Vol. 799
No. 335

Friday
19 July 2019

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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Abbreviation	Party/Group
CB	Cross Bench
Con	Conservative
DUP	Democratic Unionist Party
GP	Green Party
Ind Lab	Independent Labour
Ind LD	Independent Liberal Democrat
Ind SD	Independent Social Democrat
Ind UU	Independent Ulster Unionist
Lab	Labour
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 19 July 2019

10 am

Prayers—read by the Lord Bishop of Rochester.

Extension of Franchise (House of Lords) Bill [HL]

Second Reading

10.05 am

Moved by ***Lord Naseby***

That the Bill be now read a second time.

Lord Naseby (Con): My Lords, I pay tribute to a number of noble Lords who have paved the way for me, if I may put it that way—in particular and most recently my noble friend Lord Dubs, whom I have known from the other place for a considerable number of years; the noble Lord, Lord Grocott, and the work he is doing in relation to hereditary Peers; and of course the noble Lord, Lord Steel, who has played a pioneering role in the broader field of reform of the Lords.

Noble Lords will recall that I had the privilege of being the 58th Chairman of Ways and Means in another place. The first appointment was made originally because of the restoration of the monarchy. It was felt by Parliament that your Lordships' House at the time had a particularly strong influence—many at that time felt that it was an unhealthy influence—on the other place. Of course, the whole matter is described in the 25th edition of *Erskine May*, which has just been published. What good work was done by David Natzler, whom a number of noble Lords will know personally. If you flick through that book—although it is not the sort of book you flick through, because it is quite a thick volume—you will find the key part on page 930, paragraph 37.6. The title is, "Basis of modern practice with respect to privilege". The paragraph is not very long and states:

"That all aids and supplies, and aids to his Majesty in Parliament, are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords".

The central theme of my submission this morning is that I am here as an appointed Peer, but that there are portions of policies affecting our former constituencies, if we were previously elected, and ordinary people on the electoral role. We are precluded here from interfering in certain policies.

I took a close look at and pay tribute to *Conventions of the UK Parliament* by the Joint Committee on Conventions, which was produced in 2005-06. A number of your Lordships served on that committee. In paragraph 99, it concluded:

"In the House of Lords:

A manifesto Bill is accorded a Second Reading;

A manifesto Bill is not subject to 'wrecking amendments' which change the Government's manifesto intention as proposed in the Bill; and

A manifesto Bill is passed and sent (or returned) to the House of Commons, so that they have the opportunity, in reasonable time, to consider the Bill or any amendments the Lords may wish to propose".

That is quite clear. It re-emphasises the fact that your Lordships as individuals are restricted, and that we cannot take part in a proportion of the work that the other place is doing.

I wondered what further evidence I could find that would be helpful to your Lordships. These days we spend a great deal of our time talking about what the young think. None of us here is young, but I am quite sure that in our normal lives, we talk to young people where we live. I had the opportunity to be approached by a student at Bedford School, where I went as a boy; and where, incidentally, Erskine May was also a pupil. He approached me and asked whether he could shadow me for a period of time. So I said, "Have a look at this Bill. You're taking A-level politics, are you not?". He said yes, so I said, "Have a look at the Bill, do your own research and give me some comments. I don't mind what you come up with; I'm not worried one way or the other. My views are clear, but you can criticise, et cetera".

I will now give a few quotes from what he wrote to me, because they are quite interesting—quite forthright, as most young people are. He writes:

"I was appalled to hear members of one of our two great Houses do not get a vote on who the future government should be, which will, of course, have as much of an impact on their lives as it will on everyone else's.

I find it is an embarrassing stain on the democracy we boast of in this country. As one of the world's leading powers, it is nothing short of shocking that our second chamber is the only one in the world that does not allow its members to vote at general elections. This means out of nearly 200 countries with second chambers, ours is the only one that doesn't. The only way to describe that is shameful!

The only two arguments used to defend the law in the 2013 debate"—

my noble friend Lord Dubs's debate—

"were; that this is the way it is done so leave it that way and the other was the scepticism around reform.

The first argument is, quite frankly, ridiculous. Archaic laws can have no place in our society, or politics, just because it's the way we have always done certain procedures doesn't mean it is right and should carry on … However, when the original resolution was made there was a need to limit the powers of Peers … So, if members of this House do not have a say on financial bills here or in general elections, where do they have their say on how they want their economy to be run? As you are all aware, you don't! This is a complete failure, especially as it is a basic right within our nation for the majority to be given the right to vote … If members of the House believe they should not be granted the vote, then they can make a conscious decision not to vote. However, their unwillingness to vote should not then stop others in an attempt to further participate in the political system they play a key role in. As a 17 year old who is politically active and waits with eagerness to exercise whatever democratic rights and privileges we enjoy in our country I can only imagine the pain and anger it must cause that simply because of one's job they are then unable to vote, despite the fact that they have enjoyed voting and campaigning for, or even serving, previous governments. Considering all of the facts that this is an outdated law, and was made against predecessors long before those who now sit I feel very strongly and passionately that this bill must be passed".

That is the view of a 17 year-old reading A-level politics.

[Lord Naseby]

Then I asked myself, what is the position today on royalty? I asked the Library for a little help on that. Before I got any evidence from the Library, I was sure that they were not allowed to vote. What did I find? On investigation, I found that while the Head of State—the Queen—has to remain strictly neutral with respect to political matters and is unable to vote or to stand for election, that is only a convention. There is no law that prevents Her Majesty or the Royal Dukes voting. Indeed, after the Act we passed in 1999 the Royal Dukes were allowed to vote. The advice from the Palace is that those who are close to Her Majesty—I think "inner circle" is the phrase that is used—are asked not to take part, and that is very understandable. But the rest of the royals can all vote. It is entirely up to them whether they do so—nobody is forcing them to vote—and I think that that is of considerable relevance.

A number of friends in the House will know that I started my life in the other place with a majority of 179. On the first count, it was around minus 200, so we had a recount. On the second count, I think I won by three or four. On the third count, I won by 179. I shall not go into the detail of how or why that might have happened—that is not relevant this morning—but it is interesting. If we look at more recent elections, how many of us remember Harmar Nicholls in Peterborough in 1966? After seven recounts, he was elected by three votes. Brighton Kemptown was won by seven votes in 1964. Winchester was won by two votes in the 1997 election. Even more recently, in 2017 North East Fife was won by two votes. I put it to your Lordships that it is a weak argument to say, "What difference do one or two votes make to the situation on the ground?". What would have happened in Fife if three of our colleagues from across the border could have voted and might have chosen to vote for the candidate who came second? That is worth thinking about very seriously.

My view is that one vote counts, so I put it to your Lordships that the time has come to recognise that we take part in our local communities. I suggest to noble Lords that every one of us sitting here this morning is active in our own community. We take part. We take a responsibility—yet we are precluded from voting in the key vote that any person in our society can have. This is an important Bill that should move forward. I beg to move.

10.19 am

Lord Desai (Lab): My Lords, we are all grateful to the noble Lord for raising a very acute constitutional question. It may surprise many Members of your Lordships' House to hear that I am very conflicted about it, because I am not at all sure that whatever activity I indulge in in my own constituency or in the country by way of politics necessarily qualifies me to vote in an election. The central fact is that we are an undemocratic House. Having arrived here, we are given the privilege of legislating, and we have to pay a price for that—it is very simple. The fact is that an undemocratic Chamber that is able, in a democracy, to legislate and lay down the law without any reference to the people has to pay a price. I am an economist: if you have a benefit, you pay a price.

The idea that every vote counts is really frightening. If a seat went one way or the other due to the vote of a local grandee, people would be outraged. Part of the Brexit rebellion and so on is that people are asking, "Who are these people laying down the law?" I am sorry but when we came here we gave up certain rights. If you want to vote, the way is open: leave the House and renounce your title. Everybody has that choice. Yes, the Members of this House should be able to vote but only after the House has been reformed and is an elected Chamber.

10.22 am

Lord Rennard (LD): My Lords, I very much enjoyed the account from the noble Lord, Lord Naseby, of recent very close election results. His message was that every vote matters—so, I think, it should.

The principle of this Bill has support from these Benches, but from them we note the irony of demanding votes for Peers to elect MPs without demanding votes for people to elect Peers. In 1911, Asquith's Liberal Government introduced the Parliament Act. The preamble to that legislation said that,

"it is intended to substitute for the House of Lords, as it at present exists, a Second Chamber constituted on a popular instead of hereditary basis".

When its drafters included the phrase,

"such substitution cannot be immediately brought into operation",

I doubt that they thought we would still be waiting for that substitution of principles 108 years later.

The case for giving Members of the House of Peers the right to help elect Members of the House of Commons was recognised by the first Earl of Beaconsfield, better known as Benjamin Disraeli, when he was Prime Minister 150 years ago. However, more recent legislation has confirmed the principle that Peers should have votes to choose MPs only when they cease to have votes in this place.

It seems to me, however, that since the Parliament Acts of 1911 and 1949 ended the powers of this House in relation to financial measures, and restricted its power over all other legislation, being able only to delay it, the denial of a vote to its Members in general elections has been anomalous. Of course, the Liberal Democrats sought seven years ago to achieve a full reform of this House—one which would have completed the aspiration of the 1911 legislation after only a century of delay. However, we failed, so we have to accept incremental reforms until we are able to argue again for what we consider to be basic principles of democracy.

This Bill proposes a very minor reform but it is one on which we may well be accused of special pleading by putting our own interests ahead of those of other people who are also presently unable to elect Members of what we sometimes still refer to as the other place. People who are not UK citizens but are presently citizens of the EU have a right to vote here to elect local councillors, if they live here, and they presently have a right to elect MEPs if they can get past the bureaucratic barriers put in their way, but they do not have a right to elect MPs unless they are citizens of the Irish Republic, Cyprus or Malta. I believe that the best way of ensuring that the rights of the 3 million EU citizens living here are protected if we leave the EU is to ensure that they can vote for MPs as easily as they can vote for local councillors.

In my view, there is a need for a fundamental review of the franchise for all our elections, going well beyond the scope of this Bill. A few yards from where we are now, I sometimes take questions from school groups visiting Parliament. I suspect that many of us do that. It is a delight to try to answer very many good questions. They vary a great deal. From the youngest ones, I always get, "Have you ever met the Queen?" There are questions such as, "What is the one thing in the world that you would most like to change?" Recently I was asked, "What is the longest debate in which you have ever taken part?" My description to a group of six year-olds of an all-night sitting a few years ago, with camp beds and sleeping bags laid out in the Library, led to much excitement about the holding of sleep-overs in the House of Lords, as they understood it to be.

From sixth-form groups, I generally experience questioning as intelligent and as informed as from any group of people over 18. The noble Lord, Lord Naseby, quoted the eloquent words of a 17 year-old in support of the principles of his Bill. I would say to the sixth-form groups that I frequently address that the Liberal Democrats believe that they should be able to vote to choose MPs at the first general election after their 16th birthday. That is at least as important a principle as it is for Members of this House to be able to vote to elect Members of the other House.

We now have a different starting age for the franchise for local elections and devolved elections in different parts of the UK, so it must be time to consider properly the voting rights for everyone living here, for UK citizens living abroad and for young people from the age of 16—as well as for Peers of the realm.

10.27 am

Lord Norton of Louth (Con): My Lords, the noble Lord, Lord Rennard, quoted one paragraph of the Parliament Act 1911 but he did not then quote the next paragraph, which recognises that, if you change the composition of this House, you also have to revisit the powers of the House.

I congratulate my noble friend Lord Naseby on introducing a Bill that has the merit of brevity. I would normally begin by addressing the merits of the argument, but on this occasion I shall look first at the level of support for the measure. How much support does it enjoy, be it from the public or from Members of the House?

Proposals for change to your Lordships' House, be they great or small, rarely excite interest outside the House. I have in various writings on reform of this House quoted Janet Morgan, who once wrote:

"On Summer evenings and Winter afternoons, when they have nothing else to do, people discuss how to reform the House of Lords. Schemes are taken out of cupboards and drawers and dusted off. Speeches are composed, pamphlets written, letters sent to the newspapers. From time to time the whole country becomes excited".

Well, the political classes may become excited but there is little evidence of the whole country ever doing so. Even in 1910, when there were two general elections, with Lords reform ostensibly being to the fore, the electorate remained as uninterested as it had been before the House rejected the 1909 Budget. As George Dangerfield wrote of the December election campaign:

"The country was indifferent, and politicians were hard put to it to stir up its lethargy".

I am not sure that Lords reform was to the forefront of popular concerns either when the House of Lords Reform Bill was before the Commons in 2012.

Given that, it is not surprising that the issue before us today attracts no obvious public interest. I did a post on my blog about it and invited comments on the Bill. It attracted a grand total of two responses, the first of which was:

"It's a non-issue. The Lords sitting in the upper house are small in number (and should be much smaller still—I suggest by drawing lots) and relatively balanced politically, so it's unlikely to affect any election, so who cares? It's not worth three sentences to discuss".

Public indifference is matched by apparent indifference on the part of Members of this House. The speakers' list for today may be notable for quality, but not for quantity. There is no clear, swelling demand for change on the part of Members, and in my view, that is significant. I notice also that the issue has not been the subject of much study. Even the Library briefing note relies on a blog post I did some years ago on the legal position of the prohibition.

I turn to the issue of principle. The argument, which has been made since the 19th century and is repeated today by my noble friend Lord Naseby, is that the House of Commons has powers denied the Lords, not least in terms of taxation, and Peers, the same as other citizens, should be able to vote for those who determine taxation. As my noble friend has mentioned, members of appointed second chambers elsewhere get to vote for members of the elected house.

In this country, we are now almost the only citizens not able to vote for MPs. I say almost, because certain other categories, notably prisoners, are also disfranchised. Once released from jail, they can vote—as indeed can anybody in this House who retires from membership. Mention of prisoners brings me on to the rights argument. We cannot argue that we are denied a basic right without conceding that prisoners are as well. In the Hirst case, the ECHR did not hold that prisoners should have the right to vote but that a blanket ban on prisoners being able to vote was in contravention of the convention.

There is a key difference between us and prisoners, which leads me to address the case against the Bill. Prisoners have no voice in Parliament; we do. It may not be as great as that of MPs, but we have a security of tenure denied those in the other place. The votes of Peers in a general election are not likely to swing the outcome, even in the closest of contests, but the fact of having the right to vote in addition to a place in Parliament—and a secure one—may seem a privilege too far. We may not vote on issues of taxation, but we have privileges that are denied to citizens. We can debate finance Bills at Second Reading. If a Bill is certified as a money Bill, we can offer amendments. Although the Commons is not obliged to consider them, there have been occasions when it has accepted amendments. In short, we can engage government in a way that the ordinary citizen cannot.

As I have said, the Bill will not excite great interest but, if passed, it may contribute to perceptions that we are seeking more for ourselves and do nothing to increase public understanding of the role played by

[LORD NORTON OF LOUTH]
this House. We add value to the political process, and we do so at relatively little cost. Indeed, if one could ascribe monetary value to the raft of changes we achieve to public legislation, I believe it would more than offset the costs of running the institution.

As my noble friend Lord Young of Cookham is well aware, I am keen to ensure that we improve our scrutiny of legislation. We do a good job, but I believe that we could do it even better. As I have stressed before in this House, ensuring that we deliver good law is a public good. That is what we should be focusing on, and ensuring that our scarce resources, including time, are devoted to it. That is what the public should see us doing. We should be thinking of public service, not self-service. We need to focus on raising awareness of the work of this House and what it contributes to the nation. This measure is, I fear, something of a distraction and may prove unhelpful if—it is a very big if—it gets noticed.

10.34 am

Lord Brown of Eaton-under-Heywood (CB): My Lords, I support this Bill just as I supported the same Bill when the noble Lord, Lord Dubs, was promoting it six years ago, in June 2013. I have reread the Second Reading debate of his Bill then and noted rather to my surprise that I managed to speak for eight minutes; I am not sure I shall manage that today.

I recognise, of course, that this is perhaps not the most burning political issue of the day. But it has for some time been, and remains, an issue worth raising and one which should finally be resolved—in its favour, I suggest—and put to bed. I invite your Lordships to look at it this way: suppose that our present bicameral system was being devised and established for the first time today, long after the passage of the Parliament Acts of 1911 and 1949, with an elected House of Commons being rightly accorded the primacy it is recognised to have; it alone having the power to impose taxes and deal realistically with money Bills; it alone having the right by convention to implement its policies, particularly its manifesto promises; it alone having the power to bring down government; and so on. Suppose all that, and that those setting up the system of government then asked themselves—after looking around the world at other bicameral nations where the second Chamber invariably has the vote—should the Members of the upper House have a vote in deciding who should be the Members of the House of Commons? I suggest that one cannot seriously doubt that the answers would be: of course they should; why on earth not?

It is quite wrong to suppose that the mere fact that we have a limited say in scrutinising and refining Bills from the House of Commons, and occasionally promote Bills ourselves, should disqualify us from voting in parliamentary elections. One point I made in the debate brought by the noble Lord, Lord Dubs, is that the 11 of us who in October 2009 ceased to be Law Lords here and were recreated as Justices of the new Supreme Court became at that point totally disfranchised. For so long as we remained Supreme Court Justices, we ceased to have any vote or voice whatever in national political life. We were disqualified from speaking or voting here in the Lords, yet as Members of the House of Lords we had no vote either in parliamentary elections. Still now, 10 years on, there remain in the Supreme Court two such Justices, the noble and learned Baroness, Lady Hale, the President of the Supreme Court; and the noble and learned Lord, Lord Kerr of Tonaghmore. There are, I think, two Scottish law officers similarly placed.

This does not apply to Peers who retire, nor indeed any Peer who may be expelled from the House under the provisions of the House of Lords (Expulsion and Suspension) Act 2015, although no doubt it applies to other Peers statutorily disqualified from active membership. Should we simply write off those cases as mere oversights or regrettable anomalies in an otherwise sensible, logical voting system? I suggest not. It seems to me rather that, as a matter of principle, we should finally end the wider anomaly, which consists in the disqualification of all Members of this House from voting in Commons elections. The right to a parliamentary vote should be regarded as a basic fundamental right that should be denied to citizens only for compelling reasons. It is no longer denied to mental patients. It is, as we all know, still denied to all convicted prisoners. Personally, I regret that, but I suggest that today is not the occasion to debate again its pros and cons. No more is it, pace the noble Lord, Lord Rennard, the occasion to debate the Liberal Democrats' cause of a wholly elected House of Lords or indeed the question of votes for 16 year-olds.

I accept that there is a stronger case against prisoners voting than there is against Members of this House having the vote, but I suggest that there really is no coherent case for denying us the vote simply because we have a limited—though, I recognise, valuable—role in the overall legislative process. It is not a sufficient role to justify our being denied any say in those who have primacy in legislation, the Members of the House of Commons.

The vote is a symbol of a healthy democracy whose value should be recognised. The Bill would assist in that recognition, and I wish it well.

10.41 am

Lord Dubs (Lab): My Lords, I congratulate the noble Lord, Lord Naseby, on having introduced the Bill. He and I had a chat about it beforehand and I very much welcome the fact that he has introduced a Bill on the same principle as the one that I introduced into this House about six years ago.

I want to comment on one or two of the speeches that we have heard. I was slightly surprised; I say to the noble Lord, Lord Naseby, that I have never argued that, by giving Members of this House the right to vote, we could significantly tip the balance in parliamentary elections. It may be that that would happen, but I think it is a slightly way-out suggestion. I would welcome it if we could tip the balance in close votes, but that is not the way it is.

I am more concerned about my noble friend Lord Desai, who said that we have to pay a price to be here. I find that an extraordinary comment. There are enormous privileges in being here, of course, but the idea that we should somehow be penalised by not having our democratic say seems to be slightly odd in terms of our parliamentary democracy.

I have enormous respect for the noble Lord, Lord Norton, and I often agree with him, but I must say I part company with his thesis today. This may be a distraction for some, but surely a principle is worth talking about even if there are not demonstrations in Whitehall and Parliament Square in support. The noble Lord is putting forward the theory that there has to be a lot of public feeling and there have to be demonstrations out in the streets before we should make a change. I am sure he does not really mean that, but that is what his argument sounded like.

There is a fundamental point of principle here. I like helping in elections, and at the last general election I helped in about five constituencies. Whether or not one does that, though, I actually felt a sense of pain, I was hurt, that on polling day I was not able to vote. I regard that as my right as a citizen and a fundamental democratic point, even if only 800 people would be affected by changing the law. Maybe I am being sentimental, but I have felt hurt, on every general election day since I was privileged to join this House, that I was able to help, to knock on doors and ask people to go and vote but could not do so myself.

One of the fundamental points is this. Yes, of course we are in a privileged position in that we can influence legislation, initiate legislation and change the laws of this country if the Commons agree with us, as they often do, but we do not have the right to influence who would be our Government, and that surely is the difference between influencing legislation on a day-to-day basis and actually having a say in who we want to govern the country, which we would do through voting in parliamentary elections. I would have thought that was absolutely basic. Bishops have a vote, as do Members of other second Chambers in the world, but we do not.

I would like to refer to what happened last time. After quite an extensive debate in this House, we agreed to the Bill, and off it went to the Commons. I should be careful before I criticise the procedure of the Commons but, gosh, I am going to. There is an odd procedure under which, if a Bill works its way there, any Member of Parliament can shout, "Object!", without there being any ability to identify who that person is. So I took the trouble to write to all the known objectors on the Back Benches who might object explaining what the Bill was about, that it did not affect their rights in the Commons and so on. I thought I had covered everyone, but someone still shouted "Object!". I do not know who it was, but I am going to tell the House what my suspicion is, and I am looking at the Lib Dem Benches. When I was moving my Bill last time, the Lib Dem Benches did not like it and said it was not appropriate—I will come on to that in the moment—so, when it got to the Commons, it is my strong suspicion that the notorious objectors did not shout "Object!" but someone did so on behalf of the Lib Dem Benches.

Why was that? After all, we have had a conversion on the road to Damascus from the Lib Dems; I believe that they are now totally in favour, and I welcome that. However, their argument then as I understood it—and this was Nick Clegg's view—was that we do not change anything about the House of Lords unless we change everything. This was a dramatic revolutionary principle that piecemeal change was no good: "Don't touch the Lords unless you change it in all sorts of ways". Frankly, that is an absurd approach to politics. The evidence of British parliamentary history is that progressive change bit by bit is the most effective way of achieving change, so I was surprised when the noble Lord, Lord Wallace, who six years ago was speaking for the Lib Dems, suggested that they did not want this. As I say, I have a strong suspicion that there was one objector in the Commons; I was sitting in the gallery but could not identify who they were. This is a great fault in the procedure of the Commons. We should have the right to identify anyone who shouts, "Object!" and blocks a Bill. I say this to the Lib Dems: I welcome a conversion, and if they are all converted then that is wonderful.

The Bill is about something important. There will not be cheering in Parliament Square and people will not be marching down Whitehall, but as a fundamental principle of democracy we should have the right to vote. My only regret is that the Bill says that this is to happen a year from now, but we might have an election before then, so even if the Bill went through, that would be another election where we were denied the right to vote. Still, I very much welcome the Bill, and I hope this House will give it a welcome and warm passage.

10.48 am

Lord Sherbourne of Didsbury (Con): My Lords, I support my noble friend Lord Naseby, and I support the Bill. Before I come on to the main point that I want to make in my speech, I shall pick up one of the points made by the noble Lord, Lord Dubs. He made a very fundamental point about the privilege of voting in general elections. I have always been struck by the empowering way in which general elections happen. Millions of people go into their local library, village hall or church hall. They go into a booth, take the stub of a pencil on the end of a piece of string and put a cross on a scrap of paper. They put that scrap of paper into a tin box and, very often, the next day the entire Government leave office. That is the most empowering thing that we do in a democracy. I happen to like the fact that it happens the next day, because it reminds people that they themselves did it; it was not done in smoke-filled rooms. I remember how empowered I felt when I first voted, and I have voted in every single election, as I suspect most people in this House have. However, the one thing we are not allowed to do is vote in general elections. We are denied that empowering and unifying experience, which is so important to our country.

I support this Bill for one fundamental reason, which is taxation. Everybody in this House pays income tax, VAT and excise duties; they possibly pay capital gains tax; their families might pay inheritance tax. Quite rightly, we in this House do not decide taxation—I agree with that. Members of Parliament in the House of Commons decide that, but we cannot elect those Members. We cannot have any say at all on the levels of taxation imposed upon us. If we were talking about some third-world or newly independent country where they denied certain people the right to elect the people who impose taxes on them, we would be horrified.

[LORD SHERBOURNE OF DIDSBURY]

I want to give the House two figures. At the last election, there were 46 million people on the electoral roll. Every one of them was entitled to vote for the Members of Parliament who decide taxation. There are 778 people who cannot do that—Members of this House. We are denied that right. This is more than just a minor anomaly; it is fundamentally wrong.

I want to pick up some of the arguments that I suspect—I may be wrong—my noble friend the Minister will deploy in arguing against this Bill, as I am sure he will. The first is that we should not do this via piecemeal reform. This is how House of Lords reform has been done for the last 100 years. There is no prospect of a coherent, comprehensive piece of legislation coming forward. We have changed the composition of the Lords, we have allowed retirement and we now have an attempt to reduce the size of the House. I looked back to see what excuses had been made against individual piecemeal reforms of this House in the past, and I was fascinated by the arguments used against the policy proposed in the 1960s by Viscount Stansgate, better known as Anthony Wedgwood Benn, who wanted to allow hereditary Peers to renounce their peerage. One of the arguments used against that was deployed by the Garter King of the day. He argued that allowing Peers to renounce their peerage would subject their wives to what he called "social demolition". Very weird arguments are used against piecemeal reform, but the only way this House will reform itself in the foreseeable future is precisely by piecemeal reform.

The other argument that will no doubt be used is that there are some technical flaws in the Bill. I do not know if there are or not, but if there are, they can be corrected. This week, we had the Northern Ireland Bill that went through the House in two days. There were technical flaws that had to be corrected, and they were corrected extremely efficiently and swiftly.

The third argument will no doubt be that this is not the right time. Of course, I fear that this Bill will not reach the statute book, because we will come to the end of this Session at some point.

Lord Cormack (Con): Do not bank on it.

Lord Sherbourne of Didsbury: I want to put this point to the Minister, and I would like him to answer it if he would. Does he at least accept the fundamental principle that there is something wrong when people who have taxes imposed upon them have no right to decide who imposes them?

10.54 am

Baroness Sherlock (Lab): My Lords, I thank the noble Lord, Lord Naseby, for opening this debate and all noble Lords who have contributed. The noble Lord, Lord Norton of Louth, was quite right; it may be a small debate, but it was a quality one for all that. I have certainly learned a lot this morning. I should say at the start that it is an unexpected treat to be here this morning, but I would have much preferred that my noble friend Lady Hayter was standing here covering this brief. Her gifts are rather greater than mine and she would have done a much better job. I fear she is a loss to the Front Bench and your Lordships will have to make do with me.

I am with my noble friend Lord Dubs and the noble Lord, Lord Sherbourne: I love voting. I love everything about it. I love the sense of responsibility, the sense of hope and the deep secrecy of the polling booth. I even love the pencils on strings. I often give thanks for those who fought so that I would have the right to vote and I have always used it. I voted in a general election for the first time in 1979, when I was still at school. If I am honest, the result was not all I had hoped for. However, I kept voting and by and by it got better. By about 2010, I had got the hang of it, but then I was not allowed to do it any more. In the middle, in 1997, it went really well for a few years. It went up and down.

I confess that I now miss voting in a general election. The last time I went to vote locally, there were two clerks on the polling desk. One asked the other what the "L" next to my name meant. She whispered, "Lord", looked quizzical and just said, "Well, because…". Then she looked at me and waited for me to move away, I suspect before intoning the list of Peers, felons and so on, because it seemed faintly rude.

In the last general election, 48,324 people voted in the city of Durham and 55% of them voted for my wonderful honourable friend Roberta Blackman-Woods. Obviously, I would have been happy if I had been able to vote, but it would not have made a difference to her election. I take the point from the noble Lord, Lord Naseby, that there are times when it does. Had it been on a knife-edge, and my vote had tipped the balance, I am not sure the people of the city of Durham would have welcomed that with open arms. They may not have felt happy about it, if that had made a difference. Fortunately, it did not. My honourable friend's standing was so great that the people of Durham came out to back her in great numbers.

My noble friend Lord Desai made the point that, traditionally, the view has been held that we pay a price for being here. Although I hear very clearly what my noble friend Lord Dubs thought of that analogy, it has seemed to me personally that if I had to trade the chance to vote in the city of Durham to be able to stand here to amend Bills and change legislation, that is at least a fair swap. As my noble friend Lords Dubs will know, although he may not approve of it, the view of the Labour Party has long been that if we are to look at this question, we should look at it in a broader sense. We have long had a view that there should be a constitutional convention which should look at the composition and role of the House. This could be swept up in that.

Despite the steely stare of the noble and learned Lord, Lord Brown, I want to talk briefly about other ways of extending the franchise, something raised by the noble Lord, Lord Rennard. The noble Lord, Lord Norton, is right: there is a question about priorities. If I were going to start extending the franchise, I do not think I would start with us. I would want the opportunity to give 16 and 17 year-olds the chance to vote. Then the rather impressive 17 year-old described by the noble Lord, Lord Naseby, would not have to wait for the next election, should it happen to come along sooner than currently planned. I look forward to seeing him take up the former seat of the noble Lord in due course—possibly not very long, based on

that comment. However, I would send one comment back to him. If we get rid of all the archaic laws on our statute book, it might look a little different from how it does now. He might want to give some thought to that.

I will share one thought in passing on young people voting. Can the Minister let me know whether it is true that members as young as 15 have a vote in the Tory party elections to choose the next Prime Minister? If so, is it not ironic that they can effectively choose the next Prime Minister but cannot vote for their local MP?

Alternatively, as the noble Lord, Lord Rennard, said, we could extend the franchise to long-resident EU nationals in this country after we leave the EU—or before, since some were denied the chance to vote in May. Or we could address the difficulty in voting faced by people in rented accommodation, young people on the move, or indeed homeless people, of whom there are, I am sorry to say, more than there are Members of this House. Can the Minister share any thoughts from the Government on that?

In parenthesis, before I close, one of the interesting things about our current system is that we are Members of the UK Parliament and remain so even during a general election. Should there ever be a crisis—God forbid—while the Commons was not sitting, at least our being here permanently means that we have the opportunity not only to express a view on questions, but to challenge and bring to account Ministers on the decisions they may take. Maybe that is a slight benefit to our being slightly aside from the fray.

For now, notwithstanding the very strong views expressed around the House, it is our view that this is not the biggest priority to tackle. It is not the biggest injustice before us. I am not sure that it is even the biggest injustice in this House. The hereditary by-elections, with their in-built bias on grounds of sex and race, frankly call to be addressed ahead of this. As fortune would have it, we have an opportunity to do precisely that on 6 September when my noble friend Lord Grocott brings his Bill before the House. That is something to look forward to.

11 am

Lord Young of Cookham (Con): My Lords, I thank my noble friend Lord Naseby for re-introducing a measure of constitutional importance to noble Lords, even if, as we have heard, it does not cause a great deal of excitement outside this place. My noble friend and I go back a long way, having been elected to another place on the same day in 1974. My majority that year was 808—by comparison a huge increase on his own. He has consistently taken an interest in constitutional issues, not least, as he reminded us, in his capacity as Chairman of Ways and Means in another place, and which he has maintained since his elevation to your Lordships' House in 1997.

My noble friend has been around long enough to know that the more lavish the praise a Minister heaps on the mover of a Private Member's Bill, the less likely he is to support it. He will also know that the life expectancy of a Private Member's Bill introduced at this stage of a parliamentary Session is poor. None the less, the measure is to be taken seriously, as indicated by the number of noble Lords who have spoken in the debate. I am grateful for their contributions.

As my noble friend pointed out, Peers who are Members of this place are not entitled to vote at general elections, along with other minority groups such as prisoners, as my noble friend Lord Norton of Louth reminded us. The long-standing rationale is that Peers who are also Members are already able to represent themselves in Parliament and therefore do not require separate representation by a Member of Parliament, unlike members of the general public. My noble friend Lord Norton made that point in his excellent speech: we have an ability to scrutinise legislation that is simply not available to others. The noble Lord, Lord Desai, described this as a price we pay. One could also regard it as a consequence of a privilege; maybe that is the sort of language that the noble Lord, Lord Dubs, would prefer.

The argument put forward by my noble friend Lord Norton seems sound, so I have reservations about my noble friend Lord Naseby's proposal to change the current legal incapacity that prevents Peers who are Members of this place voting in general elections. If we ask for a say on who sits in another place, MPs might want a say on who sits here. I say to my noble friend Lord Sherbourne that I am not against piecemeal reform. Indeed, I am in favour of it—I took through the other place the Bill on the expulsion of Peers—but only if I believe it makes sense.

The principle that Peers could not vote in general elections clearly has a long history, dating back as far as 1699. The 1699 Commons *Journal*, volume 13, stated at column 64:

"Resolved, Nemine contradicente, That no Peer of this Kingdom hath any Right to give his Vote"—

"his" vote—

"in the Election for any Member to serve in Parliament".

This principle has been upheld for the following 320 years and is premised on the fact that Peers are already able to represent themselves in Parliament, unlike members of the general public.

The bar has long been established within the common law. The courts have conclusively decided that Peers have no right to vote or to be entered upon the register of electors in a series of cases, including Earl Beauchamp v Overseers of Madresfield, and Marquess of Salisbury v Overseers of South Mimms 1872. In these related cases, Earl Beauchamp and the Marquess of Salisbury challenged being taken off the electoral register in their respective counties. The judgment that followed ruled that a Peer of Parliament was incapacitated from voting at an election for a Member of the House of Commons and was therefore not entitled to be placed on the register of voters.

Considering the long-standing rationale for your Lordships' voting rights, I would therefore have hoped that my noble friend Lord Naseby would agree with the statement of Lord Campbell, as Lord Chief Justice in 1858, that by,

"an ancient, immemorial law of England … Peers sat in their own right in their own House, and had no privilege whatsoever to vote for Members to sit in the other House of Parliament".—[*Official Report*, 5/7/1858; col. 928.]

[Lord Young of Cookham]

My noble friend referred to the legislation as being archaic, but as recently as 1999, Section 3 of the House of Lords Act explicitly enfranchised hereditary Peers who were not Members and disfranchised Peers who were. It says:

"The holder of a hereditary peerage shall not be disqualified by virtue of that peerage for … voting at elections to the House of Commons, or … being elected as, a member of that House",

but that:

"Subsection (1) shall not apply in relation to anyone excepted from section 1 by virtue of section 2",

which is those Peers who remained.

However, as the noble Lord, Lord Desai, mentioned, the House of Lords Reform Act 2014 has allowed for the retirement and expulsion of Peers. Under this legislation, those Peers who give up or are disqualified from their seats in the House of Lords are no longer regarded as Members of your Lordships' House and are unable to return. As such, they regain their right to vote in general elections, or indeed to stand for election. The bar applies only to Peers who are Members of this place.

In 2011, the Joint Committee on Human Rights wrote to the Government, questioning whether the disqualification of Peers who are Members of the House of Lords from voting in general elections is compatible with the right to participate in free and fair elections under Article 3 of Protocol 1 of the ECHR. The then Deputy Prime Minister, Nick Clegg, responded to confirm its compatibility, explaining that the right is not absolute and limitations may be imposed on it, and the fact that Members of your Lordships' House have a voice in Parliament makes these arrangements legitimate. The then Deputy Prime Minister confirmed that the Government had no plans at that time to review the issue, confirming the position taken by the previous Labour Government.

The noble Lord, Lord Rennard, used this opportunity to raise the case for Lords reform, voting reform and other issues. As the noble and learned Lord, Lord Brown, pointed out—in a seven-minute speech this time—that is a debate for another time.

Peers who are Members of your Lordships' House can, of course, vote where appropriate in elections to the devolved Parliaments and Assemblies, local government elections, police and crime commissioner elections, and in national and local referendums.

I will deal with one or two points raised. The noble and learned Lord, Lord Brown, raised an issue concerning the noble and learned Baroness, Lady Hale. Supreme Court judges appointed since 2009 are not Members of the House of Lords and therefore can vote. The noble and learned Baroness, Lady Hale, joined the House of Lords in 2004 and served as a Law Lord until 2009, when, along with other Law Lords, she transferred to the Supreme Court. On retirement, she will return to the House of Lords, of which she is already a Member, and continue to be unable to vote.

I agreed with the point made by the noble Baroness, Lady Sherlock, and others that there are other issues we could discuss. I will come on to that in a moment, once I have responded to my noble friend Lord Sherbourne. I am afraid I disagree with the point he made about taxation and representation. Taxation is quite rightly not connected to democratic representation in the UK. An American or Japanese citizen of voting age who works and pays taxes in the UK does not have the right to vote in parliamentary elections, and a citizen of voting age who is not a Member of the House of Lords but who pays no income tax retains the right to vote. There is not a direct connection.

In response to the issues raised by the noble Baroness, there is more to be done to encourage those who are entitled to vote to vote. We have youth engagement projects and National Democracy Week; we are supporting disabled people to stand for office; we are making changes to anonymous registration; we are making it easier for disabled people to register to vote and to stand for election; and we are reducing barriers to registration.

I look forward to 5 September—by which time I hope that the noble Baroness, Lady Hayter, may be in a position to continue to represent the Opposition Front Bench on these issues—when there will be an opportunity for further discussion on the Bill introduced by the noble Lord, Lord Grocott.

In conclusion, I recognise my noble friend's dedication to this cause. This is not the first time he has endeavoured to introduce these measures. In March 2015, he asked a Question in your Lordships' House on Peers' exclusion from voting in general elections. The noble Lord, Lord Wallace of Saltaire, replied:

"My Lords, the Government have no plans to review in this Parliament the long-established legal incapacity that prevents Peers who are Members of the House of Lords voting in a general election".—[*Official Report*, 23/3/15; col. 1224.]

That was the position of the Liberal Democrats at that point; I note that it has now changed. However, the position of this Government has not changed.

In our democracy everyone should have a voice, but I would argue that noble Lords have that by virtue of participation in this Chamber. It is a respected voice, which adds depth and wisdom to our legislative process, and allows us full participation in the life of the nation. My noble friend's Bill may clear its hurdle today but I doubt it is going to complete the course.

11.10 am

Lord Naseby: My Lords, I am extremely grateful to noble Lords who have taken the time to take part in this morning's debate. I have led marches along the thoroughfare in front of this House and know that 17 year-olds now feel as strongly as they did then. I promise my noble friend Lord Norton that, if he wants a demonstration outside from the young people of this country in support of this Bill, I will take up that challenge. He may be surprised, but there would certainly be far more than the two people who responded to his blog—that may say something about the blog, but that is by the by.

The noble Lord, Lord Rennard—I could almost have written his speech—is right. The Liberal Party is consistent; it wants overall reform of the House of Lords and I accept that position.

I was slightly disappointed in my friend the noble Lord, Lord Desai; he and I agree on so many things, and he looks very comfortable sitting there at the back. Yes, it is a privilege, but that does not undermine the rights of the individual.

I thank my almost colleague, the noble Lord, Lord Dubs. He and I will work together on this.

I had not heard my noble friend Lord Sherbourne, although he sits next to me almost every day. He made a very powerful speech.

I am particularly grateful to the noble and learned Lord, Lord Brown. The House should listen to him; he has far more experience than most of us.

There have been many quotations about why we should not have the vote, but my noble friend reminded me of a Front Bench quote. I think it is his view—it is certainly mine—that the Parliament Acts make a complete nonsense of the pre-1911 cases. I am not sure that the Government understand that, or maybe they do and have just ignored it.

I thank my noble friend on the Front Bench, who was generous in his comments about me. I remember 1966, when I fought the seat in Islington North and lost handsomely. I was keen to get to Parliament and when local elections came up in 1968, I was asked to lead in Islington. I was told that we had not got a single seat and had not had one for many years. I got things organised and arranged marches—my noble friend Lord Norton should take note. The Government of the day were very unpopular and by sheer dedication on the part of many people, we won 57 out of 60 seats. Issues of this nature are really important to me and to many others. Democracy is about one man, one vote.

I remind the House that this is not my first Private Member's Bill. I had another, the Mutuals' Deferred Shares Act 2015, which took more than one Session. There is not a great deal of time left now, but this will not go away. There is nothing wrong with incremental legislation. There is nothing wrong with focusing on a single issue in life; you are more likely to succeed.

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

EEA Nationals (Indefinite Leave to Remain) Bill [HL]

Second Reading

11.15 am

Moved by ***Lord Oates***

That the Bill be now read a second time.

Lord Oates (LD): My Lords, two years and 13 days after it received its First Reading in this House, I am pleased and a little surprised to have the opportunity to debate this Bill. This is not a complicated piece of legislation; it is not a complex issue. At heart, it is a simple matter of honouring a pledge made over three years ago to EU citizens resident in the United Kingdom. The Bill seeks to establish a declaratory approach in which the right of residence for EU citizens is based upon eligibility rather than acquired through application. Registration would therefore merely confirm the existing right and missing any deadline would render one undocumented but not unlawful.

Clause 1 amends the Immigration Act 1971 to grant the right of abode to all EEA citizens resident in the United Kingdom on the date of exit from the European Union. Clause 2 sets out what would qualify as being resident in the UK for this purpose and Clause 3 specifies the basis on which a person would be regarded as a family member, based on existing EEA provisions. In summary, the Bill would put into law the categorical commitment made to EU citizens during the referendum campaign by, among others, our most likely next Prime Minister. In June 2016, Boris Johnson, Michael Gove and Priti Patel made the following pledge in a written statement on behalf of the leave campaign:

"there will be no change for EU citizens already lawfully resident in the UK. These EU citizens will automatically be granted indefinite leave to remain in the UK and will be treated no less favourably than they are at present".

Since then, every one of those individuals has served in government, at Cabinet rank, yet that pledge has still not been honoured. The aim of this Bill is to right that wrong and to put their pledge into law.

Noble Lords will be aware that, after a long and discreditable period, the Government finally conceded last year that a unilateral commitment must be made to EU citizens. As a result, the settled status scheme was established and began operation earlier this year. While the scheme does provide a route for EEA nationals to apply for settled status and, if successful, to be granted permanent residence rights, it does not deliver on the promise made to EU citizens by the leave campaign, for a number of reasons. First, the settled status scheme is not the automatic route to indefinite leave to remain that was promised by the leave campaigners. It is an application-based system with a finite cut-off date of 30 June 2021, or 31 December 2020 in the event of a no-deal Brexit. After midnight on that date, any person who has not applied will be deemed to be unlawfully in the United Kingdom whether or not they would otherwise have been eligible for permanent residence under the scheme.

I do not think that anyone seriously believes that the Home Office will be able to reach, and grant settled status to, all the 3 million EEA nationals estimated to be resident in the UK in just two years. Based on evidence from studies of other application-based government schemes, it is possible that between 5% and 10% of those eligible will not have been reached by the cut-off date. That means that tens or even hundreds of thousands of otherwise eligible people may find themselves undocumented and criminalised in as little as 17 months' time. Inevitably, those most at risk will be vulnerable: young people in care, the elderly and the marginalised. I hope that no future British Government would even contemplate attempting to detain and deport such people; but, at the very least, that so many may become criminalised by the state will create a Kafkaesque nightmare which will then have to be painstakingly unravelled. In the process, many thousands of people will be subjected to misery and disruption.

The Government's argument for a cut-off date seems to be that it will help avoid a repeat of the injustice inflicted on people by the Home Office in the Windrush scandal, but it will do nothing of the sort. The cut-off date will simply empower the Home Office lawfully to inflict such injustice. Under the settled status scheme,

[Lord Oates]
there will be no hope of redress for EU citizens as there was for at least some of the Windrush victims because, after June 2021, they will have automatically lost their lawful immigration status by virtue of having failed to meet the cut-off date, regardless of being otherwise fully eligible for permanent residence under the scheme.

A second issue with the settled status scheme is that, unlike the system of indefinite leave to remain, it does not provide successful applicants with physical proof of their right to be in the United Kingdom. Instead, they must rely entirely on a code issued to them by the Home Office which has to be entered into the relevant website by whoever requires proof of their immigration status. The3million group, which represents EU citizens in the UK, has highlighted the difficulties that this will inevitably cause for EU citizens. Interactions with landlords, airline staff or other officials obliged to check immigration status will become fraught with anxiety, dependent on the fragility of an internet connection and the resilience of a government IT system.

Thirdly, the settled status scheme requires proof of continuous residence over a five-year period. That may be difficult for some people to provide and contradicts the leave campaign's pledge, which was made to all EU citizens lawfully in the UK regardless of the length of residence.

Finally, and perhaps most fundamentally, the current settled status scheme rests on immigration regulations which can be changed virtually at the stroke of a ministerial pen and on the undertakings of Ministers who may be out of office as early as next week. Noble Lords will not be surprised that EU citizens find it hard to have much confidence in a scheme constructed on such shaky foundations. This Bill, by contrast, would for the first time provide all EEA nationals resident in the United Kingdom with a guarantee in primary legislation of their right to remain. Consequently, their status could be altered in future only with the active consent of both Houses of Parliament.

Beyond the flaws in the principles of the settled status scheme, there are also concerns about its practicalities. Since it started operating, the Government have made much of the fact that few applications have been rejected, but we should not get carried away by this reassurance. Anecdotal evidence suggests that, while applications may not have been wholly rejected, many people are told that they have not provided sufficient documentary evidence and must provide more. Others who have applied for settled status have been granted pre-settled status instead—we do not know how many because, for some reason, the Government do not seem to say, but I hope that, at least on this point, the Minister will be able to enlighten us today.

The last three years since the referendum have been a time of fear and uncertainty for EU citizens resident in the UK and British citizens resident in the EU. That fear and uncertainty have been compounded by the increasing prospect of a no-deal Brexit and the repeated failure of Brexit politicians to honour the pledges they have made. For those affected, this is not a debate about some abstract principle; it is a debate about their lives and their futures, whether they will retain the right to remain in the country in which they have chosen to live, whether their loved ones will have the right to settle with them if in future they should return home, whether their pensions will continue to be uprated and whether they can continue to access healthcare and remain in employment. It is about all the things that are the very essence of a person's sense of security. That security should never be reliant solely on the whim of an ever-changing cadre of Ministers increasingly cavalier about the impact of a no-deal Brexit on the rights of millions of British and other EU citizens. This Bill cannot solve all those difficulties—that can be done only by remaining in the EU—but, imperfect though the Bill inevitably is, it will provide a greater sense of security and certainty to the EU citizens who have contributed so much to our country. With the co-operation of Ministers, it could be strengthened further to address the concerns of British citizens in the EU about family reunification rights and the uprating of pensions in the event of a no-deal Brexit.

In October 2017, speaking to the Polish community, Boris Johnson, the man we are told will be our Prime Minister in a matter of days, had this to say:

"I have only one message for you all tonight: you are loved, you are welcome, your rights will be protected whatever happens".

Since then, as on so many things, his actions have not lived up to his rhetoric. This Bill will offer him the opportunity to demonstrate, if he becomes Prime Minister, that he is capable of marrying his actions to his words and finally honouring the definitive and categorical pledge he made to EU citizens more than three years ago. I beg to move.

11.27 am

Lord Cormack (Con): My Lords, I am delighted to support the Bill introduced so powerfully by the noble Lord, Lord Oates. I sincerely wish him well. There is no reason why that wish should not be fulfilled. The new Prime Minister could very easily decree that the Bill be fast-tracked through both Houses in the same way as the current Northern Ireland legislation.

I want to make another personal reference, not to the noble Lord, Lord Oates, but to the absent noble Baroness, Lady Hayter. I am certain that the noble Lord, Lord Kennedy, will do an admirable job today, but the noble Baroness has led on EU affairs with enormous distinction and great dedication. It is monstrous and outrageous that she should have been dismissed from her post. I know that she remains the Deputy Leader of the Labour Peers, and long may she so remain, but that she should have ejected from the Front Bench is frankly appalling and I am sure I speak for everyone in your Lordships' House in sending her our unanimous good wishes for a happy return.

As I said, I am very glad to support the Bill. The noble Lord, Lord Oates, quoted the pledge given by the famous three: Boris Johnson, Michael Gove and Priti Patel. That pledge has been echoed by many fervent Brexiteers in the past three, increasingly difficult, years. My noble friend Lord Forsyth has himself made plain in your Lordships' House that this is an issue on which he sees eye to eye with those three who made the pledge. It is something we should have done immediately after the referendum. I proposed in your Lordships' House before the end of June 2016, and I was not alone,

that we should take the moral high ground and make a unilateral gesture to demonstrate that, if we are preparing to take back control, we could take immediate control on this issue and so put the minds at rest of all those EU citizens living in this country, many of whom make an enormous contribution to our country.

One has only to think of our universities and the number of EU students and—much more important in this context, in a sense—lecturers and professors who give leadership, add distinction and help make our universities what they are, recognised among the greatest in the world. I had personal experience at the end of last year when I unfortunately had to be in hospital for a time and I frankly lost count of the number of EU citizens working as doctors and nurses and in other capacities in that hospital. That has been the experience, I am sure, of many noble Lords. These are people who have helped to make our country the community or communities that it is. They deserve that unilateral gesture. How much better it would have been had we got this out of the way before the end of 2016.

However, in those time-honoured words, we are where we are. Of course I welcome the fact, as does the noble Lord, Lord Oates, that the Government did make a unilateral declaration. I do not for a moment doubt their total sincerity in making that declaration but, as the noble Lord pointed out in his admirable introductory speech, there are a number of problems with it and it will not give that immediate peace of mind that a far-sweeping piece of legislation could have given. I therefore strongly support what the noble Lord is arguing for today. As I said when I began, at the moment we have a demonstration of how legislation can be fast-tracked, and this is something that deserves that treatment.

Whatever the fate of this Bill, it is really important that the new Prime Minister repeats what he said to that Polish audience a little while ago and that he takes immediate action. Speaking as one who was a remainer but who fully accepted the result of the referendum, and would have accepted the Prime Minister's deal, as I made plain on many occasions, I look to Mr Johnson, who is so likely to be Prime Minister, to show that he is a man of his word in this area. Because a lot could hang on that—for Mr Johnson, for the Conservative Party and for our country. I am delighted to support the Bill.

11.34 am

Lord Kerr of Kinlochard (CB): My Lords, the only obvious defect in the Bill—it is a glaring defect and not the fault of the noble Lord, Lord Oates—is that it is so late. I am very glad that it is resuscitated, but as the noble Lord, Lord Cormack, says, the Bill does what we should have done three years ago. It was a glaring negotiating error not to have unilaterally and voluntarily done exactly this three years ago; a negotiating error almost as serious as that of not drafting and putting forward a framework for the future relationship before we triggered Article 50. We should have done this before we triggered Article 50. Had this been on the statute book, the whole atmosphere at the start of the negotiation would have been completely different. Because it was not, we made life uncertain and in some ways difficult for 6% of the population of these islands. It was an extraordinarily inhumane thing to have done. Because it is not on the statute book, we have acted dishonourably.

The noble Lord, Lord Oates, is quite right to recall the statement by Mr Johnson and Mr Gove of 1 June 2016, before the referendum, when they promised an automatic system with no question of application. By not having this on the statute book, we have gravely damaged the interest of 1.3 million British citizens who live in continental Europe. Their position is still uncertain. Their legitimate expectations were overturned by the results of a referendum in which most of them had no vote, because the Government had not fulfilled their manifesto commitment to change the eligibility for the franchise of citizens resident abroad. Their position is still in doubt despite Mr Costa's admirable February amendment in the other place. It is now very difficult to get this dossier out of the withdrawal agreement. I suspect that the withdrawal agreement is dead, but this dossier is lurking in the middle of it. If and when—let us say if—we leave the European Union in a no-deal Brexit, the EU has made it clear that the three dossiers in the withdrawal agreement are where future negotiations will start, not with trade. That means that there will be an inhibition on member states acting unilaterally to respond reciprocally to what we should have done three years ago and could do now with the Bill. If we are interested in setting at rest the minds of 1.3 million of our fellow citizens living in the EEA, we should pass the Bill as quickly as possible.

I agree with the noble Lord, Lord Oates, about the defects in the system that the Home Office is now operating. The principal defect is that it is not automatic; it is an application system. We have the rigmarole of pre-settled status, settled status and indefinite right to remain, or the decision to go instead for British nationality. These are complicated questions being tackled by people some of whom are not necessarily internet savvy, some of whom do not necessarily have access to legal advice or the right linguistic skills. To take one example, in the event of a no-deal Brexit, if only 15% of the children from other EU member states who are now resident in this country fail to operate this system and regularise their position by the end of next year, 100,000 children living in this country will be in a Windrush situation. They will be here with irregular status and potentially—possibly actually—criminalised because they are here. They will be vulnerable to hostile environment policies and deportation if they go back. The noble Lord mentioned Windrush. It is an exact parallel, except there are an awful lot more people this time.

If you want to get rid of that risk, you need a legal backstop—to use a new word—underpinning the Home Office system. I am not saying that the Home Office system should be torn up, but the right to citizenship should be underlined, as is set out in this Bill. For those who cannot work the application system, there should be a safety net lurking round. We will need something like that at the end of next year if we fall out of the EU with no deal, because public opinion in this country will be just as shocked at the way we are treating some of these people as it was to discover how we had treated Windrush people.

[Lord Kerr of Kinlochard]

In addition, as a more straightforward argument to advance, if we put this on the statute book, the likelihood that similarly generous reciprocal treatment will be handed out to the 1.3 million British citizens living in continental Europe will rise very steeply.

I agree with those such as the noble Lord, Lord Cormack, who say that now is Mr Johnson's moment. He said what he said. He made a promise three years ago on 1 June 2016. Will he carry it out? Some foreign friends ask me to define Mr Johnson's political philosophy; I find this quite difficult to do. It is quite easy to explain what Thatcherism meant. It is quite easy to explain what new Labour meant. It is very difficult to define "Johnsonism".

I look forward with keen interest to seeing the evidence, but one streak in Johnsonism is probably completely genuine—I think he is libertarian on issues such as this, and naturally likely to want to do what he said he would do three years ago. I very much hope that, whatever the Government tell us today, in a very few weeks they will tell us that they strongly support this Bill and would like to see it on the statute book as soon as possible. I certainly support it.

11.42 am

Baroness Smith of Newnham (LD): My Lords, it is frequently the case that, when Bills or debates are introduced, speakers congratulate the Peer who has introduced the legislation or secured the debate. Naturally, I do so this afternoon. It is also frequently the case that we talk about a Bill or debate as being timely. This Bill had its First Reading over two years ago, as my noble friend Lord Oates pointed out.

As the noble Lord, Lord Cormack, has pointed out, the debate goes back rather further. In preparation for today's debate, I seemed to recall that I had spoken on this issue several times in the immediate aftermath of the referendum. I went back to *Hansard* and found a Question for Short Debate in the name of the noble Lord, Lord Lucas, on 14 July 2016. On that occasion, the noble and learned Lord, Lord Keen of Elie, was responding to the debate, and I pointed out what a pleasure it was to have the fifth opportunity of questioning the fourth different Minister on the issue of the rights of EU citizens resident in the United Kingdom. That was within three weeks of the referendum. I thought that today the noble Baroness, Lady Williams, might be responding—at least she has had the opportunity of answering on the same set of issues many times before—but I am delighted to see the noble Baroness, Lady Barran. I know that she at least has not had to answer any of my questions on this issue before.

It feels as if, over the last three years, the only thing that has had settled status, a right to reside in this Chamber, the other place and the country, is the Brexit groundhog that keeps appearing and raising its ugly head in whatever debate and on whatever issue. What did we have in the Northern Ireland (Executive Formation) Bill? Amendments on Brexit. It has been the subject of debate for months and years; the rights of EU citizens have been uncertain for the three years since the referendum. That is, frankly, disgraceful.

In the immediate wake of the referendum, the noble Lord, Lord Lucas, queried—perhaps to the world in general—whose fault it was that the rights of EU citizens were not unilaterally guaranteed. In those days after the referendum, there was virtual unanimity in this Chamber that the rights of EU citizens should be guaranteed immediately. The noble Lord, Lord Cormack, has pointed out that he made that case; the noble Baroness, Lady McIntosh of Hudnall, made the point on the Labour Benches; as did the noble Lords, Lord Forsyth and Lord Lawson; from these Benches, so did I and other Peers. The only people who disagreed at that time were any Ministers having the misfortune to be responding from the Government Front Bench. I am not even sure that those Ministers disagreed with us, but they clearly had to put forward the party line. In the three weeks following the referendum, the party line was set by the then Home Secretary: the right honourable Theresa May, MP for Maidenhead. That line persisted through her time as Prime Minister. There was a sense that, however many Members of your Lordships' House and of the other place called passionately for the rights of EU citizens to be guaranteed immediately, Mrs May was not agreeable to it.

We said that EU citizens should not be treated as pawns, and yet what happened in the negotiations was precisely that: EU citizens and their rights, and the rights of UK nationals by extension, as the noble Lord, Lord Kerr, pointed out, were used as hostages in the debate. It was wrong then; it is wrong now. Three years after the referendum, EU citizens should be certain of their rights, but they still cannot be. I therefore very much welcome the opportunity to have this debate today. I realise that Private Members' Bills very rarely make it to the statute book, but, as my noble friend made clear in introducing today's debate, in many ways the issues we are discussing have already come on to the agenda through the Government's settled status regime.

However, the Bill under consideration today goes a stage further. It would guarantee the rights of EU and EEA nationals. It would do it as a right, not requiring endless form-filling. It has been customary across the Chamber today to talk about the noble Baroness, Lady Hayter, in her absence. She made it very clear, in the previous debate, how difficult it is for people to fill out the necessary forms about indefinite right to remain; there are 80 pages of documentation. For EU citizens wanting indefinite right to remain, there is traditionally the need to say where they have been in the five years since they started being resident here. If you are an EU citizen exercising your right to free movement, your passport will not be stamped if you go back and forth between London and Brussels, or wherever your hometown might be. If you go home to Wrocław, Tallinn or any European city, your passport will not be stamped. Nobody keeps that sort of record. The rules that were in place made it very difficult for people to fulfil the requirements. The proposed settled status scheme is an improvement, but, as noble Lords have made clear, it still requires EEA nationals currently resident here to make applications. There is no automaticity.

I feel some sympathy with the noble Baroness, Lady Barran, for having to respond to this debate, because it touches on a set of issues that are outside

the purview of the Home Office. The Windrush scandal has been mentioned. However, these applications have to be made through the Government's IT procedures, and universal credit has demonstrated some of the difficulties with that. Is the Minister sure that the arrangements put in place for applications will be satisfactory, and is the government IT system fit for purpose? As the noble Lord, Lord Kerr, pointed out, not everyone will be IT-savvy, so what arrangements do the Government envisage to assist people who do not have access to the internet? Indeed, is the government software available on all types of mobile device? Those have been issues of concern.

In addition, the recent experience of the European Parliament elections demonstrated the problems even for fairly savvy EU citizens resident in the United Kingdom. Many EU citizens who were on the electoral register were disenfranchised at the European Parliament elections. They voted without difficulty at the local government elections in early May, and three weeks later they turned up at the same polling stations and found that they were disenfranchised. They had failed to fill in an additional form, which some local authorities had informed them about, while others had not. However, if you suddenly get an email from your local authority, you do not necessarily open it and think, "My goodness! Here is a form I need to fill in to be able to vote". If EU citizens who were seeking to vote and who were sufficiently interested to vote were disenfranchised, the danger is that many EEA nationals will find that, on the day we leave, they have not filled in the necessary paperwork.

The proposed legislation is open and tolerant. As noble Lords have pointed out, it would give the incoming Prime Minister the opportunity to live up to the words of the Vote Leave campaign and to make the situation clear for any EU citizens resident here at the time the United Kingdom leaves the European Union—if it happens on 31 October or on some other date. Theresa May did not campaign for Vote Leave; Boris Johnson did. Can the Minister undertake to send out words to Mr Johnson, in the event that he becomes Prime Minister next week, and suggest to him that this would be the perfect opportunity to live up to some of the positive narrative that the Vote Leave campaign was so keen to put forward in 2016?

11.52 am

Baroness Altmann (Con): My Lords, I congratulate the noble Lord, Lord Oates, on introducing the Bill and on his steadfast dedication to protecting our country's reputation at this vital time.

This is a question not just of the rights of good people who have chosen to work and live in our country but of honour, trust and decency. Are we a country that keeps our word? We have heard from other noble Lords of the unequivocal assurances given to the 3 million EEA nationals who are living here, that they would be automatically granted indefinite leave to remain in the UK, with rights no weaker than now. Instead, as so eloquently described by the noble Lords, Lord Oates and Lord Kerr, and my noble friend Lord Cormack, they are being offered that settled status based on immigration regulations that can be changed by Ministers, and which are not even set in primary legislation. This will offer a code—no physical proof or stamp in a passport—and it must be applied for by a strict cut-off date, so if someone is unwell or unaware and misses the deadline, they will lose out. That is hardly an automatic grant of the indefinite leave to remain they were promised. The House of Commons Home Affairs Committee also supported a declaratory approach, with physical proof of approved rights.

So I add my thanks to the noble Lord, Lord Oates, for producing the Bill, which I fully support, and I urge the Minister on the Front Bench—whom I welcome very much to this debate—to offer, if she can, some words of support or assurance to the House that she will take this seriously and bring it back to the department for further discussion.

As so many noble Lords have said, we should have done this right at the start of the Article 50 process. We have treated these good people inhumanely. They have been subject to uncertainty—we have not taken the moral high ground. So, again, I urge the Minister to relay the desire to act, albeit belatedly, with the honour and decency that has been expressed in this debate, to demonstrate that our Government's words can be trusted—especially at this late stage, when a new Prime Minister will seek to reopen negotiations with the EU, which it has spent so long drawing together and which it has said it is not willing to reopen. I urge the Minister to consider the calls to fast-track this piece of legislation now and show good will and appreciation towards the EEA citizens who perform such important work for us all, which should have been present right from the start. The Bill does what would have been needed and what we can still offer in a spirit of good will. It has my full support.

I also add my words of support, as expressed by my noble friend Lord Cormack, to the noble Baroness, Lady Hayter, for all the work she has done, and I express my regret at the way she has been treated, notwithstanding that I welcome the noble Lord, Lord Kennedy, who is here today.

11.56 am

The Lord Bishop of Rochester: My Lords, some hundred yards down the road from my cathedral in Rochester there is an establishment known variously as La Providence or the French Hospital. It is an alms house-type foundation established for those of Huguenot descent. After it was bombed out of its previous premises in the 1940s, a predecessor of mine, the late Bishop Christopher Chavasse, who was himself connected with that community, found premises for it in Rochester—and that is where it remains. That building, which I walk past several times a week, is for me a kind of visual reminder of the spirit of generous welcome shown to that earlier generation of European migrants.

Like other noble Lords, I welcome the Bill and thank the noble Lord, Lord Oates, for bringing it forward. It seems to seek to give practical and statutory expression to that spirit of generous welcome which I referred to, and what it proposes has the benefit of fairness and simplicity: the presumption that a person should be here, and that being here they should remain—in contrast to the scheme we now have where, as others

[The Lord Bishop of Rochester]
have indicated, whatever its intention, it can feel as if it starts from the opposite presumption, and people are having to prove that they should be here.

These matters are of particular concern to my friends in the Roman Catholic community. The Catholic Bishops' Conference of England and Wales estimates that, of the 3 million, some 60% would claim some form of Catholic connection or heritage, or active practised faith. However, even in my own Church of England diocese, despite being part of an English Church, I have clergy who are European nationals, and clergy spouses who are European nationals and who are having to go through these processes, and I find more and more people in my congregations—200-plus congregations across west Kent and south-east London—who are EEA nationals, brought here very often for work purposes. They indulge me by allowing me to speak French to them occasionally in various congregations around the place—and German, at which I am rather less proficient.

These are among the people who are making hugely valuable contributions economically and socially in our society, as other noble Lords have already observed. Like the noble Lord, Lord Cormack, I had cause to be treated by the NHS earlier this year, and the consultant who looked after me post surgery was a Polish Catholic who has been here for 30 years—just one example of the kind of people who have committed themselves hugely to the life and well-being of our nation and people.

Many, such as that gentleman, have been here for decades, or even generations. Many are, as we know, closely related to British citizens. We need these folks and it behoves us to make it as easy as possible for them to stay. Indeed, there is an argument of national self-interest here: if we do not make it easy for them to stay, we may be the ones who suffer.

I have a particular question for the Minister to which I hope she will be able to respond. It has been brought to my attention by the Children's Society and concerns those children and young people who are looked after—who are in care—when we leave the EU. If the noble Lord's Bill were to pass, it would automatically include them and give them the right of abode. Can the Minister give some assurance about how those incredibly vulnerable children and young people will be treated even if the Bill does not pass?

We have already heard about the complexity of the documentation required. For some of those young people, it is almost impossible to find the documentation to secure the right to remain. There is evidence that local authorities, who are responsible for them—in part, no doubt, because of resource issues—are not always pursuing applications on their behalf, where that is necessary, with the alacrity needed. Legal advice in these cases can be complex and hard to come by. I hope that for this group of vulnerable people in our midst, for whom we have a particular responsibility, the Minister may be able to give some assurance as to how things will stand.

Earl Attlee (Con): My Lords, I too congratulate the noble Lord, Lord Oates, on introducing the Bill. I admire his clarity and care in saying nothing that I do not wholeheartedly agree with.

Lord Young of Cookham (Con): If my noble friend looks at the list, he will find that we were hoping to hear from the noble Viscount, Lord Waverley.

Earl Attlee: My Lords, I have made this mistake before, many years ago—probably about 24 years ago. So I think we should hear from the noble Viscount first.

12.01 pm

Viscount Waverley (CB): My Lords, I was in two minds about the need for the Bill brought by the noble Lord, Lord Oates, as I was unsure how elements were different in their effect from what the Government have already guaranteed through the pre-settled and settled status scheme. However, listening to the noble Lord's introductory remarks, and given the current vagaries of the political arena—and this is a political matter—I have been persuaded otherwise.

It has always been a source of constant amazement, tallying the anomaly of decision-makers professing a global outlook for this country while being insular in approach. Not much need be said in support of the Bill, as it is not as if, from the word go, the Government have not been counselled—in this place and elsewhere. We all want the best for the UK, but—the noble Lord, Lord Kerr, captured the situation—we should be magnanimous and practical, we should consider the national interest, we should consider the uncertainty it causes and the plight that further uncertainty would cause, we should not fall foul of moral ineptitude but beware not to create a latter-day partition of sorts—not our finest moment.

Obstacles to working this out are time, political will and legal uncertainty—to which I may add that personal experience of the immigration decision-making process taught me that there is ill in the system. The rights situation and precarious status should be removed. It ill befits a country that prides itself as a global leader.

It should be noted that a number of EU countries—in my case, Portugal—have rightly acquiesced on citizens' rights, whatever the UK's upheaval. Who knows? It may well be that the UK will want to ally itself strategically to the EEA and EU in one form or another—so best not to upset the apple cart with aspects identified by the noble Lord, Lord Oates.

I ask for clarification on one point for the record: the question of who constitutes a family member who could accompany. The Minister may wish to comment on that point.

In conclusion, the time to address this is now. For reasons I have put before the House and so as not to leave anything to chance, I commend the Bill and encourage your Lordships to fast-track it to the next stage.

12.04 pm

Earl Attlee: My Lords, I again apologise to the House for speaking out of turn. The last time I did it was about 24 years ago, to another Viscount—the noble Viscount, Lord Falkland—and I would like to state that both noble Viscounts are very good friends of mine.

I congratulate the noble Lord, Lord Oates, on introducing his Bill today. I admire his clarity and care, shared with other noble Lords, in saying nothing that I do not wholeheartedly agree with. I also approved of his tone.

I am deeply Eurosceptic, but I voted remain because I wanted to preserve strategic stability in Europe. The EU was and is reformable, but it was too difficult to do. Finally, I considered: what did President Putin want us to do? But I am content that we leave with a deal. I strongly support the Bill. Like my noble friends Lord Cormack and Lady Altmann, I am ashamed that my party and this Government have not already legislated, as suggested by the noble Lord. What a perfectly rotten message to send to our EU friends. The noble Lord, Lord Kerr, called it a glaring negotiating error. I absolutely agree. The concession would have cost us almost nothing to make and was inevitable at some point, but it would have set a positive tone.

Several weeks ago, my Romanian taxi driver complained about the application process and its cost. I have to say that I lacked the moral courage to tell her that I was government spokesman for all immigration matters in the House of Lords in 2010 and 2011 and was a Conservative politician—but I can make up for that a bit this afternoon.

I believe that if you are legally in the UK, you are part of the club for as long as you want to be. It is okay to take the view that the UK population is rising too fast and decide to choke off the inflow—but it is not okay to unfairly penalise those who came here legally. We need to remember on immigration that migration is fiscally positive, that free movement allows economic upturns and downturns to be accommodated and that an increase in migration will, generally speaking, give us an increase in GDP. However, we also need to remember that it does not necessarily increase GDP per capita. That might be part of our problem with it.

I have one question for my noble friend. Post Brexit, which EU state will become subject to visa controls? France, Germany, Spain, Italy, Belgium, Holland or Portugal? I think not. So which of the other states will it be?

At some time in the future there will be an immigration Bill. The drafting of this Bill is an obvious amendment to insert in any such Bill. It is not clear to me how the Government would be able to resist such an amendment. As it is a Friday afternoon, the most powerful contribution I can make now is to sit down.

12.08 pm

Baroness Hamwee (LD): My Lords, I too thank my noble friend for putting into legislative form a mechanism to enable those citizens to whom we want to say, "We're so glad you're here, please stay", to stay without encountering the problems that have been and are the subject of such concern and anxiety. In that sense, in "Please stay", perhaps we have another form of remain—certainly something that is humane, as the noble Lord, Lord Kerr, said. I wish I could be confident that it would find its way on to the statute book: I have less confidence about that than the noble Lord, Lord Cormack. I say that as the sponsor of a Bill introduced in this House in June 2017 and passed by the House in July 2018—since when I have written down, "dot, dot, dot". But it gives us the opportunity to fulfil reassurances and pledges given in 2016—as a matter of honour, as the noble Baroness, Lady Altmann, said—and to raise some weaknesses, which, the more one considers the settled status scheme, the more one becomes aware of.

Ministers say at every opportunity that they want to find reasons to accept, not reject, applications. By definition, an application-based scheme is bound to lead to some rejections; my noble friend Lady Smith made that point. The Bill is rights-based, which is much more appropriate for a country concerned to uphold the rule of law. It can also be a safety net for the current scheme, as has been pointed out.

Earlier this week, some Members of the House were at a discussion arranged by the Bingham Centre for the Rule of Law about this model of administrative justice, which has at its heart automation—the rule of technology, not law. The work that was reported was on the settled status scheme, but the point applies more widely. I know that caseworkers—human beings—are involved in the scheme, but it represents the acceleration of a trend towards quick justice at the expense of important safeguards, and therefore has wide and lasting significance.

I will quote the conclusion of the Public Law Project's report; noble Lords will understand that there is a lot of analysis behind it. It comments on the,

"growing gap in individual experiences of administrative justice. For those who get positive outcomes, they will—likely with the growing support of increasingly advanced and integrated technology—get their positive outcomes more quickly. This could be a great benefit, reducing the problems associated with waiting and delay. For those who do not get positive outcomes, however, their fall is less likely to be protected by effective redress and support systems. For those in a position of social and economic advantage, there is a greater possibility of accessing high-quality advice services to cushion the fall. For those in a position of social and economic disadvantage, the landing is likely to be much harder. Given the impact that an incorrect immigration decision can have on the lives of individuals and families, this effect ought not to be underestimated".

It is fundamental to, and a crucial part of, the Bill that there is no cut-off date. Under the settled status scheme, an EU national who does not apply during the operational period will become illegally resident. The EU Justice Sub-Committee of this House, of which I am a very new member, is interested to know how the Home Office will deal with these people, who will range from prisoners—I understand that none of the organisations funded by the Home Office to assist applicants works in prisons—to people who have been granted pre-settled status and do not take it further.

As noble Lords have observed, it seems that pre-settled status is currently given in most cases when an application for settled status does not succeed. The Minister for Immigration told the sub-committee that the Home Office would consult the Cabinet Office on how best to "nudge" people who need to convert. The likelihood of misunderstanding—"I'm okay now, I've got status"—among people whose status is actually a precursor to settled status is very high. We also heard that the Home Office will not agree to a physical document, because a computer record is the "most secure" form of evidence. "Digital first" has become "digital only"—and

[Baroness Hamwee]

I do not need to refer to recent history here, which noble Lords have mentioned and which we could all talk about with considerable emotion.

I dislike the term "vulnerable". To me, it sounds patronising, but it is widely adopted. The Public Law Project refers to people,

"in a position of social and economic disadvantage".

I refuse to accept that elderly people are, by definition, vulnerable, and I think that the House will support me in that. Under the government scheme, people who we know fall into that group will, if they fail the application test—and many of them will struggle with it—become vulnerable to the Government's policies. Whether hostile or compliant, or whatever you call them, these policies will affect you badly. People will be denied access to services and will be at risk of deportation.

Obviously, looked-after children and young care leavers fall into that category, and the right reverend Prelate drew our attention to that. I congratulate Coram Children's Legal Centre and other organisations on the work that they undertake on this subject. In the time available, I can mention only a few of the issues that they have identified. One is the suitability criteria: is the applicant suitable for status? To quote a recent Coram report:

"Statistically, looked after children and care leavers are more likely to engage the suitability criteria than other children and young people".

The report refers to the number of children aged over 10 who were looked after for at least a year and who have been,

"convicted or subject to youth cautions or youth conditional cautions".

The Department for Education recognises these figures. The report also states:

"These children and young people will need to receive advice on the impact of any criminal record on their settlement scheme application before an application is made"—

and I want to stress those last five words. Looked-after children and care leavers will also need advice on nationality routes. They may have complex cases that fall outside the competency of an adviser accredited to the basic level introduced by the OISC for the scheme.

Then there are children who are eligible for the scheme but who do not have evidence of nationality or length of residence. Coram gives a number of case studies, such as that of Joao:

"Joao is a child whose estranged father is Portuguese. Joao's mother (who holds a passport from Guinea-Bissau) fled his father, who was violent, in 2014. Joao's mother has a biometric family member card that was issued in 2014 but Joao has no documents at all. The agency supporting Joao and his mother advised absolutely no contact between Joao/his mother and Joao's estranged father due to the previous violence. Joao is unable to get a Portuguese passport without the active participation of both his parents in his nationality registration application".

I could give a number of other examples, but in view of the time, I will not do so.

I will, however, refer to some of the recommendations made by Coram. It states:

"The Home Office should consult with the EU Commission on problems with accessing nationality documents and should have regard to its findings in guidance produced for both local authorities and for caseworkers on the exercise of discretion".

It says that,

"the government should consider introducing a separate system that would ensure all children in the care of local authorities and care-leavers are granted settled status without having to meet the requirements of the EU settlement scheme".

Reference is made to the statement of intent and to the fact that,

"the government 'will accept alternative evidence of the EU citizen's identity and nationality where the family member applicant is unable to obtain or produce the required document due to circumstances beyond their control or to compelling practical or compassionate reasons', but further guidance on what constitutes compelling practical or compassionate reasons is required. Where necessary, the Home Office should take a pragmatic, flexible approach".

I hope that the Home Office is familiar with all the recommendations made by specialist organisations, which identify the complexities of the scheme. The numbers affected may be small—although as the noble Lord, Lord Kerr, pointed out, they may not be that small—but each person affected is an individual to whom we have a responsibility.

The Home Office wants to find reasons to accept. My noble friend's Bill gets much nearer to achieving what most of us understand that to mean, having not necessarily initially understood the implications of the term "accept". The Bill is much more inclusive to our friends, co-workers and fellow citizens, an approach that all noble Lords want to see, both for other EU citizens—I can still call them that—whom the UK says are welcome and for the 1.3 million UK citizens elsewhere in Europe. Like other noble Lords, including the noble Earl, I share a sense of shame at the position we are in the moment.

12.20 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I welcome the Bill proposed today by the noble Lord, Lord Oates. I also agree with the noble Lord, Lord Cormack, that this could have been fast-tracked through this House as other legislation has been and it is shameful that we have not made that generous offer that so many of us talked about in this debate. We live in hope that the new Prime Minister will listen to this debate and act swiftly in the next couple of weeks.

The noble Lord sent his best wishes to my noble friend Lady Hayter, who I count not just as my noble friend but as a dear friend. I first met my noble friend Lady Hayter in the early 1980s, when we were both active in the Labour Party in London. She has had a distinguished career outside this House—a considerable amount of it in and around the labour movement, including working in Europe for many years and as general secretary of the Fabian Society. I also worked closely with my noble friend when she served on the National Executive Committee of the Labour Party and as chair of the Labour Party, which she was very proud to be. At that time, I was the director of finance for the Labour Party and part of the senior management team. Towards the end of Governments, they become unpopular, money gets tight and the party membership goes down. My noble friend and other colleagues in my team worked to ensure that we got through some very difficult days, making sure that the party continued to function properly. The party owes my noble friend a great debt of gratitude for all she has done.

My noble friend is also one of a small group of Labour and Co-op Members of the House of Lords—about 18 of us. I do not know whether noble Lords know this, but the whole leadership of the Labour group here is all Labour and Co-op—the Opposition Leader, the Opposition Chief Whip and the deputy are all Labour and Co-op. The Co-op Party is very proud that the leadership of the Labour Peers are all Labour and Co-op. I am delighted that she remains Deputy Leader of our group. She was re-elected unanimously only last month and I wish her a speedy return to the Front Bench, where she enjoys the support not just of our party but of noble Lords across the House. I am delighted to be here today but I am not looking for any more jobs on this side. The worst day was when there were three government Statements from three Ministers and it was always me responding. I said, "Carry on, it's me again". I have more than enough jobs on this side of the House and I look forward to my noble friend being back soon.

I agree with the noble Baroness, Lady Hamwee, that it is likely that this measure will get only this far in parliamentary proceedings. We will have the new Prime Minister next week and we are already hearing reports of a Queen's Speech and attempts to shut Parliament down, so I fear that the Bill will make no more progress. That is regrettable. The Bill has much merit and should be supported.

I think we would also agree that, no matter which way one voted, Brexit has been a total car crash—a shambles in terms of delivery from day one. It does not matter how you voted; it is an utter shambles. I have lost count of the number of ministerial resignations that can be attributed to Brexit—there was apparently another a couple of days ago. They just come and go now and hardly get reported in the media. It used to be a matter of news on the BBC that a Minister had gone but that does not seem to happen any more. We have been left a laughing stock around the world.

The Bill is simple and straightforward and provides for EEA nationals who are resident along with their families on the date of exit of the EU the right of abode here in the UK. It is important that the noble Lord, Lord Oates, reminded us of the pledge made by Boris Johnson, Michael Gove and Priti Patel, and his Bill simply enables them to honour the pledge they made. I also associate myself with the comments of the noble Baroness, Lady Altmann. It is a question of honour and of trust. It is a question of behaving properly and of our standing in the world. I also associate my comments with those of the noble Earl, Lord Attlee, as I do with those of every other speaker in today's debate.

The Government have their scheme, which is better than when it started out although not by much. I welcome the decision to scrap the fee, taken a few months ago. But as the noble Earl said, the scheme has many flaws and risks seeing many people left in a precarious position. The noble Earl set out those flaws. I understand that the right of abode is different from settled status and indefinite leave to remain, but my biggest concern is the risk that we could have another Windrush-type scandal at some point in the future. I am sure the Minister will tell us that that will not happen and we should not worry: it will all be fine. But none of us can predict the future. All we can do is look at the past and the record, as a pointer of future outcomes. If we do that, the prognosis is not good.

The right reverend Prelate the Bishop of Rochester was right when he said that the Bill has fairness and simplicity at its heart. I am the son of immigrants. My parents are both Irish and came here to find work in the 1950s. I know that Irish people have a different status from other European nationals in this country, but they are immigrants. I am the eldest son of immigrants. I was struck by the point that the right reverend Prelate made about the Catholic community. I went to Catholic school—primary school in Camberwell and secondary school in Peckham. The parents of the children there were Irish, Italian, Spanish or West Indian and there were a few Africans. I remember the names—the Giuseppes, Luigis, Patricks and Paddys and all sorts of names, but not many English names. That is what we were. I remember Marys, Siobhans and Margarets from junior school. That illustrates the right reverend Prelate's point. All these people came here to find work and made contributions to our country, and they were welcomed.

My mum was a nurse for many years and my dad became a black cab driver. My mum ended her working career in the Members' Tea Room in the House of Commons for many years, serving cups of tea to many Members of this House who were at one time in the other place. Immigrants come to countries and make a fantastic contribution and we have not made them feel very welcome in recent years. That is very regrettable.

I thank the noble Lord for bringing this Bill back to the House today. It is ridiculous that we have waited two years for it. That highlights to me that we must deal with Private Members' Bills better in this House. We have some wonderful Bills that receive Second Readings and then we are told that they will be committed to a Committee of the whole House. But they could go into Grand Committee. We could have a Grand Committee sitting today to consider other Bills, but we cannot do that. It is ridiculous, and we need the Government to think about that. If we are to have 40, 50 or 60 Private Members' Bills, the House should facilitate that and make more progress. I hope that when we get the new Government, they will do that.

I thank the noble Lord for bringing the Bill forward and I look forward to it making progress, but I am afraid I am rather sceptical that it will.

12.29 pm

Baroness Barran (Con): My Lords, I start by echoing the regret voiced by a number of noble Lords at the absence from the Front Bench of the noble Baroness, Lady Hayter. She was one of the first people I met here, because she was supporting the noble Baroness, Lady Bryan, and we were introduced together. She was incredibly warm and friendly then, but I have since witnessed her forensic analysis of legislation and her dignified leadership of the Benches opposite, so I share other noble Lords' sentiments and hope we see her back on the Bench opposite soon.

I turn to the Bill before us. Since the 2016 referendum, securing the rights of EU citizens in the UK, and those of UK nationals in the EU, has been the Government's priority, and we are delivering on this commitment.

[Baroness Barran]

Much of the debate today has centred on questioning the solidity and robustness of that commitment, and I will do my best in the time available to reassure your Lordships that this is indeed the case.

EU citizens have immeasurably enriched this country and our way of life, as noted by my noble friend Lord Cormack. Like the noble Lord, Lord Kennedy, I also had two parents who were immigrants, from slightly further afield but both European, and went to a Catholic school—not the same school as him, but with plenty of similar names.

The Government absolutely share the desire of the noble Lord, Lord Oates, to secure the rights of EU citizens here in an inclusive, accessible and robust way. In my response I will try to cover five areas: the applicability of the right of abode to EEA citizens as currently drafted in the Bill; the relative inclusivity of the EU settlement scheme compared with the Bill; the scheme's progress; the issue of physical documentation, which a number of your Lordships raised; and, finally, some of the risks implicit with a declaratory system.

The EU settlement scheme has been created to ensure that every EU citizen can secure their right to remain here, whether or not there is a deal to leave the EU. Settled status, or indefinite leave to remain, granted under the scheme provides the holder with the same access to benefits, education and healthcare as those who currently acquire permanent residence under EU law.

Granting a right of abode, as in the Bill, would be inappropriate and unnecessary. Not all British nationals have a right of abode in the UK—only British citizens, together with certain Commonwealth citizens. Others, such as British Overseas Territories citizens, do not have an automatic right of abode, so extending a right of abode to other groups of non-British nationals would mean they have more rights than some British nationals. In common with other Governments over time, we believe this would not be appropriate.

Turning to the scope of protection, we believe that the Bill potentially offers less protection to EU citizens than the Government's approach. I acknowledge that that is the last thing the noble Lord, Lord Oates, is intending, but that is our analysis. Those applying under the EU settlement scheme are not generally required to show they meet all the requirements of current free movement rules. The UK has decided, as a matter of domestic policy, that the main requirement for eligibility under the scheme is continuous residence in the UK. The noble Baroness, Lady Hamwee, questioned this approach, but I hope noble Lords will agree that the principle of residence is relatively simple. By contrast, under the Bill a person would have to be lawfully resident here—that is, exercising their treaty rights under EU law. This could take many thousands of people out of the scope of protection, including those who are not economically active or self-sufficient and many vulnerable people who may not be exercising their treaty rights here.

I pause on that point, because the noble Lords, Lord Oates and Lord Kennedy, the noble Baroness, Lady Hamwee, and potentially other noble Lords talked about the risks of vulnerable people. Whatever language we use around vulnerability and whatever approach we follow, those groups are the most at risk.

The noble Viscount, Lord Waverley, asked for definitions of family members. There are slightly different definitions in the EU settlement scheme and the Bill, so in the interests of time I hope that he will accept it if I write to him and set out both.

I will now update your Lordships on progress with the EU settlement scheme. The noble Lord, Lord Oates, questioned whether we would be able to reach the 3 million or 3.6 million people we believe are eligible. I am pleased to say that the scheme is running successfully. It was launched fully on 30 March this year, and we believe it provides a simple and streamlined process for resident EEA and Swiss citizens and their family members to obtain status under the UK's domestic immigration rules. More than 950,000 applications have been received, and more than 850,000 people have already been granted status under the scheme.

The noble Lord, Lord Oates, asked about pre-settled status for those who applied for settled status. We know that 35% of people have been granted pre-settled status, but we do not know what percentage of them applied for settled status. I stress that no application has been refused. I think that is significant when we are at nearly one-third of the figure.

I share the natural scepticism of the noble Baroness, Lady Smith of Newnham, about government IT schemes —I am not sure I am allowed to say that, but it is too late—but this case may be the exception that proves the rule, based on the data we have so far. She also asked about being able to use an iPhone. One can complete the online application on a smartphone, tablet, computer or laptop. The identity verification app, which I think the noble Baroness was referring to, is currently available only on Android devices, but my right honourable friend the Home Secretary has confirmed that it will be available on Apple devices later this year.

The noble Lord, Lord Kerr, and my noble friend Lord Cormack talked about levels of anxiety—I think my noble friend used the term "peace of mind"—about one's ability to stay in this country. Currently a straightforward application is being dealt with in between one and four days. I acknowledge the anxiety that people might feel, but the process is speedy. I am slightly anxious that the noble Baroness, Lady Hamwee, put the Government in a no-win situation. We are doing it quickly, but she rightly raised a question about whether automation carries risks with it. I think we would prefer to err on the side of a speedy response for those who are waiting for one.

A number of noble Lords asked about help for vulnerable individuals. We are committed to helping vulnerable individuals to obtain their status under the scheme. We have awarded up to £9 million to 57 voluntary and community-sector organisations across the UK to help us reach the estimated 200,000 vulnerable or at-risk EU citizens and help them apply. We are also working closely with local authorities and others to ensure we reach looked-after children, who were mentioned by the right reverend Prelate the Bishop of Rochester and the noble Baroness, Lady Hamwee. Local authorities are empowered to apply on behalf of looked-after children and they have been granted sufficient funding to have the capacity to do so. Additional support is available to those who do not have the appropriate access, skills or confidence to apply online.

There has been much debate about physical evidence of settled status. Those granted status under the scheme will be given a secure digital status as part of moving to the system of digital by default. EU citizens will not be issued with a physical document. Unlike many EU countries, the UK does not require people to carry an identity document. Those granted status under the scheme can access this via a secure online service. They can control who they wish to share that information with to demonstrate their status and to exercise their rights. We believe that digital status is more secure. It cannot be lost, stolen or tampered with and is more easily used by people with some disabilities.

In common with the approach advocated by some groups, the Bill would create a declaratory system. As all noble Lords noted, the Government do not agree that conferring leave to remain automatically, by statute, under a declaratory system is the right approach to securing the status of resident EU citizens and their families. A number of noble Lords, including the noble Lord, Lord Kennedy, touched on the experience of members of the Windrush generation. They were granted indefinite leave to remain but without the means of proving that status. We are very anxious not to make the same mistake again. We are concerned that even if we ran a scheme in which, as the Home Affairs Select Committee recommended, obtaining proof of status was conferred by law with an option to apply for physical documentation, it could cause confusion among employers and service providers and impede EU citizens' access to benefits and services to which they are entitled.

The Government's approach provides resident EEA and Swiss citizens and their family members with clarity and certainty about their status here. We have already confirmed that, deal or no deal, the EU settlement scheme will continue to operate. I hope that helps to reassure my noble friends Lord Attlee and Lady Altmann, who expressed concerns about this. The Government have made it clear that anyone with reasonable grounds for missing the deadline will be allowed to make a late application.

The noble Lord, Lord Kerr, was concerned about the risk to children. The spirit of the Government's work in this area is that of creating a fair and compassionate system—we are not seeking to criminalise children.

The Government recognise the invaluable cultural, social and economic contributions that EU citizens make to the UK and as part of many of our families. Quite rightly, we have made generous provision to protect the status of those who have made the UK their home. I of course understand that the Bill seeks to protect those people. However, as I have tried to set out, the mechanism whereby it seeks to do that is not one the Government can support, as we believe that it could create difficulties for those same people and their families in the future. We continue to believe that the EU settlement scheme provides an inclusive route for EU citizens to secure their lives in the UK.

Earl Attlee: My Lords, the Minister made much of the fact that EU citizens could be in difficulties if they did not exercise treaty rights. Can she undertake to write to us explaining why Clause 2(1)(f) does not provide protection?

Baroness Barran: I am happy to do that.

12.45 pm

Lord Oates: My Lords, I thank all noble Lords for having taken part in this debate and for the long-standing commitment of many of them. As well as my noble friends on these Benches, I particularly note the commitment that has been shown on the issue of EU citizens' rights by the noble Lords, Lord Cormack and Lord Kerr, the noble Baroness, Lady Altmann, and the right reverend Prelate the Bishop of Rochester. I am also grateful for the support of the Labour Front Bench. In previous debates when I have spoken on this issue, many Labour Peers have also been passionate in their support.

I share the deep regret and sense of shame expressed by many noble Lords that the Government have allowed the issue of EU citizens' rights to suffer such uncertainty since the referendum. I thank the Minister for the courtesy of her response but, I am afraid, not for the complacency of it. Perhaps I may tackle some of the points that she raised.

First, the Minister made the point that in some ways the residency criteria in my Bill are more restrictive than under the current settled status scheme. To that, I say that this Bill was constructed two years ago. In Committee I will be very happy to work with the Government while they fast-track the Bill to ensure that those criteria are reflected as widely as possible. However, the real point of the Bill and the real need for it were set out by the noble Lord, Lord Kerr. It is—we should be careful about using this word—a backstop or guarantee to underpin people's rights and ensure that their status in this country is based on eligibility, regardless of the cut-off date.

The Minister also tackled the question of physical proof of status—an issue raised by many EU citizens as a matter of concern. She said that digital status is more secure. Of course, there is no reason at all why there cannot be digital status with an accompanying document. The Government really should think about that, particularly in the context of groups of people who are less comfortable in the digital sphere and will be very nervous about it.

The Minister gave us reassurances that it is not the Government's intention to round up children or anybody else. Of course, I take that point and her reassurance, but who knows who the Government will be in a week, a month or a year? The history of Windrush and so on does not give anybody any confidence that people will not be mistreated.

Sometimes it seems that the Government have no idea at all of the devastating personal impact that their failure to uphold the pledge to automatically grant indefinite leave to remain has had on people's lives. I detected that a bit in the Minister's response, although that is no personal slight, as I am sure the Government provided that response. For example, just today I heard the example of an 80 year-old woman—an EU citizen who came to this country in 1964, has lived here ever since, brought up her family here and contributed to her local community. She was in floods of tears this weekend as she filled in an application form, without which her presence in the country that is her home will become unlawful at the stroke of midnight in less than two years' time. That scene will be played out in

[Lord Oates]
thousands of homes across the country. It brings shame on all of us, but it is something we can and should do something about.

I conclude by again quoting from our most likely next Prime Minister. Speaking on BBC Radio 4's "World at One" programme just last month, he said:

"I think what we should do is take the provisions on citizenship, take the offer that we made to the 3.2 million EU citizens in our country … do it of our own accord, pass it through Parliament".

Given this implicit endorsement by the future Prime Minister, I trust that the Minister will be able to revise her position and join me in commending my Bill to the House.

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

Victims of Crime (Rights, Entitlements, and Notification of Child Sexual Abuse) Bill [HL]

Second Reading

12.51 pm

Moved by ***Baroness Brinton***

That the Bill be now read a second time.

Baroness Brinton (LD): My Lords, I declare my interest as co-chair of the APPG on Victims of Crime. There is no doubt that being a victim of a serious crime is devastating and can result in physical, mental, emotional or economic harm. This can be to the victim direct, the relative of someone whose death was caused by or as a result of a criminal offence, or a close relative of an incapacitated victim. That is the current definition of a victim in the victims' code of practice.

I have personal interest in this matter, having been a victim of harassment and stalking along with my team when I was a parliamentary candidate in Watford. My Conservative opponent was convicted of 67 crimes targeting myself and, by association, my colleagues over a period of three years. No matter how calm or logical you can be, the scars of that sort of treatment, some of it very personal, run deep and long. How much more do the victims of rape, sexual assault, coercive control or attempted murder feel when the system set out in the victims' code fails them on top of the assault that they have already faced? They are victimised a second time.

I am grateful to the noble Baroness, Lady Newlove, the former Victims' Commissioner, who cannot be in her place today, for her encouragement and support over the last few years. I am also delighted to welcome her successor, Dame Vera Baird QC, and to thank Dame Vera for her helpful and thoughtful briefing for Members. I thank the Library for its excellent briefing too. I have also worked with Claire Waxman and Harry Fletcher over the last eight or nine years. Claire is now the Victims' Commissioner for London, and Harry still works tirelessly to support victims to ensure that they get the support they need.

The first version of this Bill was introduced by Elfyn Llwyd of Plaid Cymru in March 2015. He subsequently stood down from Parliament in 2015, and a revised version of the Bill was tabled by Sir Keir Starmer in 2016. Both 10-minute rule Bills in another place had all-party support.

The Bill puts the discretionary victims' code on to a statutory footing. The code was originally introduced in England in Wales in 2006 and is a set of expectations for criminal justice agencies, but it is not mandatory. Victims do not have legal rights, and agencies "may" or "ought" to respond to victims' needs. Despite the existence of the code, victims are repeatedly failed and often face re-victimisation by the criminal justice system. Complaints and appeal procedures are lengthy and almost impossible to use.

The code offers victims things such as: accurate and timely information; adequate notice of court proceedings; information about decisions; access to translation services; direct contact details of agencies and individuals involved; no unnecessary delay; being treated with dignity and respect; not to experience discriminatory behaviour; witnesses who are vulnerable to give their evidence at a distance or behind screens; police ensuring the safety of victims during proceedings; access to a liaison officer; access to transcripts of proceedings at no cost; the right to attend pre-court hearings; and access to financial compensation from public funds.

Over the past decades, there has been an understanding that, while the code appears sufficient on the surface, the experience of victims of serious crime is very different. Indeed, most seem unaware that the code exists, let alone know about its content or about any other complaints procedures. The Victims Rights Campaign and many others have received frustrated comments with depressing regularity. Victims are not told of parole decisions—I think we all remember the Worboys case. Victims' impact statements go missing from the Crown prosecution bundle. Screens or separate waiting areas are requested but not provided. Translation services are not available or, worse, are available in the wrong language. Probation fails to give victims vital information. Victims are unaware, until sitting in court, of previous criminal convictions. Cases take months and victims are not given reasons for delays. Personal information about victims is read out in court with the alleged perpetrator present—and I can tell you that, if someone is stalking you and your home address is read out, that is a major problem. Victims are asked to control their emotions in the witness box. I could go on.

The commitment to the introduction of a victims' law was contained in the Conservative election manifestos both in 2015 and in 2017. It was also, by the way, a firm manifesto promise from Labour and the Liberal Democrats in 2017. Despite the Government's promises so far, though, neither a consultation nor a draft law has been forthcoming. In February 2016, the government Minister said that a Green Paper would be published "soon", but unfortunately that seemed to go on hold. In May 2016, the Public Accounts Committee in the Commons concluded that:

"The criminal justice system is bedevilled by long standing poor performance including delays and inefficiencies, and costs are being shunted from one part of the system to another".

At the same time, then Victims' Commissioner reported that many,

"victims feel ignored, unimportant and confused when raising concerns about their treatment".

In December 2016, during the passage of the Policing and Crime Bill, your Lordships' House voted to support amendments, in my name and others', to turn the victims' code into law. Sadly, this was voted down during ping-pong in the Commons immediately after the new year. When the Bill came back for consideration by the Lords in January 2017, I withdrew my amendments on government legislation that would have put the victims' law on a statutory footing after an undertaking by the Minister the noble Baroness, Lady Chisholm of Owlpen, who made a Statement at the Dispatch Box. The amendment had support from Labour, the Cross Benches and indeed some Conservative Members. The Minister gave an undertaking, in exchange for the withdrawal of the amendments, of an immediate one-year consultation for victims' groups, to be followed by the publication of legal proposals.

In October 2018, the then government Minister told the victims' forum that there was a commitment to a new law, but he was unable to confirm when that would happen. In the same month, there was a three-hour debate in the House of Commons on victims, and over 50 suggestions for improvement were put forward by Members on behalf of their constituents. In July this year—just earlier this week—the Ministry of Justice finally announced that there would be a consultation on:

"Greater clarity through simplified and improved Victims' Code".

However, that does not include a commitment to a victims' law. In response, the Victims Rights Campaign said:

"The code must be simplified and turned into a law so that victims have enforceable rights. They should have a right to accurate information, a right to be consulted about parole decisions and a right to challenge any decision not to prosecute and much more. The consultation is a step forward but unfortunately stops short of a Bill of Rights".

That is why I introduced this Private Member's Bill two years ago. As with the changes to the stalking law in 2012, it seems that the cogs of the Ministry of Justice grind exceeding slow. While nothing is happening, victims of crime are being let down daily because of the lack of support, sometimes deliberate, sometimes in ignorance. The last but one government consultation talked about holding the agencies to account, but once again gave them no duty to deliver the code. That is, quite simply, what this Bill aims to do. Those of us, in debate with Ministers over the years, who hear from victims about failings in the system understand what needs to be done. This House agreed with that in 2016.

The Bill has 11 principal clauses and the Long Title is long because it covers such a range. It includes statutory rights and entitlements for victims of crime, the assessment of victims' services, extra duties for the Victims' Commissioner, rights to review decisions not to prosecute, reviews of homicides where no criminal charge has been made and a duty on professions to notify the police of possible child sexual abuse. I will not read each of the clauses out, because they are in front of you, but I want to give two brief illustrations from case studies. The names I give are not the names of the victims.

Rachel was in a relationship for two years and then found that her partner was a convicted fraudster and conman. She realised he was interested in her only because she owned a mortgage-free property. He then began stalking and harassing her, through unwanted letters, presents, flowers, emails, texts and phone calls and turning up at her house. This escalated to him following her in his car, contriving chance meetings, making silent phone calls from phone boxes, sending "mistaken" emails and following her on foot. The victim believes he also arranged for other men to follow her when out walking the dogs, and this continues to this day.

Despite receiving three harassment warnings from the police, he persists with this ongoing harassment. The problem is that the police have yet to recognise the pattern of stalking in this case. They have done very little to support the victim and have issued three warnings instead of using protective legislation. As a result, the stalking continues. The victim said:

"I have suffered immense psychological suffering culminating in a suicide attempt in June 2014. The ongoing campaign of stalking, harassment and now financial concerns continues to have a deleterious effect on my recovery. I have been unable to work for 2.5 years, I am on anti-depressants and receiving ongoing counselling from the NHS. I feel constantly tormented, unable to forget everything that's happened and so unable to move on with my life".

A victims' law would have changed her life, providing: a route to review police inaction in her case; access to a case companion to help her access justice and get real support; access to the Victims' Commissioner to get redress on her case and recognise that civil action was part of her perpetrator's abuse—I did not read out earlier that he tried to take her to court; and access to relevant local support services to help with the psychological trauma of the crime.

The second case is about a victim of domestic abuse who tried to end the relationship. Her partner called the police and she was then taken into custody for 18 hours, leaving her eight week-old baby, whom she was breastfeeding. She was offered no food, and the police would not listen to her explanation that her partner was the abuser. She was treated appallingly and was then charged. Two days later, the IDAS support worker interviewed her partner and confirmed her story. Seven months after her initial arrest, charges against her were eventually dropped and her ex-partner was finally arrested and charged with harassment. He pleaded not guilty to the charges.

On the day of the trial, the police failed to give prosecution evidence in time, thus risking his acquittal and the use of any of that evidence at any subsequent trial. He was arrested again months later and charged with stalking. Her ex-partner has taken her to court a total of 15 times and this has cost her in the region of £25,000—and so it goes on. She said:

"The adjournments in the family courts were torture and I was fearful as I had no real protection, sometimes, alarming the counsel as to my safety given my perpetrator's behaviour in court … He has been into my village, where I moved to get away from him, just a few weeks after the order was made … but police didn't arrest him as he had a 'genuine' reason for being there! … He has breached his RO and Police have charged him again".

[Baroness Brinton]

How would a victims' law have made a difference? It would create a statutory duty on PCCs to ensure adequate local victims' services; ensure that she received timely information and a case companion to speak to agencies on her behalf; and provide easier access to make a complaint against the police handling of her case. Police training would have ensured that she was treated in a dignified manner, and recognition of her right to review the police handling of the case should have as much priority at any appeal hearing.

Finally, I will comment on the adding in of mandatory reporting of child sex abuse. My noble friend Lady Walmsley is unable to be in her place, but your Lordships' House will recognise that she has been prosecuting this cause for a long time. I am delighted to have been able to support her. I am pleased that Mandate Now has provided a very detailed briefing updating us since the Independent Inquiry into Child Sexual Abuse has been taking evidence on mandatory reporting. My noble friend welcomes the clause, but she is particularly delighted that the most reverend Primate the Archbishop of Canterbury told the Independent Inquiry into Child Sexual Abuse last week that he now believes that we need mandatory reporting and that the most reverend Primate the Archbishop of York agrees. I hope the right reverend Prelate the Bishop of Rochester will be able to add some comments to that. This is extremely good news and shows that society is moving on and recognising that we need to ensure there is proper support for those of us who have responsibility for safeguarding in our communities.

The Bill would not undermine the rights of defendants or convicted offenders. It would, however, strengthen the rights of the victim, placing a duty on all the agencies to provide the support they need. The Government have long promised that they would consult on and strengthen support for victims, and, from their manifesto, I believe they genuinely mean it. But, more than that, they promised that they would deliver it. This new consultation is, once again, weak. It adds insult to injury and will not protect or help victims of serious crime until there is a duty on agencies working with victims to deliver the code.

I look forward to the Minister's response and hope it will be more positive than just another refinement of the victims' code. That is why a victims' law must become law. To fail to take action is to fail to protect those for whom life is already hard enough. I beg to move.

1.06 pm

Baroness Hamwee (LD): My Lords, I welcome the Bill very much and the opportunity to argue for improved support and treatment of victims of serious crime. I put it that way since anyone who has promoted a Private Member's Bill knows that these things often advance by micro-steps. I say that, as I said in the previous debate, as someone whose current Private Member's Bill left this House after a trouble-free passage over a year ago. The noble Lord, Lord Young of Cookham, talked about the limited life expectancy of Private Members' Bills introduced at this stage of a Parliament—whatever stage that is, of course—but we know that they can be an important stage in a campaign, and that after a lot of micro-steps the landscape shifts and, to mix metaphors, suddenly the pieces of the jigsaw fall into place.

We have heard about the Bill's detail. I will make some broad-brush observations. It seems to go with the grain of current thinking. It reflects the developing understanding of the often unlooked-for impact of the operation of the criminal justice system. That is also very much the case with society moving on, as my noble friend put it, regarding the reporting by professionals of suspected child sexual abuse. To be effective, that needs to go hand-in-hand with an understanding of how to recognise the signs that a child might have been abused. Hard-pressed professionals need time as well as tools. No doubt that means money. The term "safeguarding" has entered the lexicon, but it must not be accompanied by transferring the blame or responsibility from the perpetrator.

Another change that I hope I observe is the importance of seeing the situation through the subject's eyes. It must be all too easy, in pursuit of a conviction, to regard the victim as a mechanism to achieve that conviction—to be used, if you like, towards that end. Investigations and trials are far more complex than that two-dimensional view.

Another recent entry into the lexicon is "trauma-informed", almost to the point where "trauma" is in danger of overuse and being devalued. However, the trauma-informed approach is relevant to the whole of the Bill, including the provision for training on how to work with victims. In the case of this Bill those are victims of sexual and domestic violence, but the requirement is wider. Training is described in the Bill as "specialist" and it needs to be. I am not sure why the list does not include the police. Perhaps that is covered through another route. I must be clear that I am speaking as a lay person, but one cannot begin to get evidence from a victim without understanding the psychology of trauma. Not every victim responds in the same way. I am glad to see the judiciary on the list. I have a lot of admiration for the amount of training that the judiciary now takes on board. I have heard about the training of judges in post-conflict areas in eastern Europe and how important it was for them to understand why a victim might not be able to express herself—or less often himself—and might give inconsistent accounts of events.

This is only one aspect of the Bill that has financial implications. Parts of the code of practice clearly do too. I am all too aware of the grim descriptions of physical conditions in the Courts & Tribunal Service's estate which, inter alia, make achieving some of the code particularly difficult. Some of the points that underlie the provisions of the Bill are about stopping and thinking what it must be like to be the victim, who is not just a necessary component in the prosecution. I was particularly pleased to see that family members are included in the definition of victim, even though the approach here is that the family stands in for a person who has been harmed directly. Family members are often affected in their own right.

I am also pleased to see it proposed that members of the public should deal directly with the parliamentary ombudsman. It seems paternalistic, in this century,

to require an MP to act as an intermediary. I see that the Victims' Commissioner is observing this debate rather carefully; her suggestion of a direct reference by her to the ombudsman is strikingly obvious. As I have said before, I retain an unease about the creation of the roles of commissioner in various contexts, not just in this one. That is not, of course, in any way a comment about the individual postholders. I have not quite made up my mind whether commissioners are important indicators of progress in their respective fields, or an acknowledgment that what often seems to be the responsibility of government is not carried out by government and that we therefore need commissioners to make sure that government does its job. I am going to stop worrying about this because it is clearly the direction of travel and the commissioner needs the powers to do the job.

I share the response of the current commissioner to the provisions for area victim plans and for their assessment and quality standards. I agree with her when she refers to other actors in the criminal justice sector: police and crime commissioners, who produce police and crime plans; and the MoJ, which funds local victims' services. The commissioner's role needs to be clear and separate. We will all be aiming for attention to victims to be mainstreamed in the work of all agencies, not imposed or regarded as an add-on with a separate provenance.

Much of this agenda is part of the development of good practice, not least on disclosure of personal data. Dame Vera told us in her helpful briefing of the Home Office-funded pilot of legal advice for complainants in Northumbria. It is welcome that there is such a pilot, because it is clear that there is much to be bottomed out in this area. How data are handled is relevant to trust in every part of the process—in the police, the prosecution and the judiciary—on the part of the victim and, by extension, the public as a whole. I congratulate my noble friend on introducing this Bill.

1.15 pm

The Lord Bishop of Rochester: My Lords, I am grateful to the noble Baroness, Lady Brinton, for bringing forward this Bill and applaud the intention to give a stronger statutory position for victims of crime, especially in relation to the code and the role of the commissioner. The noble Baroness spoke of the "dignity and respect" with which we should treat the victims of crime. In my capacity as Bishop to Her Majesty's Prisons, I often find myself in conversations about treating with dignity and respect the perpetrators of crime. It seems obvious that we should accord at least the same to victims of crime. In the context of this debate, I am proud that my diocese has become the first English diocese formally to sign a partnership arrangement with the White Ribbon campaign in relation to male violence against women and recruiting of champions.

However, as already trailed by the noble Baroness, my main comments relate to Clause 11, concerning the duty to be placed on certain people, occupations and professions to report to the police where a child discloses abuse, or the person concerned reasonably suspects that such abuse may have occurred. As the noble Baroness pointed out, in the context of the current IICSA hearings, the most reverend Primates the Archbishop of Canterbury and the Archbishop of York have both indicated a shift in their thinking towards the principle of mandatory reporting. The Bill does not specifically include the clergy or other church workers by occupation—youth workers in particular come to mind—but they could come within its scope in so far as their work might relate to regulated activities.

Following the IICSA hearings and when their reports are produced, it is likely that the Church of England—I cannot speak for other churches or faith communities—will seek to strengthen what is already provided for in its various measures and provisions around these matters. In particular, Section 5 of Safeguarding and Clergy Discipline Measure could be revised in line with the direction of travel. I am given to understand that there is an intention to explore ways in which the kind of disciplinary provision already in place in for clergy might be extended to others engaged in regulated activities in a church setting.

There are details that are not simple. Certainly, if we step outside named professions and begin to talk about people in voluntary activities, we enter a different world, but, none the less, those matters need to be taken seriously. For some church traditions and communities, the whole business of information received in the context of sacramental confession is an issue. It is being looked at at the moment by the Church of England; those discussions have not yet concluded, but they are actively under way. While Clause 11 might not directly or explicitly encompass the clergy and others in churches in all respects, my view is that it would none the less offer the churches, and potentially other faith communities, helpful support as we go about strengthening our own procedures and practices in this regard.

As for the rest of the Bill, I simply say that it sounds obvious; it sounds like good practice; it ought to be there. It has my support.

1.19 pm

Baroness Benjamin (LD): My Lords, I too congratulate my noble friend Lady Brinton on bringing this important Bill to the House. The impact of child sexual abuse on victims and survivors is devastating, even when the child reaches adulthood—as I always say, childhood lasts a lifetime. I speak today as someone who has dedicated her life to the well-being of children and to working with others who share that mission. One such organisation is the Internet Watch Foundation, of which I am a champion. I take this opportunity to highlight its work and its support for the Bill.

Over a three-month period in 2018, the IWF tracked the occasions on which its analysts had seen the child sexual abuse imagery online of a little girl with big green eyes and golden brown hair—let us give her the fictitious name Olivia. Olivia's imagery had been taken in a domestic setting that may well have been her home, and she was with someone she trusted. Olivia was just three years old when her imagery was first discovered by an IWF analyst. She was abused over a five-year period until she was rescued by police at the age of eight in 2013. Thankfully, her physical abuse ended when the man who stole her childhood was imprisoned,

[Baroness Benjamin]

but her images remained in circulation on the internet. The IWF team saw her image 347 times over that three-month period in 2018—approximately five times per day. So Olivia was still being victimised again and again.

Some young people, like Olivia, develop mental problems, depression, self-loathing, low self-esteem, drug and alcohol abuse and suicidal tendencies, especially when they are recognised by total strangers in the street, some of whom describe the abusive images they saw online and make sexual propositions and demands. Just imagine experiencing that horror and anxiety every time you go out, or having to face those who have watched your abuse and feel they have a right to want you to relive it. For this reason alone, it must be a duty to notify the police of possible victims of child sexual abuse. It is why the IWF supports any measures that would encourage the detection of those suffering child sexual abuse as early as possible.

The IWF vision is of an internet free of child sexual abuse. While it is busy removing record amounts of imagery—105,000 webpages in 2018—it knows that this remains a hidden crime, often behind closed doors, with the victim being abused by someone they know, or groomed or coerced in their own bedroom over the internet. This is why I tell children to take their televisions, computers and phones out of their bedrooms, or at least switch them off. In fact, no parent should allow televisions, phones or computers in their children's bedrooms; or they should at least insist that their children practise the "switch it off" regime, because perpetrators are always on the lookout for children to take advantage of.

Clause 2 establishes a duty on those working in regulated professions, specifically healthcare professionals, teachers and social care workers, to notify law enforcement if they suspect a child has been the victim of child sexual abuse. While this measure has merit, it could be developed even more widely to include others who also have a duty of care towards children in their care.

The current Independent Inquiry into Child Sexual Abuse has highlighted significant failings in religious institutions, residential schools, local authorities and custodial institutions, which could be included in the scope of this Bill. Any recommendations the inquiry makes about these institutions in particular should be carefully considered in this legislation.

The IWF is also keen to ensure that the Bill acts in the interests of those, like Olivia, who have been unfortunate enough to have had their abuse further compounded by having their imagery spread online. It encourages the Bill to make provision for ensuring that, where these relevant regulated professionals become aware of child sexual abuse imagery and video that they suspect has been spread online, they also have a duty to report this imagery to the IWF and the police to have it removed from the internet and to prevent it circulating further.

It makes me weep to say this, but at the moment there is a rise in self-generated child sexual abuse imagery. One of the biggest areas of concern for the IWF is the rise of self-generated imagery of mostly young girls in the 11 to 13 age range. From 1 January to 30 June, the IWF dealt with 22,484 reports of self-generated child sexual abuse content. The statistics of this rise are shocking; of those reports, 96% were girls, and 85% were girls in the 11 to 13 age range. This clearly shows that the inclusion of teachers in Clause 2 is crucial, and the new RSE provisions that will come into effect later this year will also make a difference. However, there is also a real need to ensure that teachers and other professionals have access to the right training, support, advice and guidance on how to deal with suspected incidents of child sexual abuse that they may come across: what to do and how to report them. This will be a crucial factor in the success of any legislation that encourages reporting.

The saying "prevention is better than cure" applies very much to this Bill because, while the Bill positively attempts to improve the speed of reporting, there still needs to be a much greater emphasis on preventing abuse in the first place. The National Crime Agency recently announced that there were approximately 144,000 UK child sexual abuse and exploitation offenders on some of the worst dark web sites. There needs to be much more focus on targeting the 18 to 24 year-old age range of young men, who are known to be more likely to stumble on and view child sexual abuse imagery. This must be a co-ordinated prevent campaign, led by government and including all agencies with an interest in safeguarding children, including charities such as the IWF.

We cannot fully compensate a child for having their childhood stolen from them by evil, unscrupulous people, but we must consider awarding those affected by any form of child abuse some sort of compensation for what has happened to them online, as this does not apply at the moment. At the recent Independent Inquiry into Child Sexual Abuse hearings on the internet investigation, the independent panel heard evidence from the victim's legal representatives about the insufficient nature of the current guidance from the Criminal Injuries Compensation Authority, which had ruled that A1 and A2—the victims of abuse at the inquiry—were ineligible for compensation because they were not victims of crimes of violence.

But, as their solicitor said at the inquiry,

"what is unacceptable offline shouldn't be acceptable online",

and just because an issue has been facilitated by technology, that does not mean that victims of these vile offences should be exempt from compensation.

While the Government have recently taken steps by abolishing the "same roof" rule, there remains much more that can be done for victims to ensure that the law is brought into the 21st century and made fit for the digital age. Therefore, the IWF encourages close scrutiny of how a victim is defined in Part 2 of the Bill, to ensure that it was possible for a child who had been abused and had it spread online to access compensation and some form of redress. At least this would give some sort of comfort after the trauma they had suffered.

As I said, this is a very important Bill. I look forward to supporting its passage through the House and to it becoming law as soon as possible. As I said before, childhood lasts a lifetime.

1.30 pm

Lord Marks of Henley-on-Thames (LD): My Lords, I join other noble Lords in congratulating my noble friend Lady Brinton on introducing the Bill, which contains a range of careful and well-thought-out measures. In opening this debate, she introduced it in a comprehensive and persuasive way. It makes an overwhelming case for introducing statutory rights for victims. My noble friend has been an assiduous campaigner for victims' rights over a number of years and has spoken extensively in this House on the topic, as well as working tirelessly for the APPG.

The Bill is as welcome as it is important, because it seeks to give teeth to the Government's victims strategy, which was published in September 2018. It is of course true that gone in part are the bad old days when criminal proceedings were all about the police, the prosecution and the prosecution's lawyers, the defendant and the defendant's lawyers, and when the principle governing the criminal justice system held that in criminal cases, the state had taken over the case from the victim to run it on behalf of the Crown. Technically, that is right, and that principle is welcome so far as it goes. However, it had the unwelcome, unhelpful and unsympathetic corollary that the victim's role was seen merely as one of witness: yes, loser, or complainant certainly, but with no independent right to consideration or care from the criminal justice system.

With public and political pressure, that culture may have changed to a considerable degree, but we have a long way to go. The Bill would play an overwhelmingly important part in that change of culture by moving simply from cultural change to a network of legal rights to recognise and protect the position of victims of crime. The distinction between legal rights and cultural change is an important one. Legal rights lead behaviour, and in that they should be recognised as controlling cultural change rather than merely following it.

The Bill goes much further than the victims strategy in a number of areas, not merely in introducing legal rights. The noble Baroness, Lady Newlove, when Victims Commissioner, welcomed the victims strategy but called then for victims to be given legal rights—as she put it,

"for people to recognize what needs to be done".

My noble friend developed the case in her opening speech that these rights should be enshrined in law. It is pertinent that the United Kingdom opted in to the European Union victims' rights directive.

The Government may take the view that the victims strategy is enough to comply with that directive, but I suggest that that is at best dubious and invite the Minister, in responding to the debate, to consider how far that directive has been complied with. I should be highly surprised if, before and irrespective of the fact that we are threatened with leaving the EU, the Government did not take the view that complying with the EU victims directive is the right thing to do.

My noble friend talked about the support she had received from the right reverend Primates the Archbishops of Canterbury and York and looked forward to the contribution that we have now heard from the right reverend Prelate the Bishop of Rochester. No one in this House could have disagreed with a word he said. His summary was important, when he said that everything in the Bill was obviously good practice and ought to be there as a matter of law. I hope that the Government found that speech and that sentiment persuasive.

Clause 3 deals with changes to the victims' code of practice and implementations in law. The kernel of the Bill is the overriding right of victims to be treated with dignity and respect, which is enshrined in Clause 3(3)(b). Yes, of course it is obvious, but I suggest that it needs stating as a matter of law. It goes to the heart not just of a change of culture but what needs to be enshrined in law. Clause 3 also includes the right to information, including a right for victims to have information relating to relevant crimes and a right to support from relevant agencies. In the dry words of draft legislation, it is easy to forget the personal needs of victims, who are often vulnerable by virtue of who they are and their position in society, but also because of the very fact that they are victims of crime; when they are involved in legal proceedings, those vulnerabilities are at their worst.

It should be absolutely clear that all victims ought to have notice of court proceedings and relevant hearings, but there was a time—and in some cases, it continues—when victims were the very last to know what was happening to the perpetrators of the crimes against them. I suggest that it is not just court hearings: parole hearings are extremely important and there are of course changes in the Parole Board's proceedings as a result of the Worboys case. In many cases appeals also happen without victims being told about the hearing, its date, its listing or the outcome. That is simply wrong.

The Bill includes protections for children and vulnerable adult witnesses when giving evidence. Of course, the principle and good practice is that vulnerable witnesses should be able to give evidence from remote locations or from behind the screen, but gone must be the days—which I well remember from years of criminal practice—when victims who are witnesses were cowed, frankly, from giving their evidence in a straightforward and fearless manner because they were in the presence of the perpetrators of the crimes against them and subjected to not violent but intensive cross-examination that they found completely intimidating.

There are rights in the Bill to help and advice, to access for victims to a trained person to support them with information and advice, and to the ability to liaise with relevant agencies that may be familiar to a trained person, but which may seem remote and difficult to access for victims. There is the right to attend and be heard at pre-court hearings, and particularly to trained help from intermediaries for young victims. The Bill also includes a right to compensation that goes well beyond criminal injuries compensation—which does not cover losses arising out of victims' involvement in the court process, which can be extensive—and the right to legal advice where necessary and where ordered by a judge.

In opening the debate, my noble friend mentioned the right not to have personal data unnecessarily or unsafely disclosed. She made the simple but obvious point that the publication of victims' addresses can do untold emotional harm and often threaten—or make them feel threatened by—physical harm. The case for

[Lord Marks of Henley-on-Thames]
ground rules hearings in cases where witnesses might include young people or those suffering from incapacity, fear or distress is also important.

The Bill contains the valuable suggestion that the parliamentary commissioner—the ombudsman—should have a role in enforcement. Extending the ombudsman's role to victim protection would be extremely helpful. The ombudsman has been a successful innovation over the decades; it has given the public confidence that appropriate cases will give rise to a full investigation and a report to Parliament. I suggest that that would be a welcome protection for victims.

Area victims' plans are also important. It is said that the policing body must consider the needs of victims, propose a plan for meeting those needs, consult the public, publish its plan and submit area plans to the Commissioner for Victims and Witnesses annually. That will do much to keep the question of victims' rights before the public and to ensure that they are protected properly. The Victims' Commissioner is then given the duty to oversee those area plans.

The Bill includes a right to review decisions not to prosecute. In this context, I would mention that the position is fluid. These victims' rights will need consideration, and having a network of rights will improve that.

In some cases, the double jeopardy rule needs reconsidering. Yesterday, my noble friend and I saw the solicitor acting for six victims of the football coach, Bob Higgins. Those cases led to acquittals before more recent, compelling evidence became available, which led to Mr Higgins's conviction by Winchester Crown Court for the sexual abuse of 24 boys in his charge as a football coach at both Peterborough and Southampton Football Clubs over a 25-year period. In the cases that were acquitted, new prosecutions were ruled out because Mr Higgins was entitled to the benefit of the double jeopardy rule for the reason that, although the boys concerned were under the age of 18 at the time of the abuse, they were over 13 and so exceptions to the double jeopardy rule did not apply. The Bill would not cover that precisely, but my point is this: if we build in a change not just in culture but in the law, victims' rights will move up the agenda and receive the attention that they deserve, and the kind of injustice that leads to the double jeopardy rule denying prosecutions in cases where there ought to be such will be mitigated. It is all very well to say that Higgins got an adequate sentence in respect of the offences against the 24 boys, but it is wrong to deny that a real injustice was created for the six boys whose cases were acquitted.

I welcome proposals for training for people involved in cases of sexual violence and domestic violence, on which my noble friend Lady Hamwee concentrated. I am happy to see that judges and barristers were included in those proposals because such professionals are often caught up in outdated ideas and modes of thought that they regret when they are trained to identify them; they are willing to undertake training.

I come finally to the question of the duty to notify the police of possible victims of child abuse, on which my noble friend Lady Benjamin concentrated. A consultation in 2016 put out proposals for a mandatory duty to report, but in the light of the responses the Government's position was to refuse to implement it. It was argued that the case had not been made and the suggestion was that reporting could create unnecessary burdens, divert attention from the most serious cases, hamper professional judgment and potentially jeopardise the vital relationships between social workers and vulnerable families in their care. That was apparently based on a numerical majority of consultation responses against mandatory reporting. But I do not accept, without further argument, that that is the case; I accept the case for mandatory reporting. I invite the Government to explain what considerations there were, both logical and intellectual, that persuaded them to reject their earlier position. My noble friend Lady Benjamin, with her record of campaigning for the protection of children and against their abuse, made a powerful case on that point.

In summary, I support the case for statutory rights. I suggest, as did the right reverend Prelate, that the case is unanswerable. The overriding question that I have for the Minister is why, in those circumstances, are the Government ducking it?

1.46 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I thank the noble Baroness, Lady Brinton, and congratulate her on introducing this Bill. It has been a long time coming, but it is useful and worthy. I was sorry to learn—I had no idea—about the abuse that the noble Baroness has suffered that she told House about today. We all condemn that abuse. It is dreadful. But of course social media has made that even worse. This abuse is so prevalent in life now and I condemn it all. I am sure that we have all seen the disgusting abuse suffered by many Members of the other place, and in particular women Members of the other place—threats to be killed, raped or assaulted. It is disgusting and totally unacceptable and the perpetrators should be brought to justice. We have seen the disgusting abuse suffered by Diane Abbott, Stella Creasy, Jess Phillips, Heidi Allen, Anna Soubry, Luciana Berger and many other Members of the other place. It is completely disgraceful and out of order and firm action must be taken.

It is not only people in public life: it also affects people who are not in the public eye. They are not affected by this Bill, but the whole issue of how people feel needs to be dealt with by the Government. Clearly, the internet companies have failed to do this properly and the Government need to act to deal with this dreadful situation.

The Bill contains many excellent provisions, which, if they became law, would make a positive difference for the victims of crime. I agree with the noble Lord, Lord Marks of Henley-on-Thames, that the noble Baroness introduced the Bill very well and comprehensively and set out a compelling case that I hope the Government will listen to carefully.

However, it is disappointing that these measures are unlikely to make further progress in their passage through Parliament. It is tragic when we think that, as most noble Lords would agree, we have not been exactly busy in this House with legislation in recent

times. It is tragic when there is a really good piece of legislation in front of us here and it will probably not go any further because there is no time. The new Prime Minister should take a long hard look and we must move on from the situation we find ourselves in when good legislation cannot move forward and we spend a lot of our time discussing Motions that this House notes. That is regrettable. We will have the new Prime Minister next week and there is talk of a Queen's Speech and other matters and I hope that we can make some progress.

The noble Baroness, Lady Brinton, also outlined two cases that would have been protected had these measures been in place, and that is very important. I hope when we get the Queen's Speech that measures such as this will be included. These are the things that Parliament needs to be doing urgently and we are not doing them at the present time. If we do not, but we get a criminal justice Bill, and the noble Baroness moves amendments on these measures and they are in scope, I can assure her of the support of the Labour Benches; we will get those things through the House.

The right reverend Prelate the Bishop of Rochester and his diocese must be congratulated on the work they do with the white ribbon campaign. It is a great campaign to end male violence against women; I know one or two of the people involved.

On the whole issue of domestic violence, a couple of years ago I went down to Greenwich police station and met the domestic violence unit there. The stuff that goes on is horrific. I was completely shocked when I saw the cases they have to deal with there. It is really important that the Government act, because the stuff I have seen is really horrific.

As the right reverend Prelate said, the Bill is sensible and obvious and should be law. I very much agree with the contribution he made. In recent years, though, we have made progress on the impact and consequences of crime on its victims. We have done some things, but things are far from perfect. I congratulate the noble Baroness, Lady Newlove, and thank her for all the work she did as the Victims' Commissioner. I welcome Dame Vera Baird and the work she will do as the new Victims' Commissioner. Getting the definition of victims of crime is important, as is the change to the victims' code of practice proposed in this Bill.

I like the sections of the Bill about economic support and compensation orders; they have considerable merit. Expanding the role of the Parliamentary Ombudsman is really important. The requirement to get those reports to both Houses enables Members here to be aware, raise those issues in the House and, as necessary, propose legislation. That is really good.

The area victims' plan in all police areas is a good idea, and the Victims' Commissioner assessing the adequacy of the plans and ensuring that they meet an acceptable standard is something we should all support. There is clearly an important role for police and crime commissioners as well.

I strongly support the measures in the Bill to place a duty to notify the police of possible victims of child sexual abuse. We have seen in recent years that this is a horrific, hidden crime, and we must do everything we can to ensure that the perpetrators are brought to justice and the victims protected. For too long we have seen too many failures in great institutions in our country that have clearly failed to protect vulnerable young children. That is shameful, disgraceful and disgusting. It is important to place a duty that people who suspect this abuse need to report it to the police so that it can be properly investigated and, where appropriate, the perpetrators brought to justice and the victims saved. Children have the right to protection, to be a child and to have a life free from abuse. We have to make sure that this duty is brought in; nothing less will do.

I very much agree with the noble Baroness, Lady Benjamin, that much more needs to be done to prevent these crimes in the first place. In all that we deal with, prevention is of course always much better than cure. I hope that when the Independent Inquiry into Child Sexual Abuse reports, its recommendations will be taken up quickly by the Government.

In conclusion, I again thank the noble Baroness, Lady Brinton, for introducing the Bill, pay tribute to her for the work she does in this House for victims, and assure her that we will support her in what she does. Perhaps we will all be surprised when the new Prime Minister announces that he will quickly take up measures in both the Bills we have been involved with in this House today.

1.53 pm

Baroness Barran (Con): My Lords, I echo other noble Lords in thanking the noble Baroness, Lady Brinton, for her continued support to bring about improvements in the lives of victims of crime. Of course, the Government support the intention behind this Bill. I also thank her for sharing her personal experience of stalking and harassment and for the powerful case she made for change, including the other examples she gave. I agree with the noble Lord, Lord Marks, that while it may be technically true that a victim is only a witness, on a human level, it does not feel like being only a witness.

I pay tribute to my noble friend Lady Newlove for all her work, and I welcome the new Victims' Commissioner to her place and pay tribute to the many victims and their families who have campaigned so hard for the rights of victims, not least the noble Baroness, Lady Lawrence, who I think I met at the meeting with Keir Starmer a few years ago which was mentioned by the noble Baroness, Lady Brinton.

While we support the intention of the Bill, it is right to recognise that much has happened since the noble Baroness, Lady Brinton, introduced it into your Lordships' House, so I will update the House on developments on our victims strategy and give our analysis of the main provisions of the Bill, including where they do and do not align to the Government's approach to supporting victims.

We made a clear statement of our intention by publishing the *Victims Strategy* in September 2018. It aims to improve support at every stage of the justice process and consolidates the progress we have already made. Our commitments in the strategy include consulting on a revised victims' code as well as on the detail of victim-focused legislation—a victims' law. As the noble Baroness, Lady Brinton, noted, earlier this week we launched a consultation on our initial proposals for

[Baroness Barran]
revising the code aimed at addressing its complexity and accessibility and updating victims' rights so that they reflect the changing nature of crime, which was very powerfully explained by the noble Baroness, Lady Benjamin, and the changing needs of victims.

We believe that the themes within the consultation share many points in common with those raised by both the outgoing and the new Victims' Commissioner. The new Victims' Commissioner has been consistent over many years in her work and campaigning for victims. Those themes were also raised by many noble Lords in the debate today and include the need to strengthen information and communication, raise awareness of victims' rights and ensure that victims have a voice through the victim personal statement process, as well as to ensure greater accountability. We intend to hold a second consultation later this year, which will include a revised version of the code and detail specific rights. We believe it is right to focus on updating rights first and then to take forward our commitment to consult on a victims' law which will include strengthening the powers of the Victims' Commissioner and considering how government and other agencies can be better held to account, which the noble Baroness, Lady Brinton, eloquently highlighted as being vital.

While recognising the motivation for this Bill and what it seeks to achieve, we believe that some clauses are not needed in light of our updated plans. For instance, we believe that Clause 2 would unnecessarily narrow the definition of a victim as prescribed within the code by constraining agencies' discretion to include guardians, carers, aunts and uncles as victims for the purpose of receiving services. Clause 5 is unnecessary because police and crime commissioners are already under a statutory duty to produce police and crime plans for their areas. While there is not a statutory duty to include victims of crime, we know that PCCs make a real difference by taking forward innovative work, as highlighted in the recent publication by the Association of Police and Crime Commissioners, *Putting Victims First in Focus*, to ensure that crime is tackled and victims are properly supported. The work that we are undertaking will deliver significant improvements for victims and, we believe, covers much of what is included in the following clauses in the Bill.

Clause 3 seeks to make changes to the code. As mentioned, we are currently consulting on revising the code and strengthening rights. I encourage all your Lordships to contact the victims with whom they work, victims' groups and other stakeholders to ask them to share their views with us as part of this consultation. We welcome the widest possible input.

Clause 4 raises the issue of victims having redress where they do not receive their rights under the code. We fully recognise the importance of service providers complying with their duties. That is why, as part of the strategy, we have introduced a framework which seeks to hold agencies to account for compliance at a local level through PCCs and criminal justice partnerships. As part of our ongoing work and taking into account the views of stakeholders, we will also consider strengthening the complaints process for victims—a matter raised by a number of noble Lords.

In respect of Clause 6, we do not believe that the role of the Victims' Commissioner should be expanded as prescribed in the Bill at this time. That is because we do not want to pre-empt our victims' law consultation, nor miss the opportunity to involve the current Victims' Commissioner, Dame Vera Baird QC, in the process.

We are also unclear about how a number of clauses in the Bill would work in practice and about the potential wider implications that they might have for the independence of the police, CPS and the judiciary—in particular, Clause 7 on the right to review a decision not to prosecute. Victims are already entitled to ask for a review of a qualifying decision not to prosecute by the police or the CPS. Both already have schemes in place that are consistent with domestic case law and, as such, we do not believe that the changes suggested are warranted.

Clause 8 covers homicide reviews. Since 2017, the national standards of support, agreed between Justice After Acquittal, the police and the CPS—the tireless work of Ann Roberts and Carole Longe of Justice After Acquittal helped establish the standards—have given bereaved families in murder cases the opportunity to discuss issues arising from the trial process and any future investigation and/or prosecution of the case. Given the existence of these standards, we do not believe that legislation in this area is necessary.

Clause 9 covers training for those who work with or otherwise have contact with victims within the criminal justice system. This is a matter that we take very seriously, but effective training is only part of the issue, as the noble Baroness, Lady Hamwee, noted in relation to the importance of trauma-informed work and the noble Lord, Lord Marks, noted in his argument that legal rights lead culture change. Continued culture change in attitudes and behaviours towards victims is essential. We would rather strengthen the current framework of local accountability for the provision of training than provide for it in statute, which has potential implications for the organisations involved.

Ground rules hearings are already used routinely across courts to make directions for the fair treatment and participation of vulnerable defendants and vulnerable witnesses. Clause 10, as drafted, would require these hearings to be held in criminal cases where they might not be necessary and might therefore potentially have unwarranted resource implications for the organisations involved.

The right reverend Prelate the Bishop of Rochester and the noble Baroness, Lady Benjamin, focused on Clause 11, which deals with the mandatory reporting of child sexual abuse. She gave some deeply troubling examples and shared her difficult expertise, if I can phrase it like that, about issues of online sexual abuse. Obviously, online abuse goes a lot wider than children and, as she is aware, the Government aim to address some of these issues through the online harms White Paper.

In respect of Clause 11, the Government are fully committed to protecting children. While there is no specific statutory duty in England, statutory guidance is clear that those who work with children and families should immediately report instances where they think a child may have been, or is likely to be, abused or neglected. As the noble Lord, Lord Marks, raised,

the Government consulted on mandatory reporting during the passage of the Serious Crime Act 2015. A quarter of respondents favoured a duty to act, 12% favoured the introduction of mandatory reporting, and 63% felt that the Government should continue to implement the child protection reforms set out in *Putting Children First* in 2016 before considering further legislative change. I am happy to write to the noble Lord about the more detailed reasons—he talked about logic and intellect—behind that important decision. However, I stress that the decision not to introduce mandatory reporting in no way diminishes the Government's commitment to address perhaps one of the most terrible of crimes.

The noble Baroness, Lady Benjamin, raised the criminal injuries compensation scheme; she may be aware that the Government are planning to consult on reforms to the scheme this year. The noble Lord, Lord Marks, mentioned compliance with the EU victims directive. The Government's position is that we have completely complied with the requirements of the directive, but his question perhaps highlights something fundamental to all legislation, including the Bill: there can be a gap between policy and practice on the ground. I am sure all noble Lords will share my desire to close that gap.

In closing, I have outlined the consultation we are currently undertaking on revising the code and our plans to hold a consultation on a victims' law. I hope I have made clear that we are taking forward a range of initiatives to make sure that victims of crime receive the support they need to speak up with the certainty that they will be understood and protected and, above all, that this will happen regardless of their circumstances or background. They should be treated with the dignity and respect to which several noble Lords referred. I hope the noble Baroness, Lady Brinton, will accept that the measures being progressed, albeit slightly different in approach and possibly not at the pace she would desire, will achieve the important wider aims that she seeks through her Bill.

2.08 pm

Baroness Brinton: My Lords, I thank the Minister and all noble Lords who have spoken during this Second Reading debate. Time is not particularly on our side so I will be brief. I am very grateful for the various focuses on different parts of the Bill, in particular on Clause 12 and the child sexual abuse mandatory reporting issue. I am particularly grateful to the right reverend Prelate for his comments, which have been extremely helpful. Obviously, this Bill was published over two years ago, before the Independent Inquiry into Child Sex Abuse really got under way. The issues of mandatory reporting and safeguarding going wider than the statutory agencies has become much more understood. Regarding the focus of the noble Baroness, Lady Benjamin, we need to see what the independent inquiry recommends in due course. I believe the evidence coming before it, some of which I have been watching in detail, makes it clear that we must move forward to mandatory reporting, but clearly the details will need to be resolved at a later date.

More generally, I am grateful to the Minister for trying to steer the difficult course of having published a consultation two days ago that she knows does not meet the requirements of the Bill but once again offering me some low-hanging fruit just out of sight. I look forward to seeing speedier progress than we have had over the last three years on these issues.

The key point made by many speakers today is that every single day's delay means that another victim is facing an uncertain future. The Minister is reluctant to mandate training. I will pick one very brief example. It is the case of a woman who was attacked by her former partner, who threw her child away. She hit a wall and was quite badly hurt, then he threw her on to a bed and raped her. The senior investigating officer insisted on her making three separate statements because three separate crimes had been committed. It is clear under current guidance that the most senior of those crimes is the one under which a statement is made and used to reflect the others. Without mandatory training, without responsibility for those in the criminal justice system, there is no guarantee that people will not go rogue. Unfortunately, in that particular case, agony was put on the woman beyond the outrageous behaviour that she had encountered.

That is why I look forward to the Bill moving on. I agree with the noble Lord, Lord Kennedy, that the chances of that happening in the near future are probably quite slim but we have had support for this in your Lordships' House before. I will at least be looking for a Bill to make amendments to in future. If this Bill falls because this Parliament comes to an end then I will look forward to laying it again, and I know I have support from colleagues in the other place as well. This Bill needs to become law.

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

House adjourned at 2.12 pm.

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