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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Friday 8 September 2017

10 am

Prayers—read by the Lord Bishop of Southwark.

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

10.05 am

Moved by **Lord Grocott**

That the Bill be now read a second time.

Lord Grocott (Lab): My Lords, just a year ago I introduced a Bill with exactly the same objective as the one I am proposing today. Regrettably, despite very strong support from all parts of the House, the Bill was blocked in Committee by a small number of Peers. My motive in reintroducing the Bill is unchanged: the by-election system, which provides for the continuation—effectively in perpetuity—of a block of 90 hereditary Peers is absurd and indefensible. In the 12 months since the last Bill, there have been significant developments that make the case for scrapping the by-elections even more compelling.

Let us remind ourselves briefly how the system works. There are 90 elected places. If a vacancy occurs among the 15 hereditary Peers who were originally officeholders—that is, Deputy Speakers—the electorate consist of all 803 Members of the House. The remaining 75 hereditaries are distributed among three party groups and the Cross-Benchers. The electorate for each by-election then consist of the hereditary Peers who are members of the group where the vacancy has arisen. As a reminder, the numbers are as follows: for a Conservative vacancy, 48 hereditary Peers can vote; for a Cross-Bencher, it is 30; for a Lib Dem, three; and for Labour, three.

Try explaining that nonsense to members of the public as a mechanism for recruiting people to serve in Parliament; I guarantee their jaws will hit the floor. It makes the d'Hondt system look simple, and given that the system is so manifestly absurd, is it any wonder that it results in the most absurd by-elections? I cannot resist repeating the example I gave last year of a Lib Dem by-election following the death of Eric Lubbock—the first person, I might add, who raised the issue of trying to scrap these by-elections. It was held in April 2016, when the number of candidates was 11 and the electorate was three. By way of comparison, before the Great Reform Act 1832, even Old Sarum had an electorate of seven. In comparison with the Lib Dem by-election, that is a metropolis.

I can hear Members asking: “But your Bill failed last year, so why waste parliamentary time again?”

Noble Lords: Hear, hear!

Lord Grocott: Well, I will give the answer—and I hope that Members will give their answers during their speeches as well. Even in the 12 months since the last Bill, there have been a number of developments, all of

which make the case for ending the by-elections stronger, and the case for retaining them inexorably weaker—so much so that any neutral observer would surely conclude that it is not so much a matter of whether the by-elections will cease, but when.

The debates on the Bill last year, and the discussions that surrounded them, have shown beyond doubt that there is overwhelming support in this House for the reform that I am proposing. Support has come from Labour, Liberal Democrats, Conservatives and Cross-Benchers—including a very large number of hereditaries themselves, who have come to me and, understandably, find it difficult to speak on this subject. I would love to know what the actual numbers were among the hereditaries of those in favour and those against the change. When the opinion of the House was tested in Committee—of course, on a Friday, when Divisions are rare—the first vote on the principle of the Bill resulted in a defeat for its opponents by a majority of 93. There can be no reasonable doubt that the number of Members of this House who are resolutely opposed to this Bill is minuscule.

The weakness of the Bill's opponents could not be better illustrated than by the tactics they employed in Committee. In the three months last year between Second Reading and Committee stage, just six amendments were tabled. Then, lo and behold, on the day before the debate, inspiration and creativity overwhelmed two Members of this House: the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness, tabled 50 amendments overnight. My Lords, we all know what that is about: a tiny number of Members knowing they were in a hopeless minority in the House and knowing that they could not win by votes so they had better win by tricks. Fifty overnight amendments—if you are going to wreck a Bill, do it a bit more subtly.

This time, my appeal to anyone who is thinking of trying these tactics is to please think again. They do neither noble Lords' nor the House's reputation any good. They should win by the arguments and in the Division Lobbies, not by tricks. It is the opinion of the House that should prevail, not the opinion of one or two of its Members.

I also say to anyone who is thinking of wrecking the Bill this time to please think of the adverse publicity for our House that that will attract. I will give three examples from the media since then:

“Hereditary Peers Set To Ambush Bill Aimed At Scrapping Their 'Laughable' By-Elections”.

Another headline is:

“‘An embarrassment to our politics!’ Fury as Lords prepare to elect new hereditary peer”.

Finally, we have:

“Tory aristocrat joins Parliament for life by winning 143 votes in a ‘Blackadder’ by-election”.

I am the last person on the planet to argue that we should change a good policy because of some bad newspaper headlines, but it is noticeable that there is absolutely nobody, apart from a handful of people in this House, who is prepared to defend these by-elections. The argument for their continuation is friendless, and surely that is because simply there are no such good arguments.

[LORD GROCOTT]

I challenge anyone today who is thinking of opposing my Bill to not give us a history lesson. Instead, come clean and explain to us, in 2017, what added value the by-elections provide to our parliamentary system. Tell us precisely why we continue to replace the 90 hereditary Peers. Tell us what the distinctive characteristics of the 198 people on the Register of Hereditary Peers are that mean that we need to provide them with a reserved place in our legislature? Once elected, what is special about their parliamentary talents that distinguishes them from other Members of the House? To make it personal, what is the justification for the heir of a hereditary Peer in this House having a one in 200 chance of becoming a member of the legislature while for everyone else in the country, that chance is something like one in 90,000? Tell us, here and now, 18 years after the House of Lords Act 1999, what it is about these by-elections that enhances and enriches our parliamentary democracy. If they cannot answer these questions, surely it is time to call it a day and stop playing King Canute.

There have been significant developments in the last 12 months that have strengthened the case for my Bill. Among them has been the evidence provided by yet more by-elections. For those of us in favour of scrapping them, the by-elections are the gift that keeps on giving. There have been two such elections this year. The first, on 21 March, was for a hereditary Peer to be elected by the whole House. The second, on 18 July, was for a Cross-Bench Peer, when only hereditary Cross-Benchers could vote. It is the first of these two by-elections that provides the richest vein for satire. This, remember, was an election for a place in our Parliament—or rather, a parliamentary by-election. The figure for the electorate was 803 and the number of votes cast was 436, meaning that the turnout was 43%. By way of comparison, it is worth noting that in the general election in June, the lowest turnout in all 650 constituencies was Glasgow North East, with 53%. The propensity to vote in a House of Lords by-election, where voters need only walk down the corridor from their offices and put a ballot paper in a box in the Committee room, is 10% lower than the parliamentary constituency with the lowest turnout. That, to me, provides pretty clear evidence that the majority of Members of this House feel no great attachment to the practice of re-electing hereditary Peers.

Then there was the little matter of the ballot itself. No fewer than 27 candidates put themselves forward, 19 of whom got fewer than 10 votes. Under the alternative vote system there were 25—yes, 25—rounds of balloting before the winner was declared. What is more, the same person led in all 25 ballots, so if the voting system had been first past the post, the same result would have been achieved with a lot less trouble. I just thought I would point that out. There was a 43% turnout, 27 candidates, 25 ballots, and only hereditaries could stand. In 1999 when the original Act was passed, surely no one could have intended that 18 years later we would still have that system of recruiting people to our Parliament, and with no prospect of an end in sight.

The other matter is the very important Motion that this House passed last year, moving that,

“this House believes that its size should be reduced, and methods should be explored by which this could be achieved.”

As a result of that debate, the Lord Speaker established a committee under the noble Lord, Lord Burns, to consider the issue. The committee is due to report in October. What has that to do, you may well ask, with my Bill to end the by-elections? The answer is that if we are to reduce the size of the Lords to around 600 Members so that it is smaller than the Commons, surely we will have to amend the legislation that preserves in aspic 90 places for hereditary Peers. If we reduce the size of this House without changing the law on the hereditary bloc, the proportion of hereditaries would rise from 11% to 15%. For us to embark on an important modernising measure to reduce our size with the result of significantly increasing the proportion of hereditaries really would be a case of Alice in Wonderland.

I should point out that we are not the only ones looking for ways to reduce our size and of the way in which that might involve the hereditaries. Since I introduced my Bill last year, the size of the Lords and the issue of the hereditary Peers have been discussed several times in the Commons, in a Select Committee inquiry, a Private Members' Bill, a Westminster Hall debate and a 10-minute rule Bill. Most recently, on Wednesday this week, the Commons gave the First Reading to a Bill introduced by my right honourable friend David Hanson, which is scheduled for Second Reading in April. The Bill would end the right of all hereditaries to sit in the Lords with effect from 31 December 2019. Surely the initiative for sensible reforms of this House should come from this House. With the help of the noble Lord, Lord Steel, and the noble Baroness, Lady Hayman, we have had a number of very good reforms in recent years and I believe that with the Lord Speaker's committee due to report next month, there will be more to come. We should reform ourselves, not wait for someone else to do it for us.

I submit that the case for ending the by-elections has strengthened inexorably since I introduced my Bill 12 months ago. We now have the opportunity in this House to initiate a simple sensible reform that would hurt no one and cost nothing. My Bill was first in the ballot and we are at the start of a two-year parliamentary Session, so parliamentary time should be no obstacle to the passage of a simple two-clause Bill. The case is overwhelming, the time is right, so let us do it. I beg to move.

Viscount Younger of Leckie (Con): My Lords, as a hereditary Peer I have a brief say at the beginning of this debate. We have a long day of three debates and a large number of speakers ahead of us. I remind the House that there is an advisory speaking time of five minutes for this debate and I urge speakers to adhere to that.

10.19 am

Lord Trefgarne (Con): My Lords, as the noble Lord, Lord Grocott, has said, this Bill is very similar, if not identical, to the one he introduced about a year

ago, which eventually did not pass. I am afraid that my position on this Bill is very much the same as it was on the last one, so I apologise if what I now say is something of a repetition of what I said last year.

All this goes back to the House of Lords Act 1999. At that time, your Lordships' House was some 1,200-strong: split roughly half and half between hereditary Peers and life Peers. The Bill of that year, as originally introduced, simply removed all hereditary Peers from your Lordships' House without any qualification. That proposed Bill inevitably met serious opposition in your Lordships' House. Indeed, given the political numbers of that time, doubtless the Opposition could have rejected the Bill outright. However, Lord Weatherill, assisted by Lord Cranborne—now the Marquess of Salisbury—and my noble friend Lord Strathclyde, was able to persuade the then Government that a deal needed to be done, which it was, to the effect that 92 hereditary Peers would remain, topped up as necessary through by-elections until such time as House of Lords reform was complete.

The then Lord Chancellor, the noble and learned Lord, Lord Irvine, declared that agreement to be, “binding in honour on those who gave their assent to it”.—[*Official Report*, 30/3/99; col. 205.]

Your Lordships may ask what was meant by “complete” House of Lords reform. I would say that the Bill introduced back in 2012 by the then coalition Government was indeed just that. Had that Bill reached the statute book, it would have been the end of the 1999 agreement. Unfortunately, that Bill did not pass through the other place and no further attempts of that nature have been made since.

There is now talk of further reform, for example along the lines proposed by my noble friends Lord Cormack and Lord Norton, which I would not necessarily oppose—not in principle, anyway. In addition to these ideas, as the noble Lord, Lord Grocott, has pointed out, the noble Lord, Lord Burns, is now chairing a Speaker's Committee to examine the size of the House, which will surely have a bearing on the matter. I regret that that Committee does not include a hereditary Peer; but the noble Lord was good enough to agree that I and a couple of my hereditary colleagues could give evidence to his Committee, which we did. We look forward to his report.

Lord Howarth of Newport (Lab): My Lords, I have noticed that the most ardent defenders of the status quo are certain noble Lords whose hereditary peerages are of the least antiquity. Is that because they hope that the effluxion of time will clothe them as legislators in some flimsy legitimacy?

Lord Trefgarne: I would have to reflect on that question before I answered it.

My Lords, against the background I have described, I have to say that the Bill of the noble Lord, Lord Grocott, is inappropriate and untimely. I shall do my best to persuade your Lordships accordingly.

10.22 am

Baroness D'Souza (CB): My Lords, I shall begin by making it clear that there is nothing *ad hominem* about this debate. We are extremely fortunate to have

hereditary Peers providing expertise on development, aid, science, transport, the environment, learning, health, defence, law and business, among many other fields. Those Peers also regularly contribute to a host of other issues that come before the House, more often than not with a particular kind of disinterest that makes their contributions all the more valuable.

Today, we are discussing the principle of maintaining the 90 or so hereditary peers in perpetuity by means of elections. We have heard the argument that it was a promise made at the end of the last century that must be honoured until full-scale stage two House of Lords reform takes place. That argument becomes weaker by the day. Over the last decade and more, the House has changed significantly by means of incremental agreements; now, we will possibly be discussing a degree of enforced voluntary retirement to reduce our numbers. We already have the power to debar those convicted of serious criminal offences—changes that would have been unthinkable only a few years ago. The circumstances whereby this odd situation arose are well-known: it was a deal in the interests of getting the main elements of the House of Lords reform Bill passed in 1999. The crucial amendment was tabled by the late, and much lamented, Lord Weatherill, who himself subsequently proposed a Private Member's Bill to end hereditary by-elections.

In 2007, a survey of Peers resulted in 71% agreeing that hereditary by-elections should cease; yet support in the Chamber for the subsequent Constitutional Reform and Governance Bill—CRAG—was notable by its absence, thereby allowing a small group of Peers to talk it out. The view that any legislation now would be a breach of faith, if not contrived, is certainly not put forward with the best interests of the House in mind.

Phasing out hereditary by-elections is never going to be an easy fix, but there are some legitimate concerns, one of which is the potential imbalance between the two main parties, were there to be a cessation of by-elections. Another is that we, as a Chamber, might be spurning unique experience or expertise by abolishing by-elections. Surely there could be a system whereby hereditary Peers wishing to sit in the Lords could apply, like others, to be Members based on criteria such as expertise and willingness to contribute regularly. That system could be weighted to reflect a more equitable balance between the parties.

I know that a hustings system, which helps to select hereditary peers who offer expertise, is now routine, but it is still the operation of a hereditary principle. That is what sits uncomfortably with the image of the House of Lords that most of us wish to promote—that of a spare, experienced and expert body of people, carrying out a vital scrutinising role and thereby acting as a constant check on Government powers.

It is too easy for critics, of whom there are many, to lob brickbats at us: we are unelected; we are too many; we are unrepresentative; we are elitist. It is this latter charge that we could relatively easily dispense with. In the past few years, a number of mechanisms have been employed to derail efforts to confront the hereditary issue. These have included what cannot be called other than filibustering, and of course the continuing heavy

[BARONESS D'SOUZA]

reliance on the commitment made before the passing of the 1999 Act. Perhaps a further factor might be the unwillingness of many in this Chamber to state publicly their belief that the practice of by-elections should now be phased out.

A rational, thought-through argument upholding the hereditary principle has yet, in my view, to be articulated. I therefore hope that this Bill will continue its passage through this House, and an accommodation will be reached that reiterates the value of the hereditary Peers we are fortunate to have but recognises—perhaps sadly—that the principle must now come to an end.

10.27 am

Lord Rennard (LD): My Lords, “It feels like ‘Groundhog Day’,” is an expression that is bound to be used as we debate this issue again. I certainly feel like Bill Murray, who played the weatherman in that film who finds himself inexplicably living the same day over and over again. As the US Congressman Mo Udall once famously commented, “Everything has been said, but not everyone has said it”. I expect to hear the same arguments over and over again, as little has changed since last December, when the House clearly expressed the view of its Members that a Bill such as this should be allowed to make progress and be considered by the House of Commons.

On 9 December last year, the amendment aimed at blocking the progress of the Bill of the noble Lord, Lord Grocott, was defeated in this House, as he said, by 95 votes to 26, with 78% of us voting to make progress on the Bill. My first point is simply that every speech made on this subject, on every side of the debate, references respect for this House. Therefore, the will of the House should now be respected and we must put an end to the practice of holding by-elections to maintain a substantial hereditary presence in the House indefinitely, long after those hereditary Peers chosen to remain in 1999 have passed away.

My second point is that almost every Peer who speaks in this Chamber says that we must also respect the primacy of the House of Commons, yet a small number of Peers seek to block the House of Commons from being allowed even to debate the Bill. The principle of it has already been voted on by the elected House: the principle of ending the by-elections to top up the number of hereditary Peers was voted on by MPs in January 2010, when they supported the measure as it was proposed in the then Constitutional Reform and Governance Bill. They did so overwhelmingly, by 318 votes to 142. The House of Commons has already voted in support of exactly what is in this Bill, by a majority of 176, or by 66% to 34%—again, an overwhelming majority.

Those who are defending the rights of hereditary Peers to vote to elect more hereditary Peers to be a part of this legislature, should perhaps take note of the previous votes of this place and the other place on this very issue. They should allow this Bill to go forward to the Commons, without further filibuster bringing about further damage to the reputation of this House.

Thirdly and finally, I want to challenge those suggesting that a deal seen as a temporary measure, and secured by the votes of both Houses in 1999, must be binding for all time. Some noble Lords regard those votes as being irrevocable, but I believe that those same noble Lords also subscribe to the principle that one Parliament cannot bind any successor Parliament; for if it could, what would be the point of our meeting to consider much of the legislation that we do consider, if an issue has been decided in the previous Parliament, let alone one five Parliaments ago?

Baroness Taylor of Bolton (Lab): I am grateful to the noble Lord for giving way. Does he think it significant, as the previous speaker said, that Lord Weatherill himself tried to change this situation later?

Lord Rennard: I am grateful for that intervention; that is a highly significant point. It is very clear that some of those most involved in the negotiations of 1999 would not favour our being where we are today, and would favour this Bill making progress. The argument that we cannot discuss this issue or make progress, because of an agreement in 1999, is absurd in terms of parliamentary democracy.

What, for example, would be the point of our debating the EU withdrawal Bill, if the European Communities Act 1972 had been binding on successor Parliaments? Would the noble Lords fighting to preserve hereditary by-elections also be arguing that we cannot consider leaving the EU, because of votes by both Houses ratifying a treaty 45 years ago and subsequently confirmed by the 1975 referendum? I suspect they will not make that argument.

Lord Hamilton of Epsom (Con): I thank the noble Lord for giving way. The noble Lord, Lord Rennard, was, like me, appointed to this House on the whim of his party leader. Does he really think that is more legitimate than being elected from a body of hereditary Peers?

Lord Rennard: The noble Lord considers it a whim—I suspect many other noble Lords would disagree. There are at least some criteria by which people who are elected leaders of political parties make appointments. A hundred years after the attempts to reform the House of Lords before the First World War, when it was announced by the then Liberal Government that we would end the hereditary principle to replace it with the popular one, I do not think we can justify continuing to maintain the hereditary presence in any way. It seems that we must let this Bill proceed and we must vote for a minor, but important, reform to improve the credibility of our Parliament.

10.32 am

Lord Foulkes of Cumnock (Lab): My Lords, I rise to support the Bill, moved so ably and wittily by my noble friend Lord Grocott. I want to start by asking a question that many people outside this House are asking: what is the House of Lords for? What is our purpose? Some Members opposite, no doubt including the noble Lord, Lord Trefgarne, think that it is for

wise men—particularly men, reluctantly accepting women now—to advise the Commons, to offer our wisdom, but ultimately accept our impotence. I do not believe that is how the second Chamber of a bicameral system should operate. It is entirely ridiculous. We have no authority whatsoever. We have no legitimacy whatsoever. Ultimately, this place has to be reformed. I am glad that my party—the Labour Party—is in favour of an indirectly elected senate of the nations and regions. On other occasions I will argue the case in favour of that.

Meanwhile, as we acknowledge in the Labour group in the Lords, and indeed other people have acknowledged, there is a need for reforming our existing structure. We have set up a committee to look at the size of the House. I am not sure that it is the wisest thing to have as chair someone who, though a very distinguished former civil servant, is not one of the best attenders of the House, to see how we actually operate. But there we are; we have that.

Meanwhile, one of the things that I hope will be looked at is ending the participation of all the hereditary Peers, as well as ending the by-elections. Those who should legitimately sit here or who now have a place to offer some wisdom or advice in the House could become life Peers, on the clear understanding that they are, like most of us who have been appointed, working Peers. We should see the second Chamber as based on the concept of working Peers.

Working Peers, however, need some assistance. I was sitting in my office the other day in Millbank House, and the telephone rang. Naturally, I answered it, and someone from a large company asked, “Could I speak to Lord Foulkes’s diary secretary?”. I said, “Yes, you are speaking to Lord Foulkes’s diary secretary”, and I fixed myself an appointment. We do not have diary secretaries; most of us do not even have secretaries.

I had some correspondence with the Clerk of the Parliaments recently, just the other day, suggesting that he might second one of the members of his extensive staff to help me. He thought I was joking, but I am not. People outside this House genuinely believe that, like MPs, we have three or four people working for us: doing our research; making our appointments; dealing with correspondence—I said this in my letter—and emails and phone calls; dealing with invitations; arranging our travel; and dealing with our committee papers, for those of us who are active on committees.

Then there is dealing with the ever-increasing demands of Black Rod—who is not my favourite person in this House—for security. We have to inform security about every visit, which I can understand as far as security is concerned, but it does impose additional burdens on us. How do we deal with it? We have absolutely no one to help us. It is ridiculous in the 21st century.

Lord Snape (Lab): I am grateful to my noble friend for giving way. Can he tell the House whether he would like to employ anybody to write his speeches?

Lord Foulkes of Cumnock: I was going to refer to the noble Lord, Lord Snape, as my noble friend, but I am not sure whether I should. The speeches would

certainly be much better than they are at the moment. But he is right. I had two speeches yesterday in Grand Committee—one on St Helena and the other on Brexit—and here I am speaking today. If we want to participate we have to do research, do the work and try and think of—

A noble Lord: Something original?

Lord Foulkes of Cumnock: Something original to say—

A noble Lord: Something witty?

Lord Foulkes of Cumnock: Something witty to say in our speeches. My noble friend Lord Grocott has some help to do that, although most of it is his own work. Turning to the Bill—

Noble Lords: Five minutes!

Lord Foulkes of Cumnock: Previous speakers have gone on even longer. Turning to the Bill, I will just say that I strongly support it. It is a step—just the first step—towards reform. Indeed, it is the first step towards sanity.

10.39 am

Lord Cope of Berkeley (Con): My Lords, the noble Lord has got a whole series of different complaints which are not relevant to this debate off his chest, and I hope he feels better for it, but I hope he will forgive me if I do not follow him exactly in what he had to say.

The noble Lord, Lord Grocott, has based his case, as he often does—I beg your pardon, as he always does I think—on logic. That is his habit, but logic is not the only guide to our constitution. From a practical point of view, I believe that the House has gained from having hereditary Peers and from the system of electing new ones to replace those who pass on. We all know of the valuable service of individual hereditary Peers, some of whom came back of course as life Peers—I see the noble Lord, Lord Berkeley, the holder of one of the most distinguished and longest peerages in the House, who sits here as a life Peer, in his place. All of us could list a whole number of hereditary Peers by name who play a great part in this House—the noble Baroness, Lady D’Souza, emphasised this in her speech. As we have been reminded, and as many of us recall, the system created in 1999 was expected to be temporary. But as we also all know, in the British constitution, when temporary expedients work, they tend to last. This one has lasted, in my view because it has produced Members who make valuable contributions to the House.

But whatever one’s point of view on that, a central point of the argument or the criticism made by the noble Lord, Lord Grocott, and others is that in some cases when a hereditary Peer dies, there are only three electors under Standing Order 10(2). If the House wishes, we can change that without legislation. It is enshrined solely in the House of Lords Standing Orders. The legislation requires there to be by-elections but

[LORD COPE OF BERKELEY]

does not specify the electors for a by-election or some of the other arrangements. That is all in Standing Order 10. We can amend that Standing Order, so that, for example, all vacancies are filled by election under Standing Order 10(3), with the whole House voting instead of just the appropriate hereditary Peers as now for many vacancies—that is, elections conducted under Standing Order 10(2). That would of course increase the electorate substantially. If we were to do that, it would be important that the excellent Carter convention, which preserves the proportions of the different party groups, should continue under such a proposal. That could be included, if we wished, in the changes to the Standing Order to bring this about.

This plan is entirely within the authority of this House and would not involve the Commons, nor the legislative procedures inevitably involved in the wider proposal of the noble Lord, Lord Grocott. It would involve no expenditure of government or other time in the House of Commons and very little in this House—the noble Lord, Lord Grocott, and I have reason to know about the difficulties with parliamentary time and its allocation by government. As I say, this would take very little time in this Session, in which, although it is a long one, parliamentary time is going to be extremely scarce.

10.43 am

The Earl of Caithness (Con): My Lords, I regret the introduction of the Bill, but not as much as I regret the fact that we have not had a further Bill, after the 1999 Bill, to reform this House. I think that the noble Lord, Lord Grocott, and I are on the same sheet of paper when we think what the future of the House should be. We hope that something will happen fairly soon, and it will considerably improve the House.

Lord Grocott: My Lords—

The Earl of Caithness: No, I listened to the noble Lord for 12 minutes and I only have five.

The noble Lord, Lord Grocott, intervened on the Farriers (Registration) Bill on 26 April this year, and your Lordships can find what he said in cols. 1392-93. That was a Bill that I had taken forward, and he was basically asking whether I would afford the same courtesy to this Bill of his, which was due to come forward, as the House was affording to mine by not putting down an amendment. As a result of that intervention I got a number of emails from people asking: “Is this really how the House of Lords works? Is it, ‘You scratch my back and I’ll scratch your back and we’ll get the legislation through?’”. My response was very firm in saying, “No, that is not the way I operate”, and I have to say to the noble Lord, Lord Grocott, that I will be putting down amendments.

I commend the noble Lord for his consistency in bringing forward this Bill and I hope he will commend me too for my consistency, along with that of my noble friend Lord Trefgarne. Whether it be the Steel Bill, the Hayman Bill or the Grocott Bill, we have been utterly consistent in our opposition to this particular proposal. The reason is that the agreement back in

1999 was hugely important. It resulted in a compromise that many people did not like but, as the noble and learned Lord, Lord Irvine Laing, the then Lord Chancellor—whom I am delighted to see in his place again today—said, compromises are not necessarily totally acceptable but they are the practical way forward.

The noble Lord, Lord Rennard, said in his speech that the agreement was binding for all time. That is absolute rubbish; that was not the compromise at all. The compromise was that it was binding in honour for those who voted for it until such time as there was further reform. I believe that the longer the by-elections take place, the more impetus there will be for a major reform of this House. It might take longer than 20 or even 25 years, but if the noble Lord, Lord Grocott, succeeds, we will turn ourselves into a totally appointed Chamber, very keen to defend that position. I think that that is quite wrong for the British constitution in this day and age.

The noble Baroness, Lady D’Souza, whom I also call a friend, said that it was principle. I say to her that it was not; it was a commitment binding in honour, and the noble and learned Lord, Lord Irvine, said so twice in two separate paragraphs. That is the reason for my objection to the Bill and I will continue, as I have done in the past, to oppose it.

10.46 am

Lord Pannick (CB): My Lords, I support the Bill. The House should be very grateful to the noble Lord, Lord Grocott, for pursuing the subject, because these by-elections are doing severe damage to the reputation of this House. We do important work here—scrutinising legislation and in committees—and by and large we do that work very well. However, the credibility of this House is undermined by the farce, and it is a farce, that membership can be won in a by-election in which a handful of electors vote for candidates whose eligibility depends on the accident of birth. The by-elections are quite simply an embarrassment to this House.

We should also bear in mind a point that has not yet been mentioned in this debate. Hereditary peerages, with very limited exceptions, can descend only through the male line. Only one of the hereditary Peers in this House is a woman: my esteemed colleague on the Cross Benches, the noble Countess, Lady Mar. Her title is an exception to the no-women rule, as most Scottish peerages can pass to a daughter if there are no sons. The noble Countess has been one of the 92 since 1999 but no woman has been elected in a by-election since 1999, and there is only one woman on the register of nearly 200 hereditary Peers who have put themselves forward to be considered at future by-elections. I simply cannot understand how it can be consistent with basic principles of equality for this House to maintain by-elections when eligibility as a candidate is effectively excluded for women. This is relevant to the point raised by the noble Lord, Lord Hamilton of Epsom, as to whether by-elections are a less satisfactory means of becoming a Member of this House than appointment by the Prime Minister. Yes, by-elections are less satisfactory for many reasons, but one of them is that the appointment procedure does not effectively exclude women.

The main argument that appears to be advanced in opposition to the Bill by the noble Lord, Lord Trefgarne, and the noble Earl, Lord Caithness, is a historical one. The deal was done in 1999. I agree with the noble Lord, Lord Rennard: there is no other area of law and practice where Parliament feels itself bound by what its predecessor did. Why should the approach adopted by Parliament a generation ago bind this one? This House in 2017 is no more bound by what was decided in 1999 on hereditary Peers than it is by decisions taken in 1999 on the economy or foreign policy.

The only other argument that has been advanced this morning is that advanced by the noble Lord, Lord Cope, who says that hereditary Peers have individually been valuable Members of this House. No doubt they have, but there will be nothing to prevent the leaders of the political parties or indeed the House of Lords Appointments Commission putting forward the names of hereditary Peers for membership of this House if their individual qualities make that appropriate.

The Bill raises a clear issue of principle on which the House will need to take a view. I echo the hope expressed by the noble Lord, Lord Grocott, that noble Lords who do not support the Bill will resist any temptation to table a series of amendments that will unnecessarily take up time and may prevent the Bill making progress. Let us instead have a full debate in Committee on the only issue raised by the Bill: should these by-elections be retained or abolished?

10.51 am

Lord Cormack (Con): My Lords, the noble Lord, Lord Grocott, introduced the Bill with his customary wit and made an extremely good case. It is one with which I find myself in substantial agreement. He was slightly unfair on himself, though, because he did not stress two things that he stressed last year when he introduced a similar Bill. First, he talked about 90; his Bill in no way touches upon the two hereditary offices of state, the Lord Great Chamberlain or the Earl Marshal. He has deliberately excluded them for constitutional reasons, and I think that is very sensible. Secondly, he did not spell out as clearly as he did last year that no single hereditary Peer sitting in your Lordships' House at the moment is threatened by the Bill. This is not an expulsion Bill; it is merely a Bill that says in future we should not have these by-elections. I believe the case he has made, and which has just been echoed persuasively by the noble Lord, Lord Pannick, is one that should carry your Lordships' House.

I believe it is a great pity if two or three, in a House that has a number of 803, seek to block what quite evidently is, or was last year, the will of the majority. I echo those calls that have been made to my noble friends Lord Trefgarne and Lord Caithness: please do not filibuster, particularly at a time when this House has potentially the most important task that it has had for over a century. We are going to have legislation brought before us on which the individual and collective wisdom of this House could have real influence without in any way challenging the acknowledged supremacy of the other place, so do not let us be involved in protracted navel-gazing. If there is a broad consensus for the Bill, let it go through.

I address my next remarks to my noble friend on the Government Front Bench. He may well say at the end of the Bill that the Government have no intention of giving it time. Indeed I suspect that is what he will say, although he will say it extremely elegantly. If the Government will not allow the Bill to pass then it will not pass; the noble Lord, Lord Grocott, knows that as well as we all do. However, there is something that the Government could and should speed forward. This has already been touched on by my noble friend Lord Cope, and it is a point that I myself have made many times in the past. What brings the House most into disrepute in this area is the ludicrous size of the electorate. We had 11 candidates and three voters, and a similar thing would apply if we had a vacancy on the Labour Benches. That makes no sense. It is impossible to defend. No one with an ounce of logic in his brain could begin to defend it. So let us, at least as a short-term measure, turn the whole House into the electorate when there is a vacancy. The noble Lord, Lord Grocott, dealt wittily with the fact that 43% was 10% less than the poll in the lowest polling constituency in the recent general election. Nevertheless, if there are 800 voters and 400 or 500 of them vote, that is infinitely preferable to the farcical spectacle that we have at the moment.

I support the Bill and hope that it will pass but, if it does not, I hope that at the very least the Government will heed what my noble friend Lord Cope and I have said: we must do away with these tiny electorates. Let no one talk about precedents as things that bind for ever. I should love to hear the views of the noble and learned Lord, Lord Irvine of Lairg, on this, and perhaps one day we will get them, but I remember the pledge made by Winston Churchill that he would restore the university seats. He said it; he meant it; he did not do it. It is time to move on.

10.56 am

Lord Brabazon of Tara (Con): My Lords, when I was elected one of the 90 in 1999, I never supposed that I would still be here 18 years later, because we were promised at that time—at least, I think it was a promise—that there would be further stages of reform. There was one attempt by the coalition Government, which failed in the House of Commons. There was no attempt in the following 11 years of the Labour Government to bring any further reform forward. As for the matter of the hereditary by-elections, which is the subject of the Bill, as has been said, they were the result of a deal done among those involved at the time. They do not have to go on for ever, because if we get a second stage of reform they will stop.

I agree with the noble Lord, Lord Grocott, and others who have said that some of the by-elections have been curious, to say the least. At least on our side of the House, we have a reasonable-sized electorate of about 50, and we have elected some very capable people, one of whom is sitting at this moment on the Government Front Bench, but I take the point that my noble friends Lord Cormack and Lord Cope have made that there could be a better way of dealing with the size of the electorate.

[LORD BRABAZON OF TARA]

I am delighted that the Lord Speaker has set up a committee on the size of the House, which has been referred to. The real problem of the House in the public perception is its size. It is worth reminding noble Lords that when the hereditaries were effectively abolished in 1999, the total size of the House was 666. It has now grown to just over 800, and there can be no more stark example of that, I fear, than the Lib Dems, who in 1999 had 54 Members. They now have nearly double that number. In 1999, they had 46 MPs; they now have 12. I hope that the committee, which I think is to report next month, will have something to say about how we deal with the size of the House. If it makes any recommendations concerning the hereditaries or the hereditary by-elections, we will have to see what it says, but if they are part of a more extensive proposal I would be inclined to go along with whatever is suggested. I do not know whether it will make any recommendations about hereditaries—we will have to see—but the timing of the Bill of the noble Lord, Lord Grocott, is slightly unfortunate given the imminent publication of the report. At least it will be out before we get to the next stage of the Bill and, for what it is worth, I assure the noble Lord that I will not be part of any filibustering attempt, if one is to be made.

11 am

Lord Anderson of Swansea (Lab): My Lords, I only wish that other noble Lords were prepared to give that same assurance. We might then indeed make some progress. As the wags say, this is *déjà vu* all over again. I was surprised when my noble friend Lord Grocott told me earlier that it is only the second time that he has introduced this Bill, as it seems to have recurred a number of times. I looked at what I said last time and, to my surprise, I adopt all I said at that time.

In my view, the case for the Bill is overwhelming. The status quo is indefensible—but of course, that does not stop a handful of noble Lords from opposing it. To choose members of the legislature simply by accident of birth is surely absurd, as absurd as going on to the top deck of an omnibus and choosing men—as the noble Lord, Lord Pannick, said, it is only men. It would perhaps be better to go into the dining room of the Athenaeum and choose just the men who happened to be there. I make no comment on the quality of the existing hereditaries, save to say that I am very impressed by them, but we do not know whether the sons of those same hereditaries will be as competent and as diligent as them.

Lord Hamilton of Epsom: Surely the effect of an election is that you sort out the best candidates.

Lord Anderson of Swansea: I am not wholly sure that that is always the position in the House of Commons, and, given the smallness of the electorate, it is unlikely to be the case in the House of Lords.

It is rumoured that there is in Whitehall an official book—a number of Members of your Lordships' House have been officials—from which civil servants draw when they wish to block an initiative and prevent necessary change. There are many devices set out in

this book. One is, “This is not the appropriate time”. If not now, when? Another is, “This is not the appropriate vehicle”. If not, what is the appropriate vehicle? Then there is, “There should only be a comprehensive package of reform”. How comprehensive is comprehensive? Clearly, only incremental steps are feasible in practice. “We agree in principle, but the drafting is deficient”. Well, accept the principle of the Bill. “A deal was done”. Are we to say that the deal was cast in stone for all time, whatever happens? Surely, the drafters did not imagine that 18 years on, we would still be in the same position.

I look forward eagerly to hearing what particular devices the Minister will draw on in his reply from the same litany of excuses for inaction—perhaps it will be a whole mixture of these—but the best argument which has been used, the only one of any substance, is that a committee is sitting whose recommendations we await. I hope that the remit of the Lord Speaker's committee is sufficiently wide to include the hereditaries. However, if it is not, as my noble friend Lord Grocott pointed out, the 90 hereditary Members who are here would increase their numbers proportionally, and therefore the whole position would be even more anomalous. Perhaps we can be enlightened on that.

We know that the Lord Speaker's committee will make its recommendation next month, but generally we do not know what the Government's position is on the Bill, save that almost certainly they will oppose it. We know we have had the threat that a certain very limited number of Members will move amendments and presumably filibuster with the object of killing the Bill, and that should not be so. We go around the world trying to teach colleagues in other countries about democracy. Surely, this is an area in which we are mightily deficient, and we should change it as soon as practicable. I support the Bill.

11.05 am

Lord Elton (Con): My Lords, I speak as an elected hereditary Peer. I was elected not by my party but by the whole House. In fact, the election in which I stood was won by the noble Countess, Lady Mar, and Lord Strabolgi and I tied for second place. Therefore, I regard myself as having some species of such electoral legitimacy as is available to people in my position. I accept that no Parliament can bind its successor; all types of Members of this House should agree with that. At least Members who have previously been Members of the other place will agree that elected people should be bound in honour to keep to what they were elected on, and to stick to their manifesto—a controversial point.

One thing that has not been mentioned in this whole debate is the really big issue between this House and the other House. The increasingly important feature of our constitution is that the second Chamber, whatever it is, must be independent of the other and in a position to criticise, warn and to a certain extent delay. That is our function, and our power to exercise it has been eroded over time to the extent that, when we had the great dispute over statutory instruments in the last Parliament, the noble Lord, Lord Strathclyde, argued that it was the other place that must control things

without interference from this place. I very much regret that, although I warned him before the Division that he was going counter to the Cunningham committee's catalogue of the conventions between the two Houses, I slavishly voted with him—but thereafter I was adamant.

Why did I say that I would stay here? I said that I would stay to ensure that, whatever the final decision made about reforming this House, it would not reduce beyond the point to which it already has been reduced the power of this House vis-a-vis the other place. So, while I do not regard myself as statutorily or conventionally bound by the decision of this House in an earlier iteration, I regard myself as bound by my undertaking not only to your Lordships who are still here—I do not mean still alive—but to all those who, voluntarily and with some complaint, gave up their rights as hereditary Peers so that this country might modernise itself. The duty of persons such as myself is to assist in getting root-and-branch reform of any root or branch of this House that needs changing.

It has been suggested that my noble friend Lord Young may say that this Bill is not the right vehicle for reform, and I entirely agree—but I think that it could be changed, which would be quicker than bringing in a new Bill. If it cannot be, I am entirely on the side of my noble friends Lord Hamilton and Lord Cope, but, if it can be, I think it should be. Five desiderata were agreed by the Cormack/Norton group, the Campaign for an Effective Second Chamber, when last year it brought out a paper. I shall not recite them now because I shall run over my five minutes, and I have also run out of voice. But if the noble Lord's Bill were to have them incorporated, I would support it. If he does not feel able to do that, I have a Bill in the pipeline and I shall be happy to offer it to your Lordships as a means of getting some really workable and desirable reforms to take us out of the ridiculous area we are now in.

11.11 am

Baroness Berridge (Con): My Lords, I, too, begin by applauding the hard work of hereditary Peers in this House, such as my noble friend Lord Howe, which is exemplary. This is the first time I have spoken on this issue, but the current system undermines the credibility of all the hard work which your Lordships undertake on behalf of the British public.

In January this year, Her Majesty's Government outlined their argument in response to a Question from the noble Lord, Lord Grocott, that suspending these by-elections would result in a change to a wholly appointed House, but I struggle to understand how that argument can be raised against this reform. Can Her Majesty's Government really be saying that the public wish the hereditary principle to be part of the selection criteria for their representatives in the second Chamber and would want it retained—otherwise the evil of a wholly appointed House would befall us?

Your Lordships' House and Her Majesty's Government are here to serve the public, and I have seen nothing to suggest that Her Majesty's Government have consulted the public or have their views or interests as the basis for at best their technical opposition to this Bill. In fact, I think that the reverse is true: there is a very

strong anti-establishment and anti-elite sense in sections of the UK public, and having part of the legislature selected by birth or entitlement in its literal sense is an anathema in the 21st century. Can my noble friend prove that the public think otherwise? If the Government are not prepared to consult, they should drop their opposition to the Bill.

However, more important to me than the objection to the selection criteria for a role in a 21st century legislature is the gender and racial discrimination that the current system of selection embodies. I join wholeheartedly with the comments of the noble Lord, Lord Pannick, in relation to gender discrimination. Although peerages are exempt from the equalities legislation, for the mother of Parliaments to have a gender discriminatory element in its selection is unjustifiable. As a Member recently selected for the CPA UK executive, I believe that it is contradictory to the millions of pounds of UK taxpayers' money spent through the CPA, the IPU, the Westminster Foundation for Democracy, DfID and the FCO on parliamentary capacity building, when I have to hide sections of the selection criteria from visiting delegations as I am so embarrassed and would not want them to follow this example.

For the record, I do not vote in these elections when no woman is on the ballot paper; should a woman be on the ballot paper, I will consider all candidates on merit.

Further, and perhaps more controversially, no information is held by the Journal Office on the racial profile of this closed group of potential Members of your Lordships' House. I rely merely on the news report from 2013 of the future first black Marchioness of Bath to say that the group is currently entirely white.

I recognise that this discrimination is *de facto*—in fact—not *de jure*. There is no evidence that there is any racial discriminatory element in any letters patent. However, *de facto* it will take at least 50 years to change both the electors and the candidates for election to your Lordships' House. Imagine the party groups, the Appointments Commission, or the Bishops recruiting on such a basis. If Her Majesty's Government are seriously saying to this House that moving to a fully appointed House is such a radical reform which they cannot support or give time to, and that this is more important than selecting from a whites-only group, then I am speechless.

I conclude with a disclaimer. I disagree with the noble Lord Grocott. The retention of this system is not just about a handful of Members of your Lordships' House who may attempt to filibuster—though I would like to be put to the test on outlasting them—but the responsibility of Her Majesty's Government who, in our constitutional system, control the legislative agenda. Peers overwhelmingly do not want it, MPs would not support it, and so the gender and racially biased system remains at the behest of Her Majesty's Government. Why a Government led by a Prime Minister who cares passionately about racial and gender injustice lacks the political will to sort this out is hard to explain.

[BARONESS BERRIDGE]

Sadly, it took 50 years from when women could become MPs for them to enter this House as life Peers, in 1958, and it was not until 1963 that female hereditary Peers could be admitted. The Government found legislative time for a voluntary retirement age, for expulsion of criminal Peers, and for women Bishops—I am happy to see one in her place—to jump the queue. Next year, we celebrate a century of women in Parliament as MPs; surely Her Majesty's Government will have acted by then.

11.16 am

The Earl of Erroll (CB): My Lords, I am in favour of reform of the methods of getting into the House of Lords, but this Bill will ensure that we have an appointed House of Lords within a generation or shortly after. This has not been the clearly expressed intention of the House of Commons whenever it has voted on this issue. That is my major stumbling block because I, like many others, think that lawmakers must have democratic legitimacy and therefore be elected. This is not satisfied by an appointed House.

The trouble is that there are Members of both Houses who think that the other place might lose its primacy if we end up having an elected, or majority elected, House over here. That is why they want to see an appointed House, even if it is via the back door as is happening here. The composition of an appointed Chamber will inevitably be heavily influenced by the Civil Service, which will end up drawing up the guidance for the appointments body and, probably, determining the membership of it.

The next challenge is that the Prime Minister is actually the head of the executive branch—the Civil Service. He or she may also sit in the House of Commons as the leader of the majority party, but these two roles should not be confused. It is democratically indefensible that this person should be able to exert immense influence on the membership of one of the Chambers of the legislature whose purpose is to pass laws which are there to control their own Executive. That is not a good idea in any way at all. If we want greater democratic authority, and we should, we should first remove the Prime Minister's powers of appointment via the honours system and then we can see how a replacement appointments system works in real life. If we like it, then the hereditary Peers could retire.

I had thought that most Members of both Houses of Parliament would be believers in a two-chamber democracy with checks and balances, but I now realise that a lot of people are either Commons supremacists or they think that central state control is not a problem. However, that is not why we are in Parliament.

I agree that the by-elections process is flawed, and we should consider the thoughtful ideas put forward by the noble Lord, Lord Cope, for reform of the Standing Orders. We could also alter the balance of places between the parties based, say, on the total number of votes cast for each party at the last election, while preserving the 20% of independents through the Appointments Commission. All of this would be possible without primary legislation.

By the way, the noble Lord, Lord Pannick, might be amused that I am sitting here because of my mother who sat before me: I am a Scottish Peer. The Queen sits on that Throne as Queen: the royals can also do this because of James VI—I think you call him James I.

Our small proportion of hereditary Peers was put here with a purpose: to ensure further democratic—I remember those words being used—reform of the House of Lords. It is my duty to try and see that. The fact that it is taking a long time for the other place to come up with an acceptable reform is not our fault, but until they do we hereditary Peers must stay or it will not happen. I will vote for a satisfactory, sensible, sane solution which encapsulates democracy at its core. This Bill is not that and is a dangerous step in the wrong direction.

11.20 am

Lord Mancroft (Con): My Lords, there are two main premises to this Bill. The first is that the hereditary Peers' by-election is a ludicrous and, to some, embarrassing measure that is past its sell-by date, and the second is that this is one small piece of incremental reform that your Lordships can enact without too much fuss, to modernise the House, and show the world how relevant we are. It is true that the by-elections are a bit odd, and may look even odder to outsiders, but they are no more half-baked than some of the other reforms that the Blair Government made such a mess of. There are lots of oddities in our constitution, but it is important not to look at them in isolation, but in the round, as a whole.

The more I look at your Lordships' House in the whole, the more I have to conclude, reluctantly, because I am fond of it as it is, and even fonder of it as it was, that it does not work as well as it could. Sitting through our interminable debates on reform of this House, I have heard so many speakers tell the House and themselves what a very good job we do. Sadly, I am afraid that I do not agree. We do not do a bad job, but it is not as good a job as we could do or used to do. Our general and Back-Bench debates, which were often of such extraordinary quality and depth that they really were listened to around the world, and influenced thinking and policy-making at the other end of the Corridor and beyond, are now all too often pretty turgid stuff. Overlong speakers' lists result in speeches so short that they are almost meaningless or, worse still, a series of individual statements, bearing little relation to previous speeches, and often followed by a ministerial wind-up on what often appears to be a completely different subject.

Lord Foulkes of Cumnock: Does the noble Lord agree with me that it would be appropriate for Members to pay attention to the *Companion*, which states that speeches should not be read?

Lord Mancroft: My Lords, I am most grateful to the noble Lord for his comments, as I always am. I will pass them on to all noble Lords who may be tempted to read. Sadly, I am so blind I cannot really read any of it at all.

The Earl of Erroll: It is Questions that should not be read, not speeches.

Lord Mancroft: My Lords, I do not wish to get involved in that debate. The one initiated by the noble Lord, Lord Grocott, is much more interesting.

Nowadays we also have unedifying and tetchy Questions—the noble Lord, Lord Foulkes, may know a little bit about that—which seek and elicit little information of any use to anybody, but serve only to allow the usual suspects to grandstand, and junior Ministers to practise repeating the same bland, Civil Service jargon.

More importantly, it is difficult to conclude that we revise legislation as well as we used to, with a never-ending stream of Second Reading speeches in Committee, and too many important matters decided on Report on the Whip, without any reference to constructive input from the Back Benches. This is not, as some suggest and have suggested again today, because the House is too big. As we all know, it is actually rather smaller than it was 50 years ago. It is not a problem of quantity, but rather of quality. That is not directly because the number of hereditary Peers was reduced—by 90% on paper, or 45% in practice—but is a consequence of their departure en bloc. If the existence in the House of 92 Peers who owe their seats to their birth is an anomaly, it is not actually an outrage. I do not find that most people around the country are particularly horrified or embarrassed by it; they do not really think about it very much. What is an outrage—a genuine constitutional outrage—however, is that the Prime Minister who has the majority, or at least the control, of the other House, retains virtually sole power of appointment to it. That is a matter worth shouting about.

The red top newspapers complain that this House is an old people's home. They are not far wrong although they do not seem to have worked out that that is because your Lordships' House has increasingly become a retirement home for Members of another place since the Life Peerages Act was introduced in 1958. In the old days when this House had 1,200 Members, 10% were retired Members of Parliament. Now we have 800 Members, of whom 25% are former Members of Parliament. There is nothing wrong with Members of Parliament individually—I even have a few friends who were MPs—and they are perfectly suited to the House of Commons. However, in your Lordships' House, and in too great a number, they are an absolute menace: first, because, by their very nature, they want to do things and change things when they would be far better employed just paying attention, and, secondly because they think that being a Member of this House is a full-time job, so they turn up all day, every day and think that they ought to speak in every debate even when they have nothing original to say. That is why this House appears to the uneducated outside observer to be full to overflowing.

This House is often—erroneously in my view—referred to as a House of expertise. Of course, it is not. What it was when I first came here was a House of Members with a wide range of experience and independence of mind and attitude. That is why the Whips could not

dominate it as they do the House of Commons. Where you have a group of experienced and independent-minded people, you will inevitably find that they have one or two areas of expertise, and that is what the casual observer saw and often remarked upon.

Members of Parliament by their very nature, after years of subservience to the Whip, are less comfortable with exercising their free will, which is so frowned upon at the other end of the Corridor. Their skill is not in revising legislation because, unfortunately, the House of Commons no longer deals with legislation, but rather in adversarial party politics, which is what we do not do here, or at least used not to. That is why the conduct of business has become so unruly and discourteous, aping the manners of another House.

I accept that MPs find this House more comfortable but it is not about their comfort or indeed my pleasure. It is therefore essential for the health of our system of parliamentary democracy that this House corrects and completes the reform that has led to this disastrous state of affairs. Some argue that incremental reform is better than none at all but it is clear to me that, whether deliberate or accidental, incremental reform of the type that this Bill seeks to achieve would make proper wholesale reform much less likely. That is not in the interests of this House, of Parliament or of the British people. I will therefore oppose this Bill.

11.27 am

Viscount Trenchard (Con): My Lords, as an elected hereditary Peer who voted for the passage of the House of Lords Act 1999, I feel bound to oppose this Bill for the same reasons as put forward by my noble friend Lord Elton and others. I have the highest regard for the noble Lord, Lord Grocott, but regret that he insists on bringing this matter up again at this time. I repeat what I said when we last debated this matter only last December—namely, I do not believe that the public view the presence in this place of 92 Peers by succession as any more offensive than the presence of around 700 Peers who sit here by appointment. Furthermore, I do not think it is correct to argue that the hereditaries who sit in your Lordships' House have any less legitimacy than the life Peers. It is now very competitive to enter this House if you happen to be a hereditary Peer. I think the last by-election on the Deputy Speakers' list worked very well. Noble Lords were able to interview the candidates at a hustings before casting their votes. They certainly do not get the chance to do so in the case of Peers who are appointed to this House.

Furthermore, the hereditaries who sit in your Lordships' House are generally younger than life Peers, at least when they take their seats. They are more geographically representative and I believe that their link with history and tradition adds to their legitimacy. It is a good thing that prime ministerial patronage and nomination by party leaders are not the only way by which people may become Members of your Lordships' House.

Lord Pannick: Following those arguments, does the noble Viscount think that we should have more hereditary Peers?

Viscount Trenchard: My Lords, as I mentioned, I voted for the passage of the House of Lords Act as a reasonable compromise and I believe in incremental reform, but the reform agreed was that 92 hereditaries would remain pending substantive reform of your Lordships' House, which was understood by all to mean the adoption of an elected or partially elected House.

There is one area where I would support changes to the present system of by-elections. I see no reason why Deputy Speaker by-elections are open to all Peers whereas vacancies in the party blocs are chosen only by the surviving hereditaries. I would support the widening of the franchise of all by-elections to include the life Peers in each party bloc. The noble Lord, Lord Grocott, pointed out that it may be seen as absurd to elect a legislator with an electorate of three or four and this change would correct that. It is most surprising that he did not mention the firm and binding agreement reached at the time of the passage of the House of Lords Act in 1999. If your Lordships were to agree to pass this Bill, it would be a very clear breach of that agreement.

In introducing his Bill, the noble Lord, Lord Grocott, said that nobody thought in 1999 that the by-election system would still be operating in 2017. However, nobody thought in 1999 that by 2017 no substantive reform to your Lordships' House would have taken place. The noble Lord said that a small number of Peers had blocked the passage of this measure effectively in perpetuity. That reveals that he thinks that the present system will continue in perpetuity, and that the House as presently constituted will never be replaced by a wholly or partly elected House. He observed that if the membership of your Lordships' House remains at 92 but the total membership is reduced to 600 as a result of the adoption of any recommendations which may be made by the Lord Speaker's commission, it would mean that the proportion of hereditaries entitled to sit would increase from 11.5% to 15%. However, he omitted to observe that immediately after the House of Lords Act 1999, the proportion of hereditary Peers was 13.75%, and that this proportion has progressively declined as the size of your Lordships' House has increased.

If your Lordships' House should adopt a scheme for reducing its size to around 600, which involved the retention of a slate of Peers from which certain Members would be selected to sit and vote, I would be most happy for the 92 to remain as members of the larger slate rather than for all of them to be entitled to sit and vote. I believe that the best way to protect the reputation of the House, especially at this time, would be for the noble Lord to withdraw his Bill. I shall certainly continue to oppose its passage.

11.32 am

Lord Snape: My Lords, I join noble Lords on both sides of the House in congratulating my noble friend on bringing forward this Bill once again. As a personal friend of his for almost 50 years—I hope that I can refer to myself in such terms—I think that he is in grave danger of getting his fingers burned for the second time. Given the speeches we have heard from

the other side of the House, it is apparent that there will be substantial opposition to the Bill, and that that will be conducted in the same deplorable way as it was a year ago.

I congratulate the noble Baroness, Lady Berridge, on her speech. I fear that she will not have endeared herself to most of her colleagues, particularly the hereditaries, but I applaud her courage none the less. I think that there are three female speakers out of 20-plus speakers in this debate, which illustrates the point she sought to make about your Lordships' House.

I marginally commend some of the speeches made by hereditary Peers. All of them have managed to fan my fading embers of class warfare, particularly my old friend the noble Lord, Lord Trefgarne, who does this on a regular basis. They always manage to do that when they speak in your Lordships' House. Listening to them reminds me why I joined the Labour Party all those years ago. We heard a wonderful speech from the noble Lord, Lord Mancroft, who sought to take this House back to not the last century but the one before, I would have thought. It is somewhat unwise, if I might have the temerity to say this to the noble Lord, to refer to speeches in the present-day House of Lords as predetermined, turgid and boring when you are reading every word yourself. One is inclined to think that that is indeed the pot calling the kettle black. As for the noble Viscount, Lord Trenchard, I had the privilege of hearing him speak on this matter on two occasions. Again, to proffer some advice as a former railwayman, he ought to get out more. If he spoke to one or two more people about the composition of this House, they might well edge away at best, and at worst resort to violence. So I urge him to be careful.

We are time-constrained, and much of what I wanted to say has been said. However, I return first to the noble Lord, Lord Trefgarne, who, unaccountably, failed to respond to the rather mischievous intervention from my noble friend Lord Howarth. I referred to the noble Lord, Lord Trefgarne, as an arriviste some time ago, because his hereditary title does not compare in length, for example, to that of the noble Earl, Lord Caithness. I have long since up trying to convince the noble Earl in these debates of the sensible nature of the Bill, but I returned, more in hope than expectation, to the noble Lord, Lord Trefgarne, because he has been here a long time. He plays an important role; I have watched him going around the building on numerous occasions—a word here, an elbow there, nudging and fixing, and he does it extremely well. But it does not entitle him to permanent membership of your Lordships' House. Nor does he justify the preposterous electoral system that has been so rightly condemned on both sides in this debate.

I do not want to write the response of the noble Lord, Lord Young, for him, but we all know what it will be. As my noble friend Lord Anderson indicated, some degree of sympathy will be expressed for the Bill. He will congratulate my noble friend Lord Grocott on his lucid and witty manner in moving it. He will say that the Government are not particularly against it—but of course they will not be for it. Of course, he is a former Chief Whip. I never attained those heights; I was, I must admit, a Whip in the other place—one of

these deplorable characters so rightly condemned by the noble Lord, Lord Mancroft— but both I and he know that the advice which, as Chief Whip, he would have given to any Prime Minister when it came to Lords reform would be, “Don’t touch it with a bargepole”. If the Blair Government, with a majority of whatever it was—300—could get rid of only 92 hereditary Peers, there is not much hope that this lot will reform your Lordships’ House given the current political situation in the other House. I am sure that in his lucid, emollient and always listenable way, the noble Lord, Lord Young, will sympathise with the Bill but will tell us that the Government cannot do it.

As for long-term reform of your Lordships’ House, the first time I heard that discussed was in a Labour Party meeting 50 years ago, and it has not been reformed very much since. I am not a gambler, but I would wager a few pounds that it will not be reformed in any significant sense in the lifetime of any of us who are participating in this debate today. So all speed to the Bill as far as my noble friend is concerned, but I fear that like the man who put the candle out twice, he will get his fingers burnt a second time.

11.38 am

Lord True (Con): My Lords, I am too polite to return the noble Lord’s words to him, but his entertaining speech rather reminded me of why I joined the Conservative Party. I do have a beef, which is that the noble Lord, Lord Grocott, came first in the ballot for Private Members’ Bills and I came 60th out of 61. Therefore I am a little vexed that he has used this privilege of coming out top to rehash last year’s mashed potatoes—the Bill that failed. The garnish is different but the effect is the same. I am a member of the Procedure Committee of your Lordships’ House but I do not speak as a member. However, we might, in looking at the ballot system, see that it does not privilege someone who had a Bill the previous Session to bring it back in the following Session. Perhaps, as we have been told by many noble Lords in this debate, opportunity should be spread a little wider.

The noble Lord Bill has several defects. First, in my judgment—many have spoken on this—it removes the incentive for agreement on final reform that was deliberately left in the statutes of this land in 1999. The 1999 agreement secured the programme of the Labour Government, in which the noble Lord, Lord Grocott, was PPS to the Prime Minister. Perhaps he knew something about it. Under that agreement, hundreds of our Members left. However, the basis of it was that they would remain and be replaced, in the words of the noble and learned Lord, Lord Irvine of Lairg, as “a guarantee” that a final reform of the House would be agreed. That agreement was, as the noble and learned Lord said,

“binding in honour on all those”,—[*Official Report*, 30/3/1999; col. 207.]

who came to subscribe to it. As one who played a part in negotiating the details of it, I feel so bound and I oppose the Bill.

I am always interested to listen to my noble friend Lady D’Souza when she speaks on matters that affect the reputation of the House. However, I strongly reject

her statement that this sense of honour is any sense contrived. It is not contrived, and many people hold it firmly. I also disagree with the point made by the noble Lord, Lord Pannick, which was a typical lawyer’s point—a correct point—that of course Parliament is not bound: the law can be changed by Parliament. But there is a world beyond the square mile around the Inns of Court, and in politics it is sometimes not what you can do but what you should do. This agreement should not be repudiated.

I agreed with the speech made by my noble friend Lord Cope of Berkeley, which I thought was extremely interesting, as did many others in the House, and a matter that might be looked at. The original reason for the strange colleges is because, I recall, it was pressed for by the Government. The Labour Party was concerned that Labour Peers would not be elected. That would not be the case, and it could be re-examined.

My second objection to the Bill is that it would create an all-appointed House by stealth. That has never been put before the British people at any general election this century and it should not be accomplished by a Private Member’s Bill in the Lords. Others have spoken on that. The third matter is that the Bill is partisan in its effect. It would strike disproportionately at the Conservative Party, and quite fast. Some 26 Conservative elected hereditary Peers are over 70, nine are over 75, five over 80, and five over 85. They would no longer be replaced. When I raised this with the noble Lord last year, he said that that could be dealt with by appointing another couple of dozen Conservative life Peers. That is not a tune we hear some very much from the Benches opposite, nor would it be welcomed by the House. Will the noble Baroness on the Opposition Front Bench say whether that would happen—would Labour support Conservative life Peers to replace hereditaries that went?

The final defect of the Bill is a glaring one, which is that it attacks the speck of dust—the by-election system—but spectacularly fails to tackle the most glaring defect in numbers in this House: the massive overrepresentation of Liberal Democrat Peers, who are sworn to use their unelected position to foil the will of the British people in the referendum. I know that the noble Lord, Lord Grocott, agrees with me on that. If only he had used his luck in the ballot to introduce a Bill to deal with that, they might have cheered him on in Tory Telford, where the candidate wearing the rosette of the noble Lord, Lord Rennard, lost her deposit with a reasonable 900 votes. The threat of obstructionism by those Benches over there is a major and present constitutional danger to what the people of Telford voted for by a majority of 24,000. Hereditary by-elections are not. I oppose the Bill.

11.44 am

Lord Tyler (LD): My Lords, I congratulate the noble Lord, Lord Grocott, very sincerely on his persistence and on his success in the lottery—or raffle or lucky dip. Despite what the noble Lord, Lord True, has just said, it is not a ballot in the true sense; it is yet another curious anomaly that we should perhaps deal with on another occasion. I and my colleagues will be pleased to give constructive support to the Bill and, with the

[LORD TYLER]

unusual two-year Session that we have, hope that it will make progress to the other House and achieve cross-party endorsement there.

The noble Lord gave a very clear account of the Bill's purpose, which I do not need to repeat. However, it is surely necessary to provide some historic context to dispel some misrepresentations, some of them mentioned again today.

The invention of hereditary Peers' by-elections was the product of the so-called Weatherill amendment in May 1999. In effect, this was grasped by the then Labour Government and the Conservative Opposition in your Lordships' House as a short cut to try to prevent last-ditch filibustering over the former's limited reforms of the composition of this House. It was a simple agreement between the two parties, with no involvement by the Liberal Democrats. I do not think that there was even any participation—formally, at least—by the Cross-Benchers, despite its very considerable significance for their Benches. Cynics could describe it as a two-party stitch-up.

The then Leader of the Liberal Democrat Peers, my noble friend Lord Rodgers of Quarry Bank, challenged the need for that amendment in the debate on 11 May 1999 as follows:

“There are many noble Lords who could make a valuable contribution to a post-Royal Commission House, if that turns out to be not wholly elected. But their future should be as life Peers, not as residual elected representatives of the hereditary peerage”.

Even more relevant to today's debate, he went on to express serious scepticism about the claims that these fudged provisions would be strictly temporary. With his proverbial prescience, he said:

“The noble Lord, Lord Weatherill, referred to them as ‘temporary provisions’. The noble and learned Lord the Lord Chancellor made it plain today, using strong words, that this would last only through the transitional House and that the transitional House would be brought to an end in the next Parliament”.

I underline those words. He continued:

“However, if I were a betting man I would lay long odds that if Amendment No. 31 is carried, there will still be hereditary Peers in this House in 10 years' time and possibly for much longer”.—[*Official Report*, 11/5/1999; cols. 1098-1100.]

This two-party fix was intended to last for perhaps 18 months; it is long past its sell-by date 18 years later.

I have some sympathy with the objections of some of the remaining hereditary Peers—if they do not regard it as an insult, perhaps I could refer to them as the “remainers” in this context. They were, after all, given explicit assurances by very senior government Ministers, supported by the Conservative Opposition, that this curious anomaly would stay only until the proposed full, comprehensive, democratic reform was implemented. I refer to the argument put forward, not least by my noble friend Lord Rennard and the noble Lord, Lord Pannick, about the notion of “binding” agreements being totally irrelevant. In that context, it was an intention of the then Ministers that in the following Parliament further reform would take place. It was not, in the same sense, a binding resolution on this or indeed the other House that every succeeding

Parliament would have to fulfil those obligations. In that sense, I think that that “binding” suggestion was illegitimate.

However, the Blair Government failed to deliver on their various manifesto promises in that respect and, as has been mentioned, the noble Lord, Lord Grocott, was a very distinguished member of that Government. Therefore, he must also acknowledge that, if the coalition Government's proposals of 2012 for Lords reform, backed by all parties, had been followed through, this anachronism would have been removed and there would be no necessity for his further attacks today.

Sadly, despite the best efforts of the then Sir George Young—now the noble Lord, Lord Young of Cookham—that Bill failed, even with a record 338 majority in the Commons for its Second Reading. It was not defeated, despite some post-truth claims, not least in this House. It was actually supported by majorities in all three major parties, but the Labour Front Bench decided to play silly party games with Conservative rebels, refusing to agree to any timetabling of its Committee stages.

There are some Members—and they have been vocal today—who are still clearly awaiting that wholesale reform. I have always been committed to a major reform with cross-party support, so I understand their position. However, those purist supporters who are awaiting wholesale reform, and are using that as an excuse not to make any incremental changes to the way in which this House is composed, seem to be taking a completely ludicrous position in an Alice in Wonderland world. Taking the view that maintaining this absurd anachronism helps to gain and maintain support for full democratic change is an illusion as well. I do not believe that that tactic holds water any longer.

Clearly, the overloaded agenda of Brexit ahead of us means that Parliament will not have time to process anything comparable to the cross-party proposals of 2012.

I do not believe that any tweaking, as suggested by the noble Lord, Lord Cope, would be accepted by the electorate. I do not think that the public would see that as a real improvement and I do not think that we in this House would feel comfortable with such a minor change.

However, I believe that the continuation of this now totally discredited and outdated stitch-up does nothing to enhance the reputation of the House of Lords. It is surely time for it to go. In particular, I hope that the Minister was listening very carefully to his noble friend Lady Berridge. It is a clear priority for the Government to take an initiative in this respect and give full support to the Bill proposed by the noble Lord, Lord Grocott, not least in regard to gender and ethnic equality. I support the Bill.

11.51 am

Baroness Hayter of Kentish Town (Lab): For a second time, it is my pleasure to congratulate my noble friend on the Bill and to give it a very warm welcome.

Of course, I was not here and I did not vote for that deal in the last century, and I have to tell the House that I do not feel bound by it. As I said this time last year,

there are hundreds of reasons for supporting this Bill, not least the hundreds of male sons of earlier honoured men who over time have taken their seats here, not because of their own attributes but because of those of their forebears. Surely in 2017 there can be no one outside of the hereditaries themselves who thinks that our legislators should be chosen by the deeds of their grandfathers, their great-grandfathers or their great-great-grandfathers—very rarely their grandmothers.

It is true that the hereditaries in the House today have shown their value, and many—probably most, if not all—could well be here as life Peers, given their own accomplishments. So this Bill is not to say farewell to them, as the noble Lord, Lord Cormack, said, but simply to say that when they leave us—by retirement or through a higher calling perhaps—they should not be replaced.

Everyone agrees that this Chamber is too big and should be reduced in size—a size which far outnumbers the democratically elected House. I say to the noble Lord, Lord True, that the recent flood of Conservatives who have already been put here more than makes good for any fall-off there may be if the hereditaries are not replaced. However, I am grateful to him for confessing that it is the Conservative interest, not democracy, that leads some to resist the Bill.

I also say to the noble Lord, Lord Mancroft, that I accept what he said about the independence and expertise of your Lordships' House, but surely he should be arguing for more Members of the Cross Benches and fewer of the political appointments, rather than continuing to appoint Peers by who their father, grandfather or whatever was.

So surely it is time to take forward this very modest measure. My noble friend is making only a very slow and slight attempt to reduce our numbers, but it is surely right to do that.

It is true that we would prefer greater changes, discussed by a constitutional convention rather than in piecemeal measures, but in the absence of that approach, surely this Bill is appropriate. It is tidy, measured and reasonable and it might even be well drafted.

The noble Lord, Lord Hamilton, who I think is not in his place, asked whether the whim of the Prime Minister to appoint us is better than hereditary by-elections. But I have to say: we are an appointed House. That was probably the whim of a former Prime Minister who first appointed the forebears of the hereditaries who are here today. I hesitate to say this in the presence of one of the Bishops who is a Member of this House, but I do not think that those Peers were touched by God to be here. It was the whim of the Prime Minister of the day who appointed them. So, in that sense, it is an appointed House.

Lord Elton: Does the noble Baroness subscribe to the view of the noble Lord, Lord Pannick, that our births were accidental, in which case it is not a matter of appointment but of chance?

Baroness Hayter of Kentish Town: Well, we are all here by that way.

This is an appointed House: it just depends on the century in which the Prime Minister made the appointment.

It is absolutely clear that those of us who are here should bring to the House our own attributes and experience rather than those of our ancestors, proud though I am of my grandfather who was a miner and my other grandfather who was a baker. Their own geographical spread and attributes contributed to this country. But I should be here not because of them—and I do not believe that it is—but because of what I hope I have done by myself.

As a number of noble Lords have said, if we are to earn the respect of the public for our work, having just 16 people electing someone who is perhaps 12th in line to their title to sit in this House, is not the PR that we would like for the work that we do.

Lord Forsyth of Drumlean (Con): Can the noble Baroness deal with the point made by my noble friend Lord True? Should this Bill go through, will the Opposition recognise the effect that that would have on the political balance and therefore be prepared to see those hereditaries appointed as Conservatives in order to maintain that balance? If she gave that undertaking, it would make it much easier for some of us.

Baroness Hayter of Kentish Town: I have answered that. I said a few moments ago that it has already been done because of the number of new Peers that David Cameron appointed. As Prime Minister he appointed more new Peers than the previous five Prime Ministers did in total. Virtually all of them were appointed to that side of the House, and we have had one. So, in a sense, I have already answered the point—because it has already happened.

Of the 32 by-elections that have taken place, which the noble Lord, Lord Pannick, mentioned, the total number of votes cast was just under 6,000. That is under 200 votes per seat. All 32 Members elected were white men, as noted by the noble Lord, Lord Pannick, and the noble Baroness, Lady Berridge. The most significant contribution today was the challenge to the Government that, because of their broader remit, it is part of their responsibility to do something about this. That is a challenge that we wholeheartedly endorse.

We wish the Bill well. Last year, the Government used the slightly weasel words that they were sympathetic to any reform but that it should only be part of a broader review. But as the noble Lord, Lord Tyler, said, because of Brexit we will have very little time to do very much more, and the result of the election removes any such possibility. So we should accept this modest, incremental and reasonable Bill.

I am grateful for the last intervention because of the acknowledgement that it is the Conservatives who are most worried about this because they will lose some of their seats, which I do not think we have heard before. But change will be very gradual. I look round the Chamber and see some of the hereditary Peers who I am sure will have many more years with us, and we look forward to their contributions. But the Minister must rise to the challenge of his noble friend Lady Berridge. This matter is not simply for this

[BARONESS HAYTER OF KENTISH TOWN]

House but for the Government to see whether they want to continue a system where white men have a privileged way of finding their way into the Parliament of this country.

Noon

Lord Young of Cookham (Con): My Lords, it is good to start this season of Private Members' Bills with a traditional number—one that we are all familiar with. I start by thanking the noble Lord, Lord Grocott, for his rendition of it today. The noble Lord has consistently shown a passionate commitment to this issue which is admired, even by those who, we have heard this morning, are in disagreement with him. Before the noble Lord sums up the debate, I will try to respond to some of the points made and questions raised from the Government's perspective, and am grateful to all who have taken part.

The Government are committed to ensuring that this House continues to fulfil its constitutional role as a revising and scrutinising Chamber, a role that it carries out so effectively. As a newcomer to your Lordships' House and a migrant from the other place—and therefore to be regarded with some suspicion by my noble friend Lord Mancroft—I am even more impressed than I was before at the way this House discharges its responsibilities, scrutinising legislation and holding Government to account, while respecting the primacy of the other place. As a departmental Minister answering questions in another place, I would reckon to know more about the subject in question than my interrogators. In your Lordships' House, with its wealth of expertise, it is exactly the opposite, with a dramatic reversal of the terms of trade at the Dispatch Box. The Government's position on Lords reform generally was set out in their manifesto. We do not consider comprehensive reform of this House to be a priority during this Parliament, and I will return in a moment to the question whether this Bill is comprehensive.

As noble Lords know only too well, the Bill before us today seeks to end the practice of hereditary by-elections which began under the Labour Government's reforms of 1999, when the majority of the hereditary Peers were removed. Since then, as we have heard today, there have been numerous proposals to end this practice. Indeed, the Labour Government never intended any by-elections to occur. I recall, as shadow Leader in another place, being assured that elections to a reformed upper House with no hereditaries would take place before the 2001 election. The Wakeham commission, as part of its comprehensive package of reform, recommended that excepted hereditary Peers should cease to be Members of this House, and the Labour Government repeated that proposal in numerous White Papers.

As we have heard, the Constitutional Reform and Governance Act 2010 tried, and failed, to remove by-elections. In the subsequent Parliament, I was the Minister in charge of the coalition Government's House of Lords Reform Bill, which would also have removed hereditary Peers altogether, and which failed to make progress for the reasons set out by the noble Lord, Lord Tyler. We also had the numerous efforts by noble

Lords through Private Members' Bills to end the by-elections, including Lord Weatherill, Lord Avebury, the noble Lord, Lord Steel, the noble Baroness, Lady Hayman, and now, of course, the noble Lord, Lord Grocott. But thus far, none of these proposals has succeeded in achieving a consensus across this House. Against this background of collective failure of Governments and Back-Benchers, one can but admire the courage of the noble Lord in having another crack.

It is clear from today's debate that many noble Lords here today wish to see the end of by-elections. Those who have been following the debate can see the balance of views. I was particularly struck by the point made by my noble friend Lady Berridge, and a consequence of the current arrangement is a system that is very difficult to defend in equality terms. As I think my noble friend explained, there is in fact an exemption from the Equality Act 2010 for this arrangement, but that does not make it any easier to defend. But while the balance of argument in terms of numbers has been in favour of the Bill, we have also heard some strongly held beliefs that while the issue of comprehensive reform remains unsettled, the excepted hereditary Peers should remain—an argument put forward by my noble friends Lord Trefgarne and Lord Caithness.

We continue to support incremental reforms that achieve this and command consensus across the House, and I shall return in a moment to the question of whether the Bill is incremental. For example, as evidence of our support for incremental reforms under the terms of the House of Lords Reform Act 2014, 68 Members of your Lordships' House have retired and a further six have ceased to be Members by virtue of their non-attendance. I had the privilege of steering through the other place the House of Lords (Expulsion and Suspension) Act 2015, which provides this House with a power to expel Members in cases of serious misconduct. Those changes have been important in gradually changing the culture of the House. Moreover, looking ahead, it is in that spirit that we should proceed.

The Bill before us today makes provision to stop any hereditary Peers from taking a seat in this House in the future, while the existing hereditaries will remain. Over time, as has been said by the noble Earl, Lord Erroll, this House would de facto become an appointed Chamber save for the Lords Spiritual. Some noble Lords have argued that this is not incremental as we move to that position. My noble friend Lord True also pointed out that over time, the Bill would affect the party balance in the House as one party has significantly more hereditary Peers than the others. This consequence could be avoided, as my noble friend Lord Forsyth suggested, by appointing Peers to compensate, but that would negate one of the objectives of the Bill, which is to reduce our numbers.

I am most grateful, as I think are other noble Lords, for the intervention of my noble friend Lord Cope. He is absolutely right to point out that it is our Standing Orders rather than primary legislation which make provision for the by-elections, and that we do not need primary legislation to change them. A number

of noble Lords, including my noble friend Lord Cormack and the noble Lord, Lord Pannick, suggested that we might look at that depending on the progress of this Bill. The opening speech of the noble Lord, Lord Grocott, on the process of by-elections, could almost have come out of the Gilbert and Sullivan opera, “Iolanthe”. However, some of the suggestions put forward during this debate for extending the franchise might overcome the size of the electorate.

In passing, perhaps I may touch on a point brought up by the noble Baroness, Lady D’Souza, and others about the role played by hereditary Peers in the work of the House. The vast majority attend regularly and participate in our proceedings. Today, nearly half of those who are Members of this House by virtue of hereditary peerage are active as Government Ministers or members of committees. Looking at my own party, the ministerial ranks are fortified both by the initial 92 hereditaries such as my noble friend Lord Courtown and by by-election victors such as my noble friend Lord Younger.

I was also struck by the argument put forward by a number of noble Lords that the 92 were the grit in the oyster, and that those who are elected feel an obligation to stay until the comprehensive reform that was part of the initial deal is secured. My noble friends Lord Trenchard, Lord Elton and Lord Mancroft, and the noble Earl, Lord Erroll, all made the point that they feel an obligation to honour the agreement that was entered into and which was discussed at some length during the debate.

Since we last debated this subject, there has been an important initiative which to my mind constitutes a decisive reason for pausing this Bill, regardless of one’s views as to whether it is incremental or comprehensive. I would say to the noble Lord, Lord Anderson, that I wrote that sentence myself; I did not take it out of a Civil Service file. But I was struck by a point made by my noble friend Lord Brabazon that I will come on to in a moment. During the last Parliament the Lord Speaker established a cross-party committee specifically to address the size of the Lords, chaired by the noble Lord, Lord Burns. I would like to dissociate myself from the remarks made by the noble Lord, Lord Foulkes, who cast doubt on the suitability of the noble Lord, Lord Burns, as the chairman of that committee. The noble Lord, Lord Burns, has already done a great service to this House by chairing a committee in which it has been difficult to come to a conclusion. Noble Lords may remember the Trade Union Political Funds and Political Party Funding Committee which was chaired by the noble Lord, Lord Burns. It enabled us to make progress with that legislation. I should say to the House that I would rather that the noble Lord, Lord Burns, was chairing this committee than the noble Lord, Lord Foulkes.

Lord Foulkes of Cumnock: So would I.

Lord Young of Cookham: The committee has been asked to examine practical and politically viable options for reducing the size of this House, so that progress might be made on the issue, and to provide advice to the Lord Speaker on the potential next steps. I am sure that within the remit was the issue of the hereditaries;

it certainly was if the noble Lord, Lord Grocott, gave evidence. The noble Lord, Lord Burns, and the committee have since worked tirelessly on this issue, looking at reform measures to reduce our size as a whole. My noble friend Lord Brabazon reminded us that this was a priority. The committee is going to report in October and the Government look forward to its recommendations. I have no idea what they are going to be, but it cannot be right, in advance of publication and debate on those proposals, to single out one possible element which may or may not be in the recommendations and launch it down the legislative slipway. Consideration of this Bill is therefore premature by singling out as it does one potential reform which does little to address the size of the House. We should await the findings of the committee rather than seeking to pre-empt them, and proceed on that basis.

On a more consensual note, I agree with what the noble Lord, Lord Grocott, said in his peroration. We should sort this out ourselves before someone else sorts it out for us. I pay tribute to the noble Lord for pursuing this important constitutional matter and to those here today for their insightful contributions to the debate. Finally, I would urge noble Lords to engage with the work of the noble Lord, Lord Burns, and his committee to see if we can find a consensus on the best way forward, because ultimately it should be for this House, working in a spirit of partnership, to address the issue.

12.11 pm

Lord Grocott: My Lords, I am grateful to all noble Lords who have contributed to the debate and massively grateful to those who have supported my position.

I do not know whether to take the speech of the noble Lord, Lord Young, as a clear rejection or as a possible consideration at a later date, and I am sure that that degree of ambiguity was fully intended by him in his remarks. However, I just want to emphasise that this Bill is not about reducing the size of the House. That would be a small net benefit of this Bill, but that is certainly not its objective—if it was, it would be a pretty poor tool.

In the 17 or 18 years since the passage of the original Bill, 32 new hereditary Peers have arrived, not by any means all of whom have replaced Conservative Peers. The inference of the contribution made by the noble Lord, Lord True, was that this Bill would somehow lead to a massacre of Conservative Peers. It would be a very slow process of attrition and I think it would be about another 40 years before the job was done which, having myself been here for a little while now, is about the pace at which this House likes to move.

What has been noticeable about the debate, and I shall read it carefully to make sure that my initial impressions are correct, is that the challenge that I put out during my opening speech, which was to hear some positive arguments for the by-elections in terms of how they enhance the House, has not been answered. Of course good people have come here by means of the by-elections—that is not in dispute any more than is the fact that good Bishops have come, as well as good life Peers. But as for by-elections being a mechanism for putting people into a House of Parliament in the

[LORD GROCOTT]

21st century, no one has offered any positive arguments in favour of retaining the system apart from, I think, the noble Lord, Lord Mancroft, who was clearly nostalgic. I understand his nostalgia for a time when virtually everyone here was hereditary and of course most of them voted Conservative. I can understand why that would appeal to him. He described some wonderful debates to us.

Lord Mancroft: My Lords, I was not displaying nostalgia; I was reflecting upon the very real fact that the nature of the way the hereditary Peers operated was that, because they were hereditary, they had a degree of independence which was extremely desirable. I was reflecting on that point and it is not a nostalgic one at all. The fact is that the composition of this House today has by its very nature lost to a significant degree its independence from the existing political establishment, to the detriment of both this House and of Parliament.

Lord Grocott: I advise the noble Lord to stop digging. This wondrous independence and spirit of quality and intellectual debate invariably resulted in a House that always supported Conservative Governments and caused no end of trouble to Labour Governments. I will leave that one there.

I could not improve on my good friend Lord Snape. He has lost none of it in 50 years; he really can turn it on when he needs to. I was always deeply respectful of him. He reports the fact that I was his Chief Whip, but he was my Whip in the 1970s, when he reportedly put next to my name “WWWW”, which meant, “Works well when watched”.

Lord Snape: Will my noble friend accept the perception of my views at that time? He has come along very well since.

Lord Grocott: I saw no arguments in favour of the by-elections, apart from the one that I really want to put to rest now, which the noble Lord, Lord Trefgarne, repeats time and again about this compromise reached in 1999 which resulted in the 92 hereditary Peers remaining. The noble Lord, Lord True, referred to the fact that I was involved to some extent in that because I was working in Downing Street at the time. I remind him of what I still feel was breath-taking about what happened then. A Labour Government, elected on the clearest possible manifesto commitment to end the hereditary principle as a basis for being in the second Chamber—a Labour Government with a record post-war majority of more than 150—brought that proposal to this House. It was made clear in this House by the noble Lord, Lord Trefgarne, and others that the Bill, with a huge majority and manifesto commitment, would not be allowed to pass unless major concessions were made, of which these 92 Peers are the result. That was not normal parliamentary procedure resulting in this binding agreement; it was blackmail. That is the only argument that has been put forward to continue with these by-elections. It is a history lesson that ought to be written according to what actually happened.

The only other argument I have picked up is that, somehow or other, the hereditary Peers here provide a constant incentive towards swift movement towards a

fully comprehensive elected House. The noble Lord, Lord Young, is in a better position than me because he was there longer: there were loads of debates in the other place on an elected House, but I never heard anyone say that we need to do this because the noble Lords, Lord Trefgarne and Lord Elton, or the noble Earl, Lord Caithness, are insisting that it happens. By definition it simply has not worked. Those Members who want a fully elected House, of which I am not one, have not been able for various reasons to deliver it, so this incentive that allegedly is there clearly is not working. We should remember that as well.

The only really helpful, constructive attempt to move forward on this, other than what I think is the only sensible way to proceed, which is my Bill unamended—although I always listen to what the noble Lords, Lord Cope and Lord Cormack, and others, have to say—is that there should be an election of the whole House whenever a vacancy occurs rather than these absurd party by-elections with minuscule electorates. I partly answered it in my opening remarks. Even when that happens, less than half the House participates. I always regarded it as a waste of time and I am clearly not the only one. That does not enhance the quality of the democracy, and—this is an even more substantial point made brilliantly by the noble Baroness, Lady Berridge—it does not alter the fundamental flaw that, on the register of hereditary Peers as it stands, there are 198 names, 197 of whom are men. Changing the Standing Orders and having an electorate comprising the whole House would not alter that fundamental problem any more than it would alter the fundamental problem of why on earth the only people entitled to stand should be the heirs of the noble Earl, Lord Caithness, or the noble Lord, Lord Trefgarne, although we hope their heirs do not materialise for a long period yet in their new titles. Why should their heirs have an assisted places scheme to get into the House of Lords?

We all think our arguments are pretty convincing. I think the argument I and many of my noble friends put forward are absolutely overwhelming, so let us get on with it.

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

Age of Criminal Responsibility Bill [HL] *Second Reading*

12.21 pm

Moved by Lord Dholakia

That the Bill be now read a second time.

Lord Dholakia (LD): My Lords, I am grateful for the opportunity to reintroduce my Bill, which is designed to raise this country’s unusually low age of criminal responsibility from 10 to 12. At present in England and Wales, children are deemed to be criminally responsible from the age of 10. This provision was last amended about 50 years ago in 1963 when the age of criminal responsibility was raised from eight to 10 by the Children and Young Persons Act 1963. This means

that children who are too young to attend secondary school can be prosecuted and receive a criminal record. A 10 year-old who commits a “grave crime”, which includes serious violent and sexual crimes but also burglary, will be tried in the adult Crown Court. A child aged 10 or 11 who is accused with an adult will also be tried in the Crown Court.

The age of criminal responsibility in the United Kingdom is the lowest in Europe. In Ireland in 2006 the age was raised to 12, with exceptions for homicide, rape or aggravated sexual assault. Even in Scotland, where the age of criminal responsibility is particularly low at eight, legislation in 2010 has provided that children cannot be prosecuted below the age of 12. Outside the British Isles, the age of criminal responsibility is invariably higher: in Holland it is 12; in France 13; in Germany, Spain, Italy, Austria, Hungary, Bulgaria, Slovakia, Slovenia, Croatia and Romania it is 14. In most other European countries it ranges between 14 and 18. Across Europe the average age is 14.

The United Nations Committee on the Rights of the Child has repeatedly stated that our minimum age of criminal responsibility is not compatible with our obligation under international standards of juvenile justice and the UN Convention on the Rights of the Child. In a statement in 1997 the committee said:

“States parties are encouraged to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level”.

In subsequent reports in 2005 and 2007 the committee reiterated that a minimum age below 12 is not internationally acceptable. In July last year the committee recommended that the United Kingdom should,

“raise the minimum age of criminal responsibility in accordance with acceptable international standards”.

Taking 10 and 11 year-olds out of the criminal justice system does not mean doing nothing with children who offend; it would mean doing what other countries do with 10 and 11 year-old offenders; it would mean doing what we do with delinquent nine year-olds. In other words, it would mean dealing with the causes of these children’s offending through intervention by children’s services. In the minority of cases where court proceedings are necessary, it would mean bringing children before family court proceedings, which can impose compulsory measures of supervision and care. In the most serious cases this can mean detention for significant periods in secure accommodation, but this would be arranged as part of care proceedings, rather than as a custodial punishment imposed in criminal proceedings.

Those who oppose increasing the age of criminal responsibility often argue that children of 10 and 11 are capable of telling right from wrong, as though it automatically follows that they should therefore be dealt with in criminal courts, but this does not logically follow. Most six year-olds have a sense of right and wrong but no one suggests that they should be subject to criminal prosecution. In 2012 the Centre for Social Justice, which was set up by the former Secretary of State for Work and Pensions, Iain Duncan-Smith, produced a report on the youth justice system entitled *Rules of Engagement: Changing the Heart of Youth Justice*. It said:

“There is now a significant body of research evidence indicating that early adolescence (under 13-14 years of age) is a period of marked neurodevelopmental immaturity, during which children’s capacity is not equivalent to that of an older adolescent or adult. Such findings cast doubt on the culpability and competency of early adolescents to participate in the criminal process and this raises the question of whether the current minimum age of criminal responsibility, at ten, is appropriate”.

The evidence from international research is overwhelming. There is extensive evidence from neuroscientists, psychologists and psychiatrists demonstrating the developmental immaturity of young children. The Royal Society in its report *Neuroscience and the Law* in 2011 said:

“In conclusion, it is clear that at the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one’s own behaviour”.

The Royal College of Psychiatrists has expressed the view, based on similar evidence, that our age of criminal responsibility is too low. The research shows that children of 10 and 11 have less ability to think through the consequences of their actions, less ability to empathise with other people’s feelings, a greater level of impressionability and suggestibility and less ability to control impulsive behaviour. So while a 10 year-old may know that stealing something is wrong, their ability to apply that knowledge to their actions will be very different from that of an 18 year-old. This does not mean that children aged 10 or 11 have no responsibility for their actions, but on any reasonable interpretation of the evidence they must be regarded as less responsible than an older adolescent or an adult. It cannot be right to deal with such young children in a criminal process which assumes a capacity for mature, adult-like decision-making.

The Beijing rules on juvenile justice state that the age of criminal responsibility,

“should not be set at too low an age level, bearing in mind the facts of emotional, mental and developmental immaturity”.

The official commentary to the rules state:

“There is a close relationship between the notion of responsibility for delinquent and criminal behaviour and other social rights and responsibilities”.

It is therefore significant that in no other area of the law, whether it is the age for paid employment, the age for buying a pet, the age of consent to sexual activity or the age for smoking and drinking, do we regard children as fully competent to take informed decisions until later in adolescence. The age of criminal responsibility is an anomalous exception. In relation to the age of consent to sexual activity, for example, we regard any purported consent as irrelevant, to protect children from abuse or immature sexual experimentation. It is completely illogical that we regard immaturity in this context as worthy of protection by law, but we take a diametrically opposite approach when it comes to criminal responsibility.

A 30 year-old with the mental age of a 10 year-old child would probably be regarded as unfit to plead, so why do we see a child of 10 as capable of participating in the criminal justice process? The illogicality of our current law is increasingly recognised. The Law Commission concluded last year in its report *Unfitness to Plead* that the age of criminal responsibility is, “not founded on any logical or principled basis”,

[LORD DHOLAKIA]
and that,

“there may be sound policy reasons for looking afresh at the age of criminal responsibility”.

In Northern Ireland an independent review commissioned by the Minister of Justice in 2011 recommended an immediate increase in the age of criminal responsibility from 10 to 12, and a further scoping study last year made a similar recommendation. In Scotland an advisory group report recommended last year that there should be an immediate increase in the age of criminal responsibility from 10 to 12.

It is sometimes argued that there is no need to raise the age of criminal responsibility because the number of 10 and 11 year-olds who receive youth justice disposals is very small: in 2015-16 a total of 360 were cautioned or convicted. However, even though this represents a small proportion of those going through the criminal justice system, what happens to more than 300 vulnerable children can hardly be regarded as unimportant. The fact that the numbers involved are relatively small is, in fact, a strong argument for the Bill. It means that it will not be a huge burden in terms of resources to make alternative provision through welfare interventions and, where necessary, family court proceedings for the children who would otherwise have been charged and prosecuted.

Nor would dealing with these children through non-criminal processes put the public at risk. On the contrary, dealing with 10 and 11 year-old children through non-criminal procedures would be more effective than using the criminal justice process. The evidence shows that children dealt with through the criminal justice process are more likely to reoffend than those diverted from the criminal justice system and dealt with in other ways. Children who are officially labelled as offenders often react by trying to live up to the label and acting in increasingly delinquent ways to achieve status in front of their friends.

A briefing on my Bill has been circulated by the Criminal Justice Alliance, which has a membership of 125 organisations involved in the criminal justice system. The briefing concludes:

“With the numbers so low, the resources needed to execute a shift towards treating these vulnerable children through a welfare lens, rather than the criminal justice system, would be small while the positive benefits for them, and for wider society, would be very considerable”.

As the Centre for Social Justice report put it:

“Raising the minimum age of criminal responsibility would achieve important changes. Young children would not be tarred with the stigmatising ‘offender’ label which, the evidence shows, can exacerbate delinquency and would more likely have their victim status and welfare needs addressed, which the evidence suggests are currently often neglected”.

Children who go through the criminal process at a young age are often young people from chaotic, dysfunctional and traumatic backgrounds involving a combination of poor parenting, physical or sexual abuse, conflict within families, substance abuse or mental health problems. The prospects for diverting the child from offending will be far better if these problems are tackled through welfare interventions, rather than by imposing punishments in a criminal court. A welfare approach would avoid unnecessarily giving children a criminal record, which can make it

harder for them to gain employment when they reach working age. As unemployment increases the chances of reoffending, this is another way in which criminalising children can increase rather than reduce the likelihood of future crime.

Of the 10 and 11 year-olds charged and prosecuted each year, very few receive a custodial sentence—in some years none do. However, although the number of serious child offenders is small, the public will obviously want to be assured that raising the age of criminal responsibility will not increase the risk from these young people. Some people who generally support raising the age of criminal responsibility argue that an exception should be made for the most extreme cases, such as homicide or serious sexual offences. It is difficult to see the logic of this approach. The most serious child offenders invariably have the most complex welfare needs. Their backgrounds include experience of serious physical abuse, sexual abuse, emotional abuse and neglect; parental mental illness; rejection and abandonment by adults; traumatic loss; conduct disorders; and serious emotional disturbances. They need a welfare-based approach—in secure care if necessary—to help them face their unresolved trauma, to develop and mature emotionally, to reach an appropriate sense of guilt, and to learn to control their emotional and aggressive impulses.

The boys who killed James Bulger were 10 at the time of the killing and 11 when they were tried. Most foreign commentators were amazed that children of that age should be tried in an adult Crown Court. They questioned whether such young children could really understand the complexities of a lengthy criminal prosecution and trial; whether they should have appeared in the full glare of media coverage; whether they understood all the issues and the language of the trial; whether they could give sensible instructions to their lawyers; and whether their decision not to give evidence was simply because they were frightened of speaking in such a setting.

Even though some changes have been made to court processes involving children since then, it remains true that exposing such young children to a criminal trial is no way to achieve justice. Moreover, the case took nine months to come to trial, during which time the defendants received no treatment or therapeutic help in case it prejudiced their pleas. This is a completely unacceptable way to deal with young defendants and one that would be unthinkable anywhere else in Europe. It should be equally unthinkable here. The two boys should have been dealt with in family proceedings and detained in secure accommodation without all the ill-effects which resulted from a public Crown Court trial.

I commend the Bill to the House. If it were to become law, it would represent an important step towards dealing with child offenders in a way that was more humane, more in line with the reality of children’s development and more effective than our current approach in addressing the environmental and welfare needs which cause their offending. This is one of the shortest Bills I have introduced but, if implemented, it will change the shape of the criminal justice system for our children. I beg to move.

12.37 pm

Baroness Bottomley of Nettlestone (Con): My Lords, I congratulate the noble Lord on his persistence in bringing his important Bill back to the House of Lords. He and I have been partners in crime on many issues over the years, if I may say so, and I share his commitment and concern about what happens in the youth justice system. With the noble Baroness, Lady Howe, we used to chair juvenile courts in London and it was all too clear that the children who came to court were those who had been failed by social services, the education system and their families, and coming into the criminal justice system was the lowest common denominator. What used to trouble me was that the criminal justice system was a free good. These are costly, difficult children and if the other agencies sat on their hands, the funding would be provided by the criminal justice department—the Home Office, then. There was almost a perverse incentive.

Thirty years ago for the Children's Society I chaired a committee on penal custody and its alternatives for 14 year-olds. At that time there was a huge number of children in penal custody. If you did a map of the country, it was clear that some counties were incarcerating far more than others. We tried to name and shame those authorities and tried to take 14 year-olds to see the Home Secretary. This was the age for children when parents such as those of us in this House would be worrying about what school they went to or what sixth form they went to, so how could it be right to incarcerate these young people in colleges of crime, boarding schools for the poor? Looking at the burden of handicap, illiteracy, mental and physical ill-health, and disruptive, abusive homes, these were youngsters who had nothing going for them. Few of them could even read the oath.

In a moment I will say why I am not convinced, even though I was the Minister who signed up to the UN Convention on the Rights of the Child, that raising the age of criminal responsibility is going to be a magic bullet or is necessarily the most important factor. If you look at the mental ill-health of young people in youth custody, about 30% suffer from attention deficit disorder, compared with 6% of the population; 57% have dyslexia, compared with 10% of the population; 20% have learning disabilities, compared with 2% of the population; 60% have speech problems, compared with 5% of the population; 5% have psychotic symptoms and 20% suffer from depression. No one in this House needs reminding of the level of deprivation and disadvantage of these young people.

Having said that, this is an area of social policy where I believe there has been a dramatic change. The noble Lord, Lord McNally, is due to speak. He was an early and important chair of the Youth Justice Board. In the past 10 years, we have seen the number of children under 18 in custody fall by 70%. That is dramatic. Only 42 were under 14. So we are talking about very small numbers, and it is the ones in penal custody that particularly concern me. The serious issue, which has been addressed today, is that 40% are from black and minority ethnic backgrounds.

I hope the House will come back and discuss the recommendations in David Lammy's report today. He has identified, as the Prime Minister, Theresa May,

did very early on, that children from a black and minority ethnic background have far worse outcomes in the criminal justice system. Interestingly, he also referred to Germany and said that in Germany rigorous assessments of young offenders' maturity inform sentencing decisions. The point is that whether the young person is 10, 11, 12, 13, 14, 15, 16, 17 or 18, it is a spectrum—it is a continuum—and the chronological age is not necessarily the key point. The level of disadvantage, handicap and problems for many of them means that whatever age these young people are, we need to look at disposals, outcomes and prevention that are going to meet their needs.

Again, I think there have been some very remarkable changes. In my own former area of Surrey, the youth justice team has become an energetic and active team. The Surrey youth service is no longer just coffee and pool. It does assertive outreach. We can get those young people out of mental health institutions only when we have assertive outreach. These are needy people who need all the agencies on their side. There is a wonderful voluntary agency, KeepOut, where an amazing former prisoner, who had offended from the age of eight and was on a life sentence, set up peer programmes in prison to talk to young people about the effects of crime and delinquency. High sheriffs play a great role now in trying to change attitudes towards youth justice and criminal behaviour, as do police and crime commissioners, and many others besides.

Finally, we were told it takes 40 years to change. Forty years ago Keith Joseph—Lord Joseph—talked about the cycle of deprivation and it has taken that long. John Maynard Keynes said:

“The difficulty lies not so much in developing new ideas as in escaping from old ones”.

I believe we are beginning to escape from old ideas and have a more enlightened approach to young offenders. While I commend the noble Lord, I feel that change is afoot—more profound, more widespread and requiring partnership from all the agencies to achieve the result I believe we both desire.

12.43 pm

Lord Judd (Lab): My Lords, I am very glad to follow the noble Baroness. It was a powerful speech, rooted in her personal experience, and all the more effective for that. We need to hear a great deal more from her on these issues in this House. I join her in thanking the noble Lord, Lord Dholakia, for enabling us to support the Bill again today. The noble Lord has a long history of constant commitment to enlightened social reform. There are a few of us in this House who can begin to reflect on what he has stood for, with a great deal of courage on occasions, over so long.

I am half Scottish and I am very glad to see that in response to international recommendations, the Scots have undertaken to raise the age. This Bill gives us an opportunity to catch up with the Scots. There is powerful advocacy out there, which has been recommending for a long time that this change is imperative. The UK's children's commissioners are united in their support for a move of this kind; surely we should listen to them.

[LORD JUDD]

We spend a lot of time in this House debating the importance of non-governmental organisations and the key role they have to play in advancing effective social policy. It therefore seems important that, on an issue of this kind, we listen to what they have to say. I was struck by a concise but helpful paper submitted to us by the Standing Committee for Youth Justice. Let me share some of its recommendations with your Lordships. It says:

“Proponents of the current age of criminal responsibility argue that 10-year-olds ‘know the difference between right and wrong’ and must be held responsible for their actions. However, as the National Association of Youth Justice ... has argued, developing morality is ‘not a once and for all achievement; it improves with conceptual maturity’”.

I had the privilege for nine years of being president of the YMCA and I was particularly struck by the work it did with young offenders. I tried to follow that as closely as I could. That last recommendation was repeatedly obvious. Sometimes it was moving to see, in the context of work being done with young offenders, that they began to discover themselves—who they were, what responsibility was and how they could begin to face up to that responsibility in society. That could happen quite late in the teens; it could happen in their early 20s as well.

If I may just digress for a moment, I sometimes think that when we are dealing with the young and children it is particularly important that we do not spend enough time in this second Chamber, which is surely the place where we should be doing it, debating exactly what criminality is in our complex society. What is criminal and what is not? Where does irresponsibility become criminal in effect, in the damage and harm it does to people? That is particularly true for those of us who are politicians, in all parts of our political system. Sometimes the effects of what we recommend are criminal; far more criminal than anything that would be considered in a youth justice system.

The standing committee continued by saying:

“Neurological, conceptual and psychosocial developments continue through childhood, adolescence and young adulthood, and alter a person’s ability to understand and assess situations and control their behaviour. The pre-frontal cortex—which is key to decision-making and impulse control—is one of the slowest areas of the brain to mature. An understanding of third-parties’ perspectives, empathy (which is an inhibitor to offending), and impulse control are by no means fully developed at 10 years old, and the capacity to consider long-term consequences is limited”.

If I have one criticism of the Bill, it is that the target is 12. That is far too young and we should be aiming for something more senior, although I am not all sure that I am convinced about having targets at all in this context. What seems to me important in justice is to assess the person before you and see what is necessary and true, and what have been the influences on that person’s life. As the noble Baroness, Lady Bottomley, said so powerfully, often—perhaps in the majority of cases—the people before us are in fact victims. The Bill is a step forward and I thank the noble Lord, Lord Dholakia, for having introduced it. I hope that the House will warmly endorse it.

12.51 pm

Lord McNally (LD): My Lords, I can think of no better privilege than to follow the first three speakers in the debate on these matters. I respect their experience and am a great admirer of their record in these areas. I would not describe my noble friend Lord Dholakia as a partner in crime but he has certainly been a great mentor for me on these issues for a very long time.

Yesterday, I started my speech on overcrowding with the Churchill quote about how a society treats its prisoners being a mark of its civilisation. If that is true, and it certainly is, then it must be doubly true about how we treat our children who fall foul of the law. The problem is that as I look at the speakers list, and as I suspect we shall hear today, there is something missing in our debate. As I pointed out yesterday, and as I think the noble Baroness, Lady Bottomley, pointed out with a wry smile, this debate would not take place in the same atmosphere down the Corridor. When we talk about getting changes in the law, we have to acknowledge the fact that there are other voices than those which will be heard today.

The other thing I took from yesterday’s debate was the constant reference from a number of noble Lords with great experience in this area to the importance of early intervention. From my three years’ experience at the Youth Justice Board, I certainly took away that very good lesson: that the earlier we can intervene, the better the chance of avoiding a life of crime for the individual concerned. Something else the noble Baroness, Lady Bottomley, referred to, is that the more we can break down the silos of various interventions at this early stage, the better, so that the young person concerned gets an holistic approach to their needs.

I would like to illustrate this with three examples from my experience at the Youth Justice Board, each of which indicates what we face and, somewhat, how we might overcome it. First, when I went to a conference of experts in dealing with young offenders in Bucharest, I was genuinely taken aback by the fact that lots of people came up to me and said, not in criticism but with a kind of understanding sympathy, “Yes, well of course we understand that you Anglo-Saxons have a penal and punishment way of approaching offences by children, whereas in my country it is more therapeutic”. I do not think that is entirely true because, as the noble Baroness, Lady Bottomley, indicated, there are lots of interventions and there is a lot of very good thinking and study going on about how best to deal with some of the problems facing young offenders, but nevertheless one has to face the fact that ours is a punishment-led concept. Although the YJB sometimes bristles at the Howard League’s description of YOIs as “child prisons”, if you go to them you will leave feeling that you have just been to a child prison. We are not as bad as perhaps our reputation implies, but there is a punishment-led, penal, criminal justice, court-led approach to how we deal with young offenders.

My second story is from after I became chairman of the YJB. I gave an interview to a magazine that specialised in children and young people, and I was asked about the age of criminal responsibility. I said, in very general terms, that I thought there was a case for raising the age limit. A day or two after the

magazine was published, one of our popular tabloids had a story based on an interview with Jamie Bulger's mother. It basically quoted my statement and said, "What do you think of changing the law so that Jamie's murderers would have got away with it?". There is no doubt that the Bulger murder has cast a long shadow over this debate, and the willingness of certain sections of the popular press to continue to pick at that scab has done much damage to our approach. That does not in any way take away sympathy and understanding of the sheer horror of losing a child in the circumstances in which Mrs Bulger lost her child.

My third story was referred to by my noble friend Lord Dholakia. A year or so ago, I talked to a very senior and distinguished judge who a few days before our conversation had been to Preston Crown Court, where I have never been. He said that he stood in Preston Crown Court, which is a dark, sombre, Victorian creation with portraits on the wall and so on, in disbelief that 20 years ago two 10 year-old boys stood in the dock and faced the full panoply of a judge and barristers in wigs and the full power of a Crown Court trial. As my noble friend said, we have come a long way in how we treat young offenders although, as the noble Lord, Lord Carlile, said in his report on youth justice, there is a strong case for reforming the way young people are dealt with and doubt about whether the Crown Court is ever the right place. The problem is that the media continually sensationalise. I pay tribute to the way the Attorney-General Jeremy Wright has resisted attempts to break embargoes on naming young people.

Early intervention has been put forward as a solution, as has diversion from trapping young people in the revolving doors of the CJS. Reference has been made to the changes in neuropsychological understanding which have had a massive impact on developments in the past 20 years. I believe that the case is overwhelming. I agree with the noble Baroness, Lady Bottomley, that it is not a silver bullet, but it would most certainly be a step in the right direction.

12.59 pm

The Earl of Listowel (CB): My Lords, the noble Baroness, Lady Bottomley, spoke immensely eloquently about child development and the psychology and background of these children and young people. She is respected in this area. She is a social worker by background. I will put two things to her.

Speaking to her on a psychological basis, I am sure that she will be aware that children who experience rejection by their parents blame themselves for that rejection. They take the guilt of it upon themselves. Children are solipsistic: the world revolves around them. She may recall a film that came out many years ago called "Good Will Hunting". It is about a brilliant young man who grew up in a very abusive family and went on to further studies. He was treated by a psychotherapist. In the final treatment session, the therapist embraces him and says to him, "It's not your fault". He repeats, "It's not your fault", and then repeats again, "It's not your fault". The reason he says that and why it is so important is because that young

man blamed himself for the way he was neglected by his parents. I regret that the psychological flaw in the noble Baroness's argument is that, by allowing 10 and 11 year-olds to be subject to the criminal justice system, the state is saying, "It is your fault". I hear what the noble Baroness says about progress in this area, and I particularly welcome the reduction of the number of young people in custody, but I regret that I strongly disagree with her on that point.

I thank the noble Lord, Lord Dholakia, for bringing back this very important Bill. The current arrangements are barbarous, put the public at risk and are a gross waste of taxpayers' money. Very many of the 10 and 11 year-olds in question will have been in local authority care or would be in care if their local authority were not so overstretched. Yet again, we are criminalising the abused and neglected children of our society. Only last year, my noble friend Lord Laming produced his excellent report on preventing children in care entering the criminal justice system. Today's Bill is a superb opportunity to meet the spirit of his exhortation to keep our looked-after children out of custody.

I declare my interest as a trustee of the Brent Centre for Young People, which is a centre of excellence in the mental health treatment of adolescents and provides clinical treatment, outreach to schools and a youth offender service. I also declare my interest as a trustee of the Michael Sieff Foundation, which has been working to improve the welfare of children in the criminal justice system for 30 years.

Why do we treat these children in such a barbaric manner? It is hardly surprising if we consider the challenge that such children pose and the normal unthinking response to this challenge. Consider the history of children's homes, where we have found not just sexual abuse but physical abuse: children may be tied to their beds because they misbehave and have been unmanageable in the past. We have so often found staff who were not equipped to meet the mental health needs of such children and who responded in a violent or overly punitive way. There have been improvements in the training of staff, yet the high rate of criminalisation of children in care, particularly those from children's homes, shows that we have a lot further to go. Noble Lords will recall that about 63% of children arriving in care do so because of abuse or neglect. About 40% of children in children's homes will demonstrate conduct disorders arising from past trauma.

I was speaking last year with a social worker from Finland about his experience of working in a children's home there. He told me that you had to have a degree before you walked through the door. I asked him why, and he answered that when attacked by a young person, whether verbally, physically or in other ways, it is vital that staff do not reply in kind. They have to reflect, and then respond in the way that would be most helpful.

I recall working with a teenage girl with Down's syndrome 30 years ago. Sally was bags of fun, but when we sat to picnic in the park, she would walk off and not listen to reason. This annoyed the inadequate teacher in attendance, so on the way back in the van, he retaliated by teasing her about her relationship with

[THE EARL OF LISTOWEL]

Paul, a boy she liked. Your Lordships may recall the brutal treatment of adults with learning difficulties recorded in the “Panorama” programme on Winterbourne View: staff forced patients to take cold showers, because the staff were uneducated and unthinking, and the patients were not able to comply with their behavioural demands. Why do we treat 10 and 11 year-olds in this barbaric manner? Because we are ignorant bullies, no better than that inadequate teacher or those inadequate care staff.

This Bill is long overdue, and I beg the Minister to accept it.

1.06 pm

Baroness Massey of Darwen (Lab): My Lords, I thank the noble Lord, Lord Dholakia, for pursuing so eloquently this short Bill which has enormous implications, not only for the rights and welfare of children but for our society as a whole and how we view and treat children. I should declare interests. I chair the Sub-Committee on Children within the Committee on Social Affairs, Health and Sustainable Development of the Parliamentary Assembly of the Council of Europe, I am an officer of the All-Party Group for Children and I am patron of a number of organisations that work with children.

The UK position on the age of criminal responsibility as set out in the Children and Young Persons Act 1933 has been, and is, criticised by human rights commissioners and by monitors of the UK’s performance under the United Nations Convention on the Rights of the Child. The UK, as has been said, has one of the lowest age of responsibility rulings not only in Europe but in the world. Why are we still accepting of an Act which came into law in 1933?

As the Criminal Justice Alliance points out, how we treat young people in the criminal justice system has changed over the last 10 years—thankfully so. Many have been spared from entering the criminal justice system at an early age. But we can do better. I remember chairing an all-party parliamentary group inquiry into children and the police which began in 2014. During the inquiry, there were many positive discussions between the police and young people, who were very honest about their experiences in the youth justice system, and changes to the system were made. We tracked the impact of the inquiry, and it had some remarkable outcomes. For example, the stop-and-search rules were amended for the better; disturbed children were less likely to end up in a prison and more likely to get appropriate help. Things can change, but the age of responsibility as we have it now is a drawback to that change.

Many of us in the Chamber will have had children and grandchildren aged 10 or younger. Would we have liked to see them criminalised under outmoded legislation? We know that children change vastly between the ages of 10 and 14—not only physically but in terms of brain development and emotional development too. We should surely be focusing our energies on preventing young people getting into trouble and on better support, education and rehabilitation if they do. I accept, as has been mentioned already, that there is a very small number of children aged 10 who are out of control

and potentially dangerous. They, too, need interventions based on rehabilitation. Some children grow up in horrendous circumstances. Often they have inadequate parenting and poor housing, they fail in education and they have difficulty forming relationships. Then, there are disabilities such as speech and language problems. These are the root causes of much offending and, as someone said earlier, they are not children’s fault. I salute the many people and organisations, such as Barnardo’s, that work with these young people. Most children aged 10 do not need such heavy reaction as criminalisation. Indeed, it may do more harm than good as it actually labels them as offenders—a label they may then live up to.

A young people’s action plan of 2008 recommended an age of criminal responsibility of up to 15. The Bill puts it at 12. I myself would prefer 14 but we have what we have in the Bill. During my time in your Lordships’ House many laws have been passed, many policies changed and many debates held to further the rights and welfare of children, but no Governments have grasped the nettle of the age of criminal responsibility. What does the Minister think needs to happen before this outmoded law is changed? What are the obstacles to changing it?

The UK Government ratified the UN Convention on the Rights of the Child in 1991. The convention states that,

“parties should take measures for dealing with children in conflict with the law without resorting to judicial proceedings”.

The call for the welfare of the child being paramount is a thread running through that document. Recommendations for dealing with children in trouble have also been made by the Council of Europe. In July 2015, 76 organisations signed the Children’s Rights Alliance England alternative civil society report to the UN committee, which recommended that legislation to increase the minimum age of responsibility be introduced. In 2016, the UN committee again called on the Government to:

“Raise the minimum age of criminal responsibility in accordance with acceptable international standards”.

We are seriously out of step with the rest of Europe and the rest of the world. We have to do better. We have to tackle the root causes of offending, as I said earlier, and change some of our laws in dealing with young people. I agree with the aspiration of CRAE and Just for Kids that there should be an approach to youth justice whereby under-18s in conflict with the law are dealt with under a completely separate and distinct system from that for adults. How does the Minister feel about that?

We are surely wasting time and resources in dealing with 10 year-olds who have committed an offence. I emphasise the concerns expressed by the noble Lord, Lord Dholakia. In the vast majority of cases, courts and the police release them or simply issue a caution—in 2016 the figure was 279 out of 317. Only 38 were convicted and sentenced in the courts for crimes not serious enough to warrant custody. From a purely economic angle, this does not make sense. What makes more sense is to tackle the root-cause issues that I have just listed. I beg the Government to look again at this issue.

1.12 pm

The Lord Bishop of St Albans: My Lords, I add my thanks to those of other noble Lords to the noble Lord, Lord Dholakia, for his tireless work in this area, bringing it before the House. These issues have been debated pretty exhaustively and many of the main points have already been raised, so I will not repeat them. The criminal offending of children is of course a gravely important issue that has profound implications for the child and their future but also more widely for the victims, and of course we have to balance that, as has been pointed out, with their communities.

The very fact that we need legislation is of course a reminder—and it is good in this debate to remind ourselves of this—of the constant need to support our schools as they work away at values and talking about right and wrong, and indeed our support for those organisations that are particularly concerned with good parenting and supporting families that are in difficult places. I am thinking of organisations such as Mumsnet but also, from a Church perspective, of the Mothers' Union, which are doing a lot of work in this area.

This sort of legislation, which affects the course of young people's lives, needs to be done in a responsible manner. Our understanding of psychology, child development and the rehabilitation of young people has improved significantly since 1998, when the law was amended to remove the presumption of *doli incapax*, and it is deeply concerning that our law has not been updated to account for that recent knowledge and evidence. As has already been pointed out in this debate, the UN Committee on the Rights of the Child states that 12 is an "absolute minimum" age for criminal responsibility, and that our status quo of 10 is "not internationally acceptable". Our neighbours in Ireland and Scotland have set the age of criminal responsibility and prosecution at 12. It is high time to amend our legislation to give English and Welsh children the same protections as their counterparts are afforded.

As I have mentioned, it is important that young people develop a sense of responsibility for their actions. Indeed, the whole process of growing up from infant to child, adolescent and adult, is one of separating from families and care givers to develop responsibility for oneself. Nevertheless, there is a significant difference between young people having basic knowledge of their actions and a deeper understanding of the consequence of those actions. It is not correct that the law should hold children criminally responsible for actions the implications of which they may not fully understand.

Holding all 10 and 11 year-olds criminally responsible and exposing them to the criminal law system is simply inappropriate. At 10, although children may have some concept of right and wrong, it is not clear that they have the mental maturity to form a similar criminal intent to older children or adults. Male brains are understood to develop until the age of 25, and the ages of consent and enfranchisement, as we have heard, are 16 and 18 respectively. It is plainly nonsensical to hold 10 and 11 year-olds responsible in law for the mature decision to commit a criminal act.

Of course, for justice to be served, it is important that victims know who is culpable for wrongdoings committed, and I in no way suggest that we fudge that

issue, but this does not mean that young children must be held criminally responsible. Indeed, it is highly significant that only a small number of children commit such serious crimes that they receive custodial sentences. In the 10-year period between 2004 and 2014, only 12 10 and 11 year-olds were given custodial sentences for their crimes.

Conforming to international standards in this matter does not mean lessening the seriousness with which we take the offences which have been committed by children. Rather, it acknowledges that it is clearly inappropriate for the formality and weight of the criminal justice process to be brought to bear on 10 and 11 year-olds. This criminalisation achieves very little. Indeed, it can do much damage to their opportunity to grow up into citizens with a stake in our society.

We should be proud and eager to bring our law into line with international standards, and I support the Bill.

1.18 pm

Baroness Murphy (CB): My Lords, I, too, pay tribute to the noble Lord, Lord Dholakia, for his admirable perseverance in this matter in the face of official intransigence. There are good reasons why the age of criminal responsibility should be raised, not least because we have fallen so far behind every other civilised country in how we deal with crime in children. That is not to say that we have not made significant progress in our manner of dealing with children who offend—indeed we have, and that is fantastic—but the underlying principles have not changed, as was put so movingly by the noble Earl, Lord Listowel.

It has been nearly 50 years since the age of criminal responsibility was last amended in legislation, and a lot has changed in society and culture since 1970, as well as in our understanding of children's brain development. As the right reverend Prelate the Bishop of St Albans mentioned, in some ways we have gone backward since 1998, when the *doli incapax* rule, which presumed that 10 to 13 year-olds could not be criminally accountable unless there was good evidence, was lost. I have heard it mentioned that a reintroduction of *doli incapax* would solve all the difficulties, but of course it would not change the fundamental principles. Although it might be done without inflaming the tabloids to such a degree that any reform is blocked, we really need an awful lot more. The noble and learned Lord, Lord Brown, may follow me with a few words on the *doli incapax* rule.

Criminal responsibility is of course a social, not scientific, concept. Questions of innocence or guilt are far more complex than merely establishing whether someone behaved in a certain way, or their reasons for doing so, or even if they were rational when they did it. As a psychiatrist with a grasp of brain neuroscience, the question for me is about how the brain develops in response to the social environment, where that moral sense comes from, and how it is developed in the family. We all know that, by 18 months, a toddler learns that there are others who share his world who have needs and rights and that the house he lives in has rules that he must live by, however frustrating—but he does not have the ability to judge whether something is right or wrong. He is directed by what others tell him.

[BARONESS MURPHY]

His internal brain is competing with his internal drive to do what he wants. He knows that hitting is wrong because parents tell him so or because he gets punished for it.

Some interesting US studies show that by three months old some fairness and empathy has been developed. Those studies need more follow-up. There may well be some genetic element to moral behaviour, but we need more information about that. Of course, up to 10 years old, moral development occurs, but it is highly dependent on reinforcement and reminding from parents about what is right or wrong. The child in a good family behaves well because he has several years of positive parental direction; the disconnected child who has been poorly parented may still be operating on the basis of “Whatever I do is okay, as long as I do not get caught”. It is only after the age of 10 and up to the age of 12 to 14 that children begin to understand the consequences of what they are doing. To expect a child to grasp the outcome of wrongdoing at the age of 10 is patently absurd. For once, I agree with my colleagues in the Royal College of Psychiatrists—this is a preposterous age at which to criminalise children. The immature brain is simply not ready.

For a child of 10, the development of a prefrontal cortex, particularly the white matter in the amygdala area, is particularly significant in relation to the control of violence and sudden thoughtless behaviour. Indeed, many late teens still have immature white matter in the brain. I could make out quite a good case for raising the age of criminal responsibility to 25, which would ensure that everybody had mature white matter. The noble Lord, Lord Dholakia, is aiming for 12, which seems a minimal age increase, as the noble Lord, Lord Judd, said, but at least it would give us two years more in the right direction.

There was a UNICEF-sponsored meeting on the development of children’s brains in 2014, bringing together some of the scientific understanding of children’s brain development and how genes and environment contribute to the development of brains. The logical conclusion of those findings was that a good moral development and intervention at a very early stage when the environment is toxic is the only way in which to stop poor development. As a society, we have usually failed the children who have come before the courts by the age of three, but it is not too late to intervene in those of 10 or 12—and I know people who are trying to do so. In fact, we could intervene by starting to say that this is not how to treat children of 10. Remediation is what we aim for, not criminalisation. I beg the Government to listen to the wisdom of the noble Lord, Lord Dholakia, on this theme. We really do need to change this to catch up with science.

1.25 pm

Lord Thomas of Gresford (LD): My Lords, I was very interested in the views expressed in Bucharest to my noble friend Lord McNally about this country and its attitude to penal matters. I blame Charles Dickens, who portrayed packs of feral children and implanted that concept deep in the English psyche. For many centuries, children were protected by the common law

presumption of *doli incapax*. The rationale was that a child aged under 14 years is not sufficiently intellectually and morally developed to appreciate the difference between right and wrong and thus lacks the capacity for *mens rea*. Blackstone’s *Commentaries on the Laws of England*, published in 1769 said this:

“By the law, as it now stands, and has stood at least ever since the time of Edward the Third, the capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent’s understanding and judgment ... though an infant shall be *prima facie* adjudged to be *doli incapax* under fourteen; yet if it appear to the court and jury, that he was *doli capax*, and could discern between good and evil, he may be convicted and suffer death ... But, in all such cases, the evidence of that malice, which is to supply age, ought to be strong and clear beyond all doubt or contradiction”.

So I am not so sure that we need detailed understanding of the white matter in the—whatever it was, to appreciate that children are different.

In the enlightened days when he was Home Secretary, Lord Jenkins of Hillhead was responsible for Section 4 of the Children and Young Persons Act 1969. That Act provided that a person should not be charged with an offence, except homicide, by reason of anything done or omitted while he was a child—that is, under 14. Sections 34 and 73 of the Act enabled the minimum age of criminal responsibility to be increased gradually from 10 to 14 by statutory order. Then the 1970 election happened and a day was never appointed for Section 4 to be brought into effect, nor were any orders ever made. In due course, Section 72 of the Criminal Justice Act 1991 repealed Section 4 of the 1969 Act. One can see how forward thinking Lord Jenkins was in wishing to have the age of criminal responsibility at 14.

The James Bulger case changed perceptions and the atmosphere completely in 1993. In 1994, in a Divisional Court case called *In re C*, about the attempted theft of a 125cc Honda motorbike in Liverpool, Mr Justice Law, as he then was, said that the presumption of *doli incapax*,

“has no utility whatever in the present era”,

and that it “ought to go”. He robustly said—he frequently said things robustly—that the presumption was no longer part of the law of England. On appeal from that decision in 1995, the Judicial Committee of the House of Lords thought that he had perhaps strayed beyond the remit of judges in the making of the law. Lord Lowry said that the culpability of children was,

“not so much a legal as a social problem, with a dash of politics thrown in”,

and that,

“it should be within the exclusive remit of Parliament”.

He added that:

“There is a need to study other systems, including that which holds sway in Scotland”.

I will come back to that.

In 1998, the presumption of *doli incapax* was abolished. Those were the days when we were to be, “Tough on crime and tough on the causes of crime” and nothing was done to alter the age of criminal responsibility. In March 1998, my noble friend Lord Goodhart moved an amendment in the name of my noble friend Lord McNally to retain the rule but reverse the burden of

proof. That was defeated, with only the Liberal Democrats voting in support of it. I spoke on Report in favour of the children's hearings system in Scotland—talk about escaping from old ideas, as the noble Baroness, Lady Bottomley, said.

The 1966 Wilson Government had intended children's hearings to apply in England and Wales as well as in Scotland but there were strong representations from the Magistrates' Association and the Justices' Clerks' Society in England which led to that not going ahead in this country. Under the system in Scotland, misbehaviour on the part of a young person is reported to the Children's Reporter Administration and brought before a children's panel comprised of volunteers from within the community, who hold a meeting without wigs, gowns or judges and discuss with the parents and the offender how his or her behaviour should be addressed. That is admirable. What assessment have this and previous Governments made of children's hearings over the years? I would be interested to know whether anybody has looked at children's hearings in Scotland and thought that they ought to apply here.

We are out of kilter with the civilised world. As many have said, the United Nations Committee on the Rights of the Child has said that our system is "internationally unacceptable", yet the CPS code for prosecutors ironically says:

"Prosecutors must also have regard to the obligations arising under the United Nations 1989 Convention on the Rights of the Child".

However, that is ignored.

On 21 December 2016, the High Court of Australia upheld the principle of *doli incapax*. That court made it plain that, for there to be any prosecution of a child aged 10 to 14 there must be evidence that the child understood that his or her conduct was seriously wrong in a moral sense,

"as distinct from it being rude or naughty".

It was not enough just to prove that a particular crime had been committed.

I, too, thank the noble Lord, Lord Dholakia, for pursuing this matter with all the ambition and drive that he has shown over the years. I very much support the Bill that he has brought forward.

1.32 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, I join all those who have already rightly commended the noble Lord, Lord Dholakia, for his persistence in pursuing this most worthy cause.

I will make three comparatively brief points. The first is a legal one, which I do not think is widely understood, but plainly is well understood by many—perhaps all—within this Chamber. As we all know, it took 30 years to raise the age of criminal responsibility under the 1933 Act from eight to 10 years. But now, over half a century later, not only has it not been raised further but the position of 10 to 14 year-olds has actually worsened under our legislation. The noble Lord, Lord Thomas of Gresford, described expansively how the matter has developed. Until 1998, there was a rebuttable presumption in the law known as the *doli incapax* principle—the presumption that the immaturity of children under 14 meant that they were incapable of crime.

By that Act of 1998, however, as finally clarified by a judgment of the Law Lords, of whom I was one, in this very Chamber in 2009 during a parliamentary recess—I hasten to say that it was a decision based entirely on statutory construction and not a matter of policy of which we necessarily approved—the law changed, and from 1998 it ceased to be necessary for the prosecution to establish that children in the 10 to 14 age bracket knew their conduct to be seriously and therefore criminally wrong, rather than merely wrongful, bad behaviour. So for the last 20 years, the question of how mature the child actually is has been entirely irrelevant to whether he has committed a crime. It is now relevant only to particular questions which may or may not arise: whether, for example, he acted reasonably in self-defence or, say, recklessly or with foresight or intention.

Secondly, the critical question in all these cases of serious child wrongdoing—to refer to them as crimes begs the question—is how to deal with the problem and set the child on an appropriate future course best calculated to safeguard him or her and the community at large against such continuing misconduct in future. What is in the child's, and so society's, best interests? Various disposals are available, both in youth courts, under the criminal justice system, and by way of corrective welfare processes, largely under the Children Act 1989. There are child safety orders, supervision orders and, when necessary, care proceedings. But the simple fact is that in the vast majority of cases, these disposals in practical terms will involve essentially the same corrective measures: detaining the child securely if that is necessary, or, more likely, placing the child under the supervision of a responsible officer—a trained social worker. In other words, the way misbehaving children are dealt with and reformed does not depend on whether their wrongdoing is characterised specifically as criminal. To designate their misbehaviour as criminal benefits no one.

Thirdly, and finally, the all-important point is that the real and compelling reason to raise the age of criminal responsibility is to avoid criminalising the additional band of young people—10 and 11 year-olds, who are the subject of the Bill. Their emotional functioning and capacity for understanding the effects of their behaviour on others is, as many today have made plain, still growing at that age. They are, in short, still developing as individuals, developing their identities and their self-esteem, and if society characterises and brands them as criminals, that, unfortunately, is how they will come to identify themselves. That in turn, alas, will make it all the more likely—the statistics bear this out—that they will thereafter indeed develop into criminals, perhaps career criminals. Surely, therefore, we must strive above all to avoid that. We should therefore keep these youngsters out of the criminal courts, protecting them against the early acquisition of a criminal record which will remain with them for ever and, to the disadvantage of all, handicap them in all sorts of different ways at a number of subsequent stages in their lives. It just is not fair. I strongly support the Bill and wish it well.

1.39 pm

Baroness Hamwee (LD): My Lords, my noble friend Lady Bonham-Carter feels—and I agree—that we should not condemn Charles Dickens. He was a pioneer in

[BARONESS HAMWEE]

bringing attention to the treatment of some children by the Victorians. It was the “feral” Artful Dodger who saved Oliver Twist; child labour was raised in *David Copperfield*; and the issue of abusive schools was dealt with in *Nicholas Nickleby*. Perhaps I should keep the dispute within these Benches.

The point has been made that the age of criminal responsibility was eight in 1933 and was raised to 10 in 1963. I cannot point to an upward trend, for the reasons given by my noble friend Lord Thomas of Gresford and the noble and learned Lord, but over that period understanding of cognitive development has itself developed, as has understanding of emotional security.

I am no child psychiatrist and I am not a neurologist or neuroscientist, and I do not have the direct experience or expertise of many of our speakers today. I hesitate to follow the noble Baroness, Lady Murphy, but for all the reasons that she and others have given, I am keen to support my noble friend Lord Dholakia, who has made it such a project of his to argue for increasing the age of criminal responsibility. I want, in a small way, to be part of the conversation about what affects children’s and adults’ actions, decisions and motivations, as well as the issue of safeguarding. I do not know but I assume that the Government will again oppose an increase in the age, and there have been many speakers supporting opposition to it, although there have been speeches pointing to this not being the whole of the issue.

I do not think that I need to declare an interest as a board member of the organisation Safer London, as it works with older children who have been sucked into criminal behaviour or are in danger of that happening, and it also works in the area of prevention. However, yesterday I spoke to a staff member about this and she said, “You’re easily coerced at 10, but at 12 you’re a bit less likely to be co-opted into, for instance, carrying guns for gang members”.

As in so many situations, the boundary—or, these days, the cliff edge—has to come somewhere. I accept that in real life there is a very fuzzy, rather movable grey area—maturity arrives at different times for different people—but in no other area of life is a 10 to 12 year-old regarded as competent to make an informed decision. How is a child likely to be affected by finding himself in the criminal justice system? We know how older people can too often find themselves being sucked into a life of criminality by the system, rather than being diverted from it—I do not intend that comment to be in any way an attack on youth offending teams or others who work with children—but how much less easy it is for so young a person to resist it. If you do not understand the consequences of your actions, do you understand the criminal process? Do you understand the point of the sanction? I am not being soft in saying that. I draw a comparison with community sentences for adults as an alternative to imprisonment. From these Benches, we have long argued that community sentences are not a soft option.

The noble Lord, Lord Judd, referred to the work of the Standing Committee for Youth Justice, which points to the impact or stigma of a criminal record. I was

struck by the phrase used in the committee’s briefing that it anchors a child to its past, and that a criminal record becomes an issue when the child decides to try and turn his life around. A criminal records check is not required to sell drugs or join a gang.

We all know from our own experience that a child can know that something is wrong but not apply that knowledge to his own actions, as the right reverend Prelate said. Simple knowledge of whether something is right or wrong is an oversimplification, yet it underpins our current system. We are told that there is substantial evidence of a correlation between offending behaviour and a background of abuse and trauma—the noble Earl, Lord Listowel, made that point. I am not in a position to argue that correlation amounts to cause, but my instincts tell me that, against a background of knowledge of cognitive and emotional development, we ought to bring our law at least a little more up to date.

My noble friend disposed of the argument that there is no need to change the law because the numbers concerned are low, but those numbers are a cohort of individuals and we should think of them as individuals. The Bill may not be a magic bullet and I very much agree with the wider points made, particularly by the noble Baroness, Lady Bottomley, and my noble friend Lord McNally, but that does not mean that it is not important and indeed necessary.

1.46 pm

Baroness Chakrabarti (Lab): My Lords, it has been an enormous privilege to listen to the noble Lord, Lord Dholakia, speak about a cause that he has doggedly championed over many years. I take this opportunity to thank him for that tenacity in raising concerns around the age of criminal responsibility in this country. It is certainly an area that demands review and careful consideration. On that basis, I am happy to lend the support of this Front Bench to the further consideration and progress of the Bill. From what we have heard, it certainly warrants further debate.

It has also been a daunting privilege to follow the noble Baroness, Lady Bottomley, my noble friends Lord Judd and Lady Massey, the noble and learned Lord, Lord Brown of Eaton-under-Heywood and so many other experts in this and related fields, which the subject matter warrants. This is no insignificant matter. Children above the age of criminal responsibility are subject,

“to the full rigour of the criminal law”.

They can be arrested, charged and, in certain circumstances as we have heard, be tried in a Crown Court and awarded the equivalent of adult sentences, including life sentences. They can also, of course, receive a criminal record. I do not agree that the numbers are small—360 children under the age of 12 in one year is not a small number to be convicted of an offence. With that age set, as we have heard, at just 10 years of age, the law of this country is dramatically out of step with the rest of Europe, where the average is 14. I understand that in Poland the age is set at 17 years old. Even our closest neighbour, Scotland, voted in 2010 to amend the age of criminal prosecution, at least, to 12 years of age.

In addition, the UK's legislative position in this area stands at odds with the accepted international human rights framework. The EU Committee on Social Rights in 2005 declared our age of criminal responsibility in England and Wales "manifestly too low" and incompatible with EU charters. We have heard that in May 2016 the UK Children's Commissioners made a joint submission to the UN Committee on the Rights of the Child calling for the UK and devolved Governments to raise the minimum age as a matter of urgency. Following that submission, the committee on the rights of the child recommended that we change existing legislation to meet that recommended international standard of 12,

"as the absolute minimum age",

and even,

"to increase it to a higher age level".

We have also heard about the evidence on child development which supports a growing international consensus in this area. Research in neuropsychology suggests that crucial brain development underpinning behaviour continues until at least 20 years of age. Indeed, the noble Baroness, Lady Murphy, suggested that it might continue for even a little longer than that. The prefrontal cortex, which is responsible for decision-making, impulse control and cognitive control, is among the slowest parts of the brain to mature. Psychologists have also shown that adolescents are not wholly responsible individuals and are inclined to take particular risks and behave in irresponsible ways. In 2011, the Royal Society published a report stating that,

"it is clear that at the age of ten the brain is developmentally immature, and continues to undergo important changes linked to regulating one's own behaviour".

If hard science is not sufficient to make the case, perhaps basic logic might prevail. Areas of social policy outside of criminal justice allow for the capacity of adolescents to make informed choices to differ in many respects from those of adults. As a result, the corresponding legal framework dealing with children's rights and responsibilities provides for a range of age-related safeguards and limitations. Again as we have heard, these include a prohibition on the paid employment of children under the age of 13, the legal age of consent to sex which is set at 16, the statutory school-leaving age currently set at 16 years, legislation to prohibit the sale of alcohol or tobacco to those under the age of 18, and further legislation which holds that children are not permitted to go on active service in the Armed Forces, vote in elections, get married without parental consent or sit on a jury before they have reached the age of 18.

It is surely illogical and certainly inconsistent to hold that a child of 10 possesses the decision-making capacity to commit a criminal offence in full knowledge of the legal implications of their actions and the very real consequences both for themselves and their victims. Although a 10 year-old may well be able to distinguish right from wrong, there is little evidence to suggest that they are equipped to engage meaningfully with issues of morality and should be held to account for their actions if they commit an offence in the same way as an adult.

In reviewing the age of criminal responsibility, we must understand the consequences for those children who at a very young age are being sucked into the criminal justice system. Despite best efforts, contact with the system at this age is likely to have very little success in preventing further offending and may well severely limit their ability to participate more widely in society in adulthood. Indeed, a National Association of Youth Justice report from 2012 revealed evidence that,

"the criminalisation of children is associated with higher levels of offending in adulthood".

The detrimental consequences for children being put through the criminal justice system go further than reoffending, in particular the associated stigma and discrimination faced by those with a criminal record in accessing housing, education, training and employment. We must ask ourselves if these effects, which are felt long beyond the original sentence and well into adulthood, are disproportionate. As the noble Lord, Lord Dholakia, has said, this is not about ignoring or excusing even very bad behaviour, it is about deciding on the most appropriate and effective response when it is perpetrated by some very young and troubled children. As my noble friend Lord Judd said, these children are often victims themselves.

I wonder how many of us in this House have children or grandchildren who have, in our homes at least, technically committed criminal damage. We may be frustrated or even angry, but we are unlikely to call the police. Should children who are looked after by the state or by parents who are themselves inadequate and troubled face the double disadvantage of early and unnecessary criminalisation? That this disadvantage is significantly more likely to impact children from black, Asian and minority ethnic communities is of further concern, with the Lammy report published today finding that the BAME proportion of youth prisoners has risen over the decade between 2006 and 2016 from 25% to 41%.

This debate, as pointed out in particular by the noble Baroness, Lady Bottomley, and by others, takes place in the wider context of youth engagement with the criminal justice system. I urge the Government to respond to this Bill at the very least by initiating a more substantial, cross-departmental review, including the age of criminal responsibility but also the treatment of young offenders and their relationship with the system as a whole. The current system is deeply flawed and we as a country are failing our young people, in particular some of the most vulnerable and susceptible youth.

In thinking about these issues I shocked myself into remembering that I have now worked in and around criminal policy for more than 20 years. I agree with many noble Lords that there has been some positive progress in some areas, but I fear it has not been a golden age of enlightenment. We can do better than this. I know the noble Baroness opposite to be a very thoughtful person. We came into your Lordships' House at around the same time a year ago and what a time it has been, with uncertainty and tumult at home and abroad. We now have a minority Government and, understandably, Brexit issues dominate discourse and debate in your Lordships' House and elsewhere, but surely

[BARONESS CHAKRABARTI]

there must remain some space for thoughtful reflection on vital domestic issues such as this. If not in your Lordships' House, then where? If not us, then who? I do not know to what extent the noble Baroness, having heard this debate, has any room to suggest even some openness on the part of the Government to reflect further on these issues, but I hope at the very least she can avoid in her remarks slamming the door too firmly closed.

1.57 pm

Baroness Vere of Norbiton (Con): My Lords, I thank all noble Lords for their very insightful contributions, and of course the noble Lord, Lord Dholakia, in particular for introducing this Bill and bringing this important matter back for debate in the House. I recognise the noble Lord's long-standing commitment to this subject.

The age of criminal responsibility in England and Wales was set at 10 in 1963, as we have heard, and Governments of all parties since have maintained this position. This Government take the view that children aged 10 and above are able to differentiate between bad behaviour and serious wrongdoing and can therefore be held accountable for their actions. Where a young person commits an offence, it is important they understand that this is a serious matter. The public and the victims of crime must also have confidence in the youth justice system and know that offending will be dealt with. The youth justice system needs to retain its ability to respond flexibly and effectively, which I believe it does.

The number of 10 and 11 year-olds in the youth justice system has fallen dramatically. This is something we all should celebrate. Since the peak in youth offending in 2007, the number of 10 and 11 year-olds entering the youth justice system for the first time has fallen significantly. In 2016-17, just 2% of first-time entrants were aged 10 or 11. In 2016, only 116 10 and 11 year-olds were taken to court, compared with more than 6,000 12 to 14 year-olds. In 2016, just 380 cautions and convictions were given to children aged 10 and 11 and the vast majority of these—81%—were cautions. This is a 95% reduction since 2007.

Serious crimes committed by children are mercifully rare, and we do not want to see 10 and 11 year-olds prosecuted for minor offences. Indeed, most such offending is diverted away from the formal criminal justice system. However, it would be wrong to ignore the fact that offences committed by young people, including by those aged 10 and 11, can have a devastating effect on victims and the community, and we believe it is important that serious offences can be prosecuted.

Children who have committed a crime need interventions and support to address the causes of their offending, as was so ably pointed out by my noble friend Lady Bottomley. We must make sure that they are not drawn further into the formal youth justice system unnecessarily. Alongside the work of the police and local communities to divert children away from the formal youth justice system, liaison and diversion services identify young people with specific needs or vulnerabilities when they come into contact with the criminal justice system. They support these children through the early stages of the system and

refer them to appropriate health and social care and divert them away from the justice system altogether if that is appropriate. These services are being rolled out in police stations and courts and are expected to cover 82% of the country by the end of this year, with a view to 100% coverage by 2021.

The majority of 10 and 11 year-olds who enter the youth justice system receive a caution. This means that low-level offending by younger children which does not need prosecution at court can be dealt with quickly and easily, while still allowing that child to receive the support they need to stop offending. If a child is sentenced in court, there are a number of flexible community sentences available. Referral orders require the child to attend a meeting with a panel including members of the local community and agree the steps they will take to change their behaviour. Youth rehabilitation orders can have specific requirements attached, such as a mental health or education requirement to address the child's offending behaviour. This allows the court to tailor the sentence to the young person by addressing their individual needs and ensure that the community is protected.

The Government have also taken steps to make sure that these young people are not subject to custody except in the most serious cases. Custody is only available for 10 and 11 year-olds if they commit a crime where an adult would be liable to a sentence of at least 14 years' imprisonment. In addition, courts must consider imposing a community order with a high-intensity supervision requirement before they can pass a custodial sentence. If the court decides to order a custodial sentence, it has to explain why it has done so in open court. The fact that, between 2007 and 2016, just five custodial sentences were given to 10 and 11 year-olds shows that all but the most serious cases of offending are being dealt with in the community. Even if a child of this age is sent to custody they would be placed in a secure children's home. Here, there is strong focus on addressing their and their family's needs as well as the offending behaviour.

I turn briefly to the issue of whether responses to criminal activity are age-appropriate. When considering the most appropriate response to offending by a young person, the age and maturity of the child is always taken into account. We are keen to ensure that, wherever possible, and depending on the severity of the offence, children are not unduly prosecuted. This is why most children aged 10 to 14 are diverted from the youth justice system or receive an out-of-court disposal. Where a 10 to 12 year-old child is prosecuted, the court is required to take their welfare into account, as it must when dealing with all those under 18 when determining the appropriate sentence. This includes taking into account the age of the child—their chronological age as well as their maturity.

We are aware that most European countries have a higher minimum age of criminal responsibility, and that the United Nations considers 12 to be the minimum acceptable age. However, countries such as Switzerland, South Africa, Australia and the United States also have an age of criminal responsibility of 10. We believe that each country must make a judgment based on its own circumstances and procedures. It is not as simple

as saying that our age of criminal responsibility should be the same as that of other European countries. Indeed, it can be misleading to make such simple comparisons. Having the age of criminal responsibility at 10 enables the youth justice system to deal with those cases which require the justice system to be involved but, crucially, it does not preclude other types of intervention instead, where this is a more proportionate response.

I assure the noble Baroness, Lady Chakrabarti, that we are committed to reforming youth justice, and the government-commissioned Taylor review of the youth justice system was published in December 2016. The Government are implementing a number of the recommendations, including developing plans for secure schools, which will provide a safe, secure environment with education and health at its heart. We are committed to ensuring that young offenders receive tailored education, health and care interventions that meet their needs, so that they are better prepared for life in the community and, most importantly, so that they do not reoffend.

It is important that both the public and the victims of crime have confidence in the youth justice system and for communities to know that young people's offending behaviour will be addressed. Victims of serious crimes committed by 10 and 11 year-olds must feel assured that those responsible can be proceeded against by the courts. But we must also ensure that these young people are rehabilitated and educated if we want them to cease their criminal activities.

In conclusion, the Government believe that the age of criminal responsibility is appropriate and accurately reflects what is required of our justice system. For these reasons, the Government do not support the Bill.

2.07 pm

Lord Dholakia: My Lords, I am grateful to the Minister for her response. I am disappointed, to say the least, by the position she has taken. I remind her to look at David Lammy's report, published this morning, which talks about how to divert young people before they are criminalised and the alternative ways and means by which you can deal with young people. It is only when that system fails that one has to use the criminal process. This was accepted by David Lidington when he said he would give serious consideration to the requests made in the report. I hope the Minister will have the opportunity to read the report and, if possible, at a later stage of the Bill to come back on this point.

I thank all noble Lords who have participated in the debate. The distinguished list includes Ministers, past and present; senior judiciary; and those involved in child welfare work and the legal profession. I am grateful for their contributions and support, and particularly for giving up their time on a Friday afternoon. That includes my friend, the noble Baroness, Lady Bottomley, who is my neighbour and I shall certainly speak to her privately.

The Bill follows a very important debate that took place yesterday, introduced by the noble and learned Lord, Lord Brown of Eaton-under-Heywood. One thing that came out of that debate is the need to work

effectively in diverting young people away from the criminal justice process. What David Lammy is talking about in his report—the noble Baroness, Lady Chakrabarti, brought this factor out—is that 40% of people in that situation reoffend, and we are looking at part of it. Ultimately, we have to look at how we approach this subject in order to divert more people away from the criminal process.

I say to the Minister that some years ago I was very keen on introducing a Bill on the rehabilitation of offenders, which had been with the Home Office for about 30 years and no change had taken place. I persisted with that Bill on two occasions. During the coalition Government, when Ken Clarke was the Minister for Justice and my noble friend Lord McNally was another Minister, I was invited to see them, and when I did, they sat in their posh ministerial chairs and confronted me about my intentions. It reminded me of the Preston Crown Court, which my noble friend mentioned earlier. Nevertheless, many of the recommendations in my Rehabilitation of Offenders (Amendment) Bill were accepted by the Home Office and the Minister for Justice in the LASPO Bill that that Government introduced.

One of the most interesting things in the research which has been done is evidence showing that many people have been helped to build or rebuild their future by no longer having to disclose some of their criminal record. That is the type of proposal that we are talking about, to ensure that our society looks at how to rebuild the lives of the many young people who go through the system.

Finally, it might be helpful if, at some stage, the Minister could give an indication of the Government's view on the Lammy report and the provisions it addresses concerning young people. At this stage, however, I simply ask the House to give the Bill a Second Reading.

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

Modern Slavery (Victim Support) Bill [HL] *Second Reading*

2.11 pm

Moved by Lord McColl of Dulwich

That the Bill be now read a second time.

Lord McColl of Dulwich (Con): My Lords, this Bill is an essential addition to the Modern Slavery Act, a measure which has already been a great success thanks to the support of many people, not least the Prime Minister herself. I shall begin with a brief overview of what my Bill does before moving on to explain why I believe these new measures are necessary.

My Bill would amend the Modern Slavery Act with two primary effects. First, proposed new Section 48A would put into law victims' entitlement to support during the reflection and recovery period, while the competent authorities are deciding whether there is evidence that they have been a victim of modern slavery. Secondly, new Section 48B would create a

[LORD McCOLL OF DULWICH]

statutory duty to provide confirmed victims of modern slavery with ongoing support and leave to remain for a period of 12 months. New Section 48C sets out the main types of assistance and support that would be provided to victims, and stipulates key aspects of how that support is to be provided.

In April, the Home Secretary wrote:

“We must be better at getting immediate support to victims when they are at their most vulnerable. Otherwise they just slip through the net, to be abused all over again, and we lose any opportunity to gain information on the criminals who exploited them in the first place ... We also want to make sure that victims are able to rebuild their lives. Our aspiration to help these people is in the right place—but at present, the provision of support may yet not be”.

With this, I agree entirely. My Bill provides a way to make these aspirations a reality by putting the principles for victim support into legislation.

The UK is a signatory to the Council of Europe convention and EU directive which require us to provide support when a victim is first identified, during the so-called reflection and recovery period. My Bill ensures that there is no doubt that victims should receive these international rights by creating a legal framework with minimum standards. This will provide certainty for victims and for the organisations that support them.

The treaty-monitoring body for the Council of Europe Convention on Action against Trafficking, known as “GRETA”, urged the UK Government,

“to enshrine in law ... the right to a recovery and reflection period”,

in its first report on the UK in 2012 and repeated this recommendation in October 2016.

Victim support rights are also included in the EU directive. Your Lordships will remember, possibly, that I was a strong proponent of the EU anti-trafficking directive when it was being developed. I was pleased when the Government opted into the directive, and more so when the Modern Slavery Bill was introduced. However, although the Modern Slavery Act has brought into national law most of the directive’s provisions, it does not include the measures which guarantee support for victims. It is uncertain at present what the status of the directive will be once the UK has left the EU; presumably, its provisions will no longer have effect. This lack of clarity creates risks for victims which should not be entertained.

Scotland and Northern Ireland have introduced a legal duty to provide support to victims while the NRM decision is being made. It cannot be right that victims in England and Wales have fewer protections than those in Scotland and Northern Ireland. My Bill will create equality of access by setting out a clear approach to caring for victims in England and Wales through Brexit and beyond.

My Bill will also ensure that we have consistent standards of support. New Section 48C sets out clearly what support and services victims should have access to and establishes standards for their provision. For example, assistance should be provided only with a person’s consent and should be based on the individual’s particular needs. These minimum levels of support are all drawn from our international obligations.

I turn now to an issue which has come to prominence over the past year: the support available to victims following a positive conclusive grounds decision. Front-line agencies are advising us that the current system is not meeting our objectives to recover victims and protect them from further exploitation. As the anti-slavery commissioner has said:

“Supporting a potential victim until the conclusive decision is made and then ceasing support so abruptly could be damaging for the victim and negatively affect their recovery”.

Ending support just 14 days after the NRM decision without establishing access to services and suitable housing for the following period puts victims at risk and interrupts their recovery. Research by the Human Trafficking Foundation found that,

“the current options for housing and support in the post safe house period are not sufficient for survivors of modern slavery. If there is no effective strategy to prevent re-victimisation then generational cycles of abuse and exploitation of vulnerable people may continue unabated.”

Front-line support agencies have highlighted cases where confirmed victims are destitute and sleeping on the streets, are refused access to welfare benefits or housing, and have then engaged in prostitution because they were not entitled to any form of support. The anti-slavery commissioner raised these concerns with the Work and Pensions Committee in another place last year. The committee inquiry report which followed highlighted that despite its other achievements, the Modern Slavery Act did not secure a pathway for the victims’ recovery. The committee went on to recommend that,

“all confirmed victims of modern slavery be given at least one year’s leave to remain with recourse to benefits and services ... this would allow time for victims to receive advice and support, and give them time to plan their next steps. This would not prevent those who wish to return home from doing so”.

A similar recommendation has been made by the GRETA report, which urged the UK authorities to,

“make further efforts to ensure that all victims of trafficking are provided with adequate support and assistance, according to their individual needs, beyond the 45-day period covered by the NRM”.

The committee recognised that not only is there a moral case for providing longer support, but that doing so also benefits the criminal justice system, because providing support can help to bring the perpetrators of these terrible crimes to justice. The anti-slavery commissioner told the committee that victims are often the best source of intelligence and that they would be deterred from even coming forward and making accusations against their abusers if they believed they would not be supported.

Victims are vulnerable, often fearful of reprisals from their traffickers and anxious about the future. If they are not given guarantees of housing and food, and access to other support, how can we expect them to feel secure enough to provide information about the people who abuse them? Yet without their input, it may be impossible to bring successful prosecutions against the criminals who perpetrate these horrible crimes.

The Government will no doubt wish to highlight that there are options for longer-term support through the existing discretionary leave to remain, which I shall refer to as DLR, for which confirmed victims of

modern slavery can apply. However, there is significant evidence that many victims are falling through the gaps of this scheme, because of three key problems.

First, DLR is available only in three narrowly defined circumstances, one of which, known as “compelling personal circumstances”, is given a much narrower interpretation than that in the Explanatory Note to the Council of Europe convention. In all, just 123 of the victims positively identified as victims of trafficking in 2016 were granted discretionary leave to remain.

Secondly, because DLR is not automatically available for every victim, a separate process must be instigated, which can begin only after the conclusive grounds decision. The anti-slavery commissioner has said:

“This significantly delays the process, and ultimately pushes victims onto the streets while they await a decision on their DL application”.

Although safe houses can ask for an extension to the victim’s stay pending this decision, that extension is not always granted. This cannot be acceptable.

Thirdly, the process of applying for DLR varies for different victims and in different circumstances, which leads to confusion of course. Where the application is being made because a victim is helping police with their investigations, the police must make the application. Sadly, it seems not all police forces are aware of this responsibility. One charity told the Work and Pensions Committee:

“Investigating police forces are not well versed in immigration matters and often do not know what DL means let alone how to apply for it or that they are responsible for this application”.

Even if forces are aware, processing the application takes time away from the investigative role that the police are uniquely tasked with. I suggest to the Minister that we would do better to relieve the police of that responsibility by giving all victims the option of a limited period of leave automatically, as my Bill does.

I will take a moment here to stress that my Bill provides only a limited period of leave. It does not provide an automatic grant of indefinite leave to remain. Indeed, I would not support such an open-ended commitment. The Bill provides a 12-month period for victims’ rehabilitation, not permanent residency. The possibility and length of any extension is at the discretion of the Secretary of State.

I know the Government have expressed concern that giving all confirmed victims automatic DLR would create a “pull factor” for traffickers or false claims. However, the Work and Pensions Committee rightly said:

“It is not clear ... how such a pull factor would operate”,
and that it is,
“unsubstantiated by evidence”.

Traffickers do not exploit people with the aim that they should escape and receive benefits.

Moreover, the NRM is designed to filter out such fraud, and it is expert at so doing. The suggestion that automatic DLR might lead to a greater number of false referrals to the NRM forgets that a victim cannot self-refer. It is not in the interests of the professional first responders who make NRM referrals to knowingly

making false referrals. I do not believe making support available after the NRM period would lead to such unprofessional conduct.

The Government have also expressed concern that an automatic entitlement would lead to victims with criminal records being allowed to remain in the country. I share the Government’s concern to protect the public from anyone who poses a threat, which is why I have included an exception for such people in my Bill. However, we must be cautious about assuming that everyone with a criminal record poses a risk. A criminal record can be one of the factors that makes a victim vulnerable to exploitation. A balance needs to be struck between protecting the public and denying help to a vulnerable victim simply because they committed an offence in the past.

Yes, the Bill will increase the number of victims who receive DLR and access to benefits and housing, but it will also help more victims on to the path to recovery. Some will not want to take up the offer of longer support and will return home before the end of the 12 months. Most victims do not want to live on benefits but want to regain their place in society by accessing training, education or jobs. It is just that they need help to do so. Here I must make a brief mention of the Bright Future partnership between the Co-op and charity City Hearts, which is an example to businesses who want to offer work experience to victims.

I have set out the case for further reform to benefit the well-being of victims of modern slavery. In doing so, I remind your Lordships that the Government should be applauded for setting the foundations for this next step and commended for the great strides forward that have been taken in tackling this crime over the past few years. Today I offer my Bill as a next stage in the development of the Modern Slavery Act so that we can lead the world in addressing this crime. I very much hope the Government will see in the Bill a great opportunity, and that they will embrace it and make it their own. I beg to move.

2.30 pm

Lord Prescott (Lab): My Lords, I congratulate the noble Lord, Lord McColl, on his Bill, which would extend the rights and compensation for those suffering under modern slavery. It is right and proper. Indeed, I could not say anything else, since I was a Member of Parliament for Hull for 40 years, following in the footsteps of William Wilberforce, who passed anti-slavery legislation through this Parliament.

However, I hope that the noble Lord will not mind, since this is an extension of our national law, if I take it into the context of the international framework, which is having some influence on mass migration in our world, which leads almost to the acts of slavery about which he talked so eloquently. I want to talk about that international framework against the background of my experience. I will particularly refer to environment legislation which, while geared to deal with the climate change problem, has consequences in developing countries which lead to people taking desperate means to find a job somewhere else. That is understandable and we see it on the television every day.

[LORD PRESCOTT]

As the Council of Europe rapporteur, I deal with climate change and have been dealing with it since 1997 when, as Deputy Prime Minister, I led the negotiations for the successful Kyoto agreement. That set the global architecture. Since then, we have had the Paris agreement, which established a national policy under which all countries are committed to a national target to cut carbon. Where it fails, I think, is in the completion of a new concept that I have developed within the Council of Europe and in UN climate change negotiations of a commitment to a national registry system.

I will explain that. Basically, it means that we have a subnational concept. We have the international framework and the national framework, but more can be done to assist in the environmental problem and the migration that comes from it by acting between developed and developing countries. I call it a subnational agreement, which means that you can make an agreement at a lower level, not necessarily having to find national or international agreement, but working within that framework. You could call them regional agreements if you like, but, it is the same business. It is where two parts of the global economy work together, one a developed country and one a developing country, to use the expertise in one area to help similar areas in other developing countries.

I can think of two examples based on what we learned in the Humber from the development of the Humber estuary. Estuarial development affects many developing countries, so our expertise, whether in fishing, trade, nuclear power or renewable energy—now with Siemens and wind power—can be used to help developing countries meet their low-carbon targets. We have made two agreements, which involve the universities, the local authorities, public and private industry getting together at the subregional level to see how we can help those countries to develop. One is between Hull and Morocco, which is an agrarian economy, although it has a lot of renewable power as well. We have helped Morocco develop its agriculture industry, make water savings of 30% and reduce its carbon output. That is a legitimate target for it. The second, which we are most excited about, is with Ghana. Ghana now has a connection with Hull, and the River Volta now has an estuarial development. The River Volta is 200 miles long, with 100 villages on it, and we have suggested that if they develop the estuarial economy, we will provide the boats, built in Hull, we will provide the finance and develop the commercial contact between the villages, which is important to help them to develop their economy—which is crucial—in a low-carbon way. Indeed, we are quite proud of that, and we are working very hard to achieve it. The first boat has gone—we call it the medical boat, because it enables villagers to contact the medical centre by a boat that is built in Hull. The rest of the fleet, which we are financing and developing, will help to develop the commercial economy and reduce carbon. This was referred to by Kofi Annan, the former Secretary-General of the UN, at a conference in Hull on Saturday, when he said that this was one of the most important developments and that,

“estuarial development on the Humber with similar regions in Africa”,

is a pioneering, subnational co-operation. That is exactly what it is and that is what we can do more of. It needs to be in the national and international framework.

In Hull we are a pioneering city—we are proud of that, and we have a summit on slavery taking place in two weeks’ time. We lead the world in that; it is important that we follow new initiatives in a co-operative way to do something about the mass migration that leads to slavery.

2.35 pm

The Lord Bishop of Derby: My Lords, I too thank the noble Lord, Lord McColl, for his persistence and inspiration in keeping this on the agenda and bringing this Bill before us today.

I declare a number of interests. I was on the Select Committee that helped to craft the legislation, which was a good foundation—but all the evidence shows, and some of us realised this at the time, that it needs to be developed with further investment, as we learned from victims and the adjustments of the police and other statutory authorities. I declare an interest, too, as chairman of the advisory panel of the Independent Anti-slavery Commissioner, to whom the noble Lord, Lord McColl, referred and who is doing some amazing work, helping us to see where the foundations can be strengthened and developed.

The noble Lord, Lord Prescott, has pointed to the fact that this is a perfect storm in the number of vulnerable and desperate people who are attracted and often tricked into coming to our country and into slavery. We have to push back upstream, as the saying goes—and it is great to hear what is happening in Hull. Next Monday, the Independent Anti-slavery Commissioner will release a report after he was asked by the Government to visit Vietnam and look at the relationships with cultures from which people are exported into slavery and to provide contacts for people to return. He is also looking at how economies can be developed to encounter this storm of vulnerable people.

We have heard how the Independent Anti-slavery Commissioner has been working with the Work and Pensions Committee, making suggestions to the Government about the NRM. All this is evidence based and putting victims at the centre, which is what this Bill is about and why I think it is the next obvious step for us to take.

My third declaration is that I am involved with the Clewer initiative with the Church of England and other partners, which is being launched formally on 17 October but is already working to help voluntary groups and churches in particular to engage with victims and support the statutory agencies and other partners, including safeguarding partners in local authorities, to provide energy, wisdom and expertise to add resource to what needs to be done.

Second Reading is about matters of principle, and I want to highlight two or three principles that are important to consider and invite the Minister to reflect on them with us in looking at the proposals before us. The first is about numbers. The Minister in the other place has recognised that the numbers quoted are grossly inadequate. We are looking at a vast problem

affecting almost every community; even in rural Derbyshire we discover evidence of people in slavery. So the resource implications will be huge, and we have to face that. How will we resource the needs of victims as we improve our ability to identify them, pushing back against crime and helping them to recover?

The key principle that I want your Lordships to think about is recovery. This is not just about rescuing people—it is recovery. I have had the sad privilege of meeting and working with a number of victims: women who have been raped 10 times a day, who asked for drugs to save them from the pain; people in domestic servitude, who sleep on the floor and are on call 24/7, trapped in a house; and 16 or 20 men in the city of Derby, living in a two-up, two-down house with one bathroom, a bus to work and a bus back, who have £5 a week to spend and whose passports have been confiscated. We meet people like that, from whom the very humanity has been knocked out. They are broken and their ability to think of themselves as human beings is very weak indeed.

The crime works and is such a successful business because they are good at recruiting people who are vulnerable anyway: those who are homeless or who have emotional or mental health problems. This is why resourcing is so important. People in that state do not just need a quick system—at the NRM we are realising that we need more time, resource and benefit cover—they also need loving, basically, and that is really hard to do. One thing the Clewer initiative is about is finding how people can voluntarily go the extra mile and step up. In my diocese, we provide support for the police with premises for interviews. Our Mothers' Union puts together toiletries to give to people to make them feel that their body is worth caring for. We try to provide volunteers to sit with victims and to provide accommodation, with the Red Cross and others, when the system is creaking and people are falling between the cracks.

I invite the Minister to help us think about this. There are enormous resource implications and there has to be a judgment about how it is to be delivered. How are we going to balance asking the statutory authorities and the benefit system to do what they can in the right timeframe to give people a chance to rediscover their humanity? How are we—especially the Government in their guidance to statutory bodies—going to encourage partnership with things like the Clewer initiative and other voluntary and faith groups, which can provide such a precious extra dimension by saying to people, “You are a person”; “You can be loved”; “You can have a future”? They can go the extra mile when technical resources are often constrained. I hope the Minister will help us reflect on how the voluntary and faith sectors can partner with statutory provision to provide much better resources for recovery.

2.42 pm

Baroness Bottomley of Nettlestone (Con): My Lords, I pay the warmest tribute to my noble, and very longstanding, friend Lord McColl, for his tremendous work in preparing for this Bill. He has a long track record of social responsibility and enlightened policy-making, and a real commitment to the vulnerable. Everyone in this House hugely respects and admires him.

Modern slavery is a brutal form of organised crime, in which people are treated as commodities and exploited for criminal gain. It takes a number of forms, including sexual exploitation, domestic servitude and forced labour. In many ways, it has come upon us as a great shock. It is rather like when we first uncovered the breadth and depth of child sexual abuse. Many of us had worked in this field for many years, in welfare organisations and the churches, but nobody really understood how insidious, widespread and covert this was, as a real social ill of the modern world. Modern slavery is a similar threat and scourge.

I am proud of the Modern Slavery Act 2015, and proud that the Prime Minister gave it such personal commitment. Great strides have been made. This is a world first: we should be proud of that but continue to work on what we have achieved. As the noble Lord, Lord Prescott, said, we should see the international context more fully.

The work of the Independent Anti-slavery Commissioner, Kevin Hyland, is really showing results in such a short space of time. The report, *Victims of Modern Slavery*, by my first boss, Frank Field, the chairman of the DWP Select Committee, is hugely influential. As he says:

“The Modern Slavery Act was a pioneering piece of legislation that proved the UK’s commitment to eradicate the horror of modern slavery. The Act established new protections for recognised victims but what it did not do was establish a pathway for their recovery”—

I agree with the right reverend Prelate’s emphasis on the word “recovery”.

“The journey from being a victim to becoming a survivor is unique for each individual and without the right support in place, it is a journey many individuals cannot make”.

The challenge now is for the Government to think as imaginatively as possible. Without doubt, my noble friend has given the Government an agenda for action and the criteria that need to be addressed. Whether this is done through primary legislation, secondary legislation or regulation, I am happy to debate, but the direction of travel has been forcefully identified.

The noble Lord, Lord Prescott, referred to the Wilberforce Institute for the study of Slavery and Emancipation. Having been the chancellor of the distinguished University of Hull for 11 years, I reinforce the comments he made about Hull’s link with the campaign against slavery, William Wilberforce’s birthplace, the institute next door to his home and the Wilberforce House Museum. It is a remarkable institute and I am delighted that last year it won the Queen’s Anniversary Prize for its research into slavery. It draws together experts in the humanities, law and social services. Kevin Bales, who has done the pioneering work on the meaning and measurement of contemporary slavery, was present at the ceremony along with many others. They were closely involved in the Modern Slavery Act 2015 and looked particularly at another pioneering aspect of legislation whereby UK companies with a turnover of over £36 million must report annually on the steps they have taken to ensure that modern slavery does not feature in their supply chain or business. That is a new requirement and the efforts to deliver that in practice and ensure that companies address it in the most effective way rather than simply signing off a certificate is work in progress—more can be done.

[BARONESS BOTTOMLEY OF NETTLESTONE]

The noble Lord referred to the conference on eradicating contemporary slavery to be held in two weeks' time. I hope that the Minister will pass on her best wishes to the Home Secretary who will speak at that conference—the Wilberforce World Freedom Summit—in two weeks' time, as will the President of Ghana, so perhaps the noble Lord can catch up on the River Volta and other matters when he is there. The noble and learned Baroness, Lady Scotland—the Secretary-General of the Commonwealth—will speak at the conference, as will the noble Lord, Lord Haskins, who will talk about what employers can do. This is an exciting and ongoing programme which is very much part of today's discussions.

It is clear that there are real inadequacies in the provision for survivors of modern slavery. People are vulnerable and are left homeless, without access to public funds, often in a city they do not know. Destitution makes people once again susceptible to the offers of traffickers, who claim that they can find them employment or housing when they are in desperate situations. We have to keep people safe and benefit in due course from their commitment to society.

I was delighted that my noble friend mentioned the Co-op because this is a shining example of an enlightened employer making a practical difference, with 30 placements this year for victims of slavery, with support with a buddy leading to paid employment. This is surely what Section 172 of the Companies Act is all about—how businesses can play their part. The latest estimates are that there are 21 million victims of slavery in the world, with 13,000 in the UK. The right reverend Prelate suggested that that was an underestimate.

Wilberforce said:

“You may choose to look the other way but you can never say again that you did not know”.

We do know, and it is the job of legislators, public bodies, philanthropic bodies, the faith community and employers to work together to rid us of this appalling scourge.

2.48 pm

Baroness Benjamin (LD): My Lords, I am proud to lend my support to this Bill put forward by the noble Lord, Lord McColl, who has a long history of working to ensure that those affected by human trafficking are suitably protected. I salute him for all his efforts. The Government, too, must be congratulated on introducing the much needed Modern Slavery Act, which has raised the awareness of this evil practice and ensures that more perpetrators are apprehended and punished.

The Prime Minister quite rightly called modern slavery,

“the great human rights issue of our time”.

With this declaration in mind, we must seek to go further, if we truly want to rid the UK—and indeed the world—of slavery in its modern forms. We must examine the contexts and situations that make people vulnerable to exploitation, be they girls in the British care system, women from Nigeria or men from Romania. We as a modern society need to truly understand what modern slavery entails, as was so eloquently set out by the right reverend Prelate the Bishop of Derby. So alongside our new, more robust criminal legislation,

it is vital that we evaluate how we treat the victims of this most awful, degrading, wicked and cruel crime, which involves mental, physical, emotional and sexual abuse and which abuses human dignity, destroys confidence and self-esteem and ruins lives.

Unsurprisingly, many of the vulnerable victims of this hideous crime are children. More than a third of the 3,805 victims of modern slavery in the UK identified by the National Crime Agency in the UK last year were children. So we must raise our game in this area and reach out to help those young people whose lives have been blighted by the misery, abuse and exploitation of modern-day slavery. They need intensive levels of dedicated and specialist support to help to rebuild their lives so that they become young, active and healthy adults. Presently, for child victims in the UK, this is not the status quo.

I understand that the response to children trafficked in the UK is often severely lacking and inconsistent. Many young victims receive minimal support and are even put at risk of being re-trafficked by unscrupulous criminals because of failures in their identification and care. A report by ECPAT UK last year showed that nearly 30% of children identified as trafficked went missing from care at least once, with many never being found. Budget cuts mean that local authorities are struggling to meet the needs of this particularly vulnerable group of children.

We cannot and must not allow this to continue. To truly help these children we must address the failings in the identification and support systems that currently exist. Children of all nationalities who have been exploited should be guaranteed access to specialist care and support. Childhood lasts a lifetime, so if we do not provide this type of support we are building up enormous problems for the future, especially mental health problems, which cause instability, anxiety, a total loss of confidence and lack of trust in humanity.

I therefore intend to put down an amendment in Committee to ensure that this important Bill on victim support includes specific provisions for the specialist support that child victims also need. In the long term, failing to act will result in both a financial and a moral cost to our society. We need to have the moral courage and determination to support children, who are victims of modern enslavement through no fault of their own, and to give them hope for the future.

2.53 pm

Lord Carey of Clifton (CB): My Lords, I am very pleased to be able to speak alongside so many distinguished speakers today. I thank the noble Lord, Lord McColl, for his excellent speech and for bringing this important Bill before us. Of course, it is always a pleasure to hear and follow the noble Baroness, Lady Benjamin. I will focus on one aspect of the Bill: the benefits of providing victims with a support worker, or an advocate, as they make their way towards recovery—a provision found in proposed new Section 48C(1)(e).

Noble Lords will recall that the Modern Slavery Bill was preceded by a report commissioned by the then Home Secretary—the current Prime Minister—produced under the chairmanship of Frank Field. The resulting publication informed the Government's approach to

developing their Modern Slavery Bill. The report was entitled, *Establishing Britain as a World Leader in the Fight against Modern Slavery: Report of the Modern Slavery Bill Evidence Review*. Its title summarises many of the sentiments that have already been expressed by your Lordships. We want Britain to be a world leader in the fight against modern slavery, as it was nearly two centuries ago.

In that report was a recommendation that is encapsulated in this Bill,

“that a ‘survivor support pathway’ should be developed in the UK in order to ensure that outcomes for survivors are improved and that their long-term recovery is protected and maintained ... there is a significant need for ongoing support beyond the 45-day reflection period”.

It was also recommended that there should be a special, short-term temporary residence visa and work permit for confirmed victims where needed.

The need for individuals to receive personalised support has been recognised for some time. The evidence review recommended that part of that support could include a “mentor”, who would ensure that the individual, for example, gained access to work and housing. The noble Lord’s Bill proposes in the section that I quoted that victims should have a support worker to walk alongside them through the journey of recovery. That is a sensible proposal because individuals in vulnerable situations need someone to be their advocate, to encourage them and to help them through the maze of options that they face. A victim of trafficking is in such a situation: possibly in a new country, not able to understand the language and having to navigate a complicated system of benefits and housing just to get back on their feet.

The notion of a support worker is not mere speculation; some charities already offer this kind of assistance. City Hearts, for example, is a charity that runs an integration support programme—a very innovative and effective initiative. We know from our own personal experiences through life that we all need somebody who cares about us and is invested in our future. Trafficking victims have every good reason to doubt that individual care exists, but compassionate support shows results. The evaluation report that I have just mentioned includes feedback collected from victims on their experience of having an individual coach. The comments include, “I want to say thank you for being the one who believed in me”, and, “Thank you for all your support, for not giving up on me”.

Much good work is already being done by NGOs to support victims using varying models of a support worker. We need to give them extra tools to equip victims to finish the recovery process. This Bill would provide those tools and it is widely supported by NGOs. I very much hope that the Government will regard the Bill as an opportunity to fill a missing element of the Modern Slavery Act and that, in doing so, the United Kingdom will be recognised as a world leader in caring compassionately for victims.

2.58 pm

Baroness Massey of Darwen (Lab): My Lords, I thank the noble Lord, Lord McColl, for pursuing the important issue of modern slavery and I support him.

I was struck, over the summer, by how much appeared in the media on cases of trafficking and modern slavery. Of course, trafficking results in modern slavery, whether it be in domestic work, cannabis factories or prostitution. Modern slavery is a moral and ethical issue, not just a legal one. I have learned first hand how victims of modern slavery, including child victims, have been duped, exploited, treated cruelly and abused physically and mentally. They need all the support they can get to recover and build lives without fear, as many noble Lords today have said. I declare two interests: I am a member of the Parliamentary Assembly of the Council of Europe and I chair its sub-committee on children. I am also a patron of the University of Bedfordshire child trafficking unit.

The Anti-Trafficking Monitoring Group states very clearly the importance of the Bill. It will ensure that victims receive longer-term support and stability to transition from “victim to survivor”. I stress the importance of “from victim to survivor”. The noble Baroness, Lady Benjamin, has commented today on the limitations of the Bill referring only to adults, and I will come to that myself in a few minutes, but I will support and discuss any possible amendments to include children in the Bill.

Is the Minister concerned about the UK’s exit from the EU in relation to victim support rights? Some feel that the EU trafficking directive, with its support and assistance measures, is at risk, even though it may move into UK law through the withdrawal Bill at the point of exit. Is there not a risk that it could be repealed by Ministers without reference to Parliament? Will the Minister comment?

On European recommendations, the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings produced an evaluation report in 2016 repeating criticisms and recommending again that the UK should enshrine in law applicable to Wales, Scotland and Northern Ireland, the right for victims to a recovery and reflection period as defined in Article 13 of the convention. I will not go into details of the convention, but the Council of Europe’s views back up those of the anti-slavery commissioner, who requested that the Work and Pensions Committee set up an inquiry into the support and benefits available to slavery victims. The committee recommended that victim recovery should allow time for victims to receive advice and support and give them time to plan their futures. UK NGOs quote cases where slavery victims are subject to further exploitation and re-trafficking and have taken drastic measures to survive, such as prostitution. They need time to recover, and to make the transition from the victim situation to that of a human being as we would accept it.

I believe that a Bill such as this should also apply to children, by which I mean young people aged 18 or under. All victims of modern slavery are vulnerable, but children are more vulnerable than most. As the UN Convention on the Rights the Child points out, the welfare of the child is paramount. Children who are trafficked and sold into slavery are in the most appalling place. They are unsupported, have no money, do not understand systems and are already terrified by the ordeal of being trafficked. Eventually, some may

[BARONESS MASSEY OF DARWEN]

end up being looked after by the local authority. They are the lucky ones, although their situation may not be ideal. They often go missing from care because of those conditions.

The ECPAT report "*Heading Back to Harm*" highlights the problems of such children and the limitations of the systems around them. The Modern Slavery Act recommended that they should have an independent child trafficking advocate. I agree. Such a system is currently being trialled in three sites in England and Wales and I look forward to the results of those trials. Including children in the Bill would highlight their plight and enable us to make recommendations for improving how they are treated and how systems might better support them. I hope that we can look at that and give the Bill our full support.

3.04 pm

Baroness Newlove (Con): My Lords, I am delighted to be taking part in the debate on this Bill and I congratulate my noble friend Lord McColl on introducing such a wonderful piece of legislation. He has been an ardent campaigner on behalf of the victims of modern day slavery and I pay tribute to his tenacity and resolve in seeking to eradicate this terrible crime. The Prime Minister has described modern slavery as, "the great human rights issue of our time".

I agree with that sentiment. The Modern Slavery Act 2015 is a huge step forward in tackling this pernicious crime. It sends a clear message that in the UK, modern slavery, human trafficking and exploitation in all forms will not be tolerated.

None the less, it has become abundantly clear to many of us that sadly, this legislation does not go far enough. While it strengthens the criminal justice response to the criminality that underlies modern slavery, it falls short in protecting victims and supporting them as they recover from their ordeal. There is so much more that we need to do before we can honestly stand up and say that we are providing all such victims with the care and support they truly deserve. By care, I mean robust and professional support that gives them a pathway from being a victim to becoming a survivor.

My colleague Kevin Hyland, the Independent Anti-Slavery Commissioner, has done much to tackle this crime, but even he suggests that the estimates may be the tip of the iceberg. The head of the Metropolitan Police's anti-slavery unit has said that the number of suspected victims in London alone is expected to leap by 60% this year. We are looking at victims who have come through the process already and who have been to hell and back: destitute, having suffered terribly at the hands of their captors, and so traumatised that their emotions are held behind a brick wall to protect them.

This debate shines a light on the victims who are going through or have gone through the national referral mechanism, which I think sounds cold and feels very mechanical to the victims. Of course, we in this Chamber are well versed in what entitlements a victim should receive. These include support, housing, counselling and medical assistance. Once they are formally recognised as having been "trafficked", they have

just two weeks before they must leave their safe house and fend for themselves. I have been told that this is described as "falling off a cliff-edge". It is totally unacceptable on both the emotional and the practical level to feel like this because it severely undermines the work of those responsible for bringing the abusers to justice.

I stand here as someone suffering personally from trauma and anxiety, so to hear all this is truly shocking. The stark reality is that victims will often be grappling with shock, anxiety and uncertainty about what happens next. Ongoing counselling and emotional support is a very long process. It is not like the buzzwords that we hear about 45 days being needed for "recovery" and "reflection". Those two words have a long journey behind them.

As the Victims' Commissioner for England and Wales, I travel around the country speaking to victims because only then do I get a true picture of what they are going through daily. I want to finish by reflecting their voices, because we are here today to make it better for these victims and help them survive what they have gone through. I met a beautiful young girl from Albania who was very quiet and wanted to talk to me on my own. As the mother of three daughters, what I heard over the next 10 minutes broke my heart. This young lady, whose name I will not repeat for security purposes, was born in Albania. She was born disabled and ostracised by her community and hidden from her own people. She was trafficked, brutally attacked and severely raped. She went to the police, who listened to her account but did not believe that the rape had taken place, so she signed a form which she did not understand, because she wanted to get away from there.

She managed to get through the mechanism and she is now in a house where she thinks she will be safe. She has already been bullied by people from different countries. She needs specialist care and when I met her she was struggling to walk after having had an operation. She is sharing a single room with someone else and has been told that she must put up and shut up. This should never happen in our society today. She is beautiful and disabled, and she needs care and support, but we are commissioning landlords who do not understand. She was told to shut up, and that they do not work at the weekend. It was okay to ostracise her in another community that had nothing. As a mother, listening to her story broke my heart, so I went back and spoke to the person who commissioned her care—I will not say who it was.

It is important to note that we are talking about support for a lifetime. We get these victims over one hurdle, the trial in court, but their journey begins only once they are in a safe house in a healthy environment. My noble friend has brought forward an important piece of legislation, and we need to do more.

3.09 pm

Lord Morrow (DUP): My Lords, I find the last speaker a very difficult one to follow, with the experience that she has related to the House. I too congratulate the noble Lord, Lord McColl, on bringing forward his Private Member's Bill on human trafficking and modern

slavery. I note that many of his previous proposals were adopted by the Government in the Modern Slavery Act, which is testimony to his success. I fully support his new Bill. My own experience of navigating a Private Member's Bill—now the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland)—through the Northern Ireland Assembly is that listening to the experiences of victims of trafficking is vital in developing appropriate legislation.

I said on Report on the then Modern Slavery Bill that the objective of the victim support section in my Bill was,

“to ensure that victims of human trafficking who have entered into the NRM process have a statutory right to access support”.—*[Official Report, 25/2/15; col. 1677.]*

I am still of the same opinion that it is vital for the provision of assistance to be set out in statute. It makes it crystal clear what victims are legally entitled to. It gives victims and support agencies the ability to challenge the actions of the state if it has failed to provide effective support. It also ensures that the support provided to victims cannot be withdrawn or restricted by government if, for example, it faces budgetary challenges or if international legal obligations change, which they no doubt will after Brexit.

The call for assistance and support to be mandated by the Modern Slavery Act has been comprehensively set out by the noble Lord, Lord McColl. I am left asking myself: why have the Government failed to address these deficiencies to date, and have sought to justify the much weaker legislative position on victim care in England and Wales? I am grateful for the Independent Anti-Slavery Commissioner's support for the legislation in Northern Ireland. He said, earlier in the year, that Scotland and Northern Ireland have legal frameworks that,

“provide much more flexibility to the organisations managing the NRM support provision ... This allows them to provide a holistic approach offering individually tailored support to victims of human trafficking. As the UK's Independent Anti-Slavery Commissioner, I believe it is essential to ensure consistency across the whole of the UK, following the good practice of Northern Ireland and Scotland in supporting victims”.

The anti-slavery commissioner used the word essential. I hope the Minister will be able to agree that it is indeed essential.

There is a further convincing argument for why the Government should support the noble Lord's Bill—in a word, Brexit. I am an advocate of Brexit. However, I also was a strong advocate of ensuring that the EU human trafficking directive was fully incorporated into UK law. Indeed, it was a prime objective of my Bill to do so. So, while I stand for Brexit, I also stand for victims of modern slavery and am committed to ensuring that victims receive the best support and assistance that the UK can give them.

Until the EU directive came into force, victims had no legal rights to seek redress if the necessary support was not provided. In its recent briefing on Brexit and trafficking, the Anti-Trafficking Monitoring Group said:

“As a Directive, its provisions can have direct effect in national law when they are unconditional and are sufficiently clear and

precise. States must incorporate EU Directive provisions into national law which can then be relied upon by individuals in the national courts”.

An example can be given from the significant 2015 case of *AK v Bristol City Council*, which raised questions regarding the UK's obligations under the directive. The claimant was a Lithuanian national and a confirmed victim of trafficking. As an EEA national, she had not applied for leave to remain, but was deemed ineligible for benefits and became destitute. On going to court, Bristol City Council, initially unwilling to provide support, agreed to provide short-term accommodation.

This court case raises two important points about the status of victims after Brexit. The first is that the clarity that has been provided by the directive about what support and assistance should be provided to victims before and after an NRM decision will be lost without anything to replace it: at the moment, there are no government regulations or guidance to give any certainty for victims in England and Wales. Secondly, the ability of victims to seek redress through the courts will be lost. No one, least of all victims themselves, wants to see victims having to go to court to secure access to support, but we must acknowledge that the lack of consistency and transparency about what support should be available to victims in England and Wales, especially in the period following the NRM, has made it necessary to rely on such rights in court.

We have a situation where the services offered beyond the NRM vary from case to case and where local authorities are unclear about their responsibilities—something picked up by the 2016 Haughey review into the Modern Slavery Act. It is time for the Government to act to give long-term certainty to victims in England and Wales, to fill the gap that exists in the Modern Slavery Act.

Let me say, for the information of the House, that the section of my Bill on victim support was supported unanimously by the Northern Ireland Assembly. I hope that it will be able to be said of this House too that it supports the Bill of the noble Lord, Lord McColl, unanimously. It may be proper, in advance, for me to offer an apology to the Minister, the noble Lord, Lord McColl, and your Lordships' House, because when I look at my boarding pass and my times, I think I may be away before the Minister speaks. I trust that she will understand and I look forward to reading what she has said.

3.16 pm

Lord Elton (Con): I hope that I will help the noble Lord avoid that embarrassment by keeping my remarks very short, as I expect others will. I was reluctant to take part in this debate when I was asked to do so, because I thought I did not know enough about it. Then I started thinking about the situation in which these unfortunate victims find themselves and I find it impossible to stay out of the fray and not to say what a marvellous job my noble friend has done in bringing this forward and remark on the extreme thoroughness of his introductory speech, which could actually stand on its own. However, since then I have heard a great deal more.

[LORD ELTON]

Yesterday I sat through a two and a half hour debate on overcrowding in prisons and cheekily spoke in the four minute gap—in my case it was an 18-second gap—to point out that this was all very marvellous, but actually it was the second problem, and if we solved the first problem we would not need to deal with criminals if we stopped them becoming criminals. The noble Lord, Lord Prescott, has said exactly the same thing more elegantly—and far more entertainingly and forcefully—than I did on this subject: tackle the difficulty at its roots and, as a globe, we can solve it as an international situation.

In the meantime, my noble friend's intervention is timely and necessary: people fall through. It is the machinery that is wrong, as I understand it. Even the Home Office rules themselves point out that:

“There is no automatic grant of leave to remain if there is a finding of fact that a person is a victim of human trafficking or slavery, servitude and forced or compulsory labour”.

They say that nobody actually has a duty to protect them. Then we find that the duty to get DLR after a decision rests with the police. It was really shocking to hear from the anti-slavery commissioner, in his evidence to the House of Commons Work and Pensions Committee, that some police forces and police officers did not even know that it was up to them to make the DLR application.

At this point I recall my long-term interest in policing, as an ex-Police Minister, and ask again whether the sale of Bramshill College, the closure of the police staff college some years ago, shows yet another lack of consistency in police staffing—which I use in the military sense, staff officering. This has gone by the board because there is now no central development of uniform practice throughout our police forces. That is a relevant question, which should be asked on every occasion when such lacunae arise.

I think this question has already been raised but I ask the Minister to confirm whether or not the criteria for—I cannot remember the phrase—special personal circumstances agreed in the Council of Europe convention to which we are bound by signature are actually satisfied by our arrangement for the treatment of those people. I think the convention is called COLETA for short.

I reaffirm my enthusiasm for the Bill. I do not want to display my lack of knowledge of the total circumstances. There is a cry for compassion for people who have been snatched, tricked, seduced or kidnapped out of their way of life, however unsatisfactory, which at least was stable and in their home territory and among people who spoke their language, and find themselves here with no common language, common experience or knowledge of how to apply for help. Compassion cries out loudly and I am so glad to hear that the diocese of Derby is rising to the occasion. I shall inquire in my own diocese what we are doing.

3.21 pm

Lord Anderson of Swansea (Lab): My Lords, we have had a series of remarkably well-informed speeches. I am always impressed by the reservoir of knowledge, experience and care shown in this House. Clearly,

we are dealing with one of the major scourges of our time—a scourge which may well increase because of growing pressures.

I was interested in the speech of my noble friend Lord Prescott, looking at the upstream pressures which are likely to increase, such as the likely population increases in Africa, as projected by the UN. For example, the population of Nigeria, currently one of the major sources of those who are trafficked, is likely to rise to 410 million by 2050, making it the third most populous country in the world. These pressures are only likely to increase, added to by desertification, climate change, and so on—the point made by my noble friend. This certainly adds to the fact that, yes, we have to deal with the victims in the UK and, yes, the UK has to be a leader in dealing with this scourge in every way. But equally, we have to recognise that if we do not go to them in terms of aid, development and trade policy, they will come to us because there will be teeming masses of desperate people who just want to get out of their country to look after themselves and, perhaps more importantly, their families. Yes, we must look after the victims in our country as effectively as possible, but we must see this in the wider international context.

That is why I was ready to support the noble Lord, Lord McColl—dare I call him my noble friend?—in this initiative, as indeed I was in 2015. I support this Bill, which builds on the work he did in 2015. I recognise that the Act, however important, is now showing its inadequacies regarding support for vulnerable victims. I do not intend to cover the ground that has been covered so well but will make one, as it were, confession: I did have a hesitation, which I conveyed to the noble Lord, Lord McColl, about the danger of the Bill being abused for immigration purposes. I gave him an example, drawn from Scandinavia, of a teenager from west Africa whom I had met. Using a lawyer's scepticism, when I spoke to her, it was pretty clear that there had been a degree of collusion between her and those who had brought her to that Scandinavian country. That scepticism may not have been well placed but it led me to think that there is always a danger—given, may I say, the fall of human nature—that any good provision may well be open to abuse and that perhaps the advocates of the Bill had been too ready to dismiss the dangers.

At that, I passed my concerns and hesitations to the noble Lord, Lord McColl. I say in an apologia that he has wholly satisfied me on the safeguards that have been set out, in the sense that there is no self-referral. First, the referral must come from a police officer or person similarly placed. Secondly, there is a rigorous procedure under the NRM after the first respondent has referred them to it. Thus the NRM will, I hope, ensure that a thorough check will separate, dare I say it, the sheep from the goats. We also know that any evidence of abuse will lead to questions about the whole system. My own final plea is that the NRM will continue, first, to act with humanity but also to respond in a worldly-wise way to what is often a rather wicked world, where people are ever ready to abuse the best provisions that are made. I support the Bill.

3.26 pm

Baroness Redfern (Con): My Lords, I too am pleased to speak in support of my noble friend Lord McColl, whose Private Member's Bill proposes four new amendments. These amendments to the Modern Slavery Act 2015 will, I feel, give confidence to victims to come forward knowing that there will be new assurances of protection, with further assistance and support in the now and during a further time for reflection and recovery.

I never would have imagined taking part in a debate on slavery in 2017. These extra measures will support and raise awareness for those people being enslaved day in, day out in 2017, which has to be welcomed. Since the provisions regarding the Independent Anti-slavery Commissioner commenced on 1 November 2015, local authorities have been playing a large part in notifying and engaging with the Home Office to enable central Government to gather statistics on this barbaric problem. They glean information to be fed through to other agencies such as the police, who are able to build up a more complete picture of the nature and scale of modern slavery, as well as enhancing intelligence for UK enforcement agencies but also for agencies abroad.

Yet despite concerted efforts in this country and across the world, the appalling reality is that human trafficking is one of the fastest-growing international criminal activities. Traffickers need to be aware that there will come a time—it cannot come soon enough—when there will be nowhere to hide from justice. It is so important to have strong, robust vetting procedures at airports and ports to prevent traffickers entering this country. Unfortunately, the evidence is there to inform us that this is a direct culmination of the increasing level of international travel, which brings those unwanted fresh challenges.

It is incumbent on all enforcement agencies to have an overall statutory duty to safeguard children, which includes responsibility for preventing and mitigating the risks, especially to those vulnerable children whom we know on so many occasions go missing. Enhanced protection measures and support, as proposed in new Section 48C, would provide even safer accommodation, together with the need for strong support from social workers—or possibly, more appropriately, a legal advocate or guardianship. We hear all too often, as has been stated today, that children who go missing can disappear without trace. They are rarely seen again.

Due to the hidden nature of the crime, it is difficult accurately to assess the extent of the problem. There are estimates, of course, but I am sure the actual figure must be considerable and the problem even more widespread—the National Crime Agency believes there are tens of thousands of slaves in Britain, in every UK town and city, and in our communities.

We can only imagine the involuntary domestic servitude in private residences creating day-by-day extreme vulnerability and isolation for those victims. We have to understand what a very difficult area this is for agencies to inspect, even though we know those domestic workers, especially women, face many forms of abuse, harassment and exploitation, including sexual and

gender-based violence. We need to help and find them, and further encourage communities to come forward to provide evidence to help prosecute perpetrators.

It is disappointing to hear that unfortunately, prosecutions for slavery and trafficking slumped last year despite a warning that there are tens of thousands of victims across Britain. I am therefore pleased to support the four proposed new sections of the Modern Slavery Act 2015, to give confidence to those enslaved to come forward, find the help they need, have a right to a future and rebuild their lives. Today is a great opportunity to help them now.

3.30 pm

Baroness Thornton (Lab): My Lords, I am delighted to be able to participate in this Second Reading, and I congratulate the noble Lord, Lord McColl, on his Bill. I apologise for not attending the helpful briefing the noble Lord organised, but I have read the blog he has penned, which has been published by the Co-op for its millions of members to read this morning. I declare an interest as a Co-operative as well as a Labour Member of your Lordships' House and that the Young Foundation, the research and innovation institute in Bethnal Green, of which I am currently CEO, is working with the Co-op at the moment.

As the noble Lord explained in his compelling and detailed introduction of the Bill, it is vital that victims of modern slavery be supported in order to help them rebuild their lives. Like others, I congratulate the Government and the Prime Minister on the Modern Slavery Act, but it is a job only half done if the means to support new lives is not provided at the same time. Not to do so is, as the noble Lord, Lord McColl, said, not giving victims proper support and thus endangering the progress of their recovery.

I want to talk about the work that the Co-op is doing in this regard, which has been mentioned by several other Members in this debate, and then I have a question for the Minister. I knew that I could be confident that my noble friend Lady Massey and the noble Baroness, Lady Benjamin, would talk with eloquence and passion about trafficked children, so I knew that I did not need to go into that territory. In spring this year, the Co-op launched Bright Future, which is an employment pathway to make the journey from victim to survivor by moving into permanent employment. The goal of Bright Future is to provide a pathway to paid employment and a route to wider integration into society for victims of modern slavery. In 2017 the Co-op will offer at least 30 people who have been rescued from conditions of slavery in the UK the opportunity of a paid work placement and, if they are ready, a guaranteed job. Central to this programme is the dignity that paid, freely chosen employment provides. Without this, there is a real chance that people could fall back into the hands of those who have exploited them and for the terrible, unspeakable cycle of enslavement to begin again.

The British Co-operative movement has taken innovative and progressive action on social and economic issues for almost 200 years. This is but the latest such action. The Co-op is working in partnership with

[BARONESS THORNTON]

others, including City Hearts, the anti-slavery charity mentioned by the noble and right reverend Lord, Lord Carey.

UK businesses are perfectly placed to provide employment opportunities for the more than 13,000 victims—we know that is an underestimate—of modern slavery rescued in the UK every year as they seek to rebuild their lives. I am proud that the Co-op is leading in a field that other businesses can follow. I hope other businesses will recognise the potential of the model the Co-op has developed, and consider how they might adopt and adapt it for their purposes. The aim is to share the learning and to have at least five of the Co-op's key food suppliers in 2017 supporting Bright Future. Imagine if all the large UK retailers adopted programmes like this and used their supply chains—the inroads that would make for those 13,000 victims identified at present. What a positive future that could offer them on the vital journey from victim to survivor.

The Co-op intends to increase the number of charity partners involved in Bright Future. In addition to City Hearts, it is also now working with the charity Snowdrop, which mentors and supports survivors in Sheffield. The Co-op is committed to doing this because we believe that working in partnership with others, including our competitors, is an opportunity to achieve more for the communities we serve throughout the UK.

The research launched by the Co-op today reveals a real appetite among responsible businesses to support victims by providing employment opportunities. However, unfortunately, the 45-day support currently available is not sufficient for victims to get to be work ready—other Members have mentioned this, and the Minister must be in no doubt at all that the contents of this Bill are very important to make this work. An extension to a year would increase victims' chances of building a new life and reduce the risk of re-trafficking. Businesses want to help but need enhanced victim support to do so. Would the Minister care to respond to this suggestion and would the Government consider making this possible?

To help the noble Lord, Lord McColl, in the passage of this Bill, which I strongly support, it is also very important that noble Lords recognise that piecemeal amendments to it will not help its passage: it needs to stay pretty much as it is now. I call upon the Government to support and enable the Bill.

3.37 pm

Lord Bew (CB): My Lords, I support the Bill of the noble Lord, Lord McColl of Dulwich, which has the intention of strengthening the Modern Slavery Act 2015. I will briefly recall the struggle for that Act when I was a member of the APPG on Modern Slavery, a struggle that was led with great distinction by the noble Lord, Lord McColl, and the noble and learned Baroness, Lady Butler-Sloss. At the time it seemed to me that the crucial thing was to create a situation in which the police understood that this was a real problem and to get that idea across. I think that we are at the beginning of a real change and that there has been a degree of success. Noble Lords may recall that 20 years or so ago—a generation ago—domestic violence was not

perceived in the way that the police now perceive it, as a serious problem, and we are trying to achieve a similar change in the police mindset.

These provisions to strengthen the 2015 Act have a particular importance because, as the noble Lord, Lord McColl, said, most of the information comes from victims. This is a difficult crime to detect, because the police normally expect certain types of fairly obvious symptoms—this bank has been robbed or this person has been punched—and in many cases in this area the symptoms are not obvious in that way. Therefore we have to encourage all the other means possible for the police to be able to gather as much information as they can.

A feature of modern slavery is that people may arrive in this country without knowing that they are going into a constrained situation and without knowing exactly what will happen to them when they arrive. The border agency might look at, say, an 18 year-old Romanian woman and think, “Perhaps there might be a problem here”. But that Romanian woman is not in a position to say, “When I get to my destination in London, I will be in a constrained, essentially enslaved situation”. This is a difficult area for the agencies of the state to get to grips with. We must therefore do whatever we can. The provisions in the Bill of the noble Lord, Lord McColl, allow us to do something that is good and helpful in that respect.

An issue mentioned by the noble Lord as well as by the noble Lord, Lord Morrow, is Northern Ireland. In this case it is a pleasure to say that the example of the Northern Ireland Assembly is exemplary and sets the standard for the rest of the UK to adhere to. I am not sure that at every moment in the last several years I have thought that I would be able to say that but, as I am able to say it, I have just said it. A lot of that is to do with the work of the noble Lord, Lord Morrow. As the noble Lord, Lord McColl, says, we cannot continue to have a situation where the standards in Scotland and Northern Ireland are higher than in the rest of the UK.

I want to allude to one difficulty. Two nights ago, the noble Lord, Lord Morrow, will have heard, as I did, a former Secretary of State, the noble Lord, Lord Hain, talk about the difficult situation that we are entering into post Brexit regarding the border. The noble Lord said that he feared a great increase in trafficking. I hope that that does not happen. I was glad to read in the *Irish Times* today perhaps the first report that I have seen that there is some optimism that we may be able to put together a civilised understanding with the EU about the border. The truth is that over the last few years the number of reports saying that people are smuggled over the border and that Belfast is a hub for trafficking people into the rest of the UK has dropped off considerably. That is in part because of the work of the noble Lord, Lord Morrow, and in part because the Police Service of Northern Ireland has been ahead of the curve in many respects in its work in this area. All I am saying is that we need to keep an eye on this. I hope that in the end the concerns of the noble Lord, Lord Hain, are not justified, but we need to keep an eye on that aspect of this problem.

3.41 pm

Lord Shinkwin (Con): My Lords, it is a pleasure to follow the noble Lord, Lord Bew. I, too, congratulate my noble friend Lord McColl on introducing this important Bill.

I want to make four points. First, I agree with other noble Lords that David Cameron and Theresa May in particular are surely to be commended for once again putting Great Britain at the forefront of the fight against slavery. In her then capacity as Home Secretary, the Prime Minister said at Second Reading of the Modern Slavery Act 2015:

“Let us act now—together—and send a powerful message to all traffickers and slave drivers that they will not get away with their crimes: we will track them down, prosecute, and lock them up, and ensure that the victims of their appalling crimes are returned to freedom”.—[*Official Report*, Commons, 08/07/14; cols. 178-79.]

It is the last part of that essential equation—freedom from fear of becoming homeless, destitute and vulnerable to further exploitation from traffickers—which I, like other noble Lords, believe my noble friend’s Bill would help to address. The Bill builds on the excellent lead already provided by the Prime Minister because it recognises the importance of another message: the one that we send to victims of trafficking, as well as the one that we send to traffickers themselves.

Secondly, as we have been told, the need for action is urgent. I have heard from one of the many supporters of victims in the UK, the Medaille Trust, about the difficulties that it faces in providing support beyond the current reflection and recovery period of 45 days, particularly, as has been mentioned, in relation to obtaining benefits and accommodation. In short, I am told that the current situation is unintentionally leaving victims potentially more vulnerable. The Bill enables us to address the unfinished business of the landmark 2015 Act.

That brings me to my third point: Brexit. I understand from front-line organisations that our exit from the EU may increase the difficulty of accessing support if the rights of victims are not clarified, which is exactly what the Bill would do. Brexit provides the impetus to strengthen the existing legislation. The Bill provides the means to do so.

For me, the Bill is about affirming British values. I have just read my noble friend Lord Hague of Richmond’s excellent biography of William Wilberforce, whom other noble Lords have mentioned. Barely a fortnight ago, 24 August, marked the anniversary of William Wilberforce’s birth. As he said in the other place on 12 May 1789: “The nature and all the circumstances of this trade are now laid open to us; we can no longer plead ignorance, we cannot evade it”. In 2017, 210 years after the passage of his historic Abolition of the Slave Trade Act, his call to action applies today as much as then. It can be neither ignored nor evaded. I agree with other noble Lords that, in supporting the Bill, the Government would be continuing his wonderful work. May William Wilberforce’s spirit guide our deliberations until the Bill has become law, as it surely deserves to.

3.47 pm

Baroness Cox (CB): My Lords I, too, congratulate the noble Lord, Lord McColl, on introducing this significant Bill so effectively. It reminds us that this abhorrent practice is still tragically widespread in this country and, as I have personally witnessed, in many other countries around the world.

I recently had the privilege of becoming friends with a young woman, Caitlin—that is a pseudonym. Her life story has just been published in a book entitled, *Please, Let Me Go*, in which she courageously describes how, from the age of 14, for many years she was groomed, sexually exploited and trafficked around this country by gangs of men. She says:

“I have flashbacks all the time. It started when I was so young and to be honest, I’m not even sure it’s over. They have done so much damage to me—emotionally, physically, psychologically, that I think I am probably broken beyond all repair”.

She also describes serious failures by the police and social services to help her in her desperate need.

Even for those victims who are able to receive more appropriate support, the provisions in new Section 48B are needed because so much evidence shows that the positive impact of the current support and protection is undermined by its sharp cut-off after such a short period. Article 12 of the Council of Europe’s convention on trafficking is clear that victims need support for their physical, psychological and social recovery far beyond the reflection and recovery period. This need has also been advocated by the Council of Europe’s group of experts report in 2016, by the latest United States State Department *Trafficking in Persons Report 2017*, and by the Government’s NRM review in 2014.

New Sections 48B and 48C will ensure that victims are connected with the support and services they need during the year after they are identified as a victim, to help them to reintegrate into society here in the UK or in their country of origin. The services will include safe accommodation and counselling and/or medical treatment; there will be an opportunity to learn language or job skills and even gain work experience. But without that year’s support, there are so many risks that victims will be exploited once again. As Caitlin says in her poignant book:

“I was trapped. I’d been raped so many times, abused by hundreds, if not thousands... And I always came back—they always brought me back”.

The book describes in heart-wrenching detail the vulnerability of victims to persistent, brutal and repeated rape, abuse and sexual slavery and trafficking in this country.

I turn briefly to the situation for victims from abroad. A 2010 report from the International Organization for Migration reported that,

“trafficked persons, on return to their countries of origin, are often met by similar economic and social situations which made them vulnerable to trafficking in the first instance”,

and,

“trafficked persons are vulnerable to re-trafficking relatively soon after exiting a trafficking situation”.

The 12-month support period promoted by this Bill will provide time for a risk assessment of the situation a victim might be returning to in their country of

[BARONESS COX]

origin and will enable a victim to be connected to local support networks in their home country before they return.

During the Modern Slavery Bill debates, I was very concerned about the situation of the tied visa for overseas domestic workers. Sadly, the new visa arrangement still leaves them with inadequate time to find a new position and apply for the new visa in the 14 days they can stay in the safe house. This Bill would also help fill that gap. The Modern Slavery Act introduced significant measures, but it is now essential to build on these by helping people make the transition from victim to survivor, to reintegrate into society and to be enabled to lead full and more rewarding lives. Therefore, I am very pleased to support the Bill wholeheartedly.

3.51 pm

Baroness Stroud (Con): My Lords, I begin my remarks by thanking and commending my noble friend Lord McColl, for once again bringing the concerns of vulnerable and marginalised survivors of modern slavery to the attention of this House. My interest in this Bill comes from its clear objective: to ensure that we have a framework of support for victims which truly responds to their needs and puts their interests first.

Many people in our society face challenges and disadvantages, but victims of modern slavery are among some of the most vulnerable. The experience of being trafficked or exploited not only takes from them their autonomy and sense of self but leaves them materially exposed, with no home, no source of income, no prospect of work, no protection and no community. The support provided to victims during the national referral mechanism can only ever be an immediate response to a crisis situation. The NRM offers assistance to people at the point of extreme vulnerability, when they are identified as being a potential victim, when the police have raided the place where they have been exploited or when they have managed to escape the control of their traffickers. Individuals are offered a safe home, regular meals, support workers and access to medical care. All of this is a vital immediate response to victims experiencing such a crisis.

I welcome the establishment of this support formally through proposed new Section 48A in this Bill, which will ensure that victims of trafficking in England and Wales have similar rights to support to those in Scotland and Northern Ireland. However, we also need to look at the long-term impact of the support framework. There is no doubt that we must provide assistance at the point where a person is first identified as a possible victim. But if the support we provide does not set them up for long-term recovery, all we are doing is to provide a brief respite from one situation of vulnerability before returning them to another perhaps equally exploitative situation.

I am also concerned by the evidence that, as my noble friend Lady Cox has just said, the current framework does not offer victims the support they need to make the transition from victim to survivor. The Centre for Social Justice, of which I was previously executive director, highlighted this problem in its report, *It Happens Here*. It says:

“In essence, significant support for a victim of modern slavery ends when the decision has been made over their trafficking status. Aftercare provision in the UK must develop a wider response that is victim-centred, forward-looking and which aims to give the survivor the best possible chance at an independent and self-sufficient future”.

It seems to me that this is precisely what Section 48B of the Bill sets out to do.

By providing victims with guaranteed access to services, benefits, and accommodation for one year, victims will have an opportunity through that period to re-establish their skills and their sense of identity and confidence, enabling them to move forward into an independent future. We need to understand that many will not make this journey without that support as they are still dealing with the impact of trauma and anxiety. Support workers in safe houses work hard to try to put things in place for victims when they leave, but the 14-day transition period is simply is not enough. The Independent Anti-Slavery Commissioner said, earlier this year, that 14 days,

“is often not enough time to establish safe and secure pathways to mainstream services”.

The Modern Slavery Act injected much-needed energy into efforts to tackle this terrible crime, but we now need to continue that work in respect of victim support structures. We need to build on the national referral mechanism to create a statutory framework that will not simply give victims short-term protection only to leave them with no help to rebuild their lives. We need to create a wider system that will take people out of dangerous situations, provide a safe haven for them away from their exploiters, and set them on a path to a new future.

The Bill in the name of the noble Lord, Lord McColl, expertly rises to this challenge and provides a very welcome and necessary stage two to the excellent work that the Government have accomplished through the Modern Slavery Act. I encourage the Government to see the Bill as a great opportunity and to seize this opportunity to make it their own. I commend the Bill to the Minister, with my wholehearted support.

3.58 pm

Baroness Howe of Idlicote (CB): My Lords, I was very pleased to speak in support of the noble Lord's important victim support amendments to the then Modern Slavery Bill: Amendment 78 on Report on 25 February 2015 and Amendment 2 at Third Reading on 4 March 2015. On both occasions I raised concerns about consistency in standards of care. On 4 March, the Minister, the noble Lord, Lord Bates, said:

“The quality of identification and support for victims is a critical issue”.

Unfortunately, the Government did not support the proposal by the noble Lord, Lord McColl, to put the provision of support in primary legislation but, instead, promised us regulations which could be brought into effect through Section 50 of the Modern Slavery Act, and mandatory guidance through Section 49.

On 4 March, the Minister also said:

“The regulations will include the international obligations we have discussed, including the type of victim support set out in the Council of Europe conventions. To distil this down to a fine point

... when the guidance comes forward in statutory form, will it spell out what is going to be provided? I can say unequivocally that the answer to that is yes”.—[*Official Report*, 4/3/15; col. 228-29.]

However, over two years later there is no published guidance on identification or support, nor have any regulations come to this House yet. I am not saying that the Government have done nothing about victims' care: they have run a pilot to assess new methods of operating the NRM which was completed in March. However, it is not clear to me that there is transparency on whether the minimum international standards set by the anti-trafficking convention are being met, nor whether there is any audit of those standards around the country. As far as I am aware, there have been no inspections by the Care Quality Commission of providers who support modern slavery victims. If the Minister is aware of any inspections, I shall look forward to hearing about the outcome.

In his speeches in 2015, the noble Lord, Lord McColl, made a very compelling argument about why support for victims should be assured in primary legislation, as it is in Northern Ireland and Scotland. Now that the legislation has been passed in both Northern Ireland and Scotland, the imperative for similar rights in England and Wales is even greater than in 2015. Putting the details of support in legislation provides a platform for guaranteeing consistent standards of care for all victims. In this context, I very much hope that the Government will support the new Section 48A that the noble Lord proposes for the reflection and recovery period, and new Section 48C on the details of the support that should be provided, including the requirement for regulations setting out minimum standards.

I am conscious that the Prime Minister wrote in her introduction to the background notes on the gracious Speech in June:

“The UK is taking an ambitious approach to tackling modern slavery. We are advocating for better international coordination to deliver commitments made and ensure governments and international agencies prioritise interventions and resources to tackle modern slavery, bring perpetrators to justice and support victims”.

In this context, and mindful that in April next year the Heads of Government of the 52 member states of the Commonwealth, and indeed other Commonwealth Ministers, will come to London, I am concerned that we might face some international embarrassment if the rights of victims of trafficking to support in England and Wales are not comparable to those in the rest of the UK.

The noble Lord, Lord McColl, has always been on the pioneering front of modern slavery policy, and his proposal in new Section 48B that there should be guaranteed support beyond the 45-day reflection and recovery period has significant support beyond this House. The conclusions of the Work and Pensions Committee in the other place have already been referred to. Its view that there is a need for action to secure a pathway for victims' recovery is one with which I completely agree.

I sincerely hope that the Government will embrace this vital Bill introduced by the noble Lord, Lord McColl, as the next step in providing a world-class support service for the victims of modern slavery.

4.03 pm

Baroness Hamwee (LD): My Lords, the number of speakers in today's debate seems to tell a story as far more of us are present in the Chamber than was the case during the passage of the Act. Some noble Lords will recognise that comment. That, I think, reflects the increasing awareness of the importance of uncovering and addressing what the noble Lord, Lord Anderson, called a scourge.

I, too, thank the noble Lord, Lord McColl, and the many organisations and their dedicated staff and volunteers who work with and for the victims of slavery. They will have contributed to the Bill both directly and through their work. However, let me add that the noble Lord is a role model for us all in his quiet, effective persistence.

It is a mark of the importance of the 2015 Act that it has prompted the arguments advanced for further proposals. I know that the noble Lord, Lord McColl, is, rightly, engaging in the art of the possible, so let us get the Bill enacted. Then we can turn to further issues, ranging from a name change for the national referral mechanism, mentioned by the independent commissioner, to perhaps a single-stage process, to which he also referred, to a specific actionable tort to enable compensation to be awarded to victims. The latter is constrained at present. In a recent report entitled *Human Rights and Business*, the Joint Committee on Human Rights said that the Government's approach is, “weakest in the area of access to remedy”.

Clearly, discussion must be had and action taken with regard to children.

As a society that has failed to see slavery in its midst—or perhaps seen it but failed to recognise it—we have a responsibility to its victims that extends well beyond the point of release. As the noble Baroness, Lady Massey, said, this is a moral and ethical issue. Modern slavery demands modern standards of support and protection and an up-to-date understanding and application of a trauma-informed approach.

We have just had six weeks' recess, so it must be fresh in our minds how little 45 days is—I am in no way making an analogy with our situation. The term “reflection” in this context is so inappropriate for most victims. Processing traumatic events and adjusting to a new life demand a very different lexicon. I doubt that in many cases it would feel as though recovery had even begun within 45 days. The noble Baroness, Lady Newlove, said that “the words have a long journey behind them”. I might plagiarise that description. Without effective support, 45 days is certainly too short. The uncertainty which victims experience must do its own damage, both intrinsically and because, I suspect, it adds to the distrust of officialdom which I am sure some victims feel.

The Anti-Trafficking Monitoring Group briefed noble Lords, and said of the current situation regarding discretionary leave that while it is,

“theoretically available to victims, there have been consistently low numbers of victims who have successfully applied for it”.

It talked about the,

“lack of clarity and consistency on what is deemed to be ‘particularly compelling personal circumstances’”—

[BARONESS HAMWEE]
the term used in the guidance—

“and uncertainty felt by some organisations regarding whether individual victims of trafficking should be applying for”,

discretionary leave. Anything that reduces the workload of the Home Office, which has to consider discretionary leave, must be a good thing, because it seems to be impossibly overloaded at the moment.

There is a very big mismatch, too, between the numbers who go into the NRM and the convictions of perpetrators. I have been critical of the use of the term “hostile environment” by the Home Office, but I would be entirely happy to see a more hostile environment for perpetrators—which should mean a benign environment for victims.

Consistent support and certainty will help victims, who need time to tell their story. It would also help the police, who currently seem, from discussions I have had with those involved in the system, to be forced into taking statements too soon. The fact that a victim changes his story does not necessarily mean that what has been reported is a deliberate falsehood. A statement given before a victim is really able to give it can be gold dust for the defence, which will pick up inconsistencies. Support for the police in the process may be for another day.

There is also the issue of a victim remaining in the UK to give evidence. That decision should, to my mind, be quite separate from whether a victim, as a victim, should have “assistance and support”, as described in proposed new Section 48B. That term is defined in proposed new Section 48C, and I wonder—although I am not expecting an answer today; it might be an issue to be explored in Committee—whether that extends to re-establishing contact, and indeed relationships, with the victim’s family.

On the detail of the terminology, the term “necessary” intrigues me. I know that it is used in the Council of Europe Convention on Action against Trafficking in Human Beings, where Article 14 requires a residence permit to be issued to a victim where,

“the competent authority considers that their stay is necessary owing to their personal situation”.

I am not entirely sure what that means. It is certainly less restrictive than personal circumstances being “particularly compelling”, as in the Home Office guidance, but I wonder—again, perhaps for later in the passage of the Bill—whether the term “necessary” has been developed in case law or otherwise. I mention that because I am concerned that proposed new Section 48A(7) may be more restrictive than we thought it to be.

Before I leave the question of support and the term “support”, although it is not a matter for legislation, we should not ignore the importance of support for the organisations and individuals who do the supporting.

The briefings that we have received—and I think also the Commons DWP Select Committee and certainly its chair—have been rightly dismissive of the notion that what the Bill envisages could be a “pull factor”. I admit that I am not particularly imaginative but I simply cannot begin to imagine how allowing a year’s leave to remain, with some entitlements dependent on a conclusive-grounds determination of slavery, could

“pull” somebody into slavery in order to access that leave. The organisation Hope for Justice points out that the more generous visas—more generous than in this country—granted by other countries have not done so.

I have referred to society’s responsibility to the victims of slavery. The shortfalls in the current system give rise to a lot of concern about victims’ vulnerability to being re-trafficked. What a failure on the part of society is re-trafficking. Our responsibility is extensive and it must extend to restoring to victims support and dignity. From these Benches, we give our wholehearted support to the Bill.

4.13 pm

Lord Kennedy of Southwark (Lab): My Lords, as other noble Lords have done, I congratulate the noble Lord, Lord McColl of Dulwich, on bringing his Bill forward and on securing such an early spot in the ballot for Private Members’ Bills. That certainly bodes well for the future. It is a good Bill. As we have heard from the excellent speeches today, there is considerable support across the House for it to become law, and I am delighted that that is the case. Every single speaker from every Bench today has spoken in support of it.

Like my noble friend Lady Thornton, I am a Labour and Co-operative Party Member of your Lordships’ House. The Co-operative Party and the Co-operative Group are fully supportive of the Bill and are ready to give the noble Lord, Lord McColl, any assistance they can in order to secure this legislation. A swift passage through this noble House will help the Bill enormously on its way to the statute book.

As we have already heard this afternoon, the Modern Slavery Act 2015 is an excellent piece of legislation. When she was Home Secretary, the Prime Minister brought the legislation into law. It has been welcomed in all quarters, and rightly so. The draft Bill, the Joint Committee and the consensual approach by the Government to the parliamentary proceedings were enormously helpful in securing that legislation. Having said that, the significant omission in the legislation is its response to victims, which my noble friend Lord Anderson of Swansea referred to.

The noble Lord, Lord McColl, was right when he told the House that the needs of victims must be at the forefront of efforts and we must work to restore the dignity, health and opportunities that abusers have taken from the victims. The noble Baroness, Lady Bottomley, also referred to the need to develop a pathway for abused people to move from being victims into recovery. The noble Baroness, Lady Newlove, made a powerful case in support of victims, as she always does in this House. The noble Baroness, Lady Stroud, again spoke of the need to have a framework to help the move from victim to survivor.

In both Northern Ireland and Scotland, legislation passed at Stormont and Holyrood means that help and support to victims is provided during a reflection and recovery period, so the legislation in both Northern Ireland and Scotland is superior at least in that respect in comparison with what applies in England and Wales. The noble Lord, Lord Morrow, who is no longer in his

place, spoke about the Bill that he took through the Northern Ireland Assembly and how that Act provides for victims' care. I support his call for the legislation in England and Wales to be updated. The noble Lord, Lord Bew, also made that point in his contribution. The Bill corrects that and is very welcome. It brings England and Wales into line with best practice and delivers the equality of access that the noble Lord, Lord McColl of Dulwich, referred to in his contribution.

The Bill will guarantee all confirmed victims of modern slavery a minimum recovery period with casework support. As we have heard in this debate, at the moment, once a victim has been confirmed by the competent authority, government-funded specialist support quickly ends. That position is unrealistic and potentially very damaging for the victims. Vulnerable people are left at risk of destitution or the nightmare of returning to the hands of the traffickers and being subjected to horrendous abuse in a vicious circle.

The Human Trafficking Foundation, in its excellent briefing, highlighted how the existing provisions are failing victims in legal cases where individuals have been found by the UK authorities to have been trafficked and were co-operating with the police but were then left destitute. There is also a case referred to by the noble Lord, Lord Morrow, where, in November 2016, Bristol City Council accepted that local authorities in England and Wales had a responsibility to provide welfare support to victims or would be in breach of their obligations under the European Convention on Human Rights and the Convention on Action Against Trafficking and/or the EU anti-trafficking directive. The noble Lord, Lord McColl, referred to that when introducing the Bill. This came about after a trafficking victim brought legal action because she was only able to provide for herself by engaging in prostitution.

We have further heard about the findings of the Work and Pensions Committee's inquiry into modern slavery, which was published earlier this year and is critical of the lack of support for victims. The committee recommended that all confirmed victims of modern slavery be given at least one year's leave to remain with recourse to benefits and services. The committee was also very clear that it found no evidence that granting 12 months' discretionary leave would create any sort of pull factor. It would be fair to say that it is just not plausible to believe that it would.

The noble and right reverend Lord, Lord Carey of Clifton, spoke of the need for individuals to receive personalised support as they begin the process of recovery. The noble Baroness, Lady Cox, also made an important point about the risk of re-trafficking and how important the 12 months' support is.

The Independent Anti-slavery Commissioner Kevin Hyland, who was mentioned many times in the debate, has also called for more support for victims and has highlighted the fact that the present system is not serving them well. If it is not serving these victims, that is a major failing of our present legislation and must be rectified. When you consider the horrendous abuse and threats that the victims of modern slavery have endured, and the risk of threats and violence to them and their families, it takes great courage to come forward to the authorities. They put themselves at risk of further suffering and not being properly supported.

The right reverend Prelate the Bishop of Derby rightly drew the attention of the House to the evidence-based policy that underpins the Bill following the work of the anti-slavery commissioner, the Work and Pensions Select Committee and those who work in the charity sector on behalf of victims.

The noble Lord, Lord Shinkwin, stressed the need to complete this unfinished business and properly support victims. I fully support him in that call.

The Bill would ensure that victims, when identified, would have guaranteed access to front-line specialist support that includes any necessary medical treatment, safe accommodation and further long-term support to take the victim through the next stage of the recovery process where understandably very serious and complex needs can be addressed.

I particularly want to pay tribute to the work of the Co-operative Group in helping victims through its Bright Future initiative. Along with other charities, the Co-op is supporting individuals who have been granted special leave under the present system by providing work placements in its businesses and helping to equip people with the skills they need. As the noble Baroness, Lady Bottomley, said in her contribution, the Co-op is an excellent example of what a good employer should be doing.

While I am on the subject, I commend the Co-operative Group on how it has worked to prepare its statement on modern slavery and the work it has done to ensure that its supply chains are free of this evil. I am proud to have been a member of the Co-op for 40 years, which is as long as I have been a member of the Labour Party. It has set an example of best practice for business and all should be aspiring to it.

The benefits of granting an automatic right to leave would, as I mentioned earlier, help with the long-term recovery programme and rehabilitation programme and would also prevent re-trafficking. It also would further strengthen the original Modern Slavery Act and empower victims to co-operate fully with police investigations and help to secure convictions of the people involved in this evil crime. Victimless prosecutions are possible, but the testimony of victims can provide compelling evidence to put before a jury in order to help secure a conviction, as the noble Lord, Lord McColl of Dulwich, told us, and as was referred to by the noble Baroness, Lady Redfern. There is the further argument that the automatic grant of leave would free up valuable resources to be used in other ways to deal with this horrendous crime.

My noble friend Lord Prescott referred to the international framework and how that affects modern slavery and the challenges that we are all seeking to combat today.

Every Bill before your Lordships' House can of course be improved by amendment, and I have moved many amendments here. It is also widely accepted that Private Members' Bills have an honourable tradition of dealing with issues that have widespread support but perhaps not always the support of the Government. They can also be narrow in their scope because they deal with particular issues. The process of going through Parliament is a precarious one for Private Members' Bills without the active support of the Government, so I hope that amendments are tabled only if there is

[LORD KENNEDY OF SOUTHWARK]

no other way of seeking changes; namely, that they cannot be delivered through regulation or another mechanism. The last thing anyone would want is for this Bill not to become law because it had been dashed on the rocks and lost through amendments in Committee or on Report. As my noble friend Lady Thornton said, piecemeal amendments would cause problems. People should think very carefully before they seek to move amendments to the Bill.

This has been an excellent debate on a truly important Bill that will strengthen an otherwise excellent Modern Slavery Act. I hope that when the noble Baroness, Lady Williams of Trafford, responds to this debate imminently, she will be able to indicate that the Government are supportive of its aim and will give it their wholehearted support, and if necessary give it government time to secure it. As has everyone else, I thank the noble Lord, Lord McColl, for his campaigning, his tenacity, his compassion and his defence of the victims of this truly horrendous crime, and his steely determination to get this Bill on to the statute book.

4.24 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, I join other noble Lords—I think every noble Lord—in thanking my noble friend Lord McColl for introducing the Bill and the opportunity to have what has been an excellent debate. I welcomed all the opportunities to listen to noble Lords' contributions, in particular the poignant recollections of the right reverend Prelate the Bishop of Derby and my noble friend Lady Newlove's eloquent description of the things victims have to go through and the assistance they need to begin the process of rebuilding their lives.

I also thank the Church for the work it is doing and the other organisations for the work they are doing, including the Co-op, which has been mentioned so many times. The Government fully support the work the Co-op is doing. I am particularly proud that the Co-op's project is up and running in the north-west, but it is also looking to expand and I wish it well. It works really well in delivering the government-funded victim care contract, City Hearts. Through this, we know victims have secured employment with the Co-op.

I do not like to start a speech with disagreement, but I disagree with the noble Lord, Lord Prescott, who made the link between migration and modern slavery. Human trafficking and modern slavery are particularly brutal forms of criminal exploitation, but they are not immigration issues. We are focusing on tackling the traffickers who perpetrate the brutal crimes and rescuing the victims regardless of how they came to be exploited, not necessarily through migration.

Modern slavery is a hidden and complex crime, but the UK has taken world-leading action to lift the lid. I am grateful to noble Lords who referred to the Modern Slavery Act 2015, which gives enhanced support and protection for victims, as well as providing law enforcement agencies with the tools they need to tackle modern slavery, such as a maximum life sentence for perpetrators. We also successfully argued for the establishment in 2015 of UN global target 8.7 to end modern slavery by 2030.

For all potential victims the Government provide access to a tailored and personalised support service that exceeds the requirements of international law. The Council of Europe Convention on Action against Trafficking in Human Beings that noble Lords have referred to requires that we provide 30 days' support to all potential victims of trafficking. Instead, we provide to all victims of modern slavery—not only victims of trafficking—this support for a minimum of 45 days, with most victims receiving support for more than double that minimum period. I hope that clarifies the point made by the noble Baroness, Lady Thornton, who also pointed out the difference between England and Wales in matching Scotland. As I said, on average most identified victims in England and Wales are in receipt of support for 119 days. We therefore feel we are more than matching the work that has been done by the devolved Administrations.

My noble friend Lord McColl, the noble Baroness, Lady Massey, and the noble Lord, Lord Morrow, and others talked about victims after Brexit. It is an important consideration. I reassure noble Lords that victims' rights will be upheld and guaranteed after Brexit. We are considering how best to do this as part of the NRM reform.

The noble Lord, Lord Elton, asked whether we are doing enough under Articles 12 and 13 of the Council of Europe Convention. I am pleased to report that the support we are providing meets and exceeds some of the UK's obligations under these articles.

We appreciate the necessity continually to assess the needs of victims and to provide the support that they require. To that end, the Home Secretary has committed to reform of the NRM, the system we use for identifying and supporting victims. Following a review of the NRM in 2014, the Government tested new approaches through an 18-month pilot. The pilot finished earlier this year its evaluation will be published shortly.

The noble Baroness, Lady Howe of Idlicote, asked about the guidance. That has been paused until the NRM reform is implemented. We are using findings from the pilot, along with the recent report by the Work and Pensions Select Committee on support for victims and the 2014 Home Office review, to shape proposals for long-term reform of the NRM. Officials are now consulting widely with a range of stakeholders, and I value this opportunity to incorporate the views of Peers into this work. It has provided a further opportunity for us to reflect on the existing support and assistance we offer to victims, to consider how best to ensure that victims receive the support they need, and to debate what the long-term offer for victims should be.

On the first point, I am reassured that the assistance and support set out in the Bill broadly reflect the support already provided by the Government to potential victims. For example, all potential victims currently have access to safe accommodation, financial assistance, medical advice and treatment, counselling, a support worker, translation services, independent legal advice and support to return to their home country. Victims' needs are complex and one size does not fit all. That is why, when victims come into support through the

NRM, their individual needs are assessed and a tailored plan of support is put in place according to those needs. In terms of ensuring that victims have access to support, discussions are already in hand on the statutory guidance required under Section 49 of the Modern Slavery Act. This guidance will, as I say, be completed when reforms to the NRM have been confirmed but, in addition, the Government understand the importance of ensuring that the rights of victims are set on a legislative footing.

Section 50 of the Modern Slavery Act gives the Secretary of State the power to make regulations on the identification of and support for victims. I note that my noble friend's Bill seeks to make exercising this power a requirement. I assure noble Lords that we are considering the most appropriate way to enshrine victims' rights in the context of the NRM reform programme. Finally, to address the issue of long-term support, the Government are committed to supporting victims and helping them to rebuild their lives. However, I must be clear that the Government do not accept that all victims of modern slavery should automatically be granted one year's leave: we take them on a case by case basis. It is critical to the Government that victims of modern slavery have options and are supported in considering their future, but we must not assume that all victims wish to remain in the UK. Indeed, many who have been trafficked to the UK would far rather be supported to return home with dignity.

Where leave to remain is granted it is normally for those who are supporting the police, those who need access to medical and counselling support that is not available in their home country, and those who are pursuing compensation for the exploitation they have suffered. Other victims of modern slavery will already have leave to remain in another capacity, and the Government are committed to supporting those who do not qualify for leave to remain to return to their country of origin to rebuild their lives.

The noble Baronesses, Lady Massey of Darwen and Lady Benjamin, talked about child victims, a subject not articulated in the Bill. Child victims of modern slavery receive support through local safeguarding structures, alongside other vulnerable children. However, the Government recognise that they have particular needs and that is why we are committed to rolling out independent child trafficking advocates nationally. We have also funded £2.2 million-worth of projects aimed specifically at supporting trafficked children and reducing their vulnerability to being exploited.

I again thank my noble friend Lord McColl for bringing this issue to the House's attention. I have looked forward to the debate today and look forward to future ones on this topic.

4.34 pm

Lord McColl of Dulwich: My Lords, I say a very big thank you to everyone who has taken part in the debate, which I found inspiring, moving and encouraging. I thank the Minister for her warm words and encouragement, and look forward to the publication of the evaluation of the NRM pilot scheme. I thank the noble Lord, Lord Anderson, for his gracious acceptance of my reassurances regarding the possibility

of abuse of the provisions. I finish with a word of thanks to the many charities that have given me advice, information and encouragement, and which share the stories of some of the victims. I applaud the work they are doing, caring so diligently for these victims, including filling in the gaps in our publicly funded provision.

I commend the Bill to the House and ask your Lordships to give it a Second Reading.

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

Hurricane Irma

Private Notice Question

4.36 pm

Asked by Lord Naseby

To ask Her Majesty's Government what emergency funds they are providing and plan to provide to United Kingdom Overseas Territories in the Caribbean following the devastation caused by Hurricane Irma.

Lord Naseby (Con): My Lords, I beg leave to ask a Question of which I have given private notice. I declare an interest in having members of my family in the Caribbean.

The Earl of Courtown (Con): My Lords, the Government's priority is to provide immediate emergency relief and to support British nationals. We have moved swiftly and have people and military assets on the ground now. More are on the way. We have also made £32 million available for emergency assistance. We are working in support of the territories' Governments to develop the best possible assessment of their immediate and long-term needs. As my right honourable friend the Prime Minister said on 7 September,

"we will continue to look at what is needed, and we will provide what is necessary".

Lord Naseby: I am most grateful to the Lord Speaker for accepting this Question, and to the Government and indeed the Opposition for co-operating. This is in effect an emergency Question but I recognise that it is late on a Friday afternoon so I am grateful to all parties. With hundreds of thousands of British citizens at risk and potentially in peril, it is vital.

At lunchtime today the Governor of the Virgin Islands announced a disaster emergency for that territory. I fear the same will happen in Turks and Caicos, either tonight or tomorrow. I ask my noble friend: given that hurricanes are not new in the Caribbean and that they always happen at this time of year, why was there no standby facility to deal with this sort of emergency, particularly when we see that France and Holland had prepared and were able to react speedily, much more speedily than we have been able to?

I also ask my noble friend: last weekend, when it was quite clear that this was potentially the worst hurricane that has ever hit the Caribbean, why was there nothing—no questioning or Statement—from DfID? Why did it take until Wednesday for there to be

[LORD NASEBY]

any news of what action it was taking, and Thursday evening for COBRA to be called? I ask my noble friend: for the future at least, can we not ensure that when this sort of disaster is clearly going to happen, Her Majesty's Government will move with a great deal more speed?

Finally, will my noble friend confirm that, as I understand it, there are two naval ships out to help? One is the Royal Fleet Auxiliary ship, "Mounts Bay" but does it have lifting gear? It may not. Does it have a standby facility for transmissions, given that none of the mastheads is available now as they have all been washed away? Secondly, I understand that HMS "Ocean" has set sail from the middle of the Mediterranean. Is it correct that it will take nine to 11 days before she arrives? If that is the situation, will Her Majesty's Government seek some help from neighbouring countries for heavy lifting machinery, which is vital to getting rid of all the trees—I assure my noble friend that they are not small trees—so that that work can proceed long before HMS "Ocean" gets there and docks?

I thank Her Majesty's Government for increasing the funds from £12 million to £32 million. But it would be much more reassuring to the hundreds of thousands of our citizens—British citizens—if the Government found themselves in a position to say that whatever it costs to restore these islands, that money will be paid out and the restoration will be undertaken.

The Earl of Courtown: My Lords, I thank my noble friend for his questions. He first raised the point of France and Holland being in action faster than British assets. I think he is aware that France and Holland have a military base on their island.

As far as our own assets are concerned, he mentioned the Royal Fleet Auxiliary "Mounts Bay", which was in action very quickly in Anguilla. It was not tied up against a dock because that was not a very safe place to be. From the initial warnings of the event, it was not exactly clear where the hurricanes would hit.

My noble friend also mentioned lifting gear. I am not in a position to tell him whether there is lifting gear, but we will no doubt co-ordinate with the Dutch and French on this matter. I should add that there are 40 Royal Marines and Army engineers on board, plus a range of equipment including vehicles, tents and facilities to purify water.

My noble friend also drew attention to HMS "Ocean", which is on its way, but there are also three transport planes which either have or are about to set off. One is landing this afternoon in Barbados. It is part of an MoD task force, with helicopters and several hundred troops, that is en route to the region today to support the relief effort.

Lord Collins of Highbury (Lab): My Lords, I am sure that this House would like to join Members of the other place in sending our deepest sympathies to the people whose lives and livelihoods have been lost to the devastation caused by Hurricane Irma.

Yesterday, there was the urgent Statement in the other place and we had a debate in Grand Committee, in which the noble Lord, Lord Bates, was able to

update us on what the Government were doing. That included an emergency meeting of COBRA, chaired by the Defence Secretary. Then of course this morning we had a detailed list of responses from DfID, partly in response to the criticism that we had not acted fast enough—including from my noble friend Lady Amos, who felt that the response had been too slow. There has been a further meeting of COBRA this afternoon, chaired by the Prime Minister. Can the noble Earl tell us a bit about that? For me, the most important issue is ensuring that we have the immediate support for the islands. But we also need to guarantee—this was addressed by the noble Lord, Lord Naseby—that there will be a sustained commitment to reconstruction. This is not just about tomorrow but about building sustainability in the long term. If the Minister is unable to do so this afternoon, can he commit to update the House at the earliest opportunity on the actions following COBRA's meeting today, chaired by the Prime Minister?

The Earl of Courtown: My Lords, I thank the noble Lord, Lord Collins, for his questions. In many ways, they support what Her Majesty's Government are doing. I do not have any details on the COBRA meeting this afternoon, which was chaired by the Prime Minister, because it has not long finished, but I will ensure that the noble Lord is made aware of anything that comes up from that. The noble Lord spoke about the long-term situation in this part of the world. We have announced £32 million, but he will no doubt be aware that two years ago we announced a £300 million infrastructure plan for this part of the world, which will help with development for long-term aims.

Baroness Sheehan (LD): My Lords, I express my deepest sympathy to the families and loved ones of those who have lost their lives in the devastation caused by Hurricane Irma. We now know of 19 deaths, and that figure may yet rise. How many of those deaths were on British Overseas Territories?

Barbuda, whose Prime Minister says it is nearly uninhabitable after the devastation wrought by Hurricane Irma, lies in the path of Hurricane Jose, which is currently categorised as a category 3. Have the Government had discussions with the Government of Antigua and Barbuda to assist with the evacuation of Barbuda? If that were necessary, do we have the resources in place to do so? For example, would RFA "Mounts Bay" be in a position to assist? Do we have sufficient helicopters, which are so essential in disasters of this nature?

Also, what were the thought processes behind sending a second relief vessel to the region which will not arrive for 10 to 14 days? Was no other option available? Given the catastrophic scale of the emergency, does this not risk leaving the Government open to accusations of adding insult to injury?

The Earl of Courtown: My Lords, I should have made it clear in my earlier answer that the Government are taking this extremely seriously. The assets being moved into this part of the world will be quite considerable. One of the MoD task force planes has already arrived

in Barbados. The task force consists of several hundred troops as well as helicopters and other assets which will help to alleviate some of the problems. I should make it clear that initially, we must assess what is needed on these islands. In the past, great relief efforts have been put into disasters. We want to make sure that the correct logistics—communications, electricity, safe drinking water—are there for those who are suffering under these conditions.

The noble Baroness mentioned the death toll. I do not have exact figures at the moment, but it is appalling that this disaster has caused deaths. As the noble Baroness knows, the majority of people in British Overseas Territories are British nationals with full or British Overseas Territories citizenship. Officials from cross-government crisis teams are meeting today to assess the information we have. DFID assessors are

already on the ground and are looking at what they can do to help. Over the next few days, more will be decided.

Lord Swinfen (Con): Is my noble friend aware that I run—

Viscount Younger of Leckie (Con): My Lords, I regret that the time for the PNQ has ceased. I beg to move that the House do now adjourn.

Lord Campbell-Savours (Lab): Can I please object to the truncation of these proceedings? This is an extremely important matter and the House should have been given more time.

Viscount Younger of Leckie: This is a PNQ and the time permitted is 10 minutes.

House adjourned at 4.49 pm.

