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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Royal Assent....1211
House of Lords (Hereditary Peers) (Abolition of By-Elections) Bill [HL]
Report 1211
Cohabitation Rights Bill [HL]
Second Reading 1257

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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
Lab Co-op	Labour and Co-operative Party
LD	Liberal Democrat
LD Ind	Liberal Democrat Independent
Non-afl	Non-affiliated
PC	Plaid Cymru
UKIP	UK Independence Party
UUP	Ulster Unionist Party

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

House of Lords

Friday 15 March 2019

10 am

Prayers—read by the Lord Bishop of Southwark.

Arrangement of Business

Announcement

10.05 am

The Lord Speaker (Lord Fowler): My Lords, I remind noble Lords who were not here of what the right reverend Prelate the Bishop of Southwark said a moment ago: there will be a minute's silence at 11 am for what has happened in New Zealand.

Royal Assent

10.06 am

The following Acts were given Royal Assent:

Supply and Appropriation (Anticipation and Adjustments) Act,

Organ Donation (Deemed Consent) Act,

Parking (Code of Practice) Act,

Stalking Protection Act,

Children Act 1989 (Amendment) (Female Genital Mutilation) Act,

Northern Ireland Budget (Anticipation and Adjustments) Act.

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

Report

10.06 am

Moved by ***Lord Grocott***

That the report be now received.

Lord Trefgarne (Con): My Lords, may I say a few words?

The Lord Speaker (Lord Fowler): The procedure is that we take this first. The question is "That this Report be now received". As many as are of that opinion will say "Content", to the contrary "Not-Content". The Contents have it.

Report received.

Lord Trefgarne: My Lords, I apologise for confusing the procedure. I simply wanted to say a few words before we get to the Marshalled List. The plain fact is that the noble Lord, Lord Grocott, and I, who disagree over the Bill's provisions, as is well understood, none the less agree on a number of important issues relating to this matter.

The noble Lord has on several occasions drawn attention to the very small number of Peers who vote or take part in hereditary Peer by-elections for the Liberal Democrats and the Labour Party, and I do not disagree with that curiosity. I therefore would not oppose the idea that all hereditary Peer by-elections be conducted on an all-House basis, as are those by-elections for officeholders at present. He has also drawn attention to the small number of female Peers—

Lord Hunt of Kings Heath (Lab): My Lords, I wonder whether the Minister might help the House understand what is actually taking place.

Lord Young of Cookham (Con): Well, let me have a go. I think my noble friend Lord Trefgarne was hoping to intervene on the Motion moved by the noble Lord, Lord Grocott, that Report be now received. However, the question was put, the House agreed and my understanding is that we should now move to the first amendment. It may be that some latitude could be extended on the first amendment for my noble friend to make the point that he was in the process of making.

Clause 1: Overview

Amendment 1

Moved by ***Lord Cormack***

1: Clause 1, page 1, line 4, at end insert ", save for the Earl Marshal and Lord Great Chamberlain, who hold hereditary offices of state."

Lord Cormack (Con): My Lords, before I speak to my amendment, I say—on behalf of everyone in the House, I am sure—how glad I am that there will be an opportunity for a minute's silence at 11 am in the wake of the thoroughly barbaric and appalling outrage in New Zealand.

I also very much hope that we will be able to conclude proceedings on this Bill in good time to enable the Bill brought forward by the noble Lord, Lord Marks of Henley-on-Thames, which potentially affects hundreds of thousands of people in this country, to have a decent Second Reading.

My amendment is essentially a tidying-up amendment and a simple one, and I have discussed it with the noble Lord, Lord Grocott, who has kindly indicated to me that he is minded to accept it. There are 92 hereditary Peers in your Lordships' House, but only 90 of them are subject to the by-election provision. I strongly support the Bill—the noble Lord knows that: I have spoken in its favour and may have to do so again—but there are two hereditary Peers who are not subject to by-elections, who are here by virtue of the fact that they hold important offices of state. Neither of them ever participates politically in the proceedings of your Lordships' House, but the Lord Great Chamberlain has the duty from time to time to deliver messages to your Lordships' House. Therefore, his membership is important although peripheral. The Earl Marshal has the very real burden of being in charge of notable affairs of state. Again, it is appropriate that he should be a Member of your Lordships' House, and the measure adopted some 20 years ago accepted that.

All I suggest in the amendment is that we make it abundantly clear that the Bill is dealing with what it says it is dealing with—by-elections—and that those two posts are not relevant to the Bill and therefore should not form part of it. I beg to move.

Lord Grocott (Lab): My Lords—

The Lord Speaker: I can see it is going to be one of those days. Amendment proposed: page 1, line 4, at end insert the words as printed on the Marshalled List. I call Amendment 2, as an amendment to Amendment 1. Lord Northbrook.

Amendment 2 (to Amendment 1)
Moved by ***Lord Northbrook***

2: Clause 1, at end insert ", and who thereby remain members of the House of Lords."

Lord Northbrook (Con): My Lords, I firmly support my noble friend Lord Cormack's amendment but it needs a little tweaking. In moving Amendment 2 I will speak also to Amendments 16 and 31. I am amending my noble friend's amendment because I believe, contrary to the Bill, that the current royal officeholders—the Earl Marshal and the Lord Great Chamberlain—and their successors should remain Members of the House of Lords.

The Earl Marshal is the eighth of the great offices of state. The Duke of Norfolk's family has held that position since 1672, being responsible, as my noble friend Lord Cormack said, for organising major ceremonial occasions, the monarch's coronation and state funerals. He also oversees the College of Arms. The Lord Great Chamberlain is the sixth of the great offices of state, having charge of the Palace of Westminster. The office goes back to William the Conqueror's reign. It is quite right that these two royal officeholders should remain Members of the House of Lords due to the importance of their roles and duties. Amendment 16 would adjust the Bill's wording to put that into effect.

Amendment 31 covers a slightly different situation. At the end of last year, I was pleased to see the noble Lord, Lord Carrington, elected as one of the 90 hereditary Peers through a by-election. However, when Her Majesty dies, the noble Lord will become the Lord Great Chamberlain, as the position rotates between different peerage families on the death of the sovereign. As a result, there will be a vacancy among the 90 excepted hereditary Peers. This situation is not covered by the new subsection (4) proposed by Clause 1(3), which refers only to,

"the death, retirement, resignation or expulsion of an excepted person".

Hence I believe that in these circumstances, a by-election should be held. I beg to move.

Lord Grocott: My Lords, I fear that we may already be losing the dozen people I understand to be following this discussion in the country at large. I will try to expedite things. The retention of these two positions is completely anachronistic. Two hereditary positions remaining in perpetuity when they do not take part in events here is odd, particularly when we are trying to reduce the size of the House to 600. However, it is not germane to the Bill's central purpose, which is to end by-elections, as the noble Lord, Lord Cormack, said. On those terms, I accept the amendment and hope that we can get on to Amendment 2A.

Amendment 2 (to Amendment 1) agreed.

Amendment 1, as amended, agreed.

10.15 am

Amendment 2A
Moved by ***Lord Strathclyde***

2A: Clause 1, page 1, line 4, at end insert "and create a statutory House of Lords Appointments Commission"

Lord Strathclyde (Con): My Lords, Amendment 2A is not on the Marshalled List. I apologise; it was tabled rather late yesterday and I did not have an opportunity to discuss it with the noble Lord, Lord Grocott. I had a eureka moment in my bath yesterday morning, when I was thinking about the noble Lord and his Bill, and came to the conclusion that it was an appropriate way to deal with this legislation and solve a very serious lacuna at the heart of the Bill.

Before I go on, I join my noble friend Lord Cormack in saying how right it is that this House should stop at 11 am for one minute to mark the terrible attacks in New Zealand. I hope that my noble friend Lord Young will direct us at a suitable time so that we can honour that moment with appropriate dignity.

Given the sort of parliamentary chaos that has been going on over the past couple of weeks in another place, it is wonderfully reassuring for people to come to this House and find that we can have a straightforward debate—one we have held many times in the past 20 years—discussing in detail how to progress with reforming your Lordships' House.

As the House knows, I have been involved in many such debates, as has the noble Lord, Lord Grocott, but this is the first time I have spoken on this Bill during this Session. I have no idea how long this Session will last, but even if it lasts just another couple of months, I hope the noble Lord will agree that it is extremely unlikely that this legislation will get into law. I do not know whether we will finish Report today or when the Bill will receive its Third Reading. However, to be clear, I oppose the legislation because it would create a wholly appointed House. As the House knows, I am broadly in favour of politicians in the United Kingdom being elected, not appointed, but I know that that is not a popular view in this House.

Lord Forsyth of Drumlean (Con): If my noble friend is so certain that the Bill will not make it on to the statute book, why on earth is he moving this amendment?

Lord Strathclyde: I was just about to come to that. My amendment is small and humble but it deals with an important issue. As it is unlikely to become law, we now have time to study it in some detail—if the principle behind it is accepted today, as I hope it will be—before Third Reading, when we can add detail to it. I am grateful to my noble friend for allowing me to clarify that.

What is the most difficult part of this Bill? It is the third and fourth lines of Clause 1, which say,

"thereby making the House of Lords a wholly appointed Second Chamber".

This is the central part of the legislation, to which I would like to add the words,

"and create a statutory House of Lords Appointments Commission".

I have nothing but the greatest respect for the noble Lord, Lord Grocott, and for his integrity and tenacity in coming back time after time with this legislation. However, it is a profoundly political Bill. In Committee, my noble friend Lord True explained why that was. By doing this, we will remove the ability of 40-plus Conservative Members of this House to replace themselves without a guarantee that they would be replaced in any other shape. I wholly understand why the noble Lord thinks that is a desirable outcome, and I hope he will understand why I think it is an undesirable outcome. He certainly does not duck the issue. The noble Lord is completely up front about his objective.

The lacuna at the heart of the Bill is that it removes the ability to have hereditary by-elections but does absolutely nothing to improve the way others are appointed to this House. I want to put that right. I hope that the noble Lord, Lord Grocott, will agree with me that it is something we need to tackle, and why not tackle it in this Bill? It has been promised for more than 20 years by the party that the noble Lord, Lord Grocott, supported so ably in government. It appeared in several White Papers in the early part of the century. Now is the opportunity to debate it further and, I hope, to put it in this Bill. I have said that it is a humble amendment but it deals with a big issue, and I hope very much that the House will accept at least the principle behind it.

Lord Anderson of Swansea (Lab): My Lords, has the noble Lord been advised that his amendment is within the purposes of the Bill?

Lord Strathclyde: My Lords, I went to the Public Bill Office to put the amendment down, and it took the clerk about 10 seconds to agree that it was entirely in order. It might also be worth flagging up that my noble friend Lord Caithness, after Clause 3, has a very substantial amendment, Amendment 59, which seeks to amend the Bill to include a fully thought through appointments commission. I think it is in order but if the noble Lord feels that it is out of order in any way, I will certainly listen to his argument.

Lord Hunt of Kings Heath (Lab): I am grateful to the noble Lord. I have to say that the loss of 40 Conservative hereditary Peers may not be greeted with great sorrow all around the House. Can he tell me how many years he would expect it to take to lose the total of 40? I suspect it would be many years.

Lord Strathclyde: My Lords, I am not an actuary but I am sure there are actuarial tables that the noble Lord, Lord Burns, will have looked at in the course of his report. But what the noble Lord's question really begs is that he does not believe that there will ever be any long-term reform of this House. I have not given up hope. One of the few things that the noble Lord, Lord Adonis, and I agree on is that that is a very desirable way to go forward. I accept that it is unlikely to happen in this Session of Parliament, or indeed in the next, but that does not mean that we should give up on that ability. My fear is that once we have a wholly nominated House, that will be it for another 100 years, and I am not in favour of that.

As the House knows, in 1999 we had a two-stage reform.

Lord Redesdale (LD): My Lords, I do not want to intervene for long, but I am in rather a strange position. As a life Peer, having stood down as a hereditary Peer and been elected to this House, I have the issue that my son could stand on the hereditary Peer list. Obviously I have had to explain to him that I will have to be dead first—that is the way of it. But I question the noble Lord's premise. In 1999, the number of Conservative Peers was set just because that happened to be the percentage of the number of Peers there were at the time. That of course led to the Liberal Democrats having only three. If the same situation arose today and was based on the number of Peers, we would have a larger proportion. Is he saying that, as a matter of luck, the Tory party ended up with a large number of hereditary Peers who will carry on for ever and that should be the basis going forward, or is he suggesting that perhaps we should rejig the number of hereditary Peers available to other parties?

Lord Strathclyde: My Lords, I wholly accept that everyone thought that the hereditary Peer by-elections would never actually occur because they would kick in, if I may use that term, during only one Session after the subsequent general election that took place in 2001. The noble and learned Lord, Lord Irvine of Lairg, looked me in the eye when he made this agreement and said, "These things will never happen because we intend to come forward with proper reform early in the next Parliament". I accepted that.

I say to the noble Lord, Lord Redesdale, that it is always entertaining to hear a Liberal Democrat talking about the disparity of numbers in this House: need I say more? Whether it was luck or a matter of fact, those figures for the hereditary Peers were set at the time and no one thought that they would continue. But they are set now and my point to the noble Lord, Lord Grocott, is that if you take away the hereditaries' ability to remove themselves and put nothing else in place, that could create a long-term unfairness, which I will deal with in a moment.

Post 1999 we were promised a second-stage reform, but we are not there yet. The by-elections are a central reminder of that failure. As well as being a nod to the past, I think the new hereditary Peers are perfectly capable people and I know that the noble Lord, Lord Grocott, has been at pains to say that there is no personal attack on hereditary Peers or their heirs; these are much more principled objections. But if we are stuck with this halfway house, we must deal with some of these issues. For the noble Lord that means the by-elections, while for me it means an appointments commission set up on a statutory basis.

Lord Adonis (Lab): I hope the noble Lord will forgive me. Would his statutory commission apply just to Cross-Bench Peers, as now, or does he see it applying to party Peers too? He will know that there was a big debate when the commission was set up on a non-statutory basis about whether it would apply party Peers. Indeed, there was a radical idea that the commission itself, rather than the party leaders, should nominate the party Peers. Has the noble Lord given any thought to this idea, because the scope of his commission is an important question?

Lord Strathclyde: My Lords, the noble Lord and I stand shoulder to shoulder in our radicalism. I would want a statutory appointments commission to do exactly that: to appoint all Peers to this House apart from the Lords spiritual, who of course get here in an entirely different way. At the moment the Bishops have their own route in and the hereditary Peers have their by-elections. The HOLAC nominations come in, but the overwhelming majority of new life Peers who come to this House arrive through the political route, advised and guided by the Prime Minister, who no doubt takes soundings and recommendations from other party leaders. This is the reason for the change. The noble Lord, Lord Adonis, is asking his question at exactly the right time because it is the time for radicalism on this.

I shall make some further points. First, nothing I say is a criticism of the current system championed by HOLAC. It does an excellent job and is led by the noble Lord, Lord Kakkar. However, HOLAC is not statutorily based. The commission can be abolished or its remit can be changed at any stage. Since I feel that in recent years our constitutional arrangements have become more fluid, in a sort of make-it-up-as-you-go-along mood, there is a real danger over the next few years, if we accept the case for a wholly appointed House, that a Prime Minister could well use those ancient constitutional powers to increase the House of Lords on a party basis. Remember, this has been threatened in the past. If we are to create a wholly appointed or wholly nominated House, we need new protection.

My humble aim today is to get the principle of this agreed—I cannot imagine that anybody would want to oppose it, but in this House you never know—and then to join others, including my noble friends and perhaps the noble Lords, Lord Grocott and Lord Adonis, to look at what has been written about this in the past and to come up with an amendment at Third Reading that might appeal to noble Lords across the House and to the Government. To those who might say that it would be inappropriate to table such an amendment at Third Reading, I say that obviously I would not do it if it were not clearly in the rules. We might even be able to recommit that new clause at Third Reading. I hope the House would regard that not as a constitutional innovation—it is not—but as an opportunity to debate in detail what I would propose.

10.30 am

The key ingredients of this should be that an appointments commission would be independent by statute, would decide on the political balance and would have a vital role in defending the Cross-Benchers, who at the moment are not defended at all—a Prime Minister might instruct HOLAC not to appoint any new ones. As the House knows, I have defended the principle of an independent group of Peers sitting on the Cross Benches since I started involving myself in these debates at the end of the last century. That is why I have always championed an 80:20 elected House, to keep the 20% in.

I can see that the noble Lord, Lord Campbell-Savours, is looking at the clock, but I hope the House will agree that I have been generous in replying to all the interventions made.

This amendment would remove at a stroke most political patronage: no more placemen, no more cronies, but a properly statutorily based independent House. As the House knows, I oppose the Bill; I think politicians should be elected.

I discovered in my research that in 2000 my late noble friend Lord Kingsland introduced a Bill to do just this, which was accepted by the House. In his opening words, he said,

"I believe that it is constitutionally undesirable for the composition of a parliamentary body to be determined by the executive".—[*Official Report*, 14/4/00; col. 413.]

I can put it no better. I beg to move.

Lord Grocott: My Lords, someone from this side should perhaps say a few words at this stage. I wholly associate myself—I am sure everyone in the House does—with the remarks made about the events resulting in our minute's silence at 11 am. I fear that that might be the end of the consensual feeling I am able to express today.

The noble Lord, Lord Strathclyde, began his remarks by saying that he thought the Bill was unlikely to become law, and then spent 16 minutes making it less likely to become law. He knows perfectly well what he is doing; he has been here for 34 years, so I imagine that he is getting the hang of it by now. Mind you, he is a newcomer compared with our friends the noble Earl, Lord Caithness, who has been here for 49 years, and the noble Lord, Lord Trefgarne, who has been here for 56 years. So they have had 140 years between them, and that is a pretty good innings. Maybe they can listen to some more recent voices.

I simply say this to the noble Lord: it is a pity he was not able to join us in Committee to familiarise himself with what has happened to the Bill so far. It was introduced 18 months ago in September 2017, when I was lucky enough to draw number one in the ballot for Private Members' Bills, which should give one a reasonable hope of the Bill passing through its stages in the Lords. It had its Second Reading then; it has since had three days in Committee, which the noble Lord, Lord Strathclyde, was unable to get along to.

Had the noble Lord made it to the third day in Committee, he would now be aware that the precise amendment he is proposing now was debated at length and overwhelmingly opposed by those who spoke, including no less an authority on procedure—admittedly, not in this House—than the noble Lord, Lord Lisvane, who pointed out, quite correctly, that this is a single-issue Bill that I am proposing. It is a three-clause Bill on one page. The noble Lord, Lord Lisvane, said, in terms, that to introduce this kind of additional related material into a single-issue Bill of this sort was a rather "generous" way of interpreting our procedures. The noble Lord, Lord Strathclyde, knows perfectly well that, if this amendment were accepted or debated in any detail now, it would add enormously to the time involved in establishing this Bill, it would add to the costs of the Bill and, most importantly of all, it would do what I am sure his amendment is intended to do and make it even less likely that this Bill will become law.

I am so conscious on these occasions that we have these ragged debates—we have had several on this—that are unintelligible to the public outside. The noble

Lord, Lord Strathclyde, suggested that he was a moderniser; well, not in this respect. It needs someone—and it falls to me—to remind the House why we are doing this and why I am introducing the Bill. It is simply to end these idiotic by-elections, which are occurring with increasing frequency, in which only hereditary Peers on the hereditary Peers list, of which there are 211—I remind the House that 210 of them are men—can take part. In the first 10 years of the 20 years for which this system has been in operation, there were 10 by-elections. In the second 10 years, to date there have been 26. There is one pending, which bears a moment's thought. It is due to be announced on 27 March. There are 28 electors who will elect this new Member of Parliament on 27 March, and 14 candidates; that is two electors per candidate. The cost of the by-election will be £600. Noble Lords might think that is not much, but I think—my maths is not very good—that is roughly £8 per vote. I would do it for less, should the offer be made to me. Needless to say, it is an all-male shortlist, which is quite unusual these days and takes some defending—which the noble Lord, Lord Strathclyde, is presumably capable of doing.

Most of what I want to emphasise today is what is happening in this House. In the last 10 days, 63 amendments have been put down to this simple, three-clause Bill, 53 of them by the same two Members—our old friends the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness. They have degrouped all the amendments—I will not go into the details of degrouping, because I really would lose an audience if I were to try to do so—but it simply means that today we are discussing 42 groups of amendments. Most Chief Whips will say that if you are very lucky you can get through six groups in an hour—we are certainly not doing that now—so I reckon it would take seven hours of debate to get through those 42 groups. Of course, every one of them needs opposing, because most of them are ridiculous.

I will give two examples; I will spare my noble friend Lord Adonis on this side—I think he would win the prize for the silliest amendment. Actually, I cannot resist; I will mention it in a moment. But there are two that I will mention now. Amendment 47 says that in order for the Act to be implemented there would need to be an approving ballot among not just hereditary Peers here, but all hereditary Peers. There are about 900. I have not counted them, but I am sure the noble Lord, Lord Strathclyde, knows how many there are. I have no doubt that many of them are living abroad and are in various stages of excitement about the arguments that they can deploy—that is as politely as I can put it. The idea that you can organise a ballot of 900 people worldwide in order to sort this out is just ridiculous.

The amendment that takes second prize is Amendment 54, which says that the Act will be implemented when the number of women hereditary Peers equals the number of women hereditary Peers who were Members of the House of Lords at the time of the 1999 Act—you know it makes sense. There were four women hereditary Peers at the time of the 1999 Act. The progressive series of elections has resulted in the fact that there is now one—so the number has gone down from four to one—and the Act would come into effect until that number got back up to four. Please spare us that amendment. I ask that all the amendments be withdrawn or not moved, but let us concentrate to begin with on the most idiotic amendments. The idea that in the 21st century we should be arguing about whether we should have one woman or four women among the 92 reserved places is beyond satire.

However, I have to give first prize to my noble friend Lord Adonis. He says—

Lord Cormack: I support everything that the noble Lord, my friend, has said, but would it not look ridiculous in the country if this debate prevented a proper discussion of the Cohabitation Rights Bill, which is due for a Second Reading and in which many people throughout the country are taking a real interest?

Lord Grocott: That is absolutely right. This Report stage is scheduled to finish at 1.30 pm. That is ample time to deal with any reasonable amendments that anyone might wish to put down. It is generous time—but I am losing track of my desire to get to my noble friend Lord Adonis's amendment. It would provide that, when the next by-election takes place, which we know will be on 27 March, when there are 28 electors, as I pointed out, the vacancy would be filled by a vote of the whole of the electorate of the United Kingdom. I will say that again because I do not think it has quite sunk in; the electorate would be the whole electorate of the United Kingdom. I cannot tot that up off the top of my head, but the electorate is about 40 million, so I suggest gently to my noble friend, who is known for his hyperbole, that to substitute 40 million electors for 28 electors to elect a hereditary Peer is overdoing it, so I hope my noble friend will have enough sense not to press that amendment.

This is all serious as far as I am concerned, but there is a real test here, particularly for the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness. It is this: they can decide to expedite these amendments, and move them if they must, to conclude this Report stage by 1.30 pm. The House would then be orderly, it would have given the Bill more than enough time—more than anyone could reasonably expect a Bill of this length to have given to it—or they will be in grave danger of bringing the whole proceedings of this House into serious disrepute if they do not withdraw the vast majority of the amendments.

Lord Hain (Lab): Before my noble friend sits down, perhaps I may ask his advice on one point. Surely the Government should end this whole pursuit and provide time for the Bill to conclude during this Session and to be introduced in the Commons and then carried over into the next Session so that we can really make some progress and end this ridiculous farce that is bringing this House into terrible disrepute.

10.45 am

Lord Grocott: I sincerely wish it were possible to carry this Bill over into the next Session, because there is no doubt whatever that it has overwhelming support in this House in all parties and, I guess, even among the hereditary Peers—but it is not within the power of the House to do that. The *Companion to the Standing*

[Lord Grocott]
Orders is quite clear. I reassure my noble friend that if I should be unfortunate enough, despite having been first in the ballot, not to get my Bill on to the statute book this year, despite the wonderful support that it has had, I shall bring in exactly the same Bill in the next Session of Parliament. I know it will succeed some time. It is just a matter of persistence, and I can be extremely persistent if required.

The Earl of Caithness (Con): My Lords, it might be for the benefit of the House if I speak to my Amendments 58, 59 and 60, which my noble friend Lord Strathclyde mentioned in his speech. I am glad I am now following the noble Lord, Lord Grocott. I do not have my name down to 53 amendments, as he claimed. That was a very misleading statement. He also derided the amendment relating to female hereditary Peers. There is a slightly deeper reason for that. My name is not to that amendment, but I think my noble friend Lord Trefgarne, who will doubtless speak for himself on this matter, has introduced a Bill to change the rules regarding succession to hereditary peerages. I believe that it should be the eldest child. If the eldest child of the monarch should succeed, so should the eldest child of a Peer succeed. I would support any Bill in that direction.

Lord Campbell-Savours (Lab): There will be people outside watching this debate. Will Members declare an interest at the beginning of their contribution if they are hereditary Peers so that people understand exactly where people are coming from in this debate?

The Earl of Caithness: My Lords, that is not a declarable interest, but I think all those who are interested enough to listen to this debate will know that I am a hereditary Peer, and it does not take much looking up on Google to decipher whether a Peer is a hereditary.

The noble Lord, Lord Grocott, also said that he did not want me to speak. It was not until, I think, the 42nd minute that I was allowed to get to my feet, so I have not been delaying the Bill.

The noble Lord also mentioned patronage, which is of great interest to my noble friend Lord Cormack. I am sorry that he has changed sides. He will recall that, on 10 November 1999, in the other place he said:

"I believe without equivocation … that the House of Lords will be better for the 92".

He raised another point a little earlier in his speech:

"We are witnessing a crude exercise of patronage".—[*Official Report*, Commons, 10/11/1999; col. 1200.]

That was the patronage of the then Prime Minister Mr Blair, and I wonder what my noble friend thought of the patronage of Mr David Cameron in his Dissolution list when he ceased to be Prime Minister. That is why my noble friend Lord Strathclyde had one of his many eureka moments—this time it was in the bath yesterday morning, but he has had a number of them—and it is also why I tabled Amendment 58, which requires the setting up of a statutory appointments commission. I go into more detail than my noble friend Lord Strathclyde—I set out exactly what I want.

Lord Forsyth of Drumlean: Does my noble friend not see the irony of a hereditary Peer arguing against patronage, given that all hereditary Peers are here as a result of patronage given some generations ago? As to the image of my noble friend Lord Strathclyde in his bath, does he not think that this matter requires rather longer consideration than the time he might have spent in his bath?

The Earl of Caithness: We are giving it consideration. It was that eureka moment in the bath that has prompted this debate. My noble friend Lord Forsyth knows full well my position on hereditary Peers. I do not think that they should be here, and I also think that this ought to be an elected House. However, in 1999 there was a binding-in-honour agreement that the hereditary Peers would stay here until stage 2 of House of Lords reform. The noble Lord, Lord Grocott, never refers to that and I can quite understand why, but to us it was a fundamental part of the agreement. If I am being criticised for standing up for a binding agreement and principle, so be it, and I am very sad that other noble Lords do not take the same principled view on the matter.

Lord Snape (Lab): Far from it being a noble quest back in 1999, those of us who were in the other place at the time seem to recollect that it was a rather squalid agreement to preserve the neck of the Conservative Party.

The Earl of Caithness: My Lords, that is the noble Lord's interpretation of the agreement. I was not party to it, but it was introduced by the then Lord Chancellor, the noble and learned Lord, Lord Irvine of Lairg, and it was binding in Privy Council terms on all of us who took part in that debate. That was a binding commitment. I have tabled an amendment that we shall come to later to try to help the noble Lord, Lord Grocott, get to the same position that I want to get to, which is to get rid of the hereditary Peers in this House.

Perhaps I may return to my amendments. I set out in quite considerable detail how the House of Lords statutory appointments commission should work. It will come as no surprise to my noble friend Lord Young on the Front Bench because he will recognise the details. They come from Schedules 5 and 6 to the 2012 Bill, which, sadly, failed in another place. I would have supported it had it come to this House. His name was on that Bill, as indeed was Danny Alexander's, so I presume that the Liberal party still supports a statutory appointments commission, and I look forward to getting the support of its Members for this.

I do something slightly different from my noble friend. I set out that there should be a House of Lords appointments commission, and, equally and importantly, that there should be a Speakers' committee comprising 13 members, as designed in 2012, to oversee the statutory appointments commission. It was drafted by a government draftsman, so I will not go into any detail, but I hope that the House will give this consideration. As my noble friend Lord Strathclyde said, there would be a lacuna. When the hereditary Peers go, it would be a much better arrangement if there were a totally independent committee to look at all appointments. My amendment covers all that. Proposed new subsection (4) in Amendment 58 says that it should come into operation,

"on a statutory basis, with the role of screening, selecting and recommending all persons for appointment to the House of Lords".

Lord Tyler (LD): Does the noble Earl recall that he advanced this argument at length in Committee on 23 November 2018? Does he also recall that the *Companion* says at paragraph 8.138:

"Arguments fully deployed either in Committee of the whole House or in Grand Committee should not be repeated at length on report"?

What does he have to say to that?

The Earl of Caithness: My Lords, I raised this amendment in Committee and, as with many amendments tabled in Committee, I have brought it forward again on Report. Where I disagree with the noble Lord is in him saying that I raised it at length; it was a very short speech.

Noble Lords: Oh!

The Earl of Caithness: Yes, I read it too, and I remember saying it, so it is no good pointing and waving papers at me. My noble friend Lord Strathclyde has raised other points that were not mentioned in Committee and are worthy of debate and, on that basis, I support his amendment.

Lord Trefgarne: My Lords, I will speak for only a few moments. I support the amendment and very much hope that it will become part of this Bill if it reaches the statute book, which, naturally, I hope it will not. Just a few moments ago, the noble Lord, Lord Grocott, appeared to deploy what I believe he considers to be—

Lord Campbell-Savours: Will the noble Lord declare an interest so that those outside understand where he is coming from?

Lord Trefgarne: If it will satisfy the noble Lord, I am happy to declare that I am a hereditary Peer.

A few moments ago, the noble Lord, Lord Grocott, described what he sees as the principal shortcomings of the by-elections—namely, that there are very few voters and candidates for the Labour Party and the Liberal Democrats as compared with the Conservatives. I hope he therefore agrees that, if the Bill does not become law, voting in by-elections should be done on an all-House basis, which I shall very much support.

Lord Grocott: Can we dispose of this matter? One would think that lots of people would vote in a whole House election. I never take part in these things, but I am very happy to report that at the last whole House election earlier this year, 33% of this House took part in the ballot. I think that that is a sign of people voting with their feet—they know how silly the whole thing is. The percentage taking part has steadily declined since the 1999 Act.

Lord Trefgarne: No doubt, if there is another all-House by-election, the noble Lord will persuade them otherwise, particularly those in his own party. I will not detain your Lordships any longer unless any other noble Lord wishes to intervene. I simply repeat that I support the amendment proposed by my noble friend.

Lord Elton (Con): My Lords, I wish to intervene very briefly to declare an interest as another hereditary Peer and to say that I have a close interest in what is happening here.

I want the House to be reformed. Reform is available in the form of the Burns report. Everybody has said that all we are looking for is stage 2 of reform. From my point of view, that is stage 2, and if that report were the basis for the second stage of reform, I would not resist this Bill. However, if it comes to a vote, I will vote against it because we have not got to stage 2. That reform was promised to me and 800 other Peers, and they gave up their privileges for no reward on the promise that we would remain here until stage 2 occurred. The most important element of that reform was, whatever form it took, the House would still be free to challenge effectively the national Government when that was required by circumstances. My resistance is temporary, and I wish that we could get on with the issue of reform.

Lord Northbrook: My Lords, I hope that this answers the point raised by the noble Lord, Lord Anderson of Swansea, who is not in his place. I remember well that in the original House of Lords Bill in 1999 we tried to get the amendment of my noble friend Lord Strathclyde added, but it was thrown out by the other place at the last minute. As other noble Lords have said, the non-statutory Appointments Commission, which was established in May 2000, has done a good job in connection with the non-political Peers.

Lord Campbell-Savours: My Lords, again, will the noble Lord declare an interest in this debate to help people outside understand where he is coming from?

Lord Northbrook: I apologise to the noble Lord, Lord Campbell-Savours. I declare an interest as a hereditary Peer.

The House of Commons Political and Constitutional Reform Committee report of October 2013 has an interesting section discussing that.

11 am

The Lord Speaker: My Lords, we will now pause for a minute's silence in memory of those who have lost their lives in Christchurch, New Zealand. Our thoughts and prayers are with their families and friends and indeed with the whole people of New Zealand at this time.

A minute's silence was observed for the victims of the New Zealand attacks.

11.01 am

Lord Northbrook: My Lords, Professor Meg Russell of UCL's Constitution Unit, who is an acknowledged expert on House of Lords matters, said that the non-statutory Appointments Commission,

"has helped to transform the Crossbenches into a more active place where members arrive better prepared, and there is now a clear distinction between independent and party peers. It has also been possible to use these appointments to somewhat improve the gender and ethnic balance in the chamber, and fill clear expertise/professional gaps".

The noble Lord, Lord Jay of Ewelme, is reported to have told the committee that,

[Lord Northbrook]

"by focusing on merit, quality and diversity, the Commission had helped to bring much-needed experience to the cross-benches".

He added that,

"figures for gender diversity, ethnic minorities and disability on the cross-benches are considerably higher than among members of the House … as a whole".

Some members of the committee, such as Meg Russell, argue that the non-statutory commission should be given more powers. I fear that this would not work. There are problems with its non-statutory basis. The noble Lord, Lord Howarth, in giving evidence said:

"While the existing Appointments Commission acts with scrupulous care and excellent judgement it is not satisfactory, to itself or anyone else, that it has no statutory basis, it invents its own remit and makes up its own rules as it goes along. There should be a statutory Appointments Commission, its task defined in general terms by Parliament and plain for the public to see".

I agree, and believe that this amendment is important for the future appointments process.

I will make a few more general remarks. As the noble Lord, Lord Grocott, was saying, in 1999 the Lord Chancellor—the noble and learned Lord, Lord Irvine—replied:

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

He also said, in March 1999:

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

As the noble Lord, Lord Grocott, was Tony Blair's Parliamentary Private Secretary, he must have been well aware of all this. To the hereditary peerage, it was a vital part of the 1999 Act and an additional reason to let it have satisfactory progress through the House.

Lord Snape: I appeal to the noble Lord not to try to rewrite history in the way that he is doing. Does he not recollect that the deal in 1999 to which he refers was done in such an underhand way that it led to the resignation of the Conservative leader of the Peers in this House? There was nothing particularly noble about it; rather the reverse.

Lord Northbrook: With respect to the noble Lord, I was not part of that deal so I cannot go into the detail of it. With reference to the Burns report, I have just seen that the Government do not accept the committee's recommendation that the Prime Minister must now commit to a specific cap on numbers, absolutely limiting appointments in line with the formula proposed. Thus an important element of the Burns report is deemed to be invalid and the major reform which was promised for phase 2 is incomplete.

Baroness Hayter of Kentish Town (Lab): My Lords, it would be helpful if we could intervene from these Benches just once. I have to say that just at the moment I do not feel like a shadow Minister. I feel rather like Alice through the looking glass, as though I had fallen through a door and discovered myself—I will not say at the Mad Hatter's tea party—somewhere in quite a different century.

On the so-called promise made in 1999, women of my age—or rather six months younger than me—were promised throughout their working lives that they would have a pension at the age of 60; they then discovered, unprepared, and without the money, that it would be 67. This House let that through, so it is quite possible to change what has been promised by an Act of Parliament. It is right to do it by an Act of Parliament rather than any other method, but let us not have any of this, when we consider what has been taken away from women. I am one of the very lucky ones—the last cohort of women who got their pension at 60, which was a long time ago—but a whole swathe of women have lost out.

Along with some colleagues, I met a group of Slovak MPs here in the House earlier this week. As very often when women politicians get together, we fell to discussing female representation in our various Parliaments. I have to say that they were completely mystified as to how this House—with the advantage of appointments and therefore not having to worry about whether the electors always choose equally—had not moved further towards female emancipation. I then pointed out that, with one exception, we had a caucus of 92 men who would always remain here because the system was that, when they left, they would be replaced by another man, and nothing that anyone else could do would alter that. They were a little mystified.

The Earl of Erroll (CB): I am afraid that I have two sons and two daughters, so the two sons would have to go first with no male heir for the daughters to get here; but there are those possibilities and several others here in that position.

Baroness Hayter of Kentish Town: There were several others but, as we know, the figure has gone down from four to one; that is why I said that, with one exception, they are all men. For most on the list, as we have already heard, we are talking about men; in a House of only 400 or 500 active Members, 91 places will always be held for men. That may not make others ashamed, but it makes me ashamed and I am not even one of the people who are here by virtue of my father, grandfather, great-grandfather, great-uncle or anyone else, noble though those people were in their own right. I did not come here having inherited that right through the attributes of some earlier generation. That is what those who stand in the way of this Bill are trying to retain. They are trying to preserve, with some exceptions, the right of sons of people whose attributes 100 or 200 years ago were notable to have a seat in Parliament.

I do not believe that is the right way for us to choose anyone. I do not believe Picasso's child should be recognised as a top painter simply because their father was. I do not know whether the noble Baroness, Lady Bull, has children, but surely they should not be considered a top ballerina just because their mother was. Yet we think that legislators should be here by virtue of their fathers, grandfathers or earlier forebears. I am not embarrassed by this, but I am embarrassed for those who are here for that reason now—nothing in this Bill will alter the position of those here at the moment—that they should seek to preserve a system

whereby, with some exceptions, the sons of people whose forebears were given a seat here should have it, and that they should try to continue this ludicrous system.

We in the Opposition say: this Bill has our support. What we are seeing is a filibuster to try to undermine, talk out and stop the Bill, which will alter something fundamental to our constitution. That is not good enough. It belittles this House, and I think it belittles the hereditaries who are here to vote for the continuation of this system.

Lord Young of Cookham: My Lords, perhaps I could intervene briefly at this stage to restate the Government's position on the Bill. I begin by commending the noble Lord, Lord Grocott, on steering his Bill through the obstacle course in Committee and reaching Report, where there are still a number of hurdles in front of him. I say to the noble Lord, Lord Campbell-Savours, that I am a life Peer but a hereditary Baronet. I hope that does not confuse his rather binary approach to these issues.

It is clear that many noble Lords wish to see the end of the by-elections, but, despite the oratory of the noble Lord, Lord Grocott, he has not achieved total unanimity. A number of my noble friends, and in earlier exchanges some Cross-Benchers, believe that hereditary Peers should remain, in line with the commitment given at the time, until we have comprehensive reform. I pay tribute to the role that the hereditaries play in our proceedings, as they have a higher participation rate than us lifers.

As the Bill has proceeded through your Lordships' House, the Government have not obstructed it, nor will we. On the contrary, my noble friend the Chief Whip has been exceptionally generous in the amount of time he has allocated to this Private Member's Bill, in a field where there are many contenders. While we have some reservations about the Bill, our position is actually academic, as the chances of it reaching the statute book in this Session are, frankly, small, however many meaningful votes are held. The Government's view is that our energies would be better spent in taking forward the recommendations of the Burns report, as mentioned by my noble friend Lord Elton, which I believe is a more effective way of getting our numbers down than abolishing the by-elections. The Prime Minister has assisted in this process by showing commendable restraint in her nominations to your Lordships' House, which has caused a lot of distress among former Members of Parliament.

On this particular amendment, noble Lords will know that the House of Lords Appointment Commission was established in 2000 to make nominations for membership of your Lordships' House to the Cross Benches. It is also responsible for vetting the propriety of all nominations to this House, including candidates for party-political membership. We believe that it does an excellent job and have no plans to make it statutory. As was said earlier, I do not think that amendment sits easily with the main purpose of the Bill. Having set out the Government's position, I do not plan to intervene again, unless provoked beyond endurance.

The Earl of Erroll: My Lords, to avoid an unnecessary intervention by a politically appointed Peer, I am a hereditary Peer who believes firmly in a democratically elected Parliament in both Houses. I have absolutely no financial interest to declare as to whether the by-elections continue or not. There is no financial interest at all.

It is basically a failure of the democratic principle for the head of the Executive branch of the Government—in other words, the Prime Minister—to be able to influence the appointment of people to a part of the legislature that passes the laws that should be controlling him or her. That is the basic problem. The proposal of an appointments commission, when combined with Amendments 58, 59 and so on, goes some way to correcting that dangerous anomaly in our form of democratic government. It must be totally independent of the Executive, especially as many Members of the other place are Ministers—even more nowadays—and if they reduce the numbers there then the proportion will be even worse. It can be extremely difficult for them to know which hat they are wearing when they are passing legislation that will affect them. Are they legislators or members of the Executive? That concerns me.

I have always said that this House should be principally elected by the public. Many Members of another place agree with that principle; back in 1998, they held several votes on the subject and could not reach a decision on the question of appointed versus democratically elected. The real challenge is that the democrats want both Houses of Parliament to be elected but the Commons supremacists want this House to be appointed, because then they can take away its power as they are the ones with democratic authority, and this House will eventually lose its power over the years. The Prime Minister loses their power to reward people under both proposals, which is part of the problem.

Interestingly, the increase in the number of elections taking place now indicates that, were the Bill to pass, the hereditary Peers would die back to very few over a much shorter period than people seem to think. That would remove all incentive for what we were promised in 1999, which was further democratic reform of this House. All noble Lords who believe in the democratic principle should remember that, and therefore vote for something that does it. That is why the amendment is vital: it would give us an independent appointments commission that was totally outside any influence by the Executive of the Government.

11.15 am

Lord Rennard (LD): My Lords, I shall be brief, as I believe all other noble Lords should be at this stage of consideration of the Bill. It is the fifth day in this Session of consideration of the Bill, and anyone looking at it will be quite amazed that this talented group of people has spent five days considering a one-page Bill consisting of just 231 words, which takes less than two minutes to read. It is of course a Bill that has the overwhelming support of Members of this House, which has been tested a number of times in its earlier stages. Overwhelming support has been demonstrated by this House for the principle of the Bill of the noble Lord, Lord Grocott.

The Bill is also entirely consistent with, and complementary to, the proposals of the Burns report. Indeed, without this Bill making further progress and

[Lord Rennard]
being enacted, the report might undermine the principles of this House because it would see a reduction in Members and a consequent increase in the proportion of hereditary Members, unless we do something to halt these ridiculous by-elections.

Over three days in Committee we looked at nine pages of amendments to this one-page Bill. A week ago, 11 pages of amendments were tabled, and now, thanks largely to the efforts of a very small number of hereditary Peers, we are looking at 23 pages of amendments to a one-page Bill. Amendment 59 on its own is a seven-page amendment to a one-page Bill. Therefore, to avoid repetition, I suggest that in each grouping we consider the dictionary definition of the word "amendment":

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

Most of the amendments on the Marshalled List are not anywhere near what might be described as being either minor or intended to improve the legislation. They are intended to wreck it, filibuster and prevent it making progress. They are certainly not minor and they do not improve the text.

I think it brings the House into disrepute that, once again, a small number of Members are preventing the overwhelming majority of the House allowing the Bill to be expedited and preventing the important next Bill, on cohabitation rights, being considered properly. The purpose behind most of the amendments is clearly to delay discussion, filibuster the debate and prevent progress on this issue. I believe we should complete Report today and, as soon as possible, allow the House of Commons to democratically consider the Bill. We are debating issues that are barely relevant to many of the amendments simply to prevent Members of the House of Commons being able to consider the Bill.

We should no longer waste time. We should seek to conclude this stage today and take the next steps to allow the House of Commons to consider this very important and worthy Bill.

The Earl of Caithness: Before the noble Lord sits down, will he say anything about the amendment that we are discussing? The question is: does he support, as his party did in coalition, a statutory appointments commission?

Lord Rennard: The noble Earl is well aware of our position in support of having a properly constituted appointments commission on a statutory basis, but that is not the purpose of the Bill. The purpose of the amendment seeking to put forward that idea, which we have long supported, is simply to prevent proper consideration of the abolition of hereditary Peers' by-elections, which continue to bring the House into disrepute. Such interventions seeking to delay progress are further bringing the House into disrepute.

The Earl of Erroll: So how on earth does the noble Lord hope to get what he wants to achieve? He will not be able to sponsor a Bill to get it through. This is his only chance.

Lord Rennard: There is no chance of achieving what the noble Lord says he wants to do—set up an independent statutory commission—through this Bill. The noble Lord, among others, seeks to delay the progress of this Bill so that it can go nowhere. There is no prospect of progress in the way the noble Lord intended. It will require a proper, separate Bill, which we would support.

Baroness Hooper (Con): My Lords, I declare my interest as a life Peer who has sat in your Lordships' House for 35 years and served the House from the Front Bench, the Back Bench and the Woolsack, and behind the scenes in committees and all-party groups. I also was here for the passage of the reform Bill, which sadly was handled very badly. Although the core purpose of that Bill was to lead to a more "democratic" House of Lords, it did not do so. I cannot say that the fully appointed House of Lords is worse than the mixed House in which I sat for 15 years, which had a mixture of almost equal numbers of life Peers and hereditary Peers. But it is not a democratic House.

I support my noble friend Lord Strathclyde's amendments. I do not need to go into detail, because he and the noble Earl, Lord Erroll, have explained the situation very clearly. Indeed, it was very helpful to have the intervention from the Minister. It is important to remember that the purpose of the so-called reform Bill was not just to get rid of hereditary Peers, as was said at the time, but to lead to elections of a second Chamber. I have voted in favour of an elected second Chamber in your Lordships' voting lobbies.

Lord Brown of Eaton-under-Heywood (CB): My Lords, I strongly support this Bill. It is for that reason that I oppose this amendment, not because I do not see powerful arguments for a statutory HOLAC but because they clearly will not prevail in the context of this Bill; as has already been amply pointed out, they can only destroy the limited but important effect of the Bill as proposed.

I have said in the past that I am a huge admirer of the contributions made by hereditaries, but I fundamentally object to the notion that they should be followed by other hereditaries through an assisted-places scheme. That is what it is, and we have called it so in the past. It is of course right to say that the present scheme is also gender and racially biased, but those considerations fall into insignificance compared to that fundamental objection: that it provides for a well-born group of people to be necessarily the only candidates to fill 90 slots. That is just not appropriate. For the reputation of the House, I urge that this Bill be not hampered by the accretion of a statutory HOLAC, but be accelerated through. The fact that this House is trying to modernise and promote its reputation should be foremost in all our minds.

The thought that, as the Burns report progresses and we diminish in numbers, an ever-larger proportion will be hereditaries is absurd. Besides the Prime Minister's commitment to her reticence and the fact that we are now diminishing in number, the one response of relevance to the Burns report is that in future there is to be,

"no automatic entitlement to a peerage for any holder of high office in public life".

If Cabinet Secretaries, CGSs, Chief Metropolitan Police Commissioners, Lord Chief Justices and the like will not be able to count on appointment in future, why on earth should future hereditaries?

Lord Jones of Birmingham (CB): My Lords, I do not think I need to remind noble Lords that, at this moment, all over the nation, the political class is seen to have failed the country. If ever there was a time when noble Lords could make a stand for connecting more with the people, it is now. I assure noble Lords that, in pubs from Cradley Heath to West Bromwich, to Kings Heath in my home town, they talk of nothing but reform of the hereditary peerage system.

I fully support the noble Lord, Lord Grocott, in what he is trying to achieve. The time has come when, if we truly believe in making the political class that which I know this talented nation can provide for its people, this House must set an example. These amendments—every one of them—should be withdrawn, and after five days of debate over 240 words, we should push this through and stop the farce. We can then get on with not only running the country but reconnecting the political class with the people who have trusted us to look after them.

Lord Adonis: My Lords, I support the amendment of the noble Lord, Lord Strathclyde. It is not an irrelevant amendment and it does not distract from the purpose of the Bill. On the contrary, it is an essential accompaniment to the Bill if it is passed. If it is passed, this House becomes a wholly appointed House, and therefore the mode by which people are appointed to it is not a peripheral issue but one of central importance. I was extremely surprised to hear the noble Lord from the Liberal Democrat Benches, a party that is supposed to be committed to radical constitutional reform, going well beyond this Bill. He was not even prepared to support an acceptable process for people to be nominated to this House in the first place.

I understand the point from the noble Lord, Lord Jones; I would much rather we were not discussing this issue at all. I completely agree that we should be discussing the big issues facing the country, not the distraction that my noble friend Lord Grocott has imposed upon us day after day. However, since my noble friend has forced us to debate this issue, we should get it right. That is very important. The likelihood of having a wholly nominated House will be significantly reinforced by this Bill, because once it passes, you can wave goodbye to the prospect of any more fundamental reform of the House. Indeed, my noble friend does not want to see more fundamental reform of the House of Lords. He is patently honest about his intentions: he wants a nominated House in perpetuity and does not support an elected House. He has been extremely clear about that.

I support an elected House. I am with the noble Lord, Lord Strathclyde. We share a birthday; we have not had much else in common over the years, but we are united in House of Lords reform in our late 50s. It is very important that we do not imperil the urgent issue facing the country as far as parliamentary reform is concerned, which is connecting Parliament as a whole with the people far more effectively than we do at the moment.

Coming to the point made by the noble Lord, Lord Jones, the reason we are in the middle of the Brexit crisis gripping the country is in large part because Parliament has become so divorced from the people, particularly in the Midlands and the north of England, an area my noble friend Lord Grocott knows well. The sense of power being distant has become greater. The idea that a wholly nominated second Chamber will do anything to repair the connection between people and Parliament is farcical. Indeed, it may make it worse than the status quo, because it will put into abeyance any agenda for wider reform.

My noble friend Lord Campbell-Savours, for whom I have the greatest respect, said that we should declare interests. I declare an interest: I am a life Peer appointed to this place by Tony Blair. If my only concern was to remain here as long as possible, I should have a big interest in the passage of this Bill. I am 56 and I hope I have a reasonable lifespan; indeed, there is research by reputable medics which shows that membership of the House of Lords adds 15 years to your life on average—I cannot begin to think why. On that span, I may well be here in 40 years' time, if this Bill passes, because there will be precious little chance of reform hereafter.

The agenda for House of Lords reform we should pursue is not tinkering changes about whether it is somehow superior to be nominated rather than hereditary. We are equally illegitimate on any democratic principle; let us be very clear about that. As an appointee of Tony Blair, I have no more legitimacy than the noble Lord, Lord Strathclyde, has as an appointee of Charles II—or however far back it goes. In this debate, there has been an air of superiority from life Peers, as against hereditary Peers, but we are equally illegitimate. The only justification for our being here is that this is the existing law of the land. It is a very unsatisfactory law. I was present and working at the heart of government when the reforms of 1999 passed. I can assure the House that it was very much a spatchcocked reform. Let me be completely frank that it was in part motivated by the desire of people my noble friend Lord Grocott not to have wider reform of the House. My noble friend has been anxious at every stage that there should not be a move towards elections and wider reform.

I have spent most of my career engaged in public service reform, infrastructure and now, alas, trying to stop Brexit. I have taken the view that House of Lords reform is not high on the list of either my priorities or, to be frank, the nation's, but in this big Brexit crisis, where the whole issue of Parliament's relationship with the people is at the centre, I do not believe it is now possible to duck this issue any further. I am entirely with the noble Lord, Lord Strathclyde: we need a much wider reform of this House. My view is that we need to move towards—

11.30 am

Lord Grocott: I know that my noble friend is a very keen tweeter. I have had the pleasure of reading one or two of his tweets, although I am not sure how I acquired them because I am not part of the system.

[Lord Grocott]
For example, I think he is comparing our present situation to the one Britain faced in the spring of 1940. He is given to hyperbole, but as he tweets—and no doubt the wisdom he is expounding will be tweeted out to a large number of people as soon as he leaves the Chamber—could he please promise me that he will tweet the details of the amendment he will propose later and the arguments for allowing 40 million people to take part in the next hereditary Peer by-election? Will he also please give an estimate as to what the cost of that would be? Finally, could he explain to us how he thinks that would reconnect him with the public?

Lord Adonis: My Lords, let me be completely frank. If it is a choice between the next election to this House taking place with an electorate of—what is it?

Lord Grocott: Forty.

Lord Adonis: Or an election by 40 million of our fellow citizens of this country, I believe it should be the 40 million. I believe that they would support that in the pubs of Birmingham, too.

Lord Rennard: Does the noble Lord accept that the cost of the current system, which we are trying to abolish, is about £600, but the cost of his would be about £80 million?

Lord Adonis: My Lords, that is a completely absurd intervention from the Liberal Democrat Benches. Of course democracy comes with a cost. The question is whether we are prepared to meet it. That is the whole issue. Of course I recognise that my amendment is absurd, but this is the key point. We are talking about amendments that the noble Lord tells us have to be minor changes to the current Bill. It is less absurd than the status quo, which is that the only people who will have a say are these 40 hereditary Peers. It is significantly preferable that the people of the country should have a say.

What I wanted to do was move to a fully elected House in the Bill. I wanted to do what I think is actually Lib Dem policy. I was told by the clerks that was beyond the Long Title. That is why I tabled the amendment. The only amendment that was acceptable was one that would make the election of hereditary Peers subject to the whole electorate. I could not do the really radical thing that I wanted to do, which is to have the election of Members of this House by members of the public from among members of the public—a revolutionary idea, but one we should be implementing.

Lord Forsyth of Drumlean: The noble Lord has stolen my thunder by admitting that his amendment is absurd and part of an exercise to try to talk this legislation out, which is a disgrace. I wonder what Brenda from Bristol would think of his proposition that 40 million people should vote for the hereditaries.

Lord Adonis: I think Brenda from Bristol might be keen to take part in this election, because she currently has no say over any Member of this House. For the first time, Brenda from Bristol would have the opportunity to nominate and vote for somebody to sit alongside the noble Lord, Lord Forsyth. She would give thanks to the noble Lord, Lord Strathclyde, and to me for making it possible, because under the independent Appointments Commission that the noble Lord, Lord Strathclyde, is proposing, Brenda from Bristol might well be nominated, whereas she stands very little chance of Mrs May noticing her, which is the only way to get into this place at the moment.

The Earl of Erroll: If I may assist the noble Lord, funnily enough, a countrywide election could be handled online electronically. That would be quite an interesting prospect.

Lord Adonis: My Lords, the noble Earl is very much into these high-tech solutions. Being old-fashioned and believing that people vote by putting crosses on ballot papers, I do not necessarily go the full way with these revolutionary suggestions, but that might be possible.

I come back to the point about this issue being fundamental, not peripheral. I can tell your Lordships that this issue was considered when the reforms of 1999 were considered. I was in No. 10 when we considered it. The obvious vulnerability to which we were open when we removed the hereditary Peers was that we would be creating a wholly nominated House, and how could we justify the only source of nominations to that House being the Prime Minister? What we did was a classic English compromise. Remember that before the independent Appointments Commission came, the Cross-Benchers were nominated by the Prime Minister too. Let me tell your Lordships, if I may choose my words euphemistically, that the selection was not always uninfluenced by what line those nominees might take in your Lordships' House on matters of state. Noble Lords might be scandalised by that idea—I can see scandal written on the face of the noble Lord, Lord Strathclyde—but I am afraid these considerations took place. That is why a compromise was reached whereby the independent Members would be appointed by the Appointments Commission, but it was too much for my then boss, Tony Blair, to agree that the party Members should be. There were very big debates about it, particularly about whether there should at least be a role for an independent commission in reviewing the bona fides of those nominated by the party leaders because, again, if I may choose my words euphemistically, sometimes—

A noble Lord: It does.

Lord Adonis: No, it does not; it is very important to understand what happens. At the moment a health check is undertaken, but not a judgment as to whether the nomination takes into account considerations of racial, ethnic, geographical or gender diversity, or whether that person is appropriate and has the qualities needed in Members of the House. We looked at this halfway house. It was ruled out because my then boss and the then leader of the Conservative Party did not want their control of nominations fettered in any way. Even reviewing the bona fides, in the sense of the health check, was an extremely difficult concession that was granted.

The reason for this was that the party leaders did not want to give up their control of nominations to this place. They did not want any formal process in

place by which either their judgment might be challenged, or it might be possible for nominations to be made apart from by them, which is a real issue because—to choose my words delicately again—the leaders of parties almost always represent factions of parties. Let us be clear about it; that is what happens. When Tony Blair was nominating Members to this House—

Motion

Moved by ***Lord Cormack***

That the Question be now put.

The Deputy Speaker (Baroness Garden of Frognal) (LD): My Lords, I have to read this very slowly. I am instructed by order of the House to say that the Motion "That the Question be now put" is considered to be a most exceptional procedure and the House will not accept it save in circumstances where it is felt to be the only means of ensuring the proper conduct of the business of the House. Further, if a noble Lord who seeks to move it persists in his intention, the practice of the House is that the Question on the Motion is put without debate. Does the noble Lord, Lord Cormack, wish to pursue his question?

Lord Cormack: I beg to move.

11.39 am

Division on Lord Cormack's Motion

Contents 87; Not-Contents 23. [The Tellers for the Contents reported 87 votes; the Clerks recorded 89 names.]

Lord Cormack's Motion agreed.

Division No. 1

CONTENTS

Addington, L.
Altmann, B.
Andrews, B.
Balfe, L.
Bassam of Brighton, L.
Beith, L.
Berridge, B.
Best, L.
Birt, L.
Boycott, B.
Brooke of Alverthorpe, L.
Brookman, L.
Brown of Eaton-under-Heywood, L.
Bryan of Partick, B.
Bull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Cashman, L.
Chandos, V.
Collins of Highbury, L.
Cormack, L. [Teller]
Deech, B.
Dholakia, L.
Donaghy, B.
Dubs, L.
Elder, L.
Evans of Watford, L.
Falkland, V.
Faulkner of Worcester, L.
Featherstone, B.
Forsyth of Drumlean, L.
Foster of Bath, L.
Fox, L.
Garden of Frognal, B.
Gardner of Parkes, B.
Golding, B.
Grocott, L.
Harris of Haringey, L.
Haselhurst, L.
Haskel, L.
Hayter of Kentish Town, B.
Hoyle, L.
Hughes of Woodside, L.
Hussein-Ece, B.
Jones of Whitchurch, B.
Kilclooney, L.
Kramer, B.
Lawrence of Clarendon, B.
Lea of Crondall, L.
Low of Dalston, L.
Macpherson of Earl's Court, L.
McKenzie of Luton, L.
McNally, L.
McNicol of West Kilbride, L.
Moonie, L.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Newlove, B.
Northover, B.
Paddick, L.
Palmer of Childs Hill, L.
Ramsay of Cartvale, B.
Randerson, B.
Redesdale, L.
Rennard, L.
Russell of Liverpool, L.
Sherlock, B.
Simon, V.
Snape, L. [Teller]
St Albans, Bp.
Stern, B.
Stevenson of Balmacara, L.
Stirrup, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Taverne, L.
Thornton, B.
Tope, L.
Touhig, L.
Truscott, L.
Tyler, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Wheeler, B.
Whitaker, B.
Williams of Elvel, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

Adonis, L. [Teller]
Bethell, L.
Caithness, E.
Carrington, L.
Colgrain, L.
Elton, L.
Erroll, E.
Hooper, B.
Howard of Rising, L.
James of Blackheath, L.
Lamont of Lerwick, L.
Lilley, L.
Liverpool, E.
Mancroft, L.
Morris of Bolton, B.
Northbrook, L.
Reay, L.
Selsdon, L.
Strathclyde, L. [Teller]
Trefgarne, L.
Trenchard, V.
Trimble, L.
Wilcox, B.

11.51 am

Division on Amendment 2A

Contents 21; Not-Contents 85. [The name of a noble Lord who voted in both Lobbies has been removed from the voting lists.]

Amendment 2A disagreed.

Division No. 2

CONTENTS

Adonis, L. [Teller]
Bethell, L.
Caithness, E.
Carrington of Fulham, L.
Colgrain, L.
Elton, L.
Erroll, E.
Falkland, V.
Freeman, L.
Hooper, B.
Howard of Rising, L.
James of Blackheath, L.
Liverpool, E.
Mancroft, L.
Morris of Bolton, B.
Northbrook, L.
Reay, L.
Strathclyde, L. [Teller]
Trefgarne, L.
Trenchard, V.

NOT CONTENTS

Addington, L.
Altmann, B.
Andrews, B.
Bassam of Brighton, L. [Teller]
Beith, L.
Berridge, B.
Best, L.
Birt, L.
Boycott, B.
Brooke of Alverthorpe, L.
Brookman, L.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.
Bryan of Partick, B.
Bull, B.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Collins of Highbury, L.
Cormack, L.
Deech, B.
Dholakia, L.
Donaghy, B.
Dubs, L.
Elder, L.
Evans of Watford, L.
Faulkner of Worcester, L.
Featherstone, B.
Forsyth of Drumlean, L.
Fox, L.

Garden of Frognal, B.
Golding, B.
Grocott, L.
Harris of Haringey, L.
Haskel, L.
Hayter of Kentish Town, B.
Hoyle, L.
Hughes of Woodside, L.
Hussein-Ece, B.
Jones of Whitchurch, B.
Kramer, B.
Lea of Crondall, L.
Low of Dalston, L.
Macpherson of Earl's Court, L.
McKenzie of Luton, L.
McNally, L.
McNicol of West Kilbride, L.
Moonie, L.
Morris of Handsworth, L.
Murphy of Torfaen, L.
Northover, B.
Paddick, L.
Palmer of Childs Hill, L.
Purvis of Tweed, L.
Ramsay of Cartvale, B.
Randerson, B.
Redesdale, L.
Rennard, L.
Russell of Liverpool, L.
Selsdon, L.
Sherlock, B.
Simon, V.
Snape, L. [Teller]
Stephen, L.
Stern, B.
Stevenson of Balmacara, L.
Stirrup, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Taverne, L.
Thornton, B.
Tope, L.
Touhig, L.
Truscott, L.
Tyler, L.
Warwick of Undercliffe, B.
Watson of Invergowrie, L.
Wheeler, B.
Whitaker, B.
Wilcox, B.
Wrigglesworth, L.
Young of Norwood Green, L.

12.02 pm

Clause 2: Abolition of the system of by-elections for hereditary peers

Amendments 3 and 4 not moved.

Amendment 5

Moved by ***Lord Trefgarne***

5: Clause 2, page 1, line 8, leave out subsections (2) and (3) and insert—

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

"(4A) Standing Orders relating to the filling of vacancies must provide that any party or group specified in the Standing Orders need not take up its entitlement to fill any vacancy among the people excepted from section 1, and that in this event the vacancy will be allocated to one of the other parties or groups specified in the Standing Orders, by a method specified in the Standing Orders, for that party or group to fill.""

Lord Trefgarne: My Lords, this amendment is largely self-explanatory but I believe it deals with some of the concerns that have been expressed. Any political party that does not wish to take part in the process of electing hereditary Peers would not have to do so if the amendment were agreed. I beg to move.

The Earl of Caithness: I rise to support my noble friend's amendment and to speak to Amendment 6, which is similar to that of my noble friend. My noble friend's amendment asks that vacancies be spread to other parties. I do not believe that that should necessarily be the case and that, if it helps reduce the numbers in the House, a party need not take up a vacancy. When the noble Lord, Lord Campbell-Savours, asked us to declare an interest, I hoped that I might be able to misquote Shakespeare. Some are born with peerages; some have peerages thrust upon them, and some achieve peerages. The great advantage of being a hereditary Peer is that everybody knows why I got my peerage. The other two categories are still open to debate.

Lord Young of Cookham: My noble friend said that he wanted to speak to Amendment 6. That has been ungrouped and is in the next selection.

The Earl of Caithness: My noble friend is absolutely right, but I was trying for the convenience of the House to speed things up a bit. If we talked to both amendments now, as I have done, it might be helpful.

Lord Strathclyde: My Lords, perhaps I may now be allowed to join this debate. I said in my opening remarks that I had not spoken in this debate at all; I had tabled one small amendment on which I was about to reply. If my noble friend Lord Cormack thinks that what he did was a clever little ploy, he has another think coming. As a result of that, I shall now speak on every single amendment that I can. It was outrageous for those who support this Bill to deny me, as the mover of the previous amendment, an opportunity to reply, particularly when the noble Lord, Lord Adonis, had electrified the debate on the purposes of the Bill and, frankly, had shot the fox of the noble Lord, Lord Grocott, in explaining exactly what its motivation was. That is why I am deeply shocked that so many Peers voted against that amendment, which would have provided for a statutory appointments commission.

I would like to calm things down while we go through the rest of the amendments. When the noble Lord, Lord Campbell-Savours, asked Peers to declare whether they were hereditary Peers, I rather cheered that he could not tell the difference. That is the point. I know exactly why I am here. I am here as a result of legislation passed at the end of the last century and by election. I am an elected hereditary Peer under law. More than 200 hereditary Peers voted for me, and in that list I came second.

Lord Grocott: My Lords—

Lord Strathclyde: No, my Lords, I am not going to give way to the noble Lord until I have finished this point. I was proud to have come second to my late noble friend Lord Ferrers—I hope that my noble friend Lord Trefgarne is not going to argue with me about that—and my noble friend Lord Trefgarne was third. I hope that the next time the noble Lord, Lord Campbell-Savours, gets up, he will tell us in some detail, as the noble Lord, Lord Adonis, did, why he is a Member of this House. Let every other noble Lord who is going to speak declare their interest and explain what brought them to this House and who ticked that box. I am happy now to give way to the noble Lord, Lord Grocott.

Lord Grocott: I am grateful to the noble Lord, Lord Strathclyde, for lowering the temperature. Perhaps we have had just enough of this faux anger. I was going to point out how lucky he was to be elected with 200 votes, because when I first stood in Lichfield and Tamworth I got some 25,000 votes and lost.

Lord Strathclyde: I notice that the noble Lord, Lord Grocott, ducked the opportunity to explain to this House why he is a Member.

Lord Snape: The noble Lord, Lord Strathclyde, said earlier that he was just like everyone else: a hereditary Peer, and one could not tell the difference between the

two. Did he think that when we walked through from the Division Lobby a moment ago there was some confusion among noble Lords as to who was the former railwayman and who was the Scottish landowner?

Lord Strathclyde: My Lords, like the noble Lord, Lord Campbell-Savours, I could not possibly comment on that nor tell the difference between the two. It was a pleasure to be in the Lobbies with the noble Lord, Lord Snape, and I was glad that we had a good conversation. However, I say again to my noble friend Lord Cormack that if really wants to have a Division on every single amendment, he may find this Bill delayed a bit more. That is the law of unintended consequences. I suggest that my noble friend does not try it again.

Lord Cormack: Surely my noble friend understands that, having had well over an hour on his amendment, it was time to move on. It was the general wish of the House to move on. His amendment was really without the scope of the Bill. It would be an admirable subject for a separate Bill and I would support it, but what we have seen today—I hope that my noble friend, having provoked me, will concede this—is a rather sophisticated filibuster to ensure that the Bill of the noble Lord, Lord Grocott, does not complete all the amendments. That is a disgrace, given the overwhelming support he has in your Lordships' House.

Lord Adonis: My Lords, what we have seen today is a serious abuse of the procedures of the House by the noble Lord, Lord Cormack, to stifle debate on a matter of significant public moment. That is what we have seen. I never thought, having been in this House for 15 years now, that I would see this abuse of procedure in the House. The issue of how people are appointed to this House is not a side or minor issue, it is fundamental to the working of our Parliament. I congratulate the noble Lord, Lord Strathclyde, on putting this issue before the House and I completely agree with him that we should continue to raise these matters, because this squalid Bill that the noble Lord, Lord Grocott, has promoted to perpetuate a nominated House of Lords is fundamentally against the interests of the people.

Lord Young of Cookham: My Lords, I gently remind your Lordships that we are meant to be discussing Amendment 5, which is about Standing Orders and the replacement of vacancies among people excepted from Section 1.

Lord Strathclyde: My Lords, I think that that was as a result of an intervention from my noble friend, so perhaps I could just finish my remarks but also say how much I agree with what the noble Lord, Lord Adonis, said. The noble Lord, Lord Grocott, said that this is a short Bill of three clauses. The Maastricht Bill was four clauses long and that was debated for days and days in Committee on the Floor of the House in another place and then in this House, again for several days. The size of the Bill has no relevance to how much it should be debated.

As for the noble Lord, Lord Rennard, with his little lecture on amendments, I look forward to seeing his submission to the Procedure Committee to describe amendments in different ways. I accuse the Liberal Democrats of stretching every single sinew of the clerks' patience in order to find ways of putting amendments down. I remind my noble friend Lord Cormack that this is the first time, the first day I have spoken on this Bill. He has spoken far longer than I have during the passage of this Bill.

Lord Campbell-Savours: The amendment!

Lord Strathclyde: My Lords, I will get back to the amendment, but I say to the noble Lord, Lord Campbell-Savours, if you deliberately curtail debate in this House, those of us who oppose this Bill will find other ways, perfectly conventionally correct, to continue that debate.

Lord Rennard: Will the noble Lord recall his own very deep anger, which I witnessed, against repeated filibusters during the passage of the Parliamentary Voting System and Constituencies Bill 2011? He decided then that perhaps we should change the procedures of the House to prevent such filibusters. I wonder whether he is still of that view.

Lord Young of Cookham: My Lords, I very gently repeat the encouragement I made a few moments ago that the House should address Amendment 5 in the name of my noble friend.

Lord Strathclyde: My Lords, I shall make one very short point: what the noble Lord, Lord Grocott, has misunderstood in all of this is that although I oppose this Bill, I am prepared to accept it in exchange for an appointments commission, which I think would be extremely sensible. With that, I finish my brief intervention.

The Earl of Erroll: My Lords, briefly, I think we should look at rejigging the balance between the parties represented here, because freezing the 1999 position is silly. I suspect that when we get to Amendment 9, that is the one I shall support. They are not grouped properly, but I pre-warn noble Lords that I think they are interesting and we should look at them.

Lord Grocott: My Lords, this is the fifth amendment of 61 that we have to consider. What has been happening is a complete abuse and I am shocked that the noble Lord, Lord Strathclyde, who has been here since he was very young and has held high office on many occasions, should be party to this filibuster. I am not going to waste the House's time by responding to every amendment; I am simply going to recommend, as the sponsor of this Bill, that every single amendment is resisted. I appeal to the noble Lord, Lord Trefgarne: even at this stage we have an hour and a quarter left, which should be easily enough to dispose of these amendments, all of which wreck the Bill. He has the opportunity to wreck the Bill quite legitimately by voting against Third Reading after this stage. That is the proper way to do it: the noble Lord, Lord Strathclyde, will perhaps nod in assent to that. If you object to the Bill in principle, you vote against Third Reading. So, please, I appeal to him—for anyone who is watching to make sense of what is happening here—that he does not move the rest of his amendments and we get on with the next business.

Lord Trefgarne: I think that the remarks of the noble Lord, Lord Grocott, were addressed to me rather than to my noble friend. I shall therefore detain your Lordships no longer. I beg to move.

12.15 pm

Division on Amendment 5 called. Tellers for the Contents and for the Not-Contents were not appointed, so the Division could not proceed.

Amendment 5 disagreed.

12.20 pm

Amendment 6

Moved by ***Lord Trefgarne***

6: Clause 2, page 1, line 8, leave out subsections (2) and (3) and insert—

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

"(4A) Standing Orders relating to the filling of vacancies must provide that any party or group specified in the Standing Orders need not take up its entitlement to fill any vacancy among the people excepted from section 1.""

The Deputy Speaker decided on a show of voices that Amendment 6 was disagreed.

Amendment 7

Moved by ***Lord Trefgarne***

7: Clause 2, page 1, line 8, leave out subsections (2) and (3) and insert—

"(2) For section 2(4) substitute—

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

The Deputy Speaker decided on a show of voices that Amendment 7 was disagreed.

Amendments 8 to 11 not moved.

Amendment 12

Moved by ***Lord Northbrook***

12: Clause 2, page 1, line 8, leave out subsections (2) and (3) and insert—

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

"(3) Standing Orders must provide for—

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

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

(4) Schedule 1A makes provision about the Hereditary Peers Commission.""

Lord Northbrook: My Lords, Amendment 12 states that Standing Orders must provide for 90 people to be excepted for the duration of a Parliament and that a new organisation, a hereditary Peers commission, shall determine at the start of a Parliament which hereditary Peers shall fill the 90 places provided. The amendment also sets out how the commission should be launched immediately after the Bill becomes law, as well as its role in by-elections.

Amendments 32 and 33 set out alternative details of the proposed composition of the commission. Deciding this has given me some difficulty. It is not entirely clear in my mind how it should be made up—whether it should consist of Peers in the House of Lords, excepted Peers or hereditary Peers including those excluded from the House in 1999. For simplicity's sake I have for now considered, as per Amendment 32, that the commission should,

"comprise two persons nominated by the leader of each political party".

For the Cross-Bench elections there should be two Members from the Cross Benches, but, as an alternative, they could comprise two independent members of a non-statutory appointments commission. The amendment sets out that the procedure should be carried out at the start of each Parliament, with the first appointments being made immediately after the next general election.

Amendments 32 and 33 also set out criteria for selection. The commission must take account of party balance, age, interests, expertise, commitment to participate and regional representation. Importantly, the commission must ensure that the party balance among the hereditary Peers who are to be Members of the House helps to ensure that the overall party balance reflects the share of the vote secured by the main political parties at the general election. The hereditary Peers commission will also supervise any by-election that takes place during the course of a Parliament.

This amendment should help monitor the balance of the 90 hereditary Peers and goes some way to answering the criticisms of my noble friend Lord Cormack and the Campaign for an Effective Second Chamber that some of the political parties' representation among the 90 excepted Peers does not reflect their electoral position in the other place. I beg to move.

Viscount Trenchard (Con): My Lords, I am not sure that my noble friend's amendment has got the wording precisely correct, but he is right to draw attention to the possibility of changing the Standing Orders. I have thought for a long time that the present Standing Orders providing for only the hereditary Peers to vote in the party bloc by-elections should be changed, on the basis that all Peers in this House are equal. From the beginning, the life Peers on the Cross Benches and the Conservative, Labour and Liberal Democrat Benches should have had a vote alongside their hereditary colleagues.

If that had been the case, there would certainly be a rather different feeling in this House about the obsession of the noble Lord, Lord Grocott, in pursuing this single-issue Bill. He has done it with great tenacity, for which I greatly admire him, but I am surprised that he thinks it proper to bring a single-issue Bill to your Lordships' House that seeks to unpick a very firm agreement between the House of Lords and the Executive which was made in 1999. The agreement was that the hereditary Peers would remain until the House was properly reformed. It may be 20 years on—it may be 100 years on—but it would be absolutely wrong not to

make proper progress in moving to a democratic House but simply to remove one important element of it which was part of the agreement from the beginning.

I do not often find myself in agreement with the noble Lord, Lord Adonis, but I felt today that he could not have put it better. I utterly and completely agree with everything he said. This is not a small issue. It is a fundamental issue that affects the relationship of your Lordships' House with the Executive and the country. It is fundamentally important in the evolution of your Lordships' House through hundreds of years of history, and to break the solemn and binding agreement made in 1999 with this piecemeal, cherry-picking piece of legislation would be very regrettable.

The amendment may not be quite right, but your Lordships' House should look at revising the Standing Orders to remove the unfair difference between life Peers and hereditary Peers, so that all the life Peers in the party blocs could vote on the selection of new hereditaries. That would get rid of the most arcane and slightly ridiculous elections that take place on the Labour and Liberal Democrat Benches.

The Deputy Speaker (Lord Brougham and Vaux) (Con): My Lords, I should have advised the House, for which I apologise, that if Amendments 12, 13 and 14 are agreed to, I cannot call Amendments 15 to 31 due to pre-emption.

The Earl of Erroll: My Lords, I support Amendments 12, 32 and 33. Funnily enough, on the subject of the declaration of interests, this is one which would potentially remove me in the readjustment and rebalancing of the 90 hereditary Peers who stay here to try to ensure further democratic reform. I am quite happy for that to happen if it will move us forwards in getting a democratic House of Lords. This is where the noble Lord, Lord Adonis, was absolutely spot on.

There is one very useful thing in Amendment 32, which states:

"In exercising its functions, the Commission must ensure … overall party balance in the House of Lords reflects the share of vote secured by the main political parties at the general election".

The share of the vote would be the number of votes cast overall, and would not reflect the number of MPs in the House of Commons—so you get your proportional representation at least somewhere in Parliament. I am sure the Liberal Democrats will be very pleased with that, because they have been gunning for it for years. That could be a good start and could indicate the way forwards for democracy when we finally start electing both Houses of Parliament.

Lord Howard of Rising (Con): My Lords, I do not know why my noble friend Lord Trenchard was let off by the noble Lord, Lord Campbell-Savours, from declaring who or what he was, but he is obviously a favoured person. I am a life Peer; I do not know whether I should declare—or indeed whether it is too presumptuous to declare—that I am a kinsman of the Earl Marshal, the noble Duke, the Duke of Norfolk. We share the same name and the same coat of arms; I thought that perhaps for the sake of the noble Lord, Lord Campbell-Savours, I should just mention that.

12.30 pm

I should also like to say how much I respect and admire the noble Lord, Lord Grocott. When I first came into this House he was a grand figure, being the Government Chief Whip. At a very early stage I had to act as a teller, and he was my co-teller. He will not remember this, but he was exceptionally kind to me, showing me exactly what to do and stopping me making a complete idiot of myself, so he has been high in my esteem ever since.

I am concerned about the idea of a standard appointments commission. In 1968, when discussing the Parliament (No. 2) Bill and the idea of this sort of appointment, Michael Foot said:

"I do not think that it is an exaggeration to say that the overwhelming majority of opinion in the House of Lords is that the powers are to be retained pretty well as they are, but that the possibility of using them will be greatly enhanced because the place will have been made much more respectable. Theoretically, the powers have been somewhat reduced but, practically, they are to be greatly increased, and such powers will be able to be used in circumstances in which they have been unable to be used during the last 30 years—increasingly so in the last five or 10 years. This is the great constitutional prize to be grabbed. This is what they said there, in another place.

I recommend right hon. and hon. Members to read the speech by Lord Butler in another place. Nothing has disturbed me more about this Bill than the bubbling bonhomie with which it was received by him. He could hardly contain himself. I cannot quote him, but I can tell the House the gist of what he said.

Lord Butler told his fellow peers, 'Boys and girls, this is marvellous, absolutely marvellous. Look at what we are getting. This is the finest thing we have been offered for many a long year and if you do not seize it you will be even bigger fools than you look to me at the moment'. Lord Butler said all that from the cross-benches … He went on, 'Do not worry about composition, by the way, or about nomination by the Prime Minister. It is all to be done through the usual channels'"—

I remind your Lordships that the usual channels will have a large say in any commission. He continued:

"That is what Lord Butler said. I have it all here. He said that the usual channels would fix up the composition of the other place.

Think of it! A second Chamber selected by the Whips. A seraglio of eunuchs. That is roughly what Lord Butler said about it".—[*Official Report*, Commons, 3/2/69; cols. 87-88.]

Michael Foot was a great man, and he got it absolutely right: if you start appointing hereditary Peers by any method other than by their electing them, you will get in the same sort of mess as we are in because of the 1999 Act.

Lord Colgrain (Con): My Lords, I support this amendment and Amendment 23, having said before in your Lordships' House that I endorse the whole House voting on hereditaries while the Burns report is being implemented and comprehensive reform is being put in place.

I am disappointed to see that the noble Baroness, Lady Hayter, is not in her place. I much enjoyed her comment about looking down the rabbit hole as wee Alice. My election by the whole House as a hereditary Peer was greeted by a broadsheet with reference to a Blackadder election. The producer of Blackadder is responsible for another programme—"The Museum of Curiosity"—the title of which I was hoping another broadsheet would have entertained us with, with reference to hereditaries.

[Lord Colgrain]

It may interest your Lordships to know that yesterday I was on the roof outside the stained glass windows up there, looking at the work that had been done on the stained glass and all the leading, and as I looked in, I felt there was a certain parallel. I looked into the Chamber and could see absolutely nothing at all; we look out from this Chamber and can see daylight and lovely colour, and think that the work we do here is fully understood by the public at large. In fact, they are on the outside, looking in, and can see very little. They do not understand what it is we do, and in particular what hereditaries do.

Hereditaries are not apparatchiks of any particular political hue, whether Fabian Society or Bow Group. We are what the poet Matthew Arnold praised as being "formed men, not crammed men", formed by the independence of our own thoughts and experience, random, without any party tribalism or essence of our own political importance. When I look at fellow hereditaries across all the Benches, I see Olympic gold medallists, journalists, film and documentary makers, doctors, dentists, the self-employed, owners and managers of SMEs, pilots, specialists in insurance, banking, shipping and property, linguists of all descriptions, married to different nationalities—

Lord Lea of Crondall (Lab): Is the noble Lord's logic not that all hereditaries should be Cross-Benchers?

Lord Colgrain: If the noble Lord, Lord Grocott, is successful in his Bill and the hereditary election process is terminated, so is this independence of thought, action and experience, to be replaced by an even greater proportion of life Peers who are ex-MPs, ex-MEPs and representatives of regional assemblies and county councils. The general public have had their fill of the body politic from the other House at the moment—some would say where lunatics are running the asylum—and would relish the chance to have a more catholic representation in your Lordships' House.

Brexit has not endeared politics to Everyman. We should be mindful of the consequence of decreasing the number of unorthodox Peers who have a less political careerist disposition, and recall the adage, "Be careful what you wish for".

Lord Adonis: My Lords, this is not a sensible amendment. We have one absurd system for electing hereditary Peers at the moment, which it is proposed be replaced by another. While I could not begin to justify the system of elections that takes place at the moment, I could no more justify the establishment of a commission to do it. The only justification for the status quo is that it is the status quo, and it is best to leave that until we do a radical reform of the House of Lords, which should of course end the election of hereditary Peers entirely.

There are a whole lot of problems in Amendment 32 and the construction of the commission which one could go into, but I am not sure that it is necessary. Rather, I make the point that the best thing to do—this is my fundamental objection to the Bill of my noble friend Lord Grocott—is nothing in respect of the existing House of Lords until there is a sufficient consensus or a Government who are capable of leading towards a radical reform of the Lords, which should fundamentally replace this House with an elected or federal second Chamber. To tinker with the precise way that hereditary Members of this House are appointed, whether it is by some absurd system of election, to be replaced by some equally absurd commission, seems entirely beside the point, playing the game of my noble friend Lord Grocott, which is to make tinkering changes to essentially preserve the status quo. I am not in favour of preserving the status quo—I want radical reform. The Brexit crisis we are going through at the moment and the huge public discontent in the country mean that we can no longer duck this issue of a fundamental reform of this House, and we should put paid to all these tinkering changes.

Lord Strathclyde: My Lords, I am grateful to my noble friend Lord Howard of Rising for reminding us of what happened in 1969 in the House of Commons and the argument that took place there that any change to your Lordships' House would ultimately mean that it would demand more authority and be able to use its powers more vigorously. To some extent, this argument was made again, not nearly as effectively, during the passage of the House of Lords Act 1999, and proponents of the Act said, "No, it won't happen", including the noble Baroness, Lady Jay, who was then Leader of the House.

I wonder whether the House agrees that while initially that was the case, as the years have rolled by the House feels itself even more legitimate, being shorn of hereditary Peers. The automatic right of hereditary Peers to sit and vote in the House of Lords came to an end in 1989. I agree with what the noble Lord, Lord Adonis, said some time ago—that we are all equally legitimate or illegitimate in this House—but the 1999 Act changed something. Therefore, the Bill, proposed by the noble Lord, Lord Grocott, will also change things and allow people to take even greater authority than they would otherwise have done.

I agree with the noble Lord about the status quo. This is not a satisfactory place: I have argued that consistently over the past 20 years. I understand why my noble friends Lord Northbrook and Lord Trefgarne have proposed the amendment. They have tried to solve the conundrum expressed by the noble Lord, Lord Grocott, and find a different way to honour the promise made in 1999, which my noble friend Lord Elton spoke so eloquently about before he had to leave, and this is their solution.

I must say that I am not entirely convinced, but it is a good effort. To return to a previous debate, a proper statutory appointments commission could also look at questions such as party balance, age, interests and expertise, commitment to participate and regional distribution, which I think is increasingly important. Of course, if we had an elected House, we would have solved all those problems, because people would decide. It is therefore unfair to accuse my noble friends of trying to overcomplicate matters. The system we have at the moment is actually very simple and straightforward. It is not adequate or perfect in any way, but it is at least an attempt to try to solve the problem that the noble Lord, Lord Grocott, is trying to solve through his Bill.

Lord Grocott: It obviously does not even begin to solve the problem, because the elephant in the room is that the only people eligible to fill these vacancies will continue to be those who have inherited titles. The noble Lord, Lord Colgrain, said that if you happen to have inherited a title, that gives you a dispassionate view of the world. Let me put it in more personal terms. The noble Lord, Lord Strathclyde, is an hereditary Peer. The noble Lord, Lord Howard, is a life Peer. Explain to me the crucial difference. I thought that they were both Tories who normally voted Tory and are indistinguishable from one another in that respect, but according to the noble Lord, Lord Colgrain, there is a fundamental difference between people who inherited the title and others.

How can it possibly continue to be right that 900 people, in this country of 60 million plus, who happened to have inherited a title have a one in 900 chance of becoming a Member of Parliament by being successful in an hereditary Peers' by-election; whereas the rest of us—not us life Peers, but the remaining millions—have a roughly one in 75,000 chance of being a Member of Parliament? They have to get elected to do it. Why on earth should the descendants of Messrs Trefgarne, Colgrain, Caithness and Strathclyde have this assisted places scheme, as it has been referred to, which is denied to the rest of the population? Unless someone can give me a sensible answer to that, we will have to agree to disagree and, I hope, vote very soon.

Lord Strathclyde: I am not aware that anyone has made an argument in favour of the hereditary peerage since the end of the previous century. That is why, as I briefly tried to explain, the hereditary peerage came to an end in 1999. We are dealing with the dissatisfaction with the Labour Government. Let us remember who created these by-elections and introduced the Act: it was a Labour Government, whom the noble Lord supported. It was unsatisfactory at the time. I know that it was intended to continue to stage two. That has not happened yet, but we are patient and should continue to be. After all, it was in 1911 that the Liberal Prime Minister promised us reform on a popular basis, and no doubt we will get to that debate later.

I hope that that clarifies for the noble Lord, Lord Grocott, that no one is trying to defend the current position, but we do not want to create a wholly appointed House.

12.45 pm

The Earl of Erroll: My Lords, the noble Lord keeps banging on about how the hereditary Peers should not be here, it is appalling, and so on. At the previous general election, most MPs stood for parties which agreed that there should be further democratic reform of the Lords, and a Bill was tabled to do this in 2012—I think it proposed 80% elected. For some reason, it did not go all the way through the House of Commons, but there was basically a will to have democratic reform of the Lords, including in the noble Lord's party. Why on earth he is now trying to act against his party's manifesto and most MPs at the previous election, I am not sure.

Lord Howard of Rising: I wish to quote from that same 1968 debate—

Lord Young of Cookham: I remind my noble friend of the instructions on page 130 of the Companion. They state very clearly:

"On report no member may speak more than once",

except in some very constrained circumstances. I think that my noble friend does not fit into one of those exclusions.

The Earl of Caithness: My Lords, the noble Lord, Lord Grocott, prompted me to rise when I was not going to speak on this amendment. He quoted again the odds of becoming a Member of the House of Lords and said that the balance is tilted in favour of the hereditary Peers. Does he agree that once hereditary Peers are removed, the quickest and easiest way to get into this House is to become an MP? A third of the House are ex-MPs and that proportion will go up. Does he agree that that is an equally unjust way to fill the House of Lords, and that the right way is to hold elections?

Lord Brown of Eaton-under-Heywood: My Lords, I suggest that a feature of this group of amendments—indeed, of all the others too with the single exception of Amendment 2A, moved by the noble Lord, Lord Strathclyde—is the destruction of the Bill's essential purpose: to abolish hereditary Peers for the future but keep our present invaluable 90, or 92. The original proposal of the noble Lord, Lord Strathclyde, was at least consistent with the Bill in the sense that he was prepared, as he said, to accept the abolition of future elections provided that we introduce a statutory HOLAC but that is not true of the rest of these amendments.

Lord Snape: My Lords, I did not intend to speak on this group of amendments but I was provoked to do so by the intervention from the noble Lord, Lord Strathclyde. He was around in 1999; indeed, I am pretty sure that he played a major role in what took place then. It is all very well for the likes of the noble Viscount, Lord Trenchard, to pray in aid the agreement that came about then and use it as an excuse to say that it was a solemn and binding—he did not use that particular phrase—way to reform the House, that it was at only an initial stage and that he intended to continue that reform later, but the noble Lord, Lord Strathclyde, knows full well how the 1999 agreement came about. It was accepted by the Labour Government because the Conservative majority in the House of Lords at the time was enormous. Despite the equally enormous Labour majority down the corridor as a result of the 1997 election, that Conservative majority, in which the noble Lord, Lord Strathclyde, played a major role, made it quite plain that it was either this particular deal or no reform of the House of Lords at all. So let us not have any nonsense that this was merely stage one and talk of solemn and binding promises.

Indeed, that agreement came about without the knowledge and permission of the leader of the Conservative Party in the House of Commons. The leader of the Labour Peers in the House of Lords lost his job as a result of the agreement. He was a descendant of Lord Salisbury. I would have thought that it takes a lot to shift a Salisbury from your Lordships' House, but

[Lord Snape]
that is exactly what happened. The noble Lord, Lord Strathclyde, knows not only where the bodies are buried but I suspect wielded a shovel himself.

Lord Strathclyde: I really do think that I would try the patience of the House if I even attempted to respond to the noble Lord, so I will not do so, except perhaps another time in the bar.

Lord Mancroft (Con): My Lords, while it is attractive and interesting to look back at the past and see what happened—what the noble Lord, Lord Snape, has been saying is interesting—

Lord Campbell-Savours: Will the noble Lord please declare his interest?

Lord Mancroft: I think that the Standing Orders do not require me to declare an interest given that most people in this House know I am a hereditary Peer—and I am delighted to be one. What I am not is a placeman of a Prime Minister.

That is the issue which divides the House today. My noble friend Lord Strathclyde has quite rightly said that no one is defending the hereditary peerage in the way it was defended in 1908 and 1911. That is not the attempt; rather, it is the inadvertent effect of this Bill, which is of concern to many of my noble friends and indeed to the noble Lord, Lord Adonis, who referred to it earlier. By creating an appointed House without an appointments commission, we create a monster whether we want it or not. I say this with great respect to noble Lords throughout the House, however they came to be here.

The joke that is repeated in the newspapers is that this is the second-largest Chamber in the world after the Beijing second Chamber. That is probably correct, but it is pointless and irrelevant. What is much more important is that, if we were to go down the route the noble Lord, Lord Grocott, is seducing us to follow, we will have done something that is unique in the world. We will have created a second Chamber that is virtually a retirement home for the Members of its first Chamber. In other words, we would create a second Chamber which is the poodle of the political establishment of the day.

At the moment, we are going through one of the most difficult periods in our political development—certainly during my time in this House. The passage of Brexit and our departure from the European Union is causing huge problems, the biggest of which is the separation between—

Lord Rennard: My Lords—

Lord Mancroft: If the noble Lord will kindly allow me to finish, I will give way to him. As I say, we are seeing the separation of the majority in both Houses of Parliament from the majority of the people. Both may mildly have changed their minds in the meantime, but that is what has happened. We have a Parliament which is completely cut off from the way the people are going. If we go down the route that the Bill of the noble Lord, Lord Grocott, takes us, we will move even further in that direction. That is why I am opposed to it.

Lord Campbell-Savours: My Lords—

Lord Mancroft: I think that the noble Lord, Lord Rennard, trumps the noble Lord, Lord Campbell-Savours.

Lord Rennard: My Lords, I recall almost exactly the same speech being made in almost exactly the same terms by the noble Lord, Lord Mancroft, in Committee. It might be helpful to remind noble Lords that paragraph 8.138 of the *Companion* states:

"Arguments fully deployed either in Committee of the whole House or in Grand Committee should not be repeated at length on report".

I think it will facilitate our discussion for the next 40 minutes if all noble Lords would adhere to that principle.

Lord Mancroft: I am most grateful to the noble Lord for reminding me of that, but I am afraid that he was referring to the speech I made on last year's Bill. I did not speak at the Committee stage of this year's Bill.

Lord Northbrook: My Lords, I am grateful to all those who have participated in the debate on this amendment, including the noble Earl, Lord Erroll, my noble friends Lord Howard of Rising, Lord Strathclyde and Lord Colgrain, and the noble Lord, Lord Adonis. I did not agree with his views, but they are interesting as usual. We have had civilised discussions with the noble and learned Lord, Lord Brown of Eaton-under-Heywood. I opposed his Bill and I am just trying to amend the existing system. I thank also my noble friend Lord Mancroft. There has been sufficient interest in this amendment that I should like to test the opinion of the House.

12.55 pm

Division on Amendment 12

Contents 15; Not-Contents 48.

Amendment 12 disagreed.

Division No. 3

CONTENTS

Caithness, E.
Colgrain, L.
Erroll, E.
Falkland, V.
Falkner of Margravine, B.
Freeman, L.
Hooper, B.
Howard of Rising, L.
Liverpool, E.
Mancroft, L.
Northbrook, L. [Teller]
Reay, L.
Strathclyde, L.
Trefgarne, L. [Teller]
Trenchard, V.

NOT CONTENTS

Adonis, L.
Andrews, B.
Bassam of Brighton, L. [Teller]
Berkeley, L.
Bhatia, L.
Boycott, B.
Brooke of Alverthorpe, L.
Brookman, L.
Brown of Eaton-under-Heywood, L.
Browne of Ladyton, L.

Campbell of Pittenweem, L.
Campbell-Savours, L.
Deech, B.
Donaghy, B.
Dubs, L.
Elder, L.
Featherstone, B.
Glasman, L.
Goddard of Stockport, L.
Golding, B.
Grocott, L.
Harris of Haringey, L.
Haskel, L.
Hayter of Kentish Town, B.
Hughes of Woodside, L.
Jones of Whitchurch, B.
Lea of Crondall, L.
McKenzie of Luton, L.
Osamor, B.
Palmer of Childs Hill, L.
Prosser, B.
Ramsay of Cartvale, B.
Rennard, L.
Russell of Liverpool, L.
Selsdon, L.
Sherlock, B.
Simon, V.
Snape, L. [Teller]
Stephen, L.
Stevenson of Balmacara, L.
Stoneham of Droxford, L.
Taylor of Goss Moor, L.
Tope, L.
Tyler, L.
Warwick of Undercliffe, B.
Wheeler, B.
Wood of Anfield, L.
Wrigglesworth, L.

1.05 pm

Amendment 13

Moved by ***Lord Northbrook***

13: Clause 2, page 1, line 8, leave out subsections (2) and (3) and insert—

"(2) Section 2 is amended as follows.

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

(4) After subsection (3) insert—

"(3A) An excepted person elected to the House of Lords under subsection (4) after the House of Lords has passed a resolution that steps have been taken to implement paragraphs 29, 35, 50, and 51 of the Burns Report (fixed-term appointments) remains a member of the House of Lords for a period of 10 years beginning with the day on which they receive a Writ of Summons.

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

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

(c) a vacancy arises on the end of the 10 year period of an excepted person under subsection (3A),""

Lord Northbrook: My Lords, Amendment 13 is a refined version of the amendment I moved in Committee. It again suggests that once the Burns report has passed into law any excepted person will remain a Member of the House of Lords for 10, rather than 15, years after that date. Limiting the term to 10 years would help the pace of the reduction of the size of the House but would still keep the by-elections after the 10-year period. I am open to suggestion that they could cease when House of Lords reform is complete, including a review of its powers. I beg to move.

Lord Strathclyde: As I understand the amendment, and I am not sure I entirely understand it, my noble friend is trying to co-operate with the idea in the Burns report to reduce the total number. I have not looked at implementation or at paragraphs 29, 35, 50 and 51 of the Burns report, but I think the notion is that once the House of Lords has been reduced to a certain figure, hereditary Peers should not be part of that figure. If they leave after 10 years, however, presumably they will be replaced. I wonder whether my noble friend thinks that will help the reduction.

Earlier in the debate, a view was taken that if the overall size of the House reduced, the portion of hereditary Peers would increase. I agree. However, it would still be a lower proportion of the House than when the elections first took place in 2000 because the size of the House has increased so much. I hope the noble Lord, Lord Grocott, will find that reassuring.

Lord Adonis: I have read this amendment twice, and I do not understand how it works. However, I shall address the big issue underlying it, which is the size of the House. Being today in the business of calling a spade a spade, I might as well carry on doing it because it is in my nature. This obsession with reducing the size of the House is entirely beside the point. If we are to have a large appointed House and its purpose is to function at least reasonably effectively and to keep its membership up to date, it is sensible to make new appointments. Choking off new appointments is basically a preservation activity by existing Members to see that the House is not increased in size by new Members, which would create a greater sense of illegitimacy because the number will be large. To be completely frank, that is not pursued out of any great constitutional principle. It is purely an act of preservation by existing life Peers who do not want to make this House look any more illegitimate than it does at the moment. The best thing to do is against the interests of the House in the short term because it would deprive us of new Members who might—how can I phrase this delicately?—be of an age where they would participate actively and fully in the work of the House, which some noble Lords tend not to as they—I probably ought not to pursue that line of argument because it will not be popular with some noble Lords.

The point is that the Burns report is being, and has been, used—it is the latest in-vogue thing in your Lordships' House—to pretend that reform is being done while in fact no reform is being done. That idea is as old as the hills. In this House it is always important, to pursue a sense of legitimacy and progress, that some reform is sponsored. The noble Lord, Lord Cormack, has a special working group looking at very modest, tinkering reforms for this House so that he can pretend that he is in favour of progress, although, when he is present, he opposes substantial reforms.

Lord Mancroft: I think the noble Lord means that my noble friend Lord Cormack and his noble friends are preserving the status quo: the comfortable state of the House, which neither the noble Lord nor I approve of.

Lord Adonis: I entirely agree. In so far as I understand what the amendment of the noble Lord, Lord Northbrook, does, I would not make any concessions to the Burns commission. While the House of Lords exists in its current absurd state, it is clearly sensible that new Members be appointed to it, and, frankly, more younger Members would be a good thing, as that would bring the House more into contact with life outside.

What is being engaged in at the moment is displacement activity. The real issue is not whether this House has 600, 700 or 800 Members; it is whether it is appointed

[Lord Adonis]
and hereditary, and therefore fundamentally illegitimate, or whether it is elected, either directly or, if we had a proper federal system, perhaps like the Bundesrat in Germany, indirectly, and therefore directly relates to the people and/or the devolved institutions of the country, which are themselves elected. All this displacement activity, talking about Burns, about removing the hereditary Peers, about by-elections and, if I may say so to the noble Lord, about hereditary Peers commissions—that was a new idea to me; the latest one today—or about all the other tokenistic reforms that are put forward, is entirely beside the point.

Lord Northbrook: Perhaps I may quickly explain to the noble Lord the intention behind my amendment. Originally it referred to a period of 15 years for the appointment of newly elected hereditary Peers so as to put them on a par with the recommendations of the Burns report. That was not accepted, so I reduced the period to 10 years. The amendment might need retabling at Third Reading. If the Burns report is implemented, by-elections will fall altogether.

Lord Adonis: I am very grateful to the noble Lord for explaining the amendment. I now understand it and will hold in my mind the complex formula that he has just set out. However, my fundamental point is that it does not matter one whit whether this House has 600, 700 or 800 Members; it will be equally legitimate or illegitimate, whatever your view on how many it should have. Those are still very large numbers. I think it will function more effectively with its existing remit if it has a larger number of Members. That will mean that we have a steady flow of new appointments to the House, rather than drying up the appointments. However, all that is fundamentally beside the point. The current House of Lords is illegitimate. It will be just as illegitimate as the existing House, and arguably more so, if it is wholly nominated. The right thing is not to do any tinkering—either of the sort proposed by my noble friend Lord Grocott or any other variant—but to set up a constitutional convention and get to grips with fundamental reform, which, in the context of Brexit and the governance crisis across the United Kingdom at the moment, is long overdue.

Lord Grocott: My Lords, as my noble friend Lord Adonis repeats his arguments on successive amendments, he is getting more and more fluent but that does not make him any more persuasive. As it is now 1.15 pm and we have been going for three hours, it is up to me to say a sentence about what has been happening here today for the benefit of a baffled public, should anyone have been watching.

We have had three days in Committee and a Second Reading, and the Bill has been going for a year and a half. On Report, we have now reached Amendment 13. We have 62 amendments to consider. We have made ridiculously slow progress due to quite deliberate tactics by less than half a dozen Members of this House, of which I am sad to say number one is my noble friend Lord Adonis. Another culprit—I am shocked rather than sad to say—has been the noble Lord, Lord Strathclyde. The number of amendments is almost entirely the responsibility of Messrs Caithness and Trefgarne—of course, they are noble Lords not Messrs. I know and assert that what has been happening is a clear abuse of the procedures of this House. I do not have to worry about that too much; Members must answer for themselves whether they have been abusing the procedures of the House. But the net result is that Bills with overwhelming support will not reach the statute book. It is a bad position for any assembly to be in, when half a dozen people can thwart the direct wishes of hundreds who have expressed themselves in sundry votes on this issue as well as numerous people who are not here.

1.15 pm

Lord Howard of Rising: I thank the noble Lord for giving way. What does he think about the House of Commons opposing the will of 17 and a half million people?

Lord Grocott: I do not see the direct relevance of that to what I am saying. I have expressed my views on the 17 and a half million people ad nauseam in this House; to be absolutely clear, I am very much on their side.

What has happened is not just an abuse of the House, a waste of its time and, to a degree, a waste of taxpayers' money. To be personal about it, it is also a waste of precious Private Members' time. We rarely get the opportunity to introduce a Private Members' Bill. It is bad for the House to appear threatening to any future Member who wants to introduce a Private Members' Bill.

We are closing the debate at 1.30 pm, when I will conclude. But this is a Bill that will not go away; I want to make that quite plain. They all know they are playing King Canute. This Bill will pass. I say that with absolute confidence, although I occasionally wonder whether it will be in my lifetime. The House needs to look very carefully at its procedures to ensure that the farce that we have endured today is not repeated. I hope that the Procedure Committee will see whether there are ways of dealing with this. Otherwise, the risk of further disrepute being brought on our House will only grow.

The Earl of Caithness: My Lords, the noble Lord, Lord Grocott, once again mentioned my noble friend Lord Trefgarne and myself. I did put my name to a small number of amendments, but the noble Lord cannot accuse either my noble friend or me of filibustering by talking for far too long. We have talked very little, to make a short point. When the noble Lord accepted my amendment in Committee, I sat down immediately, as he will recall. I think he has forgotten one person who has prolonged the proceedings today, and that is the noble Lord, Lord Cormack.

Lord Northbrook: My Lords, I thank noble Lords for all their contributions to the debate on my amendment. I feel that it will need a bit of fine-tuning before Third Reading to account for the fact that by-elections will die if and when the Burns report is enacted. For the moment, I beg leave to withdraw my amendment.

Amendment 13 withdrawn.

Amendment 14

Moved by ***Lord Northbrook***

14: Clause 2, page 1, line 8, leave out subsections (2) and (3) and insert—

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

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

Lord Northbrook: My Lords, this amendment provides—

Lord Strathclyde: My Lords, may I just check to which amendment my noble friend is speaking? Is it Amendment 15, in the name of my noble friend Lord Cormack, or Amendment 16 in his own name?

Noble Lords: Amendment 14!

Lord Strathclyde: All right. Thank you very much.

Lord Northbrook: My Lords, this amendment provides that,

"future vacancies … be filled using a method which ensures that over time excepted hereditary peers are elected on a basis which retains a fair representation of hereditary peers representing Scotland"—

I am grateful to the noble Lord, Lord Adonis, as I have used the word "maintaining"—

"while over time reaching the same proportion … in relation to the total number of excepted hereditary peers as the proportion of MPs for Northern Ireland and Wales".

I am not going into extensive detail on it, as the noble Lord, Lord Rennard, has talked about, the unfair treatment of the Irish representative Peers or the Scottish Peers. In fact, there used to be 28 Irish Peers who sat for life on the part of Ireland. However, after what I hope was my erudite exposition, at this hour I am not going to detain the House. For Scotland, 16 Scottish Peers were elected under the Act of Union, and this was maintained until 1963.

The noble Lord, Lord Thomas of Gresford, said I had missed out the situation with Wales, so that is where there is a change in the amendment. He reminded me of the Act of Union of Wales of 1542—although I question that because research for Committee revealed that there were two Acts, of 1536 and 1543, and they should really be called the Laws in Wales Acts, which has been the legal title since 1948. To qualify for by-elections, their peerage would need to have Welsh connections, with priority, as for Scotland and Ireland, being given to those who use their main residence for the purpose of claiming expenses.

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

Lord Strathclyde: My Lords, I understand my noble friend's intention, which is to try to guarantee some sort of regional representation in this House. That is very important, but I am not convinced that this is in fact the right way to do it. His amendment talks about, "hereditary peers representing Scotland". Being someone who comes from Scotland—I was born in Scotland and live in Scotland—I do not suppose that anyone in Scotland thinks I am representing them. Indeed, the whole purpose of this House is not to represent anyone; we represent ourselves.

Lord Snape: The noble Lord is being too modest. After all, he owns a large chunk of Scotland, so who better to represent it?

Lord Strathclyde: That is a very kind thought from the noble Lord, but I do not represent Scotland or anyone in Scotland any more than he represents railway workers, train drivers, signalmen or anyone else involved in the transport industry. I hope my noble friend will withdraw this amendment and take it away.

Lord Adonis: My noble friend Lord Snape takes huge offence at that remark by the noble Lord, Lord Strathclyde. He represents in his person all the railway workers of the United Kingdom.

Lord Snape: If I may say so, none of them Members of this House, despite what the noble Lord, Lord Colgrain, said earlier.

Lord Strathclyde: Okay, my Lords, I can see that I have lost that particular argument with the noble Lord, Lord Snape.

At the end of the last amendment, the noble Lord, Lord Grocott, wanted to place on the record exactly what was going on. That was his version—his truth. But what is also going on here is an attempt to create an all-appointed House with no guarantees of representation from anywhere in the UK, as laid out in this amendment, which of course would be solved if we had an independent statutory appointments commission. It is in no way an argument to say that, just because the noble Lord, Lord Grocott, believes he is right, no one from any part of the House should be able to argue against him. I have witnessed the noble Lord arguing many times on Bills, and it would be an absurdity to change the rules to stop him, any more than it would be to stop my noble friend Lord Caithness.

Lord Grocott: My Lords, I am absolutely in favour of every Member of this House expressing their views on whatever subject is before us in a reasonable way and for considerable periods of time. The problem we have here is that it is not only me who wants this Bill to go through but the overwhelming majority of people in this House. There is a tiny minority, all of whom we have heard from today. They are perfectly at liberty to speak—I fully support that—but I do not support their right to use procedural tricks to thwart the will of the majority.

Lord Strathclyde: My Lords, I do not look forward to the next Labour Government, but there will be one. When that Government come in, I look forward to seeing, in their first Session of Parliament, a House of

[Lord Strathclyde]
Lords Act, or a fully formed constitutional reform with this change at its heart. That is how things happen in this country: you win elections and control the legislative agenda. There is an opportunity for Private Members' Bills, but this is a major constitutional issue and I do not think it is appropriate for the Private Members procedure. That is the underlying problem. The noble Lord, Lord Adonis, and I disagree on most things, coming from opposite sides of the political fence, but we share a birthday and stand shoulder-to-shoulder on opposing this piece of legislation, because it is the wrong thing to do.

Lord Russell of Liverpool (CB): My Lords, before I—and, I suspect, many others in this House—lose the will to live, I declare an interest: Lloyd George knew my great-great-grandfather, and that is why I am here. I also share a reflection from my great-grandfather, Stanley Baldwin. When he arrived in this House, he said, "It is one of life's great ironies that I am arriving in a place to which I have sent so many people, devoutly hoping never to see them again". I suspect some of their descendants have contributed to these proceedings. This is the law of intended consequences, rather than the law of unintended consequences.

There are 90 hereditary Peers in your Lordships' House. I would suggest that the fact that so few of us turn up at these proceedings, following this Bill, and an even smaller number take part is not an accident. Most of us have absented ourselves quite deliberately, first, because there is an obvious conflict of interest, and secondly, because, although I have not taken John Curtice-type soundings on this, I suspect that the great majority are strongly in sympathy and in favour of the noble Lord, Lord Grocott. I wanted to put that on the record.

Lord Grocott: My Lords, I am profoundly grateful for that intervention from the noble Lord, Lord Russell, which is one of the most effective contributions that we have heard in this long discussion. I stand now because we are close enough to 1.30, when we had agreed that this would finish, to move that debate on amendments be now adjourned.

Lord Northbrook: My Lords, I am thankful to all noble Lords who spoke. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

Consideration on Report adjourned.

Cohabitation Rights Bill [HL]

Second Reading

1.28 pm

Moved by ***Lord Marks of Henley-on-Thames***

That the Bill be read a second time.

Lord Marks of Henley-on-Thames (LD): My Lords, it was in July 2007, nearly 12 years ago, that the Law Commission issued its report recommending the financial provision measures in this Bill. Then, in December 2011, it recommended the Bill's intestacy and related provisions. Yet, in all this time, there has been no government action.

The proposals in this Bill are modest. They would not give cohabitants relief resembling the financial relief available on divorce. However, they would enable courts, in appropriate circumstances, to adjust the financial position of qualifying cohabitants on relationship breakdown, so as to spread the financial consequences, benefits and costs fairly between them. As I said when introducing the predecessor to this Bill in December 2014, in a passage quoted in the helpful House of Lords Library briefing, for which I am grateful:

"Essentially, and simplifying them to the core",

my proposals,

"aim to address economic unfairness at the end of a relationship that has enriched one party and impoverished the other in a way that demands redress".—[*Official Report*, 12/12/14; col. 2070.]

They are urgently needed.

When we debated this in 2014, the number of people cohabiting in the UK had risen from less than 3 million in 1996 to 5.9 million. The figure is now 6.6 million, and this rate of increase is not abating. The Office for National Statistics' 2018 figures show that cohabiting families are the fastest growing family form and a quarter of all children are growing up in cohabiting families. About 40% of cohabiting couples have children together while cohabiting. The Bill is aimed not just at those couples but at their children, who stand to suffer from their parents breaking up.

This discussion takes place against the background of the misplaced but extraordinarily widespread belief that cohabiting couples already have legal protection on the basis that they are in what is often called common law marriage. It might be called that, but it does not exist. In January, the British Social Attitudes Survey demonstrated that 46% of people in England and Wales believe that cohabiting couples form a common law marriage. Despite all the publicity, that figure has remained almost unchanged since 2005. Only 41% of respondents get it right. I am grateful to Professor Anne Barlow at the University of Exeter for the further research she has done in this area, but the figures show that the level of ignorance is truly alarming.

The reality is that, in the absence of cohabitation agreements, cohabiting couples have virtually no legal protection. Rights to property are difficult and expensive to establish. They depend on outdated and unwieldy trusts law. A claimant has to show a joint intention that property should be jointly owned, and it remains extremely difficult to predict or ascertain what courts will decide the parties' shares should be, even where joint ownership is established.

Child support protects the parents of minor children, where the arrangements work, and provides some financial support. However, when the children are older that stops, and the caring parent might be left unsupported, often having given up a career to look after the children. On the death of a partner, the survivor of a cohabiting couple might apply for limited provision under the Inheritance (Provision for Family and Dependants) Act 1975, but it is necessary to go to court to establish such a claim and it is limited. However, if a woman gives up a career to live with a man and

look after their children, or even just his children, and contributes to his business, even spending her savings to do so, there is no relief. If one partner in a couple works hard in the business of the other and suffers financially as a result, and then they break up, there is no relief. If one partner helps to build up the assets or the property of the other and cannot establish an intention that it should be jointly owned, or cannot afford to try, there is no relief.

The present law is a charter for partners in cohabiting couples, whether inadvertently or deliberately, to take financial advantage of their relationship and to walk away when it ends, leaving the other party disadvantaged and without redress. Then again, if one partner dies without a will, the other will inherit nothing as of right from the estate, not even the home they lived in together. The Bill would ensure that where a relationship between qualifying cohabiting couples breaks down, the court could adjust the economic impact of the relationship so they share that impact more fairly. I would hope and expect that were these provisions to be enacted, couples would settle the financial consequences of breakdown amicably and without the need for court proceedings.

I will now introduce the main financial provisions in the Bill. By Clause 2, cohabitants are defined as a couple—whether same-sex or opposite sex—who either have a child together or have lived together as a couple for three years. Importantly, particularly in the context of allowing people freedom of choice, by Clause 6 co-habitants could by agreement opt out of the Bill's financial settlement provisions. There are requirements in Clause 12 for independent legal advice, along with other safeguards and formalities for opt-out agreements. By Clause 14, there would be power in the court to vary or revoke unfair opt-out agreements. Other cohabitation agreements or deeds of trust would also be honoured under Clause 6(2)(c), so the scheme would not be compulsory. By Clause 7(3), there would be a two-year time limit for bringing a claim following separation.

Clauses 8 and 9 and Schedule 1 set out the scheme of the financial settlement provisions. The starting point is for the applicant to show that he or she has made or will make qualifying contributions, whether financial or in work, care or kind to the party's shared or family lives. If as a result of such contributions the other party has derived and retained a financial benefit, actual or potential, whether in capital, income or earning capacity, or the applicant has suffered or would in future suffer an economic disadvantage, the court could intervene to award a financial settlement if it considered it just and equitable to do so, having regard to a number of discretionary factors, to which I turn.

The award would, first, reverse any retained benefit in full or in part so far as reasonable and practical under Clause 8(3). If the applicant would still be left with an economic disadvantage, the court could then order that disadvantage to be,

"shared equally between the parties",

under Clause 8(4); again, so far as it is reasonable and practical. The discretionary factors to which the court would be required to have regard in deciding whether it was just and equitable to make an order include the welfare of any minor children of the parties, that being the first consideration; the financial position of each party; conduct which it would be inequitable to disregard; and the circumstances in which contributions were made, especially where they were discouraged rather than sought by the other party. The orders that could be made would, under Clause 10, be capital orders for lump sums, property or pension sharing. There would be no provision for continuing maintenance, although lump sums could be payable by instalments.

There are many who argue that it is not right to withhold from cohabiting couples the full relief available to couples who divorce. I do not agree. Couples are entitled to choose between marrying, entering a civil partnership or cohabiting. It is right that we respect the choices they make but that does not mean that cohabiting couples should be entirely without protection.

In 2014, the noble Baroness, Lady Deech, whom I am delighted to see in her place today, suggested that as a result of the then Bill, cohabiting couples,

"will find that they are snared unaware in a trap of laws from which there is no escape, save for the opting-out provisions of the Bill. Almost the entire panoply of marriage law is to be lowered on to them by the Bill once they have spent two years"—

it is now three years in the Bill before the House—

"cohabiting … or if they are parents of a child".—[*Official Report*, 12/12/14; col. 2072.]

I do not agree with the noble Baroness, although I look forward to hearing from her again today.

The noble and learned Baroness, Lady Butler-Sloss, would have liked to be here today but unfortunately could not be so. With all her great experience of family law, she has said:

"I do not see 'the panoply of family law' as an appropriate phrase for the very modest proposals that the noble Lord, Lord Marks, has put forward, particularly in Clause 8 of the Bill. These are modest proposals: you have to show either a benefit acquired or an economic detriment".—[*Official Report*, 12/12/14; col. 2079.]

I regard the opt-out provisions and the respect for cohabitation agreements and deeds of trust as important in preserving choice for cohabiting parties. It may be argued that the Bill would encourage litigation between former couples, but I expect most cases to be settled by agreement, without coming near a court. Furthermore, mediation will play a large part.

I turn now to the most important of the proposals for change, in respect of the death of a cohabitant. Clauses 16 and 17 would enable cohabitants to insure each other's lives and policies to be written for the other partner's benefit, so as to fall out of the deceased's estate for inheritance tax purposes. Clause 18 would provide that cohabiting couples would be treated as relatives for the registration of death. Most importantly, Clause 19 would enable the survivor of a cohabiting couple to inherit an estate and an interest in the estate of a deceased partner on an intestacy. Clause 20 would ensure that a surviving cohabitant could make a claim to the parties' joint home.

Cohabiting couples would still be able to make their own wills, like everyone else, but the unfairness that often occurs when one partner dies intestate would be avoided. I regard these as important provisions because, at present, when one partner in a cohabitating couple

[Lord Marks of Henley-on-Thames]
dies intestate, the other is vulnerable to losing not only financial support but the home in which the couple lived. By Clauses 21 and 22 in Schedule 2, cohabitants' 1975 Act claims would no longer be limited to claims to maintenance.

As your Lordships know, the Law Commission is a statutory independent commission established in 1965 with a mission to keep the law "fair, modern, simple" and "cost-effective". The two reports recommending the proposals in the Bill were fully and carefully researched, and followed detailed and extensive consultations; yet, in all this time since their publication, we have had no government action—never refusal, always a delay.

In 2008, the Labour Government said they intended to consider the evidence about the working of similar provisions in Scotland, which were introduced in the Family Law (Scotland) Act 2006. In 2011, the coalition Government suggested that, at that stage, the Scottish research was inconclusive and that the Government did not intend to implement the Law Commission's recommendations in that Parliament. In the well-known case of Gow v Grant in the Supreme Court on the Scottish Act, the noble and learned Baroness, Lady Hale, now president of the court, said:

"The main lesson from this case, as also from the research … to date, is that a remedy such as this is both practicable and fair… It does not impose upon unmarried couples the responsibilities of marriage but redresses the gains and losses flowing from their relationship".

She concluded:

"'The Act has undoubtedly achieved a lot for Scottish cohabitants and their children'. English and Welsh cohabitants and their children deserve no less".

The evidence from Scotland has been overwhelmingly positive. Ireland introduced similar legislation in 2010. Other jurisdictions with similar protections include Australia, New Zealand, Canada and some states in the US, yet still the Government have dithered.

As recently as November 2018, Lucy Frazer, Parliamentary Under-Secretary of State at the Ministry of Justice, stated in a Written Answer:

"The Government's current priorities are to reform the law on the process for obtaining a divorce in order to reduce family conflict and to extend civil partnerships to opposite sex couples. The Government will be considering how to proceed in relation to proposals made by the Law Commission in the context of any further reforms to the family justice system".

I simply do not accept that it is not possible for the Government, given the necessary political will, to introduce three desirable and laudable reforms, rather than just two. These proposals have the overwhelming support of family judges, of Resolution, which represents family law solicitors, and of the Family Law Bar Association. It is high time they were implemented. I beg to move.

1.44 pm

Lord Lexden (Con): My Lords, I shall be relatively brief, for I have just one specific, though very important, issue to raise.

I have spoken on many occasions in this House about the urgent need for legal rights to be conferred on family members, particularly siblings, who choose to live together in adulthood, sharing their lives in committed, platonic relationships which in many cases endure until death. They remain scandalously unprotected by existing law, as the noble Baroness, Lady Deech, has also emphasised on many occasions.

Denied the option to form civil partnerships—though, contrary to widespread belief, there is nothing in the civil partnerships legislation to say that any sexual element is needed—they are denied all the rights that both married couples and civil partners enjoy. Yet cohabiting couples who are related by blood are no less likely to be either financially or emotionally interdependent than those whose union is sexual.

The hardships that must be borne by those who live together in a relationship based on family ties range from the denial of shared income tax allowances and pension rights to complications with passing on rented tenancies after the death of the first cohabitant and the denial of the spousal exemption from inheritance tax. Without the last of these, many cohabiting family members who bought their homes jointly decades ago, when property was comparatively cheap, face old age with the anxiety of knowing that they may be forced to sell the home, with all its much-loved associations, to raise inheritance tax when the first member of the couple dies.

Some of the provisions of the Bill before the House today—the right to have an insurable interest in the life of a partner, the right to succeed to a partner's estate under intestacy rules, and so on—would be of the greatest value to cohabiting siblings and other family members who pair up, whether as companions through life or, as is frequently the case, as carers of an elderly relative. So I ask: why should they be excluded from this Bill simply because their relationship is platonic? Why single out for discrimination the only group of people left who have no access, through any means, to any legal rights and are crying out for them? Why assume that the only kind of relationship worthy of legal protection should be one based on sex, when two family members living together in adulthood in the way I have described so obviously represent a social good?

The Government are soon to extend the right to form civil partnerships to opposite- sex couples. Those who cohabit but are closely related by blood will, shamefully, continue to be excluded from all the attendant rights. Last month, during the passage of the Bill that will bring about the extension of civil partnerships, I said that committed, long-term cohabiting siblings look on with anger and astonishment as the Government continue to do nothing to relieve them of the constant anxieties they endure in the absence of joint legal rights.

This Bill, with its specific insistence that those within the prohibited degrees are to be excluded from its provisions, is inevitably a disappointment to cohabiting family members. It could have been a golden opportunity to put things in a better state for cohabiting family members, who deserve parliamentary and governmental action to remove the discrimination under which they have laboured for so long. I ask the noble Lord, Lord Marks, for whom I have high regard, to reconsider the exclusion of family members from the scope of the Bill.

1.48 pm

Baroness Deech (CB): My Lords, the noble Lord, Lord Marks, and I have one important issue in common. Every year for the past four or five years, he and I have introduced Private Members' Bills intended to reform family law—and every year, the Government reject them. We have dealt with a series of Ministers, few of them with any experience in family law, and I have the impression that the Government are loath to embark on the major overhaul of family law needed for the 21st century.

As best as I can discover, the average length of a cohabitation in this country is just under five years, according to the Institute for Family Studies; that is, the three-year period provided for in the Bill is shorter than average. Without doubt, parents who are not married before having a child are far more likely to split up than those who are married. This is similar across many countries, some of which give rights to cohabitants while others do not, but most of those countries have fixed and far less discretionary law relating to the division of assets.

The Bill would make the end of cohabitation disputes as expensive and legalistic as divorce. It is drafted with too much judicial discretion, and we know that that leads to a very high proportion of a couple's assets going on legal costs. Given that cohabitants tend to be the younger and less well-off, they would be open to greater deprivation and more pressure being applied by one former partner threatening to sue unless the other complied with their demands. A cohabitation law is likely to deter even more men, typically, from providing the stability that children need, judging by public attitudes to the prospect of a cohabitation law. I collect comments from the *Guardian*, such as:

"Do not foist legal obligations on people who have not explicitly chosen to undertake them";

"Time to respect people's life choices not limit them";

"Getting really tired of the illiberal campaigns to compel cohabiting couples into a quasi state-determined relationship".

People who cohabit have the right to respect for their private lives and decisions—a right breached in particular by the retrospective application of the provisions of Clause 7—and now that civil partnerships for heterosexuals will soon be available, there is no necessity for this law at all. If people will not marry and not enter into a partnership, clearly they wish to be left alone by the law and not boxed into a corner.

I have called this law a bedroom tax, and so it is: share your bedroom and you will have to pay for it. This is thoroughly illiberal. Cohabitation is growing in popularity, maybe because it avoids the heavy financial penalties of a failed marriage and divorce. It is curious that English law attaches such heavy financial obligations to a sexual relationship, no matter how brief, but ignores the equal demand for fairness by siblings, a topic on which the noble Lord, Lord Lexden, whom I fully support, has spoken. It is often said that cohabitants are as committed to each other as married people and that that justifies similar legal treatment, but "commitment" is not the word. Commitment lasts as long as it lasts. What couples need and respect is the express assumption of responsibility, and studies have shown that drifting into a relationship does not mean the same to the partners, especially the men, as the deliberate assumption of responsibility for each other—which, incidentally, is shown by the many cases of siblings living together that your Lordships have had before them.

Another reason this law is unnecessary is that Schedule 1 to the Children Act 1989 provides for financial provision for children, in addition to the Child Maintenance Service. The 1989 Act can operate to provide a lump sum, property or education costs or to transfer the home to the unmarried parent for the benefit of the child, and that is how it should be. We should be worrying about provision for the children of these relationships, not the short-term cohabiting partner. Child maintenance and the unwillingness of fathers, married or not, to do the right thing, has been a stain on our system for ages, and I wish the legal profession were as demanding for reform on that score as it is in relation to the more lucrative asset division between partners.

Turning to the drafting, I highlight first the provisions about retrospectivity. Clause 7 allows former cohabitants to apply with two years of the end, or longer if the court judges the circumstances "exceptional". This opens the door to a massive number of claims, pressures and costly proceedings to determine whether a situation is exceptional, which is a wide open concept. Under Clause 2, people living together now will find that the law applies to them, even though they had no knowledge of this trap when they started to live together. Under Clause 3, people who continue to live together, although not as a couple, will find that that counts as cohabitation too. Under Clause 14, the court may set aside an opt-out agreement if it is "manifestly unfair". One could hardly devise a phrase more likely to lead to dispute, especially when our principles of maintenance are undefined and our support law desperately needs reform. What a charter for dispute and expense this is.

Possibly the most unwelcome part of the Bill is that relating to intestacy. In brief, it gives the surviving cohabitant rights over the property of the deceased, which will pit the cohabitant against the deceased's children, his widow—if there is one—and other close family. The bitterest disputes we see over legacies are precisely these. Cohabiting partners already have rights to claim under the Inheritance (Provision for Family and Dependants) Act 1975, which has been enlarged. The Law Reform (Succession) Act 1995 enables cohabitants of two years standing to claim without proving dependency. Those Acts enable discretion to apportion between the cohabitant and the blood family, whereas under the Bill the cohabitant will take priority.

Some 87% of the population leave less than £500,000 behind them; according to a study by Irwin Mitchell, the average inheritance is very little. If the first £250,000 is taken by the cohabitant, this will mean in most cases next to nothing for the children, who will most likely have been the children of divorce and who were perhaps not properly maintained during the deceased parent's lifetime. It is a double blow, likely to lead to litigation or pressure for settlement, reducing the available sum still further. The surviving cohabitant may go on to another relationship, but the children of this younger generation, so handicapped in relation to housing and education debt, deserve in my view the first slice of their parents' legacy.

[Baroness Deech]

The Bill will be unpopular with the public once they grasp its extent and uncertainty. It is an attack on the lifestyle of a certain group. Some may not wish to marry each other but to try out the relationship. Older people who live together—as I have heard from Members of this House—but who have refrained from marriage especially to protect their inheritance for their children and not have it forcibly transferred to a new partner, will be very upset by this. We do not have forced marriage in this country; even if there are expectations on the part of one partner, or if one has refused to marry the other, that is no reason to impose a regime on them. Why should a woman with a good career, who is disappointed that her partner will not marry her, have to face a claim by that partner if he leaves her? We should observe the human rights of privacy and respect for family life, which are interfered with by the Bill. Private adult choices should be respected. The claims of children are already legislated for, and there is provision in existing statutes for the surviving cohabitant without damaging the rest of the family. As a society, we want stability for our children, whether their parents are married or not. Extending cohabitation law to shorter than average relationships will not achieve this.

1.57 pm

Baroness Featherstone (LD): My Lords, I am very pleased to have the opportunity that this Bill offers to put in place protections for those couples who choose not to marry and not to have a civil partnership registration—although I trust that civil partnerships will soon be available to straight couples—but choose simply to live together.

The reasons couples do that are manifold. Not everyone believes in marriage, and some do not want the weight of religious overtones, the male patriarchy or just the mere formality of it. It may be the case that they are religious and have already been married but their religion does not permit divorce. Maybe they had a bad experience previously with the more formal arrangements. Maybe there are financial reasons for a couple to want to live together, particularly given the price of property and renting. Maybe they just want to try cohabiting as a prelude to marriage or civil partnership; maybe parental divorce has led them to distrust marriage; maybe, as the noble Baroness, Lady Deech, said, one wants to marry and the other does not.

To be frank, it does not really matter why a couple do not want to take the options of marriage or registration. It is a free country and we are, thank goodness, still free to choose the nature of our relationships. In the end it does not matter what I or any of your Lordships think. We are totally entitled to our views—and we clearly have differing views—but it is not the state's role to prefer one to another. Although the tone of this debate has been quite moderate, in the previous debate in 2014 there was definitely a heavy effort to make sure that marriage was the gold standard—that it was somehow better than living together, and therefore had protections not available to those who did not make the decision to marry.

It is the state's job to enable and make lawful arrangements to facilitate loving unions—of our choice—and to ensure protection for the participants and their children. I read the contribution of the noble Baroness, Lady Deech, on this same Bill from 2014, and her concern that there would be less willingness to commit to a long-term relationship and that the stress of couple breakdown added significantly to the detriment of children. It is true that most people desire that lifetime commitment, but it is not the protection in law that delivers it, nor necessarily the form which it takes. We need to face the reality of life as it is, not as we wish it to be.

My own nephew died aged 35 as a result of the contaminated blood scandal. I take this opportunity to say thank goodness for the inquiry now in train. For that, if not for Brexit, Theresa May deserves our thanks and praise for going where previous Governments had refused to go. Nick was 35 and had a 10 month-old daughter. He had been with his partner for 14 years. They did not believe in marriage, and civil partnerships were not available, so in a relationship as loving and faithful and enduring as any marriage, they had no rights in law—no support whatever. So I very much welcome this opportunity to move this issue into law and provide that protection.

As my noble friend mentioned, other parts of the United Kingdom are ahead of us. Scotland has had its cohabitation law since 2006, and other jurisdictions have moved on this, including Canada, New Zealand, Norway and France.

As I said, in the last debate most of the speeches against this very modest measure seemed to focus on the desire to make people marry and stay together as the gold standard and as a safe harbour in which to raise children. We know that there is no such thing; we know about the divorce rate and that children are mistreated in married homes as well as unmarried homes. While we may aspire to live happily ever after, that desire applies to most people in whatever arrangement they choose to live.

The truth is that single-parent families are endemic. I am a single parent myself, and being married did not stop my husband running off with someone younger and less attractive—I could not resist saying that. Around 90% of single parents bringing up families are women, and it really should not make a difference to the responsibility that they shoulder whether theirs was a marriage, a registration or a cohabitation. So, while we may mourn family breakdown, withholding protections for couples who choose cohabitation is not the answer.

My noble friend mentioned the law, which is already lenient in terms of the grounds for divorce. If it is now going post haste towards no-fault divorce, the corollary surely is that you can no longer differentiate in law between modes of coupledom. There will be no special sanctions for ending a marriage. If society at large and we as lawmakers accept that marriage breakdown happens and that you cannot make someone stay, and we—quite rightly—remove the threat of the financial penalty for being the guilty party, surely we cannot then turn to those who cohabit and tell them that their choice is less valid or valuable than the choice of marriage.

Of course it would be better if people were more constant, if men and women never strayed from their partners and if the family unit was in perpetuity. But,

as I said, we have to deal with the world as it is, not as we wish it to be. Our commitment and mission in this House should be to ensure that men, women and children in cohabiting arrangements have protection on the breakdown of those arrangements—and these are the most modest proposals.

2.03 pm

Lord Northbrook (Con): My Lords, in general I am not especially favourable to the Bill in the name of the noble Lord, Lord Marks of Henley-on-Thames, even though it is eloquently presented. I recognise that, according to the Office for National Statistics, the number of cohabiting couples has more than doubled, from 1.5 million families in 1996 to 3.3 million in 2017. I recognise the Bill's good intentions and its desire to protect cohabitees in vulnerable situations and to protect children from hardship. As has been recognised, there are gaps in the law that can lead to significant financial vulnerability and disadvantage, especially for a woman, when a cohabiting relationship ends due to separation or death of a partner. I realise that, at present, cohabitants have no right to the equitable division of property or other assets following the breakdown of the relationship, as would be the case with divorce. Similarly, in the case of the death of one of the cohabitants, their partner has no right to register the death—dealt with in part, I believe, by Clause 18—or succeed to the deceased's estate if they died intestate, dealt with by Clauses 19 to 22.

However, the Bill goes beyond those provisions and creates something of an opt-in provision for cohabiting couples with, as the noble Baroness, Lady Deech, said, a low threshold for cohabitation of a continuous period of three years—although that has been edged up from two years in the original 2014 Bill. That is far too short a period and does not constitute a long-term relationship as referred to by the noble Lord, Lord Marks, when in 2014 he cited the 2008 British Social Attitudes Survey.

I should be far happier, rather than extending rights to cohabitees, recommending that they might consider the benefits of civil partnerships, or even marriage, to receive the automatic benefits which they are currently denied as cohabitants. For couples opposed to entering either of those, I rely on an article from Hughes Paddison solicitors, which recommends the following form of protection. First, they should enter a cohabitation agreement and/or a deed of trust which sets out how capital assets—for instance, the home—are to be owned and resolves any other financial issues, such as division of household expenses. Secondly, they should ensure that each cohabitee has executed a valid will in order to protect their partner's interests and avoid them making an application under the Inheritance (Provision for Family and Dependents) Act 1975. Thirdly, they should make any additional or reversionary provisions necessary to ensure that any pensions allow payments to be made to unmarried partners. Fourthly, they could take out life insurance policies, having ascertained that they will pay out to unmarried partners—as per Clause 16, as I understand it.

Overall, I agree with the noble Baroness, Lady Deech, who said in 2014 that cohabiting couples will be snared unaware in a trap of laws from which there is no escape, except for the opting-out provisions of the Bill. I agree that the effect of the Bill would be to apply almost the whole panoply of marriage law to cohabiting couples, making cohabitation as expensive and legalistic as divorce. The Bill will reduce the willingness to commit long-term and would greatly increase the stress of couple breakdown.

I also agree with the noble Lord, Lord Farmer, in the same debate that the Bill would discourage marriage and that it would be far more beneficial to rebuild the social fabric to encourage marriage—and, I add, civil partnerships. The right reverend Prelate the Bishop of Oxford—then Bishop of Sheffield—made an interesting point in 2014. He argued that any confusion over the rights of cohabitants should be dealt with by education, not legislation. He also said that the Bill creates a quasi-legal matrimonial structure based on an arbitrary length of cohabitation, a concept which itself is hard to define and has all kinds of unforeseen consequences. I noted the interesting comments of my noble friend Lord Lexden about siblings and those of the noble Baroness, Lady Deech, about the Children Act 1999 covering certain circumstances, and the dangers of the retrospective Clauses 7 and 14.

In summary, although I praise the Bill's good intentions, I have considerable misgivings about the problems it could create.

2.08 pm

Baroness Burt of Solihull (LD): My Lords, this has been a short but nevertheless important and wide-ranging debate and we have had some excellent and thoughtful contributions. I give particular thanks to my noble friend Lord Marks for bringing the Bill before the House again, because it provides extremely important protections for cohabitees and their children, many of whom do not even realise that they need them.

We have made some great advances in recent times and eagerly await the Government fulfilling their promise to bring in the same protection in law for civil partners as same-sex partners, should civil partners choose to legally formalise their relationship but not marry. However, just as not everyone wants to marry, not everyone wants a civil partnership, for all sorts of reasons so carefully outlined by my noble friend Lady Featherstone.

My noble friend Lord Marks spoke about the ignorance of the majority of cohabiting couples, who labour under the illusion that they have a common-law marriage and that this gives them any legal status at all. The Bill is for them. It is for when couples split up and the person who has made the most sacrifice—perhaps caring for children for years or sinking their money into a property or another investment—has no right to financial redress on the break-up, or when one partner dies intestate and the survivor discovers that they have no right to the family home. You never know what is going to happen. These protections, so ably outlined by my noble friend, redress some of the unfairness that can occur towards the partner and their children.

The noble Baroness, Lady Deech, accused the Bill of being illiberal and said that the average length of a cohabitation is short. She took what I consider the worst-case scenario, when a relationship lasts only a

[Baroness Burt of Solihull]
short time. That does not address the fundamental wrong done to partners whose relationship has been long-standing and for whom nothing can be done under the current law.

The noble Lord, Lord Northbrook, talked about the steps that cohabitees could take, including cohabitation agreements, deeds, wills, pension arrangements and insurances, but not everyone realises that they do not have the same protections as married people or people in civil partnerships. About half of such couples do not, which is why we need the Bill.

I have huge sympathy and admiration for the noble Lord, Lord Lexden, in his long campaign for cohabitating family members. He talked about the heart-rending situations that can arise. I ask him to consider whether these should fall within the remit of the Bill. It is our view that it is a matter for fiscal reform, and that if we sort out the fiscal situation, we would not necessarily have to muddy the waters by trying to include long-cohabiting family members in the Bill.

My noble friend Lady Featherstone talked about the wide range of instances in which people do not, or cannot, choose a civil partnership or marriage. I am sure the House thanks her for the personal, tragic example of her nephew. She called these proposals "most modest". I believe that; they do not go as far as the noble Baroness, Lady Deech, suggested in her comment about the panoply of marriage law being lowered on to people by the Bill. The proposals are modest but fair, and cover a whole group of individuals. The number of couples who have never married is growing. They deserve our protection and our care.

2.14 pm

Baroness Chakrabarti (Lab): My Lords, the debate has been thoughtful and civil. It is nice to be able to say that, not least in the light of the earlier debate and others here and in other places. The noble Baroness, Lady Featherstone, is probably woman of the match for her comments and revelations but, none the less, there is still an element of otherworldliness to our discussion. I am sorry to say it but the elephant in the room is the complete obliteration of civil legal aid, including in family law cases over recent years. People say that talk is cheap, but legislation without the fiscal changes described is only a little more expensive. Family legal aid is in complete crisis, with a minority of people in family cases getting access to advice and representation. Moreover, family courts are under strain, and that is the case even when people have chosen to get married, let alone getting into the territory where people have not.

I do not doubt the good and benign intentions behind the Bill but I cannot help but think that the method of execution slightly misses the target. As the noble Baroness, Lady Deech, and others have pointed out very kindly, the Bill places obligations on people who did not choose them. What is more, it does so on those who may have actively chosen not to take them on, including some women. It is easy to gender this issue but it could place obligations on women, including those who are in a second or third relationship, quite possibly with adult or dependent children. They could be caught just as easily by the need to pay out in a relationship that they have chosen not to make legal or financial. That really needs to be borne in mind.

I take seriously the comments of the noble Baroness, Lady Deech, about generational injustice and children being the priority. It would be one thing if this Bill had been targeted on protecting children or adding to the protections for the children of a cohabiting relationship. However, what it seems to do is place, if not the full panoply of marriage rights, nevertheless quasi-marital rights on people who have chosen not to take them on, in an age when we are quite rightly moving towards expanding the nature of marriage to include same-sex partners and so on. That needs to be considered. As the end of the magical and arbitrary three-year period looms, as the Bill stands, it would put pressure on people who have chosen a slightly more fluid arrangement than marriage or civil partnership either to opt out and pay a lawyer because they are not going to get legal aid—the noble Baroness, Lady Deech, pointed out that this is about relatively small sums of money, but they will have to pay a lawyer, which is quite a red flag in an embryonic relationship anyway—or perhaps they will have to split up and thus avoid the regime. I cannot believe that that hits the target of protecting the vulnerable and I cannot believe that that is the intention that the noble Lord, Lord Marks, is trying to promote. Moreover, it will of course mean more work for courts that are already under strain. It is very easy, in this wonderful and otherworldly place, to salve our consciences and signal virtue by creating more and more intricate, byzantine rights and obligations which applications to the courts will sort out, but the courts are under strain.

For all its noble intentions, the Bill or something like it might work if proper legal aid and publicly funded legal education were in place. It is all very well to talk about the ignorance of the majority, but we must be a little careful about language like that. We need to fund education, advice and reputation for the majority. Equally, with such provision, a Bill such as this might not be needed. I hope that I will be forgiven for saying that the Bill in its current form at this time slightly misses the target.

2.19 pm

Baroness Vere of Norbiton (Con): My Lords, I begin by thanking the noble Lord, Lord Marks, for introducing this Bill and enabling the House to debate the important questions of whether new rights should be provided for cohabiting couples and, if so, what those rights should be.

I will start by giving a brief overview of the Bill's proposals. Currently, cohabitants have some legal protections when their relationship comes to an end, but these are more limited than those of married couples and civil partners and depend on the individual circumstances of each case. With certain exceptions, a cohabitant can acquire property rights in relation to his or her fellow cohabitant only by entering into a contract or trust under the civil law. Similarly, cohabitants' legal rights are more limited than those of persons who are married or in a civil partnership if one of the cohabitants dies. In cases where a cohabitant has died

and made a will, their surviving partner may inherit, but where a will has not been made the law gives priority to any surviving blood relatives, such as parents, siblings or children.

The Bill before your Lordships' House today defines cohabitants as two people who have lived together for at least three years, have a child or are recognised in law as having a caring responsibility for a child. Part 2 of the Bill seeks to make provision for financial settlement orders in certain circumstances. The court could do so only if it were satisfied that the couple had ceased living together as a couple and, as a result of qualifying contributions the applicant had made, either the respondent had retained a benefit or the applicant had an economic disadvantage.

I am very aware of the interest in these matters and in family law more widely in your Lordships' House, and of the considerations given to proposals today and during other debates. The noble Baroness, Lady Deech, questioned the wide discretion that would be given to the court. How the court makes decisions of the kind in these proposals will continue to draw sharp differences of opinion. For their part, the Government are considering what, if any, changes might need to happen to the law in this area. Across the range of opinion of Members of this House, family judges and legal practitioners, there does not as yet seem to be any clear consensus on how to limit the court's discretion in practice.

Then there is the issue of the opt-in. Under the Bill, qualifying cohabitants are automatically opted in to the Bill's framework of rights in the event of separation unless they have made an opt-out agreement during their cohabiting relationship. This point-out agreement can be valid only if each person in the cohabiting relationship,

"has separately received legal advice",

and confirmed in writing that they have understood the effect of the agreement. Some might feel these proposals are somewhat costly and perhaps a little bureaucratic. This was noted eloquently by the noble Baroness, Lady Chakrabarti, and it was a pleasure to have her on my side—sort of—for a change.

The Bill also seeks to give cohabitants certain rights on the death of one of the couple. It gives the survivor the same rights to inherit under the intestacy rules, and to make claims under the Inheritance (Provision for Family and Dependants) Act 1975, as a spouse or civil partner. It also gives the surviving cohabitant the same rights as other family members in relation to the registration of death. Lastly, the Bill gives cohabitants equivalent status to spouses in relation to certain types of insurance payments and policies, and the payment of damages in the event of a fatal accident.

The Government understand the reasons of the noble Lord, Lord Marks, for seeking these provisions. However, for a number of reasons the Government have reservations about the Bill. The proposals in this Bill could be seen by many as taking away their fundamental freedom to be in a relationship with someone for whatever length without the state imposing obligations on them. The Bill therefore raises a fundamental question about the role of the state in relationships that have previously had little in the way of a legal regime. The debate today has been penetrating but has also revealed a divergence of views. There is much more work to be done before Parliament can resolve this issue.

Some also argue that for many people cohabitation is a lifestyle choice rather than something in need of a legal fix. A significant number of people today choose to live together with their partner without marrying or formalising their relationship in another way. For some, the choice to cohabit may reflect in full or in part their rejection of the rights and responsibilities that come with a legal union. Some couples may resent the idea of incurring financial responsibilities to each other not by choice but simply as a result of the way they have chosen to live and of the period over which they have chosen to live that choice. Children, of course, are already entitled to child maintenance regardless of the marital status of their parents.

There is a question, too, of how far it would be understood that a person could suddenly find themselves faced with financial obligations to their former partner because they were unaware of their new legal status. In that sense, the Bill introduces a new risk of a cohabitant unknowingly acquiring legal responsibilities to another person. The state and the law do not regulate the formation of cohabiting relationships in the same was as they do for marriage or civil partnerships. In other words, when did the relationship start? On what date did you actually start cohabiting? This is enormously complex and very difficult to define.

The legal challenge remains how to equip prospective cohabiting couples to make informed choices. The Government acknowledge that there is a widespread belief that there is something called "common-law marriage". The National Centre for Social Research reported in January that about half the people it surveyed believed that this was the case. However, as mentioned by my noble friend Lord Northbrook, the solution to this is perhaps not more legislation but education.

There is also a need to recognise how the legal landscape is potentially changing. For example, proposals are being considered separately in Parliament for extending civil partnerships to opposite-sex couples. These proposals, which are supported by the Government, may have a profound impact on the number of people who still choose to cohabit rather than having a formal legal relationship.

On civil partnerships, I acknowledge my noble friend Lord Lexden's tenacity in pressing for protections for siblings who live together, and the support shown to him by the noble Baroness, Lady Deech. The House will have a further opportunity to debate this matter next week when my noble friend has an Oral Question. I think that the noble Lord, Lord Marks, would not agree that protections for siblings should have a place in this Bill. This was noted by the noble Baroness, Lady Burt. While I appreciate my noble friend's interest in inheritance, I do not see that the Bill's other provisions, particularly on providing redress, would be suitable for siblings. Again, the range of opinions within and beyond your Lordships' House seems to indicate that there are still questions to be resolved about the extent to which family law should apply to relationships outside marriage and civil partnership.

[Baroness Vere of Norbiton]

The Government are also concerned that the Bill's proposals could lead to more cases coming to court, rather than providing certainty and clarity for the people it aims to protect. There is nothing to suggest that separating couples would settle financial matters amicably under these new arrangements. Indeed, it could be suggested that, given a possible lack of clarity, it would be the reverse. The Government's view is that coming to court to resolve a dispute about a private family matter is best avoided. Indeed, one of our priorities is to help more separated couples and parents resolve matters concerning children and financial settlements on divorce out of court, provided that it is appropriate and safe to do so.

Finally, I must conclude with the Government's position in relation to the proposals put forward in the Law Commission's two reports on cohabitation. In broad terms, the Bill implements the recommendations in those two reports. The first, *Cohabitation: The Financial Consequences of Relationship Breakdown*, was published in July 2007. The recommendations in this report are to give cohabitants who have lived together for a qualifying period—it was thought that between two and five years would be appropriate—rights to obtain financial remedies from the court not provided for in the current law. Cohabitants who share a child would not be required to meet this minimum duration requirement.

The second report, *Intestacy and Family Provision Claims on Death*, published in December 2011, makes a number of recommendations. The Bill proposed by the noble Lord, Lord Marks, would implement those recommendations about cohabitants. The previous Government had already implemented the other recommendations in this later report through the Inheritance and Trustees' Powers Act 2014, which came into force that year.

The overall effect of the Bill and the Law Commission's recommendations in those two reports would be to create a substantial new scheme of legal rights and obligations for cohabiting couples. The Government would need to carefully consider the proposals put forward in the two reports before undertaking any review of this area of law. At present, our immediate priority for family law is to reduce ongoing family conflict following the irretrievable breakdown of a marriage or civil partnership. We will also be supporting the extension of civil partnerships to opposite-sex couples, and we are studying the issues around financial provision following divorce or civil partnership dissolution.

We want to make progress in the field of family law, and I know that my right honourable friend the Secretary of State for Justice and my honourable friend Lucy Frazer both listen intently to what this House has to say. I thank the noble Lord, Lord Marks, and all noble Lords for their contributions today. There are strong opinions on all sides, but all noble Lords will recognise that calls to introduce legislation in any new area must be balanced against arguments about ensuring that the individual freedoms we all take for granted are protected.

2.30 pm

Lord Marks of Henley-on-Thames: My Lords, I am very grateful to all who have spoken in this debate, and particularly to the Minister, the noble Baroness, Lady Vere, for her helpful explanation of what the Bill and the Law Commission's recommendations do. I said at the outset that the Bill only implements the two Law Commission reports. I re-emphasise that those reports were consequent upon long and detailed consultations, taking evidence in which a very wide variety of opinion was expressed. Although there was much in the noble Baroness's speech with which I agreed, there was a certain amount with which I disagreed, which will not surprise her. However, one of the fundamental points she made was that there was no consensus. Among the legal professionals, the judges, the Bar and the solicitors' professions, there is a very wide consensus on this issue. Of course there are dissenting voices, but there is a very wide consensus that the Law Commission found a very good balance.

I emphasise that the Bill is about choice. It is about allowing people to choose between marriage, civil partnership and cohabitation. Those choices are made by people and they are to be respected. However, the point of these very modest proposals is to ensure that, if people choose cohabitation, they are not subjected to the unfair disadvantage that flows from taking on obligations—looking after children, providing assets and providing contributions, whether in kind, money or care—that then leave them bereft of support when the relationship breaks down. The Law Commission's proposals and this Bill are designed simply to redress that balance.

I do not agree with the noble Baroness, Lady Deech, on two points. First, I do not agree that the existence of judicial discretion necessarily means that more cases are going to court. That is not the experience. Indeed, although some very well-known and high-profile cases end up in expensive disputes, the vast majority of divorce cases settle amicably because divorce lawyers and parties understand roughly what will happen. The experience of Scotland—

Baroness Deech: If the noble Baroness, Lady Shackleton, were here, she would say that the settlement costs a fortune. We do not know how much it is in legal costs, but the fact that people do not go to court does not necessarily mean that a lot of money is not spent.

Lord Marks of Henley-on-Thames: My Lords, I agree with that but it will not have escaped your Lordships' attention that the noble Baroness, Lady Shackleton of Belgravia, has a particularly niche practice in an area where costs do not always matter a great deal. If one is talking about the generality of cases, I am not sure that her experience—knowing her from a professional as well as a personal viewpoint—really adds to the debate. Most cases settle; the experience of other jurisdictions—Scotland in particular—suggests that. There have not been many contested cases in Scotland. Gow v Grant was one that got to the Supreme Court; it was very important and high profile, but I suggest that what the noble and learned Baroness, Lady Hale, said in that case is an important lesson for us all.

I draw attention to some of the points made by the noble Lord, Lord Northbrook. Having gone into the reasons for the Bill and the unfair disadvantage that it was designed to offset, he then pointed out that the advice of solicitors is that people in cohabiting relationships can make cohabitation agreements, opt-out agreements and wills. Those protections enable people to give effect to their choices. I take the point of the noble Baronesses, Lady Chakrabarti and Lady Vere, that these cost money, but I suggest it is only a limited amount if you are simply certifying that you have had advice, much as people do when taking out a mortgage. The real point, made by my noble friends Lady Featherstone and Lady Burt, is that while people can choose, many do so against a background where they believe wrongly that they have relief or rights anyway as part of a common law marriage. They are then stuck in that belief and led to disadvantage as a result.

I will address a few more points briefly. The point about intestacy is that it is unfair that the children, parents and siblings of those in former marriages take precedence in all cases over cohabiting partners, to the extent of being able to evict those partners from their houses. That is wrong. We know that people die intestate. We know that a very large number of people do not make wills, even though anyone would tell them that they were well-advised to do so. The effects of that can be very damaging.

The noble Baroness, Lady Deech, said that this would be unpopular, but it is not unpopular in Scotland, Ireland, Canada, New Zealand, Australia or other areas that have this legislation or something like it. Of course there are dissenting voices, but overwhelmingly, this sort of relief is popular. Last time, the noble Lord, Lord Northbrook, commented on the contribution of the noble Lord, Lord Farmer, to say that there is no evidence—indeed that there is evidence to the contrary—that protections such as this have an adverse impact on marriage. The evidence from studies is that there is no impact on the rate of marriage from changing the law relating to cohabitation in a jurisdiction.

The point made about the Children Act 1989 is a bad one. Schedule 1 claims under that Act can be brought only in respect of minor children. We have very many cases where, as people get older and their children leave, they are left in their home—if left by their cohabitating partner—with no support. Those are very damaging cases. A claim under the Children Act will not help them if they have given up their careers and lives to look after children until the relationship suddenly breaks down later on. Those mothers—it is usually but not always mothers—need protection.

Finally, as everybody does, I have a great deal of respect for the point made by the noble Lord, Lord Lexden, and for his tenacity in campaigning for the rights of siblings and blood relatives. But I think he knows—the noble Baroness, Lady Vere, said that I would probably take this view—that while I agree with every point he made about the unfairness to siblings and blood relatives of many of the fiscal provisions of our law that leave such blood relatives at a significant disadvantage during life, on succession and in relation to landlord and tenant matters, this is not the Bill for them. As the noble Baroness, Lady Vere, said, this is a Bill for cohabitants living together in an intimate relationship.

Lord Lexden: My Lords—

Lord Marks of Henley-on-Thames: I will give way at the end of the next sentence because I hope to offer some further measure of agreement with the noble Lord. I urge the Government to look very carefully at the points that he has made, take them to the Treasury and see what can be done to ensure that the significant unfairnesses to which he points are redressed by fiscal measures.

Lord Lexden: I thank the noble Lord for his powerful and eloquent support for the basic points that I was making. Perhaps I may express the hope that, should I bring forward another Private Member's Bill to try to redress the injustice for family members, I can look forward to his powerful and eloquent support on that occasion.

Lord Marks of Henley-on-Thames: My Lords, I am bowled over by the noble Lord's praise and hope of support, and of course I will give it to him. I agree with his points but not in the context of a Bill about intimate relationships such as cohabitation.

I believe that I have dealt, probably at greater length than I should have done, with the questions raised in this interesting debate. I accept the points made by the noble Baroness, Lady Chakrabarti, that we have got into a terrible state with legal aid, but I do not think that that undermines the Bill.

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

House adjourned at 2.41 pm.