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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

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House of Lords

Thursday 24 November 2016

11 am

Prayers—read by the Lord Bishop of Coventry.

Stalking and Domestic Violence
Question

11.06 am

Asked by ***Baroness Nye***

To ask Her Majesty's Government whether there are plans to include serial stalkers and domestic violence offenders on the Violent and Sex Offenders Register so that they are identified, risk assessed and managed like sex offenders.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we are committed to tackling stalking and domestic violence. That is why we introduced a new domestic abuse offence last year and two stalking offences in 2012. Convicted perpetrators of these crimes are already recorded on systems such as the police national computer to support the police in identifying, risk assessing and monitoring offenders.

Baroness Nye (Lab): I thank the noble Baroness for her Answer. A register, as recommended by Paladin, the National Stalking Advocacy Service, would have helped Zoe Dronfield, who was the 13th victim of a serial stalker, as well as many others. Can the Minister say whether the Government have any plans to develop one-to-one programmes for serial stalkers, either in custody or in the community, because the onus needs to be on the perpetrators to change rather than asking victims to change their behaviour to protect themselves and their children?

Baroness Williams of Trafford: My Lords, the Government have put a significant amount of effort into introducing these stalking offences. Certainly the victims need ongoing support, and that is one of the things that the Government provide.

Lord Paddick (LD): My Lords, hopefully those noble Lords who listen to "The Archers" will have a greater understanding of the issue of coercive control following the Helen Archer case. I declare an interest in that I have first-hand experience as a victim. Does the Minister not accept that for many perpetrators, domestic violence and coercive control form a pattern of behaviour that is likely to be repeated and that the chances of reoffending are high? Surely public protection panels have a duty to engage with these offenders.

Baroness Williams of Trafford: The noble Lord is absolutely right. Stalking, coercive control and domestic violence are not generally one-off offences but recur time and again. There are perpetrator programmes with which some of the charitable organisations we work with engage. It is sad that it is the other way round and the victim tends to flee the scene of the offence, as opposed to the perpetrator receiving that kind of ongoing work.

Baroness Royall of Blaisdon (Lab): My Lords, I declare an interest as a trustee of the excellent charity Paladin. My fellow trustee, Dr Eleanor Aston, was the victim of horrendous stalking. Her perpetrator was jailed for five years, the maximum sentence. When he was sentenced the judge said he wished that the maximum sentence could be raised. Mr Alex Chalk, the MP for Cheltenham, therefore introduced a Private Member's Bill at the other end to increase the maximum sentence to 10 years. Why would not the Government support this excellent Bill?

Baroness Williams of Trafford: My Lords, I understand the concern about why the maximum sentence is not higher than it is. The Government keep these issues under review but we do not have any plans at the moment to change the maximum sentence.

Baroness Thornton (Lab): My Lords, why does the Minister not have such plans? Also, do the Government know how many serial stalkers there are in England and Wales? If, as the Minister said in her Answer, there is a register of these men—they are mostly men, although not exclusively—have the Government considered how to warn women that they are in danger of becoming a victim of a serial stalker like Zoe Dronfield was?

Baroness Williams of Trafford: My Lords, the number of stalking and harassment referrals by the police to the Crown Prosecution Service in 2015 was almost 13,000. There were 1,102 prosecutions under the new stalking offences. These new laws need to have time to bed in. At this point the system appears to be working well.

Lord Cormack (Con): My Lords, will my noble friend suggest to the Home Secretary that it would be a good idea to look at the maximum sentence? There seems to be fairly general agreement that it is too low. Why will the Government not at least discuss this matter?

Baroness Williams of Trafford: These offences, in particular the stalking offences, are relatively new. As I said, the Government keep legislation under review all the time. We will look at it if there is evidence that it needs to be changed.

Baroness Featherstone (LD): My Lords, as the Minister said, during the coalition years laws were introduced so that a woman could stay in a house with an emergency order over the weekend, extendable up to one month. How many of those have been issued?

Baroness Williams of Trafford: I will have to get back to the noble Baroness on the exact numbers, but that system is still in place. That has not changed.

Lord Foulkes of Cumnock (Lab): My Lords, if I was in the Minister's position answering Questions and the noble Lord, Lord Cormack, had raised his question in

[Lord Foulkes of Cumnock]
the way he did, I would say, "I'll take that back to my colleagues and have a look at it". Why does she not do that?

Baroness Williams of Trafford: My Lords, I most certainly will.

Istanbul Convention

Question

11.12 am

Asked by ***Baroness Gale***

To ask Her Majesty's Government why they have not yet ratified the Council of Europe's Istanbul Convention, and when they intend to do so.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the Government are absolutely committed to tackling violence against women and girls, and to ratifying the Istanbul convention. In most respects, measures already in place to protect women and girls from violence comply with or go further than what the convention requires. Before the convention is ratified, we need to take extraterritorial jurisdiction over a range of offences. We will seek to legislate when the approach to implementing ETJ is agreed and parliamentary time allows.

Baroness Gale (Lab): My Lords, I thank the Minister for her reply, but I feel quite disappointed with it, bearing in mind that each year more than 2 million people in England and Wales, the majority being women, suffer some form of domestic violence. Although we have a raft of laws to protect people from domestic violence, this would be an additional safety net that means all our citizens could lead a life free from violence. I hope the Minister can go back and have another look at this. I am sure parliamentary time can be made available if the will is there. I hope the Minister will agree and urge whichever ministry is responsible for this to get a move on.

Baroness Williams of Trafford: I hope I can give the noble Baroness some comfort on some of the offences for which we already exercise our extraterritorial jurisdiction: murder, FGM, forced marriage and offences against children. In addition, we have pledged to increase funding to £80 million for violence against women and girls between now and 2020.

Baroness Hussein-Ece (LD): My Lords, as the Minister has said, there has been tremendous progress over the past six years. However, she has not really articulated why we are a signatory to the convention but still setting our face against ratifying it. By ratifying it, we would show a long-term commitment to preventing, educating and doing all we can to take action on violence against women. Ratifying also means providing education for equality between men and women and on how violence against women in all its forms is unacceptable. What is wrong with that?

Baroness Williams of Trafford: My Lords, as I have said, we will seek to legislate when the approach to implementing the extraterritorial jurisdiction requirements in England and Wales is agreed and parliamentary time allows.

Baroness Chakrabarti (Lab): I am grateful to the Minister for that commitment in principle. These questions no doubt mark White Ribbon Day tomorrow. Does the Minister agree with me that it would be a wonderful statement on the part of the Government if they were to commit to ratifying this important treaty by International Women's Day next March?

Baroness Williams of Trafford: The noble Baroness points to something that both she and the Government would ultimately like to see. I repeat what I said to the noble Baroness, Lady Hussein-Ece: we will seek to legislate when the approach to implementing the extraterritorial jurisdiction requirements in England and Wales is agreed and parliamentary time allows.

Baroness Massey of Darwen (Lab): My Lords, as a Member of the Parliamentary Assembly of the Council of Europe, could I ask the Minister how many conventions of the Council of Europe have been signed but not ratified—I am not asking for details of them—and why not?

Baroness Williams of Trafford: I literally cannot answer that at this point because I do not have the figures before me. I apologise to the noble Baroness, Lady Chakrabarti, because I forgot to welcome her to the Front Bench.

Lord Wallace of Tankerness (LD): My Lords, the Minister has talked about legislation for extending extraterritoriality in England and Wales. What discussion has there been with the Scottish Government about extraterritoriality in respect of this convention with regard to Scotland?

Baroness Williams of Trafford: We liaise regularly with the devolved Administrations on violence against women and girls issues. Ministry of Justice officials have had informal contact with their counterparts in the devolved Administrations about the extraterritorial jurisdiction requirements of Article 44. We will formally consult Ministers in the devolved Administrations about whether legislative change on ETJ in England and Wales should extend to Scotland and Northern Ireland in due course.

Lord Lexden (Con): How much time has passed since this convention was signed?

Baroness Williams of Trafford: I think it is about four years.

Baroness Farrington of Ribbleton (Lab): My Lords, may I remind the Minister and Members of your Lordships' House that when my noble friend Lady Armstrong was the Minister for Local Government, we ratified the convention giving genuine self-government at local and regional level? People need to be vigilant after a ratification, because many of those terms are still not implemented.

Baroness Williams of Trafford: The noble Baroness makes a valid point. In some ways, we perhaps go further in our application of ETJ than other countries.

Baroness Massey of Darwen: My Lords, may I push the Minister on similar point to the one that I raised? I asked how many conventions had been signed but not ratified. Will the Minister investigate this and write to me?

Baroness Williams of Trafford: I most certainly will. Indeed, on any of the specific questions on this matter that I have not been able to answer, I will write to noble Lords.

Baroness Kennedy of The Shaws (Lab): My Lords, can I come to the assistance of the Minister and say that we have some of the best policies on domestic violence—I cannot pretend that we have solved the problem—and have made greater headway on law here in Britain than most other parts of Europe? I therefore think we have a role to play in expanding our experience and bringing it to places where we can do great good. One reason for ratifying the treaty is to make use of our expertise in a field in which we certainly have some.

Baroness Williams of Trafford: The noble Baroness is absolutely right: we are world leaders in certain areas such as tackling violence against women and girls, domestic violence and stalking, and I hope other countries will follow.

Sex and Relationships Education

Question

11.20 am

Asked by ***Baroness Donaghy***

To ask Her Majesty's Government whether they plan to make sex and relationship education part of the national curriculum.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, there are currently no plans to review the national curriculum. This Government want to provide all young people with a curriculum that prepares them to succeed in modern Britain, and that includes sex and relationships education that is age-appropriate and fit for the world they live in today. The case for further action on PSHE and SRE delivery is actively under review, with particular consideration being given to improving quality and accessibility.

Baroness Donaghy (Lab): I thank the Minister for his reply. He will be aware that 5,500 sexual offences were reported to the police by UK schools over a three-year period up to 2015, including 600 reports of rape. That is probably just the tip of the iceberg. With many boys learning about sex from online pornography and some schools failing in their legal obligation to keep girls safe, does the Minister agree that there must be a whole-school approach on a statutory basis, with Ofsted including this subject in its inspections?

Lord Nash: I agree entirely with the noble Baroness that it is completely unacceptable for pupils to learn about sex from pornography rather than from an age-appropriate programme of SRE in schools, and that a whole-school approach is appropriate. Of course, Ofsted has a vital role to play and takes an interest in all school provision, and in particular how schools provide spiritual, moral, social and cultural development for their pupils. The inspection handbook was updated in August. It now says that inspectors will look at records and analysis of: bullying; discriminatory and prejudicial behaviour, either direct or indirect, including racist, sexist, disability and homophobic bullying, use of derogatory language, and racist incidents.

Lord Storey (LD): My Lords, I am delighted that the Minister used the term "actively under review" because he himself, and indeed the Leader of the House on many occasions, have said they wished that PSHE and sex and relationships education were taught in our schools. He may be aware that in Scotland sex and relationships education is part of the curriculum; every young person receives that entitlement. Indeed, there is a syllabus from key stage 2 right through. Perhaps in his active review, the Minister might look at lessons that can be learned from Scotland.

Lord Nash: The noble Lord makes a good point. We are very open-minded about this and will certainly do that.

Lord Lexden (Con): Does my noble friend feel that in this area HIV should feature prominently, not only because it is so important in itself but also because the Government have set a target date for the elimination of this scourge?

Lord Nash: Again, my noble friend raises a good point. I shall certainly take that back.

Lord Winston (Lab): My Lords, I declare an interest as somebody who leads the outreach programme in schools from Imperial College. We do a tremendous amount of work with teenagers around the age of 16. What is absolutely shocking is the very low number of girls who even know when ovulation occurs. The ignorance of the menstrual cycle and basic biology is striking. Is this not another example of the narrowness of the curriculum in schools that prevents a wider education generally and is very important in these matters?

Lord Nash: I am fully aware of the programme that the noble Lord referred to at Imperial College, and I know that it is very much valued by the schools that participate in it. I am a bit shocked to hear what he said. Of course, these matters should be taught in science but clearly the issue he has raised is unacceptable and we need to look at it further.

The Lord Bishop of Winchester: My Lords, does the Minister agree that it is important for such education to be about not just sex and sexuality but sex and relationships? Should such education therefore include wholesome friendships and relationships between the sexes, the importance—as already discussed—of guarding against abuse, and the vital need for young people to have a healthy self-identity? On the last point, I commend the right reverend Prelate the Bishop of Gloucester on her work with children on body image. What steps will

[The Lord Bishop of Winchester]
the Government take to incorporate such broader issues and concerns into any sex and relationships curriculum?

Lord Nash: I agree entirely with the right reverend Prelate. I know that the Church of England has a very good record on these matters. Of course, self-identity is very important. Public Health England has a Rise Above campaign that is intended to build the resilience of young people by providing online information and tackling issues, including the forming of body image.

Baroness Howe of Idlicote (CB): My Lords, given the clear importance of this issue, is the Minister satisfied that school governors play a strong enough role in overseeing this whole situation?

Lord Nash: As the noble Baroness will know, in the past few years we have tried to strengthen the role of school governors to make sure that they have the right skills. It is certainly true to say that many governors coming through now are fully aware of the role that schools should play in providing a much wider education and being aware of the issues facing young people being brought up in modern Britain.

Lord Geddes (Con): My Lords, is there not a particular onus on parents in the context of this Question?

Lord Nash: That is certainly true. My noble friend makes a very good point about parents. We have done a lot of work with parents in relation to online security and access to things such as pornographic material. Of course, schools engage with parents increasingly well, but the sad fact is that too many of our young people are brought up in homes where, frankly, the only brick in life is their school—and it is schools that have to take an increasing responsibility.

Baroness Featherstone (LD): My Lords—

Baroness Gould of Potternewton (Lab): My Lords—

Baroness Tonge (Non-Afl): My Lords—

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is the turn of the Liberal Democrat Benches.

Baroness Featherstone: My Lords, everyone in this House would wish us to tackle FGM, but for the past five years it has been impossible to get it into the curriculum. We are negligent in our duty if we do not enable young girls, who have no idea what is about to happen to them, to know what is going to happen, who to signpost and who to go to for help. Our front-line workers need the support of the Government to act against FGM.

Lord Nash: I agree entirely with the noble Baroness. Of course, we have left it to schools to decide on appropriate training on SRE and PSHE, considering the particular populations that they have. I know that many schools take this very seriously, but I will look particularly at how much this is included in our thinking. I certainly hope and am sure it is, but I will check.

Baroness Gould of Potternewton: My Lords, I am very pleased to hear the Minister say that he is rolling out PSHE; that is great. He referred to a review on SRE. Perhaps he could tell us who is participating in the review, what the timing is, and whether it will take into account that all the evidence shows that at least 70% of parents, 70% of school governors and 70% of teachers believe that SRE should be a statutory subject on the curriculum.

Lord Nash: As I said, we are actively considering what our next steps should be. It may well be that such a review will be one of them.

Lord Watson of Invergowrie (Lab): My Lords, the last time noble Lords had the opportunity to consider this question was in February this year on a Question from my noble friend Lady Massey. On that occasion, the Minister replied:

"We have now asked leading head teachers and practitioners to produce an action plan for improving PSHE. We shall continue to keep the status of the subject under review and work with these experts to identify further steps that we can take to ensure that all pupils receive high-quality, age-appropriate PSHE and sex and relationship education".—[*Official Report*, 10/2/16; col. 2233.]

I emphasise the word "ensure". The Minister who gave that reply has since moved on—indeed, she is now Leader of your Lordships' House—but the question of PSHE has not. Can the Minister say, first, what happened to the action plan, and, secondly, how he plans to ensure that all schools inform their pupils of the crucial issues involved in this subject so that they are adequately prepared for adult life?

Lord Nash: As I think I said, our thinking has moved on somewhat further, which may please some noble Lords, and I hope that we will be able to say more about this shortly.

Housing and Planning Act 2016

Question

11.29 am

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government, further to the Written Statement by Lord Bourne of Aberystwyth on 21 November (HLWS274) announcing that local authorities will not be required to set higher rents for higher income council tenants, whether they intend not to proceed with other measures contained in the Housing and Planning Act 2016.

Lord Kennedy of Southwark (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare that I am an elected councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, the Housing and Planning Act 2016 is helping us to

build more housing, as will announcements made in yesterday's Autumn Statement. I am sure that noble Lords would want to welcome the detailing of £7.2 billion of spending on housing supply that was made yesterday.

Lord Kennedy of Southwark: My Lords, during the passage of the Housing and Planning Act, we said that pay to stay was unworkable and would cost more to administer than the money it would raise. We were told by the Government that there could be no movement on it and that we were tabling wrecking amendments. Now that the Government have agreed with us and dropped this policy, can the Minister look further at the gross unfairness of the forced sale of vacant council houses, which penalises poorer families? Will he drop this dreadful policy and instead build more social houses?

Lord Bourne of Aberystwyth: My Lords, as I say, the announcement made yesterday will add to housing supply. The noble Lord will know that pay to stay remains a voluntary policy—indeed, there are occasions where I think it appropriate that people on high incomes should pay—but I take his comments to indicate support for the move that we have taken.

Baroness Gardner of Parkes (Con): My Lords, can the Minister tell us when we will see the regulations? We are still waiting for them. During the whole of last year's debates on the Bill, we asked for the draft regulations and were assured that they would be coming shortly. This year, I have asked about them again many times. I do not know whether I have just missed them, and they have come and gone. When are we going to see them?

Lord Bourne of Aberystwyth: My Lords, many parts of the Housing and Planning Act are in force already—for example, on brownfield registers, speeding up the local and neighbourhood planning system, raising the performance of local planning authorities and so on. As my noble friend will know, we are looking at regulations on rogue landlords and so on that will come into force next year, partly in April and partly in October. If she wishes me to look at specific areas, I am certainly willing to meet her so perhaps she could get in touch about them.

Lord Shipley (LD): My Lords, the Housing and Planning Act was largely about promoting owner occupation, yet during the passage of the Bill it was made repeatedly clear to the Government that there is an urgent need for more homes for social rent. Among the plethora of figures produced yesterday as part of the Autumn Statement, it is not clear how many homes for social rent the Government are now proposing. Can the Minister help us?

Lord Bourne of Aberystwyth: My Lords, the noble Lord has a valid point about the mixture of tenure, which we are certainly looking at, and the announcement yesterday contained proposals on that. We will of course proceed further with this in the housing White Paper, which will be out before Christmas. That will detail some plans and be open for consultation.

Lord Campbell-Savours (Lab): My Lords, the Minister will recall that during Committee and Report on the Bill, we argued at length on the issue that is the subject of the Question. What has led to this U-turn? Was it the strength of our formidable arguments?

Lord Bourne of Aberystwyth: My Lords, what resulted in the change was considering how people, particularly in London, would be penalised on the levels we are looking at. The Government should not be criticised for examining the situation in front of them and reconsidering a policy, which is what we have done. As I say, the provision will remain on a voluntary basis because there are people on very high incomes who should pay more for the housing they occupy.

Lord Beecham (Lab): My Lords, while the Government are in the mood to reconsider things, will they look again at the requirement under the Act for councils to let tenancies for periods of between two to five years only? I understand that councils will have the discretion to decide whether to apply the pay-to-stay provision. Why cannot that same discretion be applied to the length of tenure for which they are enabled to house their tenants?

Lord Bourne of Aberystwyth: My Lords, it is important that we get the balance right on housing by ensuring that we have people in social housing for an appropriate time, in order to ensure that as many people as possible are housed. Of course the Government take account of all these things. As the noble Lord will know, we are looking at restricting local authority lifetime tenancies, and 20 local authorities across the country are looking at how we proceed with this. But he will appreciate that the aim of the Government, and the commitment of the Prime Minister, is to build as many houses as possible because this is the basic problem facing the country. Some of those houses will be on an owner-occupied basis and some will be for affordable rent.

Lord Kennedy of Southwark: My Lords, what was the new information the Minister referred to in his previous response?

Lord Bourne of Aberystwyth: My Lords, after consulting authorities and taking account of relevant circumstances, it became appropriate to look at this again. I would have thought that, rather than the exultant crowing we seem to be getting, noble Lords opposite would welcome what is a considered response to a problem to ensure that we have the appropriate level of protection for people in relation to their incomes. But as I say, there are undoubtedly some people in local authority housing who are not paying enough, and that is where the voluntary right of councils to respond with appropriate rents will come into play. We are building more houses than ever before. We have certainly exceeded the number of council houses built in the past six years—more than double what the party opposite managed in 13 years—and it is important that we focus on that and ensure that we build as many houses as possible. I encourage the party opposite to do the same.

Baroness Altmann (Con): My Lords, I commend the Minister on this decision and the Chancellor's decision yesterday to emphasise the importance of infrastructure and housing investment for the future of this country. Will the Minister consider making sure that we include pension funds and insurance companies, which have plenty of money they would like to invest in such projects? Secondly, when planning the future housing strategy, will he ensure that we take into consideration the needs of older people who would like to downsize to more suitable homes—last-time buyers—rather than just first-time buyers?

Lord Bourne of Aberystwyth: My Lords, my noble friend is absolutely right about the importance of the mixture of private money and public money in housebuilding. She will be aware that we are bringing forward a housing White Paper, which will be broad in scope, looking at these issues. I remind noble Lords of the Chancellor's important announcement in the Autumn Statement yesterday of £7.2 billion-worth of spending, signalling the Prime Minister's commitment to housebuilding.

Business of the House

Timing of Debates

11.37 am

Moved by ***Baroness Evans of Bowes Park***

That the debates on the motions in the names of Lord Brown of Eaton-under-Heywood and Baroness Finlay of Llandaff set down for today shall each be limited to two and a half hours.

Motion agreed.

Armed Services: Claims

Motion to Take Note

11.37 am

Moved by ***Lord Brown of Eaton-under-Heywood***

To move that this House takes note of the case for limiting the number and nature of claims against the Ministry of Defence and United Kingdom armed services personnel arising out of future armed conflict abroad.

Lord Brown of Eaton-under-Heywood (CB): My Lords, 60 years ago, as a young national serviceman, I was on active service in Cyprus. I record this not as a declaration of interest but rather as a boast because, together with a great number of other people, I am proud to have served Queen and country and it now distresses me, as it plainly distresses lots of others, to see how today, often years after valiant service in conflicts abroad, our forces are subject to apparently endless claims and allegations of misconduct. Not only is this upsetting, but it affects our nation's combat capabilities by damaging morale, recruitment and our fighting strength. The problems of these largely now historic allegations are so many and so diverse that I have scarcely time even to outline them, let alone elaborate their possible solutions. There are multiple criminal allegations, multiple civil claims, claims by foreign combatants, claims by foreign civilians caught up the conflicts and claims by our own forces against the MoD. Essentially, as I shall finally come to suggest, the way ahead I would propose is not merely, as recently foreshadowed by government, to derogate from the ECHR in future combat but to reverse the trend of recent years whereby human rights obligations have been extended beyond the domestic sphere even to foreign battlefields.

First, however, I shall briefly chart the way these problems have developed and how we have reached our present sorry situation. The great majority of the criminal allegations and civil claims date from 2003 to 2009 in Iraq. Those years covered three phases: the initial invasion, the occupation and then four years as part of a multinational force assisting the Iraqi Government to maintain law and order. IHAT, the Iraq Historic Allegations Team, was established in 2010 to investigate the alleged ill treatment of Iraqi civilians in British custody. It was later extended to those not in custody. Initially this duty arose under the Armed Forces Act 2006 and previous such Acts, but later it had to be greatly extended to discharge what in 2011 Strasbourg held to be the UK's investigative obligations under Articles 2 and 3 of the convention. Its initial case load of 165 cases to be completed by 2012 has grown hugely over the years, so that even in April this year there still remained 325 allegations of unlawful killing and over 1,300 cases of alleged ill treatment—hopefully to be completed by December 2019 at the cost of some £57 million.

Over the years, IHAT's difficulties have increased, largely from the Strasbourg Court's ruling in Al-Skeini in 2011 that, contrary to all previous understanding, the convention applied to our operations in Iraq. First, IHAT's investigators were held to be insufficiently independent, and military police had to be replaced by naval and retired civilian police. Then IHAT was found insufficiently independent of the Executive for Article 2 and 3 investigations, for which inquisitorial inquiries on the model of coroners' inquests were held to be required.

I should add that IHAT's inquiries were serving also to meet the requirements of the ICC, whose prosecutor in 2014 opened a preliminary examination into war crimes—the alleged systematic abuse of detainees in Iraq. This followed a report by a retired senior judge into the notorious death of Baha Musa in 2003. Later, however, in December 2014, another retired judge reported in the al-Sweady case rejecting most of the Article 2 and 3 allegations arising from a number of detentions in 2004. Later still, in September this year, Sir George Newman published a report into the death of Ahmed Ali, who drowned in a canal as one of a number of looters driven into the water as punishment. The judge found a manifest disregard for the risk to Mr Ali's life, but his greater criticism was the Army's failure to train, instruct and guide the men in policing methods and how to deal with lawlessness, not least widespread looting, as in Basra.

Of course it is imperative in any future conflict that our troops should be better prepared for what often become essentially peacekeeping missions. Equally obviously, our troops should be held to the highest standards and any truly credible allegations of criminal

wrongdoing should be properly investigated. However, it is fervently to be hoped that never again will it be necessary to embark on another vast IHAT-like process and engage in a series of Article 2 and 3-compliant judicial inquiries, with all the enormous problems that these face. It is unsurprising that in his September 2016 review of IHAT Sir David Calvert-Smith described the interviewing of witnesses as,

"the single most intractable problem",

that it faces. Indeed, we now find ourselves paying Iraqi witnesses to travel abroad to give evidence against British soldiers.

One should note that despite all this huge effort and expenditure, barely a handful of investigations have led to any further action, and punishment thus far has been limited to a single fine. Meanwhile, alongside these endless criminal investigations—and, no doubt, to a degree prompted by them—a growing number of civil actions have been brought against the MoD, both public law claims for convention-compliant investigations and private law claims for compensation. Mostly these allege ill treatment, unlawful detention and in some cases unlawful killing. In September this year the Court of Appeal in al-Saadoon recorded over 1,200 public law claims and over 600 compensation claims, in addition to some 250 claims already settled. True it is that the UK has indeed paid out some £20 million or £30 million to settle a number of claims, most of which were doubtless well founded, though one suspects that few were of the Baha Musa kind. However, it seems likely that many claims are spurious. As the judge concluded in the al-Sweady inquiry,

"the vast majority of the allegations made against the British military … including all the most serious allegations … were wholly and entirely without merit or justification".

Those are just the Iraqi claims. A series of cases also had to deal with a number of claims arising from the Afghanistan conflict—largely claims for wrongful detention—the lead case, Serdar Mohammed, being brought by a Taliban commander.

What, then, can be done to stem such a tide of claims following on from any future foreign combat? I am of the clear view that it is international humanitarian law, sometimes called the law of armed conflict, based largely on the Geneva Conventions, which strikes the appropriate balance between military necessity and humanity and which therefore should regulate the conduct of such operations, not the human rights convention, which is, rather, designed to regulate the domestic exercise of state power. Our American allies, for example, are not subject in such conflicts to inappropriately exacting human rights requirements; nor does the Canadian Charter of Rights and Freedoms apply to its forces fighting abroad.

We should therefore, in any future military conflict overseas, derogate, so far as we are able, under Article 15 of the convention, but I cannot pretend that derogation is a simple, straightforward and guaranteed route to immunity from all future human rights claims. Alas, I have no time today to go into the problems and limitations of derogation, but I understand that my noble and learned friend Lord Hope of Craighead will touch on these. So I would not stop with derogation. Rather, I would legislate to overcome the central problem we face following Strasbourg's 2011 judgment in Al-Skeini holding, contrary to all previous understanding and this House's earlier decision in the same case, that the convention applies not just within Council of Europe states but anywhere—in broad terms, whenever a state through its agents can be said to exercise control, an approach which itself leads to grave doubts and confusion as to its limits.

I am certainly not advocating that we should withdraw from the convention, so, subject to whatever may be achieved through derogation, we shall remain liable on the international law plane to any future Strasbourg ruling. But we could and, I believe, now should legislate for domestic law purposes to amend the Human Rights Act itself to confine its application to the UK. In 2007, when Al-Skeini was before this House, we had to decide, first, whether the Act applied extraterritorially and, secondly, who is within the UK's jurisdiction for the purposes of the Convention. The late and great Lord Bingham of Cornhill, the wisest among us, dissented on the first point. He would have held that the Act has no extraterritorial application. The remaining four of us, however—unwisely, as I now think—held the contrary. We thought the Act should track the convention, but we did so explicitly on the basis that the convention itself applied only within the area of the member states with, as I myself put it,

"just a limited extra-territorial reach in certain closely defined circumstances",

such as in an embassy abroad or, by analogy in Baha Mousa's case, in a British military detention unit abroad. Naturally, one is reluctant to deny complainants any domestic law remedy, it being implicit in all this that we may choose not to give effect to some adverse international law ruling. For my part, however, I would find this much easier to justify in the present context than with regard to, say, prisoner voting, where it seems to me that the Government are being just plain silly.

Thus far, I have said nothing in respect of claims of deaths and injuries suffered by our own forces in conflicts abroad: claims against the MoD both under the Human Rights Act and in negligence. A number of such claims have been brought and, following a 4:3 majority judgment in the Supreme Court in Smith in 2013 refusing to strike them out, they remain undecided. I say nothing today as to whether the majority judgment may be regarded as right or wrong, but there seems little doubt that it has caused serious concerns in the MoD and the military about what the noble and learned Lord, Lord Mance, called, "the judicialisation of war", and that it may lead to our Armed Forces becoming dangerously hyper-cautious in conflict.

What, then, should be done about this? Much has been written on this topic, perhaps most helpfully last year in the Policy Exchange paper, *Clearing the Fog of Law*. With regard to claims in negligence, I would suggest that the time has come, not to expand the rather elusive common law doctrine of combat immunity but rather to make a ministerial order under Section 2(2) of the Crown Proceedings (Armed Forces) Act 1987 to revive, in the case of warlike operations outside the UK, the effect of Section 10 of the old Crown Proceedings Act 1947, which had prevented claims for injury or death on military service. Section 10 was repealed in 1987 really because personal injury damages had by

[LORD BROWN OF EATON-UNDER-HEYWOOD]
then risen way beyond the benefits payable to those injured on service under the Armed Forces pension scheme.

In fairness, and indeed as a matter of political reality, a ministerial order ending tort claims would now need to be accompanied by a scheme to compensate the injured fully on a no-fault basis. This would avoid all the problems of legal proceedings by way of stress, delay and expense and, of course, end the basic problem presented by Smith that the risk of litigation itself results in a damagingly risk-averse approach to soldiering.

As for human rights claims by our own forces—

Lord Thomas of Gresford (LD): My Lords—

Lord Brown of Eaton-under-Heywood: As this is a time-limited debate, I think I should be allowed to finish. As for human rights claims by our own forces, if the HRA is confined territorially, as I suggest it should be, such claims could be brought only in Strasbourg, and as to this, I tend to share the view of the minority in Smith that that court would itself shrink from adverse judgments based necessarily on reviewing the conduct of our military operations abroad.

All I have said is really but a thumbnail sketch of the many difficult questions that arise, and I now look forward to hearing the views of the number of real experts—all noble and several gallant, too—who I am delighted to note are to follow in this debate.

11.52 am

Earl Attlee (Con): My Lords, I am grateful to the noble and learned Lord for introducing this exceptionally important debate today. I have to say that I did not expect to be number two in the speakers list, and I will have to disappoint the noble and learned Lord a little bit because I do not claim to be an expert on legal matters.

If I were asked what advice I would give to a young person considering joining the Armed Forces, I would be tempted—tempted—to say, "Don't". The first reason is that we are woefully ill prepared to deter conflict, a subject I will cover in greater detail in another debate in the near future. Secondly, if he or she has to take vigorous action in dealing with opposing forces while acting entirely within the intent of commanders on the ground, the chain of command seems to be completely powerless to protect them from extremely unpleasant legal claims and investigations, as outlined by the noble and learned Lord.

Not only do service people have to accept the obvious difficulties of military service and training, they now have to accept the interference of lawyers in questionable circumstances. Therefore my admiration of those who do step up to the plate is even more enhanced, if that is possible. I can assure the House that this situation is having an adverse effect on morale, and I have to say that the reputation of the legal profession and the legal system within the Armed Forces is not very good, although many who will no doubt read *Hansard* and the speech of the noble and learned Lord will perhaps be a little more reassured.

If we are to have young men and women live and work closely together, operate lethal equipment and, when required, engage the enemy, obviously we need to have a very effective system of military discipline. My noble friend the Minister has never hesitated to stress this to your Lordships. If noble Lords cannot stomach that, then do not have Armed Forces at all and rely on someone else to keep us safe. Unfortunately, it seems to me that we have moved away from having a system of military discipline with appropriate checks and balances to a vain attempt to have a perfect system of military justice. The former ensures that the needs of the majority are not sacrificed to meet the needs of a small and often undeserving minority, while the latter does the opposite, is extremely slow and therefore unfair.

Some of the changes that we have introduced in recent years have had an odd effect. In the past, we were engaged in very few hot operations and we legislated accordingly, whereas nowadays it is not unusual to have troops in contact. I recall in the late 1990s when my noble friend the Minister and I were opposition Front Bench spokesmen for defence and the noble Lord took a Statement in the House because our forces had taken out a warlord in the Balkans—a Statement on something like that; something that now our forces are doing practically every week. How times have changed.

But the odd effect is this: in the past, a commanding officer acting on legal advice could legally condone an action on the part of his subordinate or dismiss charges. For the service person, that was the end of the matter, with a few exceptions. Now, to meet the obligations arising from earlier cases, we have a system independent of the chain of command for determining whether a service person is to be prosecuted. That means that no one in the chain of command, not even Ministers, can halt an investigation or even interfere with it. I suspect that they cannot even ask for a proper briefing on it. I believe that the turmoil for the service person under investigation can continue for as long as the system wants. We must change this. That does not mean that I will tolerate misconduct on operations—far from it. The House will recall my very strong support for the Minister regarding a case involving a Royal Marines NCO who was convicted of murder. It was an extremely unpleasant task for me, but it had to be done. So I agree with everything that the noble and learned Lord has said, and look forward to the Minister's response.

11.57 am

Lord Craig of Radley (CB): My Lords, I am delighted to be able to follow the noble and learned Lord, Lord Brown of Eaton-under-Heywood, and commend his absolutely brilliant analysis. The Minister stated only last month, on 19 October, that there are no current plans to amend the Human Rights Act; that the Government might derogate from the ECHR in some undefined circumstances; that they do not rule out legislating about combat immunity but there are no plans in train for any major change; and that they will "announce further measures shortly". It is a quiver full of the vaguest of promises but no action. Lack of action has been going on for far, far too long.

More than three years ago, I pointed out that this year's Armed Forces Bill would be a very appropriate and timely vehicle for introducing in statute combat immunity and other legal protection for the Armed Forces on operations. The Government resisted. Every service man and woman of whatever rank should not be exposed in operations to fear of, let alone belated mental trauma from, contemporary legislation, even that which has brought strength and validity to human rights protections. In a non-violent, peacetime scenario, there must be few who do not accept and support these rights, but they were surely cast and designed for use in non-operational settings. Some may still have a place whatever the scenario, but others, such as the right to life, or to family life, are so clearly at odds with the stark realities of conflict.

Nearly 20 years ago, when the Human Rights Bill was being debated, I pointed out the incompatibilities between the Armed Forces Acts—in those days each service had its own Act—covering the behaviour and discipline of the Armed Forces, and the human rights legislation. While the Armed Forces were obviously a public body, the requirements of discipline underwritten in the forces' Acts could not be dovetailed into the intentions of the human rights legislation. My pleas and those of others were not accepted. The services have therefore had to live with the incompatibilities between these Acts—incompatibilities that have now morphed into the many cases of alleged criminal behaviour being followed up by the Iraq Historic Allegations Team, or IHAT.

IHAT's existence and behaviour is, in part, also due to other legislation—the International Criminal Court Act 2001—which was much trumpeted and most earnestly endorsed by the then Government. I can remember well the concerns expressed not only by the then Chiefs of Staff and other serving officers but by many of us in your Lordships' House. The then Government's stance was to insist that arraignment before the International Criminal Court could never happen. Our courts and the International Criminal Court would abide by complementarity; that is, that the International Criminal Court could only be brought in if the national court and authorities were unwilling to deal with a case or negligent in doing so. No British justice would fall foul of such a charge, it was asserted. So the services had nothing to fear. But the obverse is now the case. Serious criticism and faults have been found by the UK courts in IHAT methods. Indeed, the Government seem to fear that one or more IHAT cases might be at risk of being brought before the International Criminal Court. The Minister admitted as much when responding to a Question on 19 October. If this is true, what should the Government now do about their involvement in and commitment to the ICC?

The USA and the French have not ratified, and there is a fine legalistic distinction between declarations and statements in any ratification. But, given the difficulties—the unintended consequences, if you will—surely thought and action must be given to adjusting the UK position with the ICC. Media comment recently suggested that other countries are indeed withdrawing from it. The Government are to pull away from the European Court of Human Rights and repatriate all aspects of legal procedures into our own sovereign authority. Should they not also apply the same philosophy to our relationship with the ICC? The USA is said to be helpful and supportive of the ICC without ever having ratified the treaty. Why cannot we have a similar approach and understanding?

Some will no doubt argue that any derogation or change would be quite impossible, or at least that the services' concerns are not reason enough to be seen to be trying to push a few tender fruit off the ICC apple cart. But we are not talking about just anyone—service men and women and veterans have surely earned special consideration, as the Armed Forces covenant's statutory approval indicates. We have had words of determination from government sources at the highest levels, we have had manifesto commitments, and we have had a quiver full of promises, but we seem to be no nearer to resolution. Service men and women are in conflict situations today. They have no immunity. Action, not fine words, is needed, and needed now.

12.03 pm

Lord Hope of Craighead (CB): My Lords, it is a great pleasure for me to follow the noble and gallant Lord, Lord Craig of Radley, and, like him, I join in congratulating the noble and learned Lord, Lord Brown of Eaton-under-Heywood, on the way that he has introduced this debate. Like him, I speak against the background of national service. I served for two and half years in north Germany, or what was then West Germany, being trained under the eagle eye of people who had served in the closing years of the war in northern Europe and also in Korea. That is the background against which I approach the subject.

The noble and learned Lord has drawn our attention to two issues that certainly require attention if morale is to be sustained and the Armed Forces are to be enabled to do their job in armed combat outside the territory of the United Kingdom. Both of these problems are linked to the extraterritorial effect of the European convention—the ultimate safeguard against the abuse of power—during the invasion of Iraq and the post-conflict situation there. This is as explained in that part of the judgment in Smith on which all the judges were agreed; it was the unanimous part of that judgment. These two problems are: first, claims against the Ministry of Defence arising from the death or injury of service personnel; and, secondly, claims by civilians under Article 3 alleging actions by Armed Forces personnel in breach of that article, which prohibits torture or inhuman and degrading treatment or punishment.

On the first point, there is a question which I hope the Minister can answer—namely, what is the magnitude of the problem? How many cases are there, and what is really going on there? I suggest that anyone who takes the time to read through paragraphs 64 to 66 and 75 to 76 of the majority judgment in Smith will appreciate that it was concerned with procurement and not with actions taken by people on the ground in the face of the enemy. It also sought to strike the right balance very carefully, recognising that the law should exercise great caution in entering this field of activity at all. Therefore, the question arises of how great this problem is.

As for the solution that the noble and learned Lord suggested—an order under Section 22 of the Crown

[Lord Hope of Craighead]
Proceedings Act—as he pointed out, the repeal of Section 10 of that Act was the result of a review which showed that damages which courts awarded in some cases could greatly exceed the benefits that servicemen received under their pension scheme. It is a fact that every statutory scheme which depends on funding by the Government is inherently parsimonious, and that it tends to become more so with time. Therefore, I suggest that we should consider very carefully whether it would be fair to front-line service personnel to confine them to a statutory Armed Forces compensation scheme, even with the adjustment that the noble and learned Lord, Lord Brown, has suggested.

Then there is the question of how to solve the much greater problem of unmeritorious claims against members of the Armed Forces. The magnitude of the problem is beyond question, as the noble and learned Lord explained. The solution is rather difficult. I wish I could be satisfied that there was an easy answer. The room for derogation under Article 15 of the convention is much narrower than some people seem to think. It is qualified by the phrase:

"In time of war or other public emergency threatening the life of the nation".

That sets a high threshold. Article 2 on the right to life can be derogated from only in the case of deaths resulting from lawful acts of war. Derogation from Article 3—the prohibition of inhuman and degrading treatment and torture—is not permitted at all.

The word "war" speaks for itself, but the other phrase is much more difficult. It suggests, as was explained in Smith in paragraph 59, that the power to derogate,

"is available only in an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community",

as the European court held that it did during the Troubles in Northern Ireland. Lord Bingham explained that his view was that it was hard for the terms of that article to be met in a case,

"when a state had chosen to conduct an overseas peacekeeping operation, however dangerous the conditions, from which it could withdraw".

He was speaking about Iraq. He thought that it was very difficult to see how the conditions could ever be met in that situation.

One has to take account of the case of Baha Mousa, which the noble and learned Lord, Lord Brown, mentioned, which shows that, despite the best of intentions and the most careful training—which I am quite sure everyone in the Armed Forces receives—there are cases where abuses occur and where the protection of Article 3 is most needed. Therefore, I suggest that derogation is a very difficult route to go down. We should also bear in mind that, if a derogation is attempted, I think it would have to be made by a statutory instrument, which would be open to challenge by judicial review. The noble and learned Lord, Lord Brown, will recall the cases of control orders where there was a derogation by statutory instrument and, to the great dismay of the Government, the derogation was set aside.

As for the decision in Al-Skeini, I tend to support Lord Rodger's view that the Human Rights Act applies to a public authority acting outside the United Kingdom. Of course, that can be altered by an Act of Parliament, but one has to bear in mind that claimants could still go to Strasbourg in search of their remedy and that Article 46 of the convention requires contracting states to abide by the judgment of the Strasbourg court in a case to which a contracting party is a party. So it is not easy to escape from the obligations under the convention.

12.10 pm

Baroness Kennedy of The Shaws (Lab): My Lords, first, I thank the noble and learned Lord, Lord Hope, for encouraging caution in following the suggestion that we should withdraw from our legal obligations.

Mention has been made of the case of Baha Mousa. I know that many noble Lords in this House will have heard the name but will not be sure to whom it refers. The killing of Baha Mousa was a terrible blot on our reputation. Here was a man with a young family, found in the wrong place at the wrong time—he was a receptionist in a hotel—who was beaten to death, unfortunately, by British forces. Without the Human Rights Act, which forced the Government to hold an inquiry, there would have been no investigation, no accountability and no justice. We should remember that. The Human Rights Act places in the hands of individuals the right to petition and the power to seek justice.

I remind your Lordships that an inquiry, chaired by William Gage, found that Baha Mousa had been killed after sustaining more than 93 identifiable injuries to his body—this makes uncomfortable listening but we have to hear it so that we remember. He found that several other Iraqi men were placed in a circle and beaten sequentially, creating what the soldiers involved called a "choir". They were hooded, forced into stress positions, made to dance and doused with toilet water—that is, water from a toilet bowl. One detainee had liquid poured over him while a soldier, pretending that it was petrol, appeared to use a lighter. These terrible abuses resulted in broken bones, damage, swelling to internal organs and post-traumatic stress disorder.

As a nation, we seek to uphold our values against those intent on destroying them. If we compromise, we lose our moral standing and betray the trust of those we seek to protect. Hypocrisy does not win wars, and neither does it win hearts and minds. Only three or four years ago I went to Iraq as an independent assessor of human rights programmes that had been established there after the withdrawal of troops. One of the things that stood us in good stead was that we, with our great respect for the rule of law, had investigated, proceeded appropriately and paid compensation appropriately in cases where we felt our Armed Forces had misbehaved. That we take those stands was a lesson to those who sought to advance the cause of human rights in Iraq.

I am currently involved in a similar sort of activity with regard to the rape of women in refugee camps, where often the rapes are conducted by peacekeeping forces, whose nations do not prosecute them. We had the moral standing in the world to be able to say, "We

do prosecute". There are independent law firms—we have an independent legal profession and judiciary, and we bring cases appropriately. Sometimes they will not be well founded, but even if that happens in a small number of cases, it is important that we are seen by the world to do this.

This whole campaign to retreat from legal obligations and our moral responsibility for wrongs committed by our military is built on a false narrative. The claim that there is an industry of vexatious claims and spurious allegations is not supported by evidence. First, I concede immediately that in all law, claims will be brought that do not withstand careful examination, and they will collapse. I accept that such claims cause horrible distress to those against whom allegations are made. We have discussed it in this House with regard to sexual allegations and other areas of crime where people face allegations, and we know about the horrible experience of the innocent who are put through that. At the same time, we know that the right route is through the law.

The military and some right-leaning think tanks have been pushing for this withdrawal from our human rights obligations, and I urge caution on this House. I quote from a letter written to the press by Reverend Nicholas Mercer, a former lieutenant-colonel in the British forces who had been a senior legal military adviser to the 1st Armoured Division during the Iraq war. He attacked the Government for inventing this orchestrated narrative account, saying that,

"the idea that the claims are largely spurious is nonsense. The Ministry of Defence has already paid out £20m in compensation to victims of abuse in Iraq. This is for a total of 326 cases, which by anyone's reckoning is a lot of money and a shocking amount of abuse. Anyone who has been involved in litigation with the MoD knows that it will pay up only if a case is overwhelming or the ministry wants to cover something up".

That was written by someone who was a senior person in the military but is also someone who, I suggest, is unlikely to make easy accusations about wrongdoing.

I urge this House to recognise that, as the noble and learned Lord, Lord Hope, has just said, even derogation carries with it its problems, as we saw in Northern Ireland. When some of the techniques used against Baha Mousa were tested, not only were they found to cause needless suffering but it was felt that they turned the troops into the enemies of ordinary citizens. That is what terrorists want, and it is what human rights law helps to stop.

It was suggested by the mover of this Motion, the noble and learned Lord, Lord Brown, that we should simply rely on international humanitarian law, but I am afraid that, on its own, it just does not cover the waterfront. It would not give people the access to the courts and inquiries that was possible under the Human Rights Act.

On the subject of derogation, I remind everybody that we have signed up to international conventions against torture and cruel and inhumane treatment. Certainly the majority of the cases that I know of were about the abusive treatment of people taken into custody. I quote the director of Liberty, Martha Spurrier:

"There is a dark irony in our government proposing derogation in wars of its choosing, even though many of those conflicts, like in Iraq and Afghanistan, are fought ostensibly in the name of human rights … If ministers held our troops in the high regard they claim, they would not do them the disrespect of implying they can't abide by human rights standards. For a supposedly civilised nation, this is a pernicious and retrograde step".

I agree with that. I want your Lordships to know that my father and grandfather—

Viscount Younger of Leckie (Con): My Lords—

Baroness Kennedy of The Shaws: I am coming to a conclusion now. I want your Lordships to know that my father and grandfather were in the military, and my male cousins recently fought in Northern Ireland and Iraq, so I will not be told that I am not being loyal to this country or to the military when I say that respect for human rights is one of the things that makes me feel proud of our military. I want it to be held up as a banner which we abide by and which is our beacon to the world.

Viscount Younger of Leckie: My Lords, it would be an appropriate moment to remind the House that this is a time-limited debate. For Back-Bench speeches, Peers are reminded to conclude their remarks when the Clock reaches six minutes.

12.18 pm

Lord Dannatt (CB): My Lords, I add my thanks to that of other noble Lords to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, for proposing this important debate and to the other Cross-Bench Peers who voted that we should discuss these matters today.

However, we should not be having to spend valuable parliamentary time on this subject in the first place. The fact that we are having this discussion today is not as a result of a plethora of cases of abuse and wrongdoing by British troops in Iraq and Afghanistan but as a result of an abject failure by Her Majesty's Government to back members of Her Majesty's Armed Forces in their carrying out of difficult and dangerous duties on behalf of the people of this country.

Rather than hundreds of soldiers, sailors, airmen and marines facing indictment for a range of alleged offences, it is the Ministry of Defence and the Ministry of Justice that should be facing popular indictment for an abject failure to stand up to the threats from the International Criminal Court to take over the investigation of British service personnel. The lack of faith in the good conduct of the vast majority of British service personnel is lamentable—little short of shameful. The only exonerating mitigation available is that the Prime Minister had the moral courage to cross Whitehall and meet with the service chiefs on this issue. However, it should never have come to this. As my noble and learned friend Lord Brown of Eaton-under-Heywood's Motion states, it should not do so in the future.

At the heart of the issue is the willingness of government Ministers and officials to believe the fallacious allegations of Iraqis and Afghans, themselves manipulated by unscrupulous and commercially driven lawyers, rather than to have confidence in the Armed Forces' chain of command and the tried and tested processes of investigation and judicial disposal.

Like other Members of your Lordships' House who have spent time on operations around the world, I am fully aware that there are incidents of abuse and

[LORD DANNATT]
wrongdoing by members of the Armed Forces when deployed. Such incidents are, of course, deeply regrettable and where credible allegations are made, investigations follow and, if appropriate, due process of law is applied. One such example is the action taken in the genuinely outrageous Baha Mousa case, which resulted in a court martial and a conviction. But this stands in shameful contrast to the treatment of Sergeant Rachel Webster of the Royal Military Police. She was arrested in the early hours of the morning in her home by members of the Iraq Historic Allegations Team, an experience she described as,

"tantamount to being kidnapped by the state".

The fact that Rachel Webster, who served for 24 years in the Army, was subsequently paid a four-figure compensation sum illustrates the degree to which this whole matter has got out of hand.

In conclusion, I want to ask the Minister a number of questions. How many cases of abuse and wrongdoing have been alleged to the Iraq and Afghanistan historic allegations teams? How many of those cases have led to formal criminal justice proceedings? How many convictions have there been? It is my understanding that the answers to my own questions are: thousands in Iraq and hundreds in Afghanistan, with no more than a handful of cases going to court at most, and there have been no significant convictions to date. Furthermore, will the Minister tell the House what the financial cost of these inquiries has been to date?

Finally, does the Minister agree with me that the financial cost is nothing whatever when compared to the loss of morale and operational effectiveness by members of the Armed Forces and loss of confidence in the Government, in whose name, on behalf of the people of this country, they have been operating? We must never put our soldiers, sailors, airmen or marines in this position again.

12.22 pm

Lord Carswell (CB): My Lords, I congratulate my noble and learned friend Lord Brown of Eaton-under-Heywood on bringing this topic before the House in today's debate. It is one well worthy of your Lordships' consideration. I must say to the House at the outset that I, too, was a member of the panel of the Appellate Committee of your Lordships' House which heard the Al-Skeini appeal—the case of Baha Mousa. I say at once that I do not seek in any respect whatever to minimise the iniquity of the treatment that he received, which was perfectly correctly described by the noble Baroness, Lady Kennedy of The Shaws. Indeed, we all expressed our horror at that iniquity in the opinions that we delivered.

I was in agreement with my noble and learned friend Lord Brown then on the grounds on which we decided the legal issue arising in the appeal. But, like him, I have reconsidered the wider ground on which Lord Bingham based his very carefully argued and perceptive opinion. I now see more virtue in that wider ground and in Lord Bingham's view of the limits on the reach of the Human Rights Act 1998. As my noble and learned friend Lord Brown went into that, I am not going to take time to go into the question further.

In some countries where they are serving, members of Her Majesty's forces are confronted constantly by dangerous situations requiring instant decisions and reactions. The people who are in the best position to comment authoritatively on the difficulties, dangers and stresses facing such service personnel are those who have themselves served in such places. It has not been my lot in life—nor, I suppose, has it been that of the large majority of your Lordships. For that reason I am particularly glad that some Members of the House who have served in high command in Her Majesty's forces will speak in this debate. Two of whom we have had the privilege of hearing already, and there are more to whose contributions I actively look forward.

The reason why I presume to speak on this topic today, apart from my judicial experience in the Al-Skeini case, is because, in Northern Ireland, as counsel and as judge, I heard detailed evidence on a number of occasions in court of those very situations and how service personnel dealt with them. The legal position was, of course, very different. Most obviously, we were dealing with events within the United Kingdom, so questions of extraterritoriality could not arise. Secondly, the Army was acting in support of the civil power and its rules of engagement were prescribed by the yellow card. The ordinary common law applied to claims brought against it and the Ministry of Defence. All the cases in which I was concerned, in either capacity, arose before the Human Rights Act was enacted, so the Convention on Human Rights did not come directly into consideration. I appeared for the Government in a number of cases as counsel and subsequently had occasion to hear and decide others as a judge of the High Court.

I shall confine myself to recounting one instance which illustrates vividly the type of situation which can arise. A person wanted for various serious terrorist crimes was known to be living in the Republic, out of reach of arrest by the security forces. It was also known that his girlfriend lived in a house very close to the border but just inside the territory of Northern Ireland. The Army received intelligence that this man would slip across the border to visit her in the near future. A small party of soldiers lay concealed within sight of the house and kept up observation for several days and nights.

One night the wanted man was seen to appear at or near the house and within the territory of Northern Ireland. The soldiers swooped on him and were able to arrest him without a struggle. They escorted him to a nearby field and summoned a helicopter to take the party and their prisoner to their base. The prisoner was in the centre of the field, guarded by the officer in charge, while the other soldiers secured the perimeter. Fairly soon the helicopter appeared and commenced its descent to the field, shining a bright light downwards—I believe it was called a Nightsun light. At that point the prisoner, hoping that the officer might be distracted or blinded by the light, made a lunge to grab his weapon. The officer reacted instinctively, discharged his weapon at the prisoner and wounded him fatally.

His representatives subsequently brought a civil action against the Ministry of Defence, claiming damages for the death of the man concerned. I appeared as counsel for the Ministry at the hearing of the action.

The law was quite clear. It was not suggested that the man had been shot by an accidental discharge of the officer's weapon. It was acknowledged that he had been shot deliberately—on the spur of the moment, of course—and the burden was then on the defence to justify the shooting as necessary in self-defence of the officer or defence of the other soldiers. In the result, the judge found in favour of the defence.

My point in describing this case as a sort of cameo is to illustrate the type of crisis which service personnel can encounter and the difficulties which they may meet in making proper decisions in situations requiring instant reaction. That is just one incident played out against a relatively calm background. How much more difficult could it be for soldiers in the circumstances which they faced in Iraq and other theatres abroad? I put this before your Lordships as a solid, practical reason to reinforce the reasons of principle which Lord Bingham adduced. I support the conclusions and suggestions which the noble and learned Lord, Lord Brown, has put before the House.

12.30 pm

Lord Richards of Herstmonceux (CB): My Lords, I too am most grateful to the noble and learned Lord, Lord Brown of Eaton-under-Heywood—and, I should say, fellow gunner officer, of which I am very proud—for giving the House this opportunity to debate a subject that is so important, perhaps deceptively so, to our nation's ability to pursue its national interests in adversity. I also pay tribute to Policy Exchange, the London-based think tank, for putting so much wisdom and energy into this issue, and to my good friend the late Duke of Westminster in particular for backing the "Fog of War" project that resulted.

My ex-military assistant Tom Tugendhat and his colleague Johnny Mercer, both of whom sit in the other place, early on recognised the flaws in our nation's stance and have done much to draw attention to them. For this is a much more important subject than, understandably, many outside the House might expect or wish it to be. If the defence of the realm is any Government's most burdensome and important role—indeed, their first and primary duty—not understanding the constraints the law might apply on the execution of that role would be a grievous omission on Parliament's part.

Today's Armed Forces have never been smaller. The Royal Navy has fewer vessels than at virtually any time in its history. The Army last had so few people in its ranks in 1790. The RAF has never been smaller or possessed fewer combat aircraft. The wisdom of this situation in what is such a troubled and unstable world is a debate for another day, but limited numbers of people and platforms mean that the individuals on whom we depend in war must be particularly clear-eyed about their mission and fully committed to the often dangerous tasks with which they are charged. They must know that their country values them and, if things go wrong, that they and their families will be looked after. They must be confident in their superiors, right up the chain of command, including their political masters, and in their comrades. Erode this and at the very moment we most need them to act decisively and unselfishly, they will pause, with potentially deadly effect on them and those around them, and on the successful completion of their mission. Every single person, particularly in today's very small Armed Forces, counts.

That is why I was so pleased that Prime Minister Cameron adopted the Armed Forces covenant. While many of the bureaucratic constraints on delivering the intent behind it need freeing up, much of real value has come from his initiative. I argue that a vital part of the covenant that reflects the moral contract between our country and its Armed Forces should be the issue under discussion in this House today. Our Armed Forces need to know that the Government will look after them should things go wrong in the heat of battle. The covenant is about more than ensuring the NHS gives due priority to our veterans or that councils provide housing for them when they return to their home towns. The certainty that government will protect them from being sued in the courts under inappropriate law is even more important, I promise noble Lords, than the morale of our fighting men and women.

What needs to be done? First, we must be prepared to derogate from the European Convention on Human Rights. I applaud the Government's stated intention to do this, but I am keen to see the details of their strategy. Like other noble Lords, I wish to know when and in what circumstances it will apply. Is it automatic or dependent on a parliamentary consensus that may not be forthcoming on the day? Clarity on this issue is vital.

Secondly, as the noble and learned Lord, Lord Brown, proposes, the Government should reassert the primacy of the Geneva Convention in regulating and guiding the actions of our Armed Forces in conflict. This is also the view of the International Red Cross, which we should note. Have the Government any plans, where appropriate—I accept that there will be nuances—to adopt IHL over the ECHR?

Thirdly, notwithstanding the difficulties which I accept are involved in so doing, there is a crying need for retrospective action to lift the burden imposed on many hundreds of disciplined and loyal service men and women through flawed legal action taken against them under the ECHR for alleged crimes committed in Iraq and Afghanistan. This issue is critical to Armed Forces morale now and into the future. Beyond the injustice perpetrated on hundreds and probably thousands of fine people, action today as a sign of good intent is vital. Promises of jam tomorrow will not do. A failure to act retrospectively will lead to distrust and cynicism about how much confidence can be placed in future derogation plans. Do the Government intend to develop retrospective legislation to resolve this crucial issue? I would be most grateful if the Minister answered these questions.

12.36 pm

Lord Robathan (Con): My Lords, it is a delight to follow the noble and gallant Lord, with whom I studied at staff college—your Lordships will note that he had a rather more successful career than I did. I also defer to the high-price legal opinion that we have on both sides of the House and want to address this issue from the position of a practitioner, albeit a long-retired soldier, and of a politician with an interest in defence

[LORD ROBATHAN]
who spent three-and-a-half years in the last Parliament as a Minister in the MoD responsible for personnel.

I want first to look at the workings of military discipline in the chain of command and then briefly at the legacy in Northern Ireland, where soldiers have been pursued for political reasons. Finally, I want to see how we might improve the situation.

When I was a soldier some 30 years ago, military discipline was a great deal fiercer, but it was largely accepted by troops—everybody knew where they were, and they were all volunteers. It was not perfect; it was sometimes harsh and by 21st-century standards unjust, but it worked.

In today's debate, I want briefly to cover the cases of Trooper Williams and Baha Mousa in Iraq. In 2004, a young man called Williams, 18 years old, found an Iraqi pushing a barrel-load of mortar bombs. He and a corporal pursued the man into a compound—they did not shoot him in the back, which they could have done—and Williams said that in a struggle, the corporal was having his pistol taken away from him by the Iraqi so he shot him. Who are we in this Chamber to dispute that story? He was charged under military law in front of his commanding officer and, with legal advice, the commanding officer dismissed the case.

However, the Adjutant-General at the time, conscious of feelings, wrote quite unacceptably in a letter—I quote it from memory—that Williams had to be charged again or it might become "a cause celebre for pressure groups". I was quite unhappy with that when I discovered it. Kevin Williams, 18 years old, was kept in open arrest for a year and charged with murder in the civil jurisdiction—because he could not be charged a second time. When he went to the Old Bailey, the judge dismissed the case on day one.

Baha Mousa's case was one of a disgraceful, appalling failure of discipline, but seven soldiers were charged. One was jailed for inhumane treatment and, quite rightly, the careers of several officers were ended without the need for subsequent inquiry.

In both cases, one of appalling misbehaviour, the military system had worked, however imperfectly. I put it to some of the noble and learned Lords in this Chamber that sometimes the civil jurisdiction does not work that well either. We did not need the ECHR to tell soldiers what was right and wrong, because they know—they are taught the Geneva Conventions, international humanitarian law and the law of armed conflict. The case of Sergeant Blackman is relevant, because in Afghanistan he knew exactly what he was doing and he actually said, "This is against the Geneva Convention"—although the eight years he received remains too long a sentence. However, he was tried by court martial, by military jurisdiction.

The Northern Ireland conflict ended in 1998. Many of the deaths and incidents there took place more than 40 years ago. There were 3,500 deaths, of which approximately 90% were caused by terrorist action. The other 10% were the result of police and military action in protecting the people of Northern Ireland, be they Catholic or Protestant, against terrorists—however imperfectly on occasion. One example where civil law was involved is the pitchfork murders in Fermanagh in 1972 which, as noble and learned Lords may remember, were covered up by a patrol. When that was discovered, the retired soldiers were brought to justice—quite rightly—and sent to jail. Where soldiers have been proved to have broken the law, they have been punished. I saw that myself in Northern Ireland.

However, the situation we now face in 2016 is disgraceful. For political reasons and under pressure from Sinn Fein, we now have the Legacy Investigation Branch of the PSNI, which is 70 officers strong and investigating 300 cases involving the military—which of course kept records—as its priority. Yet tenfold died because of terrorist activity. The Attorney-General for Northern Ireland ordered 56 coronial inquests and I am told that all bar one involve police or military actions. The Police Ombudsman for Northern Ireland is looking at historic complaints of police misconduct back in the Troubles. So the police and military are under the cosh yet they have always been judged by the law—often at the behest of former terrorists.

The last Secretary of State spoke in February of a "pernicious counternarrative" of the Troubles: opponents of the United Kingdom trying to rewrite them. The Stormont House talks of 2014 wanted to set up a proportionate inquiry unit, the Historical Investigations Unit, which would look at cases only where there was compelling new evidence and would have a five-year time limit to finish its work, starting with cases from the very beginning of 1969. Let me illustrate the current situation, briefly, with the case of Dennis Hutchings who, 42 years ago, shot a man dead. The Army and the public prosecutor investigated and the case was closed. The Legacy Investigation Branch of the PSNI undertook a cold case review and in 2013 decided to take no further action. The then Minister for the Armed Forces apologised to the dead man's family—I was slightly surprised to discover that that Minister was me. Hutchings has now been charged with murder but his two comrades—his defence witnesses in the case—are dead. Is that justice? In all these theatres, we are often allowing our enemies and opponents to use our liberal values, which they oppose, against us.

The Government should fulfil their manifesto commitment, repeal the HRA and have a UK Bill of Rights—not to withdraw, as the noble Baroness said, from our moral obligations but to make things more fitting. I also back the noble and learned Lord, Lord Brown. We should reinstate something like prior immunity so that soldiers cannot sue the Crown for inadequate equipment because that is an entirely subjective judgment. Imagine the consequences of that 100 years ago with the Somme: it would have been a complete lawyer-fest. I am out of time, but I congratulate the noble and learned Lord on his excellent speech and for having this debate. I encourage Her Majesty's Government to listen to the feelings expressed here and to take action so that our Armed Forces are effective in battle, able to act in the heat, dust and nightmare of it without worrying that lawyers in comfortable offices, be they in Strasbourg or the Strand, will later judge them to be criminals.

12.43 pm

Earl of Stair (CB): My Lords, I join many other noble Lords in thanking my noble and learned friend Lord Brown of Eaton-under-Heywood for bringing

forward this debate on this extremely important subject. I am pleased that the Government appear at least to be starting to acknowledge it as such.

It seems that, starting with the Iraq war, confusion has developed between the international humanitarian laws covering conflict and the European Convention on Human Rights designed to protect the individual. I do not believe that human rights legislation was ever designed to be used in conflict or even outside the normal territory of participating Armed Forces. Yet this has become a precedent and, as we heard, will end up opening many other historic investigations into every operation undertaken by our Armed Forces outside normal territorial boundaries. It is interesting that international humanitarian law is deemed to have adequately protected all in conflict situations to date. However, human rights law has brought a challenge in the form of protection including for suspected enemy forces who may be trying to kill our forces but are deemed to have a greater right to life. We have been well served by international humanitarian law, including the Geneva Conventions, and the Armed Forces Acts in protecting and guiding our Armed Forces in the work they undertake either overseas or when they have had to operate at home—for example, in Northern Ireland.

It is wrong that members of the Armed Forces can be prosecuted long after an event, following an investigation undertaken perhaps using witnesses with ulterior motives. This has now also started, I believe, with some historic cases from Northern Ireland. Like some other Members of this House, I was involved in the Falklands campaign nearly 35 years ago and I know that should someone raise questions with me about actions that were taken at that time, much of the detail has been forgotten and could easily be open to incorrect assumptions.

It is easy to forget from the warmth and comfort of an office that in many incidents involving troops in contact with opposition forces, they often operate under stress and fuelled by adrenaline, and judgments are based on the situation as it appears at the moment and within the guidelines of their training. To follow up at a later time in court cannot allow the full circumstances to be considered and, indeed, could be open to confused assessment if left for a long period of time.

The European Convention on Human Rights has a very important role in the protection of people in the normal course of life. However, I cannot believe that it was ever conceived to be used in a conflict situation, irrespective of whether the conflict is at home or abroad, and certainly not as a means for financial gain, for either legal advisers or victims. Although the Government are correct in applying the derogation to Article 15—taking into account the warnings of my noble and learned friend Lord Hope—prior to the proposed alteration of our status in Europe, the final intention must be for sound legal guidance that supports the actions taken by our Armed Forces when working in conflict situations but, equally, under no circumstances tolerates abuse or misuse.

There are few careers I can think of where as an employee you are expected to place yourself in mortal danger. As such, this needs to be respected and every effort made to support and protect those who are prepared to undertake such jobs, both through support after conflict and by the unrestricted provision of protection either through equipment or by legal cover. The Ministry of Defence must assume ultimate and total responsibility for what is undertaken in the name of the Government by the Armed Forces, and ensure that there is a robust control to ensure that there can be no comeback after the event on those who were implementing the directions they received. This, I am sure, can be achieved by an immediate summary and report and a detailed record of activities that have taken place soon after the event, and perhaps independent monitoring of those being held under detention prior to further investigation or prosecution.

I welcome the Government's proposals and look forward to the protection that the Armed Forces working on our behalf will gain—and deserve—whether working at home or abroad. I look forward to hearing from the Minister about whether he can give some indication of the timescale and the importance with which the Government intend to treat this matter.

12.48 pm

Lord Bew (CB): My Lords, like other noble Lords, I express my thanks to my noble and learned friend Lord Brown of Eaton-under-Heywood for securing this debate. I fundamentally support the underlying thrust of his speech but I confess that I do not have an answer to some of the key questions that have been discussed already. What about derogation of the ECHR? Should the Human Rights Act 1998 be amended, as my noble and learned friend argued? Should there even be retrospective amendments to the Human Rights Act 1998? All these courses of action have their supporters and all of them have their very intelligent and able opponents.

There is no case for allowing the status quo to remain unaltered. UK forces should rightly remain subject to international humanitarian law—the Geneva Conventions—as well as, of course, UK military and civil law; for example, the Armed Forces Act 2006. It is perfectly obvious that it is not just the Geneva Conventions or our domestic law that are important in this respect; it is actually the moral culture of this country, its polity and its military. I will come back to that in a minute.

While the thrust of today's debate deals with extraterritorial matters such as Iraq and Afghanistan, there is no question that the key moment in what has been called the juridification of armed conflict came in Northern Ireland with, for example, the Bloody Sunday tribunal. There is no question that that is where the great impetus originates from in our modern culture. I was the historical adviser to that tribunal and I do not regret doing that work. Earlier in this debate the noble Baroness, Lady Kennedy of The Shaws, talked about the Baha Mousa case; I think that she used the phrase "A very serious blot on the reputation of the British Army". I think there is no question that Bloody Sunday was also a very serious blot on its reputation but I would add one thing, which I can say as the historical adviser.

Even before the great tribunal of the noble and learned Lord, Lord Saville, there was the Widgery tribunal, which was so widely dismissed as a whitewash.

[Lord Bew]

Lord Widgery referred to reckless firing and said that eight of those who died were innocent. By the way, the only reason that Lord Widgery did not say that the whole 13 were innocent was the duff forensics he had to work with, which were quite rightly later modernised in the work of the noble and learned Lord, Lord Saville. I have seen the response by senior Army commanders to that first report and they did not say, "That's wonderful—it's a whitewash and everything is fine on the day". They said, "This is shocking. We, the British Army are responsible for the death of eight innocent civilians". This happened before we had a £200 million inquiry and there never was anything like Bloody Sunday again, despite many difficult and dangerous circumstances during the life of the Troubles. That is why I said earlier that we should not just be able to rely on the Geneva Conventions and our own domestic law; we also have some reason to think that we can rely on the culture and reflections on tragic events of our own senior Army officers, and indeed of our own political community in the United Kingdom. It is perhaps worth saying that.

The current run of legacy cases in Northern Ireland have already been referred to in this debate. They are very expensive and, in the end, are always paid for by the long-suffering hero of the Troubles, the unknown British taxpayer. Among the cases running at the moment I am predictably thinking most recently of the inquiry, which some of your Lordships will know of, into the activities of a famous army agent called Stakeknife. They seem to involve at some level the application of humanitarian law and the intrusion of these concepts of human rights into the theatre of war. Let us remember that the IRA always claimed to be waging a just war, from its point of view. We need to think just how wise that actually is as a project.

I return to my argument that the status quo is not sustainable. We have reached a point where, through a number of steps—the Bloody Sunday inquiry was part of this as well as the legal cases that have been referred to—all of this is understandable. At every point the decisions made by judges, whether in this country or elsewhere, and by politicians at various points in this process are all understandable. Yet in the case of Northern Ireland, we have stumbled to this end result: if you were responsible for bombing people in London, you will now have received a letter of comfort. I understand why that decision was made, ambiguous though it was. If you were an IRA person and have that letter of comfort, you will not be prosecuted yet according to the press, the soldiers of Bloody Sunday may in fact face prosecution. As I said, in the chain of decisions not one of them is irrational or not open to a certain type of defence. However, this suggests that the stumbling empiricism that we are engaged in in this field has to come to an end. There is a case for the Government to take some decisive action.

12.55 pm

Lord Bilimoria (CB): My Lords, I remember as a teenager going to visit my late father, Lieutenant-General Bilimoria, when he was a brigadier commanding a desert brigade in Rajasthan. He said, "Come on. I want to show a military court martial". I remember going and sitting right at the back. Talking to your Lordships now, I can picture watching the Judge Advocate-General in action. I realised then and there that if something happened, the military conducted the business in its own way through a court martial.

The Conservative Party's 2015 general election manifesto made a commitment to,

"ensure our Armed Forces overseas are not subject to persistent human rights claims that undermine their ability to do their job".

Last December, Michael Fallon, the Secretary of State for Defence, was reported as saying,

"that there was 'a strong case' for suspending the European human rights law when sending forces into action overseas".

He told the *Daily Telegraph* that ambulance-chasing British law firms were inhibiting the operational effectiveness of British troops abroad and,

"argued that the European convention—which applies in the UK through the Human Rights Act—was 'not needed' in the field of military conflict overseas".

Does the Minister agree?

In January, the then Prime Minister David Cameron set out his plans to reform the situation. He said:

"It is clear that there is now an industry trying to profit from spurious claims lodged against our brave servicemen and women who fought in Iraq. This is unacceptable and no way to treat the people who risk their lives to keep our country safe. It has got to end".

We talk about derogation. In October the Government announced that they will introduce a presumption to derogate from the ECHR in conflicts to protect Armed Forces from persistent legal claims. Can the Minister confirm that this will be the case in future because he wrote:

"While the Courts have been seeking to reconcile the Convention with the long established Law of Armed Conflict (or International Humanitarian Law), our military personnel have been engaged in operations overseas in support of the international community"?

The Attorney-General gave evidence to the House of Commons Defence Sub-Committee. He highlighted that the decision to derogate would not be "immune from challenge", and therefore there would need to be a,

"logical and defensible thought process applied to the decision to derogate".

Will the Minister explain that?

Policy Exchange published a well-known document which stated:

"The application of laws originally designed for domestic civilian cases to military operations overseas has changed the way the armed forces can act".

It argued in favour of applying IHL not human rights law to military operations. Toby Perkins, then shadow Minister for the Armed Forces, commented that IHAT,

"is being abused by irresponsible law firms or malicious complainants".—[*Official Report*, Commons, 27/1/16; col. 201WH.]

We had a debate on this matter in February. I remember that I had just returned from the Indian Defence Services Staff College in Wellington. The Guards officer, Lieutenant-General Gadeock, the commandant, reminded me of the motto of the staff college: "To war with wisdom". The mascot of the staff college—its emblem—is the owl, which of course stands for wisdom. Are we being wise in this country when it comes to the law and the Armed Forces?

I thank the noble and learned Lord, Lord Brown, for initiating this important debate and for speaking about the fog of war and the fog of law.

Everyone has been consistent. The former Armed Forces Minister Penny Mordaunt has spoken openly about spurious cases being the,

"enemy of justice and humanity".—[*Official Report*, Commons, 27/1/16; col. 203WH.]

After all, France has opted out of certain elements of the ECHR to protect its military from the threat of litigation as have Portugal, the Czech Republic and Spain. Why can we not? Why will we not definitively say that we are going to do this? The Geneva protocols should be applied in conflicts and war. Surely the Minister agrees.

In the Defence Services Staff College, I remember referring to *10 Things Entrepreneurs and Military Pilots Have in Common* by Ron Yekutiel. Two of those 10 things are "Be Bold" and:

"Just get the Job Done".

Can you be bold and just get the job done when you have the ECHR hanging over you?

The noble Lord, Lord Richard, spoke about the military covenant. The first duty of government is the defence of the realm. The covenant is at the heart of everything.

A letter was written by our former senior generals, many of them now noble Lords. They said very clearly:

"The increased risk of prosecution constrains the ability of commanders to respond to fast-moving situations on the battlefield".

As the noble Lord, Lord Dannatt, said, this could lead to a generation of risk-averse military leaders, which undermines the world-class status of our Armed Forces and their morale.

I conclude by talking about General Ian Cardozo, who wrote the book on my father, *Lieutenant-General Faridoon Bilimoria: His Life & Times*. I asked his opinion on all this. He said very clearly:

"A soldier by the very nature of his profession is required to put 'Country First and Self Last'".

In his own words, he spoke about the covenant:

"Considering the above, and the fact that personnel of the armed forces carry out their duties cheerfully and courageously, in the face of death, it would be incumbent on the country that he serves, that he is treated with honour and respect and that this translates into a system that cares for him should he be killed or disabled during the execution of his duty … the soldier needs to know that he and his family will be dealt with fairly should the occasion demand. A country that does not look at the needs of the soldier in a fair and just manner dishonours itself".

If I may, I will conclude by reading a poem that I came across that sums it all up, written by an unknown soldier:

"I am that which others did not want to be,
I did what others did not want to do,
and went where others feared to go,
I have felt the blistering cold,
stared death in the face,
and enjoyed only a moment's love.
Even though no one cares who I am or what I've done,
I can honestly say
I am proud of what I am!
A SOLDIER".

We cannot let them down.

1.01 pm

Lord Ramsbotham (CB): My Lords, I join noble Lords in thanking my noble and learned friend Lord Brown of Eaton-under-Heywood for obtaining this debate, and congratulate him on the masterly way in which he introduced it.

I note that my noble friend's Motion uses the words "armed conflict", not "war". I must say that after 41 years in the Army I was horrified by the loose use of the word "war" by Messrs Brown, Blair and Bush when declaring "war on terror" and "war on drugs". I was pleased when Professor Sir Michael Howard reminded us that the Romans had two words for war: "bellum", which was the lawful use of force between states, and "guerra", which was the unlawful use of force within a state. What we are faced with in armed conflict at present is often described as "asymmetric warfare" but I prefer a phrase that was used by General Sir Rupert Smith, who commanded our division in the first Gulf War, of "war amongst the people" because it expresses most vividly the problems that our current commanders in armed conflict face, particularly overseas. I want to limit my contribution to making a plea on behalf of all commanders who are likely to face that sort of situation.

Like my noble friends in this House, the armed conflict that I was involved in, including in Northern Ireland, was more certain than it is now. The laws of war, as they are often referred to, were drawn up for conflict between clearly identifiable armed forces fighting on a clearly defined battlefield. They do not apply, though, because there is no such thing as a battlefield in wars among the people. I found when commanding troops in Northern Ireland that it was essential that all ranks were quite clear on where they stood in regard to the law if they were to act within the law. The yellow card regarding opening fire that was issued at the time gave a clear description of that.

At present, though, the fact that such a number of claims are being made against armed services personnel shows that not only have the Armed Forces not been completely clear on where they stood in regard to the law, particularly human rights law, neither have the lawyers understood the conditions in which the armed services have to act. There is no doubt that the conditions and circumstances of armed conflict differ from times of peace. The application of human rights law in particular, which has been very ably covered by my noble and learned friend Lord Hope, especially the definitions in Article 15, emphasises that difficulty.

Commanders must be completely clear about the legal position regarding operational decisions that they are going to take. I very much took the reference made by my noble and learned friend Lord Brown and my noble friend Lord Dannatt to the danger of becoming risk-averse. You cannot have commanders made risk-averse by something that is not in their control. My noble and gallant friend Lord Boyce recognised this at the start of the second Gulf War when he sought a decision on whether the invasion of Iraq was legal and therefore whether those taking part were likely to be arraigned as war criminals.

I ask the Minister to note the importance of any Government who are committing UK armed services personnel to armed conflict abroad ensuring that the

[LORD RAMSBOTHAM]
legal position is made abundantly clear to all ranks involved. To my mind, that is the best way of preventing the shameful example we have had of the performance of some unscrupulous lawyers in pursuing them, particularly in Iraq.

1.07 pm

Lord Trevethin and Oaksey (CB): My Lords, I declare an interest of sorts in that I am a practising barrister and I work in the field of claims against professionals, and I suppose that is a field into which at least some of the cases that your Lordships are discussing would fall. Unlike many of the noble, and sometimes noble and gallant, Lords who have spoken in this debate, I am completely unqualified to comment on the effect of the law's incursion into military matters on operational efficiency because I have never seen action or done military service. In that, I would think I resemble over 99% of the judges who now serve. We now do not even have judges on the Bench who will have done national service. The disconnection between the legal system and its practitioners on the one hand and military people on the other is part of the problem that lies behind this important debate.

I have asked myself how things might go on the side of the fence that I know a bit about: namely, litigation involving professionals. At the moment, if you leaf through the increasingly bulky textbook on professional negligence, you travel through the bit about insurance brokers and then there is a bulky section on lawyers, but you do not have a chapter on military negligence. Within five or 10 years' time, though, unless the developments we have been discussing today are arrested and reversed, we will find a chapter on military negligence and it will make uncomfortable reading. I shall give the House in advance one or two highlights of what it might say. There will be a section on breach of duty that will say something like this: "It is a defence for the defendant to show that the Ministry of Defence has been following a procedure that is established and recognised as acceptable by a substantial body of opinion within the military". In professional negligence law that is known as the Bolam defence, and I see no reason why it would not apply to the claims against soldiers that we are currently considering.

When the military sets about drafting its manuals to fend off the risk of liability in future litigation, it will find itself having to set out procedures designed for that very purpose. Those procedures will ossify in the manual in a way that is completely inappropriate when one considers the need for operational efficiency in the face of ever-changing threats. The result will be that the military will be constrained to make the well-known mistake of fighting the last war by the incursion of the fog of law, if you like, into military activities. That is one problem.

When one moves on from breach of duty, one passes over issues about evidence and comes to the section on causation and loss, which for lawyers in the field is often the most difficult and legally interesting part of the case. As the noble and learned Lord, Lord Hope of Craighead, said, the Smith decision in the Supreme Court was concerned with issues of procurement and equipment. Nevertheless, one of the cases before the Supreme Court involved injuries and deaths caused by friendly fire in relation to the use of Challenger tanks. It seems to me inevitable that, if that case were to go to trial, issues would arise about exactly what happened in the heat and dust of the battleground.

The judge hearing that case and similar cases might well have to answer issues about causation. It would be said on the part of the defendant—it is a standard defence in this type of litigation—"Even if we had done what we should have in relation to equipment and so forth, the result would have been the same, because things would have played out in the same way on the battleground". The judge would have to ask himself whether there was a possibility of a more favourable outcome. That would involve hypothetical inquiries about the actions of combatants on the battleground, and he might end up saying something like: "There is a 30% chance that the hostile combatants would have behaved in a different way if the equipment issues had been properly addressed by the Ministry. I am therefore constrained by the law to award discounted damages on that basis". That sort of inquiry into events on the battleground seems to me, and, I should have thought, most of your Lordships, unimaginable and something that cannot be allowed.

What is to be done? I have about 30 seconds left and there are obviously no easy answers. I entirely understand what the noble and learned Lord, Lord Hope, said, about the difficulty of derogating from the convention. It seems to me that primary legislation is required. One function of that legislation might be to define combat immunity. That doctrine was explored by the Supreme Court in the recent case of Smith. This cannot be left to the judges alone because they cannot cope with the thickets of law emerging from Strasbourg. Strasbourg jurisprudence is a living tree and, every now and then, the tree surgeons in Strasbourg lop off one branch and replace it with another, which makes judicial control of this area impossible. Legislation is required and, for all the reasons developed in this debate, it is required urgently.

1.13 pm

Lord Stirrup (CB): My Lords, this is an important debate, and I, too, thank my noble and learned friend Lord Brown of Eaton-under-Heywood for securing it and for the interesting ideas that he advanced, which I support. In considering these and other aspects of the problem, it is important to be clear precisely what we seek to achieve. We are not suggesting that the Armed Forces should somehow be freed from the constraints of the rule of law. The notion that military personnel, if not kept on increasingly tight rein through legal process, would have a tendency to unlawful behaviour is totally unjustified and does great disservice to the men and women who sacrifice so much on behalf of our nation. The need to act lawfully is not a side consideration for the Armed Forces; it is an integral part of the ethos and training.

When I was an operational commander responsible for making decisions about whether or not targets should be attacked, I had a lawyer at my shoulder the entire time. We worked hand in glove to ensure that all decisions conformed with the law of armed conflict

and the various other legal constraints placed on us, but I did not need a lawyer to spell out for me the various considerations of the law or the necessity of abiding by them. These had been part of my training for years and were as much a part of my thinking as the military necessity and effectiveness of the decisions I was making. The lawyer was there as a sounding board, as a provider of expert advice and as a check of last resort, should I have some sort of mental aberration, but we were not coming at the process from different angles, one military and one legal; the legal was a fundamental part of the military.

The same is true in all other parts and at all other levels of the Armed Forces. The people we are discussing today are professionals. Wider moral considerations aside, they take pride in doing their job professionally, and that means doing it under and within the law. Can I guarantee that none of them would ever act unlawfully? Of course not. Humans are not perfect and occasionally somebody, knowingly or not, will carry out an illegal act. They must be subject to the full rigour of the law.

The noble Baroness, Lady Kennedy of The Shaws, rightly highlighted the terrible Baha Mousa case, but later suggested that the MoD would generally resist investigation of such cases. I say to the noble Baroness that I was present during discussion of the Baha Mousa case in the MoD. To an individual, we were sickened. We were determined that responsible parties should be brought to justice. It was as far from resistance as can be imagined.

That said, the context of military operations is very different from that which most people experience throughout their lives. It is inherently chaotic. Operations take place in a violent arena where uncertainty abounds and an opponent is trying his utmost to wrong-foot you. In such an environment, the cleverest, most perspicacious and well-trained people will make judgments that turned out to be wrong. It is inevitable. It is inherent in the nature of the beast.

This uncertainty and imprecision extends beyond the boundaries of immediate combat. Some people have claimed that their aim is to ensure that our people go to war only with the best possible equipment. Of course we should all like that, but the effectiveness of equipment will vary according to many different factors; it cannot be perfect in all regards. Ordering an attack today with imperfect equipment may well be less costly in the long run than delaying that attack until the equipment can be improved. These are complex issues with no neat solutions.

It seems to me that that complexity has been extended beyond all reasonable grounds by the involvement of human rights legislation. The protections offered by such legislation are important in the round and are part of the very society and culture that our Armed Forces are there to defend but, ironically, we now run the risk that the way those protections are being interpreted will actually weaken that defence.

I, for one, have always been somewhat bemused by the concept of a right to life. What about the young girl who tragically dies of leukaemia? What happened to her right to life? There is, in my view, no such right—not least because it is inherently unenforceable. What there is, and must be in any civilised society, is an obligation on its members not unnecessarily to hazard the safety of others. Some may argue—rightly, I think—that this is simply another way of making the same point, but how we put things is important. It influences how we think about those things.

No military commander would ever wish unnecessarily to hazard the people under his or her command, but in the Armed Forces it is sometimes necessary to do so. The degree of necessity and level of acceptable risk are often difficult judgments, and sometimes they will turn out in hindsight to have been wrong. If the decisions were made negligently, those responsible for them should be called to account, and legal routes for doing so have long existed, but if every judgment is to be second-guessed in the courts, the result will be caution and even risk aversion. History has amply demonstrated that both tendencies are themselves damaging and dangerous over the long run. The 2013 policy paper *The Fog of Law* and the subsequent 2015 paper *Clearing the Fog of Law* provided an excellent overview of the issues involved.

Some argue that the courts can be relied upon to understand the difficult context of operations and to ensure that only egregious cases go forward, but such post-fact filtering, while better than none, will do nothing to diminish the impact on decision-making in the field. Commanders will still face the prospect of their judgments leading to legal challenge, and the assurance that they should eventually be cleared will be of no comfort to them.

In sum, we expect people in our Armed Forces to make difficult judgments in complex and ambiguous situations. With the benefit of hindsight those judgments will inevitably be called into question and, on occasion, even those making them will conclude that they turned out to be wrong. But the alternative is much worse. Hardened veterans of many nations over many centuries have averred that only one thing frightened them more than a commander who made the wrong decision and that was one who made no decision. Unless we restore some balance and provide the military with a degree of protection against the increasing tide of legal challenge it faces, that is the very situation we will be engendering.

1.21 pm

Lord Thomas of Gresford: My Lords, first I declare an interest as chairman of the Association of Military Court Advocates, with experience of courts martial and military matters over a period of some 20 years.

Regarding claims against the Ministry of Defence, I am with the noble and learned Lord, Lord Hope, in pointing out that these claims have been essentially on procurement issues. Even the case to which the noble and gallant Lord, Lord Stirrup, referred—regarding friendly fire—was as a result of inadequate communications equipment between the tanks that fired and the troops who received that fire. It was essentially an equipment problem. These claims against the Ministry of Defence are not on the basis of wrong orders, or no orders, being given in the field of battle but merely the putting of our troops into that battle without the necessary and proper protections that they should have. What has followed from that, and I know that noble and gallant Lords will appreciate this, is that the equipment has been improved in every case.

[Lord Thomas of Gresford]

They have been given better equipment; their service has been made that much safer as a result of the claims that have been brought.

I do not believe in a scheme of statutory compensation, as the noble and learned Lord, Lord Brown, suggested—though I congratulate him on bringing this debate forward, because it is very important—for the reason given by the noble and learned Lord, Lord Hope: that such statutory schemes tend to get more and more parsimonious. I was once a member of the criminal injuries compensation board when compensation was paid on the basis of civil damages, and kept in step. I resigned from that board when, back in 1992, the scheme was altered so that a tariff scheme, without regard to the particular circumstances of the individual, was introduced. Statutory schemes are not the answer.

I turn now to the claims for torture and inhuman and degrading treatment brought by people as a result of their alleged treatment by members of our Armed Forces. I ask the Minister: has a single one of the 326 cases, for which £19.6 million has been paid by way of settlement, been brought by a combatant as a result of injuries that he received in actual warfare—in combat? I should have thought that combat immunity, although it may shade a little at the edges, is a sufficient defence to any such claim. I think that we are dealing simply with prisoners of war and civilians and the treatment that has been meted out to them. If combat immunity is at all vague, it is because it is generally a question of fact, not of law.

I was in the Baha Mousa case—I represented one of the officers who was charged with neglect of duty—and I very much recall what it was about. It was an absolute disgrace. Do your Lordships appreciate that the case against the corporal who pleaded guilty to a war crime and received 12 months' imprisonment for it was standing at the door of the stinking prison in which these prisoners were kept, inviting passers-by—military personnel—to come in and take a shot at hitting or kicking the Iraqis who were hooded and tied in that compound? That was the sort of circumstance that led to Baha Mousa receiving 93 separate injuries, as the evidence said.

In the al-Skeini case, it was decided that the civil claim could go forward on the basis that the prison could be regarded as an equivalent to an embassy. Certainly there were no Ferrero Rocher things being handed out there. It was the most dreadful place, and for it to be compared with an embassy to give jurisdiction was completely wrong.

Reference has been made to Lieutenant-Colonel Mercer, who served some 20 years as a lawyer in the Army. He served in Northern Ireland and also in Bosnia. He volunteered his expertise to the defence team of which I was one—in fact, specifically to me—when we were defending seven paratroopers from the 3rd Battalion of the Parachute Regiment in a court martial in Colchester in 2005. They were all acquitted. I remember that case for one very good reason.

An Iraqi lady had been brought over from a village in Iraq because she had complained that a paratrooper had ripped off the front of her dress and exposed her to the villagers, and to be exposed in that way was the worst thing that could happen to a woman in Iraq. She came to the witness box and took the oath on the Koran. Then, to the surprise of everybody, she announced, "I have now taken an oath on the Koran, and I have to tell you that everything I've said so far has been a lie". That was the quality of the evidence in that case. Judge Blackett, the Judge Advocate-General, when dismissing the case said that,

"most of the Iraqi witnesses have exaggerated their evidence".

Three women, one of whom was pregnant at the time of the incident,

"have admitted telling lies that they were seriously assaulted when they were not … Others have been shown to tell lies".

He added:

"In their own admission these Iraqis saw an opportunity to seek financial advantage from the British Army. They frequently spoke of fasil, or blood money, and compensation in relation to what were patently exaggerated claims".

I certainly had my eyes opened by that case; falsified claims could very easily be brought, and discovered.

Article 1 of the European convention requires states to uphold the rights guaranteed by the convention within its jurisdiction—not its territory, its jurisdiction. The noble and learned Lord, Lord Brown, suggested that the extent of the European covenant should be confined to the United Kingdom. That, of course, would have meant that the Baha Mousa family could not have brought any proceedings. But the al-Skeini judgment was considered by the European Court of Human Rights, and it said that,

"if universality truly is the foundation of human rights, why should it matter for the purpose of its extraterritorial application that the ECHR is a regional treaty? Jurisdiction either means control of a territory or it does not, and people either are within the state's jurisdiction or they are not".

It held that,

"following the removal from power of the Ba'ath regime … the United Kingdom … assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government".

In other words, it was within the United Kingdom jurisdiction. So we ought not to confine the convention territorially to the United Kingdom.

As for derogation, I follow the noble and learned Lord, Lord Hope, again in saying that it is very difficult to derogate from the convention. The phrase,

"in time of war or other public emergency threatening the life of the nation",

could not possibly be applied to our invasion of Iraq or Afghanistan.

I was brought up in a world in which barratry still existed—that is the stirring up of litigation. It was abolished only in 1967. Ambulance chasing was against the law but, since that time, it has started again. I was against the legal profession advertising its services, but that stopped in 1986. That has led to the sorts of abuses that we have seen by certain very limited firms of lawyers who are facing professional obloquy. I do not believe that commanders in the field are afraid of firms of lawyers of that calibre, and I am quite sure that they follow far more readily the legal advice that is always at their hand.

1.32 pm

Lord Touhig (Lab): My Lords, the House is in debt to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, for securing this debate. We have seen throughout the wide range of experiences and backgrounds that have contributed to this most important discussion.

On the eve of the battle for Iraq in March 2003, Colonel Tim Collins said:

"We go to liberate, not to conquer. We will not fly our flags in their country. We are entering Iraq to free a people and the only flag which will be flown in that ancient land is their own ... As for ourselves, let's bring everyone home and leave Iraq a better place for us having been there".

Sadly, not everyone came home, and the debate over the consequences of the outcome of the Iraq war rages on today. But for me those words express the very best of the tradition of the British Armed Forces when going into conflict. Those who join our Armed Forces become part of an organisation with a proud record, and they know at some time they may asked to put their lives on the line. So we must ask why some are seemingly obsessed about finding fault, seeking out allegedly guilty servicemen and ex-servicemen and branding them with allegations of terrible actions in Iraq and elsewhere. It is, of course, completely right that, when there is credible evidence of a wrongdoing, this must be investigated. However, in recent years, a whole industry has emerged which is fuelled by vexatious claims against the men and women of our Armed Forces. It is has become far too easy for large law firms to lodge a claim against our servicemen and women. Most notable was Public Interest Lawyers, which took 2,470 cases to the Iraq Historic Allegations Team; 70% of all the cases came from that one firm. This large number of referrals led the Ministry of Defence to complain to the Solicitors Regulation Authority. The Legal Aid Agency ruled in favour of the MoD and Public Interest Lawyers was stripped of its legal aid funding and ceased to operate in August this year.

Britain's Armed Forces are subject to UK service law and the Geneva Convention, and allegations of criminal activity are rightly and properly investigated. If I reflect on my time as a Defence Minister, I recall speaking to many soldiers who talked about the split-second nature of decision-making on a battlefield, adding that there was not time for debate in the heat of war. I can completely empathise and understand their point, and I am sure that it is shared across the House.

Like many others, I am concerned about the increasing number of vexatious claims being put to the Iraq Historic Allegations Team, claims that are putting service men and women through endless scrutiny and questioning only for many allegations to be thrown out due to insufficient evidence. Jeremy Wright MP, the Attorney-General, recently told a parliamentary inquiry:

"I am convinced that at the end of this process the vast, vast majority of allegations will be found to be baseless".

As I have stated, it is right that any cases of wrongdoing are investigated and acted upon. However, cases that are considered baseless should be disregarded so IHAT can devote greater time to those that deserve attention. Some 1,500 of over 3,367 cases were disposed of by IHAT straightaway. The IHAT deputy director, Commander Jack Hawkins, in evidence to the Defence Sub-Committee in the other place last week said that he was in the process of disposing of 700 more cases. That leaves a total of 1,167 cases still open to investigate. Commander Hawkins added:

"The number we are trying to get to and hope to get to by the middle of summer is 60".

So between now and the middle of next summer, there have to be 166 case reductions per month to reach that target, which appears somewhat unlikely. Do the Government have a view on that? Commander Hawkins said:

"A lot of these allegations did not outline any criminal offence—they did not even mention a criminal offence—but they came to us for assessment".

During that hearing, IHAT director Mark Warwick and Commander Hawkins were asked if they had ever been involved in the conflict in Iraq. They stated that no one working on the team had been involved in the conflict. To ensure its independence, IHAT cannot employ anyone who served in Iraq or has any direct relationship with Iraq. However, to make up for the lack of direct conflict experience, all new IHAT employees undergo a three-day induction process. Mr Warwick told the sub-committee:

"Part of that is about understanding the complexities and the unique situation and environment that we are now being asked to investigate".

I would question whether three days is sufficient time to enable the team members to understand and appreciate the complexity of a conflict that lasted six years. Perhaps the Minister may have something to say about this when he replies.

When asked how often IHAT briefs Ministers, Mr Warwick answered:

"Rarely, in terms of our personal interaction with the Minister".

I doubt whether this is adequate. Surely Ministers need regular briefings. Again, perhaps the Minister has a view on this that he will share with the House.

The 2015 Conservative manifesto promised that our Armed Forces would not be subject to persistent legal claims that,

"undermine their ability to do their job".

The Prime Minister in her conference speech said,

"we will never again in any future conflict",

allow Britain's Armed Forces to be harassed. I support that objective, and I am sure that all of us would. But the Defence Secretary seemed to contradict her, saying that we will act to stop such claims only where this is appropriate. He said the Government intended to derogate from relevant articles of the ECHR in future conflicts. I believe that that is now the Government's stated position. Article 15 of the ECHR allows derogation in times of emergency.

Serving soldiers and veterans have been under pressure when they have faced these investigations—often under terrible financial pressures. They, I am sure, welcomed the Defence Secretary's announcement on 23 September that those who were facing criminal charges in IHAT investigations would have their legal fees paid by the Government. Again, perhaps the Minister might want to say something about that. According to the *Guardian*,

[LORD TOUHIG]
the Ministry of Defence has already paid out £20 million in compensation. Are the Government paying out this money because it is justified or because it is easier than going to court? We need some understanding and clarification on that. Former soldiers have claimed that they have been hounded through the courts because of unfounded claims. Can the Minister say what the Government are doing to help these ex-servicemen, who are often separated from the forces and are not sure where they might turn for help and advice?

Now and in the future, our Armed Forces will not be able to operate to the best of their ability if there is a possibility of claims being brought against them years after operational duties have been completed. I echo the hope around the House that the Government will come forward with proposals to tackle this. While service personnel must always act within the law, we cannot allow members of the Armed Forces to feel that they cannot act in ways they deem necessary to meet operational objectives. The Opposition would work with the Government to bring vexatious claims to an end and show that we value the service, commitment and sacrifices that the men and women of our Armed Forces show every day.

1.41 pm

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I am very grateful to the noble and learned Lord, Lord Brown, for tabling this Motion. The issues that it covers have been debated on a number of occasions in this House in recent years. I thank the noble and learned Lord for his continued concern about these matters, his masterly résumé of the issues involved and this timely opportunity to take stock of recent developments. The contributions to this debate have shown how much is at stake here, above all the ability and confidence of our Armed Forces to conduct effective operations in our national interest.

Before I outline the measures we are taking to mitigate these issues, I should start by emphasising the point well made by the noble and gallant Lord, Lord Stirrup: that the Armed Forces of the United Kingdom are required, without exception, to comply with all applicable domestic and international law. That said, a series of court judgments have created uncertainties about some aspects of the law relating to the conduct of armed conflict, or unintended consequences that could well impact on our Armed Forces' ability to train and operate. The Government have expressed their concerns about this in recent years, and the manifesto commitment last year, which was to,

"ensure our Armed Forces overseas are not subject to persistent human rights claims that undermine their ability to do their job",

was a clear signal of their intent to tackle the effects of legal claims and legal developments.

The strength of interest and the quality of debate we have heard here today demonstrate the breadth and complexity of the challenges we face. Military operations in Iraq and Afghanistan have led to an unprecedented volume of litigation about, for example, ECHR jurisdiction, detention, and how international humanitarian law and the European Convention on Human Rights interact in armed conflict, and which include thousands of private law claims for compensation. The personal impact on service personnel has been brought to light in the context of IHAT—the Iraq Historic Allegations Team. We have also seen what I will simply call questionable conduct on the part of some law firms, as well as escalating costs for defending claims or conducting investigations where the evidence or allegations are, at best, unsubstantiated or, at worst, based on lies, as witnessed in the Al-Sweady public inquiry.

All these problems require a broad-based response; there is no simple remedy. The Government have accordingly been giving careful consideration to how to manage the adverse effects of these legal challenges and avoid similar difficulties in the wake of future conflicts. We have already taken a number of steps to help this mitigation. First, as a number of noble Lords have mentioned, the Prime Minister and the Defence Secretary have already set out the Government's intention to derogate from the European Convention on Human Rights, where appropriate. I was grateful for the comments of the noble and gallant Lord, Lord Richards, on this issue. Let me be clear here: there is no question of a blanket opt-out from the ECHR. If and when a derogation is made, it could be made only from certain Articles of the convention and would have to be fully justified by the circumstances pertaining at the time. Where justified in the light of circumstances, it could serve to limit some of the opportunistic ECHR-based claims we have seen, and would reflect what we consider to be the right balance between these rights and the law of armed conflict.

I am afraid I must take issue with the noble Baroness, Lady Kennedy, who criticised the idea that we might derogate from the ECHR. This would not, as she certainly implied, put British troops above the law. She stated that international humanitarian law would not be enough to ensure that justice would be done. Our Armed Forces are, at all times, subject to UK service law, which includes the criminal law of England and Wales. International humanitarian law, based on the Geneva Conventions, will still apply in situations of armed conflict and there are some rights that cannot be derogated, such as protection from torture and slavery. The noble Lord, Lord Thomas of Gresford, asked whether any cases involving Iraqi prisoners had been brought by combatants. The answer is no—these cases do not involve the principle of combat immunity. The vast majority result from the ECHR decisions that UK forces did not have the right to detain people suspected of insurgency.

On another point made by the noble Baroness, Lady Kennedy, to deduce from the many millions paid out in compensation that there has been extensive wrongdoing would be wrong. The vast majority of the sums paid out were paid because the European Court of Human Rights decided that the UK had no right to detain dangerous insurgents in Iraq. The court has since significantly altered its position on that point, but we will not be able to recover the money. It is worth adding that Article 4 of the International Covenant on Civil and Political Rights also permits states to derogate from certain rights, providing the conditions as set out are met. I emphasise that, if and

when the UK does derogate, care will be taken to ensure that it is wholly consistent with our other international legal obligations, as required by Article 15 of the ECHR.

It is important that I should make one other thing clear, especially in response to the noble Lord, Lord Dannatt. We take seriously our legal and moral duty to investigate credible allegations of criminal offences and to prosecute, where appropriate. I agree with the noble Baroness, Lady Kennedy, that the case of Baha Mousa serves as a reminder that a small number of serious offences were undoubtedly committed. I stress that the overwhelming majority of service personnel deployed on operations conduct themselves to the highest standards and in accordance with the law. The Al-Sweady inquiry, which I mentioned, has demonstrated that some allegations will be exaggerated or even false—the noble Lord, Lord Thomas of Gresford, referred to others in that category.

The noble and learned Lord, Lord Hope, suggested that any derogation should be subject to parliamentary approval. Let me make clear what the process would be. A designation order can be made by the Defence Secretary, which would come into force from the date made. However, under the existing law, a designation order under the Human Rights Act must be subsequently approved by each House of Parliament within 40 days from that date in order to amend the terms of the Human Rights Act. In this context, perhaps I could address a point made by the noble Lord, Lord Bilimoria. It is important to note that, to date, derogations from the ECHR by other states, including the United Kingdom, have been in respect of activities on their own territories. The announcement by the UK to derogate, where appropriate, for armed conflict overseas is, I hope, a clear statement of intent.

The noble and gallant Lord, Lord Craig, and the noble Lord, Lord Dannatt, suggested that we should remove ourselves from the jurisdiction of the International Criminal Court, as the United States has done. I would just point out that the obligation to investigate serious allegations against our Armed Forces is based squarely on UK domestic law. As long as that is done, we have nothing to fear from the International Criminal Court. We should remember that, in the context of the Baha Mousa case, it is not true to say, as the noble Lord, Lord Thomas, did, that the family could not have brought proceedings had it not been for the ECHR. The Baha Mousa family was in fact able to sue the Ministry of Defence under common law. A settlement was eventually reached as a result of mediation.

Lord Thomas of Gresford: I did not suggest that. They succeeded in the Supreme Court.

Earl Howe: I am grateful to the noble Lord for his comments if I misunderstood him.

The noble and gallant Lord, Lord Richards, asked whether the Government would retrospectively end prosecutions. The Government are extremely reluctant to propose retrospective legislation because it compromises the principle of legal certainty. However, we will seek to ensure that investigations are brought to a close as quickly as possible.

Baroness Kennedy of The Shaws: Does the noble Earl accept that in the Baha Mousa case there would have been no inquiry but for the European Convention on Human Rights? It was used to force the Government to have an inquiry, which in turn led to investigation and so on. That was the tool in the hands of the family of Baha Mousa, which enabled us to know fully what had taken place, and for us all to express the horror we are expressing today. Otherwise, could we be sure that something would have happened?

Earl Howe: My Lords, I will look into the sequence of events that led up to that inquiry because I am not in a position to gainsay what the noble Baroness has just pointed out. I agree that it is important that we tease out these issues.

Moving to a slightly different issue, we have taken steps to tackle improper conduct by those in the legal profession, as mentioned by the noble Lord, Lord Ramsbotham. It is only right that law firms should not be incentivised or encouraged to represent or put forward unfounded or speculative claims, and where a solicitor's conduct falls short of expected professional standards, action should be taken to address this. Noble Lords will recall the grave concerns expressed following the publication of the al-Sweady public inquiry report. The Ministry of Defence took the unprecedented step of referring these matters to the Solicitors Regulation Authority, which investigated them thoroughly. As a result, the solicitors concerned will face disciplinary tribunal hearings in 2017.

I reassure the noble and gallant Lords, Lord Craig and Lord Richards, that we are seeking to clarify the issue commonly referred to as combat immunity—the common law doctrine that excludes civil liability for injury caused by the negligence of those engaged in the course of hostilities. The doctrine also means that members of the UK Armed Forces are under no duty of care in tort to avoid causing loss or damage to another member of the UK Armed Forces, or anyone else. It is essential, as a number of noble Lords have made clear, to ensure that this doctrine should be applied in full, and that the courts should not be called upon to adjudicate matters which should be the subject of military decision-making. It goes without saying that those who have been injured or suffered bereavement in the course of combat or hostilities have our deepest sympathies, but the uncertainty that has resulted about the circumstances in which the doctrine should be applied is a cause for concern and leaves the Ministry of Defence and the Armed Forces open to a raft of claims. More importantly, as pointed out very cogently by the noble and gallant Lord, Lord Stirrup, it potentially calls into question the professional judgment of military commanders, giving rise to the prospect of what has been called the "judicialisation" of war. We take this matter very seriously. We are considering it closely, and we expect to be in a position to announce our proposals very shortly.

The noble Lord, Lord Thomas, suggested that the combat immunity cases are essentially about procurement rather than battlefield decisions. With respect, I do not think that is quite right. I apologise again if I have misunderstood him but I believe that he suggested—

Lord Thomas of Gresford: I certainly did not say that. I said that I could not imagine any case arising that the Ministry of Defence would settle where combat immunity was a defence.

Earl Howe: I am grateful. However, to clarify this point, the Challenger case mentioned by the noble Lord turns on training rather than procurement, but the important point here is that no one now knows the extent to which military decisions may be questioned in court. That is the problem the Government must, and will, address. I also suggest that combat immunity is a real problem. We have three major cases progressing through the courts at the moment, and many others are stayed behind them. Therefore, to suggest that this is only a minor issue involving one or two people is incorrect.

The noble and learned Lord, Lord Hope, suggested that the Armed Forces compensation scheme should be made subject to statute. In fact, the scheme covers any claims made since 6 April 2005. It was made part of the Armed Forces Act of that year.

The noble and learned Lord, Lord Brown of Eaton-under-Heywood, suggested that one solution would be to reinstate Section 10 of the Crown Proceedings Act. I am hesitant about that solution. It is one of the options we have been looking at but it would be possible only under certain specific circumstances, and careful consideration would need to be given to the impact on service personnel. Certainly, I agree with the noble and learned Lord that such a step would not be sufficient on its own.

I also want to make it clear that we remain unequivocal in our commitment and duty to look after our Armed Forces and veterans, particularly those who are subject to investigation. What is more, we remain steadfast in our commitment to support those who face legal proceedings. In respect of the Iraq conflict, the IHAT is now making rapid progress towards its expected completion by the end of 2019—a point which Sir David Calvert-Smith affirmed in his recent review of the IHAT. Some 70% of the more than 3,000 allegations received have already been disposed of, the vast majority without the need to interview service personnel or veterans. I say to the noble Lord, Lord Touhig, that we are confident, based in part on Sir David Calvert-Smith's report, that the IHAT will be able to meet the progress targets it has set. The IHAT's workforce is comprised of Royal Navy Police and experienced former civilian police officers who are dedicated to conducting their investigations as sensitively and effectively as possible. The noble Lord, Lord Touhig, questioned whether three days was enough training on the conditions in Iraq, and said that perhaps Ministers were not briefed about the proceedings often enough. There is a balance to be struck here. Ministers absolutely respect the IHAT's independence, but I am sure they will take full account of any recommendations the Commons Defence Committee makes on this matter.

I think the noble and learned Lord, Lord Brown of Eaton-under-Heywood, suggested that we are actively paying Iraqi witnesses to travel to interviews. I make it clear that the IHAT pays only travel and subsistence expenses and loss of earnings. That is essential if the necessary investigations are to proceed.

My noble friend Lord Robathan turned our attention to issues in Northern Ireland, and said very powerfully that something has to be done about prosecutions of veterans in Northern Ireland 30 or 40 years after the event. I very much share my noble friend's concern that these legacy investigations must recognise that the vast majority of deaths in the Troubles were the direct responsibility of the terrorists. Northern Ireland would not be the peaceful place it is today without the tireless work and many sacrifices made by the Armed Forces.

The noble Lord, Lord Bew, also referred to issues in Northern Ireland, and in particular the soldiers from Bloody Sunday who face prosecutions, whereas the terrorists do not. The noble Lord will recognise that, as a Ministry of Defence Minister, I cannot comment on or influence possible prosecution decisions. I am sure that those who make such decisions will take due note of his words.

I shall of course write to noble Lords whose questions I have not had time to answer today. At the end of a debate of this kind it is right for me to conclude by reiterating my unwavering admiration for our Armed Forces. The job they do, protecting and defending our freedom, security and prosperity in often difficult and challenging circumstances, is second to none. In this spirit the Government are seeking to move forward and deliver their manifesto commitment to ensure that our Armed Forces are able to do their job effectively, safe in the knowledge that they have our full and unstinting support, and confident in our ability and intent to protect their freedoms when they return home.

Lord Craig of Radley: My Lords, the Minister mentioned bringing forward some further information about combat immunity shortly. Can he define "shortly"?

Earl Howe: I believe that I said "very shortly", and I say that advisedly—it will be within the next month.

2.01 pm

Lord Brown of Eaton-under-Heywood: My Lords, essentially, I confine myself to thanking all noble Lords who have taken part in this debate—those who are neither gallant nor learned no less than those who are. I am most grateful, too, to the Minister for his full and sympathetic response. There is not of course absolute consensus among us as to the way ahead, but I think most of us are agreed that there is a problem here. It is to be hoped that some of the ideas put forward by speakers in this debate will contribute to its solution.

I will respond to only one point, which arose from the speech given by the noble Lord, Lord Thomas of Gresford. I confess surprise that he quarrels with my suggested scheme for dealing with any future claims by our own injured servicemen. Surely they would be immeasurably better off with full—I repeat, full—tort-based compensation on a no-fault basis than with the highly speculative claims they now have following Smith. However, I leave it at that, thank all those who have contributed and beg to move.

Motion agreed.

Rural Bus Services

Question for Short Debate

2.03 pm

Asked by ***The Lord Bishop of St Albans***

To ask Her Majesty's Government, in the light of research published by the Local Government Association showing that subsidised bus services in England have reduced by more than 12% in the past year, what assessment they have made of the sustainability of rural communities.

The Lord Bishop of St Albans: My Lords, I thank all noble Lords contributing their considerable expertise to this debate, particularly the noble Lord, Lord Kirkhope, whose wealth of experience is a welcome addition to this House. I declare an interest as president of the Rural Coalition and bishop of a diocese with large rural areas, some of which have seen considerable cuts in bus service provision in recent years.

As many noble Lords in this House will know first-hand, rural bus services provide a lifeline for rural communities, creating vital routes of connection to other parts of the country. For anyone who struggles to drive themselves because of age or a disability, or because they do not have a car, buses are often the only means of transport that connects rural residents with work, friends and family. With an increasing number of local services cut from rural towns and larger villages, the need to be able to connect with urban areas only increases.

The problem, of course, is that rural bus services are not particularly profitable. Relatively low footfall and long distances between stops mean that rural bus services, particularly in more remote rural areas, require discretionary local council subsidies to maintain viability. As cuts in local authority funding have taken hold over recent years, rural bus routes have been quickly disappearing. Indeed, the rate of this disappearance is startling. Official statistics from the Department for Transport show that bus mileage in local authorities outside London has decreased by 12% in the last year alone. According to the Local Government Association, council-supported bus services in rural areas have decreased by approximately 40% over the past decade.

This drop is a direct result of local authority cuts to bus subsidies. Figures collected by the Campaign for Better Transport show that Bedford Borough Council, in my own diocese, has seen an 83% cut in discretionary support for bus services since 2010, while Hertfordshire, also in my diocese, has seen a £1.7 million—or 40%—cut in funding in 2015-16 alone. Across England and Wales, several local councils have decided to cut all discretionary funding for bus services, and some rural towns and villages have found themselves removed from the bus network completely.

This situation is completely unacceptable. Rural towns and villages do not exist in self-sustained isolation. As living, breathing communities they depend—like all communities and all people—on interconnection. Whether it is providing care for the elderly, bringing jobs into the local economy, building healthy, diverse and thriving communities, or combating the isolation and loneliness that can be endemic in hard-to-reach places, in such places connectivity is absolutely essential.

It is particularly important among the elderly. According to Age UK, 40% of people aged 60 or over use local bus services at least once a week, and around a quarter of these journeys are for medical appointments. When Age UK interviewed elderly residents of rural villages near Durham and Northampton, they found that cuts to rural bus services had severely inhibited their ability to socialise and participate in community life, limited their access to healthcare and left them significantly poorer owing to the higher costs of alternative forms of transport.

It is difficult to blame local authorities, however, because cuts to bus service provision are inevitable when local councils continue to see their budgets shrink. It is down to Her Majesty's Government to ensure that local authorities have the resources they need to adequately support rural communities. One option would be for Her Majesty's Government to commit to funding the statutory concessionary fares scheme in full. The LGA estimates that £764 million is spent each year by local authorities in fulfilling their statutory obligation to provide concessionary fares, with local councils having to divert money from discretionary bus service funding to make up a shortfall of around £200 million. Full central government funding for the scheme seems a perfectly reasonable suggestion that could free up resources for local authorities to invest in discretionary, but often essential, bus service support. I hope the Minister will assure me that his department will look at that carefully.

Of course, we also need to think about the long-term future of the bus network as well as the immediate needs. The Bus Services Bill makes significant changes to the way bus services are regulated, not least through the extension of franchising powers. While this is a welcome step change in the provision of bus services, it must be recognised that the extension of franchising is likely—at least at first—to be confined to predominantly urban areas that have developed a combined mayoral authority. Given the scale of the change involved, I understand the Government's caution, but I hope that the Minister can indicate at least an aspiration to see franchising powers extended to authorities such as county councils before the end of this Parliament, where it could make a substantial difference to rural bus service provision.

As a side note, while on the subject of the Bus Services Bill, I take the opportunity to welcome the Government's commitment to requiring audible and visual information on all buses. I urge Her Majesty's Government to ensure that adequate financial assistance with the associated costs is provided to small and medium-sized bus companies, which often operate in rural areas. Given the reliance of disabled people in rural areas on bus services, it would be unacceptable if this commitment were later watered down and smaller bus companies were excused from this requirement.

Of course, it is always the case that in some remote areas commercial bus routes will remain unviable in the long term, no matter what support they receive from the local authority. Rural communities themselves need to be willing to think creatively to provide publicly accessible transport. Community transport schemes hold great potential if a joined-up approach can be found, and they offer real opportunities for third

[The Lord Bishop of St Albans]
sector organisations, including the Church, to get involved in providing an essential local service. Indeed, I was pleased to learn just this week of a church in Harpenden, just up the road from where I live, which has acquired two 17-seater buses and several volunteer bus drivers. It is hoping to start a bus service in February connecting care homes with the wider community. I hope that Her Majesty's Government continue to commit to projects like the community minibus fund and the Total Transport scheme so that we see this important sector grow and develop in new and innovative ways.

In a world of increasing connectivity, rural areas are facing a future of deepening disconnection. Her Majesty's Government are taking steps in the right direction but local authorities still lack the financial resources they require to connect rural areas with the wider community. Without these resources, we will not be able to build flourishing, sustainable rural communities, and I urge the Government to commit to putting rural bus services on a long-term and sustainable footing.

2.12 pm

Baroness McIntosh of Pickering (Con): My Lords, I congratulate the right reverend Prelate the Bishop of St Albans on securing this very timely debate. It is a privilege to sit with him on the Rural Affairs Group of the General Synod under the excellent chairmanship of Bishop James Bell. It is just a point of regret to note that in the new year he will be retiring from that position. It was also an honour to chair the Environment, Food and Rural Affairs Select Committee in the other place for five years.

It gives me particular pleasure to congratulate and welcome my noble friend Lord Kirkhope to his place today. We very much look forward to hearing his maiden speech. I am sure that will be the first of many occasions on which we hear him contribute. We have both come a long way since we drove tanks with the British Army on the Rhine all those years ago, and I take this opportunity to wish him a very happy, fruitful and successful time in this House.

This debate on the sustainability of rural communities goes to the heart of the challenges that are faced by living in parts of rural North Yorkshire. It goes wider than transport alone; to have a sustainable rural economy and to enjoy living well in rural communities we must have access to fast, reliable broadband and mobile phone and internet networks. We must have a supply of affordable homes, good rural schools, regular and reliable bus services and a vibrant rural economy, which means access to banks and financial support for rural businesses through loans and grants. Certainly, banks are coming under increased pressure and in many cases have seen reduced opening hours in recent years.

I recognise that the cost of providing services in rural communities is higher than in urban areas. The costs of transporting children to schools and patients to hospitals, running police vehicles and other such things are much greater than in urban areas. I make a plea to my noble friend the Minister—whom I welcome to his place today—that we should recognise these additional costs and include a rurality and sparsity factor, as we have done increasingly in education funding.

I also make a special plea for rural bus services and concessionary fares. They play a big part in helping to combat isolation and loneliness among elderly people and indeed among young mums with children. They go to the heart of quality of life, which can be enhanced by subsidised bus services. The key to sustainable transport in rural areas is access to regular, reliable bus services for the very old, the very young and the most vulnerable. There is often no alternative—people may have no car or be too frail to drive. Bus services can enable these very vulnerable people to access vital services, such as schools, hospitals, doctors' surgeries and dentists, and can ease the feelings of loneliness and isolation. For me, the game-changer would be one simple thing: to keep concessionary fares on rural bus services but allow those eligible to pay a contribution. Older people in North Yorkshire would willingly do so—in fact, they would be willing to pay up to half the cost of the fare. What would be the point of offering concessionary fares with no services to provide them?

2.16 pm

Baroness Scott of Needham Market (LD): My Lords, when we talk about sustainable rural communities, we are covering a very wide range of communities where how we define sustainability and the things we need to do to achieve it can be very different. Social, economic and technological changes are as inevitable in rural areas as they are in towns and cities, and harking back to what we used to have is likely to prove unfruitful.

I live in a very small village in Suffolk with a population of 275. Our facilities are a post box and the parish church with its associated church room. It is not just a place of worship; it is the focal point of our social life. The 1901 census showed that the village had a population of 229. Even then, we were not able to sustain a shop or a pub. Every employment listed was related to the local farms. Around 95% of the population were born in Suffolk, and most of them in the village. The incomers lived in the rectory.

The village is not much larger now but its inhabitants come from across the United Kingdom and from abroad. The range of occupations is wide, and the uniting factor is that we have all chosen to live in the village, notwithstanding its lack of facilities. We expect to have to travel. I do not know how long it is since we had a decent bus service. When my now husband first came to the village about a decade ago, he asked, "When is the next bus?". "Thursday", I told him, but we do not even have that now.

Of course, we need alternatives to the private car, and that gap is filled by neighbours, by local taxis and by a demand-responsive community transport system. However, as we have heard, councils have been forced to divert money from discretionary schemes such as community bus services in order to fund the statutory scheme, which increasingly is not available in rural areas. If you ask the residents in my village what they need to keep their community sustainable, they tell you that it is better broadband access.

Just down the lane is a village around eight times larger. It has a range of facilities, and sustainability there is rather different. The residents there want planning policies which preserve the space between them and the nearby town so that they keep their village identity. Having always had a good bus service, they want to keep it. People have chosen to live there because of the location and the services, and the bus service now being under threat is posing a major problem for those who rely on it.

I am afraid that "rural proofing" by government is a total myth. During the passage of the Bus Services Bill, the question of rural public transport was raised and the Minister referred to the statutory guidance. To his embarrassment, when it was published it contained two lines about rural buses. The Bill could have provided a really good opportunity to bring the benefits of area-wide franchising to rural areas—in effect permitting a cross-subsidy with more profitable routes—but, because the opportunity is limited to areas with elected mayors, places like mine are not likely to benefit.

Whole swathes of government policy are based on the assumption that accessibility is easy, when for those in rural areas it is not. Government should not assume that poverty and social inequality are something you find only in towns—they are real and harder to spot in rural villages because families are often very isolated. The Suffolk Community Foundation has done superb work on this in its *Hidden Needs* reports.

Sustainability is very much about diversity—of age, occupation, background and economic situation. Keeping that diversity, especially in very small communities, does not need dramatic government intervention, but it does need proper attention to the detail of legislation and policy to make sure that they are genuinely rural-proofed.

2.20 pm

Lord Kirkhope of Harrogate (Con) (Maiden Speech): My Lords, I rise to address the House for the first time with a mixture of pride and trepidation. It is a pleasure to participate in this important, if short, debate, instigated by the right reverend Prelate. Let me say at the outset how grateful I am to my supporting Peers, my noble friends Lord Hunt of Wirral and Lord Freeman, not only for their kindness and good advice on many occasions in the past and on my introduction to the House, but for their exemplary public service. I must also thank the staff of the House for their immediate helpfulness and warmth of welcome. My attempts to recognise the names of all our doorkeepers are progressing well, with only the occasional error caused by their official photographs not always being completely up to date. I mentioned my pride in being here. That pride is shared by my wife and four sons, and I know also that my late parents would have felt the same. I certainly intend to make a full and positive contribution to the affairs of the House.

I have been active in politics for more than 50 years. I have served as a county councillor, a Member of Parliament and Minister in the other place, and then for 17 years in the European Parliament, including having the privilege of leading our MEPs there for six years. I am now honoured to have been elevated to your Lordships' House on the recommendation of the former Prime Minister David Cameron, to whom I would like to pay a special tribute for all the good things he did for our country. In the aftermath of June, it is inevitable that he will not yet receive the credit he deserves for his premiership, but I am certain that in the fullness of time that should and will be remedied.

I grew up in an urban environment in Newcastle upon Tyne, where I was educated at the Royal Grammar School and was in a legal partnership, before taking my parliamentary seat in Leeds North East, another predominantly urban area. Only when I became MEP for Yorkshire and the Humber, an area covering 6,000 square miles and with 5.2 million inhabitants, did I realise how important our rural communities and the rural economy are to our country. Needless to say, my elected service to the people of Yorkshire for nearly 30 years is something I will always cherish.

In this necessarily short contribution I want simply to emphasise the importance of rural agencies and organisations such as our parish and town councils, which do such an important job of co-ordinating community activity. I congratulate particularly those councillors who give so much of their time voluntarily; I have seen much evidence of that in my work in Yorkshire. But those organisations need re-innervating, with more encouragement and more acknowledgment.

Parish councils are of course responsible for bus shelters, but not sufficiently for planning the most suitable means of transporting people in their locality. The Rural Challenge report in 2010 made proposals that highlighted the need to use existing facilities, rather than merely funding new ones, including our community halls, churches and church buildings, postmen and women, market town partnerships and local businesses. Informing local people of bus services or alternative shared transport schemes, using IT where available and pressing for its availability where not, must be part of that agenda. The idea of having village agents to advise on needs and opportunities should be explored further. Establishing needs and meeting them brings communities together and reassures those who live in rural areas that they are as important as urban dwellers to government at all levels. Future transport plans must, in my view, reflect that balance.

2.24 pm

Lord Polak (Con): My Lords, I congratulate the right reverend Prelate the Bishop of St Albans on securing this debate. As he knows, I live not very far from St Albans and am delighted, therefore, that he is my local bishop. It gives me enormous pleasure to follow the maiden speech of my long-standing and noble friend Lord Kirkhope. His record of public and political service is second to none. His tenacity, coupled with his remarkable ability to prove doubters wrong, will be a great asset to your Lordships' House. He was a highly regarded MP for Leeds North East and a Home Office Minister in John Major's Government, and after losing his seat he bounced back and became a trusted and effective MEP for Yorkshire, including two shifts as leader. This time, after the people of Britain have decided to remove all our MEPs, once again he has bounced back to join us in your Lordships' House, and we will all benefit as a result.

[Lord Polak]

In my area of Hertsmere, next door to St Albans, the local MP, Oliver Dowden, has been working extremely hard to preserve transport services for the community and minimise local disruption as a result of the county council cutting subsidies. It is true that our area could at best be described as semi-rural, but it is also true that it is the so-called semi-rural areas on the outskirts of London that need good connectivity and transport links too. It is heartening that the Bus Services Bill, which has had its Third Reading in the House, provides powers that enable local transport authorities to work in partnership with transport providers to ensure that services reflect the needs of local people. However, in the case of Hertsmere, it is the responsibility of TfL to do more to support these links. Will my noble friend the Minister urge TfL to play its full role in this regard?

We are all aware of the great strengths of rural communities, and I am certain that the announcement made by the Chancellor in the Autumn Statement to double the rural rate relief to 100% in 2017 will play an important part in ensuring that there are enhanced conditions for rural businesses to grow and prosper. The Federation of Small Businesses report of May 2016 entitled, *Going the Extra Mile: Connecting Businesses and Rural Communities*, concluded:

"Improving the quality of transport links will help small businesses to become more productive, increase employment and make even more of a contribution to the UK economy than they currently do".

It is true, however, that transport connectivity can be unsatisfactory, as we have heard. Does the Minister agree with me that the £25 million community bus fund has been a great success, with the Government having provided almost 200 community transport operators with a free minibus, thus providing vital transport services in certain rural areas across the country? The scheme has indeed been successful, but will the Minister look at ways of expanding the community bus fund?

2.27 pm

Lord Greaves (LD): My Lords, I too thank the right reverend Prelate for introducing this debate. The first point I want to make is one I often make: rural areas do not exist in isolation; they exist as part of an area that includes their local market and small towns, and the two are very often closely interlinked. We hear an increasingly large amount about big cities and city regions, and people talk about the more sparsely populated rural areas. The area I live in, in east Lancashire, is typical of a great deal of England: it consists of a mixture of small and medium-sized towns and the villages and rural areas that surround them. The two are closely interlinked, not least in the case of bus services.

Very often, the bus services that serve the villages are actually town-to-town bus services, which would not exist if there was not the trade from the towns. One of those, which we fought hard to maintain in the spring of this year when Lancashire County Council was discussing proposals to stop all subsidies to bus services, which I think were about £8 million in total, is the 65 bus. It runs from Burnley through the small town of Padiham, through the Pendle villages of Higham and Fence, and then through to Barrowford and Nelson, which is another small or medium-sized town. It provides services round the back streets and estates of Burnley, and then goes into the countryside and provides essential services for these villages. I have to report that the county council—the Labour county council, I regret to say—for Burnley Central West, which covers part of that area in Burnley, wrote on Facebook, when we were campaigning to save this service:

"Yes, our Liberal Democrat partners did betray us in saving our most vulnerable elderly for the sake of a few bus routes. May they rot in hell forever".

I think he was referring to the Liberal Democrats rather than the vulnerable elderly. I am pleased to say that we did save the service. Whether we will rot in hell for ever afterwards, I do not know. Perhaps I will need to take advice from the right reverend Prelate on rather more than bus services after this debate.

The right reverend Prelate and other speakers, including my noble friend Lady Scott, are right that the heart of this issue is not the question of rural services but of all services and the funding of local authorities. Most of the cuts in bus services, according to the Government's statistics, have been in subsidised services. It will happen again in the budgets for Lancashire this year and next year. It is not possible for local authorities to continue to fund everything they do if their budgets are being cut by millions and millions of pounds. In Lancashire it is something like one-third of a billion over three or four years. If those cuts have to be imposed it will be impossible to maintain those services.

The basic message for the Government from this and many other debates is that local authorities have come to the end of the road of what they can subsidise and pay for that are not statutory services. There is no hope for subsidised services, whether or not the new Bus Services Bill comes through, unless the Government are prepared to fund local authorities in a more reasonable and practical way than they are proposing to do.

2.31 pm

Lord Cameron of Dillington (CB): My Lords, I, too, thank the right reverend Prelate for bringing this matter before the House.

We can take as read the importance of public transport to the carless in the countryside—the poor, the old, the young, the disabled, and so on. Without public transport they cannot access work, food, doctors, medicines, education, training, banks, lawyers, accountants, cash machines or just meetings with family and friends.

Equally, we are all aware that the deliverers of public and private services are cutting back the number of outlets they have in rural England. My local paper has just announced eight more bank closures; our local police station has just been closed; post offices are getting fewer; there is another wave of court closures coming; small rural health centres are threatened; jobcentres get fewer, as do small local pharmacies and so on. It is clear that the candle of rural life is being burnt away at both ends because, just as all these services are getting further removed from their rural customers, at the one end, so the provision of public transport is being diminished at the other.

I wish to make two points. The first is about rural-proofing and joined-up government. Any department or local authority cutting back on local services must rural-proof their policies. This means understanding the consequences for the carless, who I have described, who can no longer reach the services being "rationalised".

The decision-makers in both central and local government must analyse what local public transport exists and ensure that the local transport authority is aware of the importance of the transport assumptions that they, the rationalisers, have made. Equally, the LTA, when examining its local transport grid and assessing its priorities for subsidy and support, must take account of the assumptions that have been made by the local health authority, the local courts and so on. I could even suggest that if one department or local service is saving money by closing a particular outlet, maybe it ought to contribute to keeping going the bus services to the surviving outlets on which it has, or at least should have, based its assumptions. Just because you are saving money, you have no right to thrust extra costs on to others, including the LTA. That is my main point.

My second point is an optimistic look into the future. In 15 or so years' time, driverless cars will have changed the way we get around. For a start, regular bus routes could be served by cheap to run driverless mobility pods, as we will learn to call them, with automated mechanisms both in the vehicle and along the route. Then it is likely that fewer people will own a car. There will be a new agenda for motoring. Like an Uber taxi, one will order a cheap driverless car to turn up and take you wherever you want whenever you want. You will not have to park it. It will park itself, if it needs to. You will not be responsible for maintaining, licensing or insuring the vehicle.

The ramifications for the rural agenda here are enormous and the LTAs should soon start thinking about the sort of service they can offer and maybe even the fleet of cars they might need to own. I will say no more about that but leave it as food for thought.

I will end with a story of my time at the Countryside Agency. I was meeting a group of Yorkshire parish chairmen and somehow the conversation drifted to the problems of the disaffected rural youth who could not get into towns to join youth clubs, football clubs and so on because there was no evening bus service. Trying to bring a rather taciturn chairman into the conversation, I asked him when the last bus went from his parish to Harrogate. He looked at me blankly and after a moment he said, "1987, mate". It rather killed the conversation.

Sadly, the direction of decline since then has done nothing to alleviate his concerns but, hopefully, automatic vehicles will offer a bright new future to the next generation of rural young.

2.36 pm

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I am grateful to the right reverend Prelate the Bishop of St Albans for securing this important debate. We have heard some interesting contributions. I congratulate and welcome the noble Lord, Lord Kirkhope of Harrrogate, and look forward to his future contributions.

I am extremely concerned, as are we all, about the impact on rural communities of the decline in subsidised bus services. Figures show that of those who use buses, 20% are full-time workers, 30% part-time workers and 50% students. A reduction in bus services would lead to fewer students being able to access education. Students in rural areas would be especially disadvantaged and the skills of the future workforce affected.

Transport by bus is critical to the economy of local communities, ensuring that people can get to or find employment and can spend their money with local businesses. In areas such as Cornwall, rural Lancashire and others, bus cuts have rendered people with low skills economically inactive. The frequency of buses in these areas is reduced to a point where it is unrealistic to rely on them as transport to and from work. Frequent bus use is most common among unskilled workers and, in general, 35% of commuters with no car use the bus to get to work, and 43% of these have no alternative transport.

If bus services in rural areas are reduced to the point of making them unfeasible, many families will be unable to live in or contribute to their communities. The effect on the job market is marked and decreases the likelihood of job/worker matches, making it harder for firms to employ skilled staff. The likelihood of an individual being able to find another job if they lose their current one is decreased, with a resultant increase in the risk of economic inactivity to individuals with no other form of transport. A survey undertaken by the University of Leeds shows a decrease in the likelihood of an individual being able to access a better job, with almost half of its sample who used a bus to commute to work saying they felt that a better bus service would give them access to a better job.

With 80% of local authorities, as we have heard, reducing school and college transport since 2010, there is also the impact on parents, who are dependent on school bus services in order to allow them sufficient time to participate in the labour market. Again this reduces options for students and increases social and economic isolation in rural areas, putting a greater burden on local authorities and housing associations.

As more and more bus routes are cut or reduced, fewer retirees and concessionary bus users, including people with disabilities, many of whom use the infrequent bus service, will be able to shop, visit the dentist, meet friends and so on, as will fewer families on lower incomes and families with student-age students. All of these groups are heavily reliant on buses for transport. These vital contributors to our communities will be forced out of rural areas. In a time when there is a major issue with finding affordable housing anywhere, the reduction of bus services can only contribute to the problem. A sustainable solution must be found.

I look forward to the Minister's response to all the questions that have been raised today. I would particularly like to ask him: if all bus services are withdrawn from a rural area, how does the "no better off, no worse off" rule apply?

2.40 pm

Baroness Jones of Whitchurch (Lab): My Lords, I thank the right reverend Prelate the Bishop of St Albans for initiating the debate and for being a consistent

[Baroness Jones of Whitchurch]
champion of this important issue. I also welcome the noble Lord, Lord Kirkhope of Harrogate, and congratulate him on the experience and insight he brought to this debate and will no doubt bring to future debates.

This debate has gone to the heart of what makes a thriving, sustainable rural community. Clearly, issues such as jobs, economic investment, quality public services and a prosperous agricultural sector all have their part to play. For example, a snapshot of rural living shows that employment opportunities are all too often limited to low-skilled, low-paid, insecure work. Meanwhile, the farmers are having a tough time too. The dairy industry, for example, is caught in a perfect storm of global market saturation and declining milk prices. At the same time, price volatility is now a widespread hazard. Understandably, it makes farmers fearful for the future. In turn, that impacts on their confidence and investment in their locality. All this has an impact on sustainability, but as a number of noble Lords have pointed out, the decline in public services is particularly damaging. I am therefore grateful to the right reverend Prelate for highlighting the decline of rural bus services, which, we would contend, illustrates a wider lack of strategic thinking by the Government.

We had the opportunity to debate rural bus provision in some depth during your Lordships' consideration of the recent Bus Services Bill, and successfully moved amendments to extend bus franchising. We also argued that the provision of these public services in rural areas should be looked at holistically, rather than purely on a cost-driven basis. As the noble Lord, Lord Cameron, pointed out, we should understand the full consequences of decisions made in a locality. We argued that those commissioning bus services should consider the economic, social and environmental benefits to the community, rather than focusing just on the lowest-cost option. We also argued that remote rural communities should be able to delay the cancellation of bus routes when they were a demonstrable lifeline for a local community. Sadly, our proposals fell on deaf ears, but we still contend that rural communities will be sustainable only if localities have greater influence and control over the factors that help them thrive.

We believe these principles should apply equally to other local services that can make a difference as to whether communities thrive or die. People are all too aware of the damage that can be done if a rural shop closes, but there can be equal damage if the village school closes as a consequence of the Government's forced academies programme, or if a GP surgery closes as a result of a shortage of new GPs, or if the failure to invest in affordable homes and tackling social housing waiting lists means that young families are priced out of the locality. This is why we need to use our full planning and fiscal strategies to consider the needs of communities as a whole, rather than on a piecemeal basis. This is what our party is committed to do.

Finally, the Brexit decision adds new uncertainties about future subsidies, markets and labour availability in rural areas, which could bring further detriment to fragile rural communities. I hope the Minister is able to reassure us that action is being taken to address these challenges for the future.

2.44 pm

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, I am most grateful to the right reverend Prelate for raising this important issue. I also congratulate my noble friend Lord Kirkhope of Harrogate on his excellent maiden speech. I think all your Lordships much appreciate his decision to make it during a rural debate. I declare my rural interests as set out in the register.

Rural areas are home to one-fifth of England's population. They are the source of much of the food we eat, the water we drink, the landscapes we enjoy and the biodiversity we all cherish. This is why well-connected and well-served rural communities are essential, not just for local economies, but for the nation's prosperity and well-being. Sustainable communities are safe, inclusive places where people want to live and work, and where they act together to provide the facilities they need. They offer quality of life and opportunity, both now and in future. Indeed, the attraction of rural England is evident from the number of people moving from urban areas to the countryside—around 60,000 a year. I agree with what the noble Lord, Lord Greaves, said about interconnection of all parts of the country. It is a very bad idea to be spinning in one's own orbit.

Rural communities in England already make a strong contribution to our economy. They employ 3.8 million people and contribute more than £200 billion to the GDP. A quarter of our businesses are based in rural areas and 85% of rural employees work in SMEs. The announcement in the Autumn Statement to double the rural rate relief to 100% in April next year will give a much-needed boost to businesses in the country.

The sustainability of our rural communities also derives from the fact that they are cohesive hubs. They draw social and cultural sustenance from shared values, community spirit, volunteers and institutions such as parish councils, village halls, schools, shops, post offices and churches. Only last weekend I attended two community events: the monthly community cinema in Eye and, the next day, the Wickham Skeith November fair—all, as is usual in the countryside, run by volunteers.

As Rural Affairs Minister, I am committed to doing everything I can to help rural communities flourish and enhance their distinctive character and quality of life. Our rural productivity plan last year set out some clear steps to help rural areas achieve their potential. We want to ensure we improve the sustainability of our rural communities even further. We are doing this in a number of ways.

Like my noble friend Lady McIntosh, I well understand the importance of broadband and mobile connections for rural users. Indeed, I am sure that I and many of your Lordships share some of the frustrations many country dwellers feel. Everyone can now access basic broadband speeds of 2 megabits per second—fast enough for online access to every government service. Around 92% of UK premises have access to superfast broadband and we are on track to reach 95% by 2017. We are also working on the introduction of a broadband universal service obligation by 2020, at a minimum speed of 10 megabits per second. A broadband universal service obligation aims to provide a safety net for

those without access to superfast broadband. Indeed, the industry has guaranteed to extend mobile phone 2G coverage, allowing access to basic voice and text messages, to 90% of the UK landmass by 2017. But we know we need to do much more, and as a member of the digital implementation task force I can assure your Lordships that I am continually making the case for improved rural connectivity.

Increasing rural housing stock enables villages to thrive and, I hope, become increasingly prosperous. New, well-designed and affordable homes for families, young people and rural workers help ensure that village services such as schools and shops can continue, and support sustainable rural communities. Indeed, the rural housing scheme I facilitated many years ago at Kimble was driven by the parish council, so I was very interested in what my noble friend Lord Kirkhope of Harrogate had to say on the matter.

I encourage local communities to take the initiative to secure the future of their own villages through sensitive development. One way to do this is through making more use of neighbourhood plans in rural areas, which enable communities to have a proper say in where new homes are built and to see the benefits of development. I am working closely with DCLG, and as a member of the housing implementation task force, to ensure that housing policy delivers for rural communities.

The Government recognise the importance of public transport for the sustainability and independence of communities. We know how important affordable, accessible transport is for people and fully recognise the extra pressures placed on local authorities throughout the country to provide such services, particularly in more remote areas. The Government also believe that local authorities are best placed to decide what support to provide in response to the needs of local communities. A number of noble Lords, including my noble friend Lord Polak, referred to the Bus Services Bill, which had its Third Reading yesterday. The Bill provides powers that enable local transport authorities to work in partnership with transport providers to ensure that services reflect the needs of local people.

The noble Baroness, Lady Jones of Whitchurch, was absolutely right that the needs of local people must come as a priority in looking at what solutions we can bring. The nature of rural areas means that we also need to work across Whitehall to develop innovative solutions to address rural connectivity—I was very struck by what the noble Baroness, Lady Bakewell of Hardington Mandeville, had to say on those challenges. I have discussed many of them with my own officials and colleagues in the Department for Transport.

My noble friend Lord Polak and the right reverend Prelate referred to the community minibus fund. The Government have provided almost 200 community transport operators with a free minibus, funded through the £25 million community minibus fund. These provide vital transport services in rural areas across the country. To answer a question about what more we are doing in this regard, I can say that a second round was announced earlier this year. All the feedback that I am receiving tells me that such minibuses are making a big difference. I assure your Lordships that I discuss this matter with my ministerial colleagues because I think that it is a very sound way forward.

Total Transport is also finding ways to commission public sector-funded transport more effectively so that passengers receive a better service with less duplication. My notes contain a list of local authorities that are receiving funds, including Somerset and Cornwall. Although I do not have time to go through all the figures, I think that local authorities in almost every area represented by the speakers in today's debate are receiving funds via Total Transport, which I hope will be helpful.

I understand the points made about concessionary travel. The Government provide almost £1 billion of funding for concessionary bus passes ever year and remain committed to the current scheme. In addition, £250 million was paid this year to support bus services in England via the bus services operators grant. Nearly £89 million was paid through the green bus fund, improving the environmental performance of buses. Some £30 million of funding was provided for low-emission buses and associated infrastructure, and a further £150 million for low-emission buses and taxis was announced in this week's Autumn Statement. More than £200 million was provided through the local growth fund for 15 bus schemes, including new bus stations, rapid transport schemes and bus priority corridors. So considerable funds are going into bus services, but I have taken on board the points that have been made.

On concessionary travel, bus operators are reimbursed on the basis that they are no better or worse off for carrying concessionary pass-holders. The Government issue guidance to help local authorities administer the concession consistent with this principle, but I will take back to colleagues in both departments the points that have been made on the matter today.

I noted what the noble Lord, Lord Cameron of Dillington, said about autonomous vehicles—I have not got my head around them, but they are a coming thing, I am sure. I am pleased to say that the department and others are far more advanced than me and we will engage with local transport authorities as we continue to develop our overall regulatory framework for such vehicles,

My honourable friend Thérèse Coffey, Minister for Environment and Rural Life Opportunities, is working with other departments to improve access to childcare, education, healthcare and skills—mentioned by a number of your Lordships—in rural areas. I hope that the Government's plan to offer 30 hours of free childcare to eligible parents of three and four year-olds demonstrates in part our commitment. The Government are also consulting on the access criteria for post offices to ensure that they continue to provide vital postal and banking services to rural communities.

The noble Lord, Lord Cameron of Dillington, has championed the cause of rural proofing for as long as I can remember. I think that it is fair to say that, in another life, I was working with him, so, naturally, I endorse his cause. As an example of rural proofing in action, your Lordships may have noticed that the *Northern Powerhouse Strategy*, published only yesterday, sets out clearly:

[Lord Gardiner of Kimble]

"The government will continue to work with the region to create growth and improve life chances for residents across the whole area, ensuring we have the right conditions for rural communities and businesses to thrive".

It is vital in the national interest and for future generations that rural England is in good heart. Rural communities offer so much. Our two 25-year plans for food and farming and the natural environment will demonstrate our commitment to future prosperity. Rural communities have an innate resilience and ability to build on their strengths. I have noted all that has been said today—we could have had a very much longer debate and I hope that there will other opportunities. I am conscious of the challenges facing the countryside, but I look forward to helping those who live in it achieve the undoubted potential of rural areas. For future generations, all our efforts should be concentrated on that purpose.

Health and Social Care

Motion to Take Note

2.56 pm

Moved by ***Baroness Finlay of Llandaff***

To move that this House takes note of the implications for the health and social care workforce of the result of the referendum on the United Kingdom's membership of the European Union.

Baroness Finlay of Llandaff (CB): My Lords, I am grateful to have been able to secure this debate. I will use the term EU collectively to cover the non-UK parts of the European Union and the European Economic Area, as only 230 health and social care staff come from the latter.

We spend about the same percentage of our GDP on publicly funded health as is spent on average by the 14 nations who acceded to the EU before 2004, yet an Organisation for Economic Co-operation and Development report published today shows that we are the sick man of Europe for doctors and beds. Our heart attack and stroke survival is mediocre, cancer survival poor, we desperately need more doctors—Germany has 50% more than us—and we need more, not fewer, beds.

Our struggling health and social care sector has unfilled posts, increased demand and funding pressures. Until now, reciprocity of qualifications and free movement has brought us Europeans, from the top-flight academics and clinicians with unique skills to the lowest-grade care workers. Now, with Brexit, we must decide what we want to negotiate for.

Twenty-nine major health and social care professional bodies, royal colleges, unions, employers and skills and learning organisations have formed the Cavendish Coalition to ensure a sustainable workforce supply and thereby maintain excellent standards of care.

Around 160,000 current NHS and social care staff are EU nationals—58,000 in the NHS and 90,000 in social care, which is 6% and 7% of the workforce respectively. Most are in posts that would otherwise have gone unfilled; they are essential to sustaining services and to our research enterprise. Unless we respect staff at every level and the NHS and social care become good employers, we will not attract the next generation here into the care sector.

Salary alone is not a proxy for worth. "Worth" is knowing that you are valued in society and respected as doing an important, complex and at times difficult job because you have unique skills. After Luxembourg, the UK is the largest net importer of healthcare professionals who qualified in other parts of the EU, particularly in some specialist NHS trusts such as the Royal Brompton and Harefield, where more than 15% of staff are from the EU.

Let me start with my own profession, doctors, of whom a quarter overall are non-UK graduates. Some 11% of registered doctors in the UK—just over 30,000—gained their primary medical qualification in another European country. That is one in 10 of our NHS doctors. We are so under-doctored that 40% of advertised consultant vacancies are unfilled, usually through lack of suitable applicants. Well over a quarter of current consultants report,

"significant gaps in the trainees' rotas such that patient care is compromised".

The very welcome increase of 1,500 medical student places will take a decade or more to feed through to supply specialists. In the meantime, we must continue to recruit from outside.

What about beyond medicine? Overall, the NHS vacancy factor is running at 6%, particularly in nursing. Almost a fifth of midwives in parts of London—it is 6% across the UK—are EU nationals. We rely on Europe. There is already a tension between safe levels of nursing staff and financial pressures against using agency staff. I know my noble friend Lady Watkins will address the nursing workforce further. Access to dentistry is also already a problem but I will not the steal the thunder of the noble Lord, Lord Colwyn. We rely on physiotherapists from overseas, 7% of whom are EU qualified. As service demand grows, so recruitment becomes more difficult. The Chartered Society of Physiotherapy—I declare my interest as president—has workforce modelling showing we need at least 500 extra physio student places each year for the next three years.

In social care, one in 20 social workers and more than one in 10 other professionals, particularly nurses, are from the EU, but the greatest crisis looms in domiciliary social care. Turnover rates are already incredibly high: currently well over one in three, 37%, leave their role each year. This churn leads to lack of continuity and concomitant problems. When will the current workforce be told they have indefinite leave to remain—with their children? We cannot continue to defer such assurance which must apply regardless of how long they have been in the UK.

This workforce provides care and support to aid people's independence, and prevent ill health and unnecessary hospital admission. They care for people when they are most vulnerable. The mood music is positive but that is not enough. These people we depend on need legal certainty and we need that clarified quickly to mitigate the risk of staff leaving. Such rights, including any cut-off period post-Brexit, must be communicated in a way that actively supports

community cohesion and reverses the detestable aggressive and xenophobic attitude seen in recent months. If EU workers continue to feel unwelcome and decide to leave, some NHS and social care services will simply have to put up a closed sign.

On staff numbers, I focused on the large number of EU nationals working here in health and social care but more than double that number are non-UK, non-EU staff. Blanket calls for tighter immigration controls overall will simply cripple NHS and social care at a stroke. Make no mistake: the current five-year rule for a permanent UK residence card would exclude thousands. More than a quarter of all adult social care workers are from outside the UK.

The current tier 2 visa system needs review. With a fixed quota of tier 2 work permits, applicants score more points for higher-paid jobs; it is not a level playing field. Financial services staff enter in preference to low-paid health and social care staff, yet we desperately need the latter. Will the Government undertake to urgently revise both the residence requirement and the tier 2 visa points for future health and social care staff?

We must continue to recruit and retain health and social care staff from the EU and beyond while we try to increase domestic supply. To fill vacancies, more specific occupations than just nurses and midwives need to be added to the Migration Advisory Committee's shortage list. Yet a word of caution: we must not compensate for fewer Europeans by selfishly raiding professionals from developing countries. That would further destabilise our world.

The Medical Training Initiative is a mutually beneficial scheme, run by the Academy of Medical Royal Colleges. It gives junior doctors from all over the world the opportunity to work and train here under a tier 5 visa while giving trusts a high-quality, longer-term alternative to locums for filling rota gaps. Will the Government support extension of this proven effective scheme?

We need special arrangements for Ireland. Professionals flow freely between north and south across the land border. Many doctors in Northern Ireland graduated from a university in Eire. Are the Government looking to Ireland to be our friend at the table when we leave the EU, in the same way that Norway relies on Denmark?

In employment policy and practice we benefit from remaining in concert with Europe, not disconnected from advances that safeguard staff such as TUPE protection during service reconfigurations and the manual handling directive. The European working time directive is in UK law and junior doctors' working hours now average 48 a week. No one should contemplate increasing hours post-Brexit but we could introduce more flexibility over rest breaks and work patterns to enhance work/life balance and improve training. This can be done if and only if there is no tightening of immigration numbers in health and social care.

The General Medical Council would like the opportunity to test the competence of all doctors coming to practise here from Europe, to check they meet the same standards as UK graduates and so better protect patients. To make this possible, will the UK Government amend the GMC's powers as set out in the Medical Act 1983? Will regulation and training across professions be integral to Brexit negotiations?

Currently, medical and research staff particularly benefit from training experience in EU countries. Will the Government remember to keep the door open for UK doctors wishing to work in the EU once the UK is no longer a member state? It is not only doctors but nurses, physiotherapists and all our other professionals.

Let us not forget biomedical research, in which we have been a world leader. Our global collaborations keep us ahead of the field. To date, the UK has been a net beneficiary of European research funding. From 2007 to 2013, we received €8.8 billion but contributed only €5.4 billion. The Prime Minister's announcement this week of an extra £2 billion research development spend is incredibly welcome but we need to be able to employ the right talent to optimise research output.

Overall, one in five of the UK's academic community is an EU national, although more than three-quarters of the winners of the prestigious BMA medical research grants this year originate from other European countries. Brexit risks our being excluded from the Erasmus and Marie Curie research training schemes and from invaluable collaborative experience in communicable disease management at the European Centre for Disease Prevention and Control. We cannot exclude ourselves from this expertise. Infection and toxins know no political barriers. World epidemics are and will remain a looming threat to our nation's health.

The impact of Brexit, with falling scientific recruitment and disrupted Horizon 2020 research, was reported in *Nature* in August. Is the Government's plan that we try to remain part of EU research systems and contribute funds to the European grants schemes so that we can apply for them? Will the Government ensure that our future regulatory framework enables cross-border research and clinical trials, even though we may well wish to be more nimble in the newer research fields, such as genomics?

The challenges are huge. To grow our own we must attract people into health and social care. That means valuing staff at every level, both in the workplace and in society, for the complex job they do and the personal risks to which they are very often exposed. Society's attitudes to the sick, the vulnerable and the frail must change, and those who care for them should have proper working conditions—not thanklessly be worked into the ground. Only then will we attract our school leavers into caring roles and only then do we stand a chance of being self-sufficient in health and social care. I beg to move.

3.11 pm

Lord Colwyn (Con): My Lords, I am sure noble Lords will be grateful to the noble Baroness, Lady Finlay, for giving the House another opportunity to examine the reaction to the result of the referendum on the UK's membership of the EU, particularly with regard to the health and social care workforce. I am looking forward to hearing from noble Lords, some of whom contributed to the debate introduced by the noble Baroness, Lady Watkins, on 21 July. I am not used to speaking at such a high position on the list and the noble Baroness is probably not used to speaking near the end, but I am sure we are all grateful to the noble Baroness, Lady Finlay, for securing this debate.

[Lord Colwyn]

I will refer to the situation in the workforce and the implications the result of the EU referendum might have for doctors, nurses and other health professionals, as well as social care workers. I take this opportunity to highlight the fact that Britain's exit from the EU is likely also to have a major impact on Britain's fourth-largest healthcare workforce group: the dental professionals. My noble friend the Minister will be pleased that, like the noble Baroness, Lady Finlay, I have managed to refer to my own profession. I declare my interest as a fully retired dental surgeon, a fellow of the British Dental Association and vice-president of the British Fluoridation Society.

Of the 40,000 dentists registered to practise in the UK, close to 7,000 qualified in one of the EU countries outside Britain. Many of them relocated here in the early noughties in response to the well-publicised shortage of NHS dentists at the time, and there is absolutely no doubt that they make a crucial contribution to dentistry in the UK, both in the NHS and in private practice. These dentists' ability to work in our country is based on the European principle of free movement and the professional qualifications directive. It is of utmost importance that their rights to live, work and have their qualifications recognised here is retained post-Brexit. The failure to do so could lead to a significant workforce shortage in general dental practice and create severe problems with access to dental care for patients in many areas.

Issues with recruitment of dentists for high street practices are already surfacing again in quite a few areas, and I am very concerned that this trend might be aggravated by Britain's anticipated exit from the EU. It is crucial that EU dental health professionals receive firm and unequivocal assurances that they will be able to continue to practise in the UK following Brexit. We cannot afford to keep them guessing. In fact, the British Dental Association has informed me that it has been receiving inquiries from members who are considering leaving the UK as a consequence of the uncertainty of their status in the wake of the referendum result.

It is all too easy to think that if there is a serious shortage of staff in dental practices as a result of Brexit, we could just plug the gap with dental professionals from outside the EEA, but that is not as simple as it might sound. Any dentist coming to the UK whose qualifications are not recognised under the European professional qualifications directive must sit the General Dental Council's overseas registration examination. This examination, at over £3,000, is not only incredibly costly but it does not have a particularly high pass rate. Due to the high cost of its administration, it is not held very often, which means that it could take a dentist applying to sit the exam—assuming that they are successful the first time round—more than a year to pass it. Add to this the necessary visas and the lengthy process of equivalence dentists need to undergo in order to be allowed to work in the NHS and it becomes very clear that relying on dentists from outside the European Union to fill the gaps in our dental workforce would not be wise.

Finally, we should not forget that while dentists are first and foremost health professionals, most high street practices are effectively also small independent businesses. This makes many dentists business owners, who invest in and develop their practices through their income and borrowing. Their business running costs are affected by inflation and given that a large proportion of their equipment and materials is imported, they will also be hit by the falling value of the pound.

A possible wider economic downturn that we might experience following Brexit could lead to a further drop in dental practices' income. This is because many patients view oral healthcare as a discretionary cost—increasingly so in the context of ever-rising dental patient charges. If they need to tighten their belts, many will opt out of visiting their dentist, even if this is detrimental to their oral health. Any such drop in practice income could mean practice owners having to let go of some of their staff or possibly even compromise the financial viability of the entire practice and lead to its closure, leading to potential problems with access for patients who need dental help.

I would be very grateful for the Minister's assurances that all dentists qualified in one of the countries of the European Economic Area will continue to have their qualifications recognised in the UK post-Brexit, and will be able to continue working in our dental services and serving British patients.

3.18 pm

Lord Lipsey (Lab): My Lords, this is the second Thursday in a month in which the House has focused on the potential downsides of Brexit. Last time we were talking about higher education, and now it is health and social care. There are many other subjects of a similar nature that we could debate. I am tempted to suggest that we run the whole series and at the end of it cock a snook at the popular press by publishing a little account of the debates called "Why the British People Was Wrong".

I will concentrate my remarks on social care. Of course, the health and social care workforces overlap. There are nurses who work in the health service, nurses who staff nursing homes and nurses who work in the community, although health workforce planning seems to ignore the fact that there is a need for nurses elsewhere. But social care is different from health in one particular regard: most of it is not provided by people who were trained for years and years to do so. Of course, there are very important skills required of people in the social care sector but most—not all—can be acquired in relatively short periods. That makes a big difference to planning.

What will be the impact of Brexit on the social care workforce? We do not know. We do know that nationally 6% of social care workers come from the European Union; that rises to 12% in London. Will they be available in future? Well, that depends on two known unknowns. The first is whether the Government eventually accede to the soft-Brexit option of continuing with free movement of labour. Secondly, and if they do not, is how they decide to prioritise two of their objectives: keeping a healthy social care workforce by letting the workers in—or if they are already here, letting them stay—or keeping the immigration figures down. I fear that we will not get a clue this afternoon as to which of those options the Government will choose.

What we know as a certain fact is that the demand for such workers is going to rise. It will rise simply because of the demographics, as the number of old and very old people rises. We also know that there is much uncatered-for need at the moment. Research published last week by Age UK shows that, since 2010, nearly 400,000 more people aged over 65 are living with some level of unmet need, while the numbers getting care from local authorities in their own homes have fallen by something like 25% over the past four or five years.

I am an economist, so if this were about most industries, it would not cause me tremendous bother. If the supply of labour falls short of demand and need, the straightforward solution is to raise wages. In social care, that would have another great advantage: it would be some recognition of the real contribution that social care workers make. Unfortunately, there is a fatal Catch-22 in the higher wages logic: about half of old people in care homes are paid for by local authorities. Local authorities are also in high degree responsible for the care workers who look after people in their own homes. But consistently, year after year, the Government have forced councils to cut their spending so as not to have to cut their own. Defence's 2% of GDP is sacrosanct; aid, as the House debated last Friday, must be 0.7% of GDP every year; health spending is protected in real terms. So the whole of the cuts falls on local authorities, and social care is overwhelmingly the biggest thing on which they spend money.

Council spending has been slashed by eye-watering amounts. There have been little handouts here and there, as the Minister will remind us. Councils are now able to increase their precepts by 2% a year to meet their costs although, of course, that greatly favours those areas with a lot of richly expensive residential housing and gives least to those areas which have less expensive residential housing—which of course are the areas where the greatest need for social care provided by the state exists. This is just one of several sticking-plasters being applied to a gaping wound.

Ministers claim that there is not unlimited money, and they are right. But are they using the money they have right? I want to draw the House's attention to one rather shocking example. Recently, virtually unnoticed by the public, the press and Parliament, the Government increased spending on an area of social care in an expensive way by increasing the nursing care allowance. Now, to a degree, I contradict myself here, because the nursing care allowance—a non-means-tested payment towards the costs of those with substantial nursing needs who self-fund their care—was a recommendation of the minority report of the 1999 royal commission, signed by Lord Joffe and myself. Just as the British people was wrong, we was wrong about that. It has been a great waste of money.

I must also make a confession. If the Government had acted on my advice, I would be worse off, because I found the other day that I was the beneficiary of a handsome cheque paid from my mother's estate. The money came from the Government and was the backdated value of the new allowance, which rose from £112 a week to £156.25, and covered the period from April to July, when she sadly died. I am not an extremely rich man, but anybody who thinks that I am in the greatest need of government benefits of this kind is really barking up the wrong tree. We are not the top priority. The top priority is those in the bottom half of the income distribution who need this care most and are being deprived of it. We found yesterday in the Autumn Statement that there was little money for the much talked-about JAMs, but there appears to be plenty of money for jammy sods like me. This preposterous propriety comes at a cost—wait for it—of £190 million a year. The Government are now looking at increasing the money still further. I have a great admiration for the Minister, but I am surprised that he can hold his head up in the face of these facts.

To sum up, in social care only two alternatives can be contemplated. One is to ensure that Brexit does not cut the social care workforce by allowing people who come now to come. The other is to fund social care more fully so that providers can afford to pay what it takes to attract the workers they need. Otherwise, and of necessity, we will end up in a position to which we are already heading at a rate of knots—that the welfare state, in so far as it looks after the old and needy, effectively ceases to exist.

3.26 pm

Lord Dykes (CB): My Lords, I am sure we all feel enormous gratitude to the noble Baroness, Lady Finlay of Llandaff, for introducing and leading this debate because she is one of the great experts in this House on the subject, particularly in covering doctors. I look forward to hearing from other expert voices, too, in this important debate and I thank the noble Lord, Lord Colwyn, for his wise words on the problems and dilemmas facing the dentists. My remarks may be more general because of my lack of specific, detailed expertise in the various medical and social care fields being discussed. None the less, that in no way reduces the anxieties of lay observers of the scene, such as myself, over what will happen in the dilemma now facing our medical and social care services as a result of the decision made by the people in June.

As the noble Lord, Lord Lipsey, implied, as time goes on we seem in the Lords to have more and more debates on Brexit and its consequences on different sectors and in general terms. They are having them in the Commons as well, thank goodness, but ours may be more numerous. Next Thursday there will be another debate here about the agonising dilemmas of Brexit. We face a grotesque, difficult and almost unassailable situation with what happened at the end of June and the Government's attempts—I feel sorry for the Minister, who is directly involved, and for the Prime Minister—to deal with these huge and sometimes insoluble dilemmas.

All the time, we are approaching that horrible date when Article 50 will launch the actual negotiations. This will be some time in March, according to the Government's latest pronouncement. I have tabled a Question for 19 December asking whether they might kindly give an exact date by then, but maybe that will be too early. Until that date comes this is really a phoney war in one sense, but one of the greatest importance as the doubts and second thoughts begin to develop. They are at very early levels. I have tremendous respect for the people's decision on 23 June—that is of

[LORD DYKES]
course axiomatic for all right-thinking parliamentarians of both Houses—but there are indications that second thoughts and doubts are beginning to creep in.

I refer particularly to the excellent submissions we have had from the medical field in preparing for this debate. In the time available, I should like to quote from the briefing that the BMA sent us in some detail. Page 2 of that briefing says:

"It is important to acknowledge the contribution made by European migrants, including doctors, in delivering and sustaining public services, such as the NHS, care services, and our universities. Doctors from the EU have become essential members of the UK's medial workforce and the NHS is dependent on them to provide a high quality, reliable and safe service to patients. These highly skilled professional have enhanced the UK health system over the years, improving the diversity of the profession to reflect a changing population, bringing great skill and expertise to the NHS and filling shortages in specialties which may otherwise have been unable to cope. We unreservedly condemn the xenophobic attacks by individuals who have taken the referendum result as a green light to attack the NHS staff who care for them".

I wholeheartedly endorse that, as I think others will.

The dark forces unleashed by the elements in that decision which are not the general elements of a generous population in the British political system in normal times have to be taken into account as time goes on. It will not be easy. I am grateful that the noble Lord, Lord Turnberg, and the noble Baroness, Lady Walmsley, who are experts in these fields, are on the Opposition Benches to guide us along these difficult paths. If NHS employees and professionals from the EU, the EEA and non-European areas are excluded from the results of negotiations which are not very successful after all, that would be a calamitous decision for this country in every way.

All the Ministers on the Government Front Bench are good listeners, but the noble Lord, Lord Prior, is one of the best. I am sure he will be kind enough to respond at the end of the debate if I ask him two direct questions. First, what guarantee will the Minister give that EU citizens currently working in the UK—there are 90,000 in social care alone—will have their right to live and work in the country maintained after the UK leaves the European Union? That applies, of course, to other people. Secondly, will the Minister make maintaining mutual recognition of medical and social care certificates a red-line issue for Brexit negotiations? Not much has been said so far, apart from some vague allusions to the subject and some hints here and there, in a very disconcerting and disorganised way, so we need that guidance.

Things are going to get worse as time goes on and as the public begin to manifest second thoughts, to which I have referred, about this whole, unhappy, nightmare business of trying to negotiate leaving the European Union. Most people in this country increasingly realise that we do not need to leave the European Union to maintain a figment of imagined sovereignty that probably last existed in this country and in other countries in about 1912. Even then, a few years later, British Armed Forces were under the control of a French commander-in-chief in the First World War.

So many letters and emails are now pouring in, grumbling about what happened at the end of June and asking what parliamentarians are going to do about it. I shall quote just one of them. I shall not give the name of the person who wrote it because I have not had time to contact him in order to do so. He writes: "We must assume that this is an irreversible notice, yet these are the issues. Sixty-three per cent of the electorate did not chose to leave the EU in the referendum. This Government is proud of running the country, but it does it on the basis of 24% of the population, the lowest figure in the post-war period. In Europe, that cannot be other than a minority Government. Of the 37% who chose leave within the binary option available, how can we know that they intended a hard Brexit? Even the top leave campaigners have rejected that possibility more and more rapidly from now on. I know it is difficult to believe this, but even Nigel Farage has admitted that he knew that the referendum was and is advisory only. Finally, Brexit campaigners have created a dangerously toxic EU debate where facts do not matter".

That is just one example of the letters and emails that are beginning to pour in. I believe that the national petition has now been signed by well over 4 million people and that number will grow as time goes on. There may be plenty of time for these negotiations, but if they get plenty of time for sensible decisions to save this country in the future, I for one—not only for medical and social care reasons—will be deeply grateful.

3.34 pm

Baroness Masham of Ilton (CB): My Lords, I thank and congratulate my noble friend Lady Finlay of Llandaff on securing this very important debate. I hope it will highlight the essential need to be able to fill some of the gaps in our NHS and social care workforce with people who come from Europe and elsewhere. There are gaps too in the private sector, and disabled and elderly people living in the community in their own homes are also having difficulties. As it is now, with the extreme demands on the services to fill the gaps, if we are more restricted, it will be a total disaster.

Nobody knows when they or their families will need the NHS. It can be the vital lifeline in an accident or serious illness. Since the campaign and the referendum, there has been an increase in horrible incidents involving people who seem not to be British or who support the EU. The tragic murder of Jo Cox MP has shocked the world, as has the murder of a Polish man. Given the uncertainty of what will happen when we leave the EU, recruitment has already become more difficult for the health and social care workforce. If people who want to come to work in the UK feel they are not wanted and are not safe, they will go elsewhere. There are plenty of other countries in Europe which need them apart from us. It is of great concern to hear that the Commons Health Select Committee has criticised some hospital trusts for allowing poor performance to "become the norm" in A&E departments because of the lack of staff. The NHS faces a winter predicted to be more difficult than the last. What preparations are being made for this crisis?

More than 55,000 EU nationals work as doctors and nurses in the health service, which would collapse without them. Companies that recruit abroad on behalf

of NHS trusts are full of anxiety. TFS Healthcare, which recruits nurses for UK hospitals from Spain, Portugal, Romania, Poland and Italy, is already seeing the impact of the Brexit vote. A lot of nurses from these countries have now been put off coming to the UK. The managing director says that even more concerning is that nurses already placed in UK hospitals are seriously considering leaving as they no longer feel wanted or welcomed. The BMA has warned that the boost in home-grown doctor numbers will go only part of the way to addressing the NHS recruitment crisis.

I cannot stress enough how serious the problem is becoming because of the escalating costs of agencies. Those who work for agencies charge so much that people with disabilities living in the community find it difficult to fund their care, and local authorities find it difficult to fund care for the people they support. As a result of cuts and growing costs, social services have reached crisis point. With society getting older, people having complex conditions, and NHS and care staff also getting older and retiring, we need young, fit, honest people, and we should welcome them coming from abroad to fill shortages in our NHS workforce.

There are exciting advances in personalised treatment across the world. The UK is among the leaders in the field in Europe, and it is important that people in Europe do research work together and share data. If we lose our place in Europe, it would be everyone's loss. In research, everyone should work in co-operation with the universities to drive innovation forward. What will happen when we lose the grants from the EU? Will other grants be available? Perhaps the Minister can answer that.

Many people in the healthcare system fear that the UK's decision to leave the EU could result in the repeal of various regulations, including many implemented through directives designed to protect the rights of workers. Regulations also need to be correct for the safety of patients. The Medicines and Healthcare Products Regulatory Agency, the MHRA, has been very important to both the UK and Europe; whatever happens due to Brexit, I hope it will continue to play an important part in their work.

I hope the Government realise that morale among the healthcare profession is at an all-time low due to the many pressures on it. I hope this debate may make decision-makers realise that more support is vital, and that the NHS and social services must have the workforce they need to make it a safe and thriving service.

3.41 pm

The Lord Bishop of Ely: My Lords, I am grateful to the noble Baroness, Lady Finlay, for bringing this important matter before the House today. The right reverend Prelate the Bishop of Carlisle, our lead bishop on health and social care, cannot be in his place today, but I am glad to contribute from these Benches on his behalf.

The debate brings to mind two principles central to Christian faith and practice: justice for the stranger in our midst and care for the vulnerable. Mosaic law enjoins us not to withhold justice from the outsider. Only yesterday, in conversation, the Secretary of State for Communities and Local Government sought to check that I had heard the words of Jesus, "Love thy neighbour as thyself". I am grateful to him. This reminds us that the words of Jesus tell us that every care and service given to others is a service given to God.

In the context of the present debate, I want to explore how those principles might be applied to care workers. I trust that the first of these will be upheld in line with the Government's statement, recorded in the *Guardian* on 21 September, that the Prime Minister has been clear that she wants to protect the status of EU nationals already living here. In excess of 84,000 EU citizens do the demanding and essential job of caring for vulnerable people in our society, day in, day out. They deserve both our gratitude and support. For their sake, as well as the sake of those they care for, I trust they will continue to be welcome.

As we all know, social care in this country faces a challenging future. Only last week, Age UK and the Alzheimer's Society reported that some 300,000-plus elderly people are in need of social care but are not receiving any assistance; indeed, my own mother is one of these. With an ageing population, this problem is likely to get worse unless the recruitment of care workers increases notably. It is difficult to see how this can be achieved if immigration policy is changed post-Brexit. According to modelling by the charities Independent Age and the International Longevity Centre UK, if all immigration from the EU were halted there would be a shortage of care workers in excess of 1 million by 2037. A low-migration scenario would still mean a 750,000 shortfall. Even under current migration conditions, the care sector will face a workforce shortage of 350,000 because of the likely dramatic increase in the population needing care.

I cannot stress or praise highly enough the role played by care workers, whether in care homes or through domiciliary care. Care workers play an indispensable role in promoting the health and well-being of millions, mostly elderly or disabled people. Without their intervention, the needs of many vulnerable people would go unmet. Some might go for days on end without any meaningful contact with their families or other human beings. The economic cost to the nation would be immense.

In the past I have been a trustee of a Christian care home and domiciliary care service, and I have seen at first hand the extraordinary work undertaken by care workers over and above what they are paid to do. In spite of that, care workers are seldom given the recognition they deserve, with few attempts being made to make care work a recognised and valued profession. It is therefore no surprise that there is a growing shortfall in the number of care workers from within the resident UK population. Unless underlying issues are addressed, the disparity between care provision and need will continue to grow even if Brexit's efforts prove to be less damaging than many fear.

The UK care sector is indebted to EU workers, in part because it is difficult to recruit and retain care workers from the existing population, given the poor wages, inadequate training and low esteem in which many care workers perceive themselves to be held. The jobs of current care workers from the EU ought not to

[The Lord Bishop of Ely]
be at risk if the Prime Minister's undertaking is adhered to, but it is really important that the UK does not continue to rely on EU workers solely because care work is attributed such a low status. The pathway to sustaining and developing the care workforce lies in improving the profession, rather than relying on others to do the jobs that many UK citizens are not prepared to do.

The Social Care Institute for Excellence, in its Dignity for Care Workers initiative, set out a series of recommendations for commissioners and providers of social care that would enable workers to enjoy the esteem in which they deserve to be held. These go beyond addressing the persistent problems of low pay and zero-hours contracts, calling on commissioners and providers to offer support and training, proper career pathways and the involvement of care workers in day-to-day decision-making and service improvement.

It is essential that Her Majesty's Government take effective action to address the concerns of care workers, rather than continuing to rely on low-paid, unqualified positions that offer little job security or chance of advancement. Providing care for an ageing population requires a professional care force that enjoys decent pay, job satisfaction and prospects for personal and career advancement. The current question of admission of care workers from the EU ought not to mask these crucial concerns.

3.47 pm

Lord Warner (CB): My Lords, I am sure that we are all grateful to my noble friend Lady Finlay for securing this debate on an issue which has not had the public attention it merits. I say at the outset that I am a remainer who believes we made a massive error of collective judgment on 23 June. However, whatever your views on Brexit, the NHS and social care sectors now face a very uncertain future if they are prevented from recruiting at scale from both within and outside the EU. Far from releasing resources for the NHS, as the more excitable Brexiteers claimed, Brexit is likely to damage our health and care systems in terms of both funding and workforce. It is the latter we are discussing today, rather than the funding consequences of the £60 billion upfront costs of Brexit that the OBR has estimated.

We do not start from a good position for handling the Brexit challenge for our health and care sectors. These are very labour-intensive industries, where about two-thirds of their costs are labour and service demand is growing rapidly—at a rate of at least 4% a year for the foreseeable future. They will need more people of some kind for years ahead. Successive Governments have failed to deliver effective long-term workforce plans. Health Secretaries usually aspire to greater workforce self-sufficiency but fail to stick to the policies and plans that would achieve it. We as a country have become obsessed with avoiding oversupply of the workforce. The result has been that the health and care system never produces the doctors, nurses, other professionals and care workers that it needs for the future. It has also been lacklustre at retaining and upskilling the workforce that it has. Even now, we are cutting education and training budgets to deal with acute hospital overspends. We have a serious addictive habit of relying on recruitment from overseas to plug our workforce gaps. About 280,000 doctors are registered with the GMC, and about a third are foreign-trained, with 30,000 trained in the EU. About 10% to 12% of the foreign-trained doctors are specialists.

Only this week, the Royal College of Surgeons told this House's Select Committee on the Long-Term Sustainability of the NHS, of which I am a member, that 40% of surgeons on the specialist register were trained overseas—about half of them from the EU. The Royal College of Physicians told us that its figure was 20%. Shortage specialties such as radiology cannot cope without overseas recruitment. A very high proportion of patient diagnoses, especially for cancer, depend on radiologists interpreting scans. I gather that about 250,000 scans are awaiting interpretation, yet there is a 9% vacancy rate for radiologists, with about 40% of those posts remaining unfilled for more than a year. Radiographers cannot help much, because their vacancy rate is even higher. This specialty will continue to be dependent on the recruitment of overseas radiologists and radiographers for as far ahead as we can see.

It is not just overseas doctors we depend on. The NHS has to compete in a total pool of 90,000 registered nurses who were trained overseas, and secures about two-thirds of them—about one in seven NHS nurses. There are also about 15,000 other NHS staff from overseas, nearly half of whom come from the EU. The picture in social care is similar, with about 30% of the professional workforce coming from overseas, and just over a third of those coming from the EU. Approaching 20% of the total social care workforce comes from overseas.

Some parts of the country are more dependent on overseas staff than others. In London, about 40% of the adult social care workforce comes from overseas. The former chief executive of Addenbrooke's—ironically, an Australian—has said that about a third of its nurses are from overseas. Recruitment is going on from everywhere within the EU: radiologists from Latvia, Hungary and Greece; paramedics for ambulance trusts from Poland; nurses from Italy, Portugal and Spain; doctors from almost anywhere, providing they meet the requirements of the GMC. The health and care system is now so dependent on overseas recruitment that it is difficult to see where plan B is, should access to overseas skills be closed—either by design or by sheer neglect.

By one of life's splendid ironies, some of the areas that voted most emphatically for Brexit have the greatest dependency on overseas recruitment, with little immediate prospect of Brits filling the gaps. Fans of Tennessee Williams, like me, may remember the fading southern belle Blanche Dubois in "A Streetcar Named Desire" saying that she had become dependent on the kindness of strangers—I will not do the accent. That describes the position of large parts of our health and care system, as we face the rather unappetising prospect of a shambolic Brexit.

In conclusion, I say to the Minister that the Government need to work much harder than they have done so far to convince both overseas staff already working in health and care that we want them to stay

and to reassure their potential successors that the Government will negotiate a Brexit that keeps an open door for them in a future immigration system. Controlling our borders should not mean shutting out the very people we desperately need to deliver NHS and care services to our citizens. Using these personnel as an EU negotiating chip will only drive them away and reduce the longer-term inward flow. We need to move on from the tautology that "Brexit means Brexit" and articulate a plan for safeguarding the essential workforce until we can be more self-sufficient, which cannot be before the 2030s.

Can the Minister enlighten us on what the Department of Health Brexit plans are for dealing with this issue, and is it working with the Home Office on visa arrangements that secure the health and care workers, both from the EU and from outside, whom we need for at least another two decades?

3.54 pm

Baroness Brinton (LD): My Lords, I add my gratitude to that of other noble Lords to the noble Baroness, Lady Finlay, for nominating this debate on a vital matter. For me, it does not matter that we have debated this issue already this month; until the Government start to hear and understand the serious concerns, we shall be repeating it regularly.

Although most of my comments will be on social care, I want to start with a conversation I had with two nurses at St Thomas' Hospital yesterday as I was leaving. They said to me, "You work over the road, don't you?". I said that I did, and they continued by saying, "We are just struggling to understand what on earth Brexit is all about. We knew during the campaign that that £350 million a week was not real, but we do not understand why people believed it". Patients still talk to them about the extra money that the NHS is going to get. They said that they see crisis after crisis going on around them in what is an absolutely excellent hospital. I make no more comment than that, but it is clearly something that is troubling the workforce.

Others have commented on the size of the social care sector—a 1.3 million workforce. As other speakers have already outlined, struggling with the demography alone in Great Britain would put it under pressure, but it is facing a perfect storm. We need to add in the cuts to local government funding, the inability of the Government to commit to delivering Dilnot to really harmonise health and social care, and the Government's relentless focus on reducing immigration. That is before we even start to consider the financial consequences of Brexit, as outlined yesterday by the OBR.

Independent Age and ILC UK research has looked specifically at social care workforce issues and their modelling shows that the closing off of migration will have a dramatic effect. There will be a social care workforce shortfall of 750,000 people if the Government achieve their objectives of only tens of thousands of immigrants into this country. Even under the high migration scenario, a shortfall of 350,000 is likely purely because of our ageing population. London and the south-east would be worst hit, because one in nine of the capital's care workers are at risk of losing their right to work here.

There is a further problem in the sector of a very high turnover rate of around 25%, and an estimated vacancy rate of 5.4%, which rises to 7.7% in domiciliary care. The King's Fund paper, *Five Big Issues for Health and Social Care after the Brexit Vote* notes that, immediately after the referendum,

"Bruce Keogh, NHS England's Medical Director, and Jeremy Hunt, the Secretary of State for Health, have both publicly sought to reassure European staff working in the health service".

They said:

"We endorse these views but would go further: providers of NHS and social care services should retain the ability to recruit staff from the EU when there are not enough resident workers to fill vacancies".

Can the Minister provide encouragement not just to doctors, nurses and other clinical healthcare professionals but to those who absolutely fill the important jobs in the healthcare sector who have either low or no skills, such as healthcare assistants, cleaners and catering staff, so that they will also have the facility to come to work in the UK to provide vital services?

I turn to the specific experience of people in the social care system, which at the moment is really struggling with seven older people per care worker. By 2037, the projections show that that figure will almost double to 13.5 older people per care worker. That is very alarming, especially as we are relying on the care sector to relieve the pressure on hospitals. How on earth we expect the service to be able to be delivered with even fewer staff is quite extraordinary. London, as I have already mentioned, is especially reliant on migrant care workers. Nearly three out of five of its social care workforce were born abroad and, in recent years, the percentage of EEA workers has increased. Although the overall average does not look particularly large, EEA migrants now make up more than 80% of new entrants to the profession. With the turnover rates to which I have referred of one in four, the consequence of any restriction on EEA workers will be severe and rapid.

On the effect already of the pressures in the social care system, Age UK says that the number of older people in England who do not get the social care that they need now has soared to 1.2 million, up by 48% since 2010. Nearly one in eight older people are struggling with the help that they need to carry out everyday tasks, such as getting out of bed, going to the toilet, washing and getting dressed. Among that 1.2 million, nearly 700,000 do not get any help at all because, as we know, the moment there is pressure on services, the criteria for accessing help keep getting harder and harder.

My right honourable friend Norman Lamb has said that the health and social care systems are "living on borrowed time", with more providers moving from publicly funded systems to focus entirely on private care. He said:

"The social care system always loses out in comparison with the NHS, and that's the case even when the money was flowing".

Under the later years of a Labour Government, there was a real disparity between the NHS and social care; in one Budget, the NHS was awarded 4% and social care just 1%. That is why the Liberal Democrats continue to call for a cross-party commission to address

[Baroness Brinton]
the problems of health and social care funding. We need to address that, and the impact of Brexit on both sectors.

The better care fund, in the coalition, was a small but helpful start, but it remains only a small contribution. Implementing Dilnot is urgent and overdue. Yesterday's Autumn Statement failed completely to mention health and social care funding. The Alzheimer's Society in its very helpful briefing made the very important point that, regardless of any changes in migration policies, the Government must make social care an attractive career pathway. Shortfalls in staffing are leading to social care providers failing. Already there is evidence, not just in the health and social care sector but more widely, that EU and EEA workers are leaving the UK because of the uncertainty following the referendum results. With a rapid turnover in the workforce, the consequences will be felt very quickly.

Finally, after all the doom and gloom, I wanted to end on one positive note about the diversity of social care staff. My mother, after one of her strokes, suddenly started speaking French—she had spent a lot of time in France in her childhood. The home went out of its way to find a French healthcare assistant to be moved to her ward and, as a result, she understood them and, importantly for her, someone understood her, and she was able to communicate easily. That is the social care system at its best. We need as a nation to understand that we have to resource it effectively to do its job; it cannot do it on thin air.

4.03 pm

Lord Bilimoria (CB): My Lords, as I have said before, the National Health Service is Britain's national treasure, yet it is an institution that is constantly under challenge and pressure. It is the largest employer in the country and the sixth largest employer in the world. I thank the noble Baroness, Lady Finlay, for initiating the debate.

We have heard that there is a shortfall between the numbers of staff that the providers of healthcare services said that they needed and the number of posts, with huge gaps in nursing, midwifery and health workers. In 2014, there was a 50,000 shortfall, yet the Government continue to insist on this net immigration target, to bring it down to the tens of thousands. How will they achieve this when in the NHS and care sector alone, as we have heard, there are over 130,000 just from the EU alone?

We know that in 2015, the NHS recorded its largest deficit ever, of £2.4 billion. And yet, as the noble Baroness, Lady Brinton, has just said, there was no mention in the 72-page Autumn Statement document of the words "NHS", "mental health", "public health" or "social care". May I ask the Minister why was the NHS missing from the Autumn Statement?

We know that the NHS needs more money; we spend less as a percentage of our GDP on health compared with many of our European Union counterparts. Of the original 15 EU countries, we are 13th in healthcare spending. There were some figures released today in the press. In terms of doctors per 1,000 people, we come 25th in the EU, with 2.8; the EU average is 3.5. For hospital beds per 1,000 people, we are 25th with 2.7; the EU average is 5.2 and Germany has 8.2. Our average maternity stay in days is 1.5; the EU average is 3.2. What does the Minister have to say about these rankings?

More than 30,000 doctors from the EEA are currently registered with the GMC to practise medicine in the UK. According to the Royal College of Paediatrics and Child Health,

> "In paediatrics, 5.6% of consultants and 5.5% of speciality and associate specialist … grade doctors qualified in EU nations outside the UK … 30% of paediatric consultants and 45% of specialty and associate specialist grade doctors in the UK qualified from other non-EU overseas countries".

I am chancellor of the University of Birmingham and we have one of the highest-rated medical schools in the country, and one of the largest—we take in almost 400 undergraduates per year. The Secretary of State has said that the Government's intention is to introduce 1,500 new undergraduate medical school places to make the NHS in England self-sufficient by 2020. Are 1,500 new places going to make us self-sufficient? I do not think that that is possible. Can the Minister confirm that this is the reality?

The Royal College of Nursing, in talking about priorities, says that we have 33,000 EU-trained nurses. There are 58,823 staff with EU nationality working in NHS hospitals and community health services, of whom 10,000 are doctors, 22,000 are nurses and health visitors and 1,369 are midwives. One in three nurses is due to retire in the next 10 years. Clare Marx, the president of the Royal College of Surgeons, said that:

> "Twenty-two per cent of registered surgeons trained in European countries, with a further 20 per cent from outside the EU … the main risk of any changes to migration rules is not to highly qualified medical professionals—which the Government has already pledged to protect—but to the tens of thousands of administrative, clerical, and support staff from overseas that the NHS and social care fundamentally rely on for delivery of the service".

If you look at the statistics it is in every area: in medicine, 14% are from the EEA and 20% from the rest of the world; in something like obstetrics and gynaecology, 40% are non-EU and 15% are from the EEA—that is over 50%. That is how reliant we are on foreign staff and doctors in the NHS.

While we are waiting for Article 50 to be triggered, all our research funding is under threat, as was mentioned earlier. The thing about our research funding is that it is not enough for the Government to say that we are going to compensate for the lack of research funding because we will not be paying into the EU. It is the power of collaboration that we will lose. At the University of Birmingham we collaborated with the University of the Punjab, and during the Prime Minister's recent visit to India we highlighted that when we do research on our own, the factor is about 1.6 and for the University of the Punjab it is about 1.3; when combined, it is 5.3. When we do combined research with Harvard University, it is 5.6. That is the power of collaborative research that we risk losing if we leave the EU. Higher education and research and the translation of that research into commercial breakthroughs and drug discoveries is huge. All that is under threat.

Elisabetta Zanon, the Director of the NHS European Office, said that:

"A prolonged economic fallout could indeed have a chilling effect on the NHS budget, which in turn could impact on patient care. It could potentially lead to longer waiting times, or reduced access to innovative, expensive medicines and health technologies, or in a lowering of quality".

This is really serious. The scale of deficit, as we have heard, is up to £2.7 billion. The Institute of Public Care has forecast that the number of people aged over 65 who are unable to manage one or more self-care tasks will increase by 44% by 2030. Are 1,500 extra doctors going to cope with this? Eighty-four thousand of England's social care workforce are EEA migrants. Head Medical, the largest UK-based international firm specialising in doctors, has said that overseas doctors are deciding not to work in the UK since the country voted to leave the EU, with an increase in the number of EU doctors rethinking their plan to come here. This is really serious.

When I was in India at the time of the Prime Minister's visit there, she spoke of returning people from here to India. She did not mention higher education once. She did not even meet the 35 higher education leaders who were there with Jo Johnson at the time of the visit and did not even talk about international students. The Indian Prime Minister spoke about the importance and mobility of Indians and Indian students and of foreign education. I remind the House of the fear that arose when nurses who did not earn £35,000 within six years were going to be thrown out of the country. The public backlash was so strong that the Government rowed back on that.

Reducing migration will damage this country. The race and hate crime which I personally have experienced is absolutely shocking. I have met many people who voted to leave the European Union because they believed that slogan on the back of buses which said:

"We send the EU £350 million a week, let's fund our NHS instead",

and that hugely misleading Vote Leave campaign film which ended:

"Every week the UK pays £350 million to be part of the EU. That's £350 million that could build one new hospital every week, £350 million that could be spent supporting our doctors and nurses. Now is your chance to take back control and spend our money on our priorities, like the NHS".

Those were absolute lies. We contribute to the EU £150 million net a week, which is £8 billion a year. That is 1% of our government expenditure.

In conclusion, this debate is so serious and crucial because it is about the NHS and the care sector. However, it is also about immigration, our vital research, and about what lies at the heart of what makes this country so great, which is in threat and jeopardy.

4.11 pm

Lord Wigley (PC): I am delighted to follow the noble Lord and the trenchant points he has made. I thank the noble Baroness, Lady Finlay of Llandaff, for initiating this timely and far-reaching debate. I also take this opportunity to thank her for her tremendous contribution to the health and social care services in Wales over many years. She spoke today from a position of immense knowledge and experience. The Government would be foolish to ignore her warnings and, indeed, the warnings of others who have brought their expertise and viewpoints to this debate.

I wish to make it clear where I am coming from on this issue. I have always been an ardent European and regard the Brexit vote as an absolute tragedy. Therefore, before I address the specific healthcare dimension, I wish to say a word about the state of play on Brexit. I accept that, regrettably, we are likely to leave the EU. The vote on 23 June in the advisory referendum asks the Government to take such a step. The referendum did not in any way advise the Government on what new alternative relationship the UK should have with our current 27 European partners. Several alternatives were mooted during the referendum campaign by the Brexit backers. Some advocated a Norwegian-type relationship, some an arrangement more similar to that of Switzerland, and some even proposed Albania, Turkey or Ukraine as possible models. Others looked to the long-negotiated deal that Canada has secured. Others on the hard Brexit extreme advocated basing new arrangements on World Trade Organization rules, and essentially walking away from our European neighbours.

Not one of these alternatives was endorsed or rejected by the referendum. The Government have no mandate from either the referendum or the 2015 general election manifesto to adopt any of these alternatives as the way forward. They have not yet even asked Parliament to endorse any preferred course of action. Unless they secure a prior mandate from Parliament laying down the negotiating objectives—not necessarily in all the intricate detail, but by way of broad strategic targets—they must face the possibility two years down the line of returning with a set of proposals that Parliament then rejects. In these circumstances, Parliament would have every entitlement to instruct—yes, instruct—the Government to withdraw their Article 50 application, which lawyers now accept is legally possible. It therefore now behoves the Government to seek a mandate from Parliament for their strategic objectives, and I approach this debate on the potential implications for the NHS from that angle.

Improving, not undermining, the NHS was a serious factor which influenced many people to back Brexit, believing that the NHS would gain £350 million a week and thereby recruit more doctors and nurses, many of them from the European Union itself. The NHS is massively dependent on staff who have been recruited from overseas. Some 20% of the entire NHS workforce is from overseas: about half from the EU and half from other overseas countries. More than 10,000 NHS doctors come from other EU countries, as do more than 20,000 nurses, and they come predominantly from Ireland, Poland, Spain, Portugal and Italy. In Wales, a staggering 30% of all doctors were trained abroad—2,687 of them.

The Brexit vote has done two things. It has raised in the minds of NHS staff from other EU countries the question of whether they will be sent home when we quit the EU. These fears were exacerbated by the Prime Minister's ill-advised comments at the Tory Party conference and her subsequent refusal to give assurances that all EU citizens currently working in the UK will, in all circumstances, be guaranteed the

[Lord Wigley]
right to continue to work in the UK indefinitely. The only definitive statement made by the Prime Minister on these matters has been to rule out the Australian-style immigration system. The uncertainty created by the inept way the Prime Minister has dealt with these issues has led NHS staff, particularly in specialist jobs, to start looking around for suitable vacancies in other countries. No one can blame them. If in two years they find that they have to go, they might not then easily find a job in their home country. Indeed, they might face much greater pressure as other medical specialists in the UK also turn back to look for jobs at home.

The pressure to leave the UK is not just on EU-originated NHS workers. Many from Commonwealth countries have faced the horrid racial abuse that has mushroomed as a direct result of the Brexit campaign. Racially motivated crime has escalated, as the police have told us, and many NHS staff from non-EU countries are asking themselves whether they want to remain in a narrow, inward-looking, racially prejudiced Britain—indeed, whether they want to bring up their children in such a hostile climate. It is an absolute tragedy that all the hard work that has been done to break down the barriers of prejudice and racial hatred have been so disastrously undermined by the tone of the Brexit campaign, the outcome of the referendum and the Government's inability to handle the situation.

I ask everyone, throughout the UK, to look around when they go to their hospitals and note the number of overseas workers on whose backs all that depends, and to look at the lists of names of doctors in the departments they visit and see the many names from foreign countries. My wife recently went to an NHS hospital in Wales, and of the 14 names on the plaque by the department no fewer than 12, at least ostensibly, were from overseas. I ask people to think what they would do if such staff went home, as some are told to do on the pavements of British cities. I ask them to consider the dependency of other services, such as home helps to support disabled people, or the staff in homes for the elderly who look after their parents or grandparents.

I ask the Government, taking all these aspects into consideration, to do three things. First, they should announce forthwith that every EU national—indeed, every overseas national—working in the UK will be entitled to remain here irrespective of the Article 50 negotiations and their outcome. Secondly, such a guarantee will have no ifs, no buts and no conditions; it will be absolute and not time-limited. Thirdly, it will be in the UK's negotiating position, if we are leaving the EU, to retain our rights vis-à-vis the single market—if necessary, specifying a customs union deal—and accept the free movement of working people throughout the EU into the UK. Anything less than this will leave a bleeding wound that will hit many sectors of the UK economy, but none worse than health and social services, from which the haemorrhaging of vital staff could lead to the end of the NHS as we know it.

4.19 pm

Baroness Watkins of Tavistock (CB): My Lords, I thank my noble friend Lady Finlay of Llandaff for securing this debate, which follows a similar one in my name held in July, referred to by the noble Lord, Lord Colwyn. I will not repeat a lot of what I said in July; instead, I shall focus on the challenges that have begun to emerge over the last three months in relation to nursing and the allied health professionals workforce.

Others have already said that it is vital that we continue to value our EU colleagues who work in the health and social care sectors. The Chief Nursing Officer, Jane Cummings, has joined others in stating the value that we place on these workers. At the moment, we can to some extent continue to recruit from the EU. However, as an example, on a recent visit to Spain it was made very clear to me by some nurses that they no longer seek an opportunity to come and work in the UK because they fear that the very high number of Spanish nurses who are here now will seek to return, and they may then not have jobs if they, in turn, go back to Spain after a short period here. So, as well as what we know from meta-analysis, we are, anecdotally, very clear that things are changing.

Another important point is that we must not over-recruit from countries where there is already a significant shortage of healthcare workers. The report of the noble Lord, Lord Crisp, which looks particularly at the triple impact of nursing internationally, argues that we must be very careful not to do that.

Amid the concerns and possible doom and gloom, this week the Royal College of Nursing celebrated its centenary and I attended part of its conference. A really positive note was the developments in nursing across the four countries of the UK and the absolute commitment to continuing to improve care and support for our communities, working with healthcare staff from a range of backgrounds and countries in the EU.

The UK Government have told us that they want to ensure that the health and social care needs of our population are not negatively impacted by the UK's exit from the EU. A sound supply of staff is essential, not only for the NHS but for the voluntary and independent sectors. It is estimated, for example, that the independent health sector generates in excess of £2 billion a year for the London economy, with associated tax revenues for the Treasury. As indicated yesterday in the Autumn Statement, we need to keep this kind of business in the UK, and, to get those benefits, we need to provide the staff to deliver them.

Our relationship with the EU has had a substantial direct and indirect impact on the delivery of health and social care in the UK. It has developed really good patient safety standards and improved the quality of care. The staff we have now are central to the successful delivery of care in the future. Because so many others have talked about this today, I do not intend to dwell for long on the incredible support for older people that is provided by staff from the EU, However, it is essential that we develop more home-grown staff.

We need to develop a long-term, coherent workforce strategy and implement plans that maintain and grow the domestic health and social care workforce. The noble Lord, Lord Warner, talked very clearly about the fact that we have failed to do that in the past. There is a terrible fear of over-recruitment. Certainly we need a whole new set of doctors and nurses, but we also need nursing and medical academics to support

the rapid increase in such programmes, so it is not quite as simple as it seems. We must ensure appropriate educational and professional regulatory frameworks, including for nurses, nurse associates and social workers trained in the UK, to create a proper professional pathway for young people.

Others have referred to the fact that a lot of the law from Europe has resulted in safeguarding decent working conditions for staff. It is imperative that as we go through the great repeal Bill, we do not undermine some of those advances, such as TUPE and other good standards for those employed.

I turn to the relatively severe concern of funding for the ongoing training of nurses, midwives and allied health professionals, which has been stripped out again this year. Therefore, we have people qualifying who would like to develop their career, but who cannot afford to because of the post-qualifying costs of further and higher education.

We have not seen any campaigns to successfully promote nursing as a career such as those we have recently seen for teaching. Of course, I finished writing my speech last night and then read the *Metro* on the way in this morning, in which there is a fantastic advert for nurses to return to practice in London—there are always exceptions to the rule. However, we need to fundamentally encourage people to come into nursing and the allied health professions, particularly as they will be starting to pay their own fees. We cannot do this too soon.

There are steps we can take that will protect against nurse shortages. Noble Lords will know that I have consistently argued that postgraduate pre-registration courses that supply nurses for the NHS need protection. I am delighted that the Government have committed to continue funding these in 2017-18, but that needs to continue until at least 2020.

My noble friend Lady Finlay described the numbers and challenges we will face if our EU friends decide to move. However, all the figures on NHS-funded nurses fail to take into account the shortage in specialties in mental health, largely because most of the child and adolescent mental health services are provided by private companies contracted by the NHS. There is already concern that recruiting to mental health and learning disability nursing programmes next year may prove difficult. We need to keep a watchful eye on this and ensure that we can retain and recruit in those areas.

Common EU standards for training and recognition of qualifications have enabled mobility, raised educational standards and improved health. Other activity, including research collaboration, has developed nursing practice. I trust that the Minister will give careful consideration to some of the challenges we have raised, particularly how we will staff mental health and learning disability services in the future.

4.28 pm

Baroness Walmsley (LD): My Lords, I, too, thank the noble Baroness, Lady Finlay of Llandaff, for introducing this debate. I note with interest that not one speaker thinks Brexit will be good for health and social care. The tragedy of the vote on 23 June—by 37% of the electorate—is becoming more apparent every day, not least yesterday, following the Autumn Statement. The OBR has reacted to the statement by giving us an independent assessment of where we are now and where we are likely to be, as a nation, as a result of the actions of this disastrous Government, who cannot even stand up for their own judges, let alone stand up to their own right wing.

The Government say that we have a £220 billion Brexit black hole and will have rising unemployment, lower wages and higher inflation, resulting in lower living standards. The projected fall of £8.2 billion in tax receipts over the next two years will seriously impact on our public services. That fall is enough to fund more than 330,000 nurses.

It was shocking that there was not a single mention of social care in yesterday's Statement from the Chancellor, despite the £1.3 billion hole in social care budgets needed by 2020 simply to stabilise the system, let alone deal with rising demand and reverse the fall in the number of people able to squeeze through the rising eligibility barriers for care. More than two-thirds of acute hospital trusts are in serious deficit and this figure is projected to rise. These are the real effects of Brexit on our national treasure. We cannot pay for the staff we need in the NHS and social care if tax receipts are falling unless the Government make different choices.

Our public sector workers have not had a decent pay rise in years and are promised in the coming year less than expected inflation—in other words, a real-terms pay cut. That is why we on these Benches called for the Chancellor to announce £4 billion extra for the NHS and social care yesterday and a decent pay rise for public sector workers—but he did not. Instead, we will be spending much more than that on additional civil servants charged with getting us out of the EU. You could not make it up.

In addition to that situation, since 23 June there has been enormous uncertainty, as we have heard from other speakers, among providers of health services and social care about whether they will be able to retain the staff from EU countries already here and recruit new ones in the future. The current staff from these countries are valued and essential to the operation of health and social care, and yet the Government refuse to give them any reassurance. Thirty thousand doctors, 55,000 nurses and others, 90,000 care workers and goodness knows how many medical researchers from the EU are currently working in the UK. Without them, the NHS and care services would fall over and our research efforts will be damaged. EU funding supports many of our medical research programmes and I am very concerned that without it, after Brexit, UK patients will no longer benefit from clinical trials and early adoption of the cutting-edge treatments that they bring.

Others have picked up their own areas of concern about the health and social care workforce but I should like to mention two groups: midwives and people supplying medical equipment. In April this year there were 1,192 full-time-equivalent midwives from other EU countries working in the NHS in England, according to figures from NHS Digital. In London alone, 16% of the NHS midwifery workforce was from elsewhere in the EU—674 full-time equivalent

[Baroness Walmsley]
midwives. At University College London Hospitals NHS Foundation Trust, 32% of the midwifery workforce was from the EU. Outside London, in both Basildon and Thurrock, and in Walsall, more than 10% of midwives were from other EU countries.

On the latest calculation, the NHS in England is already short of around 3,500 full-time midwives. Without EU midwives, that shortage figure would be over 4,500. We need more midwives, not fewer. The Royal College of Midwives believes that any policy that could see EU midwives blocked from continuing to be able to work in the NHS post-Brexit would be very damaging for maternity services across the country and truly catastrophic for London. Can the Minister tell us what plans the Government have in their negotiations to protect our maternity services?

The information I have just mentioned concerns the proportion of the current midwifery workforce coming from the EU. It does not take account of how many join or leave in any one year. It is important to consider this churn because, even if existing EU midwives were able to stay, any who then returned to their home country might not be easily replaceable. The latest figures available on that churn, from September 2014-15, show that during that period 189 EU midwives left NHS employment and 248 started—a welcome increase. Simply allowing existing EU midwives to stay without taking any account of allowing new ones to come would lead to a fall in numbers. In summary, the NHS in England has been short of midwives for years. We need all the midwives we can get; currently well over 1,000 of those we have are from other EU member states. We need them.

Turning to my other concern, many people working in health and social care are involved in the provision and support of medical devices for their patients. Brexit will pose problems for them, too. At present the UK is closely involved with EU regulatory bodies in licensing about 150,000 medical devices. Licensing by these EU bodies ensures that patients receive safe and appropriate medical equipment. It also means that the businesses responsible for their research, development and sale can trade easily within the EU, and with other countries, based on EU-wide approval. There are thousands of jobs in these businesses and they affect millions of patients.

Many EU countries value UK expertise in the regulatory field and much of the approving of medical devices for use across the EU is done here in the UK. Casting us adrift from this EU-wide process and creating a wholly separate regulatory process will weaken the process of approving innovative medical devices and create barriers for businesses working to develop them.

Who knows what the results of negotiations will be, but it would make sense to continue the regulation of medical devices on an EU basis. However, that will not be possible if the EEA, EFTA or customs union models are rejected. What we do know is that creating a "bespoke" regulatory process as part of a hard Brexit will make it more difficult to develop and get approval for the kind of medical devices that will assist those working in health and social care to support patients properly, and in many cases to help them live their lives as independently as possible. That includes patients of all ages with chronic conditions, elderly people, people with disabilities and people with learning difficulties.

Creating our own bureaucracy for regulating medical devices will be costly and at the expense of direct support for people who may benefit from them. Why spend the money on new bureaucracy rather than on more prostheses, heart pacemakers, computerised blood sugar regulators, mobility aids and much more? In addition, failing to maintain EU-wide systems will threaten their future development here in the UK. If we are to leave the EU, the UK businesses that are researching, developing and promoting medical devices would clearly prefer a new arrangement in which the system remains EU-wide, even if that means a loss of sovereignty and the need to pay a share of the costs of EU-wide regulation. If the Government are determined on a hard Brexit to appease their right wing, however, this important UK industry will suffer, work will move to the EU, and those working in the health and care sector will find that the changes have been detrimental to their patients. There could be huge and unnecessary costs for the supplying of medical devices if there are not, at the very least, long transitional arrangements allowing issues such as labelling to be addressed. Will the Government's industrial strategy take account of this important health-related industry?

The process and consequences of Brexit will cost this country millions and have already cost us trillions of pounds because of the fall in the value of the pound. What will the Government do to minimise the negative effect of Brexit on the health of the nation?

4.38 pm

Lord Turnberg (Lab): My Lords, I also congratulate the noble Baroness, Lady Finlay, on securing the debate and giving us this opportunity in her usual clear and erudite manner. I refer noble Lords to my interests in the register.

It is pretty obvious that the noble Lord, Lord Hunt, could not be here today. I am sure he is almost as unhappy as I am that he is not here, but this has been rather a depressing debate. Of course, this is not the first time we have had a debate on this topic. When we had our earlier debate in July, the noble Lord, Lord Prior, suggested that we should have another debate in three or four months' time, when he must have presumed that we would have more clarity on the Government's thinking. I therefore very much look forward to hearing what he has to say today.

Two messages are clear from virtually every noble Lord who has spoken. First, the NHS and social care are in dire straits. Every report we see and everything we hear from people working in these services say the same thing. Even the National Audit Office and the Public Accounts Committee say that we cannot go on as we are. The Chancellor did nothing yesterday to offer any relief.

On top of that, we are threatened by the possibility of losing the support of our EU immigrant staff on whom we rely so heavily—a double whammy. Everyone who has spoken today, and everyone both inside

government and outside it, say the same thing: that these staff represent an invaluable asset and provide vital support for the NHS and social care.

I sit on the Select Committee on the Long-Term Sustainability of the NHS. While the ostensible purpose of that committee is to gain an idea of what the future will bring for the NHS in 20 or 30 years, we have been unable to get any of the innumerable witnesses who have come before us to engage in anything but the immediate problems they face today. They are entirely taken up with how they are going to survive this next year and cannot lift their heads up from firefighting today.

I shall not reiterate the catalogue of uncomfortable data that we have heard today which emphasise the size of the problems we face, save to mention just a couple of the most glaring facts. My noble friend Lord Lipsey spoke so clearly about social care, where the 25% cuts that we have seen over the past few years are causing the most acute problems. According to Age UK, 1.8 million elderly people are not receiving the care they need—the noble Baroness, Lady Brinton, spoke of 1.2 million; I do not know which figure is right, but both are awfully large numbers.

Last week's debate in the other place spelt out in unhappy detail the dire problems due to the cuts in local authority funding. Now the CQC and the Local Government Association talk of social care services being at "tipping point". In the NHS, eight out of 10 hospitals say that they cannot ensure a safe rota of nurse care throughout the day and night. The Royal College of Paediatrics and Child Health tells us that it cannot fulfil its rota arrangements as its paediatric vacancy rates rise. Everyone, from the royal colleges, the King's Fund, the Nuffield Trust and now even the GMC, is warning of the impact of the cumulative shortfall on standards of care—the noble Lord, Lord Warner, laid it all out in depressing detail.

This week, I met a young doctor working in a large London teaching hospital who told me that he had just spent a 10-hour stretch without a break in the A&E department. When I asked him how many of the patients whom he saw did not need to come to that department, he said that the great majority should have been dealt with by their GPs if only they did not have to wait a couple of weeks for an appointment. What a sad state of affairs. Now the public are waking up to the problems, as newspapers begin to show pictures of queues of patients lying waiting for hours on trolleys in A&E departments.

It is against that background that we have to face the possibility that 5% or 10% of the workforce might be lost if we do not take action to prevent the potential damage of Brexit. We have heard the figures: a vulnerable 5% overall and a particularly severe impact in London and the south-east, where 10% of the workforce are EU immigrants. The figures are frightening. In London, more than 40% of social care workers are immigrants. In nursing, already with 23,000 vacant posts, they are desperate to reassure and retain the 33,000 nurses trained outside the UK who now feel rather insecure. Midwifery is no better off. A striking example of its vulnerability is UCH, 32% of whose midwives are qualified in the EU outside the UK.

Among the 30,000 doctors on the UK medical register and who qualified in other EU countries there are many vulnerable specialties such as surgery, psychiatry and so on. There is a particular case in the large teaching hospitals that are so attractive to academic clinicians from abroad. Overall, 15% of academic clinicians in our hospitals qualified in the EU. They can go almost anywhere in the world to work. Will we be able to keep them here and will we continue to attract a continuing stream of them? We will certainly be at a disadvantage if we lose our capacity to attract them. The noble Lord, Lord Bilimoria, spelled out the need for scientific collaboration.

We have heard all sorts of encouraging words from the Secretary of State, the Prime Minister and the noble Lord the Minister about how much they value the contribution of our immigrant staff and how important it is to reassure them that their future is safe. However, there remains considerable uncertainty in the minds of many and this perception is not helped by the way that the Government keep their negotiating cards so close to their chest. There is a feeling among our own EU staff that they are being used as bargaining chips in the negotiation to strengthen the position of UK expats living in other EU countries—that if they can stay there then we can allow EU healthcare workers to stay in the UK. That may be a cynical view and it will probably be denied, but that is certainly one perception that is difficult to dispel.

Let me briefly outline a couple of other areas of concern. First, in public health, we rely on the European Centre for Disease Prevention and Control to work closely with our own Public Health England laboratories for the rapid detection of outbreaks of infectious diseases and the sharing of information about them. As the noble Baroness, Lady Finlay, said so powerfully, infections, unlike immigrants, know no borders, and we can ill afford a barrier to the flow of information. What discussions are being held to ensure that we can maintain this vitally important link?

I mentioned the need to attract academic clinicians, but what is the Government's plan to deal with the fall-out when the European Medicines Agency moves out of the UK, as is now inevitable? We will certainly lose jobs, but currently we have very close and invaluable access to the EMA by industry and researchers engaged in clinical trials. This will be lost unless we can make special arrangements. What thoughts have the Government given to dealing with this problem?

The European working time directive has had its critics, but its aim to improve the health and safety of our staff should not be readily jettisoned. Will we be able to retain it or something similar?

Several other actions the Government could take might offer some mitigation. For a start, they could certainly be more open about their intentions for this particular group of workers. The suggestion that they do not want to reveal their negotiating hand too early really does not wash. Surely starting with a strongly stated and clear position on what we require can only strengthen our position.

What about the status of the Migration Advisory Committee? I understand that it maintains a shortage occupation list that provides for certain groups of staff

[LORD TURNBERG]
to come to work in the UK from abroad, and that this includes nurses. Will the noble Lord consider the prospect of expanding that committee's list of permitted staff to include a range of threatened and vitally important NHS staff?

To reiterate the plea from the noble Baroness, Lady Finlay, about the Medical Training Initiative that we currently operate for non-EU specialists to come to the UK for two years' training before they return home, is there a prospect for that scheme to be expanded to incorporate EU doctors across all specialties?

As far as doctors and nurses already here are concerned, can the Minister confirm that if they are now on the register they will continue to be recognised and as a result will be able to continue to work here? That would go an enormous way to reassure them. There are many steps the Government might take to reassure both our services and our immigrant staff. I hope that the noble Lord, Lord Prior, will be able to offer some comfort.

4.49 pm

The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con): My Lords, when the noble Lord, Lord Turnberg, said that this has been a depressing debate, he was not exaggerating. The noble Lord, Lord Warner, referred to "A Streetcar Named Desire". Frankly, I feel more like Hamlet:

"To be, or not to be".

It has been a very thought-provoking debate and I thank the noble Baroness, Lady Finlay, for raising this hugely important issue. If there has been some deviation from the subject on the Order Paper, that is perhaps understandable, given how important the issue is. In thanking the noble Baroness, I echo the remarks of the noble Lord, Lord Wigley, about the work she has done in palliative care in Wales. I know she has had a huge impact on healthcare in Wales. Indeed, that has extended to Norfolk because she has been to Norfolk a few times as well and I know that that is hugely appreciated.

Before I get into the meat of the subject, I will pick up the point about people who work in social care. The noble Baroness said that the turnover rate of people who work in social care is 37%, which is a pretty shocking figure. You cannot run a business if you have a staff turnover of one in three; you certainly cannot deliver good-quality care. I see my noble friend Lady Cavendish sitting in the corner. The Cavendish report that she produced four years ago, which introduced the care certificate for people working in social care, has had a huge impact. I think there was a worry at the time that it was another piece of bureaucracy but it has had a big impact. Of course, the move to the living wage will have a big impact as well. I agree with the right reverend Prelate the Bishop of Ely and others that social care workers are a hugely undervalued part of our workforce. They do extraordinary work and I record the strength of feeling we all have in this House for the work they do.

There are three big issues running through this debate. First, there should be no doubt that the healthcare system, social care and the NHS depend on people from all over the world—from Asia, Africa and the Caribbean as well as Europe. It will always be so and we are hugely in their debt. The *Health Service Journal* held its awards yesterday and Alastair McLellan, the editor, said:

"The NHS has always relied on people from around the world to help it deliver for its patients and even accounting for planned welcome increases in home grown staff, it always will".

I echo those words and would add people who work in social care. We owe a huge debt to all those people. They play a vital role.

The second theme is this: like most people who contributed to this debate, I voted to stay in the EU and I have not changed my mind about that. I voted to stay in the EU and I would like to have stayed in the EU. As was mentioned by the noble Lord, Lord Lipsey, sometimes it is as if we in this House are preparing a dossier on why the British people got it wrong. It is about time that we listened to what the British people said. They voted to leave the European Union. It does us no credit as a House to keep on moaning about why we have left. We have left. Let us make most of it.

Noble Lords: We have not left.

Lord Prior of Brampton: We have voted to leave the European Union. We now have to make the most of it. We can make the most of it and we can make a success of it. We can use Brexit as a catalyst for change. Even though most people, like me, wanted to stay in the EU, none of us felt that the EU was perfect. Most of us felt that it was a deeply flawed institution. Now that we will be outside the European Union there are huge opportunities that we can take.

The third theme is immigration. Immigration has been hugely beneficial for our country, not least for the NHS but for our country as a whole, and we should celebrate that. But that does not mean to say that uncontrolled, high levels of immigration cannot do damage to our country. The tone of the debate, both in the US around the election and here around Brexit, was often deeply shocking, deeply unhelpful and, as many others have mentioned, deeply deplored.

However, let us not pretend for one minute that all the difficulties around immigration in this country stem from those two debates. No one can say that the "Black Lives Matter" campaign in the US suddenly started when Donald Trump became President-elect. No one can say that the problems which people from BME backgrounds have with the criminal justice system, or have in the NHS, suddenly stemmed from Brexit. Many of these issues are much more profound, much deeper and much more fundamental than that. Controlled levels of immigration can undoubtedly enrich this country materially and culturally, but uncontrolled immigration runs the risk of damaging both those things. Those were the three big issues that ran through this debate.

I turn to the scale of the issue that confronts us. There are 57,000 colleagues from EU member states working in the NHS and about 90,000 working in the social care system. As we heard from my noble friend Lord Colwyn, there are 7,000 dentists from the EU. We know that the proportion of overseas and EU staff is much higher in some parts of the country, especially

London. We also know that there is a huge impact on our life sciences industry—I took note in particular of the comments of the noble Lord, Lord Bilimoria, on this—from EU nationals and people from other parts of the world. The collaborative work we do across the EU in life sciences is extremely important. Cancer Research UK says that between 30% and 40% of all its research is done in collaboration with EU nationals. As we put together our strategy for the life sciences, as part of the industrial strategy, I assure the noble Lord that access to the world's best talent will be absolutely centre-stage and critical.

There should be absolutely no doubt that the UK benefits from immigration, but reducing net migration is compatible with continuing to attract hard-working and skilled people who come here to study and to work. The immigration system will always have a role to play in supporting growth and meeting the needs of UK businesses. People from overseas fill vital gaps in our labour market in social care, nursing, medicine and science.

The Prime Minister has been absolutely clear that she wants to protect the status of EU nationals already living here—incidentally, this was also the view of her predecessor, David Cameron—and that the only circumstances in which it would not be possible is if British citizens' rights in European member states were not protected in return. Some degree of reciprocity does not seem unreasonable. Personally, I regard the chances of that happening as being so remote as to be almost inconceivable. My right honourable colleague the Secretary of State for Exiting the EU, David Davis, also made this clear when he said:

"We will always welcome those with the skills, the drive and the expertise to make our nation better still. If we are to win in the global marketplace, we must win the global battle for talent. Britain has always been one of the most tolerant and welcoming places on the face of the earth. It must and it will remain so".

Lord Bilimoria: Can the Minister explain this one fact? We have had uncontrolled immigration from the European Union, and we have heard from all quarters in this debate that the NHS and the care sector are highly dependent on those people. We have more than 3 million people from the EU living and working here, yet we have the lowest level of unemployment and the highest level of employment in living memory. How would we have managed without these people? If people voted to leave because of the burden of immigrants on the public sector, we have just proved in this debate that without those immigrants they would not have the public sector.

Lord Prior of Brampton: I repeat what I said earlier: the contribution made by people coming into this country from the EU and elsewhere has been enormous. It was clear in the Statement yesterday that one of the great fundamental problems we face in this country is low levels of productivity. If we are to afford the kind of social care system and health system that we want, we have got to increase levels of productivity. It has been too easy for us in this country to rely upon people coming from overseas rather than training our own people.

I strongly believe that that is why we must focus on areas such as life sciences, for example, where we have huge strength in research and high levels of productivity. That is the only way that we are going to be able to afford to have the kind of health and social care system that we need. I agree with David Davis. The Conservative Party is unashamedly internationalist, outward-looking and global in its outlook. There is no place for jingoistic, xenophobic or little England views in our party. On the contrary, we look out to the world, a world that includes Europe, but is not defined by Europe. Noble Lords deplored the xenophobia that appears to have increased since Brexit, and I entirely share their views. There can never be any excuse for that kind of attitude.

We recognise that we cannot continue to rely on people from overseas to maintain the level of staff that is required within our health and care system, nor is it right to do so. If we are honest with ourselves, we knew this before Brexit. We must become more self-sufficient. Indeed, this is consistent with our commitment to the World Health Organization's priorities on human resources for health. It cannot be morally right for a rich country such as the UK to recruit skilled doctors, nurses and other workers from countries whose need is so much greater than ours, so we will take a range of actions to increase the supply of domestically trained staff and to increase efficiency through better use of technology and skill-mix solutions.

In respect of the NHS, we have already increased the number of key professional groups being trained. For example, since 2013 the number of nurse training commissions has increased year on year by some 15%, and we expect to have 40,000 more nurses by 2020 than we had in 2015. We are committed to ensuring that there will be 5,000 more doctors working in general practice by 2020. From September 2018, the Government will fund up to 1,500 additional undergraduate student places through medical schools in England each year. This is in addition to the 6,000 medical school places currently available in England. That is a very significant increase. It is 1,500 places each year on a five-year course, so that is an extra 7,500 doctors coming through the system. The recent reforms to the funding of training for nurses and allied health professionals will further increase supply by removing restrictions on the number of training places, so that universities are enabled to deliver up to 10,000 additional nursing, midwifery and allied health training places over the course of this Parliament.

Nevertheless, it is important to recognise that it takes time to train skilled health and care professionals, and therefore we have introduced initiatives to improve retention and to encourage trained staff to return to practice. We are also working to increase the efficiency with which we use our existing staff and to improve productivity by changing the skill mix through the introduction of new roles, such as physician associates and nursing associates. This will ensure that highly trained professional staff are properly supported and more productive. We will also see over the next five years a huge increase in the use of digital technology to enable more people to be looked after outside hospital settings.

We all recognise that social care is a vital service for many older and disabled people. The Department of Health is working with Skills for Care, employers and

[Lord Prior of Brampton]
Health Education England to support activity to recruit and, importantly, retain our caring and skilled workers who work in social care. In many ways, these people are the unsung heroes of the health and social care system, delivering very personal care to very vulnerable people at very low salary levels. Since 2010, we have seen more than 340,000 new apprentices into the workplace in the care sector, which is more than any other sector. So we are taking action to increase our home-trained workforce in medicine, nursing and social care.

I do not want anyone in this House to think for one minute that we underestimate the challenges that Brexit presents to the health and social care system, but I think it also presents huge opportunities. It behoves us in this House just occasionally to look on the slightly more optimistic side, and not to be quite as depressing as we sometimes are.

Lord Warner: Before the Minister sits down, could he address the issue of reciprocity, which some of us raised? There is no incentive for the EU to give guarantees on reciprocity, so why should it move on this area at this point? We stand to lose because those people will actually leave unless they are given guarantees. If we are going to wait to reassure these people until there is reciprocity, we are bound to lose that argument. Why can we not move on this issue before reciprocity?

Lord Prior of Brampton: My Lords, we have not even triggered Article 50 at this point. It would be pretty strange for us to start taking unilateral action until at least the article had been triggered and negotiations had begun.

5.06 pm

Baroness Finlay of Llandaff: My Lords, I thank everyone who has spoken in this debate. I wish I could go through each contribution individually but time will not allow that.

I am very sorry that the Minister thought the debate was a moan, because it really was not. I do not think anyone here has moaned; rather, everyone has laid out facts and figures to try to demonstrate the problem that we have to tackle. The Minister spoke of huge opportunities, and it is to be regretted that no one who campaigned to leave was here to spell out what those opportunities might be, which they could have done. I offered up a couple and asked a question about them, but got no response. I look forward to the Minister perhaps writing to me in future and answering them—simply about the GMC's powers and so on.

The debate has demonstrated that there is indeed a gaping gap. We risk haemorrhaging staff. A perfect storm is brewing, as has been spelled out today. Yes, we need to train our own staff, but this is not just about training places; this has to go right back into schools and across society to change attitudes, as has been said, so that care is viewed as esteemed work to go into. Our research cannot happen unless the regulations and routes for collaboration are in place and wide open and people feel welcome. I am sad that we have had no assurance on that today.

The phrase "addicted to overseas staff" is absolutely correct. Perhaps this debate has demonstrated that cold turkey is going on, as we realise that they are not going to be there in future and we cannot carry on with that addiction. The heart of our country is indeed at threat. The prejudice that people have experienced has been ugly. We are at a tipping point if we are going to lose that 5% to 10% of qualified European staff, who are certainly feeling uncomfortable and getting cold feet about remaining.

To close, I simply wish to say that I do not believe this was a negative debate. People were trying to be very constructive and lay out the problems. Unless you know the problem, you cannot find a solution. We cannot simply come out with bald statements along the lines of, "Don't worry, it'll be okay in the longer term".

I thank most sincerely everyone who contributed. I beg to move.

Motion agreed.

Terrorism Prevention and Investigation Measures Act 2011 (Continuation) Order 2016

Motion to Approve

5.09 pm

Moved by ***Baroness Chisholm of Owlpen***

That the draft Order laid before the House on 4 July be approved.

Relevant document: 7th Report from the Secondary Legislation Scrutiny Committee

Baroness Chisholm of Owlpen (Con): My Lords, this statutory instrument will extend the Secretary of State's powers within the Terrorism Prevention and Investigation Measures Act 2011 for a further five years.

The first and foremost responsibility of the Home Secretary is to keep the people of this country safe. As noble Lords will be more than aware, the threat from terrorism is very much present. The events in France, Belgium and other parts of the world in recent years bring home to us the very real danger posed by terrorists who would seek to do us harm.

The Home Secretary is absolutely clear that the police and security services should have the powers they need to disrupt terrorists. We should, of course, always ensure that wherever possible we prosecute those individuals who would seek to harm the people of this country to ensure that they are brought to justice. In a very small number of cases, this is not possible, so the police and Security Service need alternative powers to disrupt terrorist-related activity.

This is why I am here today seeking parliamentary agreement to extend the powers available to the Secretary of State in the TPIM Act 2011 for a further five years. The Act first came into force on 14 December 2011. It introduced a new framework for placing restrictions on individuals where appropriate to do so. TPIMs are

civil preventive measures intended for use only when the prosecution—or deportation in the case of foreign nationals—of individuals considered to be involved in terrorist-related activity is not possible.

The Act allows for the imposition of restrictive measures on an individual where the Secretary of State is satisfied, on the balance of probabilities, that the person is, or has been, involved in terrorism-related activity. Available measures under the original Schedule 1 to the TPIM Act 2011 are: an overnight residence requirement; a ban on overseas travel and holding travel documents; exclusion from specific places; restrictions on the use of financial services; restrictions on ownership or transfer of properties; limits on the use of telephones and computers, including the internet; limits on association; restrictions on the individual's ability to work and/or study; police reporting; a requirement to be photographed as required; and a requirement to wear an electronic tag. Under Part 2 of the Counter-Terrorism and Security Act 2015, a TPIM notice can also: require the individual to reside in a property up to 200 miles away from their residence without their consent; ban the individual from possessing certain weapons; and require the individual to attend appointments arranged by the Secretary of State.

A key objective of the Act was to introduce a more focused regime which protected the public from the risk of terrorism but increased the safeguards in place to protect the civil liberties of those subject to the measures. Built into the legislation is an automatic right of appeal which allows individuals subject to TPIM notices to challenge through the courts the decision of the Home Secretary to impose the TPIM. However, unlike the previous control order regime, no TPIMs have been quashed by the courts.

In accordance with Section 21 of the Act, the director-general of MI5, the Independent Reviewer of Terrorism Legislation and the Intelligence Services Commissioner have all been consulted, and they all recommended the continuation of the Secretary of State's powers. I commend the order to the House.

Baroness Hamwee (LD): My Lords, from these Benches we thank the noble Baroness for explaining the order, and we will not oppose the continuation of TPIMs. In the current climate, I am not surprised that they are to be extended, but it is a shame that the extension is for five years—I will come back to that.

I note the Government's assessment for the Home Affairs Select Committee that the Act as amended in 2015 met its objectives and that the amendments incorporated most of the changes recommended at the time by the Independent Reviewer of Terrorism Legislation. The amendments that were not included were changes the Liberal Democrats called for, so I will mention them briefly again.

The first change is the proposal that the Home Secretary should be required on review to persuade a court—I stress, a court—that, on the balance of probabilities, a TPIM subject was involved in terrorism. The independent reviewer, commenting on this, said:

"Both the Home Secretary's decision to impose a TPIM notice and the review by the court will be considered on the balance of probabilities that the individual is or has been involved in terrorism-related activity".

That is intriguing in the light of the Government's comment that the court will ask whether the Home Secretary has acted reasonably and proportionately.

The second change is a statutory bar to the use as evidence of information given during compulsory deradicalisation interviews—appointment measures. In 2015, the Government considered that the existing power of the criminal courts to exclude evidence where it would have an adverse effect on the fairness of proceedings was a sufficient safeguard. Now, as then—again, this point was raised by the independent reviewer—as soon as there is sufficient evidence to prosecute, the judicial process should take its course and the TPIM be ended.

I do not know whether the noble Baroness has in her briefing evidence that having TPIMs in place has led to more prosecutions. At the time of the creation of these measures, the Joint Committee on Human Rights commented that the "I" in TPIM—for "Investigation"—might be something of a misnomer. The debate around the Prevent strategy, in which many noble Lords have taken part, and will take part, has been rightly concerned about alienating communities. I have expressed the same concern about TPIMs: that they may increase the risk of the very thing they seek to avert. The measures have been changed and they are lesser measures than control orders—although they crept towards them. A considerable impact was noted in connection with control orders on both the subject and his family.

5.15 pm

The Liberty briefing, which noble Lords will have received, calls for the use of intercept as evidence as a different way of dealing with this problem. I shall not spend time on that this evening—we had a go at it during consideration of the Investigatory Powers Bill, and I am bound to acknowledge the intrinsic problems in using intercept as evidence, although it is not a subject that will go away.

The extension of five years is the maximum permitted by the primary legislation. It should not be the norm, in our view. We would have welcomed a shorter extension, so that the matter came back to Parliament in less than five years, to give it the opportunity to debate it again. Nor should it be the norm that every possible measure allowed under the legislation is applied in every case. I mentioned alienation and the impact on the subject's family, as well as the subject himself. Relocation is one of the measures. We have seen what I will call evidence, although it is perhaps not evidence in the sense of evidence given to a court, but it is a compelling description. When a subject who is not thought by his community to be deserving of the measure is removed, the community itself is affected. A family whose head—usually—is moved up to 200 miles is bound to have difficulties; there will be different difficulties for the spouse, the children and so on.

In that connection, I quote the wise words of David Anderson from a recent event at the Council of Europe. He said:

"The threat of terrorism curtails normal activities, heightens suspicion and promotes prejudice. That is precisely what the terrorist intends. If the authorities are powerless to act against it,

[Baroness Hamwee]

some will be tempted to vigilantism. By prevention and by punishment, strong laws can help reduce the fear and hatred that the terrorist seeks to generate … But at the same time, those laws must not *alienate* or render cynical the rest of the population, in particular the innocent and peace-loving *millions* in the communities from which terrorists seek their support. This matters particularly for Muslims, because as a minority group in most of our societies, they are especially liable to feel targeted by measures, however well-intended, that may seem to be designed more for them than for others".

TPIMs will be extended today, but they are not the solution to the underlying phenomenon of terrorism. I do not think that noble Lords will disagree with my comment that we are treating the symptoms and not the cause.

Lord Kennedy of Southwark (Lab): My Lords, I thank the noble Baroness, Lady Chisholm of Owlpen, for presenting the order to the House this afternoon. It has the support of the Opposition. As the noble Baroness says, the first duty of government is to keep our people and our country safe, and the Government have our full support in that important work.

The order before us will renew the Secretary of State's power to issue TPIM notices for a further five years, so long as the independent reviewer, the Intelligence Services Commissioner and the director-general of the Security Service have been consulted. I understand that they have been and that they have all consented. I note the point that the noble Baroness, Lady Hamwee, made about going for the maximum period of time. At present, I believe that that is the right decision. I also note that the Secondary Legislation Scrutiny Committee in considering the order did not raise that as an objection at all.

As noble Lords have heard, the notice has rarely been used, but it is an important measure of last resort to protect our security when it is not possible to prosecute or, in the case of foreign nationals, deport individuals believed to be involved in terrorist-related activity and when the Secretary of State has decided on the balance of probabilities that the person is or has been involved in terrorist-related activity and the restrictions that can be placed on an individual are both necessary and proportionate.

I am sure that the orders are not issued lightly and one would prefer to be in a position to mount a prosecution. It is welcome, on the other hand, that the orders can be challenged in the courts. As the noble Baroness, Lady Chisholm, said, when they have been challenged, not one has been quashed, which says much for the robustness of the system in place and the built-in checks and balances.

I seek confirmation from the noble Baroness that the Intelligence and Security Committee would be further involved in satisfying itself as to the robustness and operation of the TPIM orders. If that is the case, that provides a further level of parliamentary oversight but in an appropriate, confidential setting.

In conclusion, the order has my full support. It strikes the right balance between keeping the country safe, placing restrictions on individuals when no other option is appropriate and allowing those individuals to challenge them in the courts.

Baroness Chisholm of Owlpen: My Lords, I am grateful for the comments that have been made on all sides. Let me just answer the questions that were raised. The noble Baroness, Lady Hamwee, asked whether TPIMs have led to an increase in prosecutions; I am afraid that I am not able to say, for reasons that she can understand. She also asked about judicial involvement in the process. The High Court considers whether the decision to impose a TPIM was obviously flawed and then a later hearing will determine whether the TPIM is necessary and proportionate. The noble Baroness also asked about the impact on communities of relocation. The potential impact that a relocation may have on a local community is always carefully considered. The noble Lord, Lord Kennedy, asked about the security services and the committee.

Lord Kennedy of Southwark: I asked whether the Intelligence and Security Committee is involved in the oversight of these orders.

Baroness Chisholm of Owlpen: I think that it is—inspiration is appearing over my left shoulder as we speak. No, it is not completely involved at the moment. We are happy to consider that further.

In conclusion, TPIMs have proved to be an essential tool to allow the police and the Security Service to manage the risk from terrorism and one that is required today as much as when the Act was introduced in 2011. This is a tool that is subject to a considerable level of court oversight, rightly, to ensure that it is used only where it is a proportionate response. I therefore ask the House to approve the order.

Motion agreed.

House adjourned at 5.26 pm.