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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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House of Lords

Friday 23 November 2018

10 am

Prayers—read by the Lord Bishop of Oxford.

Divorce (Financial Provision) Bill [HL]

Order of Commitment Discharged

10.06 am

Moved by ***Baroness Deech***

That the order of commitment be discharged.

Baroness Deech (CB): My Lords, I understand that no amendments have been set down to this Bill and that no noble Lord has indicated a wish to move a manuscript amendment or to speak in Committee. Unless, therefore, any noble Lord objects, I beg to move that the order of commitment be discharged.

Motion agreed.

Organ Donation (Deemed Consent) Bill

Second Reading

10.07 am

Moved by ***Lord Hunt of Kings Heath***

That the Bill be now read a second time.

Lord Hunt of Kings Heath (Lab): My Lords, I should first like to declare an interest regarding my forthcoming appointment to be a member of the General Medical Council.

Noble Lords: Oh!

Lord Hunt of Kings Heath: It is a good start, my Lords—just have to keep going.

Every year, NHS Blood and Transplant holds a number of very moving ceremonies with donor families. These occasions are wonderful celebrations of the gift of a loved one's organ, to give life to others. Last year in England, there were over 1,300 deceased organ donors and over 3,300 transplants. That is a wonderful achievement but we could do so much more. My Bill aims to increase the number of organ donations while maintaining strong family involvement in the decision which, I stress, will remain a remarkably altruistic act of giving. Nothing in this Bill will change the concept of giving.

It is thanks to the tireless work of a number of people to promote the Bill, especially my honourable friends Geoffrey Robinson and Dan Jarvis, who secured unprecedented cross-party support, that we are today a step closer to putting it on to the statute book. I extend my thanks to the Prime Minister and my right honourable friend the leader of the Opposition, and to other leaders of the political parties in Westminster, for their continuous support for the Bill, and to the *Daily Mirror*, for its unflagging and enthusiastic support. I also pay tribute to the noble Baroness, Lady Randerson, who took forward subsequent legislation in Wales to allow organs and tissues under deemed consent to be used in transplants in the rest of the UK countries. I am hoping that she may inform the House of the latest progress in Wales regarding the legislative changes that occurred there.

The Bill is often referred to as Max's and Keira's Bill, in honour of a recipient, 10 year-old Max Johnson, who recently received a "Pride of Britain" award from the Prime Minister for his immense bravery while waiting for a heart transplant, and the donor, Keira Ball, who tragically died in a road accident. I pay tribute to both of them.

There is currently a record 20 million people in England recorded on the organ donor register, but 400 people died last year while waiting for transplants, and a further 755 people were removed from the transplant list as they were just too ill to receive treatment and a transplant. This is partly down to the fact that only 1% of people die in circumstances where their organs are suitable for donation. It is also partly because members of the family are often not aware of their loved one's wishes, and sometimes find it safer to say no. Our ambition is to achieve an 80% consent rate in England. This will not happen overnight; the experience in Wales is clear in that respect. However, if we reach that target and 80% of families allow donation to go ahead, there will be 280 donors a year, which could lead to as many as 700 more transplants a year. The Bill, if enacted, will be a significant step forward. Starting from the basis of presumed consent, the family would still be fully involved in the decision. The aim essentially is to spark in England the positive culture change that many nations in Europe have experienced, following their change to an opt-out position. It will mean more people being inspired to have that incredibly important conversation with their loved ones, knowing that the life of a person waiting for a transplant could be saved.

In countries where deemed consent systems are in place, there are generally higher numbers of organ donations when supplemented with wider measures. I will return to that later. It is particularly pleasing to note that Wales has now reached a consent rate of 70%, and the first few months of 2018 showed that rising to 73%.

I would like to give a summary of the Bill, which consists of three clauses. First, however, I would like to clarify a few things about its scope. The proposed consent system only covers deceased donations—it does not apply to living donations or donations for research purposes. The Bill would make changes to the Human Tissue Act 2004, which covers England, Wales and Northern Ireland, but it would make the changes to consent in England only. The system of deemed consent in England will be consistent with the Welsh opt-out system. Transplants which currently take place under the current system—heart, lung, kidney, liver, pancreas, bowel and tissues such as corneas, skin, bones and tendons—will fall under the deemed consent provisions. Excluded from those provisions will be the less common organs and tissues, often called novel transplants. These will still require express consent.

Following consultation, regulations will be set out by the Secretary of State in an affirmative statutory instrument, which will specify which organs or tissues will be excluded from deemed consent. A Written

[Lord Hunt of Kings Heath]
Ministerial Statement will be part of the process every time the regulations are amended. It is important we have an approach consistent with Wales and Scotland on these issues to make sure that nurses and clinicians working across borders follow the same approach.

There are other important safeguards in the Bill. First, all children below 18 will be excluded from deemed consent, although they will still be able to register as now to donate their organs. People who are not ordinarily resident in England for at least 12 months immediately before their death will be exempt from the new arrangements. In practice, this means that people living in England in the short term will not be affected by changes in the consent system. The Bill also provides a safeguard for people who lack the capacity to understand the concept of deemed consent for a significant period before their death. The decision on whether a person lacks capacity will continue to be established in accordance with the Mental Capacity Act 2005.

Very importantly, the Bill sets out the role of the deceased family and friends under the proposed arrangements. It makes it clear that they may provide information suggesting the deceased would not have consented, to prevent donation proceeding. This is very important. I reassure noble Lords that the family of the deceased will continue to be involved in discussions with specialist nurses about their loved one's wishes and how best to support those wishes, also taking account of faith and cultural considerations. Clinicians will never proceed if the family object strongly. I know the Government have worked hard with different faiths to ensure that they are comfortable with how deemed consent will work. As Kidney Care UK put it, changes in the law on consent do not change the importance of people talking to their families about their wishes in respect of organ donation.

To support the smooth implementation of the provisions in the Bill, it places a duty on the Human Tissue Authority, the regulator, to update its code of practice and issue practical guidance for professionals. The new codes will be consolidated in a single code, to be consulted on and laid in Parliament. The Bill will also allow all organs removed in England for transplantation purposes to continue to be used across the UK, to save as many people in need as possible.

Clause 3 sets out that the Bill extends to England, Wales and Northern Ireland as it will be amending the Human Tissue Act 2004, which extends to those countries. It sets out that Clauses 1 and 2 will come into force on the day or days that the Secretary of State appoints in regulations made by statutory instrument, so in effect the Secretary of State will have to set out what the commencement date is for deemed consent in England. Clause 3 automatically comes into force on the day that the Act is passed.

I recognise that a change to the consent system is not a panacea. The Bill needs to be accompanied by an assurance that capacity in the NHS in terms of transplant teams, intensive beds and specialist nurses will be sufficient. I particularly mention the need for good-quality training and greater numbers of specialist nurses. They are remarkable people who have the extremely difficult role of initiating discussions about potential organ donations with families at such a sensitive time. The Spanish experience is that investment in specialist nurses is one of the major factors in their success and the transformation that has occurred in Spain.

It will be essential to have a strong communications strategy to ensure that the public are fully aware of the changes, and I look forward to the Minister's response on that. I would also say—and I think this is the Welsh experience—that it is important to have follow-up campaigns because clearly, the cultural change we want to see will not happen overnight.

I end by saying that I am clear that the gift of giving will be as strong a part of organ donation as ever. I thought the Minister in the other place, Jackie Doyle-Price, put it well when the Bill went through its Commons stages:

> "The most important thing any of us can do if we want to increase organ donation is ensure that we all have those conversations with our families, so that they understand our wishes … One of the great virtues of the Bill and the surrounding campaigns is that we have encouraged people to have those conversations. It has been a real driver of cultural change in that sense".—[*Official Report*, Commons, Organ Donation (Deemed Consent) Bill Committee, 12/09/18; cols. 11-12.]

I think that puts it very well. I am confident that, if enacted, the Bill will play a significant role in changing the culture towards organ donation in England and help hundreds of lives in the years to come. I beg to move.

10.18 am

Lord Lansley (Con): My Lords, I am privileged to have the opportunity to speak following the noble Lord, Lord Hunt. I very much applaud the way in which he has brought the Bill forward and the way he presented it today. I thought he covered exactly the points that must be at the forefront of our minds in thinking about its implementation. It is my hope and expectation that the Bill will pass into law, and that it will have precisely the beneficial effects that its promoters have sought.

It might be helpful, at this early stage in the debate—I know we all share the objectives—to review the previous thinking about these issues, not least from the passage of the 2004 legislation that we are amending. The noble Lord, Lord Reid of Cardowan, was Secretary of State at the time of the 2004 Act. I was shadow Secretary of State in another place. My interest in these issues was not least as a constituency Member of Parliament, in that I represented both Addenbrooke's Hospital, where clinicians led by Roy Calne did ground-breaking work in reducing the rejection of transplanted organ tissue, and Royal Papworth Hospital, which has the largest number of heart and lung transplants, and is where Terence English conducted the first UK heart transplant and John Wallwork and colleagues performed the first heart and lung transplant. So I was always closely concerned with and supportive of the transplant work they were doing.

In 2004, however, it was not concluded during the passage of the legislation that we should proceed on the basis of deemed consent. There were two parts to that. First, the evidence continued to be inconclusive that deemed consent itself was the principal issue in obtaining the necessary organs for transplantation. The noble Lord, Lord Hunt, referred to the Spanish

experience, which was relevant and much debated at that time. We are going back some way, but those responsible for the system of consent in Spain took the view that an opt-out system was not the most important part of their experience in achieving the best transplant rates in Europe. A subsequent review was published in the journal *Health Technology Assessment* in 2009, so a little later. I was Secretary of State in 2010 and it was part of the thinking then. The conclusion of that systematic review across a number of countries said:

"Presumed consent alone is unlikely to explain the variation in organ donation rates between different countries. A combination of legislation, availability of donors, transplantation system organisation and infrastructure, wealth and investment in health care, as well as underlying public attitudes … and awareness … may all play a role".

I am simply reiterating what the noble Lord made clear in moving the Second Reading today. All of those things matter.

In 2004, the noble Lord, Lord Reid of Cardowan, said that he did not agree with the principle of deemed consent because, across the National Health Service and healthcare, we were setting out to ensure that consent was enshrined in our activity and that we should not proceed except on the basis of informed consent. To deem consent, arguably, is to abandon that principle. In this instance, we have to recognise that we are treading across an important ethical boundary, and understand why and how we are doing it. It is not that we should not do it, but that we understand the importance of recognising it.

As the noble Lord said, there is a provision in the Bill that says that, where families can demonstrate a reasonable basis for thinking that the deceased person would not have consented to transplantation, they should not proceed. The question also arises of a family who has no evidence of what the deceased person may have said, but objects themselves. We need to think carefully about that, not least because of what I remember from talking to nurses involved in transplanting at both Addenbrooke's and Papworth, during the passage of the legislation in 2003. They said they did not quite understand what an opt-out system really meant. What is the difference between, on the one hand, asking the family of somebody who has died whether they would consent to donation; or, on the other hand, saying that, although consent is deemed to have been given, we are none the less going to ask whether you agree or object? They found it difficult to understand the difference.

In practice, we should recognise that there is a difference in terms of public attitude and awareness. I think that was demonstrated in Wales, and I look forward to hearing from the noble Baroness, Lady Randerson, about the Welsh experience. In the first year or so, it was not evident, because the numbers were small and the period of time relatively short, that there was a major shift. It may well be that more of a shift is taking place over time. But much of that may be less to do with the fact of deemed consent and more to do with public awareness and support for the process itself.

After our debate on the 2004 legislation, I would not want us to proceed in this debate thinking that the broader range of issues were then neglected. They were not. In 2008, the then Labour Government instituted the Organ Donation Taskforce, the objective of which was in the subsequent five years, I think, to increase donor rates by 50%. In practice, they went up by about 45% and have continued to increase. That is precisely because the things that we know are also important were happening. There was increased public awareness and there has been an increase in the number of people on the organ donor register. After 2010, we engaged the nudge unit—the behavioural unit—to think about how we could nudge people to make that choice before their death. That has had some benefit through organisations such as the DVLA, but especially in the training of staff in the NHS and the appointment of additional specialist nurses for organ donation. It is important that it is not the clinicians who have been trying to save a life who then have to speak to the family about organ donation. Having those specialist nurses available and staff having the right training is really important.

All those things happened under the Organ Donation Taskforce, so on that basis, I do not share the view of Chris Rudge, who was the transplant director when I was Secretary of State and was responsible for the implementation of the task force, who I believe continues to oppose deemed consent. I think we have an almost ethical obligation to do everything that may contribute to the achievement of higher donor rates and thereby to save lives. The noble Lord, Lord Hunt, is absolutely right: it is tragic that so many people are on the waiting list for organs and die or leave the list without the benefit of a transplant. We must do everything we can.

I urge colleagues to recognise that we must think very carefully about how we do that and to recognise that there are other things that we have done and should continue to stress which may themselves make a significant contribution. We should proceed only on the basis that there is consensus, which happily there is, between parties and, I suspect, widely in the country. The objective is so important that we must be willing to take the ethical step of deeming consent where we cannot be absolutely sure what the deceased person's view would have been. On that basis, I hope that the House will give the Bill a Second Reading.

10.28 am

Lord Patel (CB): My Lords, first, I congratulate the noble Lord, Lord Hunt, on his appointment to the General Medical Council. I do not know whether I should also sympathise with him—I hope it bodes well for the GMC—because he certainly needs it.

I support the Bill, which proposes new opt-out legislation for the organ donation register. It is not a position I have held before when I have previously spoken about deemed consent, but I have had a change of mind.

Before I go any further, I am very pleased to see that the noble Lord, Lord Elder, will speak in this debate. I very much look forward to his contribution. I also put on record my gratitude to all those involved in organ donation. Every transplant is a reflection of the exceptional altruism of the donor and their family, and a testament to the care and hard work of many in the hard-pressed NHS. This has led to the organ

[Lord Patel]
donation and transplantation numbers reaching an all-time high. Last year, for the first time ever, 5,000 people benefited from a transplant in a single year.

Despite this, several challenges remain. As we have already heard, there is an increasing gap between the number waiting for a transplant and the number of organs available. Every day, three people who are in need of an organ die. As of 15 November 2018, 6,163 people are on active waiting lists for an organ. Over 300 are children, and over 300 are in need of a new heart. Change in legislation may not by itself be the magic wand, but together with other necessary measures, it may well begin to narrow the gap between those on the waiting lists and the number of organs available.

There is also the challenge of the huge imbalance between the number of people in black, Asian and ethnic minority communities who are in need of a transplant, and the number of suitable organs available for them. More organs from these communities are needed, as blood and tissue types must match, particularly for things like kidney transplants.

Surveys suggest that opt-out legislation leads to higher rates of organ donation, but at the same time, evidence of direct cause and effect is lacking. Clearly, as has already been mentioned by the noble Lords, Lord Hunt and Lord Lansley, other factors must also play an important part in raising the numbers. We need to be aware of what these might be. I agree with the Nuffield Council on Bioethics when it says that opt-out systems can be ethical,

"if people are well-informed, families are appropriately involved (well-supported …), and trust in the organ donation system is not compromised".

This means that this Bill must pay serious attention to three key areas. The first is a well-informed public: the public should be informed on an ongoing basis—that point has also been made. Information about organ donation should be easily available.

The second area is the importance of families: families must stay at the heart of the decision-making process. In this respect, the role of the specialist nurses is crucial—again, this has already been emphasised. We need to make sure that there are enough specialist nurses available, as they play an important role at a very sensitive time in families' lives, both for the donor and the recipient of an organ.

The third area is the importance of maintaining trust in the organ donation system. Public information on the new system will need to be backed up by the continuous education and training of the health professionals involved.

Let me now turn briefly to the challenges in relation to black and Asian communities and organ donation. Over 1,800 patients from black and Asian communities are on the waiting list for organ donation. Some 901 received a transplant last year, but had waited much longer; 114 people donated organs. Some 35% of the total number of patients waiting for kidney transplants are from black and Asian communities, partly because of the increased rates of diabetes and renal disease that occur in these communities, and partly because kidney transplants require a closer matching of blood and tissues than other transplants.

It is important that these communities understand what opt-out means, and that they are involved. While the government campaign will focus on black and Asian and other ethnic minorities, it will require a sensitive approach on the back of opt-out legislation, providing culturally sensitive information, a targeted awareness-raising campaign, and issues that need to be addressed to gain the trust that will be required.

This legislation is widely supported by the medical and other health professionals and charities, particularly those such as the British Heart Foundation, and we should support it too. I hope that the House will not hold it back.

10.35 am

Baroness Crawley (Lab): My Lords, I too congratulate my noble friend Lord Hunt on his important work in bringing the Bill before us today, and of course on his new appointment—we are very proud of him.

In so many ways, the business of politics should be to minimise unnecessary pain and marginalise premature death, as the noble Lord, Lord Lansley, said. According to the latest NHS figures for the year ending March 2018, the total number of patients whose lives were saved or improved by an organ transplant increased by 7% to 5,090, as the noble Lord, Lord Patel, said. It is a mercy that we live in a time when, thanks to science and innovation, sick children can be given new hearts—but really they are old hearts. This is the most wonderful form of recycling we can ever hope to see. Like all good recycling schemes, the more people who get involved and take action and tell their kids about it, the stronger and the healthier our society becomes.

The statistics show that the incidence of every kind of organ transplant is rising, from donors both living and deceased. But hundreds still die every year while waiting on the list, hoping for a donor who does not appear. We are told of the 426 patients who died last year on the waiting list for new organs; of those, 17 were children. There can be nothing more gruesome for their families—all those loved ones who know that the science is in place and the doctors are ready, but the phone never rings. Their souls must be truly sealed up with tears.

Everyone knows a relative or a friend—I certainly do—whose lifespan has been extended by the good will of a fellow human being whom he or she will most likely never meet. The silent solidarity of one particular young man who has bone marrow drawn out of his pelvis so that an older man can defeat blood cancer is the most precious human currency we can ever store. The kidney, the pancreas, the liver, the heart and the lung can all be used more than once. A thousand tons of relief and joy must pour into families every year because of this modern, scientific and miraculous reality.

I congratulate Dan Jarvis and all those from all sides of the House in another place who have pushed so hard to make Max and Keira's law not merely a step forward but, with this opt-out provision, a turn of the ratchet. The *Mirror*'s campaigning activity, sustained over several years, is a credit to the editor and the journalists concerned, as well as to all the brave families who told and retold their stories in its pages. Such a sustained campaign has been needed because, although

80% of people said they would be willing to donate their organs when asked last year, only 37% had recorded that decision on the NHS organ donor register. The gap is important.

Finally, as the noble Lord, Lord Patel, mentioned, we are surely all glad that, where in the past there have been cultural and religious inhibitions about post-mortem transplants, that now seems to be something of a losing force. I hope that continues. We have to hope that the whole of England, in all its glorious diversity, absorbs the message of deemed consent and that every community teaches its young that organ donation is one of the highest forms of good.

10.40 am

Baroness Chisholm of Owlpen (Con): My Lords, I am delighted to support this Bill and thank the noble Lord, Lord Hunt, for bringing it before us today. Its importance cannot be overestimated. It is a good and—thank goodness—simple Bill, and it will save lives. As the noble Baroness, Lady Crawley, and the noble Lord, Lord Patel, mentioned, there are encouraging signs of donors coming forward, but the statistics are still depressing and distressing. As we have heard, Wales already has a presumed consent or opt-out system, and Scotland intends to follow suit. As the noble Baroness, Lady Crawley, mentioned, research has shown that 82% support organ donation, and the public consultation showed unprecedented support, yet we know that only 37% are on the organ donor register.

This simple but effective Bill has the support of doctors and health campaigners. It will not, on its own, solve the problem of getting more donors on the register, but it will enable us to move forward and launch an awareness campaign. I am sure all noble Lords remember the huge publicity around the early transplants, when the successful recipients were household names, seen on TV and interviewed in newspapers and magazines due to the rarity of the procedure. Thank goodness that is not the case today and transplants are now an everyday occurrence, but that headline news was an incentive for people to come forward as donors. The general public are, on the whole, unaware of how important it is for donors to register. Most do not register unless they are personally affected.

Therefore, to be as effective as we hope it will be, this Bill depends on the awareness campaign around it. As the noble Lord, Lord Hunt, mentioned, there needs to be a cultural change. I think I am right in saying that, at present, family refusal rates in the UK are considerably higher than in many parts of mainland Europe. There needs to be education in schools, colleges and universities; an awareness campaign on the radio and TV, in newspapers, magazines and social media; a campaign on lives saved, with examples from donors and recipients; and, perhaps most importantly, a campaign to encourage families to have the conversation. As the noble Lord, Lord Hunt, mentioned, letting the relatives know the organ donor's decision will make it much easier for them to be supportive at a time of immeasurable grief. I still remember vividly how difficult it was, when I was nursing, to have this conversation with relatives and loved ones, who more often than not were unaware of a donor's wishes.

This Bill does not change families' rights. They will continue to be included and will not be overruled; it will not close families out. But the way in which the possibility of donation is presented can have a critical impact on the decision that relatives and loved ones make. Timing, language and the right healthcare professionals are all important factors, and I was pleased to see confirmation in a letter from my noble friend the Minister that there will be specialist nurses for organ donation and a key focus on training to enhance skills in supporting grieving families. It is also vital that those who opt out and relatives who do not give consent feel no shame, and that we respect their decisions.

This Bill is a no-brainer, as far as I am concerned. With the right campaign, it will become apparent that this is not a forced choice and that organ donation is still a gift, perhaps one of the greatest gifts that can be given from one human being to another. One donor can help many recipients. The donor process benefits not only recipients, but also the families of donors and recipients. Recipients' families have the joy of having their loved ones returned to health, while donors' families find meaning and gain peace from knowing that lives have been saved as a result of the unfortunate death of their loved ones.

Once again, I thank the noble Lord, Lord Hunt, for bringing this important Bill to our attention, and I am grateful for all the clear explanations of it from both the noble Lord and the Minister, my noble friend Lord O'Shaughnessy. I am delighted that the Government fully support it. Let us now get on with it and get the Bill through Parliament.

10.45 am

Baroness Finlay of Llandaff (CB): My Lords, I congratulate the noble Lord, Lord Hunt of Kings Heath, on bringing this important Bill to this House. It will bring organ donation legislation in England in line with that of Wales and Scotland for the benefit of all. I should declare that I was involved in the early stages of consultation in Wales, and I introduced the Kidney Transplant Bill in 2008 for presumed consent to donate one kidney, provided there was no evidence either from a central registry or from the dead patient's relatives that he or she had opted out of being a potential donor. My Bill did not progress but I continued to have an involvement in the developments in Wales.

Many years ago, I conducted a study of bereaved parents and was struck by the comfort that donation gave them after their terrible, tragic loss. Some regretted not being asked about transplant donation and one regretted having declined.

Laws send social messages. When we were considering such legislation in Wales, we undertook very widespread consultation and carefully considered the pros and cons. I hope that England can now learn from our experience, because all the planning and consultation was essential to the success of the legislation when it came into force.

I want to cover how we went about it, the results of our process overall and things that I hope the Minister and the team will implement to take this forward. I am grateful to Professor Vivienne Harpwood from Cardiff University school of law for giving me the latest data.

[Baroness Finlay of Llandaff]
She has worked on this issue for years. I also pay tribute to the noble Baroness, Lady Randerson, whom I would like to call a friend—she is indeed a friend—for the important role she has played in Wales.

A tremendous amount of careful thought and planning contributed to the success of the legislation: there was very careful consideration of the ethical issues; we studied the outcome of similar legislation in other countries and consulted with many sections of society, including faith groups and ethnic minority groups to help us understand their sensitivities, respect their views and address their concerns; and numerous meetings and consultations took place. Although the Human Transplantation (Wales) Act obtained Royal Assent on 10 September 2013, the system did not begin to operate until December 2015 to allow adequate time for people to absorb and understand essential information about the new law.

As we had decided to introduce a "soft" opt-out system, we realised that it was necessary to have a large-scale information/education process, during which families were encouraged to discuss their wishes and people were urged to make their views about organ donation known to their relatives. Every household in Wales received carefully designed bilingual written information on more than one occasion, and there was an extensive media campaign, roadshows in supermarkets and other places, and a national countdown clock. This campaign informed people clearly that they could either opt in or opt out of the organ donor register, or do nothing if they did not object but wished their family to decide. A 20-second TV advert urged, "Talk about your organ donation decision or someone else may speak for you". It was very powerful.

By 2017, over half the adult population in Wales had talked with family about their wishes. The widespread publicity about the benefits of organ donation helped people understand the gift of life, and we saw an early rise in the number of organs donated and transplanted. We also invested in training specialist nurses in organ donation. As the noble Lord, Lord Hunt, stressed, these nurses are key to the legislation working well. They sensitively explore the family's recall of those conversations and their feelings.

It is essential that the bereaved family are able to express their views and know that they will be respected, as the Bill before us ensures. There must never be pressure on families. They are being asked to consider donation when they are numb at the sudden loss of the person they love—their child, spouse, fiancée, partner, brother, sister or a parent. Their grief at that time is overwhelming, and they live for the rest of their lives with the events of that tragic day. They remember every word of the conversations they had, second by second. That is why a soft opt-out, as in this Bill and in Wales, is so important.

Remembering donors and thanking families with national events, such as the Order of St John services of thanksgiving, are important to recognise that they have given the gift of life. In my own family, the service honoured the man who died, bringing enormous comfort to all the bereaved, including his children.

Three and a half years after we implemented our legislation in Wales, we now have the highest combined donation rate in the UK of 80.5% after brain stem or circulatory death. Currently, England runs at 66.2%, Scotland at 63.6% and Northern Ireland at 66.7%. Donation after brain stem death now has consent rates in Wales of 88.2%, as opposed to those in England at 73.3%. Donation after circulatory death consent has also risen in Wales to 68%, compared with 59.8% in England. These figures are better than we were expecting when the legislation was going through the Assembly, and the accompanying publicity campaign might account in part for this latest good news and, importantly, that we have not had the problems or backlash predicted.

There has been a steady increase in Wales. On 1 December 2016—the first anniversary of the implementation of the new legislation—the figures indicated that 39 organs were transplanted from patients whose consent was deemed. Welsh Government reports published on the same day were accompanied by positive statements by both the First Minister and the Cabinet Secretary for Health. By February 2018, 39% of the Welsh population had opted in to donate.

When you speak to people from donor families, you realise how glad people are to have been able to transform the lives of complete strangers, despite having faced the overwhelming tragedy of losing a loved one. You realise how important the recognition of their gift is, through these services of thanksgiving and so on, as they go forward in their own lives.

I seek two reassurances from those taking this forward. The first is that the public education campaign will be as thorough and carefully planned as ours in Wales. The second is that it will be accompanied by enough intensive care beds and specialist nurses in organ donation. Families must never feel hurried, and there can be a need to maintain hydration and oxygenation while waiting for the transplant to be set up. Even those waiting for a transplant always keep the phone by them, anxiously waiting for that call to the operating theatre, but it can take some time to get there. I am grateful for the assurance given in the letter from the Minister and the noble Lord, Lord Hunt, that preferential donation, which I argued hard for in 2009, will not be jeopardised. Where a family member is awaiting transplant, and the tissue is compatible, relatives must be able to ask for that specific organ to go to that person, while other organs go unconditionally to others waiting.

On a solemn note, I hope with this Bill we will see an end to transplant tourism, where desperately poor people sell an organ—nearly always a kidney—or, even worse, organs are harvested from executed prisoners. We should follow Italy, Spain, Israel and Taiwan in legislating to confront this abhorrent human rights issue, but that is for another day.

The Bill before us today is incredibly important. It can help the 5,000-plus people waiting for a transplant to join the 50,000 now living thanks to organ donation. It is truly the gift of life, and it deserves a smooth passage.

10.54 am

Lord Ribeiro (Con): My Lords, I support the Bill and hope it will pass. I thank the noble Lord, Lord Hunt, and my noble friend Lord O'Shaughnessy for the briefings they gave us before today. However, I have a few reservations, which I will address shortly.

As we heard from the noble Lord, Lord Patel, the black, Asian and minority ethic—BAME—community is one group of patients most in need of a change in legislation. BAME people are often the most in need of transplants—particularly kidney transplants for renal failure due to secondary high blood pressure—but, for various reasons, they often refuse consent because of faith or cultural concerns. In 2017-18, 1,487 BAME patients were on the renal transplant waiting list, many as a result of high blood pressure—a particular problem for this ethnic group—but only 49 deceased kidney donors from BAME backgrounds to help out. That represents a fraction of the need. As a surgeon and an African, I understand the difficulties faced by BAME people in becoming donors. There may be religious, cultural or ill-informed reasons for saying no.

I have experience of working as a patron of Transplant Links Community, or TLC, a charity that has transformed the lives of many people in Africa and the Caribbean who suffer from kidney failure, especially children. Without transplantation, such people have to endure regular dialysis, often three times a week, which can be challenging in a rural setting and extremely expensive. The charity was founded by two kidney specialists from Queen Elizabeth Hospital in Birmingham: Dr Dwomoa Adu, a fellow Ghanaian and a nephrologist, and Dr Andrew Ready, a transplant surgeon.

In 1974, Dr Adu and I worked in the renal service at Korle-Bu Hospital in Accra, Ghana, the hospital chosen by the Birmingham team for their first live-donor kidney transplant in Ghana in 2007. We have heard about a boy called Max, but Felix, the young boy on whom this transplant was performed, has completed a chemistry degree and hopes to become a doctor. The programme has now been extended to Trinidad, Jamaica, Barbados and Zambia and is supported by my fellow patrons, the noble Baroness, Lady Benjamin, and my noble friend Lady Cumberlege. By their very nature, live-donor transplants can help only a small number of patients, while cadaveric donation has the potential to help many by offering more than one organ for transplantation.

As a surgeon working in the UK, I know how difficult and distressing it can be to approach the deceased's family with a request for organ donation, often after heroic efforts to save the person's life. As we have heard, it is not surprising that at this most sensitive time, some families say no—even if the deceased had indicated a desire to donate. Eight out of 10 patients on the transplant waiting list are hoping for a kidney; currently, 4,375 people in England are waiting for a kidney. A change from opting in to opting out will make an enormous difference and provide more organs for transplantation.

However, as the noble Lord, Lord Hunt, said, unless the infrastructure is improved, with more specialist nurses, transplant co-ordinators and so on, we will not see much change. The British Transplant Society warns that,

"assessments of the effects of opt-out laws on donation rates are hampered by differences in cultural attitudes, economic conditions, availability of intensive care units, numbers of transplant co-ordinators, degree of governmental support and other factors, whose influence may be important but uncharted".

Spain, as we have heard, has the highest rate internationally of transplantations with the opt-out policy, but it introduced the system in 1979 and saw a significant increase only,

"ten years after the law was introduced. Much of Spain's success is attributed to the establishment of a new national transplant organisation to co-ordinate the donation and transplantation process, including the appointment of transplant co-ordinators who instigate conversations with the family of potential donors".

As I said, doctors faced with repeated rejections by families often fail to press the case and so opportunities are lost. We must invest in more staff as well as raise public awareness of the need to donate. The Government will, I am sure, launch a campaign to highlight the need for more organ donors. Public awareness will, we hope, lead to an increase in donors, especially from BAME communities, who face the greatest challenge with donations, as the noble Lord, Lord Patel, told us.

I started by referring to live-donor transplants. These reflect a personal commitment—a gift, as has been said, from one loved one to another. This altruistic giving should continue and not be impacted by the belief that it is no longer necessary as the opt-out programme will remove the need for it. Tissue-matched live-donor transplants give the best results and we must encourage families to continue to engage in the programme.

The noble Lord, Lord Hunt, referred to an organ donation consent rate in Wales of 77%. I have a publication here from the Welsh Government, dated 16 November, which suggests that Wales has reached the highest organ donation consent rate in the UK, at 80.5%. This compares to 66.2% in England, 63.6% in Scotland and 66.7% in Northern Ireland. This is the first sign of Wales's opt-out programme working. It is time for us to catch up, but let us not assume that a change in the law will be the end of the matter, like waving a magic wand—it will not. It will require preparation and information to drive a public awareness campaign and I look to the Minister to tell us how this will be achieved. I can also tell the House that I have spoken to the president of the Royal College of Surgeons, who personally supports the Bill and will be raising it with his council in December.

11.02 am

The Lord Bishop of Carlisle: My Lords, the Church of England is wholly committed to both the principle and the practice of organ donation, believing as it does that giving oneself and one's possessions voluntarily for the well-being of others and without compulsion is a Christian duty and that organ donation is a striking example of that. Like many other noble Lords, I am personally glad to have my name on the organ donor register. I was closely involved with the so-called fleshandblood churches campaign, which we ran in partnership with the NHS from 2012 onwards and added thousands of potential donors to the list. We therefore have absolutely no wish to be remotely churlish about this Private Member's Bill which is so very

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clearly well intentioned, and with whose overall objectives we are in complete agreement. We are most grateful to the noble Lord, Lord Hunt, for bringing it forward.

However, I cannot let this moment pass without mentioning three caveats which have all been raised elsewhere and by other noble Lords but which bear repeating and need to be borne firmly in mind as the Bill proceeds. First, "deemed consent" is not some sort of magic wand—as the noble Lord, Lord Ribeiro, referred to it—that will automatically increase the number of effective donations. More important by some distance, as we have been reminded, is the raising of awareness, the encouragement of conversations about this subject in families and a new willingness to talk about death. This was stated by the Bill's author as one of its principal aims, but I do not see the Bill achieving that aim in itself. As some have observed, it could have the opposite effect. This would be highly unfortunate since, as we know, for understandable reasons, grieving relatives are often a stumbling block to donation, even when it was manifestly the deceased person's wish.

My second hesitation is that our present system, which is referred to as a hard opt-in but is really a soft opt-in, reflects a very careful balance between individuals, relatives and the state, with a presumption that the state does not have a right to dictate either to individuals or their families how their bodies should be used. An opt-out system represents, whether it means to or not, a major shift in the state's relationship with its citizens. The noble Lord, Lord Lansley, touched on this. As the Catholic Bishops' Conference of England and Wales observed, an opt-in system emphasises the positive ethos of donation as a free gift with informed consent. Despite the assurance from the noble Lord, Lord Hunt, that the Bill is still very much about giving, this suggests that we need an overwhelming case that numbers of lives saved or enhanced would be significantly increased. That overwhelming case would have to be made before a change of this kind is introduced.

That brings me to my third caveat. There is at present, I suggest, no overwhelming case. The evidence, such as we have, is rather ambivalent. I fully acknowledge the February 2018 *BMJ* article cited in our Library briefing, which says that Wales has seen more registered donors and fewer family refusals than any other part of the UK since the introduction of the opt-out system in 2015—the noble Baroness, Lady Finlay, and the noble Lord, Lord Ribeiro, referred to the very high consent rate in Wales. However, at the same time, as the same briefing records, the Welsh Government indicate that, as yet, opt out has had no impact on the number of actual organ donors in Wales. It is three years on: perhaps we do need to wait 10 years, as the noble Lord, Lord Ribeiro, suggested, because at the moment the evidence is not clear.

I note the comments of the highly regarded Nuffield Council on Bioethics, which is concerned that making a legislative change based on poor evidence risks undermining public trust in the organ donation system. Indeed, as we have been reminded, especially by the noble Lord, Lord Ribeiro, examples from countries such as Spain indicate that improvements to transplant protocols and procedures are more important than a change to the consent system. That is why the Church of England would prefer to build on the current opt-in model to increase the number of organ donors and transplants. However, we accept fully the head of steam, as it were, behind the Bill and will certainly not oppose it. None the less, we ask that in the almost certain event of its successful passage three very important considerations are taken into account.

The first—we have heard a great deal about this already—is that there should be very good communication, not least in schools and in BAME communities, where, as we have heard, the need for donors and transplants is often greatest. We heard some statistics on this from the noble Lord, Lord Patel. The second is that adequate resources should be made available for the implementation of this new system, including specialist nurses for organ donation. That has been mentioned by almost all noble Lords who have spoken. The third is that more effective use should be made of potential donors, in ways highlighted by the transplant pathway. Only then do we believe that the pressing need for more organ donations will be met.

11.09 am

Lord Oates (LD): My Lords, in speaking on this Bill, I should first declare my interest as a non-executive director of NHS Blood and Transplant, as set out in the register of Members' interests.

There are many people who deserve credit for their role in this legislation, but as a number of noble Lords have said, the most profound recognition and honour should perhaps be given to Keira Ball and Max Johnson. Keira, as many noble Lords will know, died tragically at the age of nine in a car accident. During a time of unimaginable grief and shock, and with his wife also seriously injured, Keira's father agreed to organ donation. Keira saved the lives of four people through that precious gift. One of those patients, as we know, was Max Johnson, who received her heart. His campaign was instrumental in inspiring this Bill that we are debating today.

As the noble Lord, Lord Hunt, stated, we also owe a huge debt to Geoffrey Robinson and Dan Jarvis, who introduced the Bill in another place. We also owe a debt to the noble Lord, Lord Hunt, who has brought this Bill before this House.

As many noble Lords have also recognised, every year hundreds of people continue to die while awaiting a transplant, due to lack of availability of organs. Hundreds more come off the transplant list because their health has deteriorated so greatly that they cannot receive a transplant. The noble Lords, Lord Lansley and Lord Ribeiro, and other noble Lords are of course absolutely right that the Bill on its own will not change that, but the experience in Wales demonstrates that such a Bill, accompanied by effective communications—and most importantly, a public debate and family conversations—can mark a profound shift. The latest figures from Wales have shown such a shift, and I pay tribute, as other noble Lords have, to my noble friend Lady Randerson for her part in that process.

Already, there has been extensive engagement from the public in England as a result of this Bill being brought forward. Over 17,000 people responded to the

public consultation, a figure that is well in excess of normal response rates to government consultations. NHSBT's ongoing public surveys indicate that over 80% of the UK population supports organ donation. As part of the consultation process, NHSBT also undertook work to seek the views of those who are most closely involved in the donation process: intensive care clinicians; clinical leads for organ donation; and specialist nurses for organ donation. Over 700 responses were received. The results show that over 76% of respondents supported the change in legislation. There are also many people who not only responded to the formal consultation but who have given further help to review and scrutinise the Bill to ensure it achieves its objectives without adverse or unintended consequences. The contribution of the faith communities has also been critical.

So the Bill has the support of the public, it has stakeholder support and it has medical and nursing support, and that support will need to be honoured by doing everything possible to make sure that every family of every single potential donor is approached and, where consent is in place, that every single organ that can be safely transplanted is transplanted. First, there is the importance of the communications strategies and campaigns, which have been spoken about already as having been important in Wales, that can raise awareness of the change in the law and encourage conversations in families, so that people have an understanding of the new legislation and also have reassurance that the decision still lies with the individual. Secondly, there is a need to ensure that the infrastructure is in place to manage the increase in donation and transplant activity. Medical and nursing teams need to be able to keep pace with the anticipated rise. Thirdly, we need to ensure that everything is done to use all organs that are donated.

It is anticipated that the change in legislation will increase the availability of organs from donors after circulatory death, from whom currently fewer organs can be successfully transplanted. Organ usage from these donors can be dramatically increased if the retrieval teams are able to use technologies that preserve the organs. For example, between February 2015 and July 2018, the introduction of machine perfusion for hearts led to 66 additional hearts being available for transplant. Service evaluations for the use of abdominal organ machine perfusion also demonstrate significant increases in the number and quality of organs that can be donated. Using these new technologies will help ensure that no potential for a safe transplanted organ is missed.

The fourth and final approach needed to deliver successful change is to continue to publicly recognise and celebrate organ donors in the way that a number of noble Lords have already mentioned. Organ donation is the last, greatest gift that anyone could possibly give. It is giving the gift of life and it must continue to be celebrated, even when this Bill is passed.

During the debate over the proposed changes to the law, a number of important issues have been raised by the public and a variety of stakeholders, particularly around family and faith. The public and stakeholders have been very clear that it is vital that the family should continue to be involved in discussions regarding organ donation after a change in the law. As the noble Lord, Lord Hunt, made clear, that must, and will, always remain the case. The next of kin of potential donors will always be approached prior to donation. If the family is not present when the patient first enters hospital, the NHS goes to great lengths to find them. That starts when the ambulance crews first arrive at the scene and continues until the next of kin can be found. If necessary, the police are asked for their help, and other records such as passport applications are checked to identify next of kin. Where there is no family, others are approached, such as friends of long standing.

Family discussion is vital for three reasons. First, it is the right thing to do. Secondly, speaking to families is necessary to determine whether their loved one would have wanted to donate, and that will continue. Thirdly, information is needed from the family regarding past medical and lifestyle information. Without this, it is much more difficult to determine whether it would be safe for retrieved organs to be transplanted.

Many noble Lords have paid tribute to the specialist nurses and highlighted their importance in this process. They are vital, and anybody who has had the privilege of speaking with them about their work will know their dedication to the very difficult job they do, in such a professional, sensitive and caring way. They ensure that, as far as possible, the family are given sufficient time to consider organ donation. NHSBT data shows that family consent rates are significantly higher if a specialist nurse is involved in the family approach.

Families are also aided by knowing whether their loved one had recorded a decision on the organ donor register. The consent rate is 92% if the family know that their loved one had recorded a decision to donate on the register. It will remain important to encourage people to register a positive decision. The family will always be asked for their views on whether any special considerations should be taken into account, including whether their loved one had a particular faith or beliefs and whether the family would like to speak to a faith leader or counsellor.

Finally, there are strict policies and protocols in place to safeguard the process, with many checks throughout the donation, retrieval and transplant process. Consent is checked on multiple occasions, by several different medical, nursing and support teams. NHS Blood and Transplant is audited and inspected on this aspect by the Human Tissue Authority.

In conclusion, it is absolutely right to say that this Bill, in itself, is not a panacea, but it is an important contribution. It will help start the debate and deliver—in the way that has been shown in Wales—profound changes, we hope, in levels of donation. I pay tribute to the noble Lord, Lord Hunt, and to all those who have brought this Bill forward. I recognise the work of officials in the Department of Health and Social Care, and the great work that has been done by the Minister in another place, Jackie Doyle-Price, and the noble Lord, Lord O'Shaughnessy. Most importantly, our tributes, thanks and recognition should go to the donors and their families, whose decisions are the gift of life. We hope that this Bill will allow far more people to benefit from such donations.

11.20 am

Baroness Sater (Con): I thank the noble Lord, Lord Hunt of Kings Heath, for his sponsorship of this Bill. I also pay tribute to all those here and in the other place for their tireless endeavours so far on this important matter. That it has cross-party support in both Chambers is also very welcome and will, I hope, facilitate smooth passage into law.

My Lords, the briefing for this debate has been clear and informative, so I will not take up time telling the House that which they already know. The stats are deeply distressing and concerning, as many noble Lords have mentioned today. As the noble Lord, Lord Patel, mentioned, three people die each day due to a lack of suitable organ donation. Over 6,000 people across the United Kingdom are actively waiting for transplants that will save or significantly prolong their lives. On average, those from ethnic minority backgrounds may wait much longer than others for a suitable match.

It was as a trustee of the British Lung Foundation that I became aware of the crucial need for and success of organ transplants and their transformational effect on not just those whose lives they saved, but their families and friends as well. The saying "a new lease of life" never rang more true. But I confess, my support for the British Lung Foundation may not have come about had I not witnessed my own mother succumb to emphysema some years before. It was heartbreaking to watch my much-loved mother's most vibrant life deteriorate, to the extent that she struggled to simply breathe. An organ donation would not have saved her, but what we do know is that today there are hundreds of people afflicted with lung disease, and many whose condition could be improved or life saved by a transplant. It is right that we do all we can to finalise and pass this very necessary Bill, but also provide the sustainable environment in which it will need to operate.

I was pleased to note that the money resolution for this Bill was passed in September. It is important recognition of the additional work an opt-out system would require and the costs that will need to be borne by the NHS and its blood transfusion authority, for example. I recognise and respect the absolute right of individuals to opt-out of organ donation, and we must make it easy for those people to do so. Establishing the practical infrastructure for those who do wish to follow through is also vital. Funding for these elements is indeed key. The United Kingdom has a very low level of organ donation consent—a sobering point which illustrates a great and profound need for a public awareness and education campaign on this subject. Both here and in the other place, attention has previously been drawn to the example set by Spain, whose noteworthy successes in this field include both educating its people and reaching families who wish to override consent previously given.

When considering the Bill's financial implications, I would encourage the Government to continue reflecting on the huge importance of public awareness. It is at the age of 18 that a person becomes eligible to determine whether or not they opt out of organ donation. In order to make an informed decision and ensure their wishes are carried out, they must be able to speak with ease about it to their families, friends, teachers, doctors, faith leaders and so on. The only way to ensure that everyone is comfortable having this conversation is by giving them the knowledge they need through open, transparent and easily accessible means. Public health campaigns have had significant impact and huge success in the past, but invariably they require co-ordination across government portfolios and the money to back them up. It would be devastating to win the day but lose the battle because of a lack of information.

I am delighted the Government are supporting the Bill. I feel grateful to be able to play some small part in furthering the cause today and I look forward to supporting the Bill going forward.

11.25 am

Lord Elder (Lab): My Lords, I rise to support the Bill and, in doing so, congratulate my noble friend Lord Hunt on his role in this and Geoffrey Robinson, in another place with other colleagues, for introducing a timely and important Bill.

I start by declaring something of an interest. As many of you will know, I am a recipient of a heart transplant myself. I was reflecting recently that, when I had my heart transplant by the excellent team led by John Dark at the Freeman in Newcastle, all those years ago, they said that the half-life of a transplant patient was about seven and a half years and I would be very lucky to last 30. There was the important rider of a new drug being introduced and, with a bit of luck, that would improve things. I do not know what has happened but, as that was now slightly over 30 years ago, I am particularly grateful for developing technologies in this area.

All I have done and been able to do over the past 30 years has been the by-product of a decision of either an individual or their next of kin, or both, to allow someone they did not know to benefit from the tragedy that they were facing from the loss, often sudden, of a loved one. So I come to this debate knowing and understanding the benefits for the patient or the recipient of a transplant, but of course I am very conscious that every recipient is one part of a process that involves either an individual making a commitment to the transplant programme by saying that, should their life be cut short, their organs should be used to help others to live—an act of great generosity—or, if not them by them, by their next of kin or others, so that others could benefit from their tragedy.

I appreciate that a register is important, but nothing is quite as important, in my view, as speaking to friends and relatives, and having an understanding of what they want and how to do it. This can mean either that the donor has made clear directly their view that their organs should be used or that the next of kin takes that view themselves. It can also mean people taking a decision in the most difficult of circumstances. For many, the decision will be sought at the point when all they can think of is the need to mourn, to cope, and to help their family and friends to do likewise. The danger is that if they take the entirely understandable decision to leave the decision about transplant for later, it will not be possible, because it is too late. I pay tribute, as others have done, to the members of the transplant teams—the co-ordinators

and specialist nurses—who have the crucial and difficult task of talking to families, on both sides of the process, and taking them through the fraught times they are facing. They are vital to the success of the scheme.

Of course, as a recipient of a transplant, I support the Bill. It is not because it will transform everything—it will not—but because it is another essential step in making the process of transplantation more accepted, better understood and more common than it is at the moment. This may mean not just this change of policy; I hope it will not be the end but the continuing of a serious attempt to have a public, open discussion and argument about the importance, understanding and benefits of signing up to the transplant process, and all that that means for individuals, their families and friends.

What the Bill does not mean is a change to the position whereby, if anyone has made clear their wishes not to have any part of the transplant programme, they should not be overturned. But it opens the way for those who have not made their views known, still to be eligible, with safeguards, for their organs to be used in the event of their untimely death. It should therefore increase the number of transplants possible and reduce the number of otherwise avoidable deaths from the lack of available organs. For that it has to be supported. As I say, it will not end all problems, but it will be a step change in the movement to what some of us think would be a more rational use of the bodies we have been given after these bodies have ceased to be of use to us. I wish the Bill well.

11.30 am

Lord Leigh of Hurley (Con): My Lords, I join in the congratulation to the noble Lord, Lord Hunt of Kings Heath, on his promotion of this Private Member's Bill. This is of course a very difficult and sensitive subject. First, one must recognise the importance, for those awaiting transplants and their loved ones, of increasing the number of donors as much as we can. I note that the number of donors has been steadily increasing, both in absolute amounts and as a percentage, for the last 10 years—from 771 in England in 2008-09 to 1,349 in 2017-18—and this is of course very welcome.

I have no medical training whatever but I wish to draw your Lordships' attention to my register of interests, which discloses that I am a vice-president of the Jewish Leadership Council and the president of Westminster synagogue. As such, speaking as a progressive rather than Orthodox Jew, I point out that, as some of your Lordships might be aware, as in many religions there are many strands within Judaism. The Orthodox community would probably be guided by the traditional biblical prohibitions against making any cuts to a body. The body is regarded as a holy vessel, because it has housed a soul created by God. The body therefore has to be honoured, as much as if it still contained a living person. However, I have discussed this matter directly with the Chief Rabbi, Ephraim Mirvis, and he believes that all Jews would temper that view by recognising that there is a higher value of saving a person's life, and that that trumps all considerations.

Needless to say, every rabbi has a view and the old saying that for every two Jewish people you will find three opinions seems as valid in this field as any other. I am also a member of Hurley's local synagogue in Maidenhead. The rabbi there, Dr Jonathan Romain, points out that there is the issue of personal autonomy and the fact that our body belongs to us, not to the Government or the NHS. So while it may be very worthy to donate organs after our death, we alone should make that choice. This was before he concluded that whatever the ethics of personal autonomy, and despite biblical objections to making cuts to the body, saving life is the highest objective.

Other rabbis, particularly Rabbi Sylvia Rothschild, point out that, ethically, for any medical procedure a person should be informed about and understand what is to happen, including any risks, and should consent explicitly to each procedure. That would not be possible with an opt-out system, which she encapsulates by pointing out that presumed consent would arrogate to the state rights that were hard won, including the right to own and make decisions about our bodies. The right reverend Prelate the Bishop of Carlisle pointed this out. But she goes on to say—and others make this point—that perhaps the better way to increase the number of organ donors, which I believe currently stands at 24.9 million, is to invest in educating the public to understand the importance of registering if they wish to be a donor.

I am, however, supportive of this Bill, mainly because of the letter that the Minister, Jackie Doyle-Price, wrote to the president of the Board of Deputies of British Jews on 25 October in which she stated that,

"organs and tissue will not be taken without full consultation with persons in a qualifying relationship".

The Minister specifically stated in that letter:

"There will always be a personal discussion with the family and full consideration … given to the views of a person's loved ones".

I thank her for that clarification but it does of course raise certain questions. First, should not this commitment be in the legislation rather than a side letter? Secondly, if this is to be a requirement, do we need the Bill? If in every case there will be a consultation before organ donation, which the letter confirms will require organ donation staff to go to extensive and far-reaching lengths to speak to family members, the opt-out does not really seem to change that much—particularly as there is a commitment that if family members cannot be reached, organs will not be taken from the deceased. I understand and am reassured to know that NHS organ donor teams will in any event need to talk to families as a matter of best practice, to try to determine whether the deceased had any allergies, history of drug abuse or other medical issues.

Leaving my reservations aside, I look to the Minster to confirm today that the terms of this letter will be honoured in full. This commitment is very important; of course, it raises some unresolved issues. For example, some families, such as mine, are mixed. My mother is Orthodox and may have reservations about organ donations, while other family members do not share this view. How will a consensus be reached? If any one person has reservations, will there be a prohibition? It is very hard for someone to determine another person's faith and ethical views, and rational analysis of what a person would want could be very difficult and stressful at a

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moment of grief. It is much easier if the deceased has chosen to donate organs by opt-in, but that may be impossible, in reality, if we move to an opt-out system. Accordingly, we need legal recognition of the organ donor register, which is not in the Bill. Indeed, recognition is needed of other first-hand wishes, like the codicil of a will, which frequently specifies such matters in addition to selecting preference on the nature of burial or cremation.

In conclusion, a person's decision to donate their organs to save the life of another human being is a wonderful act of humanity which deserves the utmost respect and support. Giving the state the right to take those organs, and depriving individuals of the ability to do so as a gift, is a very big step for our society to take. It must therefore carry with it respect for people's ethical and religious views. I personally would not stand in the way of this Bill, but seek at this Second Reading the assurance from the Minister that I have set out in my remarks.

11.36 am

Lord Carlile of Berriew (CB): My Lords, I too join in congratulating the noble Lord, Lord Hunt, and indeed the two colleagues in another place he mentioned, on bringing this Bill to Parliament. His characteristic modesty meant that he did not remind us of his enormous experience of the National Health Service, in the management context before he came to your Lordships' House, as a member of the Government and as a Member of this House. That experience gives us some extra reassurance about the integrity of the Bill and what it proposes.

Debates such as this raise serious, and sometimes acute, ethical dilemmas. I think the ethical dilemmas in relation to the Bill are strongly affected by the fact that this issue is about saving life, not ending it. As your Lordships know from previous debates, I take a very different view on issues that affect the ending of life. I am happy to support the Bill, because it seems to make an entirely positive ethical contribution to the debates we have on such issues, perhaps uniquely, in your Lordships' House.

I know that repetition rarely improves the quality of any argument. However, the support for the Bill, repeated from all parts of this House, and from all walks of life represented here, provides further important affirmation for it. We know that we are a somewhat unusual institution in this House; if a Martian were to walk in and look at the rules by which we come here, we would not pass the Martian test. Nevertheless, where else in the parliamentary world can we hold such ethical debates? Where else do we hear the kind of evidence that we are hearing in this debate? We very recently heard a wonderful speech from the noble Lord, Lord Elder, who told us of the heart transplant he had over 30 years ago. As we have seen today, it left him a very fit person: he has climbed more mountains than most of us have looked at. I hope he has also been able to enjoy some of the more traditional Scots remedies for exhaustion and other concerns.

We have also heard evidence from my noble friend Lady Finlay, who has spoken about the changes to the law in Wales and how effective they have proved. I think she gave some reassurance to the right reverend Prelate the Bishop of Carlisle about the increasing transplant figures in Wales.

I also look forward to hearing the contribution from my old friend the noble Baroness, Lady Randerson. She and I have known each other for many decades and I pay tribute to her determination. What she did in Wales on this issue was of great value, and I am sure she will provide very valuable evidence in a few minutes' time.

That leads me to Wales. For many years I was an MP in a Welsh rural constituency and I am completely unsurprised that this system in the United Kingdom was first introduced in Wales. People in Wales tend to think more empirically than many in politics realise. Also, the devolution settlement in Wales, in which the noble Baroness, Lady Randerson, played a very important part, has made it much easier to bring to the statute book changes such as this in matters not reserved to the United Kingdom Parliament. Wales has been able, as has Scotland in some things, to be a trailblazer on this issue and has provided a great deal of evidence.

My belief is that the system in Wales has worked very well. My noble friend Lady Finlay described the advertising campaign, which means that everybody in Wales, unless they spend 24 hours a day asleep, knows about this system and it is discussed in families, as well as in more public forums in Wales. It has worked very well and has widespread popular support, as it will have in England.

I turn to the duties of the medical profession and return to something that the noble Lord, Lord Hunt, said at the beginning of his speech. He told us that he is fortunate enough to have just been appointed as a member of the General Medical Council. I was a lay member of the GMC for 10 years, albeit in its former incarnation as a much more parliamentary-style body than it is now. At the heart of the General Medical Council—I am sure this is true of the much smaller and very distinguished current council—are strong and heartfelt debates about ethical matters. The GMC translates those ethical decisions made by the council into guidance for doctors. If you look at its website, you come very quickly to the guidance currently given to doctors on after-death care and organ transplantation.

I say to the noble Lord, Lord Hunt, that one of the most useful things he can do in his first few weeks on the GMC is to persuade it that that guidance needs to be expanded somewhat so that the section relating to cadavers, parts of which can be used for transplantation, are much more explicit and so that the genuine concerns about that area are addressed. When doctors breach such guidance, of course it should be treated as serious professional misconduct which can bring the most condign remedies against them. However, for doctors to know where they are in these matters, it needs to be set out more explicitly.

The ethical responsibility is laid firmly on the regulator, the GMC, which passes it on to doctors. I hope that the General Medical Council will recognise that what I hope will be the passing of this Bill and the creation of a new system in England as well as in Wales means that it must be very vigilant about the behaviour of doctors in this area. There have been some horrendous cases—such as the Alder Hey case, which has not been

mentioned so far in this debate—that have made one a little cautious about presuming that doctors can always be assumed to behave with superb ethical judgment. Sometimes they fail, and they need a stronger regulator to protect the public and themselves from such failures. I add that one of the principles that was often discussed when I was on the GMC was the responsibility of doctors to report other doctors who fall below appropriate standards. That failure, too, can be serious professional misconduct.

With those slight reservations, I support the Bill strongly, and look forward to England, once again, following Wales.

11.45 am

Baroness Brady (Con): My Lords, as always, it is an honour to speak here and to follow such knowledgeable contributors as we have heard today. I congratulate the honourable Member for Coventry North West from the other place on a well-targeted, balanced and proportionate Bill, and of course I congratulate the noble Lord, Lord Hunt, on bringing it before us today. After all, on such a sensitive subject as organ donation, when there is any action or intervention from the state or a change in policy, change must be proportionate, justifiable and properly communicated.

We have all heard about the virtues of "nudge economics", and indeed have seen its success in areas such as the opt-out for workplace pensions, which has had such an impact on saving rates. But of course, organ donation is more sensitive than pension savings, so we must tread carefully. The Bill does so. It does not impact on children or minors, or those who have already opted in, and, significantly, it will not impact on those who have not consented where reasonable evidence can be presented by the family that they would not have wished to be a donor. It concerns only those who have thus far taken no action to specify their wishes. This is a proportionate approach, and I hope that those in any doubt can be persuaded by considering the consequences of the Bill.

Quite properly, the Bill focuses on the treatment of and the impact on donors and their families. However, the benefits will be felt by the recipient, and those benefits are nothing short of the gift of life itself. We have heard today that three people die every day waiting for an organ, and thousands languish agonisingly on waiting lists. Upliftingly, however, statistics from 2017 estimate that 50,000 people—I emphasise that—are alive in the UK today because of organ donation. This is the impact that changes in policy towards donors must be weighed against. But enacting this policy change—which I believe we must do—should be only the first step. It needs to be followed by communication and campaigns to highlight the benefits—the life-changing, even life-preserving, impact that organ donations can have. This is for two reasons.

The first reason is to raise awareness and bolster support for the changes in approach. Changing to an opt-out regime should not be seen as an opportunity to take people by surprise. Even if, as I hope, the default position changes to opt-out, we should still try to deliver a regime that is as close to informed consent as possible. Secondly, the object of the Bill is to increase the number of organs available for donation to help preserve life. It should be noted that, for example, the US has very high rates of organ donation under an opt-in regime, while Greece on the other hand languishes near the bottom of the league tables despite having a similar opt-out regime to the one we are proposing today.

My point is that policy change is the beginning, not the end. There are cultural factors at play that we need to understand and speak to if we are to achieve the ultimate aims of the Bill, which are to boost organ donation while treating organ donors fairly and with respect. However, I am optimistic. As we have heard, Wales has seen an increase from 58% in 2015 to over 70% in 2017, since it introduced the opt-out regime, which surely gives us comfort that the Bill will be impactful and will change lives, especially if it is accompanied by a national campaign that can preserve confidence in the regime and boost organ numbers still further.

The British Medical Association is in favour of this change. Its members see the tragic consequences and wasted life every day caused by the status quo—consequences that can be mitigated by the Bill before us today.

11.49 am

Baroness Deech (CB): My Lords, at first sight this Bill is welcome and straightforward. It certainly is welcome, and appreciation is due to the noble Lord, Lord Hunt, and to all those who have promoted it.

I admit that my views are coloured by having been chair of the Human Fertilisation and Embryology Authority, dealing with associated but by no means identical matters. During my tenure, we had to deal with the Diane Blood case, where sperm was removed from her husband just before and just after his death without any consent. Of course, consent is absolutely central to the Human Fertilisation and Embryology Act. The lack of consent was got around by referring in part to the European law on the free movement of goods and services, which apparently included sperm. Nevertheless, the removal of the sperm was a flagrant breach of the law. The law was re-emphasised in the later statute, which pointed out that one cannot take anything from a body, alive or dead, without consent. This Bill goes the other way. Of course, sperm is not an organ, but I thought I should refer again to this notorious case, which highlighted the importance of consent.

As has been said, the BMA supports the shift to an opt-out system. In Wales, which has an opt-out system, consent rates rose from 58% to 72% in the two years to 2017, albeit reflecting very small numbers. So I give a hearty yes to the principle, but with a few words of caution and support. The BMA calls for the appropriate,

"publicity and engagement with the public".

It highlights the need to balance increased donation with,

"the wishes and autonomy of those who donate",

and their families.

Somewhat surprisingly, the very expert Nuffield Council on Bioethics did not originally recommend a change to an opt-out system, because, as it said, there was a,

[Baroness Deech]

"lack of evidence that such a change alone would increase organ donation rates",

and because of ethical concerns about the operation of the scheme. Now, the Nuffield Council, accepting the situation as it is in this Bill, emphasises how it can be made to work ethically. It says,

"it is vital to have measures in place that encourage people to express and document their wishes about organ donation during their lifetime".

A free choice in this or any other field is only legitimate if people are well informed and aware of the significance of their choice.

The Nuffield Council further says that,

"information about the donation process must be easily accessible".

It is not enough to have a publicity campaign when this Bill is passed. It needs to be maintained on an ongoing basis so that those who might donate, but are not thinking about it now, are as aware in the future as those who benefit from the publicity that will no doubt accompany this Bill's success.

The Nuffield Council also says that families must,

"stay at the heart of the decision-making",

process, and that their refusal of consent should be respected even where the deceased indicated a willingness to donate. To appear to have lower regard for the wishes of the family in their moment of bereavement would make their dilemma even more poignant and might make others suspicious of what might happen when a loved one dies.

The Nuffield Council suggests that a solution is to invest further in the network of specialist nurses for organ donation, who can support bereaved families. So the Nuffield Council is opening up the debate to the wider context and emphasising the need to maintain trust in the system. This is important when one recalls the Alder Hey scandal of retained organs 30 years ago, which led to the Human Tissue Act and dealt a serious blow to public trust in the handling of tissues and organs by hospitals—trust which has only now recovered and should not be risked again.

I should point out that one can also foresee legal disputes over the meaning of the provision in the Bill that there is no deemed consent where friends or family provide information that would lead a reasonable person to conclude that the deceased would not have consented to donate in his lifetime. That is in Clause 1(4) inserting the new subsection (6B) into the Human Tissue Act 2004. Any legal delay in decision-making would necessarily be fatal to the successful removal of the organ, which has to be done swiftly. I envisage that any information brought forward at the time of death that the deceased might not have consented, reasonable or not, would act to stop the removal.

There were also concerns on the part of faith groups, which I believe have been successfully addressed and handled. The Government should be thanked for listening. In Judaism, as the noble Lord, Lord Leigh, said, there is nothing more important than saving a life. Religious strictures yield to that, and donating organs is invaluable. Jews and some other faith communities have a commitment to bodily integrity that extends through life to death. Therefore it is critical for them to retain an element of donor and then family control in the system.

The letter from Ms Doyle-Price, Parliamentary Under-Secretary of State for Mental Health and Suicide Prevention—what a bag of responsibilities she has—which the noble Lord, Lord Leigh, referred to, was sent to the Board of Deputies of British Jews, dated 25 October, and was very welcome. The Board of Deputies represents mainstream Judaism. In that letter, the Minister confirmed that the concept of deemed consent applies only in the absence of a decision by the deceased or their appointed representative to consent or not consent, and that the method for signifying non-consent is not limited by the Bill.

The letter also said that, if an individual cannot be identified or a person in a qualifying relationship cannot be found, the organ donation will not take place, since they have to be consulted. Individuals will also be allowed to consent to donate organs selectively or conditionally. And a new faith option will be included in the organ donor register, where organ donors can request that their faith is taken into account when organ donation is in issue; the text on the register will say, "I would like NHS staff to speak to my family and anyone else appropriate about how organ donation can go ahead in line with my faith or beliefs"; and appropriate agencies will engage with faith and minority communities in developing guidance that addresses those concerns.

This letter provided faith and minority communities with the comfort that the change in the organ donation system will respect beliefs while helping to save lives. Along with the noble Lord, Lord Leigh, I ask the Minister to confirm that those assurances will be upheld.

11.57 am

Lord McColl of Dulwich (Con): I too congratulate the noble Lord, Lord Hunt, on bringing this Bill through. I should declare an interest as a former transplant surgeon. I found kidney transplantation the most exciting operation that I did in my 50 years of surgery. Kidneys would be flown in from all over the place in order to try to achieve a good match. One would connect up the vein and then the artery and to my surprise I found that some of the kidneys would start peeing on the table immediately, which was wonderful, but I noticed it was only the French kidneys that did this. I asked what it was about these French kidneys, and they said, "It's the French wine, you know". Well, in fact there were other factors involved.

At present, around 6,000 people are on the UK transplant waiting list, and last year over 400 people died waiting for a transplant. With so much at stake, it is not surprising that the question of how the donation system should operate is a source of strong emotion. The increased public awareness of the great benefits of donation is to be welcome, but—and there is a "but"—I have been rather taken aback by the way in which the evidence of what works, even the facts about the current law, has been manipulated and inflated by the media, in parliamentary debate and even in the consultation materials themselves. I do not think this is the way to support and maintain trust in our transplant system, nor to demonstrate commitment to evidence-based policy.

The 2011 Nuffield report, *Human bodies: Donation for Medicine and Research*, which has been mentioned quite frequently, strongly supported organ donation,

"where this is in accordance with the wishes of the donor",

but it did not advocate a change in the current law to the opt-out system. Nuffield concluded that,

"such a system could be ethical, as long as a number of potentially onerous criteria were met. People need to be fully informed in order to be able to make an active choice about whether or not to donate, which implies a long term and expensive commitment to public information and education. Families need to be appropriately involved—recognising not only that they are likely to have the best knowledge of their loved one's attitudes to organ donation, but also that they themselves, in their bereavement, have a stake in what happens to the deceased person's body. Critically, the system must operate in a way that ensures that public trust in the donation and transplant system is not undermined, for example through perceptions that the state is intervening to 'take' organs against family wishes. We only have to look back two decades to the outcry caused by tissue retention in the NHS to be alert to the way in which trust can be undermined, not least by failing to take into account the complex family and personal meanings associated with the body in death".

In considering these questions of trust, the report also assessed, in more general terms, whether such a change in the law would increase donation. As it said,

"the quick answer is that no one knows. In contrast with the claims (confidently asserted over past months) that opt-out will save 'thousands of lives', the Department of Health's own Impact Assessment, published alongside the consultation document, described the evidence on the impact of opt-out on donation rates as 'inconclusive' … Despite all the emotional rhetoric, the jury is still out on whether changing the law in this way will make any difference at all to the numbers of organs available for transplant".

In beginning to assess the efficacy of presuming consent, we have to confront a misunderstanding about how donation works in England today. All too often, the assumption is made that only those who have signed the organ donor register are potential donors. Given that just 37% of the population in England have signed the register, it is thought that a shift to presumed consent will increase the pool of potential donors dramatically. Even if 10% of the public opt out, one would still increase the total pool of donors from 37% of the population to 90%. The difficulty with this logic is that it fails to appreciate that, at present, it is not only those who have signed the organ donation register who can donate. As Answers to Parliamentary Questions I tabled in July demonstrate, most donations in England at the moment come from families of people who have not left instructions about what they want done with their organs. To put the same point another way, at the moment, most organs are donated by people who have not signed the register. Critically, this means that clinicians in England are not limited to a pool of the 37% of people who have signed the register—they can approach the families of 99.3% of people. The missing 0.7% relates to those who have signed the opt-out register in England, and cannot be approached.

Rather than increasing the pool of potential donors, moving to informed consent reduces it. Whenever consent is presumed, some people take offence and sign the opt-out register. In Wales, prior to the instruction of its deemed consent law in 2015, there was no opt-out register, so 100% of people were potential donors. As a consequence of introducing presumed consent, however, 180,000 people, or 6% of the population, have now opted out. It is no longer possible for clinicians to talk to families about donation, when previously they could all have been approached. The organs of those 180,000 people are simply lost to the system. Rather than increasing the pool of potential donors, the introduction of presumed consent in Wales has involved spending public money to reduce that pool from 100% to 94%.

The truth is that, regardless of what system is operated at the point of donation, the key player is the family. Not having signed the organ donor register does not prevent doctors talking to the family about donation. Presuming the consent of the donor does not enable doctors to avoid talking to the family about consent. It makes no difference whether the donor had signed the register or had his consent presumed. At the end of the day, they will be unconscious, and the key conversation must take place between the clinicians and the family. In this context, the focus of our attention should be, as many speakers have said, on the family.

We know from the detailed reports published each year by NHS Blood and Transplant that the key factors associated with high consent rates are support for families by specialist nurses, and families knowing what the deceased person wanted. Consent rates are as low as 27.5% when families are not supported by a specialist nurse. They increase to 68% when a specialist nurse is involved, and to more than 90% where families are confident of the deceased's wishes, as the noble Lord, Lord Patel, the noble Baroness, Lady Finlay, and my noble friends Lord Lansley and Lord Ribeiro have already said.

This is consistent with the experience of Spain, which, as has been mentioned, has sustained the highest donation rate for more than 20 years. Rafael Matesanz, the leading light of the Spanish transplant system, ascribes the well-known successes of the Spanish system to its focus on efficient systems and excellent family support. He is on record as calling the opt-out system a "distraction". Despite being classed wrongly by some as an opt-out country, Spain operates neither an opt-in nor an opt-out register, and relies entirely on family authorisation for the legal basis of donation.

The official evaluation of the Welsh law was published in November 2017, two years after it came into effect. It showed that if you compare the resident Welsh donor rate for the 21 months before the introduction of the new system with the 21 months since, far from increasing, the numbers fell slightly from 14.6 donation decisions per quarter to 13.4 donation decisions per quarter. This is less than encouraging. Admittedly things have since improved, but it will take at least five years to show any meaningful trend. In assessing that trend, it will be critical to allow for increased investment in specialist nurses in organ donation and critical care beds, which has nothing to do with presuming consent but will increase donation rates. The official evaluation concludes that longer period of time is needed to draw firmer conclusions about the impact of changing the law.

In the context of 400 people dying while waiting for a transplant, and when we do not have limitless public funds, I find the prospect of spending millions of pounds of public money on presumed consent rather

[Lord McColl of Dulwich]
concerning. Any money that we spend on presumed consent, for which we have no robust evidence of success, we cannot then spend on things that we know will increase donor donations. We should wait to see what happens in Wales and spend any additional monies on more specialist nurses in organ donation and more critical care beds. If the Government are determined to back this Bill, it will be imperative to limit the potential scale of withdrawal from donation by assuring people on the face of the Bill that their families will be properly consulted. This statutory guarantee of consultation must be genuine and not limited to simply giving the family a right to provide evidence that the family member did not want to donate, as in Wales.

Finally, I have another interest to declare. My daughter is a potential transplant recipient.

12.11 pm

Baroness Randerson (LD): My Lords, I thank the noble Lord, Lord Hunt of Kings Heath, for bringing this Bill forward, and for his excellent speech. We have heard moving contributions from across the House this morning. I want to thank the Government for their indication of support for the Bill. I also thank the noble Lords who chose to say kind words about me.

Of course, the important thing is that the greatest tributes must be paid to the donors and their families. There is, however, rare cross-party unity on this issue. That, you may think, is not surprising, because 80% of people say they would consider donation, but only 37% are on the donor register. Importantly, the percentage on the register from ethnic minority groups is a lot lower than that, and yet some of these groups face a greater than average likelihood of developing some of the illnesses that lead to the need for a transplant.

My party has supported this policy since 2002. At a personal level, I believe passionately that a system of presumed consent, a soft opt-out system, is the answer to addressing the gap between the number of donated organs and the number that we really need to save as many lives as possible. As the noble Lord, Lord Hunt of Kings Heath, indicated, I have some experience of this issue. As an Assembly Member in Wales, I was a member of the Health Committee. I was also spokesperson for my party on health issues in 2008 when the Kidney Wales Foundation and the BMA, together with other health groups, started to campaign for a system of presumed consent. I should declare that I was a trustee of the Kidney Wales Foundation from 2010 to 2012.

There was a well-co-ordinated campaign which had an impact on civic debate in Wales and on politicians in the Assembly. It led to the Health Committee deciding to do an inquiry. As part of that, we looked at evidence from across the world. We have heard a lot of statistics today but if you look at the evidence from across the world you will see that rates of donation vary considerably. But one thing you can draw out of it is that in countries with presumed consent, the rates tend to be higher than in countries without. When presumed consent is introduced, the number of donations increases over time as a percentage of the population.

As part of our inquiry, we also visited Madrid. Spain has been mentioned several times in this debate. There, we learned how soft consent works. We also learned that, as well as the legislation, you need the infrastructure to develop the system properly. You need improved training for staff as well as the best equipment. Meeting the clinicians, nurses and counsellors involved in the process in Spain had a huge impact and made us aware of the issues that we needed to tackle. In due course, after taking evidence from many groups, including patients and health campaigners, the Health Committee in the Assembly produced a report, which in fact at that point did not recommend a move to a soft opt-out system because some members were concerned that it might not be within the powers of the Assembly. These were early days for the Assembly and it was feeling its way.

Therefore, along with some other Assembly Members, we produced a minority report supporting a change to a soft opt-out system. Fortunately, the Health Minister at the time, Edwina Hart, was a lot bolder than some Assembly Members and decided to support the change, and she did excellent work in making it happen. It took a long time and years of consultation to get it right. The new Human Transplantation (Wales) Act was passed in 2013 but, even then, preparations took until December 2015, when the new system was eventually introduced.

I have some observations to make about that process. At the time, I was surprised at the extent to which the establishment—some in government and even some health organisations involved—closed ranks against the idea that the new Welsh Assembly could take such a radical path. It is a measure of how the debate has moved on—and I strongly welcome that—so that the Government now welcome it. In 2008, the Government's Organ Donation Task Force, in its second report, unanimously opposed a change in the law. The UK Government have now accepted that the Welsh Government did indeed have competence to change the law. That happened during the coalition Government, when I was in the Wales Office, and it was not challenged.

In our original debates we were bolstered by the extent of the support from many faith communities. There were thoughtful contributions to the debate and overall support from faith communities. I very much hope that the right reverend Prelate the Bishop of Carlisle will study the Welsh experience in detail and look at exactly how much care was taken on the key and very important issues that he raised. The noble Lord, Lord Carlile of Berriew, is right that devolution in Wales made this a manageable initiative, with Wales being the first part of the UK to adopt the system. The noble Baroness, Lady Finlay, was right to emphasise the extensive public information campaign, and there has been no backlash, as some predicted. In addition, I emphasise that the public information campaign came not just from the Government but from third sector organisations, so it involved not just public money.

The fundamental objection is the fear of coercion. That has to be addressed through thorough information and careful explanation. It is called a soft opt-out system for a reason. By convention in this country we have always put the wishes of the deceased and their

next of kin at the forefront so, whatever the legislation in this situation, it is important that that care over the wishes of the deceased and their relatives continues. You cannot rely on the law alone; you need a big investment in intensive treatment units and many more trained nurse counsellors. The conversation prior to or at the point of death is difficult but crucial. We cannot expect clinicians to do it as an adjunct to their work. Their mission is to save lives. It is very difficult for clinicians to be working to save a life at the same time as talking to the family about the point after death.

Difficult conversations need to be had as well in preparation in advance of death, where that is possible. Along with this approach to individual cases, you need, as several people have mentioned, a big national conversation, a campaign to encourage people to tell their loved ones what they want to happen to their body after death. I do not know if noble Lords have had those conversations. My son came out and told me that he wanted to donate his organs but I found it very much more difficult emotionally to raise that issue with my daughter, and it was the public information campaign in Wales that made me feel that I had a duty to discuss these issues within the family. So the open conversation is really important.

Evidence from Wales is also there to say that people also talk about not allowing cardiopulmonary resuscitation, which is often something on which there is confusion. Our system in Wales is being widely commended within the medical world, and we have evidence of overwhelming change in that too.

I want to spend a moment or two on the outcome because it is difficult to keep up when the situation is changing so fast. The Wales studies, prior to legislation, allowed for a 19% opt-out rate. In fact, as we have heard, it has been very much lower at 6%. At the same time consent rates in Wales have increased from 58% in 2015 to 72% in 2017, compared with 65% in England. Specifically, consent rates for brain-dead donors are now 89%, and for donors after circulatory death, donation rates have increased from 53% in 2015 to 68% in 2018.

The donation of eyes is always a particularly sensitive issue, and there is worldwide evidence to show lower rates of donation on those. The deficit between the number of corneas being donated and the number of transplants needed is increasing rapidly; it has gone up by 157% in five years. However, by increasing the donor pool across the UK we should be able in the long term to address that shortage.

Overall Wales now has the highest rate of consent for organ donation in the UK. There is also a hidden factor here that I draw to noble Lords' attention: organs cross borders. There is anecdotal evidence in Wales that additional donations have helped in England, Scotland and Northern Ireland, and indeed beyond, in the EU, to produce better outcomes. The number of organ donors has gone up, from 60 in 2015 to 74 last year, and 44 in the first six months of this year. Wales has a population of only 3 million, so the numbers are necessarily small.

It takes time to build the new system but I am delighted that it looks now that, thanks to the change in Wales, things have improved there. I am very pleased indeed that it now looks as though, thanks to this Bill, England has the chance of following in the footsteps of Wales. I urge those who will, I hope, have the responsibility of introducing a new system to look carefully at the procedures and experience in Wales. As several of your Lordships have said, deemed consent is not the whole answer, but it is the golden key to unlock the door. This is an excellent Bill because, most importantly, it retains the key principle that organ donation is a gift, and it must remain freely given.

12.26 pm

Baroness Thornton (Lab): My Lords, I first congratulate my noble friend Lord Hunt on introducing this Bill and all noble Lords on an excellent debate. As the noble Lord, Lord Carlile, said, this is the place where we have these debates—sometimes they are painful, sometimes they are excellent and sometimes they are very enlightening. I also thank the Library and others who have given us such excellent briefings in preparation for this debate, including the British Heart Foundation, the BMA, Fight for Sight and many others.

I was heartened by many of the contributions we have heard today, including those from the noble Lord, Lord Lansley, the noble Lord, Lord Patel, who mentioned the issue of organ availability among BAME communities, and the noble Baronesses, Lady Chisholm, Lady Sater and Lady Finlay. As my noble friend Lady Crawley said, in a moving speech which I know was in part based on her family's experience, the blessing of modern science, which allows lives to be saved, is not fully realised because of the lack of organs.

I also congratulate the noble Baroness, Lady Brady, on her contribution—it is a pity that she is not in her place now—and I welcome the speech of the right reverend Prelate the Bishop of Carlisle. I think I understood that the Church of England is now moving, as it ever does, in a slow and considered way, in what I hope is the right direction and ending up in the right place.

I particularly welcome the remarks of my noble friend Lord Elder, and his bearing witness to the successful outcome of organ donation, for which we are all—particularly those of us in the Labour family—very profoundly grateful.

I think the noble Lord, Lord Leigh, came close to suggesting that the Bill gives the state the right to take organs, but I do not believe that is the point of this Bill at all. I think, as many noble Lords have said, that this Bill is part of a process of shifting the debate, the commitment and the resourcing of organ donation as well as the thinking about what it means and how it should go forward. I congratulate the noble Baroness, Lady Randerson, on her pioneering work. Personally, I am very happy to follow Wales in this matter.

Without doubt, across the parties it has been agreed that the current law needs to be changed, and I believe that this Bill is the best first step forward in achieving the change we seek to move towards an opt-out system. With so many people who will benefit, it becomes difficult not to support this Bill and it is an honour to be able to support it. As my honourable friend Jon Ashworth said in the House of Commons, it is Labour policy, and I am very pleased to say that is the case. I

[Baroness Thornton]
congratulate Geoffrey Robinson MP and Dan Jarvis MP on the wonderful speeches they made in the Commons, and the *Daily Mirror* for its tireless campaign to bring about this change.

Like many noble Lords, I have been an organ donor for as long as I have been a blood donor and could sign the forms. All of my family are donors and we have discussed our wishes in this regard. This legislation will mean less ambiguity at what is probably the most stressful and sensitive time for family members. The idea that adults and children die waiting for an organ that could save their lives is painful and unnecessary. The gift of giving is part of our human condition. Following the death of my father-in-law, Henry Carr, I know that my family felt proud of and comforted by the fact that people benefited—at least two or three lives were transformed through the gift of organ donation.

Given that the Prime Minister and the Government have expressed support for legislation of this nature at various stages, I hope that the Minister can assure your Lordships' House that the remaining stages of the Bill will take place early in the new year. Doing so will send a strong signal to the outside world and bring hope to many families across our country.

12.30 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, I join the noble Baroness, Lady Thornton, and the noble Lord, Lord Carlile of Berriew, in congratulating noble Lords on a superlative debate on a vital and highly sensitive issue. It is a credit to this House. I thank the noble Lord, Lord Hunt, for bringing the Bill to the House and presenting it in such an authoritative way. I also thank MPs in the other place, Geoffrey Robinson and Dan Jarvis, both for bringing the Bill forward and for their collaborative work with the Government on it. I thank them and everybody else who has worked so hard to get the Bill this far for their ongoing dedication.

As has been remarked, the passing of the Bill would mark a significant step towards transforming and saving the lives of hundreds, if not thousands, of people in the UK waiting for a life-saving transplant. As my noble friend Lord McColl said, what is at stake could hardly be more important. While we have made great strides in recent years, we can and must do better, as we were reminded by the moving story of the noble Lord, Lord Elder.

The Government are committed to the Bill. In October 2017, the Prime Minister committed to changing the current system of consent to shift the balance of presumption in favour of organ and tissue donation in England. Her position gained support from leaders of all parties and Members in both Houses, for which I am truly grateful. As I said, the Government welcome the Bill and support it wholeheartedly as an additional and necessary measure to address the tragic death rates due to the lack of organs and tissues available for donation. As the noble Lord, Lord Oates, reminded us, public support for higher donation rates is already there, as it is among critical organisations in the healthcare family. Our job as legislators is to put in place a system that responds to public demand, but in an ethical, practical and effective way. I think that the Bill succeeds in this regard.

As has been said, the passing of this legislation is neither a silver bullet nor a magic wand, but I believe that it will play a significant role in changing the culture towards organ and tissue donation in England. Like the noble Lord, Lord Hunt, I pay tribute to Max Johnson and the family of Keira Ball. Max, whose plight captured the hearts and minds of the public and whose bravery has been remarked upon, was fortunate enough to receive the gift of life from nine year-old Keira Ball, whose family took the extraordinary and generous decision to transform and save the lives of others by making her organs and tissues available to those in need. We should never forget the importance of such gifts. I want to be absolutely clear that under the new approach set out in the Bill, organ donation will be a most precious and joy-giving gift, to use the phrase of the noble Baroness, Lady Crawley.

NHS Blood and Transplant does tremendous work in recognising the generosity of donor families in various ways, including by awarding them the Order of St John. I reassure all noble Lords that celebrating donation will continue; it is an important aspect of making organ donation part of our culture. Enough gratitude cannot be given to families who, at a time of such grief, take the big-hearted decision to transform or save the lives of others. I assure the right reverend Prelate the Bishop of Carlisle that, as I said, organ donation will always be a gift; that will remain the case. The decision of donation will remain: everyone will continue to be able to opt in or opt out of donation. To save more lives, we will still need more people to take the positive step of registering their decision to donate, so that if they die in circumstances where donation is a possibility, their organs and tissues can be made available to help those so desperately in need and the family can support that positive decision.

I should like to reflect on some important changes made to the Bill in the House of Commons where, as has been remarked, there was broad cross-party support. A set of amendments were made in the other place, including a power to remove novel forms of transplantation, such as faces and limbs, from the scope of the Bill. On this point, I want again to reassure noble Lords that the Bill will not change the list of organs and tissues currently considered standard donation. These are heart, lung, kidney, liver, pancreas, bowel, and tissues such as corneas, skin, bone and tendons. To ensure consistency with Wales and the proposal in Scotland, I confirm that for the rarer, more unusual types of transplants, known as novel transplants, as we will set out in regulations, there will continue to be a requirement for express consent to be given for donation to proceed.

If, following advice from medical experts and NHS Blood and Transplant, there is a need to update the list of novel transplants, we will consult on the relevant regulations, which will be laid under the affirmative procedure so that there will be full parliamentary scrutiny. On the point made by the noble Lord, Lord Hunt, I can go further today and confirm that the Government will lay a Written Ministerial Statement after any

changes are passed by Parliament to give absolute clarity on how regulations have been updated and what they mean in practice for deemed consent.

We all know that this change in the law is important, but it is not the whole story. Making sure that the public are aware of the change and of the importance of organ donation is the critical change. The consent system needs to be accompanied by a comprehensive public awareness campaign to give the public time to understand the changes, have a discussion with their family and make an informed decision about whether they wish to donate their organs and tissues. The Government will develop easy-to-understand material, kept up to date with information about the options, what organs and tissues can be donated and other details.

I take seriously the points made by the noble Baroness, Lady Thornton, the noble Lord, Lord Patel, and my noble friend Lord Ribeiro about the importance of this campaign reaching the BAME community. A campaign on that front started in July but clearly, we need to do much more and have much greater opting in and awareness in these communities. We have had some success on this front with blood donation; we need the same kind of success in these communities with organs and tissues.

On the point made by the noble Baroness, Lady Randerson, I can confirm that, following Royal Assent, working with charitable and other groups—and learning very much from the Welsh example—we will launch a 12-month communication campaign to support donation. The new system will go live in 2020, after the initial transitional communication campaign has ended. However, the Secretary of State will continue to uphold his duty to promote organ and tissue donation, as set out in the NHS Act 2006. We know that changing the culture around organ donation requires continuous engagement with the public and is not a one-off exercise. I can reassure the noble Baroness, Lady Deech, that we are committed to follow-up campaigns in the years to come, and the noble Baronesses, Lady Finlay and Lady Randerson, whom I applaud for their extraordinary work in Wales, that we are keen to learn from the Welsh experience what works and what, if anything, we can improve on.

Another issue that noble Lords have raised is the importance of the family. As my honourable friend the Member for Thurrock highlighted several times during the Bill's passage through another place, one of its important aims is to encourage everyone to think about what they want to do and talk to their friends and family about their wishes, so that they are left in no doubt about what their loved one would have wanted. As the noble Lord, Lord Elder, said, no consequence of the Bill could be more important.

Of course, some find such conversations difficult, but the benefit is that in the sad circumstances when a family is involved in discussions with the specialist nurse following a death, they do so in the knowledge that they are doing what their loved one would have wanted. Registering a decision on the Organ Donor Register is the best starting point for that conversation, and the most effective, as the noble Lord, Lord Oates, reminded us.

When families have not spoken to their loved one about organ donation, they are much more likely to reject donation. Some families come to regret that decision when they realise that they could have helped someone who was still alive. But let me leave you in no doubt that, as now, there will always be a discussion with the family on the best way forward. To reinforce the point made by my noble friend Lady Chisholm and in reply to questions from my noble friend Lord Leigh and the noble Baroness, Lady Deech: no family will be forced to agree with the donation if they are strongly opposed to it. My noble friend Lord Lansley spoke from great experience about the importance of good guidance for staff when implementing this regime. I will turn to how we will deal with that issue shortly.

As has already been mentioned by the noble Lord, Lord Hunt, and my noble friend Lady Brady, I confirm that children under the age of 18 will be exempt from deemed consent. That does not mean that they cannot donate but, as is current practice, children of any age will be able to register if they wish to donate or not donate their organs; the parents of the child will always be asked about the child's decision to donate.

A third issue raised today, and an extremely significant one, is the importance of working with faith communities. I was pleased to hear the noble Baroness, Lady Deech, recognise that the Government have made concerted attempts to work with faith communities to build safeguards into the new system. We have announced various specific measures in the Government's response to the consultation. For example, from next month, a new option on the organ donor register will allow those who register to ask that their family, or anyone else they wish, has a personal discussion with nurses and doctors about how donation can go ahead in accordance with their religious and cultural customs.

I can state categorically, to reinforce absolutely the point made by the noble Baroness, Lady Thornton, that the state will not take control of anyone's body as a consequence of this Bill. We will update the current codes of practice on organ and tissue donation for healthcare professionals; in doing so, we will set out how religious and cultural considerations will form part of the discussions with the family and we will involve the different faiths in its development. NHS Blood and Transplant will supplement this with training for healthcare professionals. That work is progressing well and I reiterate the Government's commitment to working with all faith groups to make sure it is successful.

I mentioned the importance of a new code of practice to implement the new system that we hope to move to; that will be developed by the regulator, the Human Tissue Authority. The existing codes will be updated to reflect the changes and, for ease, we will pull them together in a single code, on which there will be a 12-week consultation period. The noble Lord, Lord Carlile, pointed out that there will also be important implications for the professional regulators. I am sure that the noble Lord, Lord Hunt, will also want to take that on board in the new role we are all pleased to see him playing.

The issue of the NHS's capacity was raised by my noble friend Lady Sater and others. The Government recognise that it is absolutely necessary for the NHS to

[Lord O'Shaughnessy]
manage the increase in donations and to carry out these life-changing operations. My officials have already started early work on planning with NHS England and NHS Blood and Transplant to make sure that the system is ready for the changes. Following these discussions, NHS England will consider the financial and service commissioning implications, so that we have the capacity and expertise to benefit from increased donations.

I will address a couple of issues raised by my noble friend Lord Leigh and reinforced by the noble Baroness, Lady Deech. They asked about the letter written by my honourable friend Jackie Doyle-Price explaining how the Bill would work. I emphasise that the letter is not a supplement to the legislation; it is an explanation of how the system of deemed consent will work in practice. The points that she set out on this hold absolutely. With their permission I would be delighted to share the letter with all noble Lords who are interested in the debate so that they can see the reassurances that we have provided. I believe it will provide some of the answers to questions raised in the debate.

My noble friend also asked whether the organ donor register should be given explicit legal consent. I do not think that is a necessity as the system has been working successfully for 30 years. The Secretary of State continues to have a duty under the NHS Act 2006 to make arrangements to facilitate tissue and organ donation. We believe the system is there; it is about using it to the maximum of its potential.

Before concluding, I will talk about the most important issue of all in getting this right, and that is staff. Specialist nurses for organ donation are highly trained professionals, usually from an intensive care or emergency medicine nursing background. When nurses join NHS Blood and Transplant, they initially receive extensive training over a six-month period. This covers all aspects of organ donation.

A key focus of the training is to enhance nurses' skills in supporting acutely bereaved and grieving families, as this is an important, indeed essential, element of their role. When a patient has registered their decision to donate or when a family wishes to donate their loved one's organs, the specialist nurse will skilfully and sensitively navigate the family through the detailed paperwork and mandatory medical history taking. When the family does not agree with the donor's decision, the specialist nurse is trained to help the family come to terms with that decision. Experience from Wales tells us that this works and I can reassure noble Lords that we will make sure that there are enough highly trained staff to make the most of the changes resulting from this Bill. Our current estimate is that 27 more nurses would be required but, of course, if that number were to rise, we would make sure that they are fully trained and fully financed for the future.

The Government are confident that this piece of legislation will be pivotal in helping to transform and save hundreds of lives. Deemed consent in Wales is already showing promising results, with many more families now agreeing to organ donation when approached for this important discussion with specialist nurses. For those noble Lords concerned about the evidence base for change, we have seen in Wales, as the noble Baroness, Lady Randerson, pointed out, an increase in the number of deceased donors, from 60 in 2014-15 to 74 in 2017. Indeed, she talked about there being 44 in the first six months of this year. So there is evidence for its effectiveness, and our Chief Scientific Officer states in the impact assessment for the Bill that he can say with "moderate certainty", that systems of opt-out, when introduced with a range of other support, such as logistical support, public awareness and so on, do increase donation rates.

I just pick up one point made by my noble friend Lord McColl on providing an opt-out in the Welsh system which in theory reduces the pool of potential donors. That means that, beforehand, there could have been donors who were having organs taken from them when they were not happy for that to happen. If anything, the Welsh system has provided greater individual autonomy while also increasing the number of donations. That seems to me to tick both the boxes that we would want for any system. The evidence for that is very powerful and gives us cause for hope and encouragement.

I conclude by reiterating the Government's support for this Bill, congratulating the noble Lord, Lord Hunt, on bringing it forward and thanking all other noble Lords for their excellent contributions. If any noble Lords have continuing concerns about any part of the Bill, I would be more than happy to meet with them to discuss it. The Government are very keen to make progress with this. There is of course a risk that, as the time towards the end of the session gets short, we will not manage that, which would be highly regrettable.

12.47 pm

Lord Hunt of Kings Heath: My Lords, I thank the Minister for that very authoritative response and to echo what he said about the time pressure that we face. I also thank all noble Lords who have taken part in what the noble Lord, Lord Carlile, was surely right to describe as a very moving but also ethically and intellectually based debate. Where else indeed could we do it? I am also grateful to the noble Lord for his advice on the GMC. I realise I am not going to be short of advice, but I am in that glorious honeymoon period where I am not actually responsible yet. On 1 January, I might hide round some corners if I see the noble Lord coming.

This has been a very moving debate. Essentially, it is a celebration of the gift of donations to help others. I thought that my noble friend Lord Elder put so aptly what this really means to so many people in our country. It is also interesting that the noble Lords, Lord Patel and Lord Lansley, said that they had changed their minds. I am in the same camp. I was responsible for organ donation between 1999 and 2003. I also had to deal with the aftermath of the Alder Hey debacle and I well remember some parents having to go through three or even four burial ceremonies as more organs and tissues of their children were found. I have therefore always taken a very cautious approach to this issue but, like the noble Lords, Lord Lansley and Lord Patel, I have become convinced that it is time to make a change. The evidence for

presumed consent is stronger, I think, and I am very grateful to the noble Baroness, Lady Randerson, for what she had to say. Public opinion has changed, and the infrastructure has improved immeasurably. We should acknowledge that in relation to capacity, transplant teams and specialist nurses, there have been very significant improvements. I welcome what the Minister said about future developments, particularly the increase in the number of these key specialist nurses.

All noble Lords—the noble Lord, Lord Ribeiro, the noble Baronesses, Lady Finlay and Lady Chisholm, and my noble friend Lady Crawley—have emphasised that alongside the change, we need to have a public campaign. The noble Baroness, Lady Brady, said something which I thought was really important: no one should be surprised by the change. I think we should set that as our aim in the campaign. This is not a waste of money; this will have a big impact to the good on the public.

I echo what the noble Lords, Lord Patel and Lord Ribeiro, said about the shortage of donors from black and minority ethnic communities. I welcome the campaign this summer; we just need to build on it. I also welcome the discussions with faith leaders and the assurances given by Ministers. I echo and endorse those assurances and the contents of the letter that the Minister referred to.

The noble Lord, Lord McColl, and the right reverend Prelate the Bishop of Carlisle expressed some concerns that this Bill will have the opposite effect to its intended one. The noble Lord, Lord McColl, has grave doubts about the figures used for outcomes. Clearly, this is a significant step change; I acknowledge that. The right reverend Prelate thinks the balance between individual families and the state will be disturbed by it. It is a change, of course, but I believe that, with the safeguards, there is still balance in the provisions, and the change is being made in line with public opinion and the improvements in the infrastructure.

On organ trafficking, I agree with the noble Baroness, Lady Finlay, but I do not think this Bill is the right place to debate it. I pay tribute to the noble Baroness, Lady Deech, whose distinguished work in the area of human tissues is unequalled. I agree with her about the need to maintain trust. She referred to the Nuffield Council and its comments about how to make this work ethically; I agree with the points about easily accessible information, families being at the heart of decision-making and the network of specialist nurses. We heard a really reassuring view from the Minister about how that will be taken forward; clearly, we need to hold the Government to account on that.

As my noble friend Lord Elder said, this Bill is not a panacea. It will not, by itself, lead to a large increase in donations. However, it is a step change. It will help to raise awareness, encourage family conversations and change the culture, and that will lead to a higher consent rate in England. In that way, hundreds of lives will be saved. I am convinced this is the right way to go.

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

Homes (Fitness for Human Habitation) Bill

Second Reading

12.53 pm

Moved by ***Lord Best***

That the Bill be now read a second time.

Lord Best (CB): My Lords I begin by declaring my interests as in the register and, in particular, as a part-owner, with my wife, of rented property. I am also currently chair of a working group for the Ministry of Housing, Communities and Local Government, which advises the Minister for Housing and Homelessness on regulation of estate agents and letting and managing agents.

It is a great honour to be piloting this important Private Member's Bill through Your Lordships' House. Its promoter in the other place has been the heroic Karen Buck, MP for Westminster North. She has been the most dedicated and committed campaigner, not just for this Bill, but for her many constituents with serious housing problems. Her desire to see the provisions of the Bill on the statute book comes from valiantly seeking to resolve hundreds, possibly thousands, of awful real-life cases of housing misery. I salute her for all her work and for successfully taking the Bill through the other place. I also pay tribute to Giles Peaker and Justin Bates, two lawyers with extensive and highly relevant experience, who have worked tirelessly to draft and perfect the Bill. I commend the Government for having the good sense to give the Bill their full support.

The Bill comes to us with backing from all quarters including, prominently, those bodies representing both landlords—the National Landlords Association and the Residential Landlords Association—and tenants, such as Shelter, Generation Rent and others. As Alan Ward, chair of the Residential Landlords Association, has written:

> "The Bill seeks to achieve what we all want: better enforcement of existing laws and regulations against ... the criminals who bring the sector into disrepute".

It seeks to improve housing conditions for those living in circumstances that can well be described as unfit for human habitation. The public at large may think that slums are a thing of the past and that, if any still exist, there are plenty of laws and regulations to force recalcitrant landlords to bring them up to minimum standards. Sadly, neither of these assumptions is correct. There are around 1 million households forced to live in so-called non-decent properties. The English Housing Survey of last year recorded 750,000 properties which present a,

"serious and immediate risk to a person's health and safety",

with 225,000 in the social housing sector. Yet the law is woefully inadequate in compelling the owners of these properties to bring them up to standard.

Karen Buck has quoted many examples from her own constituency. One tenant living with her partner and two children writes that her son has been,

"in a coma at St. Mary's hospital due to a virus caused by excessive cold. The mould and damp in the house",

says this tenant,

[Lord Best]

"turns our clothing, toothbrushes and cups black. I cannot begin to explain how many hospital visits we have had".

Another tenant complains about her,

"freezing cold, smelly, damp, mouldy flat".

and says,

"the cold aches my bones and muscles. The damp and mould affects my asthma. As a type 1 diabetic and asthmatic I am constantly ill living in this flat".

She concludes:

"I guess the way they are progressing, it will be done the day I am being removed from this flat in a coffin".—[*Official Report*, Commons, 26/10/18; col. 536.]

These cases demonstrate not only the hardship caused by bad housing conditions but the cost of this to the NHS and wider society.

The Bill addresses the need for a serious overhaul of current legislation in England. Separate measures apply in Scotland and Northern Ireland and, for the most part, in Wales too. It addresses the current legislative inadequacies in three key ways. First, it makes it clear that it is not lawful to let substandard property. Currently, there is indeed a requirement in law, in the Landlord and Tenant Act 1985, which consolidated much earlier legislation, for privately rented homes to be "fit for human habitation" at the beginning of a tenancy and to be maintained at this level. But this requirement has ceased to have effect because it covers properties only with rents below a limit set many decades ago—a rent limit of £52 per annum, or £80 per annum in London. The Bill would remove this wildly outdated constraint, obliging landlords to ensure that all properties are fit for human habitation, with no exceptions, based on a rent limit.

With the offence of letting an unfit property restored once more, tenants would have the chance to take an offending landlord to court. This constitutes a significant change in the landlord/tenant relationship. Currently, tenants cannot take direct legal action themselves and are entirely reliant on their local authority to serve environmental health enforcement notices on the landlord and to enforce these. With local authorities short of funds, few have found it possible to take such action on any scale: in 2016-17, half of all councils served no such notices, or only one. The position changes radically with this Bill affording tenants the right to take action themselves and, on their own behalf, enforce their right to a safe and healthy home.

Secondly, the Bill addresses the problem of defining what "fit for human habitation" means. It does not add any new regulations or requirements on landlords but simply draws together all the existing obligations in this regard: the nine criteria used in the 1985 Act and the key health and safety features covering the core hazards used in the current housing, health and safety rating system—HHSRS—brought in by the Housing Act 2004. The Bill, therefore, consolidates and clarifies what constitutes an unfit property.

It is true that the HHSRS has itself been criticised as too complex and open to varied local interpretation. However, the Government have undertaken to review and revise it next year and the Bill's definition of fitness will take on board, without further legislative action, any changes made to the HHSRS.

Thirdly, for the first time, the Bill gives the same rights to tenants of local authorities to insist on the fitness of their property as tenants of private landlords. At present the local authority, as the enforcement body, cannot take action against itself, which leaves council tenants powerless in this respect. The Bill enables these tenants to compel their local authority to carry out the works needed for the property to meet proper standards.

Moreover, thanks to an amendment to the Bill in the other place, its provisions cover health and safety hazards in shared areas and communal spaces in blocks of flats. As we all know from the ghastly tragedy of Grenfell Tower, there are apartment blocks where tenants are exposed to serious dangers. The residents of Grenfell Tower raised their concerns about the safety of the building on many occasions, but their voices were not heard and they had no means of forcing their landlord to take action. This Bill gives council tenants, like private sector tenants, the power to take their case straight to the courts.

The vast majority of landlords and tenants will be unaffected by the measures in the Bill but it will redress the obvious imbalance in a market where acute shortages currently favour the provider at the expense of the consumer. The Bill empowers all tenants by replacing a now defunct legal obligation on the landlord with a real, enforceable obligation. It defines what the legal obligation covers for homes to be fit for human habitation and extends that obligation to council landlords as well as private ones. In every respect, this is a valuable and commendable legislative measure.

Will the Bill mean an end to the problems faced by tenants in the private rented sector? No—it is limited in scope and there remains much to do. Now that Westminster and Whitehall have begun to catch up with the phenomenal change in the scale of private renting and the effects of this on millions of households in this country, there is a new willingness to bring forward a range of legislative changes.

The Government have started with action against rogue landlords: fining and banning the criminals; laws against retaliatory evictions; the enforcement of electrical safety measures; an extension of licensing for houses in multiple occupation; the ban on tenant fees, which we are currently debating in your Lordships' House; the regulation of property agents; an exploration of longer tenancies and the possibility of new housing courts; the creation of an ombudsman for complaints against landlords; and more.

Sadly, these changes do not include restoring full legal aid to enable tenants fighting cases about unfit property to claim damages. Nor have the Government yet agreed to reverse the reductions, in real terms, to housing benefit. The current caps and cuts mean that many tenants face real poverty because they have to cover a rental shortfall from their meagre income from other benefits. But these are matters for other government departments and another time.

Meanwhile, this Private Member's Bill—a great example of cross-party co-operation in the cause of social justice—takes pride of place amid the other new measures to upgrade the private rented sector. It is a particularly valuable piece of the whole because it gets

to the heart of the matter. It addresses the key issue of whether the product on offer— the house or flat for rent—is fit for purpose and, if not, it empowers the tenant to get that sorted.

I close by underlining the deep appreciation of all of us with an interest in housing matters for the dedication, compassion and commitment of this Bill's parent, Karen Buck. I hope noble Lords will give it a very fair wind. I beg to move.

1.06 pm

Lord Horam (Con): My Lords, we are all grateful to my noble friend Lord Best for piloting this limited but important Bill through the House of Lords. As he said, we are also particularly grateful for what he rightly described as the heroic efforts of Karen Buck, the Labour MP for Westminster North, for conceiving of this Bill and taking it through the other place highly successfully. I had 31 years in the other place and in all that time never managed to get a Private Member's Bill through, so I know how successful she has been in doing that.

The Bill, as my noble friend said, also has the support of Shelter, the Landlords Association and, most importantly, the Government. I am glad to see the Minister in his place listening attentively, as he always does. Indeed, the degree of cross-party support on this might have been a feature of other arguments we are having on a wider scale at the moment, but sadly Brexit does not seem to be producing that degree of understanding.

It is truly appalling that we have 1 million families—2.5 million to 3 million people—living in private or social rented accommodation with category 1 hazards. As my noble friend Lord Best said, category 1 properties pose a serious and immediate risk to a person's health and safety. Although part of this problem is in the social sector, as was tragically revealed by the Grenfell incident, most of it is in the private sector. Three-quarters of the people living in this category are in the private rented sector.

We simply have really inadequate old properties badly renovated to low standards, often by absent landlords seeking to maximise their income by splitting an old house into as many small spaces as possible and then not maintaining it properly. This is the real issue here. In many ways, housing benefits contribute to this problem and make it more difficult to make the necessary renovations. My memories go back to the Rachman period in the 1950s, and of course Karen Buck represents in Parliament the North Westminster area—and previously represented Kensington North—where that was evident. It still exists in our big city areas.

It is also a problem in seaside resorts. Many of us got in the post today the excellent agenda 2030 brochure put forward by the pride of place team from Blackpool. I know Blackpool well; I was born in Preston, not far away. Blackpool has eight of the 20 most deprived neighbourhoods in the country and much of that is property of this kind. What were once bed and breakfast hotels have now been converted into appallingly low-standard accommodation of the kind we are concerned about.

The Bill will extend the definition of what is fit for purpose—that is, fit for human habitation—and will also extend people's right to take a bad landlord to court, but the truth is this is just a Bill and a very restricted Bill. We need far more if we are going to deal with this problem satisfactorily.

As was pointed out in the letter that many of us will have got from the leader of Blackpool's pride of place project:

> "Many of the tenants living in the private rented sector … are vulnerable, lead chaotic lives and would lack the confidence to commence legal action against their landlord. For the proposed legislation to be used effectively by tenants, extra resources would need to be made available to local authorities or voluntary sector advice agencies, like the Citizens' Advice Bureau or Shelter to support the most vulnerable tenants in taking their landlords to Court".

I know that well from my own constituency experience, both in Gateshead and in Orpington. People in this category do not think of going to a solicitor. They lack the confidence to do that, they have no contacts and their first thought is to go the CAB, their local council or a Member of Parliament. We need resources for those voluntary agencies to help them effectively. As the noble Lord, Lord Best, touched on in the latter part of his remarks, this is part of a wider issue with housing, not just related to substandard private rented property, which we have to tackle.

I made the point in my speech in the Budget debate that this is part of the poverty issue that so disfigures our country at the moment. It exists, and we have the resources to do something about it. It will mean raising taxation, but we should not forget that we are a comparatively lightly taxed country. We only take about 35% of our national income in taxation. In Germany it is 39%, in the Netherlands it is 41% and in France it is 47%. That is the difference between this country and other neighbouring European countries, and the extent to which we can tackle these problems because we have the resources to do so. It could be done if we had the willingness to raise taxation. In this case, for example, we could probably put a couple of extra layers on the council tax for higher, more expensive property to raise the money to give councils the funds to deal with this problem.

I wholeheartedly support the Bill and hope it goes through unamended. I also wish my noble friend on the Front Bench well, because I know his heart is in the right place, in his and his colleagues in the department's discussions with the Chancellor, because I believe that the Chancellor has to provide the funds to deal with this aspect of poverty as well as other aspects. I hope they will be forthcoming in the next Budget. They were a little in the last Budget, but we need a far bolder and more radical approach in the next Budget.

1.13 pm

Baroness Grender (LD): My Lords, good Bills on housing are like buses: you wait ages and then three come along at roughly the same time. This Bill, the Tenant Fees Bill and the Homelessness Reduction Act have all provided an opportunity for me to stick my hand out and happily climb on board.

I recall one of the first meetings I had when I came to this place in 2013, sponsored by my noble friend Lord Tope. It was a meeting with Shelter and Electrical

[Baroness Grender]
Safety First about this very issue. Both organisations have campaigned for this change for many years. The horror stories they put before us were compelling. The solution they presented was almost simple—reviving a clause from the Landlord and Tenant Act 1985 requiring all rented homes to be "fit for human habitation", a clause long defunct because the rent levels were no longer relevant, as we have heard from the noble Lord, Lord Best.

I say "simple" but, as we all know in this place, nothing is ever simple. I therefore congratulate Karen Buck MP on her excellent Bill, the Government on giving it time and technical support, and the noble Lord, Lord Best, on carefully guiding it through this place with—we hope—no amendments.

Karen Buck MP is a fellow vice-chair of the APPG for the Private Rented Sector and has regularly updated her colleagues on that group, for which I thank her. She tried to get this Bill first in 2015, and then we all tried to amend the housing Act in 2016 to include these proposals. The superb addition to include social tenants is a real credit to her hard work and determination to ensure that all renters do not have to live in homes that are a real hazard to their health and well-being. Any of us who has been an activist in some of the more challenging areas in the UK with high levels of social rent are only too well aware that it is not just the private sector that has horror stories about poor conditions. I note, however, that the English Housing Survey shows social rented housing as the lowest percentage across all tenures of non-decent homes. It is yet another strong argument for more social housing—which we have debated many times and will continue to do. Another welcome addition is the extension to communal areas.

As the noble Lord, Lord Best, pointed out, the backing of the Residential Landlords Association and the National Landlords Association is excellent news. The good news for the landlords they represent is that all landlords who are good landlords need do nothing at all when this Bill comes into effect. But those 1.3 million social and private rented properties that are deemed a hazard under the housing health and safety rating system will be expected now to have to raise their standards.

The Bill rightly places greater powers with those who rent, without having to rely on their local authority. It treats people who rent like the consumers of a service that they are. I guess my regret is that this has come late when the impact has been significant for up to 3 million people, including children, who have had to live with damp, infestation, live wires in dangerous places and more, with little or no hope of changing that. The health impact is well known and estimated to cost the NHS £1.4 billion every year. I am sure that other noble Lords will share in the collective sharp intake of breath when they recognise that, according to Shelter, if these rights had been in place, particularly in communal areas—so that tenants could go to court regarding missing fire doors, emergency lighting, sprinklers and other safety devices—the anecdotal evidence is that more tenants' lives tragically lost in Grenfell Tower might have been saved. Of course, we are still waiting for the inquiry to conclude.

So, what future buses, or Bills, are we still waiting at the stop for? The now chronic shortfall in housing benefit, which does not cover rents in 95% of the country, must be addressed. I echo the comments of the noble Lord, Lord Horam, on that.

In order for this particular Bill to be effective, greater effort must be made to underpin the original intentions of Sarah Teather MP's Private Member's Bill in 2014 to stop retaliatory evictions through Section 21. While an amendment to the Deregulation Act 2015 was the best way of trying to achieve that, more needs to be done in this area so that tenants can complain about poor conditions. Evidence to the HCLG Select Committee inquiry suggests that retaliatory evictions in the private rented sector are still a problem. A Citizens Advice survey in 2017 found that nearly three in five renters entitled to compensation did not force the issue because of fear of eviction—and half said they feared a rent rise if they did.

Security of tenure will help to underpin the good work of this Bill. Scotland's introduction of indefinite security of tenure is now one year old, and I would like to hear the Minister's view of how that significant change is going. Does he believe it has had an impact and would he consider something similar here? Shelter has recommended three-year tenancies as an effective way of underpinning the Bill we are debating today. Can the Minister update us on the Government consultation on three-year tenancies, which finished in August 2018?

Sufficient resource for legal aid is essential, and I am sure my noble friend Lord Shipley will develop this point. I will wait to hear the Minister's response on that. Likewise, I am sure that my noble friend Lord Tope will ask about the extraordinary foot-dragging on the introduction of a timetable for mandatory electrical checks.

I was particularly struck by the phenomenon of older renters, raised in a briefing by Independent Age. The changing nature of tenure in the UK means that we are now seeing larger numbers of older people renting privately. The need for accessibility standards and adaptations is something that this Government would do well to anticipate in policy before it becomes a significant problem. More than half of older renters live alone and almost three-quarters have a disability or an illness. Given the predictions for the private rented sector and population, this problem will become more acute. Will the Minister tell us whether there are any plans to look in particular at this phenomenon?

I thank the Minister for his letter of last night and the update on a public database of rogue landlords, which we will discuss when parliamentary time allows. It will be no surprise for him to hear that, on these Benches, we are a little frustrated given that we gave him ample time and opportunity to do that, both in my Private Member's Bill on tenants' rights in 2016 and during the passage of the Housing and Planning Act 2016. When parliamentary time allows, and as I said in my Oral Question of 13 November, I will return to a possible model for this open register—that of the food hygiene ratings. It operates in a commercial

sector and empowers consumers. If we can measure where we eat, we can measure where we live, and have an open register for that.

That said, we on these Benches are delighted to welcome this Bill and the time the Government have allowed now. We look forward to seeing it progress to Royal Assent with as much speed as possible, so that, finally, tenants can say no, with strong legal back-up, to the appalling conditions they have been condemned to for so many years.

1.22 pm

The Lord Bishop of Rochester: My Lords, I too am grateful to the noble Lord, Lord Best, for his advocacy of this Bill in your Lordships' House and for his customary detailed and lucid comments in introducing the debate. I also salute the indefatigable work of the Member for Westminster North, who has already been referred to, and look forward to what we all hope will be a positive response to this debate from the Minister.

Like many others, I am very supportive of any efforts to improve and assure the quality of accommodation in the rental sector, whether that be individual, corporate or social landlords. I did, however, have a slight moment of hesitation about speaking on this, as I became conscious that the Church of England, in its various national and local corporate guises, is a not inconsiderable landlord.

Clergy housing is often let short term during parish vacancies; these are the properties of the parishes and dioceses, and are let to provide income. Rather akin to the agricultural workers referred to in the Bill, there are some 7,000 or more clergy who receive housing as part of their remuneration, and are thus in a quasi-tenant relationship with Church corporate bodies. They are, I think and hope, not in need of the provisions in this Bill because, in perhaps an extremely rare instance of the Church being ahead of the game, the Repair of Benefice Buildings Measure 1972 laid on diocesan authorities a duty not unlike that in this Bill, and was reaffirmed by the Ecclesiastical Offices (Terms of Service) Measure 2009. That said, I fear that there may be instances where Church authorities and Church-related bodies could do better. I welcome the fact that this Bill will, as I understand it, apply to those corporate bodies when they let residential properties to tenants other than the clergy. If those bodies are not already ensuring that their let properties are of the best possible standard, this Bill will help to make sure that they do.

More generally, I welcome the provisions of this Bill that make clear the implied covenant within a tenancy and those which seek to clarify and extend the definition of "fitness for human habitation". Reference has also been made to the right of tenants to take action, not being dependent on local authorities to do so. That is an important provision, though I will refer to a slight proviso around that.

Clearly, as has already been indicated, not least by the noble Baroness, this will bring no added burden for those landlords who already make this a priority and operate in the best possible way. Indeed, the safeguards built into the Bill relating to those matters which are not a landlord's responsibility also help to clarify this and, I hope, reassure landlords.

An anecdote of good practice by a landlord came to me unexpectedly on my journey here this morning. My train was, for reasons I do not yet understand, curtailed at Denmark Hill and never reached Victoria, so I shared a taxi with a gentlemen who, when he discovered I was to speak in this debate, told me how he sought rental accommodation for his son, who was having a year out from university on a work placement and needed to find accommodation. He told me of taking over the tenancy of a flat, and it being very clear that the landlord and his entire family had spent most of the night before cleaning and redecorating the property to hand it over in an absolutely immaculate condition. We know that many landlords operate in that particular way; our concern is those who do not.

Noble Lords will be aware that we have to legislate for those who do not act in the best way for the common good and for the good of human kind. Many of us will be aware of instances where standards of rental accommodation fall below what is right and proper in a society such as ours. Sadly, that may particularly apply to housing which accommodates those among the most vulnerable in our society—those whose desperation, or lack of alternatives, mean that they take whatever they can, even if it is unfit. As Bishop to Her Majesty's Prisons, I have a particular concern about those who have been released at the end of a custodial sentence. The provision of housing for them is a particular challenge in our society. They are among those who often end up in housing which is frankly appalling, but it is all that is available.

Even in the student sector, one still hears tales about overcrowding and below-standard accommodation. The noble Lord, Lord Best, referred to properties with mould, which affects people's health and well-being. Without naming names, as a former board member of housing associations over some 30 years, I have in the past visited housing association properties which have been infested by mould. That is not how it should have been. For myself and my fellow board members, I hope we took that seriously and did something about it.

The empowerment of tenants to take action, with a clear right to do so if this Bill passes, is an important area already referred to. We are in an economic situation where we find real financial pressures on institutions such as community law centres, and where, thank goodness, many lawyers still offer pro bono services. If tenants—particularly vulnerable tenants—are to be able to make use of the provisions here, then we need to look at that whole area. I know this lies outside the scope of this Bill, and the noble Lord, Lord Horam, has already referred to it—I was intrigued by his comments about taxation and welcome them—but this is an area that needs to be looked at if people are to be able to exercise the rights given to them under this Bill.

The place where we live is one of the key contributors to human well-being or, in some instances sadly, the lack of it. For all to have the realistic prospect of a decent home is surely not beyond us in this society. The Bill, albeit limited in scope as others have mentioned, will make a valuable contribution to that in a particular sector of housing provision, and I welcome it.

1.29 pm

Lord Tope (LD): My Lords, I join everyone in thanking the noble Lord, Lord Best, for introducing this Bill in this House. I join him and everyone else in the tributes paid to Karen Buck MP for her indefatigable work and for promoting this Bill in the other place.

I must declare some interests. First, I am one of the many vice-presidents of the Local Government Association. I am co-president of London Councils, the body that represents all 32 London boroughs and the City of London, and I am a patron of Electrical Safety First, a charity whose name is self-explanatory. All those bodies and I welcome this Bill, support it entirely and wish its speedy enactment in due course.

Let me start with electrical safety, which my noble friend Lady Grender has already trailed for me. I am going to ask the Minister when the Government intend to introduce the five-yearly mandatory electrical safety checks. After years of campaigning for this, they finally announced in July this year that they would do so. In his letter yesterday, the Minister used the time honoured phrase that they would do so, "when parliamentary time permits". I have been here long enough to know that the Minister will say he is not responsible for the allocation of parliamentary time, so I will not ask him when parliamentary time will allow. May I ask him when his ministry hopes and expects that legislation to be introduced? Is it shortly? Is it in due course? Maybe it is as soon as possible. Can he give some indication that it really is a priority, at least in his department, if not yet, sadly, for his Government?

May I also ask the Minister to clarify, when this Bill is enacted, whether landlords will actually be prevented from renting a property where there are no records of electrical safety checks? As I understand it—and the Minister will know better than I do—it is the intention of the Welsh Government not to allow landlords who cannot prove evidence of an electrical safety check to be able to rent out a property. Is that also going to be the case in England?

On perhaps a more positive note, Electrical Safety First commissioned York University to undertake a research project on the state of electrical checks in the social rented sector. The research found that the social rented sector has a lower proportion of properties that require electrical repairs than any other housing tenures, and properties in the social rented sector are far more likely to have modern electrical safety devices present. This is the case especially with properties owned by housing associations, which have the highest proportion of homes built after 1990. The researchers found, too, that councils and housing associations are doing a much better job in maintaining fitness-for-human habitation standards in terms of electrical safety, probably due to the decent homes standard. They found that the majority of social housing providers voluntarily conduct checks at five-year intervals already and support mandatory checks. However, if the Government intend to legislate for electrical safety checks in the private rented sector, will the Minister confirm that it will also include the social rented sector?

I turn to London and London Councils, where I have some interest and responsibility. In London, the capital city, private renting is the fastest growing housing tenure. It is estimated that, by 2026, 1.4 million dwellings in the capital city will be private rented. That sector is dominated by small-scale landlords. Sadly, we all know that there are far too many documented concerns about poor management standards.

I listened with interest to the noble Lord, Lord Horam, who I think used to represent Orpington. He gave examples of some inner-city places, and I think Blackpool and other seaside resorts, all of which are sadly well known for such cases. I wanted to give an example that was given to me in my own borough, the London Borough of Sutton, by the chair of our housing, economy and business committee—I always have to think about that title. It is a borough where the council has had majority Liberal Democrat control for nearly 33 years, so I take no pride from giving this story. It is a property very close to where I live, but perhaps more relevant, it is less than half a mile from the green-belt border with Surrey—the leafy part of London, apparently. My former colleague said to me that she had come across a family of two adults and three children in a privately rented flat with two bedrooms and a reception room, in a 1960s-built, tall block of flats. From the outside, which I pass every day, it looks perfectly good and decent, but as well as being overcrowded, the state of disrepair in this place is, as my friend who has seen it described, appalling. Electrical fittings do not work and bespoke heating that has been set up as the underfloor heating is too expensive for the family to use. There are wires trailing everywhere. The oven supplied by the landlord works poorly; the smoke alarms do not work at all. There is mould and insect infestation. The family have lived there for 12 years and repeatedly asked for repairs. Although the landlord sends someone round to have a look, nothing happens.

This example, and sadly there are all too many, from the leafy part of outer London, is now drawn to the attention of the chair of the housing committee, and of course action is now being taken. But none of us looking at the outside would have been aware of that. It is not the image that is presented of much of outer London, and yet it exists—I am sad to say—nearly as much in outer London as it does perhaps in Blackpool or in Paddington.

London Councils says that it believes boroughs need to be empowered and given adequate resources to help improve protection of private tenants. It makes the point that London boroughs have suffered a 63% reduction in government funding between 2010 and 2020. It also says that councils should have local licensing powers and be allowed to recoup costs of enforcement against rogue landlords.

Finally, the penultimate paragraph of the Minister's letter to us yesterday said that the short guidance document for tenants will be published as soon as the Bill has completed its passage, to explain their rights and how to represent themselves in court if necessary. I strongly welcome that. Part of the York University research I mentioned found that consumers are being left behind in their awareness simply of their rights and opportunities, never mind the difficulty they will always experience—and some particularly so—in exercising those rights, if necessary, through the courts. Will the Minister confirm that this guide will include specific

reference to electrical safety? If it does not, he can rest assured that he will be hearing more about it from me, and I am sure from other noble Lords in this House. That said, I wish this Bill a swift passage through your Lordships' House, and a rapid enactment as well.

1.39 pm

Lord Carlile of Berriew (CB): My Lords, I too congratulate my noble friend Lord Best on bringing this Bill to the House and Karen Buck on all the work that she has done in another place. I referred in the previous debate to some of the singular peculiarities of your Lordships' House. Perhaps I should have said the peculiar advantages, for we have had two Second Readings each presented by a true expert in the field that each Bill covers. I know that my noble friend has given a great part of his life to quality and safety of housing, and the issues covered in the Bill. He is highly regarded, particularly throughout the architecture profession and by housebuilders.

I declare an interest: I happen to be chairman of the not-for-profit company Design for Homes, which organises the housing design awards each year. One of the purposes of those awards is to reward not only the beautiful, but large-scale housing that provides safe spaces in good-quality environmental conditions for families, particularly in mixed communities, where people seem to flourish best.

I can say from my experience as a lawyer and sitting as a part-time judge as a recorder in county courts, and, indeed, in the criminal courts, that I have seen the dangers presented by bad housing. One can truly observe that crime, child abuse, respiratory disease and mental illness are all caused—I mean caused—by poor-quality housing and poor housing maintenance. Anybody who is in a caring profession, such as the right reverend Prelate, if he will forgive me for describing his calling as a caring profession, sees that on an everyday basis. I have been involved in some safeguarding inquiries relating to abused children. The effect of poor housing has been all too obvious.

May I be allowed one anecdote? My noble friend Lord Best referred to local authorities. He is absolutely right. Local authorities are sometimes just as much to blame as private landlords. On one occasion I was sitting as a recorder in a central London county court. A woman who had a disabled son of some 20 years had been living without any heating or hot water for two years in her council flat, which was owned by a south London council that I will not name. In the end, a solicitor came to court pro bono to try to get something done. The local authority's housing director's answer was that he or she was unavailable that day because they had meetings and could the case be adjourned. My reaction was, "Yes of course, I'll adjourn the case until 2 o'clock and if he or she doesn't turn up then there will be a warrant for their arrest". Of course they turned up, but why should that mother and that disabled young man have had to have gone through months of difficulty and come to an intimidating county court, with wigs, gowns and the rest of it, to get their hot water and heating repaired—the ordinary requirements of life, particularly for that disabled young man? It just should not happen.

I echo something the right reverend Prelate said in this context. It is disgraceful that people who face low-quality housing conditions below fitness for human habitation cannot obtain legal aid to ensure that they get their rights. If they are given legal aid and the landlord has not provided the necessary facilities, the landlord has to pay the costs. I would have thought that this is an area in which legal aid should be glaringly and obviously available.

If I could stray on to the grass verge on the margin of this Bill, I will say something relating to my chairmanship of Design for Homes. We note that, under Sir Roger Scruton, the Government appointed what is called the Building Better, Building Beautiful Commission. This Bill does exactly what it says on the tin, but one has to read that commission's title with great caution. It seems that the Government have fallen into the trap of appointing "taste tsars" who seem to believe that the bypass variegated, as Osbert Lancaster called it, of old represents the best quality housing and that modernist architecture has no place. Some of the best housing we have seen in the housing design awards—I have been involved for several years now—has appeared in modern, contemporary-looking buildings, which have certain obvious advantages. They have large windows so that you can see what you are doing without having to turn the lights on; they have modern efficient heating systems which do not necessarily take up wall space; and so on. I invite the Minister and the Government to link with the purpose of the Bill: the need to be broadminded about architecture and not be lectured to by people who think they have a monopoly of good taste, particularly when they expressly and explicitly reject best modern practice.

There are many examples where one would not necessarily expect it of poor housing which is not kept in good repair by landlords. In rural areas, many small cottages are let by large estates which spend as little as possible on maintaining those properties. There are more cottages without inside lavatories in the rural areas of England and Wales, at least, than in the urban areas of England and Wales. That requires attention.

Many in this House have had children at universities and we have all seen, in some quite distinguished university cities, terrible accommodation in which landlords simply do not carry out the repairs. They are able to let the properties six months before the tenants move in because there is such demand for them, and if you deliver your student children to those properties you find despicable states of repair. On one occasion recently I had to go out to a supermarket to buy 24 lightbulbs so that one could see anything happening in the students' accommodation. That was in one of our great university cities. This area needs attention.

As to young working singletons, there have been grants of planning permission, particularly in the London boroughs, in which office premises have been turned into small and inadequate flats and flatlets. One can almost predict what they will be like in five or 10 years' time because they are plainly unsuited to that kind of conversion. I can understand the reasons why local planning authorities give consent in those cases—it brings properties quickly into residential use—but you are asking for trouble if you do that unless you impose,

[Lord Carlile of Berriew]
as a local authority, proper conditions so that those buildings are big enough, clean enough and properly serviced for the future, otherwise you are perpetuating the Rachmanism to which the noble Lord, Lord Horam, referred.

With those thoughts in mind, I strongly support the Bill. It is high time that it was enacted and I hope we will see strong government support for it.

1.48 pm

Baroness Gardner of Parkes (Con): My Lords, I join the debate on the Bill because I am very interested in the subject and have always strongly supported Karen Buck, who has done a marvellous job.

I do not agree with the view of the noble Lords, Lord Best and Lord Tope, that the good thing about the Bill is that people will be able to take their issues straight to the courts. We should have a return to the leasehold system, under which people did not require special measures to get their legal fees paid. The Leasehold Valuation Tribunal did a huge amount of good. There should be an ombudsman to deal with matters prior to people going to court—they could be dealt with more quickly—and court should be a second choice only if the first one does not work. That issue needs thinking about.

My noble friend Lord Horam mentioned properties being split into units as small as possible. I agree particularly that action is needed on these.

Something that has not been mentioned, and here I must declare my interest on the register, is the abuse of the letting system whereby holiday lets are taking over a lot of property in London. The Mayor of London has commented on the great loss of accommodation. I would like to see powers returned to local authorities to determine whether or not people are entitled, and at least to be able to check how many people are living in these places. As I have said before in your Lordships' House, there are three one-bedroom flats in the block that I have concerns in, and 10 people are bussed in for one or two weeks' holiday. Sometimes they come all bandaged up—they are national health tourists—but otherwise they come in and make life hell for any long-term residents living in the block. It is important that we restore powers that were taken away from the London local authorities. We should go back to that system and encourage local authorities to be more involved. Although the statement is made regularly that they have all the powers they need, if you ask them, they will say that they do not have the powers. I think Newham is the only London borough that has continuing powers.

Mention was made of mould in buildings. When I was on the Greater London Council, I was responsible for one-eighth of London's housing. We introduced systems building, which was a marvellous concrete thing that was meant to be great. As chairman, I went out to visit the properties because people were very unhappy with them. Someone's lovely wedding dress, laid out on their bed for use, had been damaged and virtually destroyed by green mould. It turned out that the whole problem was a lack of ventilation; these places were heated in the morning and then people went out to work and closed the door behind them, and the lack of ventilation meant that the mould had its perfect growing conditions. Once that was discovered, they were able to deal with the problem and put in small permanent ventilation, and the mould vanished. The problem is that, for every improvement you believe you have made in housing, there is some downside. You have to be aware of that and check that things are going well.

Many speakers, including the noble Lords, Lord Tope and Lord Carlile, mentioned legal aid. Legal aid is not that easy to come by. It is a more serious issue to have to spend the time taking a matter to court than the previous system of someone looking into things. Indeed, I understand that the noble Lord, Lord Best, himself has some sort of ombudsman qualification that he deals with. It is unfortunate that powers have been taken away from local boroughs and I would like to see them reinstated.

1.53 pm

Lord Shipley (LD): My Lords, I remind the House that I am a vice-president of the Local Government Association. This has been a helpful debate. I noted very carefully the comments of the noble Baroness, Lady Gardner of Parkes, and no doubt the Minister will respond to them. The problem is that the English Housing Survey, which was two years ago, found that one-fifth of the homes in this country fail to meet the decent homes standard, which I regard as very serious. As we know, category 1 hazards are growing and enforcement activities by local authorities are falling.

There is a very serious problem here, and I am delighted that the Bill has cross-party support and, crucially, very strong support from the Government. We have heard the list of all the organisations that support it externally, and it is a tribute to the mover of the Bill in the House of Commons, Karen Buck MP, and to the noble Lord, Lord Best, in this House that it has attracted such a degree of unanimity. That is a rare event in Parliament and a clear demonstration that this is a problem that needs a solution. We on these Benches, as noble Lords have heard, commend the Bill.

A few years ago I had the privilege of leading Newcastle City Council and one of my aims was to ensure that the decent homes standard was reached in the 30,000 or so homes for which the council had responsibility. It was vital that we achieved that and we did. However, I also recall at the time not understanding why a tenant in the private rented sector could ask the council to take enforcement action against their landlord but a tenant of the council had no right to seek enforcement by one department of the council against another. Crucially, this Bill puts that omission right.

My noble friend Lord Tope reminded us about electrical safety issues, and I look forward to hearing the Minister's response to the specific points that he raised. I will just add that we should always remember that the Grenfell fire began through an electrical fault, so the questions asked by my noble friend Lady Grender about the problems raised by Grenfell residents and the points raised by my noble friend Lord Tope about the need for better electrical safety checks are very

pertinent. To be specific, can the Minister tell us, first, whether the social rented sector will have the same statutory application that is planned for the private rented sector and, secondly, when the parliamentary time is likely to be secured to pass the legislation that the Government have promised? In particular, I would like to know whether the Government will prevent a landlord renting a property where there is no record of an electrical safety check. This matters greatly.

I do not seek to repeat all that has been said in this debate, which has been compelling, but I want to raise two or three other issues that have not been covered so far. One relates to how tenants can represent themselves in court. The Parliamentary Under-Secretary at the Ministry of Housing, Communities and Local Government has said that guidance will be produced on how tenants can represent themselves in court—but, given the cuts in legal aid, a great deal of thought needs to be given to how this will work.

Reference has been made to legal aid. It would help enormously if it could be restored for cases involving the disrepair and unfitness of properties, but I also wonder whether the Government might look carefully at expanding systems of advocacy. The councils for voluntary service, certainly in my area, support advocacy systems, and I would like to think that systems might be made available to simplify the process for tenants. They need to be briefed properly on their rights as tenants but they also need to have the confidence to take forward any problems they have. Therefore, the way in which tenants represent themselves will become an increasingly important issue.

There seems to be a problem with security of tenure in that, if a tenant makes a complaint, action must have been required by the local authority. It must have inspected the premises and served a notice on the landlord to protect the tenant's security of tenure. I hope that the Government will look very carefully at how they can ensure that, if the local authority is not involved in the process, a tenant is protected.

In conclusion, let us re-emphasise that we are dealing with a small minority of landlords. As the Minister in the other place, Heather Wheeler, said, with this Bill the Government plan to disrupt their business model. The Bill provides a critical opportunity to achieve better enforcement and higher standards. It enables tenants to be empowered to take action directly, bypassing the local authority if they wish to, and leaving local authorities better able to concentrate on the worst cases. It is extraordinary that tenants today do not have an automatic right to live in a home fit for human habitation. With this Bill, they will have that right.

2 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, as other noble Lords have done, I refer the House to my relevant registered interest as a vice-president of the Local Government Association.

I am very much in support of the Bill and congratulate my honourable friend in the other place the Member for Westminster North, Karen Buck MP, on bringing the Bill forward and on securing government support for it, which is quite an achievement. I am delighted that the noble Lord, Lord Best, is taking this Bill through your Lordships' House, and I join him and other noble Lords in the fulsome tributes paid to my honourable friend. The noble Lord, Lord, Best, also listed some of the examples that Karen Buck made reference to in the other place, which were truly dreadful. We should not forget that she represents one of the richest parts of our country and our capital. Those were examples of the dreadful conditions some people have to live in today.

I am pleased that the Government have decided to support the legislation; it is very welcome, and I was very much encouraged by reading the letter from the noble Lord, Lord Bourne of Aberystwyth.

The Bill, as we have heard in this debate, will improve standards in the private rented sector by giving tenants the ability to take legal action where the landlord fails to keep the property in a state that is fit for human habitation, and where they fail to ensure that the property is maintained in that state as the law requires them to do so. Presently, the only way a tenant can seek to rectify matters is where an environmental health officer, using powers contained in the Housing Act 2004, takes action against the landlord, as they are prevented taking direct legal action themselves to put the issues right.

So we have the situation where a landlord could rent out a property that is not fit for human habitation but only the local authority can take action against them. In many cases, the local authority will take action, but as we have debated many times in this House, local authorities are under severe financial pressure on a range of matters. According to estimated figures from the Local Government Association, the funding gap next year will be £3.2 billion. Having said that, I agree with the comment made by the noble Lord, Lord Carlile, that, unfortunately, some local authorities themselves have been proved to be guilty of providing properties that are unfit for human habitation. Unfortunately, that is a matter of fact.

Generally, this is a very welcome move, but that leads me on to the issue of legal aid, which many other noble Lords have referred to, to enable lower-income households to exercise their rights and have access to justice. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 cut legal aid for early advice on housing cases and restricted it to only the most serious disrepair cases, which is a matter of much regret. Even with this welcome Bill becoming law, if individuals do not have the means to seek redress in the courts, that is a barrier to improving housing standards for some of the most vulnerable people who need this protection. I am aware that the Government are conducting a review of the LASPO reforms, and I very much support the calls for legal aid to be restored for matters of disrepair and unfitness, including damage-only claims.

There is also the question of security of tenure and the protection from retaliatory eviction where tenants seek to enforce their new rights. I am aware of the protections that are currently in place—the noble Baroness, Lady Grender, made reference to those—but my point is that they require the local authority to protect tenants from eviction, and this situation risks undermining the new powers won for tenants if they have to rely on hard-pressed, cash-strapped councils for that protection.

[Lord Kennedy of Southwark]

I was pleased to receive the letter from the noble Lord, Lord Bourne of Aberystwyth, which I made reference to earlier. It expresses the Government's support for the Bill, which is great. However, one of the most interesting sections of the letter was at the second bullet point on the second page, where it says that the remedies available to the tenant will include an order of the court requiring the landlord to take action to reduce or remove the hazard, and damages to compensate them for having to live in a property which was not fit for human habitation. I fully support and welcome that—it is wonderful.

However, that made me wonder why the Government are resisting compensation payments for tenants who have been ripped off and charged prohibited payments. We can see that in the Tenant Fees Bill. The line we get from the Government is that we can have compensation and fines, but it would be unfair on the rogue landlord to have both. I do not agree with that. I will come back to that bizarre position when we consider the Bill on Report; I am sure that we will come back to this issue then. It owes more to the funding regime envisaged by the Government for that legislation than any other consideration.

The noble Lord, Lord Best, referred to electrical safety checks, as did the noble Baroness, Lady Grender, and the noble Lord, Lord Tope. That leads me to ask, as a number of noble Lords have done, about the Government's stated intention to bring forward mandatory electrical safety checks in the private rented sector. We heard the Government's announcement on that in July, but they have been fairly quiet since then. Perhaps the Minister can use today as an opportunity to update the House on the action that the Government intend to take. We need progress on this matter. We are now in November; change has been a long time coming and it still has not got here yet. I hope that the Minister has some good news for us today; if not, I hope that he will write to Members of the House on these matters.

I want to add to the point made by the noble Lord, Lord Tope, about whether landlords will be prevented from renting out a property where they do not have any evidence that a mandatory electrical safety check has been carried out. We heard that this is the case in Wales. I look forward to the Minister's response.

The right reverend Prelate the Bishop of Rochester was right to illustrate that most landlords provide a good product. We should be clear about that. Good landlords are providing a good product to people and meeting their legal obligations—we should not forget that—but here, we are talking about rogues and criminals who flout the law.

The noble Lord, Lord Tope, also referred to licensing schemes. I am very much in favour of local licensing schemes; they are positive and improve local housing situations. I have mentioned the Newham scheme many times before. Recently, I went to Newham with the noble Lord, Lord Young of Cookham, who was suitably impressed by the work undertaken by the council and the mayor there. I am sure that he has mentioned that to his government colleagues.

I will bring my remarks to a close. I support the Bill and thank the noble Lord, Lord Best, for bringing it forward. I want to make it clear that I have no intention of tabling any amendments to it whatsoever, which I know may surprise noble Lords. It is important that we do not do that. The Bill is very good and needs our support. I urge noble Lords to do the same as me, no matter how tempting their well-intentioned or well-meaning amendments may be. They would do great harm. I look forward to the Minister's response.

2.08 pm

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank all noble Lords who have taken part in the debate. I am not at all surprised that the noble Lord opposite will not table any amendments because I know how responsible he is. I am grateful to him, as I am sure other noble Lords are. This Second Reading has been a debate of great content. Some very interesting and important points have been made, to which I will do my best to respond. In so far as I cannot do so from the Dispatch Box, I undertake to write to noble Lords and place a copy in the Library.

In particular, I thank the noble Lord, Lord Best. I agree very much with the points made by the noble Lord, Lord Carlile, about the quality of the sponsorship of the Bills we have seen in the House today. We could not have a better pilot than the noble Lord, Lord Best; I thank him for his hard work on such a great cause. As other noble Lords have done, I also thank the honourable Member for Westminster North for introducing her Bill. I acknowledge her hard work in the other place; she has shown considerable determination in taking it through successfully. I am delighted that the Bill has received such widespread support across this House and in the other place.

The noble Lord, Lord Best, has given us an effective overview of the Bill and why it is needed, and I echo that. It is an important Bill and we heard from many noble Lords in this debate about the fact that 20% of the housing in this country is in need of urgent attention. That underlines the importance of having this Bill. We heard that from the noble Lord, Lord Best, and my noble friend Lord Horam. The noble Baroness, Lady Grender, also echoed that point.

This fairly short Bill builds on work we have been doing to improve housing conditions and tackle rogue landlords. I must say that, although I am as guilty of using it as anyone else, I wish we could get away from the phrase "rogue landlords" because it tends to make them sound a little too cuddly for my liking. "Bastard landlords" or something stronger would probably be more appropriate because they are far from being cuddly. I shall try to deal with the situations raised by noble Lords, particularly by the noble Baroness, Lady Grender, and the noble Lords, Lord Tope and Lord Shipley. All three asked about electrical checks, as did the noble Lord, Lord Kennedy.

Since 2015, we have moved on the requirement to install a smoke detector on every floor in properties and carbon monoxide detectors where the heating system uses solid fuels. We have taken tough action in

the private rented sector on civil penalties for recalcitrant landlords who need action to be taken against them, which can go up to £30,000. It is worth noting that those civil penalties can be retained by local authorities, which helps them with housing enforcement. We have seen Salford City Council use those powers recently against one landlord, issuing three civil penalties for the flouting of three separate legal responsibilities and fines coming up to £55,000. As I say, local authorities keep the proceeds of those civil penalties.

Local authorities have the power to issue banning orders for landlords and add to them to the database. As noble Lords will know, we propose that the database should now become public, but I am afraid to say that that will happen when parliamentary time allows. I know that is a standard phrase which is trotted out. This issue does need legislative action, but we are dependent on the business managers finding time for that. As far as the department is concerned, this is certainly a high priority.

Private tenants can now apply to get up to 12 months' rent back if the landlord has not dealt with health and safety hazards and the local authority has taken enforcement action through rent repayment orders under the Housing and Planning Act 2016. We have extended property licensing so that more homes in multiple occupation now need a licence and we are going out to consultation, or perhaps review, on the issue of selective licensing. We will report on that in the spring. We have also announced that we will carry out a comprehensive review of the housing health and safety rating system. The noble Lord, Lord Best, rightly stated that if that is extended, it will automatically come within the compass of this legislation. We also plan to require all landlords to belong to a mandatory redress scheme, which I think is known and understood, and we are proceeding, as noble Lords have made clear, with the Tenant Fees Bill, which will reach its Report stage in your Lordships' House the week after next. Subject to this Bill receiving Royal Assent, we will produce guidance for tenants, as has been suggested. I have covered that in a letter which has been sent round. In response to the question put to me by the noble Lord, Lord Tope, I intend that to include points on electrical safety. That was a point well made.

I will try to pick up the points made during the course of the debate, but if I do not address them all I will seek to cover them in a letter to noble Lords. On security of tenure, as is, I think, widely known, the department is considering the position on three-year tenancies and will respond to this issue in the new year, so an announcement will be forthcoming early in the new year on this point.

I was asked some specific questions relating to electrical safety standards. We put a question on the private and social rented sectors having the same requirements in the social housing Green Paper. I think the intention is that they should be dealt with in the same way. I cannot see any reason why they should not be. If I am wrong on that and there is a reason I will cover that in the letter, but it is not apparent to me. We will issue a letter announcing our intentions on this area before Christmas, so I hope noble Lords will bear with us on that.

I thank the right reverend Prelate for the points he made, together with perhaps an anticipatory mea culpa in case there was an issue for the Church, but I am sure it is following good practice in this area. He made a point about legal aid, as did other noble Lords. I am always grateful when noble Lords exaggerate my powers, but as I am sure can be anticipated, this is not an area where I can opine from the Dispatch Box. I will endeavour to cover the point and, as was rightly said, there is a review in this area. I hope noble Lords will understand when I say that I will cover that in the letter, but I cannot give a definitive statement of where we are on that issue.

I move on to points raised by the noble Lord, Lord Carlile. I agree with him on the importance of design. The design of buildings generally, not just for residences, has been a particular interest of mine. I also agree that modernist future design is important. In the National Planning Policy Framework we have, I think for the first time, a requirement to consider good design. It does not specifically mention modern design, but it certainly does not exclude it. Modern methods of construction and self-build will lend themselves particularly to more modern design. I know that the Secretary of State is committed to good design, but that does not exclude modern design. I will make sure that the points made in the debate are brought forward to my right honourable friend the Secretary of State. I agree with the point made by the noble Lords, Lord Carlile and Lord Tope, that sometimes in an area where you might expect good housing—university towns would certainly be part of that—something that looks like good housing from the outside looks very different once behind the door. That is something we need to bear in mind.

We talked generally and correctly about the impact that poor quality and non-decent housing has on individuals but, as was said in the debate, it also has economic effects in terms of pressures on the health service, and I am sure it has an effect on kids' education if they are off school and so on. It certainly has dreadful social effects as well. The points are well made, hence the importance of doing what we are doing.

I thank my noble friend Lady Gardner of Parkes for bringing forward points about the ombudsman and a housing court, which she touched on, which are still very much on the agenda. As my noble friend mentioned, the noble Lord, Lord Best, is central to the issue of the ombudsman. We are looking at that ombudsman service and the housing court issue and will be responding on that, I think, in the new year as well. I will cover that in the letter.

On holiday lets, which my noble friend mentioned, there is a special power for London in that there is a restriction of 90 days for the Airbnb-type let in London, as in other capital cities and tourist destinations around the world, such as Venice. There is a 90 days' accommodation limit. My noble friend will know that the UK Short Term Accommodation Association is doing effective work to try to make sure that that is enforced in London. There is a separate issue with landlords enforcing the provision in their leases. I know from speaking with my noble friend yesterday that that can be a particular problem and is a particular problem for her. I have great sympathy with that issue.

[Lord Bourne of Aberystwyth]
I will write to her on that point to see if there is anything specific we can do, but I thank her for bringing those points up.

I thank the noble Lord, Lord Shipley, for his contribution and support. He mentioned again the electrical issues and their importance in the context of Grenfell. We do not know with certainty about the cause of the fire—at least in a legal sense—because we have not had the criminal proceedings or the result of the inquiry, but he is right about the importance of this in general terms, so I appreciate the points he is making.

I will write on the retaliatory eviction point. Certainly, there is protection where there has been an inspection of the premises by the local authority and it has confirmed that there is a legitimate complaint on the part of the tenant, but I will write more widely to cover how that is dealt with elsewhere.

I thank the noble Lord, Lord Kennedy, once again for his support. I am very happy to discuss with him the point on compensation for loss. I can see why he thinks that is inconsistent, but I do not think it is. Our point here on compensation in relation to tenant fees is that it is legitimate for there to be a fine, where appropriate, of the landlord and for a return of the money, and compensation if there has been a loss, for example, if somebody has suffered illness and they can demonstrate that, which is what we are talking about here. Compensation for a loss is a bit different—I think the noble Lord is talking about exemplary damages. The noble Lord, Lord Carlile, will know the precise legal word.

Lord Kennedy of Southwark: We will come back to this on the Tenant Fees Bill. I thought compensation was for when you suffer some loss or injury and if you had money taken off you inappropriately for a prohibited payment. Why cannot there be compensation for that? We will come back to this on the Tenant Fees Bill, but I think it is for any sort of loss, potentially. The noble Lord, Lord Carlile, may want to intervene.

Lord Carlile of Berriew: If it helps the Minister, I did not immediately realise he was talking about exemplary damages because they are given in very restricted circumstances. It is pretty unlikely that they ever will be given in an ordinary landlord and tenant case.

Lord Bourne of Aberystwyth: I totally agree. We will perhaps come back to this but we are not debating it in this Bill.

Lord Kennedy of Southwark: I am certainly not talking about exemplary damages, but what if a landlord has been prosecuted and has to pay some compensation? Those are not exemplary damages.

Baroness Grender: What we were looking at when I tabled the amendment in Committee was compensation for expenses but, in addition, some kind of incentive, especially for people who are not on high incomes, to take the case forward. However, I am sure we will explore this further.

Lord Bourne of Aberystwyth: Without conflating the two, it begins to sound like exemplary damages to me, but we will come back to that.

I am very grateful for the support this Bill has received and the Government are very strongly in support. I thank noble Lords who participated in the debate, particularly the noble Lord, Lord Best, for all the work he has done and no doubt will continue to do in piloting this Bill forward.

2.23 pm

Lord Best: My Lords, I give deep thanks to everyone who has participated. Every Member of this House who spoke welcomed this Bill and paid tribute to its author, Karen Buck. I thank noble Lords for both things. I will make myself popular by not referring to all noble Lords and their excellent contributions this afternoon.

It is quite encouraging how many of the issues we have all expressed concern about over quite a period are coalescing. The buses are all coming down the road, with quite a few backing up to join in the queue. I had not realised that there was a selective licensing review—among the several reviews going on at the moment—looking at the things that may be improved for the future. There is an awful lot of good stuff coming down the line: security of tenure, the housing courts, electrical safety and the Housing Ombudsman.

I thank the Minister very much for that. I have been in the House some years and I think he is the most diligent Minister in writing to all of us about issues of concern and keeping us abreast of things. I much appreciate noble Lords drawing attention to the fact that amendments to this Bill will not be welcome. We need to press forward and get it done. We are under pressure of time and a swift passage is what it is all about. Nobody thinks that this Bill solves all the problems of the private rented sector, but this is a really central piece of that big jigsaw. This is about the condition of the home in which people are going to live. It is perhaps the most fundamental of all the reforms that are going on now, welcome as all of them are. For that, I pay very special tribute to Karen Buck and those who have advised her. Karen Buck was twice described this afternoon as indefatigable and I have described her and do again as a heroine in these issues.

I thank noble Lords for their contributions. 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 of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL]

Reported from Committee

The Bill was reported from the Grand Committee in respect of proceedings after amendment 35A. The Bill, as amended, was ordered to be printed.

House adjourned at 2.26 pm.

Grand Committee

Friday 23 November 2018

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

Committee (3rd Day)

11 am

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and will resume after 10 minutes.

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

Debate on whether Clause 1 should stand part of the Bill.

Lord Trefgarne (Con): My Lords, in rising to question the proposal that Clause 1 stand part of the Bill, I take the opportunity to put a question to the noble Lord, Lord Grocott. The noble Lord is, of course, a very senior and distinguished member of the Labour Party and doubtless attended the party conference in Liverpool, I think it was, earlier this year where among the policies decided upon, as I understand it, was an early general election. If that happens this Bill would sink without trace, so presumably the noble Lord does not support the idea of an early general election. Will he clarify that for us?

Lord Grocott (Lab): My Lords, this Private Member's Bill being committed to a Grand Committee is in the nature of an experiment. It is clearly a hugely successful one. This must be a record attendance at a Grand Committee. The usual channels may consider this an important precedent that might be useful on other occasions.

I am very glad that the noble Lord, Lord Trefgarne, has mentioned elections because what makes this Bill particularly important is an impending parliamentary by-election which will take place on Wednesday when we will have a new Member of the House of Lords elected by 16 people. As the noble Lord knows, the electorate is 31 people, so the mathematicians will be able to work out that 16 votes will be enough to get someone elected. In most parliamentary by-elections some 20,000 votes are needed for a new Member of Parliament to arrive. I simply say to the noble Lord, Lord Trefgarne, that Clause 1 needs to stand part. If it does not, 50% of the Bill will be gone. It is a two-clause Bill that has so far attracted I think 75 amendments. I urge the noble Lord to let the matter go so we move on to the detailed discussion of Clause 2.

Lord Trefgarne: Against that reply, I assume that the noble Lord, Lord Grocott, is not in favour of an early general election, and nor am I.

Clause 1 agreed.

Clause 2: Extent and short title

Amendment 36

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

36: Clause 2, page 1, line 14, leave out "the whole of the United Kingdom" and insert "England and Wales"

The Earl of Caithness (Con): My Lords, I shall speak also to a number of other amendments as shown on Marshalled List.

There are three or four quite important amendments that we need to discuss on this clause. The first amendment I draw to your Lordships' attention is Amendment 39. It would affect the Short Title of the Bill. I propose that the words "Abolition of By-Elections" are left out. The reason for that is that the Bill gets rid of hereditary Peers. It starts by getting rid of the by-elections and, in due course, as hereditary Peers die off, there will soon be no hereditary Peers left in the House of Lords. The Bill should have the title "House of Lords (Hereditary Peers) Bill" because there will not be another Bill to get rid of the hereditary Peers if this Bill proceeds and we wither on the vine.

The second amendment to which I draw your Lordships' attention is Amendment 42, which states that Section 1 should not come into force until,

"the Secretary of State has commissioned an independent review of the benefits that hereditary Peers bring to Parliament".

One of those important benefits is that we are not appointed by the Prime Minister. The noble Lord, Lord Grocott, accepted my amendment that acknowledges that the Bill is designed to produce a purely appointed Chamber, on the whim of the Prime Minister's patronage. We will come on to patronage a bit more in due course, because it is a matter that my noble friend Lord Young—then Sir George Young—did not like when the other Bill went through the Commons in 1999.

Amendment 43 makes another condition—that there ought to be a vote of excepted hereditary Peers before the Bill becomes an Act. I tabled that amendment because the noble Lord, Lord Grocott, is arbitrarily unpicking an agreement we had signed up to that was binding in honour until stage 2 came along; I wish that stage 2 had already happened. The people who will suffer from this are the hereditary Peers, so it seemed only sensible that a vote should be taken among them on whether they were happy that the agreement should be broken.

Another amendment that I wish to talk to briefly is Amendment 58B, which concerns the size of the House. We will talk about that a bit more when we come to the amendments on the Burns report, but this amendment states that the Bill should not become an Act until,

"steps have been taken to ensure that the membership of the House … does not exceed 600 in, or after, the year 2030".

That is about the same time as the Burns report proposed that that figure should come about, but it would be a big step towards stage 2. When the House is limited at 600, that should be the time when the hereditary Peers' by-elections should cease. I beg to move.

Lord Balfe (Con): My Lords, I will speak only once, because what I have to say applies to the whole Committee. Some noble Lords were at what I think of as the Norton-Cormack meeting the other day, which Bernard Jenkin from the House of Commons addressed by saying that if the Bill were passed he would do his utmost to get it through the House of Commons. That is important for your Lordships to note, because often Bills from this House do not go smoothly through the House of Commons.

I am amazed at the tactics used on the Bill. They are self-destructive and against the interests of the hereditary Peers in this House. The only Labour leader I ever regarded as a friend was the late John Smith, who of course sadly never became Prime Minister. He once said to me that the worst job he had was, as he put it, with the queue of supplicants down the Corridor seeking to help the Labour Party by taking a seat in the House of Lords.

There will be a change of government one day—that happens in democracies—and the Labour Party will come into power. At the moment, it has 186 Peers including four hereditaries, and our side of the Chamber has 248 Peers including 47 hereditaries. Any Labour leader who wanted, first, to strike a radical pose, and secondly, to get himself out of a lot of people supplicating for membership of this House, could pass a simple Act that would have enormous popularity in the country: the abolition of the legislative rights of hereditary Peers. That would not take the title away, but it would take away the right to sit in the House of Lords. That would quickly change the arithmetic to there being just 201 Conservatives and 182 Labour Peers. That would put us well on the way to what is not an illegitimate aim for the governing party of the day; that is, to have slightly more seats than the principal opposition party of the day.

The late Jim Callaghan was fond of talking about turkeys voting for Christmas. I wonder whether the hereditary Peers, who seem to be the only ones backing this move, have actually thought it through. What is principally being discussed, particularly on the ultra left of the Labour Party, is the idea that perhaps they should go for abolishing the House of Lords. However, there are now two sorts of people on the ultra left of the Labour Party. There is the Jeremy Corbyn faction which believes in principle above everything else, but probably more important is the John McDonnell faction. John McDonnell believes in achieving his aims progressively. I think that the John McDonnell faction is quite happily in favour of this Bill being stalled in this place because it gives him a good cause for putting into the manifesto the abolition of the legislative rights of hereditary Peers.

I have said that I will speak only once, but my overall conclusion is that hereditary Peers are shooting themselves very firmly in their own feet.

The Earl of Kinnoull (CB): My Lords, those are very interesting words and most certainly worth reflecting on. I thank the noble Lord. I rise to speak to Amendment 58D, tabled in my name. It concerns the Prime Minister's prerogative. In my Peers in Schools programme visits, we inevitably and rightly discuss the composition of the House and the routes of entry. Three issues are raised consistently by the pupils: obviously the hereditaries, the Bishops and the Prime Minister's prerogative. In respect of the prerogative, it seems that the relevant set textbook makes the point that there is no other country in the developed democratic world where one person has so much power over the membership of the legislature. Indeed, as the discussion generally continues, the view seems to develop in all the classes that I can recall that the Prime Minister's prerogative is by far the largest constitutional issue of the three.

This House considered the matter recently as part of the annual Burns committee initiative, and last December more than 90 Members spoke. As we will all well recall, the overwhelming mood was one of great support for the Burns committee, and accordingly of curbing the Prime Minister's prerogative. Indeed, the Public Administration and Constitutional Affairs Committee of the other place reported on 19 November on the matter. In a powerful analysis of the Prime Minister's prerogative, it concluded at paragraph 35 of its report:

> "It is important that the Prime Minister commits to the proposed cap and to limiting appointments in line with the proposed appointment formula".

There are 791 Members of the House, of whom 178 do not owe their membership to a Prime Minister. That number is comprised of 26 bishops, 89 hereditaries and 63 Members who have come in through the House of Lords Appointments Commission. Some 613 Peers have therefore been appointed under the prerogative power, which is around 80%. I strongly believe that this dynamic represents a constitutional risk in that the prerogative is so concentrated in one person. That risk should be managed, and this Bill clearly represents a route whereby one might attempt that. However, as currently drafted, the Bill would increase the risk over time by removing half of the non-prime ministerially appointed buffer, although other dynamics are also in play to exacerbate matters.

I very much admire HOLAC. Its chairmen have crafted a first-class institution. It is, however, being somewhat smothered. In its first period under Labour Administrations between 2001 and 2010, 52 Peers were appointed in just over 10 years. That is an average of pretty well exactly five per year. In its current period under Conservative-led Administrations there have been 15 appointments, including three last June. That is an average of just under 1.8 per year. Actuarially, one would need three to four a year to maintain the current number of 63 HOLAC Peers. Accordingly, the HOLAC part of the buffer that is not appointed by the Prime Minister is shrinking. As I said, this Bill would see other parts of the buffer shrink further.

11.15 am

Amendment 58D is designed to cope with this dynamic and the recently expressed and strong desire of not only this House but the other House—or at least a committee of the other House—to curb the Prime Minister's prerogative. The amendment accepts the elegant way of dealing with the end of the hereditary era while delaying its implementation until the prerogative is curbed. The wording is designed to promote debate only. It does not specify how such a cap would operate.

The Burns committee has already expressed views on this. The other place's constitutional affairs committee builds on it in its report of this week. It is heading in wholly the right direction. It makes no sense to have half a reform of our composition and routes of entry. A full reform process is needed. I thus urge the noble Lord, Lord Grocott, to accept at least the principle of the amendment. I naturally would be very happy to discuss matters with him.

Lord Rennard (LD): My Lords, I obviously agree with other noble Lords that we really need full reform of the House of Lords, but that is not on offer. That we cannot have full reform of the House of Lords is no reason to say that we cannot make progress on more limited reform. In examining this group of amendments, I thought I would look at the dictionary definition of "amendment", which says that an amendment is:

"A minor change or addition designed to improve a text or a piece of legislation".

I respectfully suggest that no amendment in this group remotely fits that dictionary definition of what an amendment is. The amendments in this group do not seek to be minor or to improve the text in any way. They seek simply to delay discussion on perhaps more important matters, to filibuster this debate and to prevent any progress on the legitimate issue. That is wholly wrong and brings the House into disrepute when we are debating things to prevent Members in the Commons voting on issues such as this. We should proceed with the Bill to allow them to have their say on it.

With great respect, the noble Earl, Lord Caithness, is wrong to suggest that if the Bill was approved it would mean that we simply ended up with a wholly appointed House on the whim of a Prime Minister. He ignores the very important role of the independent House of Lords Appointments Commission, which does not appoint people on the whim of the Prime Minister. I also respectfully suggest that other noble Lords are at present appointed on what might be called the whim of party leaders, but they are at least elected party leaders who have faced the electorate. To suggest that it is somehow more legitimate to have people in this place because of the hereditary position is wholly wrong. They, of course, are here only on the basis of the whim of a previous monarch, perhaps some centuries ago, whom that monarch might have married, and then their eldest son, the eldest son's son, et cetera. That is no basis whatever for any sort of legislature deciding on the laws of the land in the 21st century.

For those reasons, all these amendments should be rejected so that we can get on to more serious debates. We should have Report shortly in the House of Lords and allow the House of Commons to consider the Bill.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I will briefly address just two of the points that the noble Earl, Lord Caithness, made objecting to the Bill. The first objection is on the basis that the Bill would end the one part of the existing process for the creation of new Members that is democratic because it depends on election rather than appointment. I can perfectly well understand, though I profoundly disagree with, those who argue for an elected House rather than an appointed House. What I fail utterly to understand is why it should be considered less objectionable—indeed, considered a partial answer to those opposed to an appointed House—that 92 of its Members and those who currently elect their successors come from a privileged class of hereditary Peers who, alone, are candidates for election. This is what the noble Lord, Lord Grocott, and, indeed, I in the past, have called the "assisted places scheme". It is nonsense. It is hardly going to persuade those in favour of democracy that: "Ah, we meet that test now; we wouldn't if this Bill went through".

The second point is in relation to Amendment 58B: the suggestion that we wait until we are down to 600 before we implement the Bill. Under the Burns proposals, which are the route by which we hope to reduce the House to 600, those who leave by death or retirement are to be replaced—initially one for two, later one for one—by new members of the same party, so if hereditary elections remain, Tory slots in future would sometimes inevitably have to be filled by hereditaries wherever there is a gap. That would reduce the number of new Members whom the party leader might otherwise prefer to be in the House. If this Bill passes, therefore, and the Burns scheme succeeds in reducing us to 600, the Tories will not lose in numbers but will gain in the choice of who fills the available slots. If the Bill fails, hereditaries will form an ever-larger part of the Tory group. Is that really what they want?

Baroness Hayter of Kentish Town (Lab): There is only one point I want to raise, other than to say that of course we want a general election. Actually there are two issues. One, which the noble and learned Lord, Lord Brown, has just mentioned, is the importance of refreshing this House not only with those who happen to be sons of people who, as the noble Lord, Lord Rennard, said, were appointed by a monarch or a Prime Minister. It will be important to refresh the House so that it is not just men who are appointed. That will certainly be the case for the Conservative Party which, otherwise, will end up very male-dominated.

My other point, from the point of view of the Labour Party, is on an issue that has been raised and which I have responded to before about the binding commitment. The binding commitment was, of course, not binding in law; it was binding until it was possible to change the composition of the House. I remind the noble Lord that that commitment was made in 1997. After we lost office, his party were in government in coalition from 2010 to 2015 and did not manage to bring in a change to the House, they were then not in coalition and did not do it, and they are now effectively in coalition again and are not doing it. The lack of commitment to changing the House means that a commitment made much earlier no longer has the standing that it had at the time.

Lord Grocott: My Lords, I am grateful to a number of noble Lords who have spoken in favour of the Bill, and I do not want to add to the points that they made. The noble Lord, Lord Balfe, shared a useful piece of

[Lord Grocott]
information about the views of important people in the Commons in relation to this legislation. It gives me great heart if I am able to think that, should this House pass the Bill, as I very much hope it will, it would be a huge example to almost any other institution of an institution reforming itself in a sensible way.

I am grateful to the noble Lord, Lord Balfe, for that, and to the noble Lord, Lord Rennard, who mentioned the need for speed. These by-elections will take place with increasing frequency; that is the inevitable consequence of age. We are talking about people who were identified as the 90 in 1999. There have been 44 by-elections since then—or 44 new Members as a result of by-elections; some have been for two new Peers—but inevitably they will come with greater frequency. There are two in the pipeline. The need to get this Bill through is all the more urgent if we are not to be subject to, it seems to me, the reasonable accusation of looking completely ridiculous with some of these by-elections. The point made by the noble and learned Lord, Lord Brown, about the effect that an increasing proportion of the membership of the House being hereditary Peers will have on different parties is powerful.

I do not disagree at all with the noble Earl, Lord Kinnoull, about the need for a cap on the size of the House. I think very strongly that we should reduce the number of people here. But of course, if nothing is done specifically about the hereditary Peers—this is the point made by the noble and learned Lord, Lord Brown—it will be significantly harder to reduce the size of the House if there are 92 people to whom "two out, one in" does not apply. The stats in the second, most recent report of the Burns committee are quite clear. They are small numbers so one should not draw huge lessons from them, but they make it pretty plain that it is difficult to reduce the size of the House if hereditary Peers are being replaced one-for-one, whereas everyone else is being replaced on the basis of one in for every two out.

This is a big group of amendments and I urge the noble Earl, Lord Caithness, not to press them further, either here or on Report, as they would have the cumulative effect of delaying the Bill's implementation. I will be kind to him today and say that he is not trying to wreck the Bill with these amendments—though it was hard for me to say that—but they would certainly significantly delay it. One or two of them are, frankly, close to being silly, such as the idea of reviews of the work of both Houses. But let us leave it at that, and I appeal to him not to press them further either here or on Report.

The Earl of Caithness: My Lords, this has been a useful discussion. I would only say to my noble friend Lord Balfe that I think the McDonnell wing that he mentioned will put into the manifesto exactly what he says, whether this Bill goes through Parliament or not. It was in fact in the 1997 manifesto that all hereditary Peers should go. It is something that I agree with, because I think that all hereditary Peers, and all life Peers, ought to go. That is what I say to the noble Lord, Lord Rennard: whatever the composition of a House that is not 100% elected, it is easily criticised. That is why I believe that 100% election is much the best way forward for a second Chamber in this country.

The noble Lord, Lord Grocott, did not answer me at all on Amendment 39. I wonder whether he might give that some thought between now and the next stage, because it would not delay the Bill at all; it would merely clarify exactly what the Bill does, which is to abolish hereditary Peers. Meanwhile, I beg leave to withdraw my amendment.

Amendment 36 withdrawn.

Amendments 37 to 40 not moved.

11.30 am

Amendment 41

Moved by ***Lord Trefgarne***

41: Clause 2, page 1, line 16, at end insert—

"(3) Section 1 comes into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.

(4) Regulations under subsection (3) may not be made until the Secretary of State has published a report outlining progress made towards the implementation of the recommendations in paragraphs 18, 19, 29, 35, 39, 41, 44, 45, 48-51, 53, 55, 66, 70, 74, 77, 81, 82, 96 and 97 of the Burns Report.

(5) In this section, the "Burns Report" means the Report from the Lord Speaker's committee on the Size of the House of Lords, published on 31 October 2017.

(6) This section comes into force on the day on which this Act is passed."

Lord Trefgarne: My Lords, I have one simple thought about this. It is the one expressed by my noble friend Lord Caithness a little while ago. He, I and others object to the Bill proposed by the noble Lord, Lord Grocott, because it breaches the undertaking given in 1999. The context of that Bill was the total abolition of the hereditary peerage. At some point during its progress—the noble Lord, Lord Grocott, was, I believe, involved in the discussions that went on behind the scenes; I most certainly was not—all hereditary Peers were going to be removed from the House of Lords. A deal was done involving, principally, my noble friend Lord Strathclyde but others as well. An undertaking was given "binding in honour" those who gave their assent to it. Those were the words of the then Lord Chancellor, repeated in the House and, I believe, elsewhere. It is an undertaking that I hope, on reflection, all political parties will continue to be bound by.

The Earl of Caithness: My Lords, I want to comment on the percentage of hereditary Peers, which the noble and learned Lord, Lord Brown, raised on a previous amendment. The best date the Library could give me figures for was 11 January 2000, just after the 1999 Bill went through, when the hereditaries comprised 13.89% of the House. As of March—I have not updated the figures since then—we comprised 11.66% of the House. When the House reaches a total of 600 Peers we would comprise only 15.33%. The percentage has gone down since 2000. That percentage will go up a bit, but I am very happy to discuss that point so that we keep the hereditaries at the same figure they are now.

Lord Grocott: My Lords, this group of amendments in various ways responds to the Burns report, which most of us welcome. They lay down all sorts of preconditions that this Bill cannot come into operation until sundry provisions of the Burns report have been implemented. We have been over the point made by the noble Lord, Lord Trefgarne, about the "binding commitment" in 1999 so many times. The inference of what he said is that my fingerprints were over that commitment. I can tell him exactly why the concession was made in 1999 that resulted in the difficulties we have had ever since with these by-elections. The Labour Government, with a colossal majority in the Commons, had the simplest possible statement of intent in respect of the House of Lords, which was to end the whole of the hereditary peerage—no ifs, no buts. However, as there was a huge majority of hereditary Peers—and Conservative Peers, although for this argument, that is beside the point—in this House it was plain that the legislation was not going to be admitted by them.

Worse than that, it became increasingly apparent that the rest of the Labour Government's legislative promises to the electorate would not be able to be enacted because of the colossal amount of obstruction coming from the hereditary Peers at the time. That is the last time I am going to make that speech. It has the merit of being true. My good friend—and friend of many others here—Denis Carter, who was my predecessor as Chief Whip in the House of Lords, advised No. 10 and the Cabinet that there were real dangers to the Labour Government's whole legislative programme. The settlement of 92 was obtained under duress—that is the only way in which it can sensibly be described. What is absolutely certain is that it was intended to be a short-term arrangement, yet here we are, 19 years later, debating at length—I shall make sure that my speeches are not at length—an end to what was intended to be temporary and is now 19 years old. Can we please not have that discussion ever again? I hope that the proposers of these amendments will agree not to press them further.

Lord Trefgarne: Perhaps it may be in order for me to say one brief sentence. The Government of whom the noble Lord was a distinguished member could have honoured the undertaking by bringing forward their own legislation to reform the House of Lords, which they chose not to do. They had eight or nine years subsequently in which to do that, but did not do a thing about it.

Lord Grocott: I fear that I am in danger of being bored; I do not know about anyone else. A Bill was introduced; it died in wash-up when the Labour Government were voted out of office in 2010. Subsequently, other efforts were made. The noble Earl, Lord Caithness, and the noble Lord, Lord Trefgarne, cannot say with a straight face that they have been forever passionate supporters of a fully elected House. The two of them have been here for 100 years put together—full marks for that. If they were totally committed to a fully elected House and if they have been unable to do anything about it in those 100 years other than to keep repeating those barely credible words which are simply a device to delay and prevent enactment of this Bill, all I can say is that they have not been very effective parliamentarians. Please can we hear the end of that and move on.

Amendment 41 withdrawn.

Amendments 42 to 58 not moved.

Amendment 58A

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

58A: Clause 2, page 1, line 16, at end insert—

"(3) Section 1 comes into force after the period of two months beginning with the first day on which the conditions in subsections (4) and (5) are met.

(4) The condition in this subsection is that a House of Lords Appointment Commission, as set out in Schedule (The House of Lords Appointments Commission), is in operation on a statutory basis, with the role of screening, selecting and recommending all persons for appointment to the House of Lords.

(5) The condition in this subsection is that a Speakers' Committee on the House of Lords Appointments Commission, as set out in Schedule (The Speakers' Committee on the House of Lords Appointments Commission), is in operation on a statutory basis, with the role of scrutinising the work of a House of Lords Appointments Commission set up in accordance with subsection (4).

(6) This section comes into force on the day on which this Act is passed."

The Earl of Caithness: My Lords, we move to an important amendment which would not delay the implementation of the Bill in any way if it were accepted. It touches on a matter that we have briefly discussed: the appointment of life Peers to the House. When the 1999 Bill was debated in the House of Commons there was considerable discussion about patronage. My noble friend Lord Young of Cookham, then Sir George Young, said that the Bill would see,

"a quango House created by stealth".—[*Official Report*, Commons, 10/11/99; col. 1147.]

My noble friend Lord Cormack also criticised the patronage that could happen at that stage and recommended that the hereditary Peers be kept because of the undiluted patronage of the Prime Minister.

Since then, as the noble Earl, Lord Kinnoull, has said, the House of Lords Appointments Commission has come into being, but it is not statutory. Whatever happens to this Bill, immense power and patronage will be in the hands of one person to appoint life Peers.

The purpose of Amendment 58A and the two other amendments that go with it is to establish a statutory appointments commission. I will not go into detail because noble Lords who have studied the 2012 Bill—which, sadly, fell in the House of Commons because of mishandling at that end—had it all in there. My words are taken from the 2012 Bill, of whom one of the proposers was none other than Sir George Young, so my noble friend the Minister will know the words intimately. I hope that because he designed and approved them, he will have no objection to them coming in.

[The Earl of Caithness]

This would be a good amendment for the noble Lord, Lord Grocott, to accept. At the moment his Bill is destroying a part of the House. He has described it as a small Bill, but it is like lighting a match and putting it to a fuse that is going to Semtex because there will be substantial alterations to the British constitution as a result. He could go out with this Bill not only having destroyed something but having put something valuable in its place—a statutory appointments commission.

I will not weary your Lordships by taking you through all the points of detail because they were all made by parliamentary draughtsmen seven years ago. I beg to move.

Lord Foulkes of Cumnock (Lab): My Lords, if I was still in another place and not here, I would ask the person chairing the Committee how this amendment is allowable. The purpose of the Bill is to:

"Amend the House of Lords Act 1999 so as to abolish the system of by-elections for hereditary peers".

It does not go beyond that. However, this amendment goes way beyond that.

As I understand it, because of the crazy procedure in this place, the chair has almost no powers, so perhaps I may ask the Minister, who has been referred to on many occasions by the proposer of this amendment, how on earth these amendments are allowable. It is crazy. Is there no answer?

Lord Rennard: My Lords, the noble Lord, Lord Foulkes, is right about the nature of this amendment. There is a simple test to compare an amendment as against a filibuster: this is a one-page Bill in total and yet the amendment runs to nine pages. A nine-page amendment to a one-page Bill is not an amendment to make a small change to improve the legislation but an attempt at a filibuster. A definition of a filibuster is:

"A filibuster is a political procedure where one or more members of parliament or congress debate a proposed piece of legislation so as to delay or entirely prevent a decision being made on the proposal".

Lord Foulkes of Cumnock: The noble Lord is right about filibuster—I like filibusters on occasions. I could put down an amendment within the terms of the House of Lords Act 1999 so as to abolish the system of by-elections for hereditary peers and I could filibuster on a perfectly proper amendment which changes a word or whatever. That is allowable. However, as I know the noble Lord, Lord Rennard, is a constitutional expert, perhaps he can tell me how these amendments—which are clearly not within the terms of the title of the Bill—are allowable. I must have a word with the Clerk of the Parliaments—I am having a lot of words with him at the moment but I will have another one—to find out why on earth these things are allowed.

Lord Rennard: I ask exactly the same question as the noble Lord, Lord Foulkes, and I agree with the point that he is making. There is a strong case for putting the House of Lords Appointments Commission on a proper statutory basis. That was one of the four proposals in the House of Lords Reform Bill, which became known as the Steel Bill—one of the many sensible proposals—but it was effectively blocked because of a flurry of hundreds of amendments in the name of the noble Lord, Lord Trefgarne, tabled the day before that Bill was to be considered in the House of Lords. That is the reason it did not happen or make progress. Those people who prevented the House of Lords Appointments Commission being put on a statutory basis are now suggesting that we need to debate putting the House of Lords Appointments Commission on a statutory basis. The text is simply to prevent us making a sensible, modest reform to bring an end to the hereditary by-elections. We need to end those by-elections because if we do not make a contribution from the hereditary element towards a reduction in the size of the House, we will increase the proportion of Members of the House who will be here by virtue of the hereditary position, as opposed to at least being appointed by the Appointments Commission or by elected party leaders.

11.45 am

Lord Lisvane (CB): My Lords, I respectfully support what the noble Lord, Lord Foulkes of Cumnock, said. Of course, one cannot translate issues of scope directly into issues of relevance in this House, as opposed to the House of Commons, but it is worth recalling that this is a single-purpose Bill. At the very least—at the kindliest level of criticism—its inclusion as being in order for an entirely separate one-purpose piece of legislation is generous.

Baroness Jones of Moulsecoomb (GP): My Lords, I was hoping not to speak in this debate because I wanted to leave early and get a train to Dorset to see my grandchildren, so I am rather irritated to be on my feet. Quite honestly, this is cheating. I know that I am a relatively new Member of the House, particularly compared to the noble Lords opposite, but filibustering on a simple Bill like this which has an enormous amount of support in the House is cheating and I do not know how it is allowed.

A few comments have been made already which are infuriating. I do not remember either noble Lord signing up to my Bill on an all-elected Chamber, but I look forward to getting their signatures when I bring it back. This phrase about the "undiluted patronage of the Prime Minister" is not strictly true. I am here because Cameron honoured a promise in the party's election manifesto. I am sure that Cameron and Clegg regret it but that is the fact, so there are people who are here not just on a whim. I remind all noble hereditary Lords that they are here on a whim, as the noble Lord, Lord Rennard, pointed out—the whim of a monarch, many centuries ago—and I do not believe that anybody is born that entitled. I admire what a lot of the hereditary Peers do here—I even have a best friend who is a hereditary Peer—but the fact is that it is a ridiculous system to maintain into this century. Quite honestly, this abolition of by-elections is a soft way to go about it. It values the noble Lords we have here at the moment but it says: "Enough". This is a defunct and outdated system and we will gain respect from outside if we are to make a move of this kind.

Lord Grocott: My Lords, I really am grateful for the contributions we have had. I thought pretty much everything that could be said about this Bill had been said at the various stages so far. This is the third day in Committee, which must be unprecedented for a Private Member's Bill, or close to it anyway. Still, new thoughts arise, not least—I suppose this is not a new thought but it is a very significant one—from my noble friend Lord Foulkes, whose point was embellished with skill and elegance by the noble Lord, Lord Lisvane, whose clerkly word to describe the allowance of this amendment being tabled to the Bill was "generous". I shall remember that all-encompassing word, which avoids saying brutally what needs to be said. I was surprised as well that this amendment was in the scope of the Bill. Should the noble Earl, Lord Caithness, and the noble Lord, Lord Trefgarne, decide to bring this back on Report, I hope that they consult the clerkly community, as I am sure they do, and that the clerks will reflect on what has been said today during this debate—particularly by the noble Lord, Lord Rennard—and decide that this should not be here. Many of us are perfectly happy about having a statutory Appointments Commission. I am happy about all things in life but I do not want them all tacked on to this Bill. That is all I am saying.

I appreciate the point made by the noble Baroness, Lady Jones of Moulsecoomb. We have had very few votes, but support for this Bill in this House is overwhelming in all parties and in none, as well as among both life Peers and hereditary Peers. I have no doubt about that. I notice that one of the amendments asks that the Bill should not become operational until a majority of the hereditaries agree to it. This is only anecdotal, but a number of hereditary Peers have come to me to say, "Why on earth do they not let this Bill pass?" That is my appeal to them now.

We will come back to the Bill on Report. We have had a clear indication from the noble Lord, Lord Balfe, that there is a good chance that the Commons would support it. We would do ourselves no end of good by passing it and we would do ourselves significant damage if we allowed these silly by-elections to continue. Let us try to complete the Committee stage now.

The Earl of Caithness: My Lords, it made me smile when I heard several noble Lords criticise this proposal because I have had heard equally from noble Lords who want to attach their ideas to other legislation going through the House, their argument being, "We don't get many chances to discuss bits of legislation so let's tack it on to this Bill". The noble Lord, Lord Grocott, when he was the Chief Whip, will remember many occasions when amendments were tabled to tack on people's specific wishes that some would consider not quite in the spirit of the Long Title. However, it was a chance to air a point.

Noble Lords have not criticised the need for a statutory Appointments Commission, although they have said that it would be wrong to have it with this legislation— I remember saying that as a Minister in response to quite a number of amendments.

I have been singled out for trying to delay the Bill. Yes, I have tabled amendments, but until today I think that we have had some six hours of discussion and I reckon that I have spoken for less than a quarter of an hour. I do not think that it is me who is holding up the Bill or discussion on it. I may have put down amendments, but everyone else seems to want to chime in.

I regret that the opportunity has not been taken to put this proposal into the Bill because I do not think that it would cause much of a problem. If everyone wants it, this is a perfect vehicle for taking it forward for the benefit of the future of this House. Meanwhile, I beg leave to withdraw the amendment.

Amendment 58A withdrawn.

Amendments 58B to 58D not moved.

Debate on whether Clause 2 should stand part of the Bill.

Lord Trefgarne: I will not delay your Lordships for more than a moment. The proposal of my noble friend Lord Caithness to regularise selections as proposed in his amendment is a very good one and I support it.

Lord Grocott: As we come to our conclusion, I shall say simply this. I am very grateful to so many people for proving the success of Private Members' Bills being held in Grand Committee. It should facilitate the opportunity for more Members to make use of the House's time on a Friday while Second Readings are being taken in the main Chamber. I thank all noble Lords who have taken part in our debate. I can barely believe that we have completed the Committee stage, but it looks as though we have.

Clause 2 agreed.

Amendments 58E to 59 not moved.

Bill reported in respect of proceedings after Amendment 35A.

Committee adjourned at 11.54 am.

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