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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

Friday 7 September 2018

10 am

Prayers—read by the Lord Bishop of Southwark.

House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL]

Committee (2nd Day)

Motion

Moved by ***Lord Grocott***

That the House do now resolve itself into Committee.

10.05 am

Amendment to the Motion

Moved by ***Lord Trefgarne***

At end insert "but regrets that the bill has not been brought forward by the Government, in the light of its constitutional importance; and that the bill proposes piecemeal, rather than wholesale, reform of the membership of the House".

Lord Trefgarne (Con): My Lords, I shall not detain your Lordships for more than a few moments. I am not opposed to House of Lords reform as a matter of principle. Indeed, back in 2012, when the Government introduced a reform Bill in the other place, I sat on the pre-legislative scrutiny committee and was not opposed to that in principle at all, but it did not get very far and failed in the House of Commons. Since then, here in your Lordships' House, we have listened to the recommendations of the noble Lord, Lord Burns, to which I am not opposed either, but none of these considerations is taken into account in the Bill proposed by the noble Lord, Lord Grocott, which contravenes the undertakings given in 1999. Against that background, I beg to move the amendment.

Lord Northbrook (Con): My Lords, I apologise to the House for having been unable to take part in Second Reading and the first day of Committee. I declare an interest as a hereditary Peer.

I agree with my noble friend Lord Trefgarne that important constitutional legislation should be brought forward by the Government rather than by a Private Member's Bill. In June 1999, my noble friend Lord Denham asked the following Question of the Lord Chancellor:

"Just suppose that that House goes on for a very long time and the party opposite get fed up with it. If it wanted to get rid of those 92 before stage two came, and it hit on the idea of getting rid of them by giving them all life peerages … I believe that it would be a breach of the Weatherill agreement. Does the noble and learned Lord agree?"

The Labour Lord Chancellor, the noble and learned Lord, Lord Irvine of Lairg, said in reply that,

"I say quite clearly that … the position of the excepted Peers shall be addressed in phase two reform legislation".—[*Official Report*, 22/6/1999; cols. 798-800.]

Nothing could be clearer than that. That is why I believe that this Bill indeed breaches the Weatherill agreement and the House of Lords Act 1999.

I remind the Committee of the importance of the Labour Lord Chancellor's words in March 1999, when he said:

"The amendment reflects a compromise … between Privy Councillors on Privy Council terms and binding in honour on all those who have come to give it their assent".—[*Official Report*, 30/3/1999; col. 207.]

As the noble Lord, Lord Grocott, was Tony Blair's Parliamentary Private Secretary at the time, he must have been well aware of this. To the hereditary peerage, it was a vital part of the 1999 Act and a condition for letting it have satisfactory progress through the House.

I cannot understand why this area of the House needs reform when the by-elections have produced such capable replacements for the 90 such as the noble Lords, Lord Grantchester and Lord De Mauley, the noble Earl, Lord Cathcart, and the noble Viscount, Lord Younger of Leckie, all of whom are or have been on the Front Bench of their respective parties. It would seem more urgent to reform the life Peers system, which the Burns report proposes. The hereditary Peers are a strong link with the past, a thread that goes back to the 14th century. Until relatively recently, in House of Lords terms, the House was entirely hereditary. By-elections provide a way into this House that is not dependent on prime ministerial patronage.

Lord Blunkett (Lab): My Lords, to address the issue that has been put before us and to avoid prevarication, there is a new phase 2: it is Burns. There may be a phase 3—who knows? If a Jeremy Corbyn-led Government were elected, there would a phase 3 which might disturb the Benches opposite slightly more than not having by-elections for hereditary Peers. Burns is a phase 2, and it has consequences. Unless the issue of hereditary Peers and by-elections is addressed in the way that my noble friend Lord Grocott proposes, it is not my party or the broader opposition who will find themselves in difficulty, it will be the Conservative Benches. I would like them to reflect on what would happen if we implemented Burns and this House were decanted in six years' time, with the two things coming together, and the Conservatives were faced with hanging on to their hereditary Peers while losing their life Peers.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I am a great admirer of our hereditaries. Man for man, pace my noble friend Lady Mar, they are at least a match for those like me who have been appointed here. They are a match in their commitment, their contributions to the House, their expertise and, as the noble Lord, Lord Mancroft, pointed out at Second Reading, their independence of mind and spirit.

Like many others here, I would welcome wider improvements in our appointments system, with a larger role not least for the noble Lord, Lord Kakkar, and his excellent Lords Appointments Commission. In the meantime, I strongly support this Bill, which would go some considerable distance to enhancing the reputation and image of this House.

[Lord Brown of Eaton-under-Heywood]

Therefore, far from supporting the amendment in the name of the noble Lord, Lord Trefgarne, I see positive merit in this reform being achieved by way of a Private Member's Bill rather than by government. It demonstrates our own desire and commitment to achieving reforms for ourselves. Consistently with that goes the report of my noble friend Lord Burns, which again is our own attempt to modernise and reform this House. I cannot resist harking back to the words of the noble Lord, Lord Grocott, in closing the Second Reading debate. He asked why hereditaries should,

"have an assisted places scheme to get into the House of Lords?"—[*Official Report*, 8/9/17; col. 2186.]

There has been much criticism throughout these debates of hereditaries being, virtually without exception, male and white. As the noble Baroness, Lady Berridge, put it at Second Reading, the existing system is, "gender and racially biased". Surely altogether more fundamentally objectionable even than those criticisms is the fact that this system favours a very tiny, and—I suppose I had better put this in quotes—"well born" number within a wider population of millions. A number of those millions may have even more to contribute to our House than the hereditaries—the few future hereditaries who, if the Bill passes, will not join us. In short, why should they have assisted places? Should we not modernise and reform?

Lord Wakeham (Con): My Lords, I shall say just a few words at this stage. First, I must declare an interest: I was chairman of a royal commission some years ago that produced a number of proposals for reform of the House of Lords, and I have to say to the noble Lord, Lord Grocott, that it did not include by-elections for Peers. I am sympathetic to what he wants to do; my concern is about the timing. Since that report, we have had a Bill from the Labour Government, from Jack Straw, which failed to get through. We had a Bill from the coalition parties which failed to get through. Some of us felt that there was very little likelihood of any Government bringing forward another Bill to reform the House of Lords.

10.15 am

The Lord Speaker set up the Burns committee in order to see whether we could find a method of self-regulation. We reported just about a year ago. I hope that a report will come to show how that committee has got on; I anticipate that it will find that it has made quite considerable progress in the past year. My concern about the Bill of the noble Lord, Lord Grocott, is that it will damage any prospect of self-regulation working. Self-regulation is, in fact, the only show in town, so if the Burns proposals were not allowed to be given a fair run, it would be a great tragedy. The proposals have had a reasonable response from the Prime Minister, the opposition parties have also given them a bit of a welcome, so we are moving in the right direction and the numbers are actually working correctly. If they were not given a fair run and if this Bill becomes law, I suspect that that would damage any prospect of self-regulation.

Lord Young of Cookham (Con): My Lords, I intervene briefly to set out the Government's views on the Bill in general and on the amendments in particular. While we have reservations about the Bill, it is difficult, as has just been said by my noble friend, to reconcile it with the undertakings given at the time of the abolition Bill. Despite the eloquence of the noble Lord, Lord Grocott, he has not achieved consensus on his measure. Despite that, we have no plans to block the Bill or impede its progress, which is why I may not intervene on every one of the subsequent amendments. I say in passing that most Private Member's Bills do not get this second bite at the Committee cherry.

On the amendments we are debating, I gently point out that previous Labour Governments never introduced the comprehensive reform called for in both amendments, but that the coalition Government did. It got a large majority at Second Reading in the other place, but the Bill then stalled because there was no agreement on the programme Motion, and without that the Bill was dead. As the then Leader of the other place I accept some responsibility for the failure to get my colleagues to agree to that Motion, but I gently point out that had other parties agreed to it—and other parties were committed to the policy—the Bill would have proceeded.

Once bitten, twice shy. We made it clear in our manifesto last year that such legislation was not a priority. Indeed, why risk wasting a large amount of time on a measure that had so recently failed? Instead, we said we would support incremental reforms that command consensus across the House. We can argue as to what is "incremental" and what is "consensual". I note that at Second Reading there were 13 speeches in favour of the Bill and eight against, and that on our first day in Committee a number of my noble friends made it clear that this is a measure about which they feel so strongly that they are prepared to do whatever is necessary to delay progress, notwithstanding the fact that the Bill has no prospect of getting through the other place and on to the statute book.

Looking at the amendments today, concerns about the Bill are not confined to my party. The Government's view is that the energies of the House may be better employed in implementing the recommendations of the Burns report, where all parties are committed to reducing our numbers. Burns was silent on the question of these by-elections, although it noted that the proportion of hereditary peers in a reduced House would increase if no action were taken, a point made by the noble Lord, Lord Blunkett, and that by-election winners would pre-empt the appointments that would otherwise be made, impacting on my party and the Cross Benches.

Lord Cormack (Con): May we infer from what my noble friend has just said—I hope we can—that Burns will be given a fair wind so long as this House demonstrates again its overwhelming support for Burns?

Lord Young of Cookham: Noble Lords demonstrated their support for Burns in the debate that took place last December. It was also confirmed in a debate that took place a year earlier, which I think my noble friend introduced, where the House voted to take steps to

reduce its size. As my noble friend knows, the Burns committee has been reconvened and I hope that progress can be made.

The Prime Minister has maintained her policy of restraint so far as new appointments are concerned, with the lowest number of dissolution honours since 1979 and a smaller House than when she took office. Having restated the Government's position, I propose to listen with interest and patience to the exchanges on the amendments, intervening only when absolutely necessary or when provoked beyond endurance.

Baroness Hayter of Kentish Town (Lab): My Lords, we will try not to provoke beyond endurance. I regret this amendment to the Motion that we should go into Committee. In a sense, it is another Second Reading and that really is not the way that we deal with Bills. I will say only two things. First, 1999 is nearly 20 years ago; in that time, much has happened and much is happening now. Just down the corridor they are reducing the number of MPs by 50, as if that has no impact on the size of the Government or of this House. It seems extraordinary that when the Government are putting a lot of pressure into doing that, they now sit and say that they will do nothing on this issue. That is regrettable. It is something that we could do.

Secondly, I think that the noble Lord, Lord Wakeham, is wrong to say that it is not for us to do. In the very wise words of the noble and learned Lord, Lord Brown, this is our way of showing that it is for this House to begin to do something. If we take a lead on this, it will help to give a fair wind to Burns. If we cannot even do this minor thing—this just puts more men into this House; a very small number—and begin to reduce the numbers, it does not seem to me that we are very interested in bringing this House into the current century.

Lord Adonis (Lab): My noble friend is setting out the position of our party but the Labour Party manifesto at the last election, which both she and I supported, said:

"Our fundamental belief is that the Second Chamber should be democratically elected".

Can she explain how this Bill advances that cause?

Baroness Hayter of Kentish Town: This Bill is about something much more immediate. We are not actually in government. It is very nice to say, "If we want to be in government, we could do something about this House", but we are not there at the moment. The House can do something at the moment with this Bill. It is a very modest proposal and I call on all noble Lords to move with speed today and get the Bill through.

The Earl of Erroll (CB): My Lords, I support this regret Motion and I will support the Motion of the noble Lord, Lord Adonis, as well because it is about democracy. If the other place is reduced by 50 people, I would point out that the proportion of Ministers who are heads of the Executive's departments will increase in proportion to the number of Back-Bench MPs. The challenge comes because Parliament is here to control the Executive. The danger in the Commons is that if there are too many Ministers who see themselves as more powerful, yet are circumscribed in what they can join in on as Ministers, that weakens parliamentary scrutiny of the Executive. Therefore, the Bill is extremely dangerous because it will reduce the poison pill—us, the hereditaries—but not incentivise further democratic reform, which I have always supported. Both regret Motions are valid. It cannot be piecemeal because once we go, there will not be further reform. The noble Lord, Lord Adonis, is therefore absolutely right, apart from his point about moving Parliaments backwards and forwards, which does not work very well with Strasbourg. Apart from that, the democratic effect is vital. If your Lordships really think that there will be further reform if you allow this Bill through, I think that is charmingly naive.

Lord Lea of Crondall (Lab): My Lords, I have heard some convoluted arguments in my life but we are getting into near-nonsense territory. I ask the House to consider whether the noble Lord, Lord Wakeham, for whom the whole House has the greatest respect, can really sustain the argument—I hope he will correct me if I quote him incorrectly—that his fundamental opposition is to a principle not being sustained by this House if we wish to act by legislation, when this House has always said that it would act by self-regulation. That sounds fine but I ask the House to consider how this could be done by self-regulation. I happened to be here just in time for the 1999 Bill. At that time, it was clear that that reform had to be done by legislation. Am I right or am I wrong?

Lord Rennard (LD): My Lords, the Bill of the noble Lord, Lord Grocott, has full support from these Benches. The principle is entirely right. It is very important that we improve the reputation of this House by ending what is considered to be a farcical process of continuing to conduct hereditary by-elections. The Burns report has been referred to several times already. The Bill would actually assist the process of bringing forward Burns, which will face some problems if we do not bring an end to the hereditary by-elections because of the issue that has been raised about having a higher proportion of hereditary Peers in the House, unless we do something to stop them.

There is nothing with which I disagree in the regret Motion of the noble Lord, Lord Trefgarne. I recall that in 2010 the then Labour Government, in their Constitutional Reform and Governance Bill, brought forward the abolition of hereditary by-elections and received majority support in the House of Commons. One reason why the Bill of the noble Lord, Lord Grocott, should be approved is to allow the Commons to vote on the issue; if we do not approve it, the Commons will not have that say. That being said, in my view the regret Motion of the noble Lord, Lord Trefgarne, adds nothing to the debate. There is nothing with which I disagree but it takes up precious time and encourages the perception that there is a filibuster trying to prevent the Bill being approved. The filibuster itself brings the House into disrepute. That is enough said; I urge Members of the House to say no more

[LORD RENNARD]
than necessary in order to move on with the business, approve the Bill and discard what I consider to be irrelevant regret Motions.

Viscount Waverley (CB): My Lords, the time for practicalities has arrived. Without wishing to incur the wrath of those who remain, those in line and those who kindly enable me to stay on, the time has come to recognise that if a strategy manifestly will not deliver, dithering must end. However, I wish to counsel against endless new appointments until the whole question of this second Chamber is satisfactorily resolved—the noble and learned Lord, Lord Brown, made this point earlier. At this stage, matters relating to Burns or any other way in which we can move on with this whole question must surely be taken. Why not today?

Lord Elton (Con): My Lords, the Burns report is a question which is not before you. This is simply not a fatal Motion. It will not stop the progress of the Bill, on which there are mixed views among us. It merely expresses the opinion that this job ought to be done by central government. With that proposition I entirely agree, for reasons which will no doubt be extended later in the debate. The question is simply whether we can say to Her Majesty's Government with a resounding voice—in unison, I hope—that they ought to get on with this. That will then be in their ears when they come to look again at Burns.

Lord Shinkwin (Con): My Lords, I have neither an interest to protect nor an axe to grind but I feel we should be clear: this is not about reducing the size of your Lordships' House. Some may say that the hereditary principle is out of date. But surely it is the politics of envy which is outdated, not the noble principle of public service, handed down through the generations. A duty to serve in your Lordships' House should never be regarded as an anachronism.

Were this Bill to be passed, there would be no going back. That would be it. We would not be ending a chapter of our history so much as turning our back on it and on the golden thread that runs through it: continuity and the stability that flows from that. Yes, injustice did accompany excessive power and the abuse of privilege in the past. But are we seriously saying that that is happening now among the 92 noble Lords who are Members of your Lordships' House by virtue of inheriting their title, or that it would be the case if their heirs did so?

10.30 am

I feel we should press the pause button, because I am not sure that we fully appreciate what we are deleting. We would be deleting a part of ourselves, a part of the fabric of the nation of immense worth. We should recognise that once lost, it would not only be lost for ever but could be used by some as a precedent from which to attack other aspects of our great heritage.

In conclusion, I simply remind the House that, as the late Lord Napier and Ettrick, whose heir would be an asset to your Lordships' House, said in his valedictory speech on 30 March 1999,

"what could be at stake here is the survival of the Monarchy".—[*Official Report*, 30/3/1999; col. 349.]

I simply ask that we be careful what we wish for, for in attacking the rich legacy of public service, that fundamental duty to serve which we as a country and a kingdom have inherited, we impoverish ourselves. The politics of historical envy should not inform our decisions—unless, of course, we are admitting that we carry an enormous chip on our shoulder. I believe that we are bigger than that, and I believe that the issues at stake in this Bill are bigger, much bigger, than they are given credit for in this piecemeal reform.

Lord Desai (Lab): My Lords, the noble Lord, Lord Shinkwin, has really raised quite a large issue for what the Bill proposes, which is a quite a small but important reform. Only by-elections would be removed, not all the hereditary Peers—I wish it were so, but that is another story. There can be no envy on our part because we will never become hereditary Peers nor will we qualify to run in a by-election. We have no capacity to be envious of what is happening. We are just troubled about the anomaly and the insult to democracy that this procedure involves. As to the noble Lord, Lord Northbrook, saying that a solemn promise was made, we have a very simple constitutional tradition: a Parliament is not bound by what a previous Parliament has done. If we had not continually revolutionised institutions by due process, we would not be where we are. We would have long ago been destroyed like the French monarchy was destroyed.

Lord Cormack: My Lords, I speak as a fervent monarchist and as one who accepts a little of what my noble friend Lord Shinkwin said, but let me just remind him that if this Bill is passed, and I hope it will be, there would be two hereditary Peers: the hereditary officers of state, namely the Earl Marshal and the Lord Great Chamberlain. They will be able to remain to fulfil their ceremonial function because when 92 was decided upon it was in fact 90 plus two. The only two true hereditary Peers who are succeeded by their sons, or daughters as it may be in the future, are in fact the Lord Great Chamberlain and the Earl Marshal. For the 90, if a Peer dies, his son or daughter could indeed be elected to succeed him, but the odds against that are fairly great.

I believe that what the noble Lord, Lord Grocott, is proposing is sensible and reasonable and I believe that my noble friend Lord Wakeham, whom we all hold in genuine high regard, should not worry about this being incompatible with Burns. The noble Lord, Lord Burns, has made it plain that if the reforms which he and his committee advocate come to pass, this issue will have to be addressed, as will the issue of the number of Bishops because of the proportion of the new House that they would represent. By taking this modest step, which removes no one from your Lordships' House but merely closes one means of entry to your Lordships' House, we would be demonstrating that we are indeed absolutely dedicated to incremental reform.

If one looks back at the various attempts to reform your Lordships' House, incremental reform is really the only way forward. I saw only yesterday—

Lord Adonis: My Lords—

Baroness McIntosh of Hudnall (Lab): My Lords—

Lord Cormack: That is a double temptation. I will give way to the noble Baroness, Lady McIntosh. Oh, as she is not getting to her feet, I shall continue.

Baroness McIntosh of Hudnall: I imagined that the noble Lord was sitting down and I was going to make a separate point, so will he please continue?

Lord Cormack: I was just going to make one final point, and it is this. Only this morning, I was sent a cutting from the *Evening Standard* from November 1932. The Marquess of Salisbury was proposing major reform to your Lordships' House. The size was to be reduced from 759 to 300, there were to be 150 hereditary Peers elected by themselves, the other 150 were to be indirectly elected by some other means and women were to be admitted for the first time. That was 1932. It was not until 1958 that women were first admitted to your Lordships' House. What we have seen is that incremental reform has worked and wholesale reform has not. This is incremental. I hope it will command the support it deserves.

Baroness McIntosh of Hudnall: My Lords, I shall briefly echo the comments made by my noble friend Lady Hayter from the Front Bench. I respectfully say to the noble Lord, Lord Trefgarne, and those who support him that it is quite difficult for some of us to understand what we are doing here. This House agreed that this Bill should have a Second Reading and that it should be committed to a Committee of the Whole House, and it has already had a substantial element of Committee scrutiny. It is really difficult to see what purpose is being served by the debate we are now having, in which the substantive issues from Second Reading are being reintroduced, other than to delay the progress of the Bill. I hope that we can bring this debate to a swift conclusion and move on with the Committee stage.

Lord True (Con): Those strictures of course apply to the noble Baroness's noble friend the noble Lord, Lord Adonis, as well, who has perfectly legitimately laid a Motion before your Lordships. I am never popular on my side of the House when I say this, but I agree with the spirit of that Motion and express some sympathy. I agree with some of the sentiments expressed, and I think we should be dealing with amendments as much as we can. I reject the charge of filibuster, particularly when it comes from those Benches that we have had to listen to for day after day filibustering on the question of Brexit.

I agree in principle with what my noble friend Lord Cormack says about incremental reform, but where is the incremental reform on the Liberal Democrat Benches? We introduced provision for retirement, and when I looked at the figures today I noted that despite the retirement provisions being in place for months there are still 98 Members on the Liberal Democrat Benches. They are not stampeding for the exit. There is no incremental reform there. There is no increment at all. I think that those who do not partake in the spirit of reform should be the last to lecture the House on the subject.

There is the question of proportion, which was referred to by my noble friend Lord Cormack. The reality has been alluded to briefly and is that the effect of this measure, if your Lordships pass it, is over time substantially to change the proportions within the House. It has been argued by others that we need to do something because, otherwise, proportions would change. If this measure is passed—I have an amendment on this matter later so I will not develop it at great length—then 20% of the Conservative Benches, 16% of the Cross Benches, 4% of the Liberal Democrats and 2% of the Labour Party would be removed. So it has a profound effect over time.

Lord Hunt of Kings Heath (Lab): My Lords, I can see where the noble Lord's argument is going, but could he tell me at what point we would reach those figures? How many years will it take before those reductions took place?

Lord True: My Lords, I am not an actuary, but I know that at least 20 of the hereditary Peers on the Conservative Benches are already over 75 and a considerable number of them are over 80. I do not wish the Grim Reaper to visit any of my noble friends or indeed the noble Lords opposite, but the noble Lord knows very well that that is the position. It will happen. This would be statute, and over time that proportion will change. I have an amendment later that I hope will address that question; I hope we will get on and get to it, and I hope the noble Lord, Lord Grocott, will accept it.

I ask your Lordships not to accept strictures from the Opposition Benches but to guard the point of proportion. I agree that this should be a matter for the Government. I think we should also be looking at the issue of more comprehensive reform, as proposed by the noble Lord, Lord Adonis.

Viscount Trenchard (Con): My Lords, if I may add to what my noble friend has just said on the issue of proportion, in a smaller House of, say, 600 Members, if Burns is implemented, the proportions of the hereditaries and of the Bishops would simply revert to what they were immediately after the passage of the House of Lords Act 1999. So in a sense one could argue that the proportion of hereditaries and of Bishops has declined gradually beyond what was agreed at the time of the reform in 1999.

I also support the Motion moved by my noble friend Lord Trefgarne. I believe it would be wrong of your Lordships' House to agree to remove the hereditary by-elections, for the very simple reason that it was made very clear in 1999 that the hereditary element would remain until and unless the House was substantially reformed into some kind of more democratically elected Chamber. I have heard it said on many occasions that the retention of 92 hereditary Peers and the system of by-elections to replace them was only ever intended to be a temporary measure. That is not my recollection of what happened at the time. I remember my noble

[Viscount Trenchard]
friend Lord Salisbury, as he now is, explaining to a meeting of Conservative Peers that it was quite likely that the by-elections would remain for a very long time because he thought it likely that the House would not agree to substantive reform. My noble friend's characteristically astute judgment has proved correct. It was on this basis that a large majority of Peers decided to support the passage of the Act. It would be quite wrong to change the terms of the agreement then reached without once again seeking the opinion of all those who were disenfranchised by the House of Lords Act.

I also take issue with what the noble Lord, Lord Grocott, said in the debate on 11 July on the Procedure Committee report. I understand that the committee considered the proposal that Standing Orders should be amended to provide that the whole House should take part in hereditary by-elections. That is different from the change that I think the Procedure Committee should consider, which is that the three party blocs and the Cross-Bench bloc should be retained for all by-elections other than those in the list of 15 Peers who originally held office as Deputy Speakers, but that those four blocs should be opened up to life Peers of the same party. This would get rid of the charge that the Liberal Democrat and Labour Party by-elections, with as few as three electors, are absurd. I think the House should make this change.

It is also right that the Conservative and Cross-Bench life Peers should have a vote in the selection of a new hereditary colleague equivalent to what their hereditary colleagues have, even though the existing electorates of 30 or 40 are not so ridiculous and have provided for some quite competitive and interesting elections. Indeed, I do not think there is any logical reason for the difference in the Standing Orders adopted in 1999 between the ability of the life Peers to vote in the Deputy Speaker elections but not in the single-party bloc elections.

10.45 am

The noble Lord, Lord Grocott, spoke about the whole-House by-election in March 2017. It was for a seat previously occupied by a Conservative Peer, so under the Carter convention a Conservative should be elected. The noble Lord argued that the fact that 346 out of 803 voted in the election indicated a lack of enthusiasm among your Lordships for the election. He argued that a turnout of only 43% was very low. However, given that few of your Lordships other than these Benches would naturally have an interest in electing a Conservative, one can assume that among Conservative Peers there was a very high turnout. Even if all 250 Conservative Peers had voted, which was obviously not quite the case, 96 Peers from all other parties would have voted. Perhaps one can assume—

Lord Dubs (Lab): My Lords, I am not an expert in procedure, and I have listened quite hard, but are we not in a Second Reading debate? I thought that was not acceptable.

Viscount Trenchard: I understand the noble Lord's point of view, but I thought it was relevant to comment on the fact that the noble Lord, Lord Grocott, had spoken about the lack of interest in the hereditary by-elections. I wanted to speak in support of my noble friend Lord Trefgarne's regret Motion because, for the reasons that I am trying to explain, I think the by-election system has more merit than many of your Lordships often seem to think when they express an opinion. It is also a benefit to—

Lord Elton: With the greatest of respect for my noble friend, and with great embarrassment, I have to say that, as I said before, I do not think the speeches of this sort are addressing the Motion before the House.

Viscount Trenchard: I give way.

Lord Grocott (Lab): My Lords—

The Earl of Caithness (Con): My Lords, I am grateful to the noble Lord, Lord Grocott. I would like to add a few words in support of my noble friend Lord Trefgarne's amendment. I believe the Government should grasp this nettle. I disagree with the noble Baroness, Lady Hayter, on this; to many others, this is not a minor matter. There was a solemn and binding commitment in 1999 that we entered into. I agree with the noble Lord, Lord Desai, that you cannot bind the next Government, but this was a hugely important matter for this House. We were requested by the noble and learned Lord the Lord Chancellor, on honour, to vote in that election. When I have discussed this with people both within the House and outside it, I am quite surprised by the reactions. In this House I have been told, "It doesn't really matter in politics; there is no such thing as binding honour".

Lord Tyler (LD): My Lords—

The Earl of Caithness: May I just finish what I am saying, please? It is a very House of Commons attitude to keep on interrupting when someone is developing a theme.

Noble Lords: Oh!

The Earl of Caithness: It is perfectly true. This never used to happen; I have been here for a day or two.

Outside the House, people who think I am wrong in the position that I take on this Bill agree with me that there is a huge point of principle and I am absolutely justified in the position that I am taking. The noble Lord, Lord Blunkett—

Lord Tyler: I just want to correct the history that is being advanced this morning. The author of this provision, Lord Weatherill, referred to it as temporary. On 11 May 1999, the Lord Chancellor himself said, using strong words, that this would last only through the transitional House and that the transitional House would be brought to an end in the next Parliament. How does the noble Earl therefore justify his comments?

The Earl of Caithness: Because the transitional House was not brought to an end—I am just coming to that point. The noble Lord, Lord Blunkett, said that phase 2 will be the proposals of the noble Lord, Lord Burns. That is quite an acceptable point of view, and I hope that the noble Lord will support my noble friend Lord Trefgarne and me in our amendments to relate the Bill to the Burns report: that is one of our constructive amendments. Let me make my position clear: if Burns is agreed and implemented, I have no objection to by-elections stopping, because that fulfils the commitment of 1992.

Lord Elton: Does my noble friend agree that it is important to grasp the point, which has not already been made, that there is a difference between the two Houses? The House of Commons is transitory between elections; this House continues. We may be in a different Parliament, but it is the same House of Lords and an undertaking given in this House presumably continues.

The Earl of Caithness: I am very grateful to my noble friend Lord Elton and totally agree with what he said.

Lord Grocott: My Lords, I do not think we have covered ourselves in glory over the past 45 minutes. The Commons is not sitting today, so if there is any parliamentary coverage, it will presumably focus on us and this debate. I hope that one or two contributions do not receive a wider audience, because essentially what is happening now is a filibuster on a Bill which had overwhelming support at Second Reading. It is an identical Bill to one that I introduced in the previous Parliament which, likewise, had overwhelming support on Second Reading and was filibustered out of existence in Committee. The principal supporters—organisers, indeed—of this filibuster know that there is a small minority of people opposed to the Bill in this House. That is what the world outside, if it is interested, needs to know. The Bill is simply ending by-elections. I make no apology for repeating that in one of the most recent ones, there was an electorate of three but seven candidates. There is no by-election in the world as absurd as that and yet, amazingly, a number of speakers today want us to continue that system in perpetuity. Let us make no bones about that whatsoever.

The Earl of Erroll: First, the Bill's sole purpose is not to end by-elections. You will get an appointed House de facto through the back door, whether you like it or not. That is the net result, and we do not want by-elections to go on in perpetuity: I want a democratically elected House.

Lord Grocott: The noble Earl should simply read the title of the Bill: the clue is in the title. The Bill is the House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill. That is what it does: nothing more, nothing less. If you oppose the Bill, you support the by-elections: there is no equivocation on that fact.

I must respond on two specific points made that are worthy of emphasis. The noble and learned Lord, Lord Brown, made a point about the assisted places scheme that the Bill addresses. It is worth putting it into figures. If you inherit a title from a hereditary Peer, you have something like a one in 211 chance—that is the number on the list of hereditary Peers able to stand in any by-election—of becoming a Member of Parliament, because this is a House of Parliament. If you are anyone else, like most of us here or the 60 million or however many people it is who are over the age of 18 in Britain, you have something like a one in 70,000 chance of becoming a Member of Parliament. That is the arithmetic, as I make it, so it is a ridiculous assisted places scheme, and all those who speak up to defend it who are hereditary Peers—I know that some are not—need to explain why they should have that massive advantage over all their fellow citizens.

Lord Adonis: Can my noble friend tell the House the size of the electorate that made him, and indeed me, a Member of this House?

Lord Grocott: I cannot speak for my noble friend, who has spent so much of his life with the Liberal Democrats. I am not sure whether he was a recommendation of the Liberal Democrats or of the Labour Party, but in my case it was on the basis of 60 years' membership of the Labour Party, of which I am very proud and for which I will continue to do the job here.

I must deal briefly with the point made by the noble Lord, Lord Wakeham, because it needs addressing, which is that somehow we must wait until the Burns report is implemented before we act. I make the very obvious point that the cardinal argument within the Burns report is that we must reduce the size of the House, and the mechanism for doing it would be two out, one in. Since our first debate in Committee, there have been two further by-elections for hereditary Peers. Those two hereditary Peers should have been replaced by one, according to the Burns report, but no, lo and behold, there are two more here. It is essential for anyone who is sincere about wanting to implement the Burns report that we get on and pass my Bill, because it would enable us to reduce the number of hereditary Peers, not precisely arithmetically but in line with the recommendation of the Burns report.

The only consequence of the amendment moved by the noble Lord, Lord Trefgarne, is not to enlighten anyone; it is simply to delay further progress on the Bill. The two principal—I will not call them culprits, because I am sure they are proud of it—Peers who have relentlessly tried to filibuster the Bill are the noble Earl, Lord Caithness, and the noble Lord, Lord Trefgarne. This time, 55 of the amendments are in their names. We had a similar debate to this before our previous Committee sitting, when there was a long debate on whether to put the Bill into Committee. We are doing that again now, and presumably we will do it again whenever it is next considered in Committee. It is clearly their objective to talk the Bill out.

I simply say this to the two of them: I know that the overwhelming majority of people in this House want the Bill to pass. The exchange of views up to now does not at all proportionately reflect the view in the House because—I am grateful to them for this—the numerous colleagues on all sides of the House who I know support the Bill have not wanted to contribute to the

[Lord Grocott]
filibuster. A tiny minority is thwarting the clearly expressed view of these Benches, the Liberal Democrat Benches, a large number on the Conservative Benches and the Cross Benches and, in my judgment, a majority of hereditary Peers, any number of whom have come up to me to say that they wish that the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness, would desist from what they are doing.

They should know better. Between the two of them, they have had about 100 years' membership of this House. I repeat that because I could barely believe it when I looked it up: 100 years between them. They ought to be getting the hang of the rules by now, one of which is surely that you know when it is time to call a halt. They should call a halt on this and allow the Bill to proceed, because the only effect of what they are doing at the moment is not to improve the Bill or to stop it—they know they cannot do that, they do not remotely have the numbers; every time we have had a vote on the Bill there has been a majority of about 100. They should desist. I fear we now have only two and a half hours, but we had three and a half hours when we began the discussion. I will gladly give way to the noble Earl, Lord Caithness, because every time he speaks he gives me greater confidence of my position.

The Earl of Caithness: My Lords, I resent the fact that I have been classed as a filibusterer whose sole intention is to stop this Bill. If your Lordships add up the amount of time I have spoken for, it is comparatively little. I have put forward amendments to improve the Bill and to link it to the Burns report. We put forward amendments to widen the franchise for the by-elections, which the noble Lord, Lord Grocott, has just said we did not want to do. We have tried to improve the Bill.

Lord Grocott: He has tried to improve the Bill, my Lords? All I can say is: it is the way he tells them. I hope the House will come to a conclusion on this now. If there is a Division I hope that all noble Lords who want progress will vote against it.

Lord Trefgarne: My Lords, I have had a certain amount of support for the amendment.

11.01 am

Division on Lord Trefgarne's amendment called. Tellers for the Contents were not appointed, so the Division could not proceed.

Lord Trefgarne's amendment disagreed.

11.05 am

Amendment to the Motion

Tabled by ***Lord Adonis***

At end insert "but regrets that the bill does not provide for a democratic second chamber to replace the existing nominated and hereditary House of Lords; and that the bill does not provide for a democratic second chamber to meet in the north of England".

Lord Adonis's amendment not moved.

Motion agreed.

Clause 1: Abolition of the system of by-elections for hereditary peers

Amendment 11

Moved by ***Lord Trefgarne***

11: Clause 1, page 1, line 4, leave out subsections (2) and (3) and insert—

"(2) In section 2, after subsection (4) insert—

"(4A) Standing Orders must provide that vacancies amongst the 90 excepted hereditary peers are filled by a method which ensures that the excepted hereditary peer is younger than the average age of members of the House of Lords at the time the vacancy occurs.""

Lord Trefgarne: My Lords, I have already covered much of the substance of this amendment. I beg to move.

The Lord Speaker (Lord Fowler): My Lords, I should inform the Committee that if Amendment 11 is agreed to, I am unable to call Amendments 17 to 33A by reason of pre-emption.

Lord Snape (Lab): My Lords, I query the terms of the amendment. What is behind it? Every time we debate this piece of legislation, the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness, appear, like woolly mammoths from the permafrost, with a series of amendments. As I understand this amendment, the noble Lord wants any excepted hereditary Peer to be younger than the average age of Members of the House of Lords. He will correct me if I have got that wrong.

The noble Lord set a fine example himself. As my noble friend Lord Grocott indicated, the noble Lord, Lord Trefgarne, has spent no fewer than 56 years as a Member in your Lordships' House. As I understand it, he took his place in the House on his 21st birthday. I hope he does not think me rude if I say that, by the look of him, that was some time ago. It was, in fact, in June 1962 and he has been here ever since. In that year, as I am sure some of my noble friends well remember, the Beatles and the Rolling Stones cut their first records and Harold Macmillan was Prime Minister. In 1962, I was a humble lance-corporal in the Royal Engineers, yet at that time the noble Lord was studying the wine list in the Members' Dining Room. He is thoroughly institutionalised.

Although the motives for the amendment are creditable, the Committee deserves a fuller explanation of the thinking behind it. After all, he set a fine example himself, being scarcely out of his teens. Indeed, following the untimely death of his father, had the rules of your Lordships' House been different in 1962, he would have taken his seat even earlier; he had to wait until his 21st birthday to do so. We are due some clarification from him about the terms and the meaning of this

amendment, otherwise—perish the thought—we might think that this is just yet another attempt to delay this piece of legislation.

The Earl of Caithness: I cannot speak for my noble friend Lord Trefgarne, but I say to the noble Lord, Lord Snape, that the reason for tabling this amendment is that we are concerned about the average age of the House, which has gone up. One great advantage of having hereditary Peers here is the youth that is involved. If the noble Lord looks at the average age of life Peer appointments, he will see that, of the last 15 appointed, one was in their 80s, two were in their 70s, with most in their 60s. This eventually will shove the average age of the House up. I see the purpose of the amendment as to try to keep a balance and to keep the average age of the House as low as practicably possible.

Lord Cormack: My Lords, I hope that my noble friend on the Front Bench is being provoked beyond endurance. We have just seen a most appalling waste of time. The noble Lord, Lord Trefgarne, moved his amendment, as he was entirely entitled to do, but he did not put in Tellers. There is no way of recording the enormous majority that displayed itself in the Not-Content Lobby. Had that vote come to a proper conclusion, I doubt whether he and his colleagues would have reached double figures. They certainly would not have got much beyond that. This is a disgraceful abuse of not just your Lordships' House but the institution of Parliament. If my noble friend on the Front Bench is not provoked beyond endurance, I am.

Lord Grocott: I agree wholeheartedly with what has been said and I think that the noble Lord, Lord Trefgarne, should reflect on it as well. He knows perfectly well that the one thing he dare not do in the proceedings today is to put any of these in many cases ridiculous amendments to the vote, because he would be defeated overwhelmingly, as on previous occasions. Just for the record, in this group, Amendment 11 states that:

"Standing Orders must provide that vacancies amongst the 90 excepted hereditary peers are filled by a method which ensures that the excepted hereditary peer is younger than the average age of members of the House of Lords at the time the vacancy occurs".

Quite simply, that means that we would continue to have by-elections. This is a proposal to defeat the Bill. The Bill is to end the by-elections; this amendment would ensure that they continued. I hope that the noble Lord, Lord Trefgarne, will beg leave to withdraw his amendment but, if he does not, I hope that he puts in tellers and votes this time and no longer abuses the procedures of the House.

Lord Berkeley of Knighton (CB): My Lords, to my shame, I invited a young political student to observe this debate. I am embarrassed that I did so. This debate reflects appallingly on this House and I hope that the Government will seize the nettle. We need to get on with it; it is disgraceful that we are trying to advantage one small section of society over another, as my noble and learned friend Lord Brown has pointed out. I am deeply ashamed to have been a part of these proceedings.

Lord Northbrook: My Lords, I rise to speak to Amendment 15 in this group, which provides that future vacancies shall be filled,

"using a method which ensures that over time excepted hereditary peers are elected on a basis which provides for a fair representation of hereditary peers representing Northern Ireland and Scotland".

Lord Grocott: To save a lot of words, can the noble Lord just confirm that his amendment, if carried, would mean the continuation of by-elections for hereditary Peers, the precise matter that this Bill tries to deals with?

Lord Northbrook: I agree that I support the continuation of the by-elections, but this amendment is looking at the House of Lords Act 1999 and amending it accordingly.

11.15 am

Lord True: My Lords, for the record, I am not a hereditary Peer, nor do I favour the outcome that would follow the passage of this legislation in time, of an all-appointed House. We have many Bills in this House that are opposed, and we have seen a number of them attract far more public attention in recent weeks, where Bills have gone on for day after day in Committee. I do not think it is appropriate or reasonable to call fellow Peers who have a point of principle to put forward a "disgrace" or to say that one is "ashamed". I am ashamed when I see in the House other people stand up and say that Members of this House have no right to put forward a point in principle. I raised reasonable objections to this Bill at Second Reading. There are strong objections to the Bill—in my view, it should be a government Bill and in terms of the proportionality effect, which I have described, and of the binding commitment in honour. All those arguments are reasonable, and there are others. I will not be silenced by people saying that I am a disgrace or that I bring disrepute on the House. What is our Parliament for if not to allow those who have a minority view to put it before this House?

Lord Northbrook: My Lords, if I may continue speaking to Amendment 15 about Scottish and Northern Irish Peers, let us consider the position in 1999 when, according to *Dod's Parliamentary Companion*, the House had 785 Members in total. Of these, *Dod's* labelled 85 as Scottish and no fewer than 67 as Northern Irish. The regional numbers of the current House of Commons show that, at the last election, there were 59 Scottish MPs elected and 18 Northern Irish MPs. On the same basis, there should be nine elected Northern Irish hereditary Peers and 11 Scottish ones. Current figures for the composition of the 90 hereditary Peers in the House show Scotland adequately represented but that Northern Irish Peers, on the above alternative comparisons, should number between three and eight, rather than the one Peer at present. I will give a brief historical background to support my argument—

Lord Rennard: My Lords, to save the time of the House, and perhaps to protect its reputation, can the noble Lord confirm that, if his argument on this amendment has merit, he will seek to test the opinion

[LORD RENNARD]
of the House and put in Tellers so that we can show our opinion? If, on the other hand, he is not going to test of the opinion of the House, or not put in Tellers and waste our time, surely he is accepting that his argument does not have real merit and he is simply trying to filibuster and defeat the Bill.

Lord True: Is the noble Lord's view that no amendment should be put before this House unless it is put to a Division?

Lord Northbrook: I confirm to the noble Lord, Lord Rennard, that I wish to test the opinion of the House on this amendment.

Lord Foulkes of Cumnock (Lab): What is a Northern Irish Peer and what is a Scottish Peer? Can the noble Lord define them?

Lord Northbrook: I have relied on figures from *Dod's Parliamentary Companion*. The noble Lord makes a good point. There is one hereditary Peer on the Cross Benches, as I understand it, who lives in Northern Ireland. The complication, I think, is that there are some old Irish titles and people are living in England. I am looking at people living in Northern Ireland.

Lord Foulkes of Cumnock: Just to take an example, if a Peer lived in London but owned a huge chunk of Scotland—and there are a few of those—would he be a Scottish Peer?

Lord Northbrook: Yes, I think he could count as a Scottish Peer.

Lord Cormack: What about the redoubtable noble Countess, Lady Mar, who is loved in all parts of this House? Is she a Scottish Peer? She lives in Worcestershire.

Lord Northbrook: As I understand it, she has lived in Worcestershire for quite a long time—so I would have to check the figures from the House of Lords Library on that.

The Earl of Caithness: I think the answer to my noble friend Lord Cormack is that the noble Countess is a Peer of Scotland.

Lord Northbrook: I will give a brief historical background to support my argument. The Act of Union between the UK and Ireland in 1800 provided that the Peers of Ireland should elect 28 of their number, to be called Irish representative Peers, to sit for life on the part of Ireland in the House of Lords of the new United Kingdom. The fourth article of this Act of Union provides that,

"such act as shall be passed in the parliament of Ireland previous to the union, 'to regulate the mode by which the'",

representative Peers should be chosen,

"shall be incorporated in the acts of the respective parliaments",

by which it was to be rectified.

The Irish Parliament passed such an Act, laying down in great detail how the original representative Peers and their successors were to be chosen. It laid down that the Irish temporal Peers were to meet at a stated time and place to elect 28 of their number, and each of the temporal Lords so chosen,

"shall be entitled to sit in the House of Lords during his life".

Clearly a similar role is set out for a Peer chosen to fill a vacancy. This procedure continued unchanged until almost 100 years ago, when the Irish Free State was established. Crucially, the legislation that created this abolished the offices of the Lord Chancellor of Ireland and the Clerk of the Crown in Ireland, who was responsible under the Act of Union for carrying out important duties in connection with the election of Irish representative Peers.

In 1925, the UK Government were advised by their Attorney-General that this abolition demonstrated an intention to terminate the rights of Irish Peers to elect Irish representative Peers to fill vacancies as they arose. Expert legal opinion was obtained from two leading members of the UK Bar—namely, the future Lord Chancellor and the future Master of the Rolls—that the right of Irish Peers to elect representative Peers had survived and was unassailable. But the matter was not insisted on or carried through by the Irish Peers. Those already elected carried on serving for life, but no effort was made to replace those who died. While in 1925 the Attorney-General's opinion could be justified for the south, it left Northern Ireland out in the cold.

Lord Adonis: I am trying to understand the significance of the point the noble Lord is making, because the figures that have been provided to me by the Library suggest that among the hereditary Peers—leaving aside the big problem we have about the lack of adequate representation of large parts of the United Kingdom among the life Peers—Scotland is overrepresented and Northern Ireland is appropriately represented. The figures that I have show that 10% of hereditary Peers are Scots, against 8% of the population at large. So I am not sure what the particular evil is against which he is seeking to protect the House.

Lord Northbrook: The noble Lord is correct on Scottish representation—I said earlier in my speech that the Scots were adequately represented. As I understood it, only one of the 92 was a Northern Irish Peer, and I wanted to see that process continued among both nationalities.

Lord Thomas of Gresford (LD): Does the noble Lord agree that there is therefore a lacuna in the Act of Union of 1542 which incorporated Wales into the United Kingdom? Would he accept that Henry VIII powers should be put into this Act to amend that particular lacuna?

Lord Northbrook: Far be it from me to debate with the noble Lord, but as I understand it, the concept of representative Peers did not apply to Wales, while it did to Northern Ireland and Scotland.

A noble Lord: Should we not put it right?

Lord Northbrook: That is beyond the terms of my amendment.

The Peerage Act 1963 gave all hereditary Peers of Scotland the right to sit in the House of Lords, instead of requiring them to elect 16 of their number, as had been the case since the union with Scotland in 1707. But no similar measure was introduced for the Peers of Ireland.

We move on to 1965. A number of Irish Peers, led by the Earl of Antrim, petitioned the House of Lords for recognition of their rights to elect 28 representative Peers to sit in the House of Lords. This was referred to our Committee for Privileges. The committee concluded that as there was no longer one Ireland, the Act of Union 1800 provision for 28 representative Peers no longer applied. However, Lord Wilberforce, dissenting in part, made a crucial point. He said as follows: because the office of Lord Chancellor of Ireland, as well as other offices such as the Clerk of the Crown in Parliament, which enabled the election of Irish representative Peers, had been abolished in 1922, it made it impossible to follow the procedures laid down in the Act of Union 1800 for a replacement when one of them died.

The Committee for Privileges' verdict, in my layman's view, is unsatisfactory because it failed to recognise, first, that the Irish representative Peers represented the Peers of Ireland and not Ireland as a whole. As a result, any change in Ireland was irrelevant. It also ignored the continued existence of part of Ireland—Northern Ireland—in the United Kingdom. Lord Wilberforce also expressed doubts that an Act of such constitutional importance as the Act of Union with Ireland could be repealed by implication or obsolescence.

Returning to the Scottish peerage, I cannot fail to mention the challenge of the House of Lords Act 1999, which stated that there should be 16 Scottish hereditary Peers in perpetuity in the House of Lords and that their abolition was contrary to Article 22 of the Treaty of Union between England and Scotland.

This is therefore an excellent opportunity to redress the scarcity of elected hereditary Northern Ireland Peers and maintain the number of elected Scottish hereditary Peers.

The Earl of Erroll: I wish to say—very quickly, because we have just had a history lecture—that, under the Peerage Act 1963, hereditary Peeresses, Peers in their own right, could sit for the first time in the House of Lords. My mother was one of the 16 elected Scottish representative Peers to sit, and one of the first five hereditary Peeresses to sit in the House of Lords—so we did get a bit of female representation. The answer to the Wales question is that of course it was not a kingdom. The issue of the Scots Peers was around the merging of two kingdoms under a Scottish king.

Lord Trefgarne: My Lords, to refer to the point made in my noble friend Lord Northbrook's amendment, the question of the Scottish Peers was of course addressed when what became the 1999 Act went through your Lordships' House. As I recall, although it is now a long time ago, the Scottish Peers petitioned the House for exclusion from the provisions of the 1999 Act. They were represented by none other than the then Mr Richard Keen—now none other than my noble and learned friend Lord Keen of Elie himself. His petition did not succeed.

Lord Snape: Will the noble Lord answer the point I put to him and tell us the thinking behind his own amendment—otherwise we might think that he has tabled it somewhat mischievously?

Lord Trefgarne: My Lords, I have nothing to add to the remarks I made earlier.

The Deputy Chairman of Committees (Baroness McIntosh of Hudnall) (Lab): What does the noble Lord wish to do with his amendment?

Lord Trefgarne: I wish to test the opinion of the House.

11.27 am

Division on Amendment 11

Contents 23; Not-Contents 117.

Amendment 11 disagreed.

Division No. 1

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11.39 am

Amendment 12

Moved by ***Lord Trefgarne***

12: Clause 1, page 1, line 4, leave out subsections (2) and (3) and insert—

"(2) In section 2, after subsection (4) insert—

"(4A) Standing Orders must provide that future vacancies must be filled using a method which ensures that over time excepted hereditary peers are elected on a basis which provides for the equitable representation of each country and region of the United Kingdom.""

Lord Trefgarne: My Lords, my noble friend Lord Caithness has spoken at some length to this matter. I beg to move.

The Deputy Chairman of Committees decided on a show of voices that Amendment 12 was disagreed.

Amendment 13 not moved.

Amendment 14

Tabled by ***Lord Trefgarne***

14: Clause 1, page 1, line 4, leave out subsections (2) and (3) and insert—

"(2) For section 2(4) substitute—

"(4) Standing Orders must make provision for filling vacancies among the people excepted from section 1 through a nomination and selection process run by the House of Lords Appointments Commission.""

Lord Trefgarne: My Lords, I rise to move this amendment.

Noble Lords: It has already been debated.

Lord Trefgarne: I do not think it has been spoken to—certainly not by me.

Lord Grocott: Perhaps I may help the noble Lord, Lord Trefgarne, with the procedure, as he is fairly new to this place. This amendment was in a group that we discussed in March, when we dealt, I think, with 10 amendments in two hours. So far today, we have dealt with two amendments in one hour 40 minutes. At this rate, we will need about 10 more Fridays to complete this stage. I hope that the noble Lord acknowledges the appalling waste of precious time that is resulting from what he is doing. To now start moving an amendment that has already been part of a debated group is something that he should refrain from doing.

Lord Trefgarne: My Lords, I do not wish to offend the noble Lord, Lord Grocott, or anyone else for that matter, so I shall not move the amendment.

Amendment 14 not moved.

Amendment 15

Moved by ***Lord Northbrook***

15: Clause 1, page 1, line 4, leave out subsections (2) and (3) and insert—

"(2) In section 2, after subsection (4) insert—

"(4A) Standing Orders must provide for future vacancies to be filled using a method which ensures that over time excepted hereditary peers are elected on a basis which provides for a fair representation of hereditary peers representing Northern Ireland and Scotland, over time reaching the same proportion in relation to the total number of excepted hereditary peers as the proportion of MPs for Northern Ireland, or Scotland, in relation to the total number of MPs in the House of Commons.""

Lord Northbrook: I wish to move this amendment formally.

11.41 am

Division on Amendment 15

Contents 19; Not-Contents 107.

Amendment 15 disagreed.

Division No. 2

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11.52 am

Amendment 16

Tabled by ***Lord Northbrook***

16: Clause 1, page 1, line 4, leave out subsections (2) and (3) and insert—

"(2) For section 2(3) to (5) substitute—

"( ) Standing Orders must provide for—

(a) the 90 people to be excepted for the duration of a Parliament; and

(b) the Hereditary Peers Commission, at the beginning of each Parliament, to determine which holders of hereditary peerages should fill the 90 places provided for in subsection (2).

(3) Schedule (Hereditary Peers Commission) makes provision about the Hereditary Peers Commission.""

Lord Northbrook: This amendment has already been debated but, with the leave of the Committee, I wish to speak to it because I was not here at that time.

Noble Lords: No!

Lord Northbrook: This point was not covered on the first day of Committee.

Lord Grocott: My Lords, perhaps I may offer a gentle suggestion to the noble Lord. I do not think that he is carrying the mood of the Committee in wishing to speak to Amendment 16, which was spoken to three months ago. The previous vote rather indicates that, whatever eloquent tactics he deploys, he is most unlikely to carry the Committee, and I suggest that we move on.

Lord Northbrook: I note what the noble Lord says. Actually, it was not covered on day one, but I take the mood of the Committee and shall not move the amendment.

Amendment 16 not moved.

Amendment 16A

Moved by ***Lord Northbrook***

16A: Clause 1, page 1, line 4, leave out subsections (2) and (3) and insert—

"(2) Section 2 is amended as follows.

(3) At the beginning of subsection (3) insert "Subject to subsection (3A),"

(4) After subsection (3) insert—

"(3A) An excepted person elected to the House of Lords under subsection (4) after the House of Lords has passed a resolution that steps have been taken to implement paragraphs 29, 35, 39 and 48 to 51 of the Burns Report (fixed-term appointments) remains a member of the House of Lords for a period of 15 years beginning with the day on which they receive a Writ of Summons.

(3B) In this section "Burns Report" means the report of the Lords Speaker's committee on the size of the House of Lords, published on 31 October 2017."

(5) At the end of subsection (4)(b) insert ", or

(c) a vacancy arises on the end of the 15 year period of an excepted person under subsection (3A),""

Lord Northbrook: My Lords, as far as I am aware, this is a new amendment which has not been moved before. It suggests that any excepted person under the House of Lords Act would, once the Burns commission

[LORD NORTHBROOK]
report has been adopted, remain a Member of the House for a fixed term of 15 years, as other Members will be after the Burns report is implemented. However, until the legislation changes, a by-election could still be held at the end of 15 years after the first hereditary Peer had been elected. I beg to move.

The Earl of Erroll: This amendment sounds quite sensible as it brings us into line with the spirit of the Burns report.

Lord Grocott: My Lords, the best way to respond to the spirit of the Burns report would be to pass this Bill and turn it into an Act, because, for as long as it remains on the statute book, for every one hereditary Peer who leaves for whatever reason, he or she—well, it is "he", actually—will always be replaced by another hereditary Peer. Everyone else would be under a system whereby it is two out and one in, with the exception of the hereditary Peers. I suggest that if the noble Lord is concerned about the Burns report, he should withdraw his amendment.

Lord True: My Lords, surely this is a matter than can be addressed when we reach the Burns report. I understand the fervour of the noble Lord, Lord Grocott, who is a good old Labour man, to end the procedure that his party agreed on. However, every time he puts his point before the House, I feel that I must repeatedly say, so that the public realise, that the result of this legislation would be the creation in time of an all-appointed House of Lords. That is the effect of this legislation, but the noble Lord never refers to the effect. One of my fundamental objections is that we would, through passing this legislation, create over time an all-appointed House of Lords without the consent of the British people to a manifesto commitment or a Bill brought before Parliament by a Government. That is the proper way to proceed. This House should not, by a hole-in-the-wall procedure masquerading as modernisation, pass legislation that will have the effect in time of creating an all-appointed House for which there is no current democratic consent. Every time the noble Lord, Lord Grocott, makes his point, I will put that point before the public.

Baroness Hayter of Kentish Town: My Lords, this is an all-appointed House; it is just that some people are here because their fathers, grandfathers or great-grandfathers were appointed by the King or the Queen at the time. It is an all-appointed House.

The Earl of Erroll: The difference is that because we are here and that is found objectionable by some people, we might get a democratic House. If we go, we will not. Those of us who are democrats think that there should be democratic authority and legitimacy in the House of Lords for it to survive long term.

Lord Snape: Can the noble Earl tell us how many of his ancestors fought for democracy and where?

The Earl of Erroll: I think I should answer that question later.

Lord Trefgarne: I can help the noble Lord by telling the House about my ancestor. I am the second Lord Trefgarne and my father was the first. He was a Liberal and then later a Labour MP.

Lord Colgrain (Con): My Lords, I would point out that I am the fourth who has been fortunate enough to be a representative in your Lordships' House. I am also the most recent hereditary Peer to have been elected by the whole House: 803 of your Lordships were in a position to elect me, which makes me feel that my position is slightly more democratically representative than that of a large number of others.

I was hoping to say quite a lot of things today but I do not want to be accused of filibustering. Therefore, I will foreshorten my speech and just say three things that people have referred to me when it comes to what they find attractive about hereditaries.

The first is that we do not come from the other place with trappings of party tribalism and a sense of our own personal political importance. Secondly, in the main, we do not have experience of working for the public sector, so we have a more finely tuned sense of the anxieties and insecurities of the private sector and the self-employed. Lastly, we are not beneficiaries of political patronage, which has resulted in over 300 of your Lordships being ex-MPs, MEPs or representatives of regional Assemblies and county councils. That counts for a great deal in the eyes of the public and is not something that should be discounted.

If the hereditary principle is seen as anomalous in a present-day democracy, it is probably no more so in the eyes of many, and no more idiosyncratic, than the fact that this country has been ruled for centuries without a written constitution, and for many, tradition begets legitimacy. The time for any review of the election of hereditary Peers should therefore not be piecemeal, as the noble Lord, Lord Grocott, proposes, but should be an integral part of the review by the noble Lord, Lord Burns. We should await the finalising of his report. If in the meanwhile there was a desire to change the current voting powers so that rather than being party specific, any hereditary should be elected by the whole House, that recommendation would have my unqualified support.

Noon

Lord Adonis: I am having some difficulty in understanding what the noble Lord's amendment actually does. Can he explain to us in plain English what subsection (4) his amendment would do?

Lord Northbrook: Let us say that hereditary Peers operate after Burns in line with the 15-year term for life Peers, new hereditary Peers would be appointed for 15 years, and there would be a by-election at the end of that period of 15 years to replace them.

Lord Adonis: Can the noble Lord explain how that relates to Burns? My understanding is that the Burns report would reduce the size of the House. His amendment would not reduce the size of the House at all, would it? We would simply have an arbitrary 15-year re-election requirement for hereditary Peers. Or have I misunderstood him?

Lord Northbrook: The point is made. Maybe the amendment should be refined to say that once the Burns report has passed, the by-election procedure part of that falls.

Lord Adonis: So it is entirely in respect of those who come up for re-election at the end of the 15 years?

Lord Northbrook: I need to give that consideration.

Amendment 16A disagreed.

Amendment 17

Moved by ***Lord Northbrook***

17: Clause 1, page 1, line 5, leave out from "than" to end of line 6 and insert "90 people at any one time shall be excepted from section 1; but anyone excepted as holder of the office of Earl Marshal or as performing the office of Lord Great Chamberlain shall not count towards that limit."

Lord Northbrook: I am sorry to burden the House with my third amendment, but this is quite a serious point. I am quite surprised that the noble Lord, Lord Grocott, has eliminated the Lord Great Chamberlain and the Earl Marshal because these are royal officials. Contrary to what my noble friend Lord Cormack said, actually, when Her Majesty's reign comes to an end, the role of the current Lord Great Chamberlain will go to a separate family altogether.

Lord Cormack: Yes, but the point is that neither the Earl Marshal nor the Lord Great Chamberlain are subject to by-election. That is the important point. The noble Lord, Lord Grocott, and I have discussed this, and he accepts that. There are 90 who are subject to by-elections but neither of these two great offices of state are. They will continue to pass, as they do, within the one family in respect of the Earl Marshal and two families in respect of the Lord Great Chamberlain until the end of time unless this House and Parliament should decree otherwise. They cannot fall victim to this particular Bill because they are not subject to by-election, so the amendment that my noble friend is about to move is redundant.

Lord Northbrook: Can the noble Lord explain to me why he put 92 in this Bill but 90 in the previous Bill? I do not understand that point.

Lord Grocott: I have no problem whatever with someone being called the Lord Great Chamberlain or anything else. I was intrigued to know that apparently the office would not go to the same family as currently occupies that role. I do not know whether any of our families might qualify, but so far I have heard nothing. The point is that I can see no reason whatever why these two offices of state, which perform ceremonial functions, need to be in the House of Lords in order to perform that function. At least one of them—two of them for most of the time—has been on permanent leave of absence, so their functions can clearly be carried out perfectly effectively whether or not they are Members of the House of Lords. Whether people can become Members of the House of Lords via heredity is the issue that we are considering.

Lord Cormack: The noble Lord will acknowledge that his Bill is designed—and this is why I support it—to end by-elections. His Bill does not end the Lord Great Chamberlain or the Earl Marshal. That is a simple statement of fact.

The Deputy Chairman of Committees (Baroness Henig) (Lab): Does the noble Lord wish to move his amendment?

Lord Northbrook: Yes. I beg to move my amendment.

Lord Adonis: I have learned more about the British constitution in the last five minutes than in many years. I had no idea about the arrangements for the rotation of the office of the Lord Great Chamberlain. I hope that whoever succeeds the present one has a more pronounceable name than the Marquess of Cholmondeley because the problem with holding receptions in the Cholmondeley Room is that nobody knows how to pronounce the name of the person after whom the room is named.

This is an issue with my noble friend's Bill. I strongly object to my noble friend's Bill because it entrenches a nominated House, which is his purpose—my noble friend wants to entrench a nominated House. He is not interested in a democratic House and he is not even interested in what the noble Lord, Lord Cormack, wants, which is incremental reform, although I notice that the noble Lord did not say what his next incremental reform would be. Maybe he might tell us in due course. Perhaps he does not want any further incremental reform.

Lord Cormack: This reform.

Lord Adonis: Just this reform and no further. We need to be clear about this. This will entrench a nominated House in perpetuity.

Lord Cormack: My Lords,

"Up with your damned nonsense will I put twice, or perhaps once, but sometimes always, by God, never",

as Richter said to the first flute in the orchestra. The noble Lord ought to know that we have in this House a Campaign for an Effective Second Chamber, which I have the honour to chair and which my noble friend Lord Norton convenes; it has many Members of his side—enthusiastic Members, who are nodding as I am speaking. We believe in incremental reform. This is one more incremental reform following Steel, which dealt with retirement, following the Hayman Bill, which dealt with expulsion and there will be others. I hope that the big instalment later this year will be Burns. I would love to see that. It does not need legislation. That was why Burns was so skilful. I hope that we will have that, and it will be a further stage of incremental reform. It is not all legislative.

Lord Adonis: But these incremental reforms are so minute that no member of the public outside will have the faintest idea that any of this is happening. The reform that they will notice is whether we fundamentally change this House to turn it from being a nominated House that has no democratic legitimacy into an

[Lord Adonis]
elected House which has legitimacy. That is the reform that will make a difference that people will notice. All this other incremental reform that the noble Lord is talking about is so much stuff and nonsense. It will have zero impact in the way that the House is perceived externally, and nothing other than a tiny, marginal impact on the actual operation of the House internally.

However, in terms of the integrity of the Bill, because I know that my noble friend is keen for us to stay on message, in so far as there is any principle at stake in the Bill at all, I do not accept it because I do not think that it makes the House any more legitimate than it is at the moment. To have hereditary Peers is fundamentally illegitimate. As a nominated House, as it would become after the passage of my noble friend's Bill, it does not even achieve my noble friend's objective. I understood that his objective was, over time, to eliminate the hereditary Peers. Now we discover from the noble Lord's amendment that two hereditary Peers will remain, so there will still be an hereditary component in this House, even after the labours of Hercules that my noble friend has engaged in over many recent months.

The nonsensical nature of this Bill—nonsensical if one believes in wider reform, which some of us do—is made even greater when one looks at the actual detailed provisions. It does not even achieve my noble friend's objective of seeking to entrench in perpetuity a nominated House.

Lord Foulkes of Cumnock: My noble friend Lord Adonis has this completely wrong. I normally agree with him, fully. There is no contradiction between having incremental reform now, while there is a Conservative Government and working towards major reform. I support major reform by the Labour Party, which Labour's candidates stood on at the last general—that is, a senate of the nations and regions and not a directly elected legislature, which would challenge the primacy of the House of Commons. There is no contradiction between incremental reform now, and then, when we eventually attain a Labour Government, making some major reforms.

Lord Adonis: My Lords, it is very important that we do not dissemble. I agree entirely with my noble friend, and actually I think that he and I would probably agree on the nature of a reformed second Chamber. However, it is important to understand that that is not the position of my noble friend Lord Grocott. He wants a nominated House in perpetuity and he will frankly accept that. He does not want this to be the first stage towards wider reforms; he wants to entrench a nominated House which has, in my judgment, no legitimacy whatever within a democratic constitution. He should be, and indeed he is, open about that.

I do not understand why it is, if that is what he is setting about, that those people who claim to be in favour of democratic reform—there are some in this House—are playing his game. His game is not to take a first step on the road to wider reform—rather, it is to stop any wider reform at all from taking place. We need to understand what my noble friend is up to. He is a very serious politician; he knows absolutely what his own game is, and we should not be playing that game.

Lord Cormack: Before the noble Lord, Lord Grocott, rises to speak, perhaps I may say this to the noble Lord, Lord Adonis. He has every right to suggest that this place should be swept away and replaced by a directly elected second Chamber. That is a perfectly valid constitutional point of view. But for reasons that have been advanced time and time again, many of us in this House do not believe that and we refute it. We believe that this House is complementary to another place and that it adds value to the constitutional system. We believe that the unambiguous democratic mandate lies at the other end of the corridor but that we have something, both individually and collectively, free from many of the shackles of party and buttressed by a large Cross-Bench element, that we can contribute. That is an equally valid point of view to that of the noble Lord, Lord Adonis. While I respect his view as valid, I would ask him to reciprocate that feeling.

Lord Grocott: Perhaps I may have a word with my noble friend, who I always admire for his psychic powers, which I do not possess. He knows exactly why I do what I am doing at all stages. My noble friend is totally opposed to this Bill. I think he is the only person on these Benches—someone will stop me if I am wrong—or even on the Liberal Democrat Benches who is. I am grateful to him for clarifying his position. Whether he is sitting in the right place or not is only for him to judge.

I say this to my noble friend: I wish that he had made this statement a bit earlier. I had an identical Bill in the previous Parliament which received a Second Reading and a Committee stage. I do not recall seeing him in his place to express his view. He certainly did not take part in the Committee stage of this Bill on 23 March this year. I looked for him in the Division Lobby.

Lord Adonis: I was too concerned about filibustering my noble friend's Bill.

Lord Young of Cookham: Perhaps I may gently remind your Lordships that we are debating Amendment 17 onwards, which relate to the Earl Marshal and the Lord Great Chamberlain.

The Duke of Montrose (Con): My Lord, perhaps I may have a little clarification on what I understood the noble Lord, Lord Grocott, to say. We are looking at the point that this Bill would not affect the Earl Marshal and the Lord Great Chamberlain, but in discussing that element, I thought that the noble Lord said that these two gentlemen are not required to be Members of this House. When they come to perform their ceremonial duties, I wonder whether they do not have to be Members of the House in order to stand in the areas where they are required.

Lord Cormack: Of course they do.

Lord Grocott: What is interesting to note, my Lords, is that both of them have been on leave of absence. One is no longer on that leave, but for at least the last several years that I have been looking at it, they have been on permanent leave of absence. That includes

general election periods and the State Opening of Parliament. While I cannot pretend to know the constitution in enough depth to know whether they are allowed to stand in a certain place at a certain time, I can assure the noble Duke that the machinery of the State Opening has functioned perfectly well when these two people have been on leave of absence from the House of Lords.

Lord Jones of Birmingham (CB): My Lords, far be it from me to intrude on the private grief of the Benches opposite, but I would ask noble Lords to think about this. At the moment, we are watching a constitutional polemicism of British life. The division and nastiness of that shows in so many ways. If I was a voter of any party at any time from Birmingham to Manchester and back again and I saw what was going on in this House today, frankly, I would vote to abolish the lot. That would be a crying shame because one thing that I have valued during my 11 years here is that we definitely stand apart from the tribalism and the nastiness that arises both down the Corridor and in the deselections that go on in constituencies. We are better than that, but at this moment, I am not seeing it and that upsets me.

12.15 pm

Lord True: My Lords, I agree very much with the sentiments of the noble Lord who has just spoken. The trouble is that some of us see this as a party political strike against the Conservative Party, given the disproportionate number of Conservative Peers who would be removed. This was not a move that has been made by the Conservative Party—rather, it has been made by the Labour Benches. Earlier, the noble Lord, Lord Grocott, with support from his Front Bench, was rejoicing in the fact that he had universal approbation. Underneath this Bill is a political strike and a poison. It upsets many people who have given long service to this House. It upsets the traditional balance of the House without, as I have said before, broader democratic consent.

Lord Cormack: My Lords—

Lord True: No, at this stage I will not give way to my noble friend. He has had plenty to say, so I will give way to him later.

It is very unfortunate that the Bill is being pressed in this way and at this time which, notwithstanding my noble friend's agreement with it, is in my judgment party political. Of course I agree with everything said by the noble Lord, Lord Adonis, and I was grateful to have the fifth cavalry arrive to give support to the point I have been trying to make; namely, that the effect of this Bill is to create what the majority of people here want but do not proclaim, which is a permanent nominated House. That is what they want and that is why they support this allegedly incremental step.

Perhaps, as my noble friend on the Front Bench has just said, we could come back to the amendment. While I cannot speak for my noble friend Lord Northbrook, the Bill as I read it excludes all 92 peerages in the sense that there will be no succession. It therefore would do what my noble friend Lord Cormack has said he does not want to see happen: it would exclude the Lord Great Chamberlain and the Earl Marshal.

I will give way to my noble friend.

Lord Cormack: I am most grateful. I will make one brief point. If my noble friend had been in the Lobby, he would have seen plenty of Conservative colleagues, including some very prominent ones, in it. The point is this: the Bill, as the noble Lord, Lord Grocott, has said repeatedly, is to abolish by-elections. It does not touch on the Lord Great Chamberlain or the Earl Marshal because they are not subject to by-elections. The noble Lord, Lord Grocott, has got this wrong and he has acknowledged that he has done so. He has made his personal observation that he does not see why these two people need to be Members of the House of Lords. That is his point of view—it is not mine—but it is not affected by his Bill because it deals with by-elections, and only with by-elections.

Lord True: As always I thank my noble friend for his agile clarification for the House. I agree that I would not want to see him upset by the removal of the Lord Great Chamberlain and the Earl Marshal. By the way, the previous Earl Marshal was a very assiduous attender of this place.

If the House is going to be asked to vote, we need to know what we are voting on. The noble Lord, Lord Grocott, has put this Bill before the House. My noble friend Lord Northbrook has tried to clarify the point which my noble friend Lord Cormack supports, which is that the Lord Great Chamberlain and the Earl Marshal should stay. The noble Lord, Lord Grocott, thinks that they should go. It is a rather minor point, but actually this is a legislative House. Given that, before we vote, can we be told by the mover of the Bill what he is proposing? He wishes to remove all 92; that is the effect of his Bill and that is his intent. We have heard what my noble friend Lord Cormack says, but what is the mover of the Bill telling the House?

Lord Grocott: My Lords, the Bill is quite clear. It says:

> "No more than 92 people at any one time shall be excepted from section 1".

That means that the 92, including the two referred to by the noble Lord, would no longer be Members of the House of Lords—or rather that their membership would not pass to their successors. It does not affect in the slightest their capacity to perform ceremonial duties. I have tried to follow this but I simply do not understand the method of succession for the Lord Great Chamberlain; it is beyond me. Do not try to explain it. I want to protect the Bill in its present form and I hope that the noble Lord, Lord Northbrook, will withdraw his amendment.

Lord True: The effect of the Bill is not as the noble Lord, Lord Cormack, said—that the two Peers or their successors would remain. They would all go. That is a perfectly clear position and I am grateful to the noble Lord, Lord Grocott, for clarifying it. It is not what the noble Lord, Lord Cormack, wished for but I am thankful for the clarification.

Lord Northbrook: My Lords, we have had an interesting debate. It was not entirely connected to the amendment but that was not my doing. Having increased the number from 90 to 92, I wonder whether there is any implication for the Royal Family.

Lord Mancroft (Con): I have listened to this exchange. I do not know about other noble Lords, but I am not clear on where exactly we have got to on this. My noble friend might well take the advice of the Benches opposite. I do not think that any of your Lordships is clear what the amendment or the Bill achieves and whether they cut across each other. If my noble friend will forgive me, the obvious solution is for him to withdraw his amendment at this stage but bring it back on Report, by which time the noble Lord, Lord Grocott, could have clarified the position. I hope that helps your Lordships.

Lord Jones of Birmingham: May I add to that? When you are in a hole, stop digging.

Lord Northbrook: I want to clarify the point about the Lord Great Chamberlain for the House. Historically, the position has been split between two or three families and changes on the death of the sovereign. I do not know how that works in connection with the amendment; I want to revisit that. At the moment, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Amendment 18 had been withdrawn from the Marshalled List.

Amendments 19 to 31 not moved.

Amendment 32

Moved by ***The Earl of Caithness***

32: Clause 1, page 1, line 11, leave out "not to be filled by further exception" and insert "to be filled by the holding of a by-election, in which all members of the House of Lords are entitled to vote, with further provision to be made by Standing Orders"

The Earl of Caithness: My Lords, I was not going to move the amendment but I was provoked to do so by what the noble Lord, Lord Grocott, said earlier. I want to make the point that the noble Lord has spoken at length about the iniquities of the current by-election voting system. He said that we want to preserve it in perpetuity; in an earlier debate, I said that I do not want that. This is one example of our wanting to improve the by-election system by asking all Members of the House to vote when there is a by-election. In that way, I believe that the House will be more fully involved in by-elections.

It is worth noting that the noble Lord, Lord Grocott, talked about the proportion of people voting in by-elections. In the last Conservative by-election, 91.5% of those eligible to vote, voted. Clearly, there is a lot of interest as to who should be a successor.

Lord Trefgarne: A few weeks ago, I asked the Procedure Committee to consider changing the arrangements for by-elections so that in future they would be on an all-House basis and perhaps conducted in accordance with the so-called Carter convention. I have not yet heard the result of the committee's consideration. I have heard it informally, at least, and I wonder whether I will hear it formally.

Lord Grocott: My Lords, one or two people in the House for whom I have great respect have suggested that we could solve the issue of absurd by-elections on a party basis—because in the case of Labour and the Lib Dems, we have only four hereditary Peers, so we get these idiotic procedures—where the whole House votes. I have two problems with that, one of which is insurmountable. The first is the turnout, as referred to by the noble Earl, Lord Caithness. He rightly said that turnout figures can be very high in party by-elections: in the Lib Dem by-election, I think that the turnout was 100%. There were three electors, all of whom voted, so that is a high percentage.

However, turnout figures are consistently very low—often less than 50%—when a turnout of the whole House is required. That is lower than the lowest turnout in any constituency in the country at the last general election, by way of a useless fact, mainly because I am sure that people like me think that the system is idiotic so do not bother. Certainly, the whole-House elections have a low turnout so the noble Earl, Lord Caithness, would be proposing a system with a low turnout.

The far more fundamental issue, which is why I hope that the House will reject this proposal, is that this does not nothing whatsoever about the spectacularly unrepresentative nature of the register of hereditary Peers. The question of who can vote is one thing—by all means, you can put forward a proposal for the whole House if you want to—but we would still face a choice restricted to the 211 people on the register, 210 of whom are men and among whom there are no members of ethnic minorities, for example. It is utterly absurd to proceed with by-elections, whatever the mechanism of election or the electorate, if the eligibility of the people to stand is so totally unrepresentative. I hope that the noble Earl, Lord Caithness, will withdraw his amendment.

Lord True: I can see entirely the logic of the position of the noble Lord, Lord Grocott. Obviously, it is an argument more broadly for reform of peerage law, not just through the Bill.

It is not for me to speak on behalf of the Procedure Committee, although I am a member of it. The noble Lord, Lord Trefgarne, said that this matter was put to the committee on his request, as well as that of the noble Duke, the Duke of Wellington, I believe, speaking from memory. That is true. The Procedure Committee considered it but felt—as I believe is the mood of the House generally, beyond your Lordships' committee—that with the Burns report's proposals before the House and a stage of incremental change approaching, this was perhaps not the moment to address the perfectly understandable and reasonable point put forward by the noble Lord. That is my personal position; I do not speak on behalf of committee members. I understand

that the House can take a different view from the committee. My noble friend Lord Caithness sees his proposal as an improvement to our system. It is a genuine attempt to improve the Bill and the noble Lord, Lord Grocott, has given the reasons why he opposes it. As far as the Procedure Committee is concerned, with this Bill and the Burns Committee before the House, this might be best addressed at a later stage.

12.30 pm

Lord Trefgarne: The noble Lord, Lord Grocott, referred to the list of hereditary Peers who are qualified to stand in by-elections. That list has I think only one female. I hope that the noble Lord will therefore support my Private Member's Bill to change the law of succession for peerages so that noble Baronesses can succeed in the normal way.

Lord Grocott: How long does the noble Lord estimate it will be before the effect of his Bill will be parity between the sexes?

Lord Trefgarne: It is not in my hands at my age, I am afraid.

The Earl of Caithness: My Lords, the point has been made about daughters inheriting titles. I would be in total support of my noble friend Lord Trefgarne's Bill. I would be very happy if eldest daughters were entitled to inherit. In fact, I supported the Bill at an earlier stage. It is that mischief that needs to be corrected, not the mischief that there are only males, except for one, on the waiting list to stand for a by-election.

The noble Lord, Lord Grocott, said that if there were elections of the whole House only a small percentage of Peers would vote. If I remember rightly the figures that my noble friend Lord Trenchard gave earlier, I did a quick bit of maths and 50% of the House voted on the whole-House election. If that is considered to be a total waste of time because it is a small percentage, it is worth bearing in mind that the highest percentage of people who voted in the UK at a European parliamentary election is only 38%. Perhaps that is a very good reason why elections to that Parliament should be stopped. I beg leave to withdraw the amendment, but I will bring it back at a later stage.

Amendment 32 withdrawn.

Amendment 33

Tabled by ***Lord True***

33: Clause 1, page 1, line 12, at end insert ", if that person is, or has been, a member of a political party group within the House of Lords which has at the time of the vacancy a higher proportion of the total membership of the House than the proportion that political party secured of the total votes cast at the preceding General Election"

Lord True: My Lords, I must tell the House that I do not recall having put the case for Amendment 33. I will not detain the House with it at this time. I believe that it is a profoundly important question. It relates to the fact that there is a grotesque overrepresentation of Liberal Democrats in this Chamber—a far more glaring problem in terms of the management of democracy than the presence of the by-elections for hereditary Peers. Since I discovered this morning that it had been listed as "already debated", although I remember degrouping the matter, I will not detain the House because it would be discourteous, given that it affects the Liberal Democrats' interests for me to pursue it. I accept that I will not move it, but I give notice to the House that if we reach Report on this Bill I will take that opportunity to raise the question of Liberal Democrat overrepresentation, because I do not think that this minor matter in the Bill should go forward before that glaring democratic anomaly has been addressed. I am afraid that it is a matter we will have to return to.

Baroness Hussein-Ece (LD): I apologise that the great reaper has not taken me away yet, but does the noble Lord not think that there is an overrepresentation of white, privileged, well-off, middle-class men—or even more privileged men—in this House compared with the population as a whole? Does he not think that there is an imbalance in this House in people who represent ordinary people in this country?

Lord True: My Lords, that would be an argument for reform and change of the House. I do not do identity politics, I am afraid. I regard every member of our society, whatever race or gender, as equal and deserving equal respect. This House is a deposit of historical tradition. It is as it is. The composition of this House—it has become largely a nominated House—is the result of the choice of party-political leaders in this country. Let us not have all this flim-flam about representation. If we want representation, let us have election. So far as the composition of this House is concerned, with primary life Peers, nominated people who get attention, lucky folk who get a selector of one—the Prime Minister or the party leader of the day—who says, "Go there", the noble Baroness's strictures should be addressed not to this House, but to the leaders of the political parties, including the Liberal Democrats, who have sent here the people who are here. That is a matter we can debate further when we come back to it, but it is entirely irrelevant to this Bill, which will do nothing—

Lord Tyler: It is also totally irrelevant to the amendment to which the noble Lord is supposed to be speaking.

Lord True: I gave notice out of courtesy. I came here to speak to this amendment; out of courtesy to the Liberal Democrats, when I discovered that it was listed as "already debated"—I have explained my position—I said that I would not speak to the amendment but that I would bring it back on Report. Out of courtesy to the Liberal Democrats, having been asked a question from the noble Lord's noble friend, I gave an answer. I would like to proceed to the amendment before the House, but we will return to this matter.

Amendment 33 not moved.

Amendment 33A

Moved by ***Lord True***

33A: Clause 1, page 1, line 12, at end insert ", if, within a month of the vacancy arising, the Prime Minister has recommended to Her Majesty the conferment of a peerage under the Life

Peerages Act 1958 on a person who has the same party affiliation as that of the group to which the deceased excepted peer was originally elected"

Lord True: My Lords, I shall now address Amendment 33A, which, alongside Amendment 33, which addresses the Liberal Democrat question, addresses a glaring defect in this legislation. I am sorry that the noble Lord, Lord Grocott, is no longer in his place. I have tried to persuade him before now, outside of this House, to address the point that Amendment 33A seeks to address. I do not wish to see this Bill proceed for wider reasons, but if it does, it will lead not only to the creation of a wholly nominated House—a point made by the noble Lord, Lord Adonis, and one that I have made—but, as alluded to earlier in our discussions, to a rebalancing over time of political strength in the House.

The noble Lord, Lord Grocott, is returning. I apologise for having said that he was not in his place. I do not wish to repeat to the House, but I made the point that the noble Lord and I have discussed outside the House the Bill's impact on the political balance in the House over time. The position is that, because of the way the colleges came into being—I was involved in the negotiations in 1999—the hereditary peerage currently constitutes I think 48, at the moment, although 49 is the normal number and maybe that has just changed, of the total Conservative strength. Some 20% of the Conservative Party's strength in this House—the party of government—is provided for by hereditary Peers as a result of a historical, or I might call it incremental, evolution of the nature of the House.

Lord Snape: On that point, would the noble Lord reflect that back in 1945, when the Attlee Government were elected by a very substantial majority, there were I think six hereditary Labour Peers in this place? The vast majority of the Liberal Democrats, who he complains about, were created by a Conservative Prime Minister during the coalition. It seems that his main source of complaint about political imbalance in this place is based on the fact that there would be a dilution of the centuries-old Conservative majority.

Lord Northbrook: Quite a few Lib Dem Peers were created under Tony Blair's Government.

Lord Snape: I am not quite sure who is intervening on who here, but I was one of Tony Blair's Peers. I remind the noble Lord that when Tony Blair was elected in 1997, with a very substantial majority indeed, much of the legislation in the early part of that first Parliament was blocked by the Tory majority in this House. "Tony's cronies", as they were known, pale into insignificance compared with the number of Peers created by David Cameron during his period. He said openly that this House should reflect the majority of the Government of the day in the House of Commons and behaved accordingly. We should have a bit less of this point from the noble Lord, Lord True. He should come back to reality and stick to his amendment.

Lord True: The noble Lord might hear a bit less if he did not provoke me by making an intervention.

Lord Snape: That is what Parliament is for, though the noble Lord might not agree with it. He might not have conducted himself in the same way when he ran that local council—but that is the way this place works and he should get used to the fact.

Lord True: The noble Lord imputes to me things that I do not agree with. I have given way to him twice and enjoy his interventions. It is only that if he makes an intervention, it requires a courteous answer from me. That is the point that I was trying to make—not that he was not right to intervene.

I shall come back to my fundamental point, but I have to address the point that the noble Lord made. The historical position in 1945 was entirely different. There were no life Peers; there was a historic House, with, yes, a huge preponderance of Conservatives, partly as a result of the Irish home rule debate and partly as a result of the rise of the Labour Party, which gave great service, and still gives great service, to this country. There was an imbalance. That was addressed within that House by convention and by mutual respect—the kind of thing that the noble Lord, Lord Jones of Birmingham, spoke about earlier that enables the House to work: fairness. The great reforming Labour Government of 1945 changed Britain with the acquiescence of the House of Lords, notwithstanding the numbers. That is the historical reality.

I do not think that it is really relevant to the present position, which, to return to the argument that I was trying to make, is that 20% of the Conservative Party's strength in this House is made up of hereditary Peers. We have heard distinguished contributions from the Cross Benches today. Sixteen per cent of their strength in this House, because of the way the colleges were agreed in the negotiations with the noble and learned Lord, Lord Irvine, is made up of hereditary Peers. In the case of the Liberal Democrats, it is 4% or perhaps 5%, and in the case of the Labour Party it is 2%. The raw numbers are different. We would lose over time on our side 49; the Labour Party would lose four—a difference of 45 net votes. That would obviously have an effect on the composition of the House. Meanwhile, the majority of the House is saying perfectly reasonably—I do not happen to agree with the argument—that the numbers of the House should be limited. I agree with the Prime Minister's restraint in creating new peerages; David Cameron created far too many—perhaps including this one.

A noble Lord: Hear, hear.

Lord True: Tony Blair went much further. He went up to 354.

Lord Snape: He did no such thing.

Lord True: He created 354 Peers, my Lords. Again, we do not want to get sidetracked, but I will send the noble Lord the figures.

If this Bill goes through, there would a disproportionate attrition in the numbers of Conservative Peers and Cross-Bench Peers at a time when the call from everybody in the House is not to create new Peers and to limit the number to 600. The effect of the Bill would be noticeably

to reduce over time the proportion of Conservative and Cross-Bench Peers in the House. That is a perfectly reasonable aspiration of the parties opposite, but it is not a proper effect of a Private Member's Bill. I have therefore suggested an amendment which, in this transitional period when we are told that great new incremental reform is coming after the Burns report, provides that, so long as the reforms proceed and if this Bill goes through, there should be an understanding—just as there was an understanding in 1999 that if a Labour Peer died, the Conservatives would vote for a Labour Peer under the Carter convention.

To avoid that disproportionate effect, whereby the Conservatives would lose nearly 50 out of 250 Peers whereas Labour would lose four out of nearly 200, there should be provision for a life peerage to be created, rather than election to take place, so that there would be a steady state in political strength in this House. That would ameliorate the political impact of the Bill of the noble Lord, Lord Grocott, the effect of which I and many others believe—I am not entering into the question of the hereditary peerage, although, as noble Lords will know, I have my views on it—would be to create a disproportionate political strike over time at two parts of the House: the Conservatives and the Cross Benches.

12.45 pm

I have put forward a proposal which would mean that, when a hereditary Peer died, there would be an appointment of a life Peer from that party—which could be changed in the context of full and final reform. There would be no question of unfairness: my amendment does not perpetuate hereditary by-elections, but it takes the sting out of the grotesque unfairness that would be the political effect of a Bill introduced with the approbation of the Labour Party Front Bench.

We will have a Report stage—I have asked the noble Lord, Lord Grocott, outside the House. It may be that, between now and Report, the noble Lord will tell me that all he wants to do is end by-elections—he is a fair man and a good party man, and he will understand that I am something of a party man, too—and that he considers this a fair and reasonable proposal.

Lord Adonis: I think that the Conservatives currently have 60 more Peers than the Labour Party. Does the noble Lord regard that as fair? Surely, we should get to parity—which I believe was the convention established when the House of Lords Act was passed in 1999—before his amendment takes effect.

Lord True: There is an argument there. As I understand it, the convention is that the governing party should not have a majority over the opposition parties—and we certainly do not have that on this side. I do not know whether the noble Lord, Lord Adonis, was present during the debates on leaving the European Union, but he may well have noticed, in the course of those debates, that the Conservative Party did not command an overwhelming majority in your Lordships' Chamber.

Lord Adonis: My noble friend Lord Grocott knows these things because he was Chief Whip, but I do not believe that the Labour Party was the largest party in this House until a few years before it left office. Even after the passage of the 1999 Act, for some years the Conservative Party was still larger. Is the noble Lord seriously suggesting that the Conservative Party needs a buffer of 50 or 60 seats in order to deal with the disunity in its own ranks?

Lord True: The noble Lord is suggesting that, and of course it is utter nonsense. I will not follow on with what I am tempted to say, because it is very rare that the noble Lord speaks nonsense. The reality is, of course, that in time there will be attrition. I believe that anybody who has the honour of being Prime Minister should have regard to balance. I had the honour of working in the Administration in No. 10 under Sir John Major, and it was put to Sir John frequently at that time that it would be good to have more Labour creations. I think that the failure to have more Labour creations at that time led, probably indirectly, to the anger that caused the 1999 Act. Of course, there should be fairness as well as restraint in creation, and I think that the Prime Minister is trying to have that.

My point is that I do not think that there is a principle of friendship and comity across the House for a majority in the House which is not the Conservative Party—although many might agree with it. I am sorry if they do; I try to persuade them. But I do not think that we should pass legislation—and I could not support legislation—the back door of which would be to strike heavily at the political strength of the Conservative Party, the governing party. It would cut the number from 250 to 200—which the noble Lord, Lord Adonis, said he would welcome. Yes, it would be over time, but I remind the House that, I think, 20 Conservative hereditary Peers are already over 75 and a number are over 85, and the effect will take place.

I have prolonged my remarks because of interventions. I think that the principle is clear: I believe that, if the House wants to proceed with legislation, an element of fairness towards the Conservative Benches and the Cross Benches could be achieved by including an amendment of this type. I beg to move.

Lord Grocott: Perhaps I could clear this up with a couple of facts. On the question of the party strengths in the House of Lords, I do not think that the noble Lord, Lord True, need worry too much about a Conservative leader ensuring that their party strength in the House of Lords remains strong. By way of illustration, the Labour Party was elected with a huge majority of 157 in 1997, at which time there was a colossal majority of some 200 or 300 Conservative Peers in the House of Lords. Many of them—90% of them—went in the 1999 Act and we have only the cream left: the 10% who were elected, the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness, among them. However, it was in 2006, nine years after the Labour Government were elected, that Labour became the biggest party, although obviously not the majority party. So the Tories were the biggest party for

[Lord Grocott]
the first nine years of a Labour Government with a majority of 157 in the House of Commons. The noble Lord need not worry: the Tories are much better at making sure that they have friends in this House. Does he know how long it was after the 2010 election before normal service was resumed and the Tories were the biggest party again? It was just two years: by 2012 the Tories were the biggest party. So if the noble Lord, Lord True, is having sleepless nights about Tory leaders not appointing enough Tory Peers, I think that he can sleep well.

On the other crucial fact, with respect, talk about making a mountain out of a molehill over the disproportionate effect of my Bill on the future composition of parties in the House of Lords! I have been doing calculations on a sheet of paper while the noble Lord has been talking and just for the record, since the 1999 Act there have been, I make it, 34 hereditary Peer by-elections, roughly one third of the total. Of those, nine were Conservatives. So over a period of 19 years, although he used the phrase "striking heavily" about the effect on party representation in the House of Lords, the Conservative membership would be down nine if my Bill had been in operation. Just for the record, the Labour Party would have been down two, so the net benefit to the Labour Party in opposition over the Government would have been seven Peers over 19 years. Once again, I suggest to the noble Lord that he can sleep well still, even with that anxiety hanging over him about the future.

The Earl of Caithness: My Lords, the reason for the figures that the noble Lord, Lord Grocott, mentioned is that when the elections took place in 1999, it was by and large the younger and most active hereditaries who were elected. It is not surprising that the gathering-in rate of Conservative hereditary Peers has not been as great as it is about to become. We are all getting older and my noble friend Lord True has raised an important point.

The noble Lord, Lord Grocott, said nothing about protecting the Cross Benches. He waxed lyrical about how a Conservative Prime Minister would be keen to protect these Benches but with the possible implementation of the Burns report ahead of us, we are talking about a size limit on the House along with the importance of keeping the Cross Benches. Perhaps he could tell us how the Cross Benches are going to keep their numbers up to those required.

Lord Judge (CB): Before the noble Lord, Lord Grocott, answers that question, while I am not speaking on behalf of the Cross Benches—because nobody speaks on behalf of us—can the Cross-Benchers be left to look after themselves, please?

Baroness Hayter of Kentish Town: Perhaps I may make one small point. I apologise to my noble friend, having said that I would stay quiet all day. I want to say one thing about why the Labour Party so supports this amendment. It was never about the political balance in this House. In fact, it has been a Labour Party claim for a long time that the idea that because people whose fathers, grandfathers, great-grandfathers and sometimes great-great-grandfathers did service for this country and were therefore put in this House, their subsequent children, grandchildren and great-grandchildren should be here is one that we no longer find democratic. That is the reason why we support this Bill. We put the issue of any political balance on the very wide and strong shoulders of the noble Lord, Lord Burns, and when we are able to move to a smaller House, we will deal with it then. This is not the way to do it. The importance of the Bill is that it is incredible that in the 21st century, we are talking about having by-elections for people because of what their ancestors did.

Lord Adonis: My Lords, the incredible thing about the proposal before us is that we would entrench a wholly nominated Chamber of Parliament in perpetuity. My noble friend, whom I hugely respect, says that we support this amendment because it is in line with Labour Party policy. My noble friend Lord Grocott gave me a lecture earlier about how my position was inconsistent with that of the party. The Labour Party's policy at the last election was:

"Our fundamental belief is that the Second Chamber should be democratically elected".

I keep inviting my noble friend Lord Grocott to say whether he supports the Labour Party's policy. Does he support a democratically elected House of Lords?

Lord Grocott: I am opposed to it being directly elected. In answer to my noble friend's question: yes, believe it or not, after 60 years once in a while it may be the case that I do not say that I agree 100% with my party's policies. Can he remind us how long he has been in the Labour Party and how often he has disagreed with the party manifesto?

Lord Adonis: My Lords, I have been in the Labour Party for 24 years and I have voted against the Whip less often than my noble friend has in recent Divisions on European Union legislation. I do not take any lectures from my noble friend about party loyalty. He said to me earlier that he thought I was sitting in the wrong place in the House because I supported Labour Party policy. My noble friend appears to support an extreme version of the Conservative Party's policy, which is for a nominated House in perpetuity. Maybe he would wish to cross the Floor. Let us keep this debate in proportion. We are talking about very specific amendments—I am drawing my remarks to a conclusion—to very minor legislation, but which would have a very major impact: it would entrench in perpetuity a nominated House, whereas the right reform is not to tinker with second-order issues of this kind but to engage in a proper democratic reform of the House of Lords, which happens to be the policy of the party which my noble friend Lord Grocott and I support.

Lord Rooker (Lab): If my noble friend will allow me, what it would entrench in perpetuity is the sovereignty and superiority of the elected House of Commons, because that will get undermined the minute this place starts getting elected. It is as simple as that.

Lord Adonis: I completely respect my noble friend's point of view but it is not the policy of the Labour Party.

Lord Rooker: I do not care about that.

Lord Adonis: My Lords, my noble friend Lord Rooker may not care and my noble friend Lord Grocott may say that he has complete licence to disagree with the party's policy. I respect that but it is not the policy of the party, which is for a democratically elected House. Anything else is a departure from that policy. I respect it but it cannot claim any moral or political virtue at all.

Lord Mackay of Clashfern (Con): My Lords, I wonder whether it aids the Bill in going forward that we have so much discussion of the policy of the Labour Party, or any other party for that matter. We want to get the Bill forward and the less irrelevance that comes into speeches, the more rapid will be the progress.

Lord Grocott: My Lords, I will say only one sentence. Due to my noble friend Lord Adonis's passionate support for the Labour Party manifesto, I look forward very much to him telling us that he strongly supports the commitment in its last manifesto to respect the result of the referendum. I really cannot resist that.

1 pm

Lord True: My Lords, having heard my noble and learned friend Lord Mackay of Clashfern, I shall not follow the noble Lord, Lord Grocott, down that road, but the noble Lord, Lord Adonis, is not alone in not adhering to the Labour manifesto policy on that matter. I am disappointed by the reaction. I do not believe this Bill is the right construction, and I oppose it in principle because it has the effect, as the noble Lord, Lord Adonis, rightly said, of entrenching a nominated House. It is true that in the interests of fairness my amendment would, for a temporary period until reform, lead to a life Peer replacing a hereditary Peer, and he or she would be a nominated Peer. However, that is not the purpose of my amendment in the long term. I have every sympathy.

It is interesting that whenever a noble Lord stands up in your Lordships' House and even entertains the idea of an elected House of Lords—the noble Lord, Lord Tyler, is familiar with this, as am I—a sort of posse, often led by the noble Lord, Lord Rooker, rises with a mugging party and says, "It shall not be". The reality is that almost everyone here who is a life Peer wants to stay and believes the House is absolutely perfect as it is and that we should not have any reform. Yes, we can talk about little bits of increment but never reform. That is the reality of the position. I am sorry to say to the noble Baroness, Lady Hayter, that I do not accept her comments. She is right to a point to say that it is an atavistic and understandable wish of the Labour Party and socialist movement more generally to eliminate the hereditary Peerage in Parliament. It is a perfectly respectable wish that can, and I am sure will, be accomplished one day by a Labour Government because that is the way our democracy works. My basic submission, however, is that it should not be accomplished by stealth in a Private Member's Bill that entrenches an all-appointed House. The noble Baroness, Lady Hayter, did not address that point. She returned to the evasion which the noble Lord, Lord Grocott, has continually used, saying that this is just about ending by-elections. It is not just about ending by-elections; it is about, over time, creating an all-nominated House. For those who wish to achieve something, there is a piece of Virgil—I shall not quote him because it is not right—that states that often those who wish to achieve something weave a different pretext for it.

My noble friend is rising to tell me that it is all about incremental reform and I will hear it again.

Lord Cormack: His noble friend is rising to say that if everyone is trying to come clean on things, will he please come clean and say that his policy is for the abolition of this House and its replacement by something totally different? That is a valid and respectable point of view, but that is his point of view. Mine is the opposite.

Lord True: I definitely respect that, but since I do not share his opinion that all will necessarily be hunky-dory once hereditary Peers go, it is perfectly legitimate for me to point out my point of view, and I will do it as often as I am invited to by my noble friend, who frequently reminds us of his own position. I do not necessarily think this Chamber would be made more effective by the removal of the hereditary Peerage, but that is not what I am arguing.

I am disappointed by the reaction to the amendment. The fact is that the effect of the Bill over time, whatever the noble Lord says, will be disproportionate. The noble and learned Lord, Lord Judd, said the Cross Benches could look after themselves, and of course they can. I am sure the hereditary Peers on the Cross Benches may well disagree with me when I say it is a pity that they are going. I will speak only from my point of view as a Conservative: I believe a Bill that would result in 20% of the Conservative strength in this House being removed over time is a political Bill and an unfair one.

I believe the Bill could be improved by the amendment; I think equity would be restored. The amendment would not stop the noble Lord's Bill to abolish hereditary by-elections. It would permit him and the Labour Party to achieve their objective; it just asks for temporary political equity. I think it is mean-minded to reject it out of hand, and on these political grounds I wish to test the opinion of the House.

1.05 pm

Division on Amendment 33A

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Amendment 33A disagreed.

Division No. 3

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1.17 pm

Amendments 34 and 35 not moved.

Amendment 35A

Moved by ***Lord Adonis***

35A: Clause 1, leave out Clause 1 and insert the following new Clause—

"Election of hereditary peers

(1) The House of Lords Act 1999 is amended as follows.

(2) At the end of section 1 (exclusion of hereditary peers) insert ", except a person who fulfils the requirements of subsection (2).

(2) A person fulfils the requirements of this subsection if—

(a) there is a vacancy amongst the 90 hereditary peers excepted under this Act;

(b) the person is a holder of a hereditary peerage; and

(c) the person is elected by the persons who, on the date of the election, would be entitled to vote as electors at a parliamentary election.

(3) The Secretary of State may by regulations made by statutory instrument make provision for and in connection with the provision of an election under subsection (2).

(4) A statutory instrument containing regulations under subsection (3) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.""

Lord Adonis: My Lords, Amendment 35A had an unusual genesis. I sought to table amendments to the Bill to provide for an elected House. As I have now said several times in my fundamental commentary on the Bill, that is the big issue before Parliament and should be addressed sooner rather than later. The clerks said that it was not possible, within the scope of the Bill, to move for elections which involved members of the public being elected. However—wait for it—it was within the scope of the Bill to make it possible for the public to elect hereditary Peers from the register when a vacancy arose. That is why the Committee has before it an amendment providing that, in future, the entire national electorate would vote when hereditary Peer vacancies arose.

I am not proposing this as a serious proposition for the future composition of your Lordships' House, but I unapologetically move the amendment because it puts into the debate the central issue of moving from a nominated/hereditary House to a democratic one. I have always believed that we should do so. I believed it when I was writing the constitutional reform policies for the Liberal Democrats and when I was advising Tony Blair on constitutional reform. My noble friend Lord Grocott and I disagreed all the time about this fundamental issue.

My noble friend has, as I see it, a very conservative view of the constitution, which is basically that the constitution circa 1950 was jolly good and we should not make any changes. My view is that we should carry on modernising; part of that is more democracy, which means really substantial devolution, a fair voting system and a democratic second Chamber. Those, to my mind, are fairly sensible propositions that, sooner or later, we will have to address as a country. The reason I believe that they have much greater urgency than before is that the whole context in which constitutional reform is now being debated is that of the single biggest constitutional reform this country has undergone in the last half-century, and that is Brexit.

In my travels across the country, which I have been engaged in intensively in recent months, I can tell the House that—as many noble Lords will know from their own communities—there is intense discontent at the state of governance in this country at the moment. It is particularly intense in the Midlands and the north of the country, where there is a great sense of alienation from the centres of power and a significant feeling that parliamentary institutions are not working effectively. There are many things that I believe need to be done to address that. My own view is that we should have significantly more devolution—part of the problem in the Midlands and the north is that we have inadequate devolution. We had good devolution settlements for Scotland, Wales, London and, when it was operating, Northern Ireland, but we have only scratched the surface of devolution in the Midlands and the north and we need to address that seriously.

Reform of Parliament has a part to play in that too. The conclusion that I have reached—though I put this forward tentatively and believe that we should have a constitutional convention to discuss it—is that we should now have a democratic second Chamber, either directly elected or representing the devolved elected institutions of the country. I think an argument can be made either way for a directly elected second Chamber, as in Australia, for example, or an indirectly elected second Chamber, representing what would become a federal structure of the United Kingdom, like the Bundesrat in Germany. There are arguments for and against, but what there is no argument for, in my view, is a perpetuation of a wholly nominated second Chamber, which, by the way, we got by accident.

We got to a wholly nominated second Chamber through a series of incremental reforms to what was a hereditary House. No one at any stage set out to create a wholly nominated Chamber. When Harold Macmillan introduced the then Life Peerages Bill in 1958, it was to complement what was still predominantly a hereditary House. Indeed, ironically, a large part of the reason he introduced the Bill was that members of my party, the Labour Party, were quite rightly not prepared to accept hereditary peerages. Lord Attlee, much sainted in the memory of my party, was one of the very last members of the Labour Party to accept a hereditary peerage; others simply would not do so. As part of a classically Tory attempt to keep the House of Lords going at all, the Life Peerages Act was passed.

We have had a substantial debate on what happened in 1999 and 2000; I know about it intimately because I was advising Tony Blair at that time. We gave firm commitments that the nominated and part-hereditary House that would replace the substantially hereditary House that applied before 1999 would be interim. It was deemed interim in the report of the royal commission chaired by the noble Lord, Lord Wakeham, which of course recommended a predominantly elected House. For various reasons, not least the strong advice of my noble friend Lord Grocott, who was always passionately against any public elections to this House, those proposals were not taken forward, which I believe was a mistake.

Lord Grocott: I can live with a certain amount of total misrepresentation, but there comes a point where it is impossible for me to remain seated. At no stage have I said to the noble Lord in private or in public anything other than the fact that I am opposed to a directly elected House. He is a clever chap who no doubt would be happy in a university; he knows that that does not rule out an indirectly elected House, nor a House that is more representative of important interests across the nation. There are a whole range of other options. My fixed position—this is the only part of his long speech that has been accurate about me—is that I am opposed to a directly elected House for precisely the same reason that my long-standing noble friend Lord Rooker explained to him: it would be a threat to the House of Commons. He has never been elected to the House of Commons, never been an MP or anything of that sort, so he does not understand how fundamentally a directly elected senate would be a threat to the powers of the House of Commons.

Lord Adonis: My Lords, I defer to my noble friend's greater understanding of these issues. However, it is not the case that an indirectly elected House that represented the nations and regions of this country would not be a powerful House. If my noble friend wishes himself to go and spend time in a university, he needs to go and study the operation of the Bundesrat in Germany, which is a substantially powerful institution, because it represents the elected state Governments of the Federal Republic of Germany. If my noble friend's concern is about having a stronger second Chamber, any of these options would lead to a substantially stronger second Chamber than we have at the moment, and that would of necessity take power away from the House of Commons, which would be a very good thing.

These are issues which we should be debating as a country, and which the public wish to see debated, because they want to see more substantial power brought to them. It is a particular issue in the Midlands and the north of this country, where the sense of alienation is greatest and, I might add, if you look at the statistics, those regions are least well represented even within this nominated House. Eight per cent of the Members of your Lordships' House come from the north of England; 15% of the population comes from the north. London and the south-east are almost twice overrepresented in this House if you compare the number of Members of this House with the population of those regions.

There are fundamental problems with the operation of this House, which will not be dealt with—I say with great respect to the noble Lord, Lord Cormack—by minute, incremental reforms. They require fundamental reform. The Brexit crisis that we are now going through puts fundamental constitutional reform on the agenda. The time is right to address it now and not to engage in tinkering reforms of this kind, which will simply entrench a nominated House.

Lord Low of Dalston (CB): Instead of addressing us at some length on the rationale for his amendment, could the noble Lord possibly answer an important question about the process or the mechanism by which it would operate? As I read the amendment, it says that whenever a vacancy occurs by reason of the death—or, I suppose, the resignation—of a hereditary Peer, the whole panoply of a general election has to be mobilised to fill this one vacancy. Is that really what the noble Lord's amendment suggests?

Lord Adonis: My Lords, this is such a well-crafted amendment that it would make a fundamental reform of this House unavoidable, which was the original purpose of the undertakings given by my noble and learned friend Lord Irvine of Lairg during the passage of the 1999 Act. He saw at the time, and we agreed, that this would be a poisoned pill in the composition of the current House of Lords that would make the creation of a democratic House unavoidable. That, alas, has not happened in the last 20 years. I greatly regret it and I accept some measure of responsibility for the fact that the Government of which I was apart did not succeed in carrying through its proposals for a fully elected House. But I am afraid that the party

opposite did not succeed in it, and that the noble Lords on the Liberal Democrat Benches, who claim to be most powerfully in favour of these reforms, also failed when they were in government. So in different ways, all the parties in this House have failed.

That failure, and the failure of wider constitutional reform of which it is a part, is a substantial part of the reason why we are going through the current Brexit crisis. We need to address it, and I would much rather do so by fundamental changes and improvements to the constitution of the United Kingdom than by wrenching this country out of the European Union.

These issues cannot be ducked, and we certainly cannot sweep them under the carpet with tiny, incremental changes of the kind which my noble friend Lord Grocott is proposing, so I beg to move.

The Earl of Erroll: My Lords, I rise to support this amendment because it introduces the concept of democracy. As I have said, I would like to see democratic reform of the House of Lords. As for the practicality of it—as has just been raised by my noble friend Lord Low—with online voting coming, I am sure, and with modern electronic methods, we do not need a sort of general election set-up with lots of voting polls. Things will be handled electronically online, and this is an interesting way of introducing some democracy and accountability. I support the amendment.

Lord Rooker: Such Members as would be elected under this amendment would not be bound by the conventions of the House. That is the fundamental issue. I cannot take seriously people talking about reform in terms of the composition of the House. They completely ignore the functions and powers of the House. We cannot have the existing powers and functions of the House unchanged and then impose an election on it—under that structure there would be no dispute resolution between the two Houses. At the present time, the Commons always has the last word. That is my telling point when I take part in Peers in Schools. We are not equal Houses. The Commons always has the last word. Very occasionally it might have to wait a year, but the fact is it always has the last word because it is elected. It is as simple as that.

If, like Nick Clegg, one refuses to accept the discussion about the functions and powers of the House and only wants to change the composition process, that will lead to absolute chaos in the governance of the country. I cannot take seriously those who say we want an elected second Chamber, because they completely ignore the two fundamental things that have to change. Before we get elected to this House, we have to know what we are going to do when we get here. It is no good saying: "Oh, we'll change it afterwards". If we get an elected second Chamber, the first thing the elected Peer will say is, "I've got a mandate. Open the cupboard. What are my powers? I can chuck out this Bill from the Commons. I don't agree with it—I don't have to scrutinise anything because I've got a mandate". There would be no dispute resolution. I cannot take such ideas seriously.

Lord Cromwell (CB): Whatever one's view of the amendment, and of the view of the noble Lord, Lord Adonis, of an elected Chamber, I think he indicated in his opening remark that this is a frivolous amendment. Can we not just knock it on the head?

Lord Grocott: My Lords, I think I have a responsibility to respond, as this is an amendment to a Bill I introduced. I suppose I should be grateful to the noble Lord, Lord Adonis, for changing his mind so dramatically in the space of an hour; we are all entitled to change our minds. However, he gave us a little lecture an hour ago about the inadequacy of my Bill, saying it should be opposed because it was pointless and incremental, and he now puts down an amendment providing for the preservation of hereditary peerages, just elected by a different mechanism. I have to agree that it is not merely a frivolous amendment, as the noble Lord, Lord Adonis, himself has acknowledged; it is a silly amendment, and I hope the House will throw it out.

Lord Adonis: My Lords, I do not propose to press the amendment at this hour, given how thin the House is, having thinned out progressively over the last two hours. However, I believe the issue of a democratic second Chamber is the fundamental issue which we need to address in this House, not tinkering reforms of the kind we have been debating over the last few hours. I beg leave to withdraw the amendment.

Amendment 35A withdrawn.

House resumed.

Mental Health Units (Use of Force) Bill

Second Reading

1.34 pm

Moved by ***Baroness Massey of Darwen***

That the Bill be now read a second time.

Relevant document: 31st Report from the Delegated Powers Committee

Baroness Massey of Darwen (Lab): My Lords, it is an honour to speak on this short but important Bill, and I am glad to see that the speakers here today all have experience of and commitment to mental health, young people, police systems and making systems better.

I shall illustrate why this short Bill is so important. In 2010, a young man, Olaseni Lewis, known as Seni, was a patient at the Bethlem Royal Hospital in Croydon. There was an incident in which Seni attempted to leave the hospital's mental health unit and he was restrained face down by police officers. He suffered a heart attack and died four days later. He was a constituent of Steve Reed MP, who originally took this Bill through another place.

I thank Steve Reed and congratulate him on introducing the Bill with such passion and clarity. As he said at Third Reading, which was completed in July this year,

"the Bill in its current state will, if passed, give the United Kingdom some of the best legislation in the world to protect mental health patients from abusive or excessive restraint".—[*Official Report,* Commons, 15/6/18; col. 1266.]

That is what we all want. It is not a party-political issue—all parties supported the Bill in another place. It is a matter of human rights and human dignity, and of how vulnerable people are treated in a system that should be there to protect them.

I thank Steve Reed for holding meetings with me, and I also thank Jackie Doyle-Price, the Minister for Public Health, and the noble Lord, Lord O'Shaughnessy, our Minister here today, for attending a very helpful meeting earlier this week. Both Ministers recognise the vital role that this Bill would play in getting more order into a system that is subject to so much criticism. In another place, Ms Doyle-Price stated that,

"the existing guidance is not having the impact that the Government expected, and … we must do more".—[*Official Report*, Commons, 15/6/18; col. 1267.]

She has shown her determination and passion to make things better, and our deliberations today will, I know, contribute to that.

I also thank the numerous NGOs that have focused on this Bill with briefings and discussions—NGOs from mental health and disability organisations, the Restraint Reduction Network, the Crisis Prevention Institute and children's organisations. Their work is, as ever, much appreciated. As we know, the voluntary sector is a highly respected force in our society for its critical judgments and for advocating change when needed.

I shall not go through the Bill in detail; I shall bring forward specific concerns and questions for the Minister later. I shall simply say that, as we know, Clause 1 deals with definitions such as "patient"; Clauses 2, 3, 4 and 5 discuss the duties of the responsible person in a mental health unit, including training; Clauses 6 to 9 relate to reporting incidents of the use of force and the investigation of deaths and record-keeping; and Clauses 7 and 8 require the Secretary of State to publish an annual report and to conduct a review of reports. Clause 9 refers to the investigations of death and serious injury in mental health units; Clauses 10 and 11 speak of the duties of the responsible person and of delegation; Clause 12 makes provisions related to wearing and operating body cameras when police attend a mental health unit; and Clauses 13 to 16 make provisions on the interpretation of the Bill and its financial implications. Finally, Clause 17 applies the extent of the Bill to England and Wales.

How big is the problem of the use of force in mental health units? The Crisis Prevention Institute found, from a series of information requests sent to mental health trusts in England in 2016-17, that 3,652 patients were injured while being restrained during NHS treatment, that 13% of trusts did not have a policy in place to reduce the use of restraint, that 97,000 restraints took place, with more than 2,600 staff assaulted by patients during interventions, and that 46 people have died. This is simply not good enough.

I want to probe five issues in relation to the Bill: guidance to the Bill, the issue of training of personnel working with people in mental health units, patient involvement, the treatment of children in mental health units and the disproportionate use of restraint.

First, guidance will be crucial to the success of the measures suggested. There is already statutory guidance but it is not working well enough. Guidance is essential because every nitty-gritty definition cannot be included in the Bill. Guidance must be clear and firm and must be monitored to check that it is actually working. Will the Minister tell us when new guidance will be issued? Will contributions from NGOs, parliamentarians, and staff and clients from mental health institutions be taken into account? How will that consultation work? I do not intend to move amendments to the Bill, but I hope we can be assured that the guidance will be detailed and strong.

The second issue is training, which is vital to deliver the outcomes that we all want. What kind of training are we talking about? Those of us who have delivered training know that it is not just about giving lectures and telling people what to do. It is about exploring feelings about issues; sharing experiences; getting below the surface of deep and fundamental problems that might exist; and using client groups to suggest recommendations about behaviour. In relation to the Bill, will a training manual be produced that includes case studies of good practice or will all this go into the guidance?

Thirdly, how will the views of patients be sought? Patients need to understand their rights and be able to contribute to decision-making about their treatment. If people feel respected, they are more likely to understand the issues and contribute to solving problems.

I come now to the fourth issue: disproportionate restraint. Among patients admitted to mental health units, there may be people of different races and faiths, and different ages and abilities, both physical and mental. Today, I received a letter from someone who works with people with Alzheimer's who have suffered in these institutions. At the Second Reading of the Bill in another place, Steve Reed said:

"If we look at the faces of the people who have died after severe restraint in a mental health hospital, we see many more young black faces than in the population as a whole".—[*Official Report*, Commons, 3/11/17; col. 1090.]

The same is of course true of the youth justice system. There is a huge need for training to understand and deal with the issue of bias and lack of recognition of race, culture and special needs. Units seem to act independently, and therefore standardisation on recording data is needed. How will guidance address this issue?

Finally, I have a particular concern about the treatment of children and young people in both the youth justice system and mental health units. Children are children first, and anyone under 18 is a child according to the United Nations Convention on the Rights of the Child, which we have signed. Children on the cusp of 18 are at particular risk: in institutions they are frequently treated as adults and are placed with adults. This is inappropriate and can place them in danger. How will guidance deal with the issue of children?

This is an excellent and much-needed Bill. I look forward to contributions from all colleagues and I hope to hear a satisfactory and positive response from the Minister. I beg to move.

1.43 pm

Lord Harris of Haringey (Lab): My Lords, I am grateful to my noble friend Lady Massey for bringing this Bill forward in your Lordships' House. I am also

[Lord Harris of Haringey]
grateful to my honourable friend Steve Reed for the work he did in bringing the Bill through the House of Commons following the death of Seni Lewis at Bethlem Royal Hospital in 2010. We should pay tribute to the persistence of the family of Seni Lewis in wanting to see positive change as a result of their truly traumatic experience. I talked to Steve Reed about what he wanted to achieve when he was at first successful in the ballot for Private Members' Bills in the House of Commons and I am very pleased that we have reached this stage today.

This Bill is extremely important and valuable in its own right, but I am afraid that I do not want to talk about what is in the Bill itself, but about what is not in the Bill. I should also make it clear that I have no intention of moving amendments in Committee, because every effort should be made to get this Bill intact on to the statute book. I will raise in this speech issues that were raised in Committee in the House of Commons—along with a lot of other stuff, as it happens. I aim to get greater clarity from the Government and get the Minister to reflect on these points and take them back to his department.

I bring to this Bill my experience for a number of years as chair of the Independent Advisory Panel on Deaths in Custody. My panel was responsible for looking at deaths in the custody of the state and what more should be done to protect the lives of those to whom the state holds specific obligations in terms of Article 2 of the European Convention on Human Rights. Our remit covered deaths in prison and in police custody as well as the deaths of those detained under the Mental Health Act. If you die in prison, your death is automatically investigated by the Prisons and Probation Ombudsman, and the report of that ombudsman subsequently informs the inquest. If you die in police custody, the death is automatically referred to what is now the Independent Office for Police Conduct, formerly the IPCC, and again the report produced informs the inquest.

I am not pretending that either of those two processes—for prisons or for police custody—is in any way perfect. I certainly have many criticisms of them, and will continue to do so. But those are not a matter for today. The important issue of those processes is that they happened automatically and were both palpably independent of the institutions concerned. What is more, they were thorough enough to ensure that the coroners' court had drawn to its attention the key issues of substance.

Another point is relevant to the Minister and the Department of Health and Social Care. Those two specialist bodies developed a level of expertise and experience through looking at those types of death that meant that not only could they be more effective in terms of their investigation, because they had seen similar things before and the investigators had worked on similar issues, but the Prisons and Probation Ombudsman or the IPCC could report thematic findings that could helpfully influence the practice across the police or prison services. Because of that expertise and the fact that they were looking repeatedly at similar types of incident, they could come back to the institutions as a whole or the relevant government departments and say, "This is a common theme. These are issues that need to be addressed across the system". That is what is missing from the arrangements that we have at present, and even the arrangements that will exist after the passage of this Bill.

Like many noble Lords, I have received briefing from the charity Inquest, which I have known for many years and worked with in my work on the independent advisory panel. It has extensive casework involving families affected by deaths in state custody. Inquest believes that the current system of investigations following non-natural deaths in mental health settings is simply not sufficient. A system of truly independent, pre-inquest investigations, equivalent to others in detention settings, with a mechanism for national oversight and learning, is absolutely necessary to reduce the number of deaths and serious incidents such as those involving the use of force. But they will also illuminate other categories of death as well. Frankly, it is iniquitous that institutions that are responsible for the treatment and care of mental health patients should not be subject to the same scrutiny as other institutions of detention such as the police, prison and immigration detention. This risks leaving ongoing injustices for bereaved families.

I am sure that we will hear from the Minister about level 3 investigations as part of the 2015 serious incident framework. They are a step forward compared with what there was before, which I can—no doubt totally unfairly—characterise by saying that you would ask the guy sitting next to you in the office to investigate the failings of the service for which you were responsible. That was deemed a sufficient inquiry. Yes, there is an arrangement under the serious incident framework. It is the only mechanism for independent investigation and scrutiny prior to the coroner's inquest. But the issues with the mechanism is that level 3 investigations are used inconsistently and rarely take place. Perhaps the Minister can do something about that. In many cases, given the seriousness of the death, you would have expected an independent investigation to take place within the framework, but there has been a failure to do so. This Bill looks specifically at restraint. I would have thought that any death involving restraint must automatically be one where serious questions are raised around wider issues of practice and should be subject to a full and proper level 3-type enhanced investigation.

While the serious incident framework may provide for an independent team to conduct an investigation, the commissioning and management of the independent process is not institutionally or practically independent as it continues to sit within the NHS management structures. There is also no oversight outside of the NHS on whether investigations should take place and no oversight or external assessment of the quality of those investigations. Moreover, the investigations that do take place under the serious incident framework are of varying quality. They are often deficient in terms of their scope, timeliness, quality, independence and family involvement. There are also concerns about the lack of publication of investigation reports and the methods of identifying learning beyond that of the individual trust or provider. That is a key point because we want to make sure that if there is relevant learning,

it will almost certainly apply not just to the individual institution, but much more broadly than that. The internal nature of the investigations means that there is no visibility or oversight around the implementation of the recommendations or identification of common themes and issues which may be of relevance nationally.

I have heard it argued that such an investigation is not necessary because that is the job of the coroner's court, but my experience of looking at coroners' investigations is that they are always enhanced and facilitated by the receipt of an independent report setting out the key issues. That provides a scope for the coroner's inquiry and investigations. This is something that has to be revisited in those terms. I would ask the Minister to take this aspect away and look at it again, although not in the context of this Bill. Is the Minister confident that he is really fulfilling his personal Article 2 obligations in the absence of a more robust and independent system? Can he say, hand on heart, that he believes that the systems which are currently in place will identify wider lessons and enable them to be disseminated throughout the mental health sector?

My second and final concern, for those who feel that I am going on for too long, is about the funding of the legal costs of inquests for the families of those who die in mental hospitals. One of my most vivid memories from the listening days that Inquest organised for my panel was an account of a family whose family member had died in a mental hospital. I do not know how many noble Lords have been to a coroner's court, but they are often held in bleak environments without even the grandeur of a court setting. For a bereaved family, for whom the whole process is very emotional, the atmosphere is both bewildering and demoralising. This family found themselves having to share the rather small waiting area with not only those whom they felt might have been responsible for their loved one's death but the large teams of lawyers, funded at public expense, representing each and every one of those people. The family described to me how they walked down the corridor, trying to get to this small waiting room first to get a seat, and heard the trundling of the lawyers with their wheelie suitcases full of papers coming down the corridor behind them. They had to walk faster and faster to make sure that they got three seats in the room. That is a graphic image and a reminder of how isolated the families concerned will feel.

The purpose of an inquest is to find out what happened and determine the cause of death, yet every person involved will be legally represented at our—the public's—expense to put the position of the client's actions in the best possible light. Only the family of the person who lost their life in such circumstances will not automatically be represented publicly. I have no problem with people engaged in the issue being funded and supported, but it is grotesquely inequitable and unfair that the family—unless they have substantial means—are not similarly represented to ensure that the coroner is able to pursue all the issues that need exploring. No doubt the Minister will have been briefed that families can obtain legal aid. In practice, this is unlikely and difficult. The income rules are onerous and the pot is already small.

At present, the legal costs of the trust, the commissioner, if it is a relevant party, the nurses, the doctors and the police—if they are involved—and so on are all covered by the public purse; all except the group of individuals who care the most about knowing what happened to their loved one. What is to stop the Minister saying today that in the interests of fairness, of justice and of making sure that lessons applicable elsewhere can be identified, he will instruct the trust responsible for the individual who has died to meet the legal representation costs of the bereaved family? In practice, this will only be a small proportion of the legal costs associated with the death. If he feels that this is too difficult and too onerous a burden on the trust concerned, perhaps those costs should be borne by his department or NHS England, which would incentivise both organisations to ensure that such deaths are minimised in future. I look forward to the Minister's reply but in the meantime, I look forward to this valuable Bill passing through your Lordships' House without amendment.

1.58 pm

Lord Adebowale (CB): I rise to put forward my view on the Bill. Before doing so, I congratulate Steve Reed in the other place and the noble Baroness, Lady Massey, on bringing the Bill forward. I agree entirely with the points made by the noble Baroness and the noble Lord, Lord Harris. I declare my interests as a board member of NHS England and the chief executive of Turning Point, which provides services to people with mental health challenges.

Before I begin, I want to raise an issue that came out of my work in 2012 looking at the Metropolitan Police's response to mental health. I looked at 55 deaths associated with the police response to mental health before they got anywhere near a mental health unit. All of them involved the use of pain restraint, which has resulted in the deaths of too many individuals. I ask the Minister to take a look at that report in considering his approach to the Bill. The Bill is excellent and goes a long way to resolving some of the issues, but I do not feel that the concerns raised in bringing the Bill to the House will be fully addressed until we can look at the police response to mental health. I am more than happy to forward to him my commission's recommendations.

As I said, the Bill is very welcome. It could take the next few steps to provide strong guidance; it would be a shame if it could not. It is very rare that the voluntary sector's lobbying on these issues is so in tune with the Government's support for a Bill, such that we should take into account almost word for word what it is saying in the Bill's accompanying guidance. Its recommendations are sensible and clear on extending the definition of the use of force to cover threats of the use of force and coercion, which, as I have observed when talking to patients in mental health institutions, can be a real restriction on their ability to receive good care.

The guidance needs to clarify that force cannot be used with the intention of causing pain, suffering or humiliation, save for the purpose of lawful self-defence. That would also be helpful. It needs to ensure that a

[Lord Adebowale]
mental health unit's policy includes a commitment to reducing the overall use of force and to clarify that the post-incident reviews need to take into account the patient's perspective and that of their relatives. When you have looked into the eyes of relatives who have suffered the tragedies of deaths as a result of restraint, you can see how important that is. Ensuring that the patient's legal rights advocacy relating to use of any force is communicated to them would also be sensible and entirely appropriate. Establishing proper standards of training in these units would also be useful.

We need to take into account two points. It is vital that we eliminate any loopholes in the recording of the use of force of any kind in units, such that we can have transparency. We have to ensure accountability and transparency in the use of force, in particular the disproportionate use of force on those people from black and minority ethnic communities. It is a burning injustice that this issue has been allowed to continue. The statistics tell the story but we do not react to them. We should publish those statistics so that we can see just how disproportionately it affects those people from minority ethnic groups.

This is a good Bill that is supported by expertise from outside the House. It would be a shame if were not to use that expertise to strengthen it and the guidance that supports its implementation.

2.03 pm

Baroness Tyler of Enfield (LD): My Lords, I strongly support the Bill and I know that it has strong support from Liberal Democrats generally. I pay tribute to Steve Reed, who introduced the Bill in the other place, and to the noble Baroness, Lady Massey, for the way she introduced it. To clarify, I too will not be bringing forward amendments. I fervently hope that the Bill reaches the statute book as quickly as possible.

The Bill is a major and much-needed step forward in reducing the use of force in mental health units across the country. I am pleased that we have cross-party support on this point. The provisions in the Bill for greater transparency, oversight and accountability will lead to vital improvements in the care and protection of children, young people and adults who are experiencing a mental health crisis, and to ensuring that their rights and protections are made as robust as possible.

When I looked at the evidence for the Bill to say why it is so timely, I looked at the figures about the use of restraint. They have been going up very significantly in recent years, despite statutory guidance saying that restraint should be used only as a last resort.

When I looked at the figures, I was perturbed to see that children and young people under the age of 20 seem to be subject to the use of force four times more than adults in mental health in-patient units—a point made also by the noble Baroness, Lady Massey. I was concerned, too, to read that girls and women are subject on average to double the number of restrictive interventions experienced by boys and men. Clearly, not only will such restraint be frightening and potentially dangerous but it can retraumatise women and children who may have experienced violence and abuse. I will return to that point later.

Above all, I hope that the Bill proves to be a fitting tribute to the life of Seni Lewis, a young man who tragically died following prolonged physical and mechanical restraint by 11 police officers called to assist healthcare staff back in 2010. Sadly, nothing can bring Seni back, but I hope that the passing of this Bill brings some meaning to those tragic events.

I was struck when reading about that dreadful incident to learn that Seni had been admitted as a voluntary patient, but, following his family's departure and his becoming increasingly frightened and disoriented, the police were called by hospital staff but his family were not contacted. That is very concerning. Seven years later, an inquest jury unanimously concluded that multiple failures in care had led staff to call the police and that the restraint used by officers was excessive, unreasonable, disproportionate and therefore contributed to Seni's death.

An issue that I want to highlight today, and which the Bill goes a long way to address, is patient awareness and involvement and the involvement of families. In reality, most patients and their families do not understand their rights in relation to the use of force or even what type of restraint may be used. In some settings, it is clear that force is routinely used without adequate involvement of the patient or their representative in decision-making. Advocates are not routinely involved in post-incident reviews. I hope that the Bill, through Clause 4 and, even more so, in guidance, will be able to rectify that.

Noble Lords have already referred to the inadequate training that currently takes place, with an emphasis on painful techniques rather than de-escalating a situation. Much can be done to improve training and to move away from using combative and uncompassionate approaches towards a much greater focus on de-escalation.

I look back at what the Care Quality Commission said about training in 2017:

> "Wards where the level of physical restraint was low had staff trained in the specialised skills required to anticipate and de-escalate behaviours or situations that might lead to aggression or self-harm".

Those are important points.

There are a number of other points that I want us to probe as the Bill goes through. As I said, we might be able to cover them in the guidance. The noble Lord, Lord Adebowale, has mentioned a number of them, so I do not want to repeat what he said. Ensuring that each mental health unit policy includes a commitment to reducing the use of force needs to be spelled out. Ensuring that a post-incident review occurs to establish the patient's perspective following the use of force is incredibly important and has not happened nearly enough up to now. Ensuring that patients' legal rights to advocacy are communicated to them and their families is also important. I also think that, in order to ensure accountability and transparency, parliamentary oversight is really important. We have a critical role if progress is to be made towards reducing the use of force through the annual statement. It is there in the Bill, but there is an issue about timing. It is really important that the annual statement that, as I understand it, the Secretary of State will be obliged to make will be so timed to include the annual statistics produced

by, I think, NHS Digital, so that we can carry out good and proper scrutiny. I think that that is extremely important.

I shall finish by saying a few things about the situation for children, young people and women in particular. I have already made some reference to this. When I was looking at the statistics about the scale, the frequency and the impact, I was really alarmed. Frankly, I was very alarmed when I read that, back in 2016, more than one in six in-patient CAMHS providers did not know how often patients were being restrained and how this compared to benchmarks from previous years. If we do not even know that, that is really worrying. I was really concerned to see that children and young people seem to be subject to the use of force four times more than adults over 20. That seemed really alarming to me. Often, these incidents of restraint—I think this relates to adult patients—happen in the first week of admission, a long time before things have settled down.

In terms of gender, I have already mentioned my real concern over the figures for girls and women, who experience, on average, double the number of restrictive interventions. Again, I was frankly surprised to read that; I do not know why, but I was. I want to understand more about why that happens and what we need to do about it, because it seems to me that that is not a situation we should allow. I then looked at the impact of this and realised that it is happening in secure settings—non-mental health settings—in secure children's homes, secure training centres and young offender institutions. So there is a lot for this Bill to address.

I looked back at what Ofsted had to say on the matter back in 2012. Ofsted made it clear then that restraint should usually be used as a last resort, never as a punishment; that staff should always be trying to calm things down, to de-escalate; that it should not be used by staff just to keep good order and control. Extremely importantly—this is the point I wish to emphasise—restraint should never be used on very young children, children who had only just come in to care, disabled children, children with mental health issues and children who have been sexually abused. That is one of the reasons why this report is so very important and why I feel so strongly about it. That was 2012. In 2016 and 2017, the Children's Commissioner's findings from her visits to medium, secure and forensic in-patient settings for children and young people were indicating high levels of restraint and seclusion in units with a learning disability specialism. She found:

"There is no evidence base for the effectiveness of prone restraint in reducing the frequency or intensity of behaviours that challenge. It is a hugely traumatic and damaging experience for children and their families".

I hope that someone can give me reassurance on my final point, which has been raised by people who are working very hard to ensure that we get the Bill right. I hope that the Minister can give me explicit clarification and reassurance that the Bill applies to children—that it applies to all ages. If so, that is fine, we can all be reassured, but there seems to be an element of doubt and, for the reasons I have set out, I think it is terribly important that we know that children and young people are covered by the Bill.

2.14 pm

Baroness Thornton (Lab): My Lords, I congratulate my noble friend on her excellent introduction to the Bill and on this short but very expert debate.

I agree with my honourable friend in the Commons, Justin Madders, when he indicated the Opposition's support for the Bill:

"I thank my hon. Friend the Member for Croydon North (Mr Reed) for introducing the Bill; he certainly made a powerful case for it. Everything we have heard has made it clear why the Bill is necessary. … Restraint is used too often and disproportionately in certain sections of society. This cannot be allowed to continue. When she responds, I hope the Minister will support the Bill and allow it to be sent to Committee".—[*Official Report*, Commons, 3/11/17; cols. 1107-09.]

As we know, the Government are to be congratulated on their willingness to support the Bill.

As noble Lords have said, the purpose of the Bill is to improve,

"the oversight and management of the appropriate use of force in relation to people in mental health units".

It aims to do this in various ways, including through extensive training and requiring police officers to wear body cameras while in mental health units.

The case that has been referred to, of Seni Lewis dying due to improper force, is not isolated or a rare mishap. The current reality is that there is a severe lack of trained workers, leaving it open for patients in these health units to be abused and mistreated. The Crisis Prevention Institute found that in 2016-17—other noble Lords have referred to this—3,652 patients were injured while being restrained during NHS treatment. This is widely recognised as unacceptable, as shown by the unanimous support the Bill gained as it went through the Commons.

I am going to refer particularly to women who die after being restrained. In July, the organisation that looks at the issues faced by women facing multiple deprivation and abuse, Agenda, published research which said that 32 women died after experiencing restraint over a five-year period. It continued:

"The data, on patients detained under the Mental Health Act, suggests women were more likely to have restraint-related deaths than men between 2012/13 and 2016/17. Younger women made up a large number of the restraint-related deaths – 13 were aged 30 and under, compared to 4 men in that age range. More than a fifth of women who died were from Black, Asian and Minority Ethnic backgrounds, according to the figures, which were originally gathered by the Care Quality Commission".

The director of Agenda, Katharine Sacks-Jones, said at the time:

"It is a national scandal that so many women are dying in our hospitals after being subjected to restraint. Mental health units are meant to be caring, therapeutic environments for women and girls feeling at their most vulnerable, not places where their lives",

should be,

"put at risk. This bill is a real opportunity to reduce the use of this potentially lethal practice".

I hope that we will see it go through your Lordships' House.

However, that issue of the gender-based and other equality-based issues is one that I would like the Minister to address because of those factors. The idea that a woman who may be suffering from mental health problems and has been abused should then be

[Baroness Thornton]
subject to restraint in a mental health unit is really unthinkable and cruel. The guidance that flows from this legislation really has to address those issues.

A whole series of amendments were tabled in the Commons, which we will probably not be discussing in your Lordships' House because we want to get the Bill on the statute book and do not want to risk it. However, those amendments tabled to the Bill in the Commons raised some very important points. I hope that the Minister will address the issues they raised, many of which have been raised by noble Lords already. They include: that training for staff should include training on trauma-informed care to understand how trauma exposure can affect patients' neurological, biological, psychological and social development; to ensure that staff are required to have training on a patient's right to advocacy, so as to improve the legal rights of the patient and capability of the staff; to ensure that the training for staff includes training on safeguarding procedures, to increase the protections for patients and the knowledge and capabilities of staff; and to ensure that training on the use of force complies with the quality standards so that the Secretary of State can delegate the training standards to a different agency, for example Health Education England.

The noble Baroness has already mentioned the importance of recording and accountability. I want to raise the use of the word "negligible". It seems to me that it provides a loophole and could decrease transparency. I hope the Minister will be able to address that issue because I would hate us to find ourselves back here in three or four years' time discussing this issue again because we have managed to put on to the statute book something that creates a loophole which is then used to not solve this problem.

I agree with noble Lords that the Secretary of State coming to Parliament with the statistics about mental health units and the use of force is very important. Is the Minister confident that, if we put this legislation on the statute book, the legislation and the guidance will be sufficiently robust to achieve what my honourable friend Steve Reed wanted to achieve when he set off on this journey, which was to not allow these tragedies to happen again?

2.20 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, I shall begin by thanking three sets of people for getting us this far. The first is the noble Baroness, Lady Massey, whom I thank for introducing this Bill and for the opportunity to respond and contribute to the Second Reading. The second is Steve Reed, the MP for Croydon North, who, as all noble Lords have said, has done much of the work to get the Bill to where it is today. We know how difficult the journey of a Private Member's Bill is, but that it has got this far in this good shape and has this broad support shows not just how important this issue is, but what a fantastic job he has done. I congratulate him. The third set of people are the parents and family of Olaseni Lewis. They have been through a heartbreaking experience, but they have nevertheless fought and campaigned tirelessly for justice for their son. I join other Members of the House in expressing my admiration for them, their resolve and the work they have done to ensure that other families do not to suffer in the way they and their son sadly had to.

This is an emotive subject. It touches the lives of people when they are at their most vulnerable, but at the same time we need to be conscious of the fact that patients must have trust in all NHS services in whatever setting. In that context, the topic of restrictive interventions is always difficult. They are never without risk. Going through an intervention and, I believe, delivering one can be a frightening and traumatic experience for patients and staff at a time when those patients are unwell. The Government are clear that restrictive interventions should only be used as a last resort when all attempts to de-escalate a situation have been employed.

Noble Lords are aware that in April 2014 the Government launched the positive and safe programme, which aimed to reduce the use of these kinds of restrictive interventions in the health and social care sector. That included the non-statutory guidance, *Positive and Proactive Care: Reducing the Need for Restrictive Interventions*. It was intended to inform the Care Quality Commission's programme of monitoring and inspections.

What has been identified not just in this debate but during the passage of the Bill in the other place and by my honourable friend the Minister is that the existing guidance is not having the impact the Government expected and that much more needs to be done. For that reason as well as others, the Government are in full support of this Bill.

The noble Baroness, Lady Massey, was right in saying that this Bill is a good example of cross-party collaboration. A number of changes have been incorporated since it was first introduced to respond to multiple concerns, many of which have been raised this afternoon and by other parliamentarians, campaigners and staff. I pay tribute to all those who have contributed to the improvement of the legislation in the other place.

I shall deal quickly with some of the amendments that were made in the other place because they demonstrate how the Bill has been improved and that it is in a good place now. First, we have included "isolation" and "segregation" in the key definitions of use of force to address stakeholder concerns that these commonly used techniques would not be recorded and reported on nationally if they were not included in the Bill. We clarified the role of the responsible person in Clause 2 so that a board-level or equivalent person has responsibility for reducing restrictive interventions.

We have added to Clause 3 so that the policy on the use of force must set out what steps will be taken to reduce the use of force in the mental health unit, something that has been mentioned many times today. We strengthened Clause 4 in relation to sharing information with the patient about their rights, so that the responsible person has to take whatever steps are reasonably practicable to ensure not only that a patient is aware of the information about their rights but that they understand it. Critically, on the point that was raised by the noble Baroness, Lady Tyler, it will ensure that every patient and their family members or carers

understand what the patient's rights are in relation to the use of force while they are in a mental health unit, a really important improvement.

In Clause 5 we have expanded the topics that must be covered in training courses to recognise the impact that trauma may have on a patient's physical and mental health and, as the noble Baroness, Lady Thornton, said, what is known as trauma-informed care. I will return to the issue of training but I will say at this point that we have also now included a requirement for staff to receive refresher training as appropriate, so it is not just one-off training.

We have expanded the list of information that must be recorded in Clause 6 to include a description of how force was used and the outcome of that use of force to increase transparency and accountability, while also amending the time for which records must be kept so that it is proportionate and in line with data protection law.

In Clause 7 we have ensured that the responsibility for publishing annual statistics sits with the Secretary of State in order to enable NHS Digital to collect national data and produce and publish those statistics. Following this debate today, in response to the question from the noble Baroness, Lady Tyler, I will clarify the timing of the publication of the statistics so that it can be done in a way that shines the greatest light on that information. I shall write to her and all noble Lords with more details on that.

In Clause 8 we have further committed to an annual review of published reports by coroners under paragraph 7 of Schedule 5 to the Coroners and Justice Act 2009—more commonly known as regulation 28 reports—relating to the death of a patient as a result of the use of force, and any other findings made during that year. This will enable lessons to be learned across the system. This was one of the points made by the noble Lord, Lord Harris, and again, I will respond to that in a bit more detail in a moment.

Clause 9 is the result of much discussion about investigations, to ensure that mental health units have regard to any guidance relating to investigating deaths or serious injuries that is published by a range of organisations including the CQC, NHS Improvement and NHS England, as has been referenced. This puts the NHS Serious Incident Framework on a legal footing and gives strength to the requirement to carry out an independent investigation into an unexpected death, including the death of a patient following the use of force.

Finally on the improvements made in the other place, the clause on police body cameras was amended to ensure that the use of body-worn video is proportionate, legitimate, necessary and in line with the College of Policing guidance on its use. It was also amended to clarify that failure to bring or use body-worn video when attending an incident in a mental health unit is not in itself a criminal offence.

I thank noble Lords for indulging me in mentioning those points. I wanted to demonstrate the improvements that have been made in response to stakeholders from the charitable and voluntary sector. By virtue of those improvements, we can be confident that the Bill is in very good shape and, in response to the question from the noble Baroness, Lady Thornton, has the best possible chance of delivering the outcomes we want. We want to ensure that the Bill goes through in its current shape but, like my colleague Jackie Doyle-Price, I will be more than happy to meet any noble Lords who want further reassurance on any of the questions they have asked, although I shall try to deal with some of them as well as I can now.

I turn to some of the specific points and questions raised by the noble Baroness, Lady Massey, and other noble Lords. First, on the timing of the statutory guidance, calls to see drafts of it and the timetable for its publication, Jackie Doyle-Price in the other place accepted the need to move quickly and said that publication within 12 months of the Bill being passed would be appropriate in the context. I believe that this is reasonable, given the complexity of the guidance that we will need to consider. On the critical question of how it will be drawn up, we plan to establish and consult with an expert reference group, including experts in the field of restrictive interventions and people with lived experience, as well as carrying out a public consultation on the guidance before it is published. I reassure noble Lords that we will work closely with key stakeholders to take account of their contributions, and the discussions on the Bill in both Houses, in developing the guidance. I hope all noble Lords who have taken part in this debate will have the opportunity to contribute to the development of that guidance.

The issue of diversity and the disproportionate use of force for black and minority-ethnic groups was raised by the noble Lord, Lord Adebowale. Annual figures from the mental health services dataset showed that in 2017 the number of people subject to restrictive interventions was 9,771. Collectively, these people experienced more than 71,000 incidents of restrictive interventions. They also showed that they were disproportionately affecting patients from the BAME community, as well as women and children, as was mentioned by the noble Baronesses, Lady Thornton and Lady Tyler. This is clearly unacceptable, but we do not yet have a consistent and rich enough dataset to understand exactly where the problems in the disproportionate use of force take place, when they take place, in what settings, and so on. It is precisely for that reason that we want that rich dataset to inform practice and action, and to respond accordingly. I should be pleased to follow up our debate today with noble Lords, once data is available, to think about what action could be taken to address the discrepancies in performance.

The noble Baronesses, Lady Tyler and Lady Massey, asked about children. I can confirm that the Bill applies to all patients in a mental health unit, including children, for the purposes of treatment for a mental disorder. The children and young people who are being looked after in those mental health units are, of course, among the most vulnerable patients, and I absolutely acknowledge that staff will require a different skill set when looking after them. I will come to the issue of staff training in a moment, but Clause 5 sets out the requirements for staff training, including involving patients in their care, and this will be a different conversation for children and young people than for an adult. I reassure noble Lords that the statutory

[LORD O'SHAUGHNESSY]
guidance that we produce will have specific examples and principles of good practice for how to carry out those conversations with young people and children, as well as with adults.

I should like to address some questions raised about the use of force. Although it has not been raised in this debate, it was asked in the other place whether the words "threat to use force" and "coercion" should be included. The reason for resisting that is that we believe that they can be useful terms when used properly as part of de-escalation techniques. As the noble Baroness, Lady Tyler, pointed out, those techniques are incredibly important in reducing the use of force wherever possible.

Nevertheless, we need to ensure that there is proper oversight to ensure that threats are not used improperly. That is part of the policy that we will expect the responsible persons to put in place to ensure proper responsibility, and proper accountability within the organisation for the reduction of the use of force and not merely substituting for it by other means.

Of course, as noble Lords have pointed out, staff must be properly trained. On those occasions where restrictive interventions are needed, we must feel confident that mental health unit staff have the techniques at their hands to use properly. In response to the question asked by the noble Baroness, Lady Massey, and other noble Lords, I say that Clause 5 sets out as a minimum the list of training topics which must be covered. The list in the Bill is not exhaustive, but covers the essential topic areas key to ensuring that, where necessary, force is used in a safe way using the least restrictive force. I mentioned that that will include ensuring that staff receive refresher training at regular intervals to ensure that they are up-to-date with the latest techniques and new approaches.

While we are on the topic of force, I shall address the question asked by the noble Baroness, Lady Thornton, about the use of the term "negligible". As I have said, Clause 6 imposes a duty to keep a record of any use of force on the patient by staff who work in that unit. It sets out what information should be recorded and how long those records should be kept.

The clause also states that the duty to record does not apply to the use of negligible use of force. This is because, in consultation with our health partners, it was felt that staff should not be burdened with the need to record lower-level therapeutic activities, such as the use of a lap belt when moving someone in a wheelchair, or guiding someone by the arm down a corridor or through a doorway. These are activities that happen many times every day and, if we did not have this exception, staff would have to record such events as a use of force. This would significantly increase the time spent recording which would take staff away from caring for patients.

Baroness Thornton: Maybe that is the wrong word, then. Maybe the Bill should say "therapeutic" or something which does not allow a loophole which says: "Oh well, that slap was only negligible". That might be the wrong word to use.

Lord O'Shaughnessy: The noble Baroness makes a good point, which is relevant to the point made by the Delegated Powers and Regulatory Reform Committee when it reported on the Bill, which I will use this opportunity to address. This was about our proposal that definitions should be within statutory guidance. This determines the appropriate mechanism for making the definition, to ensure that the kind of problems pointed out by the noble Baroness do not arise. The committee noted that the guidance under Clause 6(3) will determine whether a use of force is negligible, and thus affect the legal obligations of responsible persons in mental health units. The committee's view is that this should be set out in regulations, in order to provide an appropriate level of parliamentary scrutiny. I have replied to the committee on this issue this morning and will share my letter with noble Lords.

We considered whether the meaning of a "negligible" use of force could be set out in regulations or, indeed, on the face of the Bill. However, the range of techniques that may be used for physical interventions alone is many and varied, from the most serious, such as prone restraint, to something as simple as guiding a patient by the elbow down a corridor or through a doorway. Furthermore, what is negligible will generally be a matter of degree rather than kind. It was concluded that the meaning would be more effectively illustrated through example case studies in guidance, which would also allow for more rapid revision to take account of changes in practice. The decision to require "negligible" to be determined in accordance with the guidance was taken to ensure consistency of approach to recording uses of force across the sector. Because the information recorded under Clause 6 will be used for the preparation of national statistics about the use of force under Clause 7, if responsible persons are taking a different approach to recording information—a current problem—that will affect the interpretation and value of the statistics.

The Government accept the committee's concerns about the sensitive nature of the subject. This is why the Bill imposes constraints on the issue of guidance, one of which is to require the Secretary of State to consult any person he or she considers appropriate. In practice, that will mean consulting experts in the field of restrictive interventions and those with lived experience whom the Government consider appropriate for this type of guidance. It is not usually the case that we go against the advice of the committee, but in this instance we felt that the nuance required around the definitions of "negligible", combined with the strength of force that is needed to provide consistency for statistics, meant that this particular definition within a form of statutory guidance was the appropriate way forward. I hope that noble Lords will accept that; if further discussion is warranted, I would be happy to follow it up.

My final point is on the issue of deaths of patients, which was at the heart of the questions asked by the noble Lord, Lord Harris. There was a lot of debate on Clause 9 in the other place and the clause was revised in Committee, but concerns remained about the timeliness, quality and independence of the investigations that would be made whenever a patient dies following the use of force. As Clause 9 is drafted, if a patient dies or suffers a serious injury in a mental health unit, the responsible person must have regard to any guidance relating to the investigation of deaths or serious injuries published by a list of organisations which are responsible

for regulating and monitoring the NHS, such as the CQC. As I said, this means that the NHS serious incident framework is put on a statutory footing. The noble Lord, Lord Harris, gave some examples of how this would work in practice and talked about level 3 investigations. However, prior to that there is a legal duty, under the Mental Health Act, to report the death of a patient to the CQC. After that, an independent investigation should always be considered following the death of a patient in those circumstances.

As the noble Lord pointed out, level 3 investigations under the framework are those that will probably be most suited to these kinds of incidents, where the integrity of an internal investigation is likely to be challenged or where it will be difficult for an organisation to conduct such an investigation internally in an objective manner. I want to be clear that no one involved in the investigation process should be involved in the direct care of the patients affected, nor should they work directly with those involved in the delivery of that care. Following such an investigation, there would of course be an inquest, including a legal duty to report the death to the coroner, who has a duty to investigate violent or unexpected deaths. I hope that gives the noble Lord some reassurance about the objectivity and independence of the investigatory framework that would follow such a death. I am more than happy to discuss that further with him, and to make sure that the point he made is properly reflected: that there is an opportunity not just to investigate individual deaths but to look for thematic issues at a higher level—of the kind that he outlined and indeed used to be responsible for carrying out and which the IPCC used to carry out—which may be suitable for the new health services investigation board that we are introducing. That is something that I would like to discuss further with him.

The noble Lord also briefly asked about support for families. Legal aid is, I believe, the most appropriate way for that support to be offered. The Ministry of Justice has considered this in response to the Dame Elish Angiolini report and will also consider deaths in these settings on the same basis as deaths in prisons and police custody. Again, I hope that provides some reassurance, but if he wants to discuss that further I would be more than pleased to.

I hope that I have addressed all issues and questions raised in the debate today. I just finish by saying how important the Government consider this legislation to be and how much we support the noble Baroness in bringing it forward. Noble Lords have indicated that they do not intend to amend the Bill, and of course we are all conscious of time, but I am more than happy to speak to any noble Lords about remaining questions to make sure that we can put their minds at ease, provide the necessary reassurance and move ahead as quickly as possible.

2.42 pm

Baroness Massey of Darwen: My Lords, I thank all noble Lords who have taken part in the Second Reading of this Bill. I have found the debate most moving, which cannot often be said about debates in your Lordships' House. It has been both interesting and moving, and it is a pleasure to be in the midst of people who are so concerned about vulnerable people—children and adults. I hope that the family of Seni will consider this debate something of a tribute to him and to themselves for all their work in bringing this to our attention and the development of a Bill that could be a very significant piece of progress.

I shall just make a few comments about speeches that noble Lords have made. I liked the very incisive comments of my noble friend Lord Harris and his clarity in talking about the investigation of deaths in custody, based of course on his own vast experience of this. I learned a lot from his speech and I hope that the Minister will take that up further, as there was a lot in there that needs to be looked at again in writing, assessing how it could contribute to any possible future guidance. The noble Lord, Lord Adebowale, also has huge experience of working with vulnerable young people and with mental health issues. He emphasised the need to take account in the guidance of the work of NGOs, which I—and I think all of us—totally support. The noble Baroness, Lady Tyler, and I have worked for years on the issues relating to children and young people and I am glad that she reinforced comments on that, as did other noble Lords, and that she gave her support to the Bill. Her point about consultation with parents is important, as was the issue also raised by my noble friend Lady Thornton about the traumatisation of women who may have been subjected already to violence and be in distress. She also mentioned training in the prevention of the use of restraint.

My noble friend Lady Thornton raised many good points about equality. I think she said that it was "unthinkable and cruel" that people who have problems should be subject to more, and sometimes regular, violence. She recalled the amendments tabled in the other place and said that we should take account of them, and I agree. I am trying not to use the word "negligible" here. At least I can say it. I thank my noble friend for her comments in winding up.

The Minister made some helpful points about the importance of cross-party collaboration in the Bill, and said that more needs to be done. He covered many issues that have been raised today, and I know that he is passionate about this, because we have talked about it. It would be a good idea if we had a full meeting after this debate. Things have come up that we need to tease out the meanings of, like that terrible word "negligible", and the word "patient" itself, including children in that. What is a child? We need a definition. Is a child someone under 18? In fact, some organisations use "child" to cover up to age 24. Let us get some correct definitions. Let us listen to what my noble friend Lord Harris said, to what all other noble Lords said, and to the NGOs. The Minister is generous to suggest a meeting, and it would be useful, just to tidy up some of the things we have talked about and to reinforce some of the issues. I would appreciate that, and perhaps we can talk about it afterwards.

Having said all that, I thank all noble Lords. I said I was moved by the debate, and I was. We have done justice to a serious and important issue here, and I hope that we will see it move forward a bit more rapidly than I heard the Minister say. I do not know

[Baroness Massey of Darwen]
whether that is possible, but we need guidance as quickly as possible, although not rushed guidance. However, with consideration, we can make this into good guidance that will have some impact on the ground where people work and are in mental health units. I also take the point that the people administering this violence may also be suffering somewhat. I am of the view that violence never solves anything at all; we need a different approach to this, which can come only from training, discussion and sympathetic listening to people who are in this position. I ask the House to give the Bill a Second Reading.

Bill read a second time and committed to a Committee of the Whole House.

House adjourned at 2.48 pm.

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