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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Monday 16 July 2018

2.30 pm

Prayers—read by the Lord Bishop of Southwark.

Cannabis: Medicinal Use

Question

2.36 pm

Asked by ***Lord Rennard***

To ask Her Majesty's Government what is their assessment of the case for permitting the use of cannabis oil on prescription.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, on 19 June the Home Secretary announced a two-part review into the use of cannabis for medicinal purposes. Part 1, which is now complete, reported on the therapeutic and medicinal benefits of cannabis-related medicinal products. Part 2 will provide an assessment, based on the balance of harms and public health needs, on whether cannabis and cannabis-related products should be rescheduled.

Lord Rennard (LD): My Lords, is it correct that no more than five people have so far applied for licences for medicinal cannabis; that the cost to hospital trusts of a licence is over £3,000 per patient; and that patients currently have to establish that cannabis treatment is a last resort for them but which has already been shown to work—something which requires them to travel abroad where access to the drugs is legal? Is this not simply quite wrong, when there are about 20,000 children in this country suffering uncontrolled epileptic seizures and who do not respond to the medication currently prescribed? Does the Minister agree that no parent should have to break the law to keep their children alive, and that cannabis medicines should be available on prescription as soon as possible?

Baroness Williams of Trafford: On whether no more than five people have applied, the noble Lord is absolutely right that not many people have done so. The panel as currently constituted is making those sorts of decisions on the back of some very urgent cases. Over a longer period, the ACMD will report to the Government on whether cannabis should be rescheduled. Of course, Dame Sally Davies has already made her interim pronouncement on 3 July. On the question of parents travelling abroad to get their children medicine, the noble Lord is absolutely right, and that is why the Government are doing exactly what we are doing: we do not want children to have to travel abroad with their parents and we are acting now in the best interests of those children.

Baroness Meacher (CB): My Lords, I congratulate the Government on instituting these reviews, and I congratulate Professor Sally Davies, the Chief Medical Officer, for making very clear in correspondence with me that she believes that cannabis needs urgently to be rescheduled—she did not use those words, but it was very clear what she meant. In view of the clarity now that cannabis has quite remarkable medical qualities for certainly a number of people with epilepsy, severe pain and so on, is any consideration being given to moving medical cannabis from the Home Office to the Department of Health so that there is clinical leadership in the decisions on this matter?

Baroness Williams of Trafford: There is not, and that is because of some of the harms associated with drugs. Yes, Dame Sally Davies made her position quite clear, but of course we work closely with our health partners. In the last few weeks, the noble Baroness will have seen the way in which clinicians and medically based evidence were used to arrive at some of the decisions that were made.

Baroness Jones of Moulsecoomb (GP): My Lords, how many people have been prosecuted and convicted in the past five years for the possession or growing of cannabis for medical purposes? If the Government realise that they have been in the wrong on this, will those people get unconditional pardons?

Baroness Williams of Trafford: I think the noble Baroness is deliberately conflating two different things—judging by the smile on her face, she is. We are talking about the medicinal use of cannabis, and she is talking about possession, which are two entirely different things. She knows that. Cannabis was the most commonly used drug in 2016. About 2.2 million adults aged 16 to 59 have used it, but I cannot give her the possession figures. I can tell her that there were nearly 100,000 seizures of the drug in 2016-17.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend deal with the point made by the noble Lord, Lord Rennard, which I have also heard on the media? In order to get access to this drug, there is a condition that you need to establish its efficacy. Is that not a Catch-22 situation? If the Government's position is that people should not have to go abroad, how can they possibly meet the required test?

Baroness Williams of Trafford: My noble friend will know that international evidence, as well as the limited evidence here, is drawn on. I hope that that answers the questions of both my noble friend and the noble Lord.

Lord Rosser (Lab): The Government have said that they have no plans to decriminalise cannabis for recreational use, but according to press reports at the weekend, there was a fall in the number of people prosecuted for possession of cannabis last year, compared with 2015, of 19%, and a 34% fall in the number of cautions for possession of cannabis issued by the police over the same period. In the absence of any credible evidence that the use of cannabis for recreational purposes has recently declined sharply, is chief constables deciding, for whatever reason, not to pursue cases of

[LORD ROSSER]
possession of cannabis to anything like the same level as even two years ago really an operational decision for them, as opposed to a strategic or policy decision that should be taken by elected police and crime commissioners or the Home Secretary?

Baroness Williams of Trafford: It is of course up to PCCs to decide the policy priorities for their local areas, and of course those will be different in different areas depending on the prevalence of drug use. The noble Lord is right that the numbers have dropped, but—and I see this, depressingly, in Manchester—the use of synthetic cannabinoids is rife in some cities.

Baroness Hayman (CB): My Lords, I am afraid that I am still confused, even after the noble Baroness's answer to the noble Lord, Lord Forsyth. As I understand what the noble Lord, Lord Rennard, said, if a family wants to be one of those permitted to use cannabis-based medicines in this country, it must prove efficacy, but because they are not already scheduled and licensed for such use, in order to do so the family must go abroad to take those medicines. The noble Baroness herself said in her answer that it was quite inappropriate that families should have to go abroad.

Baroness Williams of Trafford: There are two things here—and this will be third time lucky, maybe. If a family has to go abroad to get medicines, we still would wish to be sure of a medicine's safety. So it is absolutely right that we would go through a process based on medical evidence on the safety of a drug. What we have seen in the last few weeks has actually been a short-term fix to what we need to sort out: the long-term problem and the solution of providing the appropriate drugs to these children for their conditions.

Charities: National Fund

Question

2.44 pm

Asked by ***Baroness Hayter of Kentish Town***

To ask Her Majesty's Government whether they will review the recent decision of the Attorney General to give over £400 million from a registered charity, the National Fund, to the Treasury.

Baroness Vere of Norbiton (Con): My Lords, the charitable purpose of the National Fund is the reduction of the national debt. Therefore, using the fund to reduce the national debt must be the correct approach. It is not right to use money donated for a specified charitable purpose to support one or other different cause, however worthy those other causes may be.

Baroness Hayter of Kentish Town (Lab): My Lords, actually, this charity was set up to write off, not to reduce, the national debt—so can we just keep to the facts? The national debt is £1.84 trillion, which is 4,000 times the size of this charity. In fact, the national debt grows by the size of the charity every day. Instead of helping people with charitable purposes, the Attorney-General has simply given it to his friend, the Chancellor, with no consultation or debate in Parliament and no parliamentary approval. Just because it cannot write off the debt is no reason to use it in the way suggested. Given that we now have a new Attorney-General, would the Minister agree to ask him to reconsider that decision and make sure that charitable money is used for charitable purposes?

Baroness Vere of Norbiton: My Lords, the noble Baroness is not quite right. It is, indeed, the charitable purpose of this charity to pay off the national debt. The issue to which she refers is around the administrative provisions within clauses 2 and 3A of the 1928 deed, which specify that it can be paid off when that condition is reached—but the purpose remains the same. However, it is the case that, after much consideration, it is now the opinion of the trustees of the charity, the Charity Commission and, indeed, the investment managers, that to resolve the situation, we should seek the permission of the High Court to use this fund to pay down the national debt.

Baroness D'Souza (CB): Could the Minister say something about a separate charitable fund held by the Treasury, which I am told arises from fines imposed on banks during the banking crisis? If that fund exists, what size is it and who can access it?

Baroness Vere of Norbiton: I thank the noble Baroness for her question. Unfortunately, it is a little beyond my brief today as it does not particularly relate to charities. However, I shall endeavour to find out that information and write to her.

Lord Haskel (Lab): My Lords, the trustees actually asked the Charity Commission for permission to give the money to charity, and they referred the matter to the Attorney-General to get permission for that purpose. Why were the wishes of the trustees actually ignored?

Baroness Vere of Norbiton: My Lords, the wishes of the trustees were not ignored. The noble Lord is quite right in saying that, initially, it was the view of the trustees that the money should be used for other charitable purposes. They approached the Attorney-General, who then looked into the very complex charity laws surrounding this case, and it was then agreed that this was the only reasonable way forward. To that extent, in February 2017, William Shawcross, who was then the chairman of the Charity Commission, said that he accepted the legal correctness of the approach that the Government wished to adopt.

Baroness Kramer (LD): My Lords, surely there is an easy resolution to this—a payment is made to the Chancellor to keep in the narrow terms of the trust, but the wishes of the trustees for such money to go to charity are then met by an offsetting donation by the Government, which is the kind of mechanism used for dormant bank accounts.

Baroness Vere of Norbiton: My Lords, I do not believe that that would be within the spirit of the law at all.

Baroness Watkins of Tavistock (CB): My Lords, will the Government consider allocating some of these charitable funds to small charities faced with additional costs, historically associated with sleep-ins, should the successful appeal by Mencap be overturned in the future? If not, will the Government at least hypothecate some of the funds to charities in the social care sector which were running at significant deficits prior to the publication of the Green Paper on social care?

Baroness Vere of Norbiton: My Lords, the Attorney-General has received many suggestions on how this money could be used and I am sure that noble Lords could think of many more. However, it is simply not right for money that has been donated for one purpose—whether the donors are living or not—to be given to another cause. Therefore, it will not be in this case.

Lord Harris of Haringey (Lab): My Lords, I understand that, under circumstances in which—for whatever reason—trustees cannot fulfil their duties, the Charity Commission has the power to transfer the assets of one charity to another. If these trustees cannot fulfil their duties, because paying off the entire national debt is difficult, would it not have made more sense for the Charity Commission to have suggested that the assets be passed to another charity for good purposes? Why was that not considered?

Baroness Vere of Norbiton: My Lords, I think I have made myself very clear on what the Charity Commission currently feels. Noble Lords looked at the Charities Act in 2011, and the Government have been through charities law fairly recently. It is a fact that the charity is required by law to adhere to the purpose of the fund, which is to pay off the national debt. It is an administrative sub-clause which requires the entire national debt to be paid off.

Lord Foulkes of Cumnock (Lab): My Lords, I declare an interest as chair of Age Scotland. Charities are finding it very difficult at the moment because of cutbacks in grants from government and local government and difficulty in fundraising. Can I suggest that we ask the views of the chair of the Charity Commission on this? We will then find out whether her interest is really in favour of charities or of the Government.

Baroness Vere of Norbiton: My Lords, I have already quoted the views of the then chair of the Charity Commission in February 2017. There is nothing to suggest that anything has changed. The Government will be proceeding as I have already explained.

Small and Medium-sized Enterprises: Student Work Placements

Question

2.52 pm

Asked by ***Lord Aberdare***

To ask Her Majesty's Government what steps they are taking to encourage employers, particularly small and medium-sized enterprises, to offer high-quality work experience placements to all students aged 16 to 18.

The Parliamentary Under-Secretary of State, Department for Education (Lord Agnew of Oulton) (Con): My Lords, work experience is a key component of 16 to 19 year-old study programmes, including schemes such as traineeships which are focused on supporting students' transition into work. The new T-levels, beginning in 2020, will include industry placements, to ensure that students spend sufficient time in the workplace to develop their technical skills and prepare for skilled employment. We are committed to supporting employers who offer these high-quality placements.

Lord Aberdare (CB): My Lords, educators and employers agree that high-quality work experience is one of the most effective ways to help students find jobs. Many smaller employers are willing and able to offer placements, especially to 16 to 18 year-olds, who they believe benefit most. What can the Minister and his department do to increase the availability and take-up of such placements, for example by encouraging and enabling schools and colleges to spread work experience throughout term times, rather than cramming it into a short period at the end of the school year? What impact does he expect the new T-levels to have on the availability of work experience, particularly for non T-level students?

Lord Agnew of Oulton: My Lords, the noble Lord is right that these work placements are extremely important, and that there is not a one-size-fits-all placement. We have just completed an initial industry placement pilot with 21 providers, and 20,000 placements will take place over the next year as part of the capacity and delivery plan. We will evaluate how these placements have gone and make recommendations drawn from these experiences. This will include whether they have been most successful delivered in a single block, on day release, or by any other pattern. We are also looking at how we can help SMEs more by producing guidance on how they can best take advantage of this facility.

Baroness Burt of Solihull (LD): My Lords, work experience works when it is done well. Although, as the Minister said, the Government publish some guidelines for the 16 to 19 year-old work-study programme, SMEs can struggle in the short term as well as in these longer-term programmes if they are not properly prepared and helped. Who is responsible for ensuring that all work placements reach a good standard, so that it is not just a question of checking workplace safety beforehand but of ensuring that they deliver for the benefit of the student and of the company?

Lord Agnew of Oulton: My Lords, we are in the process of issuing a package of guidance for businesses, particularly aimed at SMEs; there are 10 areas of guidance in this first batch, including on how to implement industry placements, engaging students and parents or guardians, engaging staff, and the business case for industry placements. We have to accept that this will be an iterative journey as we embark on it at such scale, but we are committed to ensuring that these placements are of high quality.

Baroness Gardner of Parkes (Con): My Lords, does my noble friend appreciate that it is much more difficult for a small business to have someone in to learn exactly what it is all about than it is for huge concerns, which can take people without affecting staff numbers? I am pleased to say that as a dentist, we had a number of people come to see what it was like, and I am delighted now to go to a dentist who went into dentistry because of her visit to our surgery.

Lord Agnew of Oulton: My Lords, as someone who has run SMEs for nearly 40 years I can speak with some commitment to that important part of our economy. My noble friend is right that it can be more difficult for a small business to accommodate these sorts of placements. However, they can also be much more flexible and give a young person much more exposure to every aspect of that business. As I mentioned, we are providing the resources and guidance to employers, and this whole programme will develop over the next couple of years.

Lord Stevenson of Balmacara (Lab): My Lords, approximately 800,000 young people who are eligible to take T-levels are coming through the system, and it seems that the pilot schemes are operating in the tens of thousands, not the hundreds of thousands, as might be required. That aside, the cost of this will be significant; we are talking about a three-month placement period, not a matter of a few days. How will the Government fund this?

Lord Agnew of Oulton: My Lords, we have already announced substantial funding for the T-level programme, and there are a number of key components of it, such as the technical knowledge and practical skills that are specific to a chosen industry or occupation, and an industry placement of at least 45 days in students' chosen industry or occupation. In March of this year the Chancellor of the Exchequer announced a specific amount—I think it was £80 million—to assist SMEs in making these placements available.

Baroness Finlay of Llandaff (CB): My Lords, does the definition of SMEs include small farms, so that students can get experience in farming and animal husbandry? We have a shortage of agricultural workers coming through and we know that very few young people who are not brought up in farming go on to enter agriculture at the moment, so there is a workforce need to give them high-quality experience. Would such support also cover indemnity for these farmers?

Lord Agnew of Oulton: My Lords, I certainly hope farmers are included, because that is how I started. At 13, I was put on by my father at 20p an hour and laid off without pay when it rained. One of the parts of the guidance we are preparing is on specific health and safety advice for industries where there is more exposure to heavy machinery, such as construction and, of course, agriculture. I therefore hope very much that young people will be involved in that.

Lord Anderson of Swansea (Lab): My Lords, the last question was not just about advice but possible indemnity—insurance if there is any accident. What is the position in respect of that?

Lord Agnew of Oulton: My Lords, most SMEs have what is called a combined business insurance policy, which includes such things as indemnity limits for public liability. I am therefore comfortable that that would be covered, but that of course would be up to the employer to check.

Lord Haselhurst (Con): My Lords, is my noble friend aware of the college that has been set up with the co-operation of Stansted Airport and Essex County Council, which provides on-the-spot opportunities in technical training for people in the locality. Should we not hope to see that example followed in many other places?

Lord Agnew of Oulton: My Lords, I am not aware of that excellent opportunity but I hope that it will provide inspiration to other employers.

General Practitioners: Indemnity Scheme

Question

2.59 pm

Asked by ***Lord Sharkey***

To ask Her Majesty's Government what plans they have to introduce a state-backed indemnity scheme for general practitioners in England.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, in October 2017, the Secretary of State for Health and Social Care announced his intention to develop a state-backed indemnity scheme for general practice in England. The state-backed scheme is being designed to provide more stable, affordable cover for GPs and patients. We are working with stakeholders to design the scheme and are committed to implementing it from April 2019.

Lord Sharkey (LD): Will the proposed scheme cover all GP-related healthcare staff who provide services for the NHS and, if not, who will be excluded? Will the scheme cover historical liabilities, as was the case when the NHS clinical negligence scheme for trusts was introduced? What additional costs will the new scheme generate for the NHS?

Lord O'Shaughnessy: The scheme is intended to cover primary medical care services, which will also include integrated urgent care services and NHS primary care provided in secure environments. The scheme will certainly cover future liabilities, and cover for historic liabilities will depend on discussions with stakeholders and achieving value for money. As for the cost, this is a complex negotiation with multiple partners, and we are not in a positon to give costs at this point without prejudicing commercial interests. Suffice it to say, one intention of the scheme is to provide better value for money than those currently in existence.

Baroness Thornton (Lab): My Lords, the average GP paid indemnity costs that rose by 50% in a six-year period. That has had a knock-on effect of discouraging doctors from going into primary care and has been a factor in many leaving. It seems to me therefore that this is a matter of urgency, and so I am very pleased to hear that the scheme will be introduced in April next year. However, GPs are sorting out their indemnity insurance right now—they do it over the summer. What advice are the Minister and the Government giving GPs now to help them decide what the costs are? Given the shortage of GPs in this country, anything that the Secretary of State can do to encourage GPs into primary care would be a good thing.

Lord O'Shaughnessy: I agree with the noble Baroness's final point. Indeed, one reason for sorting out this scheme is that we know it is a barrier to people joining the profession and, unfortunately, encourages them to leave it. There is of course an urgency, but nevertheless it is a complex discussion with commercial partners. I can tell her that we are talking to GPs themselves and their representative organisations to make sure they understand what is at stake, what we intend to do and that we intend to introduce the new scheme in April.

Baroness Jolly (LD): My Lords, on 1 June, a DHSC spokesperson said:

"We are continuing to work closely with key stakeholders in the development of the scheme from April 2019"—

as the Minister said. The spokesperson went on:

"We will provide a further update in the near future".

GPs need reassurance that this will not be kicked into the long grass. What is the department's understanding of the "near future"—is it six weeks, six months or a year?

Lord O'Shaughnessy: That is a very existential question. The point is that we need to introduce the scheme by April and are absolutely committed to that. There are some very big decisions to be made on the scheme design now. We have a new Secretary of State who is getting up to speed on these issues as we speak. Our intention is to make those decisions to confirm the design of the scheme and to be able to tell GPs and other stakeholders publicly as soon as possible. We are committed to the April 2019 deadline.

Lord Suri (Con): My Lords, is such a scheme currently available to general practitioners in any other part of the United Kingdom?

Lord O'Shaughnessy: I can tell my noble friend that the scheme we are designing is for England, the jurisdiction that the department looks after. However, the Welsh Government have announced their intention to have a state-backed scheme and we are speaking to the devolved Administrations in Scotland and Northern Ireland to make sure that we act together in this regard.

Lord Patel (CB): My Lords, when the scheme is introduced, what plans are there to reduce the level of litigation in primary care, considering that the majority of primary care practitioners are independent contractors, and those who are not are employed by GP principals and not by the National Health Service?

Lord O'Shaughnessy: The noble Lord is right to highlight this issue. It is important to state that the rising cost of indemnity is not driven by a poor or worsening safety record but by the volume of activity and the rising cost of the average claim. Not only do we need to make sure that we reduce those costs, for example, by introducing a fixed recoverable cost scheme, we also need to reduce the number of safety issues so that there are fewer claims to bring in the first place.

Lord Watts (Lab): My Lords, is it not the case that the costs are rising because GPs do not have sufficient time to see their patients? It is all linked to the shortage of GPs, which means that they have to see more patients for shorter periods.

Lord O'Shaughnessy: No, it is not.

Baroness McIntosh of Pickering (Con): My Lords, I declare the work that I do with dispensing doctors. A particular barrier to retaining and recruiting GPs in rural areas is the pension provisions, which is the case for all professions. Will my noble friend make representations to the authorities that be in this regard as that would be a major step forward for those now coming into the profession in their 30s and 40s?

Lord O'Shaughnessy: My noble friend makes an excellent point and I will certainly do so. There is an attempt not just to recruit many more GPs into service but to recruit them into hard-to-reach areas, such as rural areas, through a targeted recruitment campaign. I am sure that that is one of the areas that we will want to look at.

Lord Hunt of Kings Heath (Lab): My Lords, is it intended that locums will be covered by the scheme?

Lord O'Shaughnessy: My understanding is that the scheme is for all providers of primary medical care services under GMS, PMS and APMS contracts.

Lord Kakkar (CB): My Lords, I declare my interests as in the register. In reducing the problem of clinical negligence, it is vital to ensure that general practitioners are able to learn from the entirety of their clinical practice. As has been heard, many work in single-handed practices. How do Her Majesty's Government propose to ensure that there is proper learning across the primary care system to reduce errors once mistakes have been made?

Lord O'Shaughnessy: The noble Lord is quite right. I point him in the direction of the learning from deaths programme, which is attempting to do exactly that.

Assaults on Emergency Workers (Offences) Bill

Order of Commitment Discharged

3.06 pm

Moved by ***Baroness Donaghy***

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

Motion agreed.

Mental Capacity (Amendment) Bill [HL]

Second Reading

3.07 pm

Moved by ***Lord O'Shaughnessy***

That the Bill be now read a second time.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, treating people with respect and dignity, no matter what their disability or condition, are touchstones of our civilised society. Those are virtues that we all seek to promote, but sometimes, even with the best intentions, they do not always materialise. For that reason, the Government have now introduced legislation to reform and improve the current deprivation of liberty safeguards system. It is fitting that we do so in the month when we celebrate the 70th anniversary of the NHS, an institution founded on those and other virtues, which have sustained it as one of the most successful and respected health and care systems in the world.

Deprivation of liberty safeguards seek to empower and protect vulnerable people in our society by ensuring that any deprivation of the liberty of people who lack capacity is always in their best interests. It is a step that is never taken lightly and always with the intent to prevent harm to the individual. Even in cases where a person who lacks capacity is unable to make decisions, there is an express duty for all involved to consider their views and wishes as far as they can be determined. Despite the existence and undeniable necessity of these protections in our society, the deprivation of liberty safeguards system as it stands today is overly technical and legalistic, placing significant burdens on people and their families. It too often fails to achieve positive outcomes for those at the heart of this process, and we too often hear that individuals, families and their carers are experiencing a process that feels "done to them" rather than with their full consent and engagement. People's voices, and those who care for them, are not being heard; this needs to change.

What is more, report after report has provided strong evidence of the strain the system is under and of unacceptable inefficiencies. It is costly and cumbersome, and in its current state is unable to process all the necessary applications to protect human rights. Last year, reports showed that more than 108,000 people were awaiting a deprivation of liberty safeguards application; again, this needs to change.

Many noble Lords have worked hard on this issue for years, and I would like to take the opportunity to thank them for continuing to shine a light on a system in urgent need of reform. In 2014, a House of Lords Select Committee published a detailed report which concluded that deprivation of liberty safeguards were "not fit for purpose". Again in 2017, the chair of the National Mental Capacity Forum, the noble Baroness, Lady Finlay, for whose tireless commitment I am especially grateful—and I am delighted to see that her train got her here in time—reported that the current system was overly complex, excessively bureaucratic and costly. More recently, the *Independent Review of the Mental Health Act: Interim Report*, led by Professor Sir Simon Wessely, stressed the need for,

> "an appropriate calibration between resources spent on delivery of care and those spent on safeguards surrounding the delivery of that care".

We have listened and, following a Government commission, in March 2017 the Law Commission published a review of the deprivation of liberty safeguards and Mental Capacity Act. Over three years, the Law Commission sought views from a breadth of stakeholders, exposing the system's struggles as well as looking at the process from a user's perspective. The evidence, analysis and recommendations, drawn from across the system, have provided further impetus for reform. In March this year, the Government published their response to the report, accepting in principle the Law Commission's model. Since the publication of the Law Commission's review, the Government have continued to work closely with stakeholders and we have listened carefully to them to build on that model, streamlining it to focus on the crucial protections that this Bill seeks to mandate.

The Bill will reform the process so that it is less burdensome on people, carers, families and local authorities. Not only will it ease financial burdens throughout the system, creating significant savings of more than £200 million a year which will mainly fall to local authorities, but according to the Law Commission, it will also relieve local authorities of the significant legal liability burden of more than £408 million by removing the backlog of deprivation of liberty safeguards applications. It will introduce a simpler process with increased engagement with families and other carers, and afford swifter access to justice. It will ensure that any restrictions are proportionate and help to support cared-for persons to live as freely as they can by protecting their liberty. It will allow the NHS rather than local authorities to authorise the deprivation of liberty arrangements for its own patients, enabling a more streamlined and clearly accountable process in which the NHS has a clear role in helping to afford people their rights.

The Bill will make sure that consideration of restrictions on people's liberties will be part of their overall care planning and considered from the earliest stages, rather than a bolt-on afterthought as under the current system. The Bill will also eliminate repeat assessments and authorisations when someone moves between a care home, hospital and ambulance as part of their treatment. In the words of Law Commissioner Nicholas Paines QC:

> "This new legislation … will go a long way towards addressing the flaws of the current system and better protect the most vulnerable in our society".

The president of the Association of Directors of Adult Social Services, Glen Garrod, has also indicated support for the Bill, observing that:

> "Once enacted, it is hoped that this law will help ensure the protection of liberty of all people who lack mental capacity more effectively and efficiently than under the present Deprivation of Liberty Safeguards".

Finally, before beginning debate on the Bill, I want to recount the seminal case study that underlines the importance of the legislation before us. It illustrates the role that this law plays in our society when protecting and empowering people. It illustrates the need to put individuals, carers and family members at the heart of a system, and reminds us that the framework fundamentally exists to ensure that vulnerable people

are cared for and looked after. A man—HL—came to live with Mr and Mrs E, his carers, under a resettlement scheme from Bournewood Hospital, where he had lived for 32 years. HL's carers found it rewarding to see him benefit from living in a family setting. Gradually, he became more confident and progressed beyond all expectations. HL would attend a day centre once a week, to which he travelled with the centre's transport.

However, on one occasion, the usual driver did not collect him from home. Rather than taking him straight to the day centre as normal, the driver took a different route. HL became increasingly agitated. The next thing Mr and Mrs E knew was that HL had been taken back into hospital and detained there. As HL cannot speak, he was unable to object. Mr and Mrs E were not allowed to visit him, apparently in case he wanted to leave with them. When HL returned after various legal proceedings he was "in a terrible state", in the words of his carers. Eventually, a legal case brought to the European Court of Human Rights found that HL was being deprived of his liberty without the necessary legal safeguards. This ruling triggered the introduction of deprivation of liberty safeguards in 2009. The story emphasises the importance of this system and that a rights and person-centred approach is needed to deliver better public services for everyone. Up to 2 million people in our society have impaired capacity, so many of us in this Chamber will have had direct experience of it among our family and friends. It is essential that the system affords the necessary protections for the most vulnerable people.

To conclude, we have an opportunity to transform the deprivation of liberty safeguards process, improve access to human rights, support families, carers and individuals and reduce pressures on the health and care system. We have an opportunity to bring about change and I look forward to working with noble Lords to make sure that we use this opportunity to improve the welfare of some of society's most vulnerable people. I beg to move.

3.17 pm

Lord Touhig (Lab): My Lords, a recent report by the Joint Committee on Human Rights called for a statutory definition of what constitutes a deprivation of liberty. The Bill does not offer such a definition. If it did, we would have clarity for families and front-line professionals; without it, there is a risk. We are reminded in an excellent paper from the Library that the Law Commission, which reviewed the existing legislation, concluded that the deprivation of liberty safeguards failed to offer sufficient protection of the rights of those deprived of liberty. Indeed, all too often, according to the report, it had been "theoretical and illusory".

The Bill widens the number of living arrangements that are covered by the current deprivation of liberty safeguards system to include any setting. For it to apply, an individual must be aged 18 or over, lack capacity to consent to the living arrangement and be of unsound mind. To be authorised by a council or hospital, the living arrangement must be "necessary and proportionate". There are also proposals for consultation on the living arrangements and for a "pre-authorisation review". Assessments under the proposals will be carried out by councils or hospitals unless the individual lives in a care home, in which case it would be carried out by the care home manager. The last criterion would include autistic people who live in residential care. In a response to the Law Commission, the National Autistic Society, of which I am a vice-president, welcomed the attempts to create a simplified administrative regime that could tackle the significant delays in the current system.

However, many concerns remain. In its current form, the Bill does not adequately secure the rights of autistic people. Under the current deprivation of liberty safeguards system, a deprivation of liberty needs to be in an individual's best interests for it to be authorised. The Bill moves away from best interests. Why does it do that? Instead, to be authorised, a living arrangement must be "necessary and proportionate". The new criteria risk losing sight of what is best for the individual and what the individual wants. Let us be wary of enacting legislation that pays scant regard to the individual, in particular an individual who, in the context of the Bill, is perhaps the most vulnerable in society.

There is a duty to consult on care arrangements. The Bill says that the purpose of this consultation is to ascertain the individual's wishes. However, the list at paragraph 17(2) of Schedule 1 omits the individual altogether. Although an autistic person might lack capacity to decide about living arrangements, their preferences or wishes should be an important factor in any decision about their lives. I am not sure what a decision-maker is expected to do with the results of this consultation. It is not made clear whether this is part of a determination that an arrangement is "necessary and proportionate". This needs to be clarified. I hope that it will be.

The National Autistic Society echoes concerns expressed by Mencap that this removes the rights of deputies or lasting powers of attorney to refuse the authorisation of a deprivation of liberty. Overall, the lack of inclusion of best interests, the lack of interest in trying to ascertain what the individual wants and the removal of the rights of deputies or lasting powers of attorney is most definitely a backward step in putting the individual at the centre of any decision-making process. The Bill surely should enshrine individuals' best interests, as did the Law Commission's proposals. The role of these interests within a determination about a deprivation of liberty must be clarified and I hope that it will be.

A pre-authorisation review is required in the Bill to agree to a deprivation of liberty. It says that this should be carried out by someone who is not involved in day-to-day care of the individual. However, the wording causes me concern. As drafted, it is not strong enough to secure independence. It will be carried out by an independent approved mental capacity professional only if it is reasonable to believe that the individual does not want to live in that arrangement. It is unclear how the reasonableness of this will be determined. The wording is too weak to secure the rights of autistic people who might lack capacity. Even more astounding, there is no duty whatever for the person carrying out a review to have met the individual whose case this person is reviewing. This

simply cannot be right. The Bill must require independent reviews by an approved mental capacity professional in all circumstances.

If an individual resides in a care home the Bill's requirements to carry out an assessment and consultation fall to the care home manager. While this would relieve some of the administrative burden on councils and hospitals, the National Autistic Society is concerned, and rightly so. First, the administrative burden will simply shift to care home managers, who are already stretched and may not have received the training needed to carry out these tasks. Secondly, the process in the Bill does not adequately safeguard against these assessments being, in effect, rubber-stamped by councils and hospitals, particularly while the duties around pre-authorisation reviews are so weak. This could lead to a conflict of interest, whereby care home managers are de facto authorisers of deprivations of liberty. The Government should consult more widely on this. Surely we need much more consultation.

The Bill requires that an authorisation can last up to 12 months. At the end of this period, it can be renewed for another 12 months or less. However, subsequent renewals may last for up to three years. Under the Care Act 2014, reviews of care and support plans should take place annually. Any deprivation of liberty should be considered within these reviews. It would be far more appropriate to allow for ongoing renewals of up to one year, to align more closely with care and support planning. I hope the Bill might be amended so that we can provide for 12-monthly reviews.

All individuals and their appropriate person should be able to access support from an independent mental capacity adviser with the right skills to challenge unnecessary deprivation of liberty. This is currently not in the Bill. Rights to independent mental capacity advisers should be extended to cover all individuals.

There is much to be concerned about in this Bill. I really hope the Government are in listening mode. They certainly need to be.

3.24 pm

Baroness Barker (LD): My Lords, I am not saying that some Members of your Lordships' House are not veterans on this subject, but I came in today with my hard copy of the *Mental Capacity Act 2005: Deprivation of Liberty Safeguards—Code of Practice*. I may be the only person who has one, but I went back to look at it over the weekend in preparation for this. I am very glad to be taking part in this debate, alongside the noble Baroness, Lady Barran, who will bring to it her fresh eyes: I think that that perhaps shows one of the great strengths of your Lordships' House.

I start by saying that the legislation we are considering came about because a vulnerable adult, HL, was detained in a place he did not want to be and which his carers knew was not right for him. It turned out that he had fewer safeguards than someone who had been sectioned under the Mental Health Act, or who had been detained under the criminal justice system. As we dive into the detail of what is inevitably quite a technical Bill, I urge us all to keep that person, and the hundreds of thousands of people like him, in mind. As we look at a piece of legislation that is essentially more than a decade old we need to think about updating this legislation in light of changes in society. We know that by 2030 there will be 2 million people over the age of 65 who are ageing without children: they will not have close family members to look after their interests. I rather think that our acid test ought to be whether we think that what is being proposed will look after those people.

It has been apparent since 2007—we should bear it in mind that the legislation we are talking about was not part of the Mental Capacity Act but part of the mental health legislation—that the safeguards have been poorly understood and practised. That is because the two pieces of legislation do not work well together or, indeed, at all. The mental health legislation rests on the judgment and expertise of individuals, saying ultimately what they believe to be right for the safety of other people. The Mental Capacity Act is instead based around the principles of autonomy, empowerment and the importance of supporting decision-making. Mental health legislation is very strictly overseen by statutory oversight bodies. The Mental Capacity Act never has been and therefore it is not surprising that when it has been implemented, it has been implemented very patchily and has been reliant largely upon the dedication of interested professionals.

Noble Lords will have had a number of briefings which talk about the welcome extension of these safeguards to settings such as care settings. I do not have a problem with that; in fact, I welcome it. I think many care facilities, particularly those run by charities, which have long and dedicated experience in looking after people with learning disabilities, will implement this extremely well, but they will do so without sufficient oversight or a sufficient guarantee that if they do not do their job properly the people concerned and their carers will have the relevant access to information and right of appeal. If the Government had intended to sort out this fundamental issue that has been hanging around for 20 years, they would have waited until the current review of the mental health legislation, which is being carried out by Sir Simon Wesley and which is inevitably looking at DoLS, had been concluded, but they have not.

Unlike the Law Commission, which took great care to consult on its proposals, the Government have come forward with this piece of legislation on which there has been very little consultation. It is quite clear that the Government have gone through the Law Commission legislation and selectively picked pieces out of it, when in fact the Law Commission was trying to bring together a whole package of measures which, taken as a whole, would have been a robust defence of the liberty of individuals. So my first question to the Minister is: why this legislation and why now? Why not wait until the mental health legislation is reviewed? Why not have a consultation on which people with interests, such as the parents or the families of people who have been detained, could talk about what has gone wrong and what has not worked in the current system? I say to the Minister that if the hurry is about saving money, that is something your Lordships' House will have to bear in mind as we scrutinise the Bill.

The Select Committee which reviewed the implementation of the Act, on which I sat, was concerned about very patchy introduction. We were right. We now have the figures, which show that in some parts of the country the waiting time for having one of these assessments done is longer than the time for which somebody is supposed to be detained. There is no doubt that this has to be changed. But the changes which the Government are choosing to bring in do not strike me as being sufficiently robust. The noble Lord, Lord Touhig, began to outline some of the main areas of concern.

There is also concern about the limiting of legal aid. I hope that other noble Lords, in particular the noble and learned Lord, Lord Brown of Eaton-under-Heywood, will perhaps look at the limitation of legal aid. We are all in favour of having a system in which fewer people need to go to court fewer times, but when they do have to go to court they need to be able to be properly represented. Very few of them are in a position to represent themselves against local authorities or other authorities which have access to their own legal services. I would like us to look at that.

Secondly, the new definition of "proportionate" does not adequately reflect the best-interest tests that were in the original legislation. That is a severe problem. I understand, and noble Lords will appreciate, the desire to cut down on repetitious assessments and so on, but there is a danger that we might end up with decisions being made about a person's capacity to make one decision which rest on information that was gathered for a wholly different purpose. That would not be right. I also think we have missed a trick in relation to the recognition that there are a number of people whose capacity to make decisions fluctuates. The Law Commission recommendation on that subject has not been picked up in the Bill.

Finally, I do not doubt for a moment that the Government have good intentions but there are several areas in which the detail of the Bill is deficient. We should also bear in mind the strong possibility that people who found themselves in the position that HL did all those years ago may not have the protection of the European Court of Human Rights in the future. Therefore, it is incumbent upon people in this Parliament to make sure that the human rights of those people enjoy greater safeguards than they have ever done in domestic legislation before. For those reasons, I conclude that the Bill before us is extremely flawed and deficient. I suggest that your Lordships bring their considerable experience and expertise to bear to change it radically before it goes to another place.

3.33 pm

Baroness Finlay of Llandaff (CB): My Lords, I must declare my interest, having chaired the National Mental Capacity Forum for almost three years, and having drawn attention, in March 2015, to the urgency of deprivation of liberty safeguards reform.

The Bill has had a long gestation period. Regarding the Bournewood gap—the history of which was outlined by the Minister and the noble Baroness, Lady Barker—we tried to ensure compliance with Article 5 of the European Convention on Human Rights in relation to those with impaired capacity who are unable to consent to their living and care arrangements. We should have been more vocal about our reservations when that legislation went through in 2008, because it focused on deprivation of liberty and seemed to ignore P's security and empowerment.

The Cheshire West judgment of 2014 resulted in huge increases year on year in the number of people with impaired capacity identified as being deprived of their liberty in one way or another. Therefore, without the deprivation of liberty safeguards, their arrangements constitute an illegal deprivation. As the Minister said, last year more than 108,000 people were referred for DoLS assessments. Many of them are still waiting and more have joined that list. They are all illegally detained and the time delay for DoLS assessment has lengthened year on year. The bureaucracy of the current system is crippling, with six separate assessments needed, which can leave the person, P, feeling confused and unable to understand what is happening or why they are being asked personal questions by a stranger. The burden on adult social care is overwhelming. It would need around £2 billion injected just to clear the backlog, but that would still not solve the problem. The administrative processes themselves need urgent reform, and the vulnerable need better protection and better access to justice.

A little history is relevant here. The House of Lords post-legislative scrutiny Select Committee report of March 2014, which stated that the DoLS provisions are not fit for purpose, led to the Law Commission review that Tim Spencer-Lane has been leading. This is the widest consultation that the Law Commission has ever undertaken, travelling the length and breadth of the country to take evidence from as many as wanted to offer it, and I was privileged to be able to sit in on some of those sessions. The Law Commission's consultation and draft Bill have fed directly into the Bill before us, as Tim Spencer-Lane has been working closely with officials. There has been continuity through the system, which I think is not widely known to people.

Chairing the National Mental Capacity Forum, I have asked many in health and social care how many people have had improved care as a result of DoLS. The estimates are usually around 4% and have ranged from around 3% to 8%, so for all this bureaucracy and expense, fewer than one in 20 has clear better outcomes from the current process. A placebo response for an intervention can be expected in about 20% of people. We would not allow a medical or surgical intervention that fared worse than placebo in improving outcomes, so why put people through these burdensome assessments when we have no evidence of benefit?

Around 2 million people with impaired capacity stand to benefit from the Bill. Importantly, when DoLS has improved care, it seems that this has been through a revised care plan. The best interest assessors who are bringing about improvements will need greater powers as independent mental capacity professionals to target prospectively those thought to be at risk and not depend on referrals from providers once a person is in care. Can the Minister explain how these professionals'

[BARONESS FINLAY OF LLANDAFF]
greater powers to protect those at risk will work and how this new system will relate to safeguarding and the processes around it?

This focus in the Bill is on the care plan, and it returns to the core principles of the Mental Capacity Act. Whether in hospital or a care home, those overseeing care are directly responsible for the care plan and for ensuring that, compliant with the empowering ethos of the Mental Capacity Act, the arrangements are the least restrictive option. The restrictions must be necessary and proportionate to ensuring that any deprivation of liberty is justifiable for P's security, while allowing them as much independent and enjoyable living as possible. In developing a care plan, P's wishes and feelings must be taken into account. P must be supported to take as many of the decisions over care as P is able to, and they must be involved. This builds on the important amendment that the noble Baroness, Lady Barker, introduced into the Mental Capacity Act 2005, establishing the place for an advance statement of wishes. That becomes particularly important for people with fluctuating capacity. Can the Minister provide assurance that this will be stressed in the code of practice whenever a best interest decision is taken, whether by health and social care staff or by a donee of lasting power of attorney for P?

The focus is on liberty protection irrespective of how care is funded, and that is welcome. Liberty protection safeguards are rightly so named and their portability makes sense because the care plan detailing how liberty is protected refers to P. Of course, the care plan must also be dynamic and revised appropriately. Will the Care Quality Commission be responsible for inspecting whether the liberty protection safeguards are dynamic and portable, with a review triggered if circumstances change, particularly for those with learning difficulties and other stable conditions, if an LPS has been signed off in the longer term for three years? In other words: if things change, everything changes.

Those who know P best—the family and those important to P—must be consulted, not sidelined as has happened sometimes with DoLS. Can the Minister confirm that the code of practice will signpost the involvement of expert assessment of those with speech and language difficulties, who are too often labelled as having impaired capacity because they have appeared unable to communicate?

The changes will allow social work staff to concentrate on the most vulnerable, freeing them up to provide person-focused training, so that on a day-to-day basis staff can support P better in making decisions and understand the importance of doing all that they can to involve P in decisions that need to be taken on his or her behalf.

In 2014-15, the year after Cheshire West, the cost to councils rose by more than £98 million, and it has risen further year on year. That backlog now needs £2 billion just to clear it. Will the Government undertake to review, after two years, that futile bureaucracy and duplication has been cut and tangible benefit to P increased?

The code of practice will be important in ensuring that care plans are properly devised and properly reviewed, both regularly and frequently. It will make care providers' decisions more proportionate, through the emphasis on protecting liberty rather than risk-averse attitudes by providers. Concerns have been voiced about the care home sector's ability to assess P, yet we rely on these staff day to day. I hope that there will now be mandatory training of all health and social care staff, not just care home staff, in all aspects of the Mental Capacity Act. Mandatory training is long overdue.

I hope that the Minister can assure the House that the code of practice will be developed quickly to address concerns that have been raised about the Bill. One of the most contentious is how liberty is defined, as has already been alluded to. It is important to differentiate disorders that have impaired a person's liberty—post head injury; post meningitis; the dementias; learning difficulties; delirium, whatever the cause; the list goes on—from actions taken by those responsible for care that deprive P of liberty. Such actions must be justified as being the least restrictive options and designed to allow P's liberty to be maximised and protected. Given the difficulties with a universally applicable definition, I hope that clarification can be included in the code of practice; that may be safer than trying to come up with something in the Bill.

The term "of unsound mind", although current legal language—I recognise that it comes from the ECHR—is outdated and stigmatising and may benefit from better wording.

There is a concern that those aged 16 and upwards should be brought into the remit of liberty protection safeguards for consistency, even if they are in education, because transition can be a difficult time for those people and their families.

I hope that concerns about the Bill can be resolved rapidly, because this Bill is urgently needed. I remind the House of the five core principles of the Mental Capacity Act: capacity should be assumed until it can be shown why it is not present; all support must be given for decisions by P; people can make unwise decisions; when capacity is lacking, any decision must be in P's best interests; and any such decision must be the least restrictive option.

This Bill is an add-on to the Mental Capacity Act; it does not replace it.

3.43 pm

Baroness Barran (Con) (Maiden Speech): It is a huge honour and privilege to address your Lordships' House today. I would like to start by thanking your Lordships for the very warm welcome that I have received from everyone on all sides of the House. I am grateful to Black Rod and her team for their care and attention to detail, and particularly to the doorkeepers who have manoeuvred me to the right side of the Chamber with a tactful "Where are you planning to sit, my Lady?", or gently explained that "Morning" and "Afternoon" take on a whole new meaning in your Lordships' House.

My supporters, the noble and learned Baroness, Lady Butler-Sloss, and my noble friend Lady Williams of Trafford, were superb at putting me at my ease during my introduction, and my noble friend Lord

Sherbourne has been masterly in answering my questions with the utmost patience and encouragement. And encouragement is the word that best sums up the past two weeks. All your Lordships have been consistently, and at times almost fiercely, encouraging, and I feel extraordinarily lucky to be here.

Prior to joining this House, I worked for over 20 years in the City, founding one of the first European hedge funds, before going on to advise philanthropists and foundations on their charitable giving, as well as joining the boards of Comic Relief, the Henry Smith Charity and, most recently, the Royal Foundation.

Fifteen years ago, my life changed course when I asked several small charities what they thought was the biggest human problem that was the hardest to raise money for. They all gave me the same answer: domestic violence and abuse. As a result, the charity SafeLives was born on my kitchen table in 2004, with a focus on keeping victims and children safe in their homes wherever possible and holding perpetrators of abuse to account while still helping them to change. As chief executive, I worked with voluntary and statutory agencies across the fields of criminal justice, substance use, mental health, social care, children's charities and the family courts. I was guided by many victims and survivors of domestic abuse, and today I pay tribute to their extraordinary courage.

Throughout, I have been supported by some exceptional mentors and have had the chance to try to tackle some truly important problems. I think I am safe in expecting that both those things will continue in this House.

Very high up on the list of important problems that this Bill seeks to address is that of when and how to deprive someone who lacks mental capacity of their liberty while upholding their rights. In preparing this speech, I spoke to several organisations working in this field: L'Arche UK, Shared Lives Plus and Gentoo. As a non-lawyer, I focused on the practical aspects of how the Bill will work and asked them all, "What works least well with the current Act in relation to deprivation of liberty safeguards, or DoLS?" One person smiled and said, "Try and imagine doing this. We put an automatic reminder on our calendars every month to write to the local authority to authorise the DoLS. We rarely, if ever, hear back. If we don't do it, we're penalised by the CQC in our inspection". They all highlighted practical problems with apparently pointless bureaucracy, a lack of consideration of the feelings of friends, families and carers, a disconnect between the views of social care and health professionals, and a lack of capacity to provide independent mental capacity advocates. They spoke of their frustration at an opportunity missed to protect vulnerable people, with an apparently uniform and blunt approach.

I believe that the Bill goes some significant way to addressing those concerns. There is a clear intention to simplify the bureaucracy involved and to listen to the views of families, friends and those who know and care for the individual, while providing more skilled resource to resolve the most complex cases. Welcome, too, are other practical aspects—the portability of the authorisations between settings and the extension of their duration from one to three years.

However, the key to success with this Bill when it becomes law will lie in the quality of its implementation. Does my noble friend the Minister agree that it is both helpful and necessary to give the responsible bodies and care providers absolute clarity, through the code of practice, about the Government's expectations of them, particularly regarding those sections that aim to give agency and protection to those impacted by this legislation? I refer, in particular, to the training, qualifications and availability of IMCAs and approved mental capacity professionals as well as to the need to give timely responses when renewing authorisations and in the case of an appeal. This would give assurance to the family and carers of those lacking capacity that their rights and wishes will be upheld as well as their needs met.

The novelist and Nobel Prize winner Pearl Buck said:

> "The test of a civilisation is in the way that it cares for its helpless members".

I am sure that your Lordships will agree that this Bill and how it is implemented locally go to the very heart of that test.

3.50 pm

Baroness Greengross (CB): My Lords, it has been a real privilege to hear the noble Baroness, Lady Barran, give her maiden speech. I enjoyed listening to her, and I think that we will all benefit enormously from her experience and her commitment to vulnerable people. I share that passion, so I hope we can do a lot of work together. She brings such a lot of important experience to this House. She has worked for many years to make a difference to the lives of a huge number of vulnerable people. I share her passion to eliminate domestic abuse and other forms of abuse and I hope that we can do some work together in future. I have worked in the field, particularly among abused older people, and the noble Baroness has done a lot of work among people of all ages. I have heard that she has four children and I have four children. I wonder whether there is a connection that brings our interests together because we know what bringing up a large family means. I wish her every success. I am sure that she will enjoy being in the House. I—like, I think, everybody listening to her today—look forward to working closely with her and gaining from her very valuable experience and commitment to people who are vulnerable and who need help and advice from her and from all of us.

I welcome the Bill, which has many positive features. It includes a lot more person-centred care planning, it attempts to reduce bureaucracy and it provides clarity around responsibilities for those closest to the delivery of day-to-day care. I acknowledge that there are omissions. Noble Lords who have spoken have pointed them out. We will concentrate on them as the Bill goes through our House.

Recognition that the system in its current form is overly technical and legalistic is long overdue. Indeed, in her letter to the All-Party Group on Dementia, which I co-chair, the Minister, Caroline Dinenage MP, remarked that the current system places too heavy a burden on people and their families and too often fails to achieve the positive outcomes that underpin the purpose of the process. I agree, and our committee will do all we can to help her make the Bill work and

[BARONESS GREENGROSS]
improve its outcomes, and I look forward to working with the Minister in your Lordships' House to make that happen.

In 2013 our Select Committee on the Mental Capacity Act 2005 found that its provisions were inadequate and left those deprived of liberty without adequate protection. The committee felt that the provisions were poorly drafted, overly complex and bore no relation to the language and ethos of the Mental Capacity Act. The safeguards are not well understood and are poorly implemented. With this legislation, the appropriate delicate balance has to be struck between the protection and empowerment of individuals, who may lack the mental capacity to make their own decisions about their care and treatment, and the duty of care to staff, other patients and the public at large that the state has to protect them from the behaviour of people who may not be fully responsible for their actions.

I am not fully certain that in the Bill, despite the Government's best efforts, we have got the balance entirely correct. Noble Lords will be aware that I am committed to promoting human rights for vulnerable people, so I welcome anything that seeks to drive up standards and accountability in the social care sector. I have been contacted by a social worker and co-ordinator from south Wales who is concerned that the new scheme, with its significant increase in legally prescribed duties for social workers, has not been fully discussed with leaders in the care provider sector. Indeed, he feels that many care home staff are scarcely aware of it and will be very concerned about these changes as they may not be well informed enough to make the crucial decisions that will be needed. He feels that the lessons of the patchy implementation of the Mental Capacity Act to date have not been properly studied and that it may be that all we do is simply transfer the burden, backlog and chaos from statutory bodies to unprepared care homes. Could the Minister reassure us that, in his view, there has been appropriate consultation within the care sector?

I also share the reservations expressed by the charity VoiceAbility about the lack of weight given by the Act to the wishes, feelings and views of the cared-for person or their family and carers, with concerns about how compliant with Article 5 of the European Convention on Human Rights the new scheme is. Under the Bill, the right to refuse a deprivation of liberty safeguard by a lasting power of attorney or a deputy has been removed, so we have concerns that the rights and safeguards for the cared-for person might be diminished by the Bill.

It is good news that £200 million a year will be saved by local authorities. However, we have to suppose that the increased role of NHS and independent sector providers will lead to increased costs elsewhere, while the new responsibilities being imposed on care homes, hospitals and CCGs will need some thought, resources and training. For example, the Royal College of Speech and Language Therapists argues that assessors often do not recognise or know how to support communication difficulties. One can envisage that this could be a real problem if English is not the first language of the patient or their family.

As a vice-chair of the Local Government Association, I share its assessment that the transition to the new framework and its future framework implementation should receive additional resources to reflect the additional costs that may be associated with the change. I also share the view of ADASS that a period of transition is likely to be needed to enable hearth and care staff to adapt to the new system. I hope that the Minister will be able to reassure us on these points, that an appropriate cost-benefit analysis of the changes will be in place and that the training and integration aspects have also been fully thought through and costed.

I have one or two other reservations. I do not think it unreasonable to ask the Minister to explain why, when the Bill so closely follows the recent proposals from the Law Commission, it differs from them in several significant respects. For example, the regime applies only to those who are 18 and over although the Law Commission argued that LPSs should apply to 16 and 17 year-olds because it feels that the current regime is inadequate and is failing to protect the rights of some young people. The Government said they accepted this recommendation in principle but would,

"need to consider in more detail this recommendation's practical application and implementation".

Turning to older people, I welcome the inclusion of a new special procedure for care homes within the scheme, which gives them greater responsibility for arranging the assessments of people who may lack capacity from dementia. As much as I welcome this change, I share Age UK's concern that provision must be made to ensure that care home managers have the training and resources to be able to clear the significant backlog of assessments under the Bill's provisions.

In my view, the Bill should set out a specific route for authorisations within a person's home. Can the Minister assist the House by explaining how he sees at-home assessments working? I note that the new system retains the distinction that, where an individual who could be detained under the Mental Health Act objects to being detained, they cannot be made subject to an authorisation under new Schedule AA1. I also share the concern of the Alzheimer's Society that the current interface between the Mental Health Act and the DoLS process for authorising deprivation of liberty within the Mental Capacity Act is a key issue for people living with dementia.

Lastly, the Bill makes provision for the introduction of approved mental capacity professionals, who must carry out the pre-authorisation review and determine whether the authorisation conditions are met. This role replaces the best interest assessors' role under the Mental Capacity Act. However, the Bill and the Explanatory Notes do not detail which professionals could act in this new role and how they interact with other clinicians. I know that the General Medical Council sees potential for conflict between its regulatory standards and the proposed legal requirements. It has called for more clarity about doctors' roles and responsibilities in such a challenging area. Perhaps the Minister could explain a little more about how and when the Government plan to firm up the status and context of this important role.

In closing, we must find a way to define deprivation of liberty more clearly. The JCHR's view is that this is needed to clarify the application of the Supreme Court's acid test, which sets out questions that must be considered when determining whether an adult who has been assessed as lacking the capacity to consent is being deprived of their liberty. Without a clear definition, there is a risk that the Bill will be unworkable, particularly in domestic settings. The development of the LPS must also be considered in the wider context of other issues within the health and social care system, such as the upcoming Green Paper on care and support reform and the independent review of the Mental Health Act.

The Government need to act speedily to ensure that the rights of this group of very vulnerable people are clarified and that their needs are met quickly. They are not in a position to wait any longer.

4.03 pm

Baroness Tyler of Enfield (LD): My Lords, I am pleased to be speaking in this debate, conscious that I am a novice in this area of mental health legislation but very grateful that there are so many other noble Lords across the House with deep expertise in it. To start on a positive note, I welcome the intent behind the Bill and believe that it goes some way towards ensuring that the current high levels of bureaucracy, workforce hours and cost that have been a part of mental capacity assessments since the Supreme Court ruling in the Cheshire West case are offset by a more balanced ability to plan and deliver timely care while still safeguarding patients.

However, I have real concerns about its timing and its interaction with the Mental Health Act, and because it is silent on some of the key recommendations of the Law Commission report. I hope that at the end of this debate, the Minister will provide some explanation for the variance with the Law Commission proposals and the unexpected timing of the Bill, which seems to have taken many by surprise.

A quick glance at the statistics reveals the scale of the problem. Last year, more than 200,000 DoLS applications were made—a number certain to rise. The average time taken to complete the assessments was 120 days, with a backlog of more than 120,000 cases. The Law Commission has estimated that the annual cost of all this might end up being close to £2 billion, so there is clearly a major problem here that needs fixing.

The proposals in the Bill, essentially allowing NHS staff rather than the Court of Protection to oversee when and where to deprive people of their liberty, on the face of it seem to strike a better balance between care planning and the provision of what has too often been a box-ticking procedural safeguards process. The Bill comes at the same time as the recommendations from the Joint Committee on Human Rights only last week that a new legal definition of deprivation of liberty should be debated and defined, which could,

"produce greater clarity and would extend safeguards only to those who truly need them, whilst respecting the right to personal autonomy of those who are clearly content with their situation, even if they are not capable of verbalising such consent".

All the briefings I have received from those working in the sector make it clear that the lack of such a new legal definition is a serious omission and risks jeopardising this legislation's chance of successful implementation. That all adds up to my overall feeling about this Bill: that we risk acting with indecent haste before all the relevant pieces of the jigsaw are in place to allow a coherent and joined-up new system to be put in place—and I know that that new system is much needed. I note that Sir Simon Wessely, chair of the Mental Health Act review, said as much in a recent blog, drawing attention to the fact that at the moment some people lacking the capacity to consent to their admission for care and treatment will fall under the Mental Capacity Act and the proposed new liberty protection safeguards, and some will be detained under the Mental Health Act. But—and it is a big but—the boundaries between the two are not clear. My main concern about the Bill is that, in rushing ahead to fix the clear deficiencies of the DoLS procedures, we are creating further complexity in an area already beset with confusion and complexity. My view, like that of some other noble Lords today, is that it would have been far preferable to have a single, fully integrated Act covering both mental illness and mental capacity.

The interaction with the Mental Health Act is at the very least a messy one. There is a real tension between wanting to tackle problems with the current mental capacity law straightaway—I fully understand that—and the need to properly link it with plans to improve the Mental Health Act. I know that the JCHR has called on the Government to move quickly on reforming the Mental Capacity Act, but this should not prevent close consideration of the two pieces of legislation and how they relate to each other. In response to the Law Commission's proposals, I noted that the Government stated that they would await the Mental Health Act review's recommendations on interface issues, including how reformed DoLS would interact with the Act. I find that quite a confusing statement. Could the Minister say whether and how the Government plan to fulfil that undertaking?

I am also concerned, as are others, that the focus of the Bill is on deprivation of liberty alone, rather than the wider amendments to the Mental Capacity Act proposed by the Law Commission. In particular, the important recommendation to put particular weight on a patient's wishes in any Mental Capacity Act best interests decision-making process is absent, as are any additional provisions about advanced consent. As I have said, I really feel—others have said it far more eloquently than me—that this is a missed opportunity to treat vulnerable people with the dignity and respect that they deserve in what we all agree is a very difficult situation.

I turn to the issue of including 16 and 17 year-olds in the Mental Capacity (Amendment) Bill, as originally proposed by the Law Commission. The main reasons for this are twofold. First, using parental responsibility to authorise Article 5 deprivation denies 16 and 17 year-olds the uniform statutory protections available to people aged 18 and older. Secondly, including 16 and 17 year-olds would create greater certainty and standardised practices for this age group than currently exist. It is all a bit technical but, as I understand it,

[Baroness Tyler of Enfield]
presently Article 5 deprivation can be authorised by four different mechanisms: parental responsibility, a court order, a police protection order under the Children Act, or the Mental Health Act.

Front-line clinicians I have spoken to are often unsure which option to pursue. This can cause delays of a number of weeks while professionals argue with each other about the most appropriate option. In the meantime, the 16 to 17 year-old is in a legal limbo, often stuck in a paediatric ward or A&E while these debates take place. The situation gets even more confusing if two people with parental responsibility disagree or if the local authority shares parental responsibility—for example, for children on a care order. This is an opportunity to make the situation for 16 to 17 year-olds much better, and we should take it.

The Law Commission's proposals also included the very interesting idea that we follow the lead of many countries and include in the Mental Capacity Act a framework allowing people to make formal support agreements. This would hugely benefit family members of the person under the liberty protection safeguards and value their input to the process. However, the wording in the Bill is unhelpfully convoluted, and will make it more difficult for staff, patients and their families to understand.

As the Bill stands, there is a heavy burden on care home managers to manage the applications. An individual would be reliant on the motivation, knowledge and skill of the care home manager to identify deprivation of liberty and to take appropriate safeguarding steps. Managers' level of knowledge and experience will inevitably vary enormously, resulting in an individual's human rights potentially being neglected if a manager simply does not recognise what constitutes a deprivation of liberty and takes appropriate action. As other noble Lords have said, a major training programme would be needed, as well as significant resources for implementation.

My final point relates to the phrase "unsound mind", which I understand is still used because of the reference to the European Court of Human Rights. This is dated terminology which is offensive and stigmatising and has no clinical value. Imagine if you learned that this was an outcome of an assessment of your parent, partner or sibling. I stress again the importance of keeping the patient at the centre of our legislation, not the conventions or convenience of lawyers. Will the Government commit to removing the reference to "unsound mind" from the Bill?

In conclusion, I return to my concern about timing and the outcome of the review of the Mental Health Act, given that both Acts relate to the non-consensual care and medical treatment of people. The overlap between the two systems is one of the reasons that the current system is so complicated, and changes to address problems under one system will inevitably have unintended knock-on consequences for the other. What is needed is simplification and streamlining, rather than incremental, piecemeal reform. There is much to do to improve the Bill; I hope that the Government will be open minded and in listening mode.

4.12 pm

Baroness Meacher (CB): My Lords, I am hesitant to speak in this debate, having not been involved in earlier work on the Mental Capacity Act 2005. However, having worked in mental health services and as a Mental Health Act commissioner over a number of years, and having overseen the Mental Health Act appeals of Mental Health Act managers, I do have an interest in deprivation of liberty decisions and, in particular, the justification and proportionality of them.

This is clearly an important Bill, and I applaud the Government for bringing it forward. The DoLS scheme was clearly cumbersome, little understood and in many ways deficient. It is, however, far from clear to me that the new system will be as simple for patients and carers to use as the Minister seemed to imply in his opening remarks. As other noble Lords have indicated, a key issue will be the interface between this Bill and the review of the Mental Health Act, which I understand will report in the autumn of this year. Both relate to non-consensual care and treatment and may apply to some of the same people. As the Royal College of Psychiatrists says, it is the overlaps between the two systems which to some degree explain why the current arrangements are so complicated and why staff struggle to use them. Changes to address problems in one system will surely have unintended consequence for the other. Clarity will be needed about when a patient should be subject to one Act rather than the other. It will be vital that no patient should be deprived of their liberty under both Acts at the same time. I understand that this happens at present, and it is important that this situation be brought to an end. Can the Minister give the House some assurance about how the Government propose to achieve that end?

Another rather straightforward point, which was made by the Royal College of Psychiatrists and the GMC and with which I strongly agree—other noble Lords have mentioned it—is on the use of the term "unsound mind" in the Bill. The term, as others have said, dates back to the 1950s and is stigmatising and out of place today. The college suggests that this term be replaced by "has any disorder or disability of the mind", which would certainly be greatly preferable. Will the Minister agree to bring forward an amendment to that effect? Perhaps he will be able to comment on that today.

As other noble Lords have said, it is difficult to understand why the Government have not extended the new scheme to 16 and 17 year-olds, as recommended by the Law Commission. Case law has established that the parents of a child under 16 can give consent to what would otherwise constitute a deprivation of that child's liberty where the matter falls within the "zone of parental responsibility", but a parent cannot give consent on behalf of a 16 or 17 year-old. Surely the Bill should apply to the young person themselves rather than assume that the parents will make decisions on their behalf. Again, maybe the Minister can explain this apparent contradiction this afternoon.

On the appeals process, under the DoLS system, appeals must be made to the Court of Protection, which can be complex, slow and expensive. Can the Minister explain why the Bill does not introduce any

changes to that system? In particular, is there any reason why the appeals process should not replicate the system under the Mental Health Act, which seems to work pretty well? It is worth noting that the Joint Committee on Human Rights made the point that a tribunal system would be more efficient, accessible and cost effective, and would enhance the rights of the individual concerned to be directly involved in the proceedings. In addition, of course the Mental Health Act provides for a tribunal system, so we have a nice model to follow—and why not? Non-means-tested legal aid should be available in such cases but, again, it would be less costly to the taxpayer if tribunals were established to do that job.

The GMC has raised a concern about the lack of clarity in the Bill regarding precisely who should be consulted before an LPS authorisation is made. This apparently includes,

"anyone engaged in caring for the cared-for person or interested in the cared-for person's welfare".

Does this mean that both a GP and a hospital doctor should be consulted? Is that necessary? Surely the doctor who knows the patient best would be sufficient. How many others involved in the care of the patient should be consulted?

A particular issue in this context is the power of a decision-maker to decide who is consulted from the proposed list. Surely some are far more important than others. For example, if there is a holder of a lasting power of attorney with decision-making powers in relation to the care of the patient, surely that LPA must be consulted. Yet it seems that the decision-maker can decide whether that person is consulted. The same should apply to the next of kin, who surely must be consulted—it cannot be a choice.

An obvious gap in the Bill, as others have said, is any provision for a person to be able to consent in advance to specific care or treatment arrangements so that authorisation under the new safeguarding scheme could be avoided; it would also save a whole lot of resources and avoid delays for the individual. Advance decisions, with effective safeguards, would reduce bureaucracy and cost and enable more involvement of patients and their families. The Minister will be aware that advance decisions to prepare for end-of-life care are increasingly used—although as yet, not at all sufficiently. But where these advance decisions are in place, the problems for physicians and next of kin are greatly reduced in relation to decisions about whether life-prolonging treatment should be continued, for example. The need to respect the wishes of the individual is similarly important under this legislation. Can the Minister indicate whether the Government would object to including a system of advance decisions in the Bill, and if so, why?

In conclusion, is there any prospect that later stages of the Bill could be held over until the report on the review of the Mental Health Act becomes available, to try to ensure complementarity between the two? I also very much look forward, with other noble Lords, to hearing the Minister's response to the points that have been made.

4.19 pm

Baroness Browning (Con): My Lords, it is a great pleasure to be present during this important debate to hear the maiden speech of my noble friend Lady Barran. We all wish her well in her contributions to your Lordships' House. I refer to my interests in the register and to the fact that I am a carer and a deputy holding LPAs for vulnerable relatives.

I fully understand why my noble friend the Minister has a certain sense of urgency in bringing this legislation forward. As we have heard, there is clearly a problem that is hitting individuals and our health and care institutions, because of the backlog that is accruing. Clearly, there is a sense of urgency to try to resolve this. However, I begin by saying to my noble friend: it has to be resolved correctly this time. I say "this time" having served on the pre-legislative scrutiny committee for the Mental Capacity Bill, having worked on the Bill when it went through the Commons, having served on the post-legislative committee in your Lordships' House, and having worked on all existing mental health legislation that we are currently reviewing.

There was a recurring theme on all those committees—there are people around the House who were with me on those committees and who know that we seem to have been doing this for ever. We were only too well aware of the Bournewood gap, which my noble friend mentioned when completing his remarks, and we still have not plugged that gap. It is essential that we plug it this time. Recommendation 21 from the post-legislative scrutiny committee of this House considered that we had inadvertently created a new Bournewood gap and that that should be closed. I have to say to my noble friend that I do not think that the Bill as drafted closes that gap. It is a good attempt, but I would like to have seen some pre-legislative scrutiny on this rather small but important Bill.

Let me share this with the House. At the weekend, I received correspondence from the professional carers of HL in the Bournewood case, which I was involved in many years ago. In respect of the Bill before us, they say it is bizarre that the Court of Protection gives authority to deputies to exercise control over P's accommodation and care provision. As this Bill stands, it prevents them having any real power in the process. Mr E goes on to state that their acid test is this: if HL v Bournewood happened today, would he be any better protected? As a House dealing with the Bill before it goes to another place, we have to make absolutely sure that we get it right this time.

Concerns have been expressed across the House on behalf of interested parties and the charitable third sector, particularly by my friend the noble Lord, Lord Touhig—he and I both serve as vice-presidents of the National Autistic Society. This brings forward another issue. A lot of noble Lords have spoken today about vulnerable people. That is who we are trying to address in this legislation to get it right. However, vulnerable people are on a spectrum and they all have different needs—they are all vulnerable but how one approaches them and resolves decision-making challenges for them is very different. For example, dealing with somebody very old who has been very disabled by a stroke and is in permanent residential or nursing care is very different

[BARONESS BROWNING]

from dealing with a 20-something year-old who needs residential care and is on the autistic spectrum. In the work that I have been involved in with younger autistic adults, it is often said that if you get the right person asking the right questions in the right way, those adults understand what the problem is and what the choices are. They have capacity but they have difficulty in knowing how to come to a decision for themselves about the right way forward. There is a world of difference between a professional going through that process and exercise with somebody and dealing with somebody who, as I just explained, might be very elderly or has had a stroke.

Then there is the question of communication. Across this whole spectrum of people are people with communication disorders. How they communicate, whether they need speech and language therapists to assist them or whether they are non-verbal but can still communicate, needs to be taken into account. For that process to take place and for that assessment and decision to be made, it is absolutely essential that time is given.

I know that many Members of both Houses—I am not sure how many—have taken part in training courses run by the Alzheimer's Society in how to communicate with somebody who has advanced Alzheimer's. To be frank, it is not all that different from how you communicate with people who are learning disabled or on the autism spectrum. When asking a question or putting information to them, you wait for them to process that information and give them plenty of time before they then express, in whatever way is appropriate for them, an answer to that question or indicate what their preference would be. That is not a cheap option. That type of assessment is not cheap or fast.

Although I understand the urgency to bring down this backlog and treat people individually, we must understand how some of these processes require very skilled people to carry out the assessment. They should be well-trained, experienced people, ideally who know the individual, although that is not always possible. These are the challenges in getting this legislation right.

I totally concur with many issues raised today. Best interests are very important and I am concerned that that phrase is not in this legislation. As someone who holds a lasting power of attorney for health and social care, I am only too well aware that my duties in law as a private individual—not as a professional—are that I should always assess and put that person's best interests first. If I am doing the job properly, I should notate how I went about the process. Yet we are saying in this legislation that somebody who has that legal duty in respect of another individual does not have to take that into account. They will not be consulted and will not be at the heart of the decision-making as far as P is concerned when assessments and decisions are made. There seems to be a contradiction between two different legal requirements on people in the same Act. I hope my noble friend will address that because I am now very nervous, as somebody who holds this responsibility of lasting power of attorney for another that, somehow, putting their best interests first, which I am legally required to do, will not be taken into account when another area of law is challenging the validity of that responsibility. Again, we must get this right. We cannot leave this as a gap in the process, because it is very important.

Then there are the assessments themselves and the question of training and the quality of that training for the people who carry them out. We should make sure that, even if we save money publicly on reducing the backlog and the numbers, there will be an investment in training for people who currently do not have that training. Certainly, the post-legislative scrutiny committee understood only too well from the evidence that we took a few years ago that there is a paucity of people who really understand the legislation in terms of what they are meant to do as professionals. It was very patchy then and, from what we have seen, it does not appear to be any better now. Nothing has improved all that much.

I want to raise briefly the people who have registered advance decision-making rights to refuse treatment. I am grateful to Cardiff University for its briefing, which sets out the position and explains how this issue is affected by the legislation before us. It states that the Mental Capacity Act enabled people to make ADRTs to refuse in advance specified medical treatments at a time when they may lack capacity to give or refuse consent. The Act created for the first time a mechanism for a person to specify who they would like to make those decisions, which brings us back to lasting powers of attorney. Both provisions were meant to enhance respect for personal autonomy, so it is important that, whatever is in the Bill when it leaves this House, nothing in it should reduce in any way that respect for personal autonomy. Under DoLS there was a "no refusals" test, which meant that an authorisation could not be issued if the purpose of the deprivation of liberty was to provide treatment where the person had made an ADRT refusing it, or which an appropriately empowered attorney refused to consent to on their behalf. This meant that DoLS could not be used to trump the past expression of a person's wishes and feelings about what would happen when they had had capacity. I hope my noble friend will look again and bring some clarity to this issue. The legislation we are discussing today really is not clear on how those advance decisions will be treated, not only in terms of their relevance but whether they will be recognised as they should be now.

I finish with a quote from evidence we took in our committee on a case that was prevalent at the time and remains a test case—that of Steven Neary. His father sent a letter to the committee. It is worth bearing in mind that we are not dealing just with numbers, money and legislation, but with real people living real lives and for whom there are lasting consequences. Steven's father, Mark Neary, really fought the fight on his son's behalf. After he had succeeded, he wrote to say, "Two years on, I still have to deal on a daily basis with the trauma Steven experienced as a result of the DoLS legislation being turned upside down by Hillingdon. It is painful to watch. Two years on, I still have to deal with my own feelings of anger, sadness and guilt that I was not able to protect Steven from the nightmare. Living with his and my feelings—I wouldn't wish that on my worst enemy. That is why there is still so much

to do in making sure that the Mental Capacity Act and DoLS truly protect the vulnerable people that the Act was designed for". We must get it right this time.

NATO Brussels Summit 2018

Statement

4.33 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, with the leave of the House, I will now repeat a Statement made in another place by my right honourable friend the Prime Minister. The Statement is as follows:

"Mr Speaker, I would like to make a Statement on the NATO summit in Brussels last week. Transatlantic unity has been fundamental to the protection and projection of our interests and values for generations. At a time when we are facing dangerous and unpredictable threats from state and non-state actors—from the use of chemical weapons to terrorism to cyberattack—NATO remains as vital to our collective security as it has ever been. The focus of this summit was on strengthening the alliance, including through greater burden-sharing, stepping up our collective efforts to meet the threats of today, and enhancing NATO's capability to meet the threats of tomorrow. The UK played an important role in securing progress on all three.

The UK is proud to have the second-largest defence budget in NATO after the US, and the largest in Europe. We are increasing our defence spending in every year of this Parliament. We are meeting our NATO commitments to spend 2% of our GDP on defence and 20% of that on equipment, investing heavily in modernising our Armed Forces with plans to spend £180 billion on equipment and support over the next 10 years.

This morning, I announced the publication of the UK's combat air strategy, confirming our commitment to maintaining our world-class air power capabilities. This is backed by our future combat air system technology initiative, which will deliver over £2 billion of investment over 10 years and lay the groundwork for the Typhoon successor programme. We are deploying the full spectrum of our capabilities in support of the NATO alliance. In the week that we marked the centenary of our extraordinary Royal Air Force, I was proud to be able to announce at this summit the additional deployment of UK fighter jets to NATO air policing missions. We are also leading Standing NATO Maritime Groups, contributing our nuclear deterrent to the security of Europe as a whole, and continuing our commitment to NATO missions, including in Estonia where we lead NATO's enhanced forward presence.

But as the UK plays this leading role in the security of the whole continent, so it is right that we work to even burden-sharing across the alliance and that other allies step up and contribute more to our shared defence. This summit included an additional session in response to the challenge posed by President Trump on exactly this point. Non-US allies are already doing more, with their spending increasing by $41 billion in 2017 alone and by a total of $87 billion since the Wales defence investment pledge was adopted in 2014. These are the largest increases in non-US spending in a quarter of a century and, over the decade to 2024, we expect this spending to have increased by hundreds of billions. NATO allies must go further in increasing their defence spending and capability. During the summit, leaders agreed that all were committed to fairer burden-sharing; they had a shared sense of urgency to do more. That is in all of our interests.

Turning to specific threats, there was an extensive discussion on Russia. The appalling use of a nerve agent in Salisbury is another example of Russia's growing disregard for the global norms and laws that keep us all safe. It is a further example of a well-established pattern of behaviour to undermine western democracies and damage our interests around the world. In recent years, we have seen Russia stepping up its arms sales to Iran, shielding the Syrian regime's barbaric use of chemical weapons, launching cyberattacks that have caused economic damage and spreading malicious and fake news stories on an industrial scale. Our long-term objective remains a constructive relationship with Russia, so it is right that we keep engaging both as individual nations and as a NATO alliance. I welcome the meeting between President Trump and President Putin in Helsinki today. But as I agreed with President Trump in our discussions last week, we must engage from a position of unity and strength. This means being clear and unwavering about where Russia needs to change its behaviour. For as long as Russia persists in its efforts to undermine our interests and values, we must continue to deter and counter it. That is exactly what we will do.

In this context, in a separate discussion during the summit, the alliance also reaffirmed our unwavering support for the sovereignty and territorial integrity of Georgia and Ukraine. We continue to support both Georgia and Ukraine in their aspirations for full membership of the alliance. The alliance also extended an invitation to the Government of Skopje to start accession talks following their historic agreement with Athens. This builds further on the progress made at the Western Balkans Summit in London earlier in the week, which took important steps to strengthen the stability and prosperity of the region.

For part of the summit we were joined by President Ghani, who provided an update on the situation in Afghanistan. There are encouraging signs of progress towards a peace process. Allies were united in our strong support for his efforts, but the security situation remains challenging, compounded further by Daesh fighters who have fled Iraq and Syria. So, as my right honourable friend the Defence Secretary announced to the House last Wednesday, at this summit we increased our support for NATO's mission *Resolute Support* with a further uplift of 440 UK troops for the UK-led Kabul Security Force. This will take our total troop commitment in Afghanistan to around 1,100. Together with all allies, we also committed additional financial support for sustaining the Afghan National Defence and Security Forces until 2024. As I discussed with President Trump at the summit, our commitment to Afghanistan began as NATO's only use of Article 5, acting in support of the US following the attack on New York's World Trade Centre. Our uplift will also enable the release of US personnel to conduct increased mentoring and counterterrorism activity across Afghanistan.

[Baroness Evans of Bowes Park]

The summit also agreed to extend defence capacity building to Tunisia, Jordan and Iraq. The UK's contribution will play a vital role—in particular, increasing our support to the Iraqi Government in strengthening their security institutions and promoting stability for the longer term.

Facing today's challenges is not enough. In the UK, our modernising defence programme will ensure that our capabilities remain as potent in meeting the threats of tomorrow as they are in keeping us safe today. NATO too must adapt to meet these challenges. This means delivering the reforms agreed at the Wales and Warsaw summits, politically, militarily and institutionally. At this summit, allies agreed a stronger NATO command structure, including two new headquarters, and the UK is committing more than 100 new posts to that structure, taking our commitment to over 1,000 UK service personnel.

We also agreed to improve the readiness of our forces through NATO's readiness initiative known as the "Four 30s". This is a commitment by 2020 to have 30 mechanised battalions, 30 air squadrons and 30 combat vessels, all ready to use within 30 days or less. The UK will play its full part in delivering this. We also agreed further work to help counter cyber and hybrid threats by enhancing the capabilities of the alliance to respond quickly and effectively to these new challenges. This includes a new cyber operations centre and new support teams that will be able to assist allies who want help either in preparing to respond or responding to an attack. Again, the UK is at the forefront of these efforts. For example, we were the first country to offer our national offensive cyber capabilities to the alliance, and we have also committed to host the NATO cyber defence pledge conference in 2019.

As I have said many times, the UK is unconditionally committed to maintaining Europe's security. That is why I have proposed a bold new security partnership between the UK and the EU for after we leave. But in a world where the threats to Europe's security often emanate from beyond its borders, and where we face an array of profound challenges to the entire rules-based international order, the strength and endurance of our transatlantic alliance is vital in protecting our shared security and projecting our shared values. That is why a strong, modern and united NATO remains the cornerstone of our security and why our commitment to it is iron-clad. As we have done across generations, we will stand shoulder to shoulder with our closest allies to defend the rules-based order and the liberal values of democracy, human rights and justice that define our way of life. I commend this Statement to the House".

4.42 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Statement, but while I appreciate the pressures that the Government are under it has been the norm that we would get early sight of a Statement before it is made. Today, we received it shortly before the Prime Minister started speaking in the other place at 3.24 pm.

If reports of the summit are accurate, this appears to be one of the most divisive summits NATO has had, despite common agreement on a number of key issues. We welcome indications that the NATO alliance is responding positively to changing warfare and future threats. The declaration from the summit concluded that countries can invoke Article 5 on collective defence response for hybrid warfare. That starts to open up what an Article 5 response might look like, ensuring that a wider range of potential options are available. It might not be military. It can also be, for example, diplomatic—perhaps not too dissimilar from what happened following the Skripal attack. This is a crucial issue, which could redefine a NATO Article 5 response. Were there any further discussions about what it might look like in the future, including the process of determining how it would be co-ordinated?

I note that the summit also highlighted the importance of working in tandem with other international organisations, including the UN and the EU. Was there any discussion about the role of both these organisations in co-ordinating an Article 5 response? Was there any discussion about promoting collaboration between NATO and the UN in conflict prevention and peacekeeping in terms of the wider security issues in the NATO alliance area?

As the noble Baroness and others in your Lordships' House will know, the founding principle of NATO was about guaranteeing security across Europe and the North Atlantic. Bearing this in mind, and events in Salisbury, have the Government held any bilateral discussions with the US, including with President Trump at the summit before he left to meet President Putin, about our response to Russian aggression? The NATO summit declaration rightly condemned the illegal and illegitimate annexation of Crimea. This was in some doubt beforehand, because of comments made by President Trump. What steps are our Government taking to support the Government of Ukraine?

On NATO spending, I have been reading the statement from the summit, while at the same time looking at comments and tweets from President Trump. My understanding is that nothing has really changed in terms of the 2014 aim for all countries to reach 2% of GDP on defence spending by 2024. This has been quite a slow process, but it is ongoing and there is continual progress. On the UK's commitment, does the noble Baroness consider it appropriate that the UK now includes spending on military MoD pensions as contributing towards the UK target, when it had not been included under previous Governments? What consideration has been given to the assessment by the International Institute for Strategic Studies that we have fallen short of meeting that 2%, even with pensions included? As well as the commitment for NATO to spend 2% on defence, what is the current thinking on the Government's own modernising defence programme? Will that require additional funding over and above that 2%?

The noble Baroness and others may have seen the comments from President Trump on this issue. I do not know whether she has spoken to the Prime Minister yet as to whether the Prime Minister agrees with the description of the meeting as, "two days of mayhem". It could be that after President Trump's visit to the

UK she has become inured to his extraordinary behaviour. Press reports, and the President's Twitter account, indicate that the US President did not moderate his claims or his actions as he flew to Brussels, as we saw when he arrived in the UK.

On the issue of defence spending across NATO countries, the Prime Minister's Statement says:

"This summit included an additional session in response to the challenge posed by President Trump".

Does the noble Baroness know when that additional session was held? Can she comment on the accuracy of reports that the scheduled meeting on Thursday morning with Georgia and Afghanistan, two crucial issues that she mentioned in the Statement, had to be halted and the two countries asked to leave after President Trump arrived late and insisted on discussing NATO spending there and then, even though it was not on the agenda and had not been scheduled?

President Trump announced that the EU leaders had caved in to his demands, had agreed to meet the 2% target by next January—2019—and that they would then go further and had "upped their commitment". That is not in the Statement, so is that the understanding of the UK Government, or is it, perhaps, fake news? President Trump also issued what some regarded as an ultimatum, suggesting that without these commitments the US could leave the NATO alliance. The expression was that America would "do its own thing". That is not borne out by the decision of the US Senate last week, which, showing very strong bipartisanship, voted 97 to 2 in support of NATO.

It seems there is very little that is new from this summit, although the importance of the NATO alliance countries reaffirming shared commitments and values must be recognised, alongside our ongoing shared commitment to meet the challenges of the future. There is much to be gained by our working together, but it is clear that much more needs to be done to maintain and achieve commitments that have already been made.

Lord Newby (LD): My Lords, this NATO summit, despite an extraordinarily long communiqué, was essentially about only one thing: the future relationship of the US, and particularly its President, with Europe. President Trump says many worrying and extraordinary things, but when he describes the EU as one of America's foes we are clearly in extremely challenging times. His statement is all the more remarkable because NATO faces more external threats—from Russia on the one hand and international terrorism on the other—than for several decades. At least President Trump's performance in Brussels and subsequently in the UK has succeeded in one respect in which the Government have conspicuously failed—he has brought the country together, albeit in opposition to him and many of the policies he is now promoting. In these circumstances, it is vital that the UK speaks with a clear and firm voice and that it works ever more closely with its European allies.

There is only one reference in the Prime Minister's Statement to the discussions that she held with President Trump on Russia. It says:

"But as I agreed with President Trump in our discussions last week, we must engage from a position of unity and strength".

I think many are concerned that there is now no such unity with the US on relations with Russia. As the Prime Minister talks of unity, did she seek and gain an absolute assurance from President Trump that he would indeed continue to support the NATO policy of opposition to the Russian annexation of Crimea? Did she gain any assurances about continuing US presence in the vulnerable Baltic states? More generally, did she gain any assurance that the President continues to see NATO as the best mechanism for addressing the whole range of our shared security challenges?

On every issue on which President Trump has challenged mainstream thinking—climate change, Iran and trade, for example—the UK has found itself on the same side as our EU partners and not with him. We may find after today's meeting in Helsinki that the same applies to some security issues. So was the Prime Minister able to have discussions with any of our European partners while she was in Brussels about the form of foreign policy and defence relationship which might exist were we to leave the EU? The White Paper on our future relationship with the EU says that we must ensure that,

"there is no drop off in mutual efforts to support European security",

and that the proposed mechanism for achieving this is to include,

"provisions for discussion between EU27 leaders and the UK Prime Minister".

Did the Prime Minister discuss what such provisions might look like with the principal military powers in the EU, particularly France? What response did she get?

The Prime Minister's Statement ranges over a number of areas—for example, Afghanistan and cybersecurity—where it is clear that we can be secure only if we work in the closest co-operation with our allies. A combination of President Trump and Brexit is putting a strain on these relationships. It is vital that the Government, with their new Foreign Secretary, bring greater clarity to our strategic foreign policy priorities. It has been lacking for far too long.

Baroness Evans of Bowes Park: I thank the noble Baroness and the noble Lord for their comments and I apologise for the late sight of the Statement. Obviously I will relay that message.

The noble Baroness asked about Salisbury. Yes, the Prime Minister certainly raised the severity of the issues around Salisbury and Amesbury during her conversations with President Trump, both at the NATO summit and during his visit. The noble Baroness also asked about triggering Article 50. She is right that NATO has decided that a cyberattack can trigger Article 50—sorry, Article 5. Oh God, that says it all, does it not? It is still on my mind. We regard a cyberattack as something that can cause considerable damage. I believe that discussions will continue, but perhaps I might write to the noble Baroness if I am able to provide any more information. I am afraid I do not have that at this point.

Cyberdefence is obviously part of the alliance's core task of collective defence and allies agreed that cyber is a domain of operations in which NATO must

[Baroness Evans of Bowes Park]
operate as effectively as it does in the air, on land and at sea. That is why they made the pledge to enhance our cyberdefence as a matter of priority.

The noble Baroness, Lady Smith, and the noble Lord, Lord Newby, both questioned whether the summit was constructive. It was; all allies, including President Trump, reiterated their belief in the importance of NATO. Indeed, he talked about that in his press conference afterwards. As the noble Baroness is aware, I was not at the summit, so I am afraid that I cannot go into detail about when discussions were had, but my understanding is that a session was stopped and that there was therefore further discussion on defence spending, in addition to those that were had earlier.

We agreed—all countries agreed—that it is right that NATO countries pull their weight to ensure our collective defence. All allies have pledged to aim to move towards spending 2% of GDP on defence by 2020. As the Statement made clear, NATO's European allies are stepping up their spending and non-US defence spending has, as mentioned in the Statement, increased by $87 billion since 2014. We are committed to meeting the NATO guideline to spend at least 2% of GDP on defence in every year of this Parliament, with the defence budget increasing by at least 0.5% a year above inflation—and we fully comply with NATO's definition of defence spending.

The noble Lord, Lord Newby, asked about EU relations. As the Prime Minister has said many times, we are leaving the EU but we are not stepping back from our unconditional commitment to the security of our continent and our leadership in NATO. Neither NATO nor the EU has the full suite of capabilities to tackle the range of threats we face; those can be tackled successfully only through closer co-operation between NATO, the EU and member states. We are taking forward the seven key strands of activity identified in the joint declaration announced in the Warsaw summit: in cyber, hybrid warfare, maritime, military mobility and exercises. We will of course discuss our future security relationship with the EU over the coming weeks, as part of our ongoing negotiations.

4.56 pm

Lord Jopling (Con): My Lords, following the Welsh summit, when all the nations in NATO gave a firm promise to increase spending to 2%, progress has been abysmally slow in very many cases—and in some cases it has gone backwards. Now we have renewed promises. How confident are the Government that those who met in Brussels last week will this time deliver on their promises? While it has always been thought rather bad form to name and shame nations that do not comply with their promises, would it not be a good idea if the Government could find a way of demonstrating each year the progress that all members of NATO are making to get towards the level to which they are all committed?

Baroness Evans of Bowes Park: As the Statement made clear, there was and is a sense of urgency and renewed commitment to move towards spending 2% of GDP on defence by 2024. It is only fair to say that our European allies and Canada, for instance, added $41 billion to their defence spending in 2017 alone. That is a commitment and we are confident that countries have a sense of urgency. We will continue to meet our commitment and will encourage our allies to do the same.

Lord Browne of Ladyton (Lab): My Lords, I thank the Minister for repeating the Statement. The Brussels declaration makes it clear that NATO's posture on Russia continues to be defence and deterrence, on the one hand, and dialogue on the other. When the secretary-general was recently in London, he drew heavily on his own experience as Prime Minister of Norway and said something with which many of us agreed: namely, that defence and deterrence are insufficient alone and that dialogue is necessary. Indeed, the more difficult the relationship, the more dialogue there needs to be. So why do our Government seem content with their policy of having no high-level meetings with Russia? This leaves our NATO allies to conduct bilateral relations with Russia that involve, for example, Hungary, Italy, Greece or Turkey, where the Kremlin can count on a sympathetic ear and not, it appears, a robust voice, while the President of the United States said only today, quite clearly, that in his view the deterioration of US-Russia relations is a result of,

"many years of US foolishness and stupidity".

All this undermines the integrity of the alliance and moves away from unity. Why do we not step up to the plate and engage in robust dialogue?

Baroness Evans of Bowes Park: As the noble Lord knows, NATO's practical co-operation with Russia remains suspended but channels such as the NATO-Russia Council are an important means to keep dialogue open. He is right that we have suspended all planned high-level bilateral contacts with Russia, but we continue to engage with it multilaterally when it is in our interests to do so. It is in our mutual interests to reduce the risk of misunderstanding, miscalculation and unintended escalation. The Prime Minister has always been clear that our approach to Russia is "Engage, but beware".

Lord Bilimoria (CB): My Lords—

Lord Taylor of Holbeach (Con): My Lords, the noble Lord was not in the Chamber to hear the Statement, so should really not participate.

Lord Howell of Guildford (Con): My Lords, in future we probably all need to spend a lot more on defence and security in the wider sense, not just on military equipment. Has my noble friend noticed that, according to the International Institute for Strategic Studies, America spends $31 billion a year of its total defence budget of $680 billion—about 5%—on European defence? Has she also noticed that America pays into NATO's direct expenses common funding budget about 22%? Does she agree that those figures are miles away from those of 70% and 90% that the President talked about in Brussels? He understands hard facts and believes in strong dealing. Will she make sure that he is in this case presented with the hard facts—in the friendliest possible way, of course?

Baroness Evans of Bowes Park: I thank my noble friend for the clarification, and I hope that the President takes note as well. My noble friend is absolutely right. As I said in the Statement, NATO's European allies are stepping up their defence spending. Non-US defence spending has increased by $87 billion since 2014. Progress is being made, as NATO Secretary-General Jens Stoltenberg said, but there is more to do and we will keep up the pressure.

Lord Campbell of Pittenweem (LD): My Lords, anyone present in Brussels last week would regard the Statement as an inadequate account of the nature of the summit, not least because of President Trump's divisive, disruptive and dismissive behaviour—particularly towards our Prime Minister. It is of great importance to bear in mind now the complete unpredictability of the person whom I suppose is the nominal and practical leader of the North Atlantic alliance. The Prime Minister says that she welcomes his visit to Helsinki to meet Mr Putin; perhaps we had better wait until we hear what he says about Mr Putin before we extend such a welcome. But there was one matter on which the Statement was right: we must increase our own defence spending, not just to satisfy Mr Trump but—given his unpredictable nature—to allow for the possibility that Europe may have to act on its own.

Baroness Evans of Bowes Park: As the noble Lord knows, we are meeting the 2% target and 20% of our defence budget is spent on equipment. We will continue to increase the defence budget by 0.5% a year above inflation. We take our commitments in this area extremely seriously.

Lord West of Spithead (Lab): My Lords, the noble Lord, Lord Campbell, has a good point: I have said previously in this Chamber that we are no doubt deluding ourselves. We have a sense of complacency. Experts, lay men, the Back-Benchers of both Houses and the HCDC itself have all said that we are spending insufficient money on defence, and talking about the extra things that NATO can do and how it can help is nonsense if we cannot even pay enough money to support our own defence forces. However, my question does not relate to that; my question relates to what was said about defence and security agreements with the European allies as we move forward with Brexit. Is it true that, once we leave the European Union, in any operation such as Atalanta off the Horn of Africa, the most senior post that any British officer will be able to hold is that of lieutenant-colonel, whereas at the moment British officers command many of these operations? What are the implications of that?

Baroness Evans of Bowes Park: I am afraid I will have to write to the noble Lord with that information.

Lord Cormack (Con): My Lords, it was very noticeable that while the summit was taking place, Russia was enjoying an enormous propaganda coup. In support of the noble Lord, Lord Browne of Ladyton, perhaps I may put it to my noble friend that, bearing in mind the unpredictability of the leader of the western world, it really is crucial that we engage in dialogue. It is utterly farcical that our relations with Russia are worse than they were at the height of the Cold War. I ask my noble friend to convey that to the Prime Minister.

Baroness Evans of Bowes Park: As I said in a previous answer, although we have suspended all planned high-level bilateral contacts, we continue to engage with Russia multilaterally.

Lord Touhig (Lab): My Lords, in her Statement the Prime Minister said:

"Transatlantic unity has been fundamental to the protection and projection of our interests and values for generations".

However, to date transatlantic unity is undermined by the President of the United States. We never know what Mr Trump will say next—and, frankly, I suspect that nor does Mr Trump. The other important point in the Prime Minister's Statement is that she has proposed a "bold new partnership" between the UK and our European allies post Brexit. When working with France in the difficulties that we have with the Americans, will the Government recognise that Britain and France will have to step up to the plate and that we will have to take the lead in NATO in defending Europe?

Baroness Evans of Bowes Park: We are very clear that we have played a leading role in NATO and will continue to do so. We will obviously be looking to have a deep security partnership with Europe. We do many things bilaterally with the French and will continue to do so.

Baroness Ludford (LD): My Lords, in that specific context, the UK has always been a little stand-offish about EU defence co-operation, even though it is certainly set within NATO, and it has cold-shouldered Permanent Structured Cooperation, known as PESCO. However, I understand that a few weeks ago Defence Ministers agreed to support the European Intervention Initiative, or EII for short—there are a lot of acronyms—put forward by President Macron. I believe that the UK was one of the nine EU countries that signed up to this but I do not think we have heard a great deal about it. It is about joint European action in the event of emergencies and crises—a sort of coalition or club of the willing. Can the noble Baroness tell us a little more about it and will the Government advertise it? It is a good example of the UK's willingness to take part in European defence co-operation, about which they are sometimes a little shy.

Baroness Evans of Bowes Park: The noble Baroness is absolutely right. I cannot remember exactly when—I have repeated so many Statements recently—but I referred to it in a recent previous Statement, so there is some more information there. She is right that we were an initial signatory to the letter, along with, I think, eight other European countries. As I have explained to the House, I do not have the details with me today but I am happy to write to the noble Baroness. However, it is something that we discussed in response to a Statement a few weeks ago.

Lord Hannay of Chiswick (CB): My Lords, does the noble Baroness not recognise that there was an extraordinary divergence between the NATO

[Lord Hannay of Chiswick]
communiqué, from which the Statement is heavily drawn and which said all the right things about increased spending and taking a robust attitude towards Russia, and what the President of the United States said at the sessions and to the press afterwards, when he said all the wrong things about pretty well everything? Does she not also recognise that the way in which President Trump links his not terribly well-informed concerns about trade with European countries and about the energy balance, when he got confused between Germany's imports of gas and its overall energy supplies, is extraordinarily unhelpful? It undermines the whole doctrine of NATO deterrence, which is based not on transactional attitudes, such as those of President Trump, and not on conditionality about trade but on the unconditional support of all NATO members for each other? Surely it would be better if we faced up to the fact that there is this contradiction. What can the noble Baroness say about that?

Baroness Evans of Bowes Park: The Brussels declaration was agreed by all allies, including President Trump, at the summit. As I said, he was clear about his commitment to NATO. The US has more than doubled its budget allocation for its European deterrence initiative and US forces are leading NATO's enhanced forward presence in Poland, so we also need to look at the US's actions and how they link into the support that the President reiterated following the summit.

Lord Campbell-Savours (Lab): My Lords, have the Germans given us an absolute assurance that they will bring forward the date by which they will reach the 2% contribution target?

Baroness Evans of Bowes Park: There was general agreement that there was an urgent need to step up defence spending. All allies agreed to it. The 2% is by 2024.

Lord Craig of Radley (CB): My Lords, the 2% for NATO is well understood, but the United Kingdom aspires to much more than just operating in the NATO context. There is now talk of a global Britain post Brexit, with deployments to the Far East of maritime and air forces, and we have already seen some of that. Surely 2% is not enough to cover such commitments and more should be made available to defence.

Baroness Evans of Bowes Park: Our modernising defence programme is obviously critical. We want to play a global role and we will continue to fund defence as we see fit to meet our global obligations.

Lord West of Spithead: My Lords, when we gave our commitment to 400 extra people for Afghanistan, did any other NATO nations say they would join in that commitment, bearing in mind that we will have people there for 23 years and possibly even longer into the future?

Baroness Evans of Bowes Park: I do not have an answer to that question; I will have to get back to the noble Lord. We have an uplift of 440 troops. These men and women will be focused in the Kabul security force, where we will continue to work closely with our NATO partners and the Afghan security forces.

Mental Capacity (Amendment) Bill [HL]

Second Reading (Continued)

5.12 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, the nod has come that we are resuming the Second Reading debate on the Bill before the House. Tea might be the preferred choice of those who are not remaining.

I start by joining other noble Lords in complimenting and congratulating the noble Baroness, Lady Barran, on her most distinguished and illuminating maiden speech. Plainly, she is going to be a great strength in the House.

I spoke in the debate just over three years ago on the Select Committee's post-legislative scrutiny report on the 2005 Act. I focused principally on the perhaps somewhat surprising decision of the Supreme Court in the Cheshire West case, a decision by a narrow four-to-three majority vote, which came out six days after the Select Committee's report. It was a decision which gave huge relevance to the issues arising and highlighted an urgent need to legislate afresh.

The critical concept then under question was what amounted to deprivation of liberty. The central question raised was what was required to authorise it. Put simply, Cheshire West hugely increased the number of cases in which people were to be regarded in law as deprived of their liberty, and it left in place the need for two distinct categories of authorisation. One was for people detained in hospitals and care homes who continued, and continue still, to require authorisation under the Schedule A1 procedures known as DoLS, deprivation of liberty safeguards. The other is for those, like the two particular patients under direct consideration in the Cheshire West case itself, detained in community settings whose placements presently require authorisation by the Court of Protection under a Section 16(2)(a) order.

By the time of the March 2015 debate here, the Government had already asked the Law Commission to look into all this. As eventually the Law Commission came to note in its March 2017 report, there were more than 14 times as many applications for DoLS in the year 2015-16 than in the year before Cheshire West two years earlier, 2013-14. As the Joint Committee on Human Rights records in its recent June 2018 report, 70% of the almost 220,000 such applications in the past year were not authorised within the statutory timeframe and, I quote from the report's summary:

> "Consequently, many incapacitated people continue to be deprived of their liberty unlawfully and those responsible for their care, or for obtaining authorisations, are having to work out how best to break the law".

Indeed, paragraph 32 of the report says that,

> "hundreds of thousands of people are being unlawfully detained".

Your Lordships will of course agree that that is no light matter. There is therefore real urgency in processing the amending legislation before us.

In that context, I touch next on one particular recommendation made by the Joint Committee in paragraph 45 of its report, which has already been alluded to by a number of your Lordships, the recommendation that Parliament should set out a statutory definition of deprivation of liberty that clarifies the Cheshire West test and,

"would extend safeguards only to those who truly need them, whilst respecting the right to personal autonomy of those who are clearly content with their situation, even if they are not capable of verbalising such consent".

For my part, while certainly not disagreeing with that recommendation, and while recognising that the majority of the court in Cheshire West may well be regarded as having inappropriately and needlessly—by which I mean going substantially further than required by the Strasbourg jurisprudence on Article 5—gone too wide in their categorisation of deprivation of liberty, I would be disinclined to burden and complicate this current proposed amending legislation still further by including within it a statutory definition. Better, I would suggest, to cure the all too obvious existing problems of authorisations as speedily as possible.

As to that, I broadly support the approach in the Bill, which essentially comes to this: first, a proposed replacement Schedule AA1 to authorise deprivation of liberty by new, proportionate and less bureaucratic means; and, secondly, extending the safeguards into domestic settings—in other words, to apply to all those deprived of their liberty irrespective of where they reside, thus including those who were the specific subject of consideration in the Cheshire West case and therefore relieving some of the pressure on the Court of Protection.

I am in no position today to comment helpfully on the various detailed criticisms of the Bill made by several of your Lordships in the debate, nor even to deal with the availability or otherwise of legal aid to which the noble Baroness, Lady Barker, referred. That will be for Committee.

The last matter I want to touch on, although I do not think it could or should directly affect the form in which the Bill should reach the statute book, is what has been called the Mental Health Act interface. In its hugely impressive, very long, 259-page report of March 2017, the Law Commission, in chapter 13, under this heading, pointed out that,

"the non-consensual care and treatment of people with mental health problems is governed largely by two parallel legal schemes – the Mental Health Act and the Mental Capacity Act",

the former providing for detention based on protection of the patient and the public, irrespective of mental capacity, whereas the Mental Capacity Act applies only to those who lack capacity, and provides for deprivation of liberty based on the person's best interests. But, as it goes on to say,

"there is considerable overlap between the two regimes, and the relationship can be extremely complex".

Chapter 13 concludes with Recommendation 39:

"The UK Government and the Welsh Government should review mental health law in England and in Wales with a view to the introduction of a single legislative scheme governing non-consensual care or treatment of both physical and mental disorders, whereby such care or treatment may only be given if the person lacks the capacity to consent".

Following that report, in October 2017 the Government commissioned an independent review of the Mental Health Act 1983, an Act which I ought perhaps to confess was enacted principally and specifically to deal with an ECHR challenge which, as counsel for the Government, I had lost in Strasbourg the previous year.

As your Lordships know, the present review is being conducted by the most distinguished group. It is chaired by Professor Sir Simon Wessely, and its vice-chairs include our own noble Baroness, Lady Neuberger, and a much admired, now retired High Court Family Division judge, Sir Mark Hedley. Its terms of reference include recommending improvements in relation to rising detention rates.

In its interim report of 1 May this year, the independent review discusses the interface with the Mental Capacity Act. At paragraph 7.3 of the review, it states:

"We agree and support the urgent reform of DoLS to make sure service users receive the most appropriate care for their needs",

also pointing out that,

"there needs to be an appropriate calibration between resources spent on delivery of care and those spent on safeguards surrounding the delivery of that care".

The review, having noted the Government's broad acceptance of the Law Commission's conclusions, continues:

"The government has also indicated that it awaits our recommendations on the interface issues",

and observes:

"It is likely that, if only for practical reasons, we will be unlikely to be recommending 'fusion' between the MCA and MHA in the short term, but will be considering this as a longer-term option".

Finally, to return to the Joint Committee report of 29 June, the interface between the two legislative regimes is thoughtfully discussed in paragraphs 70 to 74, and recommendations are made in paragraph 74. The Mental Health Act review will clearly want to note those recommendations and the concerns expressed by the Joint Committee. Clearly, the resolution of the critical interface between the two legislative schemes is a work in progress, and we are likely to have to return to the Mental Capacity Act yet again in probably well over a year's time.

In the meantime, I would strongly support the amending legislation now before us, although I recognise that it will need to be considered carefully in Committee. I repeat: this Bill is urgently required now to end the lawlessness consequent on Cheshire West.

5.26 pm

Baroness Hollins (CB): My Lords, I, too, congratulate the noble Baroness, Lady Barran, on her compassionate and informed maiden speech.

Many organisations working in the field of learning disability, the people who are the focus of my speech today, welcome the reform of the deprivation of liberty safeguards. Both the Joint Committee on Human Rights and the House of Lords post-legislative scrutiny committee, of which I was a member, highlighted major concerns about the implementation of deprivation of liberty safeguards. I am grateful to several organisations

[Baroness Hollins]
for their briefings in advance of today's debate, including Mencap, the Royal College of Psychiatrists, the Royal College of Speech and Language Therapists and others. I refer to my interests in the register. I speak also as the carer of an adult relative for whom I hold a lasting power of attorney.

Recommendation 37 of the post-legislative scrutiny committee suggested that,

"replacement legislative provisions and associated forms be drafted in clear and simple terms, to ensure they can be understood and applied effectively by professionals, individuals, families and carers".

Some of the briefings received in the last few days remind us of the complexity of this legislative area and how easy it is to misunderstand it.

Any adult, regardless of any communication or cognitive impairment, has the right to make or be supported to make their own decisions wherever possible. The Mental Capacity Act supports this principle while also providing a legal framework, the DoLS, so that decisions can be made when someone lacks capacity. When the Government introduced those safeguards over 10 years ago, the rules required that they would allow a deprivation of liberty if the chosen restraints or restrictions worked in a person's best interests. I am grateful to my noble friend Lady Finlay for clarifying that best interests will remain integral to the amended Act. I look forward to confirmation from the Minister that that is indeed the case, as it has been a matter of some concern to the organisations briefing me. That takes us to the heart of what they were intended to do, but implementation of the Mental Capacity Act and the deprivation of liberty safeguards has been poor. The health and care sector does not have the training, awareness and skills to carry it out effectively. It takes a willingness and considerable skill to protect people's liberty.

The impact assessment before the original safeguards were introduced estimated that 50,000 people may be eligible for them, but that the number of applications would be much lower because not all of those at risk would actually need to be deprived of their liberty to protect it. The assessment also held that numbers would fall after the initial year, as parties became familiar with the safeguards and, crucially, found ways to avoid deprivation of liberty happening. In fact, the opposite has occurred. In 2015-16, 105,000 completed applications were received, of which 73% were granted—86% in London. However, the impact assessment estimated that only 25% of applications submitted would be approved and justifiably deprived of their liberty.

The intention was that the safeguards would drive a change in practice that would seek to avoid deprivation of liberty occurring, but it has not happened. Will these new safeguards do better in preventing people being deprived of their liberty and protecting it, as originally intended? Or will they simply streamline the administrative processes and reduce the financial burden to the state of the authorisation process, while reducing the focus on an individual's own choices and preferences? These are the fears that are being expressed.

We clearly want more than that. Our goals must be to improve care and treatment for people lacking capacity; to reduce restrictive practice; and to ensure that individuals in vulnerable circumstances, their families and carers have a say in their care. This is absolutely necessary, as people who lack capacity may be dependent on the good will of their carers for some of the most basic rights and freedoms, including, for example, the right to choose and spend time with their friends—rights which we all take for granted. This is an issue I am currently struggling with for the adult relative I mentioned earlier. There is an obvious power imbalance in these relationships. The Law Commission report suggested wider changes to the Mental Capacity Act than envisaged in the Bill, including giving more weight to the individual's wishes and preferences and the establishment of supported decision-making. However, the Government's impact assessment states that they have decided not to legislate for this,

"at this point, as we think there are other effective levers to deliver improvement in these areas".

What are these other effective levers?

A key concern of the post-legislative scrutiny committee was the abject failure of many services to understand how to increase someone's capacity by, for example, providing them with accessible information; patiently making up for limited educational opportunities by increasing their understanding; assessing their communication skills, as recommended by the Royal College of Speech and Language Therapists in its briefing; and assessing their capacity to make a specific decision on more than one occasion. This is what supported decision-making involves and it takes time. The noble Baroness, Lady Browning, explained how time-consuming this is when it is done well. Alongside the need to give individuals a voice about their own care is the need to give families and carers a voice. The principle of best interests in the Mental Capacity Act had much to say on consulting others involved in the individual's care. I share the concerns expressed by the noble Baroness, Lady Browning, about the Bournewood gap. Would HL have still been detained today, but legally, and would his carers' views have still been overridden? In his evidence to the post-legislative scrutiny committee, Mark Neary said that he would not want any other family to have to experience the heartache and trouble he did. Will the role of families and LPAs be strengthened or weakened by this Bill? If strengthened, will the Minister reassure the House by explaining exactly how?

Some practitioners have suggested the introduction of support agreements, which would allow people with learning disabilities to nominate their own supporter or co-decision-maker, thus shifting power back to disabled people and those they rely on to help them make decisions. These would be a bit like lasting powers of attorney, only easier to make and more geared towards supporting the person to make decisions for themselves or jointly making decisions with a trusted person. Co-decision-making is very popular with grass-roots community organisations in Canada, and it is being adopted in Ireland, Australia, Texas, Israel and many other states and countries.

The responsibility for gathering the necessary proposed assessments, identifying whether a person is being deprived of their liberty, determining the person's capacity, and determining whether the arrangement is necessary and proportionate and who should be consulted—all of this may be left to the same person:

the care home manager. This puts a large responsibility on this individual and creates a potential conflict of interest. The person who may be responsible for the deprivation may also be responsible for assessing and gathering information. This hardly seems an appropriate way to balance the power differential, and I would like reassurance on this. Do care home managers currently have the skills to take on this responsibility? The impact assessment suggests that they will need half a day's "familiarisation" with the new policy. That would not be sufficient.

My third area of concern is the ability to appeal decisions to deprive individuals of their liberty. The new role of an approved mental capacity professional is proposed—an independent, skilled assessor with a role similar to that of approved mental health professionals in the Mental Health Act. The expertise and independence of this role is a welcome addition to the safeguards, but it seems that AMCPs will only be called upon if the individual objects. Who judges if the person is objecting? Even access to an independent review would need to be facilitated through the care home manager, as would access to advocacy. We need to think carefully about this.

Finally, the appeal process will still be through the Court of Protection, but this process has been criticised as more complex and more difficult to access than the tribunal system in the Mental Health Act. The impact assessment suggests that only 0.5% of cases will end up in the Court of Protection. But given that a quarter to a half of patients detained under the Mental Health Act appeal to the tribunal system, can the Minister explain how the Government have arrived at such a low number? The review being chaired by Sir Simon Wessely is due out later this year and, as we have already heard, some proposals are expected to relate to the interface between the Mental Health Act and the Mental Capacity Act. Could the Minister clarify, as other noble Lords have asked him to do, whether the Bill will be further amended when the Wessely review is published or whether the final stages of the Bill will be delayed until we know the content of that review and its recommendations?

This amendment Bill may work out to be cheaper for the state, although there are worries about the increased burden on care providers. The role of your Lordships' House in Committee will be to ensure that the proposed liberty protection scheme lives up to its name.

5.37 pm

Baroness Murphy (CB): My Lords, this Bill should be a lesson to us all. It is designed to correct the disaster created by another piece of legislation, introduced not to address a common problem or by popular demand by a group, but at the instigation of the judiciary, addressing a problem we did not know we had. Unfortunately, it does not solve the problem, and this House's ability to improve it will merely ameliorate the ongoing disaster.

The DoLS legislation, since its inception, was designed to plug the Bournewood gap, which the Minister described quite clearly. However, as the noble Baroness, Lady Browning, pointed out, because this legislation will no longer have the best interests of the patient at heart, it will do nothing to close better the Bournewood gap. It will leave that gap and will leave exposed the several related cases. Although the bureaucracy of the Bill apparently tries to address it, it does nothing of the sort.

The problem is that we are trying to combat an edifice of poor professional practice—in this I echo what the noble Baroness, Lady Hollins, said. However, rather than improve professional practice by working in the way that families and professional carers work and talk to each other about what should happen to improve the situation of the individual, we have moved away from what health and social care considerations should look like and into a world of legalities. Legislation and regulation can never substitute for good practice. They can provide a framework within which good practice is enacted, but they are no substitute. That is where the DoLS legislation has been such a disaster. I respect that the virtue in this Bill is the intention to make things safer, more competent and more accountable, but theoretical legal advantages have led to a massively intrusive bureaucracy of paper schedules and rules, which this Bill diminishes but does not solve.

For the past three years, as a result of widespread concern about the adverse impact of the deprivation of liberty safeguards on the care and treatment of older people, I have been the convenor of an informal group of members of the Royal College of Psychiatrists Faculty of Old Age Psychiatry. The group was established to liaise with the Law Commission and other organisations to consider issues arising from the draft liberty protection safeguards and the original Law Commission's draft bill, part of which—but only part—now comes to this House as a new Bill. I think everybody here agrees that the monstrous piece of bureaucratic machinery that is the deprivation of liberty safeguards has caused untold harm and cost a huge amount of money that has been diverted from finite clinical and social care budgets at a time when the country can ill afford it, and when the quality of care in hospitals and residential homes is barely adequate and often downright poor. The money pouring uselessly down the DoLS drain is a disgrace. The detailed problems were well articulated by the Law Commission in chapter 4 of its paper 372, published last year.

The Law Commission, through Tim Spencer-Lane and his colleagues, has done an enormous amount of hard work and consulted widely to produce improved and less bureaucratic procedures. However, it was constrained by its brief to take the judgment in Cheshire West as the starting point, which contained, in my view and that of many others, an unworkable definition of "deprivation of liberty", which most people find extraordinary. That is my main concern about the Bill before us today.

Before I get on to the definition issues, however, I want to express my surprise and concern that some of the most far-seeing and progressive parts of the draft Bill produced by the Law Commission have been omitted from the Bill before us. As many others have mentioned, we have lost proposals that were either accepted or accepted in principle in the Government's response to the Law Commission. The first relates to strengthening the place of the individual's wishes and

[BARONESS MURPHY]
feelings in Section 4, any notion of which has been abandoned in favour of what is "necessary and proportionate". These are vague words that may well imply that, in this age of austerity, the person will get care in a way that is convenient for the authorities making the judgment to impose and that does not take account of the individual's expressed wishes or include a discussion about what they might wish. Although "best interests" is mentioned, when the crunch comes, it will be ignored.

I want to refer here to the description of a person as being of "unsound mind". If that is old-fashioned now, and clinically irrelevant as a phrase, what will it sound like in 10 years, when it really will be past its prime? It is simply not a phrase that we should be using in the Bill.

Secondly, the proposal to strengthen the safeguards around Section 5 in relation to serious interference in people's lives has been ditched. Thirdly, the proposal enabling advance consent to be given has been omitted, which was accepted in principle and would have had a real part to play in allowing people to say what arrangements they are happy to accept when it comes to a later stage in their life. Fourthly, regulation-making powers for supported decision-making schemes have been omitted. Again, all of these were thought at the time by the commission to be important steps necessary to strengthen the Mental Capacity Act in how it works across the board. There has been widespread approval of these provisions by families, professionals and lawyers—a unanimity that is quite rare. Can the Minister explain why these good things have been dropped when there was such an initial positive response? It is not as though there will be another chance. There will not be another Mental Capacity Act for some time, probably years, so now is our chance to improve it.

I return now to what is meant by "deprivation of liberty". The Cheshire West Supreme Court judgment 2014, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, indicated, gave a significantly wider definition than had been previously understood both by public authorities and the lower courts to apply in the health and social care context. I will not repeat the argument of the noble and learned Baroness, Lady Hale— a bird in a gilded cage is still a bird in a cage—but her logic, as always, is totally unassailable. However, it has been applied in cases that the Supreme Court did not have the opportunity to review. Difficulty arises where everyone—patient, family members and professionals—are all either consenting to admission and the care and treatment as proposed or are not objecting, which also applies to patients in their own homes.

Approximately 750,000 people in the UK—I have heard a figure of up to 2 million, but I am talking about people who have definite and serious lack of capacity—lack the capacity to make major decisions, and the vast majority of these patients fall into "willing" or "not objecting" categories when it comes to their care. Two-thirds are living in their own homes. It is hard indeed to see in what way they are deprived of their liberty by being admitted willingly to a hospital, nursing home or hospice or being cared for in their own homes by family or professional carers whom they are happy to receive. Furthermore, when these Supreme Court criteria are applied to patients admitted to general hospitals, hospices and care homes as the Mental Health Act 2007 dictates, a ludicrous situation now arises. Before anything is done for the patients, a bureaucratic procedure is enacted to ensure that their rights are being considered, although in practice, nothing changes as a result. Lots of forms are signed and boxes ticked but little else.

Approximately one-third of older patients admitted to hospitals through A&E departments are suffering from transient confusional states consequent on physical illness, or mild cognitive impairments that intermittently, fluctuatingly or permanently affect their capacity to consent. The vast majority of such individuals—of 16 million annual hospital admissions, an estimated 3 million individual admissions—fall under the current jurisdiction. Because nobody is implementing this Act, they are currently being treated informally in their best interests with clinical staff relying on GMC guidance on decision-making and discussion with family and carers. The intrusion of an artificial safeguarding mechanism between those who did not know they were depriving someone of their liberty and those who did not know they were being deprived is a kind of Alice in Wonderland nightmare and ludicrously expensive to administer. We have in the Bill a system that will still be applied to tens of thousands of people and a pie-in-the-sky, almost delusional, impact assessment of its likely costs if it is implemented as drafted.

The result of the overinclusive definition of deprivation of liberty has resulted in very serious interface problems that other noble Lords have mentioned between the Mental Health Act and the Mental Capacity Act, and the misuse or overuse of Mental Health Act legislation to detain elderly people on general wards to treat them for physical health problems, simply because sectioning someone is easier to hurry through than the DoLS procedures and easier than the proposed liberty protection safeguards. The use of the Mental Health Act usually rules out any subsequent placement in a care home because patients are rejected by the care home system if they have been sectioned, and leads to extra responsibility for Section 117 aftercare funding for the local authority. I can give the Minister a catalogue of cases where the misuse of the Mental Health Act and/or DoLS has resulted in poor care or a decision by relatives to reject a care plan because they do not want their relatives stigmatised by being sectioned.

The interface problem has led to widespread illegality by the misapplication of legislation. The Bill continues this problem and, while I understand the wish to wait for Sir Simon Wessely's review of the Mental Health Act to be complete, we are rather stuck with a gravely inadequate situation. Inevitably, problems will continue to arise at the interface between these two regimes unless we are serious about sorting them out.

The crucial thing for me is that the criteria for "deprivation of liberty" need to be changed before any new legislation is approved. It is pointless to wait to see what we can put into a code of practice. We cannot legislate on such a serious matter by leaving it to a code of practice; I simply do not think it will work. I do not believe it is reasonable to include admission

and/or residence of incapacitated persons in homes and hospitals where there is no objection by the patient, family carers or professional carers, or to include private individuals living by personal choice in their own family homes, supervised by family members or professional carers. It really should apply only to those who express dissent or opposition, or where there is clear disagreement between those responsible for the care. I would like the Minister to explain why, given the report of the Joint Committee on Human Rights that supported the view that I and many others have just expressed—there is a need to revise the criteria—a change in the definition has not been included and whether the Government will consider bringing forward an amendment to address this problem before Committee?

No legislation should be enacted until it is clear that the law will improve the care of individuals subjected to it and genuinely protect them from abuse or unwarranted repressive conditions. We need to reinject some common sense into care relationships. Without better definitions and a serious reduction in the number of individuals being subjected to them, the liberty protection safeguards will continue to create anxiety in staff when there should be none and militate against the decent care that I believe everyone in this House agrees society should provide.

5.51 pm

Baroness Jolly (LD): My Lords, this has been an interesting and hugely well-informed Second Reading of the Bill and I join other noble Lords in welcoming the noble Baroness, Lady Barran, to her place. I am sure that she will bring a new and welcome voice to the House on all issues. My noble friend Lady Barker gave us a helpful account—a history lesson, if you like—which put everything into context. It is worth saying to the Minister now that it is absolutely not the case that we all sat around a table and decided what needed to be said. We have come to our views all on our own, and if we are saying much the same things, it is because they need to be said and are true.

I, too, welcome the Bill. It aims to make the process of depriving a vulnerable individual of their liberty simpler and less bureaucratic. Everyone here would agree that society is judged on how it manages its members who are vulnerable and unable to speak for themselves. This Bill makes a fair attempt at this, but it is not the finished article and I would probably give it a C. The points I will make fall into two distinct categories: points concerning the process of the creation of the impact of the Bill once it is enacted, and the second concerning the legislation itself: what should be in it, what should be taken out, and which clauses could be better worded.

The people who will be affected by this Bill are likely to be old, have mental health problems, autism or a learning disability, or have more than one of these conditions. I should refer to my interests as set out in the register. I chair a learning disability trust caring for more than 2,000 people, many of whom in our care lack capacity. I thank all of those who have provided us with briefings, and it is clear that common themes came out of them. One was the issue of finance. There was a feeling that this is going to be an expensive exercise. There will be a need to train assessors in care homes, to which I shall return later, to train advocates and, of course, to train the trainers. All of this will need to be rolled across England and Wales. Will care providers have to fund this, or will one-off training grants be made available? Certainly the system is under so much stress at the moment that it is unlikely to have the slack in budgets for extra training.

Then there is the role of care home managers. For some this might seem fine and a natural extension of their role. For others it may go into completely new territory where they have no experience and no confidence. I am sure that the Minister appreciates that most people with a learning disability no longer live in a care home but with carers in a domestic supported living setting. It would be a very large ask for those carers to assess the mental capacity of the person they support. Most carers are on the national living wage and may not be professionally ready to make such assessments.

Can the Minister clarify where the AMCP—approved mental capacity practitioner—sits in the new system and from where their funding comes? Where liberty protection safeguards are put in place, could an affected individual have an appeal funded? Will legal aid be available? Will the Minister explain why best interests are not included and what has taken their place? At the useful briefing last week, I inquired about consultation. For a Bill of such importance and with such a potentially huge impact, can the Minister clarify what consultation there was with provider organisations in the sector, the LGA, ADASS and the public at large? Over the last few months, many of us have had really interesting conversations with Sir Simon Wessely about his work reviewing the Mental Health Act. We welcome that review, but would it not have made sense to have waited until Sir Simon finished his work and then have a single view of the issue?

The Bill did not start from cold: the House of Lords Select Committee reported in 2014 on its scrutiny of the Mental Capacity Act 2005. Many noble Lords speaking today took part in those committee sittings. There was also the Law Commission's *Mental Capacity and Deprivation of Liberty* report of 2017. They both made many fine recommendations and, along with many in the sector, I am surprised that a lot of work will need to be done in the summer to make the Bill finally fit for purpose. Among the areas I will be looking at in Committee is the issue of 16 and 17 year-olds. To include them in the legislation would align with the Mental Capacity Act. Can the Minister tell the House the rationale for not putting this transitional cohort in the Bill?

Article 5(1) of the European Convention on Human Rights uses the phrase "unsound mind". The same paragraph also talks about vagrants. It was first drafted in 1950, nearly 70 years ago. It is not used professionally now and the profession believes that it has no place in a piece of modernising legislation; it creates unease among individuals, advocates and the sector alike. Article 5(2) calls for a detainee to be informed of the reason they are to be deprived of their liberty. Rather than having to refer elsewhere, how much more straightforward would it be to have this in the Bill? I support my noble friend Lady Barker's view

[Baroness Jolly]
that any part of the Bill referring to the ECHR should spell out the impacts rather than cross-reference the Brexit debate.

Although not part of the legislation, the code of practice, once enacted, will make the Bill workable. Will the Minister clarify what progress has been made on writing a draft? Can noble Lords have sight of it? If so, when? This is a complex and important piece of legislation; I hope that the Minister is not expecting to complete it with just one day in Committee. We need to produce an A-plus Bill to send to the Commons. It may take more time than the Government want, but all the people affected by the Bill deserve better.

5.59 pm

Baroness Thornton (Lab): My Lords, I am very pleased to be speaking in this Second Reading debate. Although we might be missing a few of our known experts in this rapidly organised debate, we can anticipate full participation in the next stages of the Bill. The debate thus far has been informed and passionate, as one would have expected.

The maiden speech of the noble Baroness, Lady Barran, was a model of its kind, and I welcome her to the House. She brings great experience. As someone who has been involved for 20 years in this House working on behalf of women and abused women and on domestic violence, I welcome her to our cohort of people across the House who campaign on these issues. I look forward to working with her in due course.

We have had some excellent contributions. Many noble Lords have been asking pertinent questions, starting with the ones from my noble friend Lord Touhig. The noble Baroness, Lady Meacher, was very modest. She has a lots of practical experience dealing with these issues. Just because she was not here when we worked on the original legislation does not mean that she does not have a valuable contribution to make to this. I am also pleased to see the noble Baroness, Lady Murphy, back in her place. I am glad that she managed to fly home from wherever it was to take part.

I thank the Minister and the Bill team for organising the briefing we had last week. It was a packed meeting—and quite hot, it has to be said—and it showed the level of interest that there is in this small Bill. I also thank the many organisations and individuals that have sent us their briefs and their views on the Bill, and which are, at this moment, working to see how it might be best improved—Mencap, the LGA ADSS, Age UK, VoiceAbility, Sense, Alzheimer's Society, the Royal College of Psychiatrists and the Royal College of Speech and Language Therapists, a doctor from Cardiff University called Lucy Series, who sent me an excellent brief, the National Autistic Society and so on.

This might be a small Bill, but it is one with potentially enormous consequences. It demands proper parliamentary scrutiny and, where necessary, amendments that will make it fit for purpose on its own terms. Anything short of this will be selling short the human rights of many thousands of vulnerable people in our country. As yet, like the noble Baroness, Lady Jolly, I am not confident that the Government have made enough time available for proper consideration of this important piece of legislation. We have experts in these matters in this House. I was witness to and a participant in these discussions—not key to them, as the noble Baroness, Lady Barker, was, but I was here—and I know from those debates how complex a challenge these matters are and that it is an issue that at the same time begs absolute clarity to serve justice for our most vulnerable fellow citizens.

I hope the Minister and the Bill team will know that we will be pressing for more time to be made available and that we will be doing it with all our support. Apart from anything else, the Minister needs to address the suspicion, which I have heard whispered, that the Government are seeking to hurry or bounce this Bill through the Lords in the summer to try to avoid the detailed and essential scrutiny that it deserves and that it would receive here. I am sure that that cannot be the case, but more time would probably dispel that terrible rumour.

As we can see, the Mental Capacity (Amendment) Bill amends the Mental Capacity Act to replace the DoLS framework, which, as noble Lords know, authorises the deprivation of liberty of people who lack the mental capacity to consent to their care arrangements in hospitals, care homes or other settings. Quite rightly, DoLS has been widely criticised as excessively complex and bureaucratic, as highlighted by the noble Baroness, Lady Barran, and by the noble and learned Lord, Lord Brown, in his great speech. I was shocked to learn that 70% are behind time. That speaks for itself. Also it is costly and offers inadequate protection for human rights.

Following the Supreme Court's ruling on Cheshire West, which offered a broader definition of the deprivation of liberty, there are now some 230,000 applications for the authorisation of DoLS in England and Wales each year—I keep hearing different figures and I am rather confused, but it is an enormous number and there is a huge backlog. Local authorities are unable to keep up with the volume of applications, leaving them, in the words of the Joint Committee on Human Rights,

"having to work out how best to break the law".

So it is costing a huge amount of public money, that is rising, and it is not doing its job.

So this is undoubtedly a timely piece of legislation; notwithstanding some of the reservations that some noble Lords have about this, I am fairly convinced that this is an urgent matter. The question we have to address here in your Lordships' House is whether the Bill will do the job it is asked to do.

The Law Commission was asked to review the framework between 2015 and 2017. It consulted widely and came up with the new framework, the liberty protection safeguards, which offer more flexible and less bureaucratic means of authorising deprivation of liberty, channelling resources into situations where there are conflicts or concerns about a person's care arrangements. It also included proposed amendments to the MCA's best interest test, highlighted by my noble friend Lord Touhig and the noble Baroness, Lady Murphy, among others, and to promote supported decision-making to bring the MCA closer in line with the requirements of the United Nations Convention on the Rights of Persons with Disabilities.

The Law Commissioner, Nicholas Paines QC, said—and the Minister quoted him—that the deprivation of liberty safeguards are failing those they were set up to protect. He went on to say:

"We're pleased the government agrees and we stand ready to work with them to implement these reforms as soon as possible".

I have read the Government's response to the Law Commission report, and it seems to accept the majority of recommendations contained—it is a 24-page document and I had some time at the weekend. However, the Bill we have before us today, while having the same title as the Law Commission's proposed scheme, appears to have removed most or some of the important safeguards it proposed, as other noble Lords mentioned. That raises some serious questions, starting with whether the Bill complies with Article 5 of the European Convention on Human Rights and whether it moves the UK further away from compliance with the CRPD, instead of closer towards it. The Bill has major implications for the human rights of hundreds of thousands of people with dementia, learning disabilities, brain injury and mental health problems.

I am disappointed that there is no accompanying equality impact assessment. Paragraphs 16.1 and 16.2 of the impact assessment refer to equality matters. Basically, what they say is that there is no need for an equality impact assessment because,

"the new system will have beneficial impacts for older and disabled people".

Surely that is a matter for examination, not something one can assume, particularly when we look at Article 5 of the European Convention on Human Rights. It seems to me that, if that is being diluted, it is very important that we have a proper, independent equality impact assessment, so I ask whether that can be supplied.

Noble Lords have raised many other questions during this debate. How does the Bill ensure that the cared-for person and those representing them have access to the information they need to understand and exercise their rights? Do the Government plan to secure the right of the cared-for person to participate in court proceedings concerning their liberty? Should the modern legislation—this was raised by many noble Lords—include outdated and stigmatising concepts such as unsoundness of mind? The noble Baroness, Lady Browning, is completely correct when she says that the Bournewood gap has not been plugged: I absolutely agree with her remarks on that. Why have the Government not taken forward the Law Commission's proposals to bring the MCA closer in line with the United Nations CRPD? Why have the Government not chosen to require a written record of serious decisions that can be made under Section 5 of the Mental Capacity Act 2005 or introduce stronger procedural safeguards?

Perhaps one of the most significant proposals in the Bill is that care homes assume very significant new responsibilities for the undertaking and co-ordinating of assessments, and provide information about residents who may lack mental capacity to statutory bodies. The very helpful local authority DoLS co-ordinator who has written to several noble Lords says:

"I receive application forms from care homes, train care home staff and give advice about DoLS and MCA issues. Based on these experiences, I have concerns that at present, despite honourable exceptions, care home staff do not routinely have the knowledge and skills to assess mental capacity and consider whether restrictions are proportionate".

We need to listen to his experience, as the noble Baronesses, Lady Finlay and Lady Hollins, highlighted. We need to ask what the mandatory training is going to be. The noble Baroness, Lady Hollins, is completely right: half a day is not sufficient.

Finally, a major recommendation of the Joint Committee on Human Rights is that there must be a statutory definition of what constitutes a deprivation of liberty in this context, but the Bill does not provide such a definition. The Bill team and the Minister have emphasised their consultation process and the organisations that support the Bill. The noble Baroness, Lady Jolly, referred to these. I am sure that is true. However, my inbox, like that of many noble Lords, is full of briefings which have serious concerns about the Bill. Our job in the coming period is to ensure that those are examined. Some clear themes of concern have been mentioned by noble Lords all the way through the debate. The Minister has two choices: either he can engage with the expertise and work with us all to improve the Bill, or he and the Bill team—I hesitate to use the example of the noble Lord, Lord Callanan—could dig their heels in and resist change to their small and perfectly formed Bill. I would counsel the former path.

6.11 pm

Lord O'Shaughnessy: My Lords, I thank all noble Lords for an incisive, illuminating, at times technically complex but always wise debate, which has been a credit to the House. I will attempt to answer as many questions as I can. I will not try to cover all of them as we actually would be here all night, but I will have time to explore the major categories of issues. I hope noble Lords will indulge me as I do that.

I welcome my noble friend Lady Barran and congratulate her on a very passionate and moving speech. It is clear that she has already been a force for good in the world and we look forward to her bringing her singular qualities to the stage which she now fills with such great authority. I hope noble Lords also noticed the attendance for the first part of the debate of my honourable friend the Minister for Care, Caroline Dinenage, who obviously takes a close interest in this. She was at the briefing and we are working closely together to try to get the right Bill through this process.

I think the general tone of the debate was that there is a strong desire to reform the DoLS system and to end, as the noble and learned Lord, Lord Brown of Eaton-under-Heywood, pointed out, the lawlessness and the highly unsatisfactory current situation. My noble friend Lady Barran brought this to life. The truth is that the current system has overwhelmed local authorities and others. As the noble and learned Lord, Lord Brown, pointed out, Cheshire West has extended the definition to whom this should apply, such that the backlog of cases is now extraordinary. The only consequence of that is a denial of access to justice. The challenge we have in the Bill is to make sure that we do not have access to justice just in theory but that it actually happens, and it cannot happen if more than 100,000 people are getting it in theory but not in practice.

[LORD O'SHAUGHNESSY]

As somebody who was new to this before preparing for the Bill, the situation almost sounds too good to be true. We are going to extend the number of people who have access to safeguards but we are also going to stop the system being overwhelmed and save money. This is achievable because it is about introducing a proportionate system that reflects the needs and wishes of the people whom it is there to protect, rather than having a maximalist approach that in theory applies to everyone but in reality does not and is sometimes random in its application, which is clearly unacceptable.

As many noble Lords have pointed out, the system that we need to create must be patient-led. It needs to have proper oversight and to deliver that access to justice which we have discussed. Clearly, if, as the noble Baroness, Lady Finlay, pointed out, only one in 20 have benefited from the current system, it is highly inefficient. As many noble Lords also pointed out, there is a huge urgency here.

Many noble Lords pointed out the benefits of the new system. I will come to some of the challenges but, ultimately, this is about making sure that caring organisations take a more active role in the assessment of deprivation of liberty. Where they do so and integrate it into their care planning, we will provide a proper system of oversight and support for individuals deprived of their liberty in general but, specifically, for those who object, or whose families who care for them object. That is ultimately what we are trying to do and it is the intention of the Bill.

Several noble Lords, including the noble Baronesses, Lady Jolly, Lady Greengross and Lady Thornton, asked about our consultations to date. There have been very wide consultations but this debate has shown that there is much work to be done over the summer, not just with noble Lords but with stakeholder groups, to ensure that we are not only explaining the consequences of what is proposed—I think there are still some misunderstandings about that—but able to demonstrate the benefits and, critically, learn how we can further improve what is proposed.

I turn to some of the issues raised. Several noble Lords including the noble Lord, Lord Touhig, the noble Baronesses, Lady Barker, Lady Finlay, Lady Greengross and Lady Tyler, the noble and learned Lord, Lord Brown, and the noble Baroness, Lady Murphy, talked about the absence of a statutory definition. I can tell the House that we are aware of that and are listening particularly to the recommendations of the Joint Committee. However, the debate demonstrated some disagreement over the right way forward. There are various options, such as definitions in the Bill or through a code of practice, but we clearly need to get to an answer in order to proceed.

We have talked about wanting a system that has the person's wishes and best interests at the heart of the process. That was raised by the noble Lord, Lord Touhig, and endorsed by the noble Baronesses, Lady Barker, Lady Finlay, Lady Greengross, Lady Meacher, Lady Browning and Lady Hollins. It is absolutely right for us to be clear that there is no watering down of the interests of the individual concerned through this process. As the noble Baronesses, Lady Barker and Lady Finlay, pointed out, capacities can fluctuate; as the noble Baronesses, Lady Browning and Lady Hollins, pointed out, they can also be varied—strong in one area and weak in another. Any system needs to take account of that and I can tell the House that it is absolutely not our intention to water down the role of a person's expressed wishes. The best interest test still applies absolutely in the care setting, but the necessary and proportionate test is to account for those cases where a person may wish to do something regarding their liberties which is contrary to their best interests for their individual care. Striking that balance and making sure that there is proper oversight, with proper advice for people who are unable to enunciate their own wishes, is at the core of getting the Bill right.

As noble Lords have also pointed out, getting the Bill right is actually about getting a statutory code of practice right. It is out of date and there is a degree of urgency about improving it. I will return to that in a moment but, in talking about the statutory definition, I will finish on the power of attorney and the role of families. They still have primacy under the Mental Capacity Act, the principles underpinning which still apply. It will not be possible to deprive a person of liberty when the attorney acting on their behalf has stated that their best interests are served otherwise. I want to make that clear but it is something that we will need to explore and explain better. Attorneys will be part of the group that is to be consulted, and the Bill creates an explicit requirement for further consultation with families. Family members can also act as appropriate persons, so I think there is a greater strengthening of the role of those acting on behalf of a person deprived of their liberty in the process of scrutinising that and making sure that it is done appropriately.

Baroness Barker: If this matter is unclear to some of us who can claim to be fairly well informed on it, clearly, there has been a communication problem. Might I suggest to the noble Lord that it would be enormously helpful—as it has been in similar situations—to have a copy of the Act, as amended by the Bill, for us and interested parties to look at? Believe me, it makes the whole business a great deal clearer and easier to understand.

Lord O'Shaughnessy: That is an excellent suggestion. I should be clear: any confusion comes from a failure to communicate on our behalf, rather than there being any suggestion that noble Lords who are extremely expert on this do not understand what is proposed. There is a need to explain better exactly how all this will work in practice.

Obviously, the system depends on the quality and independence of the reviews, assessments and authorisations that take place; that issue was particularly raised by the noble Lord, Lord Touhig, and the noble Baroness, Lady Hollins. There were also questions asked by the noble Baronesses, Lady Tyler, Lady Murphy, Lady Jolly and Lady Thornton, about the capacity of those carrying out assessments in local authority care homes, the NHS and so on to do them properly and in a way compliant with the law. I agree with noble Lords that in the coming weeks we will need to set out much more clearly how that independence support and those assessments will be staffed and provided, making sure

that there are sufficient resources and proper training. I am reassured that training in the implications of the Mental Capacity Act is part of medical training, and that there are Health Education England resources for that. Clearly, all that will need to evolve as we go through this process and the Act itself is amended.

The noble Baronesses, Lady Barker, Lady Greengross, Lady Tyler and Lady Murphy, and the noble and learned Lord, Lord Brown, asked about the interaction with mental health legislation and whether we should have delayed publication. The noble Baroness, Lady Tyler, described a tension between the two Acts. We are conscious of the interface—that is the term used—but there is an urgency to reform the system, notwithstanding its interaction with the Mental Health Act. We do not yet have a timescale on completion of the review and any subsequent legislation that might be required. There has been lots of talk about the work to reform—the committee, the Law Commission, the Joint Committee and so on—and we need to get on with this, cognisant all the time that subsequent changes may need to be made once we have the outcome of the Mental Health Act review. It is not in my gift to promise time for legislation in the future but we are cognisant of the need to make sure that our interface works, once we have the review itself completed.

Several noble Lords asked why the Bill does less than the Law Commission. We could spend a lot of time going through that, but I do not propose that we do so at this point. We can achieve non-legislatively several of the Law Commission's proposals; it is made up of lawyers, so they prefer law but there are other ways of doing things. One of the key issues raised is the Bill's not applying to 16 and 17 year-olds. There is clearly an important interplay here with the education, health and care plan process, but I have listened to noble Lords on the subject today and shall reflect on whether we can do something about it.

The code of practice was raised by the noble Baronesses, Lady Finlay and Lady Greengross, and my noble friends Lady Barran and Lady Browning. Getting it up and running quickly is critical. Detailed work is going on, and we need to be very specific in it to provide reassurance about how it will work. Unfortunately, I do not have a timetable yet for its production, but I will endeavour to get hold of one. We need to make sure that its implementation is properly resourced. The CQC will continue to inspect its implementation, so there will still be that quality oversight.

A few other issues were raised. Many noble Lords referred to "unsound mind" being an unhelpful and, frankly, out-of-date phrase. I do not disagree. The concern here is the interaction with the jurisprudence and the ECHR itself. If we were to move on that—I make no commitment at this point—we would need to think it through very clearly, but I would like to explore it.

The noble Baronesses, Lady Barker and Lady Jolly, asked about legal aid. I can confirm that it is, and will still be, available on a means-tested basis. The noble Baroness, Lady Meacher, and my noble friend Lady Browning asked about advance consent—an issue that the Law Commission also raised. Again, there is an important distinction to be made here between an advance decision to refuse treatment, which will continue to be respected and is untouched, and advance consent to a future deprivation of liberty. Although that was in the Law Commission report, officials engaged in the process indicated that this did not receive support from families. There was a concern that you could sign yourself up to being deprived of your liberty at some point in the future, so it did not garner support. Perhaps it was the wrong subset or sample of people; nevertheless, we need to consider the best way forward on that.

Finally, the noble Baroness, Lady Thornton, asked about the equality impact assessment. I do not have an answer at this stage about why it was not carried out but I will endeavour to get one.

To conclude, I hope that I have been able to summarise the main issues and topics. Clearly, there are some very big questions that still need to be answered, but I return to the point that my noble friend Lady Browning made, which is that we need to solve the problems this time. We cannot introduce another Bill or piece of legislation that just creates a problem three years down the line. It is not just about the Bournewood gap; it is about making sure that we avoid, and do not create, any other gaps. The words "nightmare" and "disaster" have been used to describe the current system, and that is why we need to act now, but clearly we need to act in such a way that we do not create another problem further down the line.

It has been clear from this debate that there is still much work to be done to provide the right kind of reforms that we all want to see. Looking at the Chief Whip, I am sure that we will have adequate time in Committee to make sure that the Bill is in the best possible shape. We saw a nod of the head from the chief, so that is good. This debate has demonstrated—the noble Baroness, Lady Thornton, said as much—that there is no group of people better qualified to improve this legislation and make sure that we get the right reforms. I look forward to engaging with noble Lords and others throughout the coming months to make sure that we can achieve that and deliver a Bill that provides for people deprived of their liberty the fair and proportionate access to justice that we all want to see.

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

National Lottery

Question for Short Debate

6.27 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what steps they are taking to maximise the income from the National Lottery and its use for the arts and good causes.

The Earl of Clancarty (CB): My Lords, I was going to start this debate by saying that we are a select group this evening, but I understand that the gap is filling up, which is very welcome. I look forward to hearing everyone's contributions and, of course, the response from the Minister.

[The Earl of Clancarty]

The National Lottery, on its inception by John Major's Government in 1994, became very quickly a popular national institution and to date has raised over £38 billion for good causes involving 535,000 projects—an achievement, and a continuing achievement, that the British public should be extremely proud of.

At the outset I should like to mention a couple of extraordinary statistics relating to film production which have caught my eye. To date, 14 Oscar winners and 42 BAFTA winners have been significantly funded by the National Lottery, and last year a lottery-funded film, Ken Loach's "I, Daniel Blake", won the top prize at Cannes, the Palme d'Or. Nor was this the first lottery-funded film to win a prize at Cannes. These achievements alone illustrate how much the National Lottery has become a truly important feature of our cultural landscape, without even touching on the enormous significance of the lottery for so many areas of the arts, heritage, sport and community projects, about which I am sure we will hear more during the course of this debate.

I believe that this is the right time to have a debate about how we ensure the continuing success of the National Lottery—in other words, to take a health check. I tabled this debate in February, hearing that, after many years of continuing growth, returns from the National Lottery in 2016-17 slipped by 15%. So the question is: is this a temporary blip—and one hopes that it is—or are there other longer term concerns? Whether or not related to that fall, which has this year been slightly reversed, there are key concerns that need addressing, which I will come to. The decline in income led directly to a Public Accounts Committee report with recommendations that was published on 28 March. I understand that in a matter of months the process of awarding the new licence will begin.

Next year will be the 25th anniversary of the National Lottery, so my first question to the Minister is: what plans are there for that celebration? I hope there will be plans for a big celebration including television documentaries on the lottery's achievements in all the different sectors, with full involvement from all the media, including the BBC which played host to the National Lottery for so many years. This week also happens to be National Lottery in Parliament Week and I hope that, among other events, your Lordships will visit what will be a hugely informative and entertaining display in the Upper Waiting Hall, as well as the reception tomorrow.

There are challenges ahead. A key concern is the threat posed by other potential rivals, in particular the umbrella society lotteries. The arguments for complementarity and competition are separate. If we believe in the prime importance of the National Lottery, and there are many good reasons why we should, it is important that there is clear blue water between the National Lottery and other lotteries, yet that gap is being increasingly narrowed. The Government's current consultation on lottery reform ends on 7 September this year, and I hope that relevant comments made in this debate will be understood to contribute to that consultation. The Government's preferred option, which I disagree with, is to increase quite substantially the sales and prize limits from limits which were previously set to try to ensure that the National Lottery was not affected.

What the Government ignore in the consultation is the impact on the National Lottery of an increasingly closely perceived association within the marketplace between the National Lottery and the umbrella society lotteries that, to a certain extent, already exist. As Camelot's excellent briefing tells us, in 2010 the National Lottery represented 85% of lottery advertising, yet, worryingly, by 2017 this had been reduced to 45%. Camelot says that it cannot be correct that these industrial-scale umbrella society lotteries with combined sales of around £370 million are spending more on advertising than the National Lottery with sales of £6.952 billion. Camelot argues that an expenses cap for these lotteries needs to be reintroduced and it recommends that it is set at 15%, the limit that existed before the Gambling Act 2005.

When I walk into my local Tesco Express, I see, away from the main counter, side-by-side the National Lottery stand holding the forms for selecting your own draw numbers and the Health Lottery stand. Not only does the Health Lottery stand mimic the style of the National Lottery, it has emblazoned on it the advertising, "Only £1. That's half the price of Lotto", the clearest evidence that the Health Lottery sets itself up as an aggressive rival to the National Lottery. This is wholly unacceptable. It would be fair to say that businessman Richard Desmond has an understanding of how this type of competition works. One only has to think of how he launched *OK!* magazine as a rival to the established *Hello!* magazine using a very similar visual design to clever effect.

The effect of this and other advertising, such as the presence the People's Postcode Lottery now has in television advertising, is surely inevitably not only to risk money being taken away from the National Lottery but to muddy the waters between them. Although it is good that the main television promotion of the National Lottery has returned to Saturday night TV at prime time, it is on ITV within an ad break, which means that it is disallowed as an advertised programme. At the very least there is the danger that the public start to see the umbrella society lotteries as equivalent to the National Lottery. There are some, I am sure, who will even perceive the Lotto and Health Lottery stands I have referred to as being part of the same operation when we should be doing everything possible to maintain the National Lottery's distinctiveness.

This brings me to a second, related concern. It is one of the recommendations of the PAC report that,

> "Camelot should work with the Lottery Distributors to better publicise the link between good causes and the Lottery and communicate the contribution to good causes … at the point of sale".

I strongly agree. One of the things that really needs to be done is to reconnect the public with the original reasons for setting up the lottery in the first place, and of course the 25th anniversary next year is a perfect opportunity to do so. Although many now play and check the results online, 75% of the public still play through retail outlets. Camelot has rightly increased participating retailers from 28,000 in 2011 to 46,000 today, and has plans to extend into other supermarket

brands. At present the public get little idea of the good causes currently represented at these sales points other than, for instance, being directed to the National Lottery website among other text on the back of scratchcards.

Certainly much more can be done to clearly and boldly publicise individual projects, and in particular projects that are local to the retail outlets. Just as an example, I am sure that shoppers at my local supermarket would love to know that their contributions, and indeed local winners' contributions, have been used to fund the wonderful Mary Rose Museum in Portsmouth, where it is natural for me to take friends and family who visit me in Hampshire. To this end, I suggest to the Minister, in consideration of a closer liaison between the operator and the distributors, that Camelot's National Lottery website and the Good Causes website could be usefully amalgamated, with good causes themselves being easier to identify by both sector and local area.

To be fair, Camelot itself has been very aware of these concerns. Perhaps more can be done internally to make the operation more effective but the Government should listen carefully to what Camelot has to say, not as another self-interested lottery operator but as having been the guardian of the National Lottery for 24 years, with all the experience that that has entailed and a successful record of running it. It should be noted, too, that the original "crossed fingers and smiley face" logo continues to be recognised by 95% of the public, and that in itself is an achievement. Something that the Government have got right is the closing this year of the loophole that allowed other lottery operators to offer bets on EuroMillions, which we are very grateful for.

The particular concern over the 15% drop has been in part because the distributors need to have the confidence that the income from the National Lottery will be reliable over a number of years. This affects long-term projects in particular. The Heritage Lottery Fund tells me that very few projects have been dropped after the initial delivery grant following a process that supports the best quality of projects in as geographically comprehensive a manner as possible, but uncertainties over the year-to-year reliability of funding will quite quickly affect the decision-making over what projects can be safely sustained. Someone working in this area said to me last week that if we are not careful we may find ourselves sleepwalking into a position of no return. The Government have to decide whether they want to allow increasingly unfettered competition or to properly and unequivocally support a much-loved institution that also happens to be a precious national asset. I hope the Government will opt for the latter and that, as a consequence, the National Lottery will continue to go from strength to strength.

6.38 pm

Baroness Andrews (Lab): My Lords, it is a great pleasure to follow such an excellent, comprehensive and forensic speech. I congratulate the noble Earl on securing this timely debate. We have the PAC report and in the past few weeks we have had the Government's response to it—and of course we have the Government's own review of society lotteries. All that makes for an opportunity to raise some fundamental questions about whether we can expect the same sort of success from lotteries in the future as we have had in the past.

I have to declare an interest as the deputy chair of the Heritage Lottery Fund and chair of the Heritage Lottery Fund in Wales. Like other distributors, we are responding to the implications of meeting increasing demand with falling resources in the past year. We are trying to bring as much creativity and foresight as we can muster, and I am grateful to the noble Earl for referencing that.

Since 1994 the HLF really has exceeded the best expectations in securing and revealing our heritage. In doing so it has, uniquely, worked across the four countries of the UK. I have often spoken in this House about the great value of our heritage of language, landscape and historic environment. It is a treasure that continues to grow year on year in terms of our economic prosperity, particularly in areas such as Wales, but it also contributes uniquely to the resilience of our communities, to a sense of belonging, to pride, to identity and to continuity. It is beyond praise.

Understanding that is the first step to understanding how to put it to work in the best sense in future. It is important to set out the scale, as the noble Earl did: £38 billion has been invested in the National Lottery. The Heritage Lottery Fund's role has been to distribute £7.7 billion, which has been invested in more than 42,000 projects. I could spend the rest of the evening describing just some of them. It is very difficult to choose which.

Wherever you look—whether it is the extraordinary vitality of our global museums in London; whether it is the small, remote cottage of Hedd Wyn in the mountains of Snowdonia, a sadly deceased poet who died during the First World War before he learned that he had won the bardic poem in the National Eisteddfod in 1917; whether it is saving the very awkward capercaillie bird in Scotland, which seems to have a death wish for all sorts of different reasons; or whether it is saving a great painting or a lost park—all these things make up the pleasure and pride of communities. I pay tribute to all those people who, over those 25 years, have worked so efficiently to do such a great job.

But it has depended on the continuing success of the National Lottery itself. Until 2012 we could take that for granted, but the first recommendation of the PAC report pointed to the fact that, since the renegotiation of the contract in 2012, Camelot's profits have gone up but the returns to good causes have gone down by 15%. Significantly, the Government agree with most of the PAC's prescriptions for change. Put simply, fewer people are playing the lottery. We need to know why. The noble Lord has talked about society lotteries, but I shall not pursue that because he gave such a good account of it.

Other possible issues include the change in the price of the tickets, the changing nature of the games themselves or the fact that the lottery brand is now rather too familiar. The Government have said that they are looking at a range of strategic changes and the validity of expectations that are held of them. The review will conclude in the autumn, and we look forward to that. The Camelot briefing for tonight, which was very helpful, set out the four areas in which it is focused on

[Baroness Andrews]
driving change: an improved range of games, an enhanced retail offering, updated digital capability and a reinvigorated brand. All that needs to happen.

My question to the Minister is: what will be the test for success for Camelot? It is encouraging that it is addressing decline, but do the Government really think that the proposals will make a fundamental difference? What else might the Government invite Camelot to consider? In particular, when there is such an increase in online gambling, is there not a case for a review of the impact of online gambling on the lottery? Has the Gambling Commission done any research or made any estimates about that relationship?

I know that we will get a thoughtful response from the Minister. We have had a marvellous Minister in Tracey Crouch and I am sure that the new Secretary of State has the licence renewal at the top of his very full in-tray. The Government need to get a grip on this. Things are changing. Brexit will bring the loss of structural funds which support the transformation of town centres, and it will cut our environmental funds, which help conserve rare species. Local authorities are no longer the active leaders that we wanted them to be: they are under the cosh. The whole funding environment is hugely, intensively competitive. Year on year, we in HLF know that, without our funds and without the extraordinary efforts of the voluntary and statutory sectors, our heritage will be at greater and greater risk.

That certainly makes for greater uncertainty for all the National Lottery distributors. It makes planning securely very hard. We have to keep income, reserves and commitments in line. It is becoming very difficult to do that. One of the most important recommendations in the PAC report concerns the difficulty of getting access to the information we need to manage forward programmes. So it is vital in this context that we get timely projections of income for returns to good causes, and that those projections are shared between the department, the regulator and the operator.

While the PAC and the Government, rather unusually in this report, pay tribute to the unsung heroes in the shape of finance directors, they cannot plan wisely or fairly unless they can rely on forward projections. For example, while there were improvements in income towards the end of 2017, which is acknowledged by the operator, they have fallen back since the beginning of this financial year—so we need action now. For some time now, all the distributors have been dealing with the challenge of irregular or infrequent forecasts. There was some improvement towards the end of last year, but there is still no agreed understanding of their income for this year or over the next few years, despite being over one-quarter of the way through the financial year. May I press the Minister to ensure that this work is done speedily and effectively to allow for sensible planning and distribution of funds to applicants for grants? These are people who may have spent years and, indeed, hundreds of thousands of pounds in putting in their application in which they have invested such hope and expectation. We owe it to them to be able to plan securely.

It is also important, as the Minister will appreciate, that the Government take advantage of what the lottery distributors already know in their expertise. They have built up a considerable level of experience on risk and projection but, for some reason, the department still declines to share the weekly sales data that DCMS holds. I do not understand this. I urge the Minister to take the message back to DCMS. To share the data would allow a more collaborative effort to identify trends and risks; it would avoid serious issues downstream. I would also really like to hear from the Minister that the Government and the Gambling Commission are going to focus on very strong competition for the next licence, including examining the structure of incentivisation within the licence, caps on marketing and the impact of the National Lottery levy on the operator. We need the best outcome.

I would also like to hear the Minister urge Camelot to intensify the good work that it has done already in trying to address some of these problems. It needs to do more. The 70th anniversary of the NHS is one obvious thing that Camelot should focus on and celebrate. It is trying very hard—and we have already heard about the opportunities that will be presented in the 25th anniversary year—but there is still much to be done. The noble Earl was quite right: we all want people who play the lottery to know more and enjoy more of what it means for good causes. Our own research at HLF has recently confirmed that people positively want us to fund projects with a social purpose, including in particular projects that deliver skills and training to young people.

We would love to tell more stories about the human impacts and the change that has been brought about in all corners of the UK. In Wales, for example, recent townscape heritage grants to Blaenavon and Newport will lift confidence and enterprise, as surely as they will lift community spirits. As for sharing the good news for lottery players, a start was made. Last December, the "Thank You" promotion meant that over 400 National Lottery-funded attractions offered special events or opened their doors free to members if they bought a lottery ticket with them—a simple idea and a wonderful success. We want more of that. Lately, we have funded some wonderful projects, such as Jodrell Bank, the NHS at 70, Gainsborough's House and Lake Vyrnwy in Wales. These are the sorts of things that we really want to go on doing to the best of our ability. None of that would have happened without the National Lottery. The demand is relentless. It behoves the Government really to get a grip on the situation and attack the detail of the funding.

6.48 pm

Lord Beith (LD): I intervene briefly in this debate, so well introduced by the noble Earl, with whose key points I very much agree. I also very much agree with the points made by the noble Baroness, Lady Andrews, who has done so much work in this area. In intervening, I declare my interest as president of the Historic Chapels Trust and the North of England Civic Trust, both of which have been able to save distinguished buildings and make them available for wider community use, thanks to the Heritage Lottery Fund. I am also chair of the heritage committee of the Methodist Church.

As the noble Baroness, Lady Andrews, said, we are in a very difficult funding environment with severe constraints on all the other key sources of funds for this kind of work, especially Historic England—in passing I must pay tribute to the help that it is giving the Historic Chapels Trust to seek a good administrative basis by working with the Churches Conservation Trust. Funding from local authorities is now under the most severe pressure and rarely available. As the noble Baroness, Lady Andrews, indicated, European funding streams are threatened. This leaves the Heritage Lottery Fund expected to do much of the heavy lifting of capital funding with much reduced resources.

It also raises the question of what happened to the concept of additionality and the view that was very strongly expressed when the lottery was introduced. It was going to enable us to do things which public funding could not normally finance. It has done many of those things, but it has crept increasingly into the gap left by the withdrawal of traditional public funding, particularly in local government care for the main buildings of a community. There is the added problem—this is not a criticism—that the policy objectives of HLF involve wider community use. This is quite understandable but it can limit the kind of project that can be undertaken at a time when it is virtually the only funder still on the scene. This poses a risk to some buildings and artefacts of exceptional aesthetic importance which are limited in their potential for wider community use and involvement.

Most of the time, there is no real conflict between the preservation and restoration of landmark buildings and the promotion of healthy communities. People attach enormous value to the buildings and places that have mattered in their lives and those of their ancestors, and which tell the story of their community. A community that loses its landmark buildings has its sense of deprivation further increased. We see that very much in some areas where the loss of buildings has been great and there is also significant deprivation.

It has been my privilege to support, and see the results of, great projects part-funded by the lottery. It is a moving experience to see the joy on people's faces when buildings they thought they were going to lose are now available to them to use. This is cultural capital, wisely used. I recognise some of the issues raised by the noble Earl, but it cannot be left entirely to the lottery to fund things that matter in our society and are of beauty and quality. It has developed a valued role, but there are responsibilities that still rest with the Government and agencies such as DCMS, Historic England and others. They should take their share and be enabled to do so by public funding.

6.52 pm

Lord Berkeley of Knighton (CB): My Lords, I am also grateful for the opportunity to speak in the gap. I approve of my noble friend Lord Clancarty's debate and of what he is trying to achieve. However, it is important to sound one note of caution. It is easy to be congratulatory, but we should remember that this is about gambling, about which I have certain reservations. I have seen impoverished families spending far too much on tickets. That said, nobody is forced to buy a ticket. I buy one quite often, not because I really think I am going to win—although, like everyone, I enjoy the dream—but because I know that the money is going to some of the causes about which the House has heard.

As I go round the country and visit many arts centres, libraries and concert halls, I have been struck and impressed by developments which would not have happened without assistance from the Heritage Lottery Fund. In particular, I would be grateful if the Minister could address an important issue which has not been mentioned thus far: the extension of disabled access. Libraries, cathedrals, concert halls—sports grounds even—have a series of ramps that enable people to enjoy these great beauties, which they would not otherwise be able to do. We must remember that this money comes from all of us, so the whole of the general public should be able to benefit. That must include those less fortunate, either through circumstances or disability. That is a real achievement and I congratulate everyone involved in it.

6.54 pm

Lord Kerr of Kinlochard (CB): I too declare an interest, as a former trustee of the National Gallery, and I now help a wonderful museum in Glasgow called the Burrell Collection, which is in receipt of generous support from the Heritage Lottery Fund. Quite right too—it is marvellous.

I am a huge supporter of the Heritage Lottery Fund, particularly now that, as the noble Baroness, Lady Andrews, said, it has spread its largesse. At the beginning it was maybe a little too fixated on metropolitan good causes, but now one sees good being done right across the country, and these days the selection processes are done extremely professionally. I am therefore a huge supporter. I am less of a supporter of the lottery. I am uneasy about this tax, which is the most regressive tax in the United Kingdom. It is regressive in the way it is collected, because not many high-income households buy lottery tickets, and in the way it is spent. That can be exaggerated, but the point is that not many low-income households go to Covent Garden. There is a potential problem here: the combination is a little perverse. The lottery takes money from people who are least able to afford it and spends a fair amount of it on the entertainments of those who could certainly afford them themselves.

I cannot help thinking that voluntary donations to the HLF, collected by HMRC through the tax system, would be a more satisfactory way of supporting the Heritage Lottery Fund and extremely good causes. If one financed it that way, it seems that it would be possible for the HLF to come into the scope of gift aid. It might also attract the attention of the Carnegies and Rockefellers of our day, as it clearly does good across the same sort of range of good causes that Andrew Carnegie supported in his time. Therefore, mine is a slightly cautionary note—the same note that the noble Lord, Lord Berkeley, struck. I cannot believe that it would be a wholly unalloyed good to have an all-out campaign to sell more lottery tickets, but to ensure that the HLF has more money to use would be an unalloyed good.

6.58 pm

Lord Foster of Bath (LD): My Lords, it is becoming a bit of a lottery to know who will speak next. I congratulate the noble Earl on securing this debate, and I agreed very much on the various points he raised. I am delighted that I am following the noble Baroness, Lady Andrews, who, as my noble friend pointed out, has done so much in the field of heritage in this country. I hope that while the Minister will take account of everything the noble Baroness said, he will pay particular attention to her proposal that there be a proper review of the impact of online gambling on the National Lottery.

I congratulate all three noble Lords who jumped in to speak briefly. My noble friend Lord Beith is absolutely right to remind the Government that they must not rely on the lottery as the provider of many of the good things that we want to see in this country. I take entirely the point made by the noble Lord, Lord Berkeley, on the wonderful work that is done, particularly by the Heritage Lottery Fund. He referred also to taking into account the needs of a wide range of people, including, for instance, disabled access. I hear entirely what the noble Lord, Lord Kerr, says. He spoke eloquently in support of many of the good things that have happened but then raised concerns about the way in which the money is raised, and he has properly come up with an alternative. I confess that I suspect his alternative would not bring in anything like the sums of money needed to achieve the wide range of projects.

At its inception in 1994, my party opposed the National Lottery, but we were clearly very wrong. As the noble Earl rightly pointed out, it has brought in something like £38 billion and helped over half a million projects. He did not point out that it has also brought around £15 billion into the Exchequer's coffers. However, I do not want to use what limited time I have got extolling the National Lottery. Rather, I want to raise a few areas where I think improvements could be made that would bring in even more money for good causes.

In doing that, I am conscious that reports such as the NAO report last December, the PAC report in April this year and the recent review carried out by the new CEO of Camelot have already led to some improvements beginning to being made. These include, as the noble Baroness, Lady Andrews, said, an improvement in the range of games, more investment in outlets and upgrading the digital capacity. However, there are four areas in which work could still be done: additionality; umbrella lotteries, which have already been raised; taxation; and promotion of the lottery.

Your Lordships' House will be well aware that it was John Major who established the principle of additionality: that National Lottery money should add to but not substitute for government expenditure. Sadly, this principle has not always been followed. Indeed, during the Blair years, the creator of the National Lottery, John Major, was highly critical of what Labour was doing, saying that,

"since it took power, Labour has diverted Lottery funding into areas that have historically been funded by the Exchequer".

He went on to accuse Labour of,

"muddying … the waters between Exchequer and Lottery revenues".

Interestingly, almost immediately after John Major criticised the Labour Party, the Conservative manifesto proposed a Club2School scheme to be funded from the National Lottery, along with a number of other schemes such as a school leavers programme. All three parties have been guilty of this. For instance, all three, with varying degrees of reservation, accepted the need for National Lottery funding to be made available to support the 2012 Olympic and Paralympic Games. The principles have of course been developed further: it is not just additionality now—we also talk about complementarity.

My point, however, is simple. Whatever the principles, there should be clear evidence that they are being adhered to; otherwise, money will leach out into things that the Government themselves should definitely be funding. I have always believed that the reports from lottery distributors should state precisely how they have met the additionality and complementarity principles. I argued for this as far back as 2005. However, over the weekend, I was reading the Big Lottery Fund's annual report for this year, and all I found, on page 47, were the simple words that all the awards made in 2016-17 were "consistent with the principles". There was no explanation of how that was done. Can the Minister explain what independent evaluation takes place to ensure that lottery funding meets the principles? Is he satisfied with the monitoring that takes place?

As other have already done, I want to touch on so-called umbrella lotteries. I recognise that, in recent times, action has been taken on lottery-style games being run by gambling operators, but it has taken since 2005, when that issue was first raised, for action to be taken. Also in 2005, I first raised the issue of umbrella lotteries. I pointed out that the online lottery, Monday, appeared to be offering a prize of £1 million, yet the then maximum prize allowed for a society lottery was £200,000. To achieve that £1 million prize, Monday brought together five so-called society lotteries that were not paying any tax. That was established in competition to the National Lottery.

Since then, we have seen the growth of these huge umbrella-type lotteries, particularly the People's Postcode Lottery and the Health Lottery, which have been mentioned, which give less money to good causes and do not pay taxation in the same way. In fact, the Health Lottery returns only the minimum of 20% to good causes, paying no tax. They have a huge promotional budget—we have heard about the sort of tricks they get up to—far larger than for the National Lottery. They distort the lottery market and undermine the original intention that there should be a single, national lottery, and they reduce funds to good causes.

I first formally raised this issue with the then Secretary of State in 2006. I tried again in 2011 with the new Secretary of State, now the Foreign Secretary, and I am now taking my chance with the Minister. The Government's current review of society lotteries provides an ideal opportunity at long last to address this particular issue, so can the Minister explain what action is being considered in relation to umbrella lotteries, whether the Government will reconsider a limit, say of 15% as has been proposed, on the level of expenses allowable to society lotteries, and what impact the Government believe the proposed increase in the maximum society

lottery prize to £500,000 will have on returns for good causes? Surely, as research shows, increasing the jackpot still further encourages more participation in the umbrella lotteries and less in the National Lottery.

The umbrella lotteries have an additional advantage over the National Lottery. They do not pay lottery duty. So I turn briefly to taxation. As noble Lords will know, the National Lottery pays 12% lottery duty, which places it at a considerable disadvantage to the umbrella lotteries, and to gambling and gaming operators which provide far less to society. For many years, Camelot has argued for a change to a gross profits tax regime, arguing that it would give it greater flexibility to respond to the new market forces. Some 11 years ago, in the other place, the DCMS Committee looked at this matter and saw then that a change to GPT would add £50 million a year to good causes and additional money into the Exchequer. I know that discussions are under way, and I hope that the Minister can update us on this issue. I also hope that he will accept that it is important that this is resolved before we begin the discussions about the new competition for the next round of the National Lottery licence.

Finally, reference has been made to the issue of promotion. Public understanding of the good causes to which National Lottery funding goes is nowhere near as powerful an incentive to participate as the possibility of winning life-changing sums of money—I fully understand that. But it does still matter. This year, the PAC pointed out:

"We are concerned that awareness of the National Lottery's support for good causes has fallen, and that this is likely to have contributed to reduced participation".

More should be done to make communities aware of the benefits that the National Lottery has brought them. As the noble Earl, Lord Clancarty, pointed out, the 25th anniversary provides a particularly good opportunity to do that.

I live close to the sunken city of Dunwich in Suffolk. It has an excellent museum explaining how the sea has transformed a once-thriving city and port into a tiny hamlet. The museum boasts a sign saying, "Supported by the Heritage Lottery Fund". I suspect that few people who visit that excellent museum are aware that the funding actually came from the National Lottery, so I welcome the news that Camelot, the National Lottery promotions unit and the lottery distributors are working together to,

"make The National Lottery and its purpose far more relevant and visible".

That is vital. But I am especially pleased they will now start talking about a single, clear brand name:"One National Lottery". I hope that the Minister will be able to update us on progress in that area. I hope that he will also acknowledge that unless action is taken in relation to the huge promotional budgets of the umbrella lotteries, all of that effort may well go to waste.

The National Lottery has been and continues to be a huge success story, transforming lives and communities. Ensuring that it continues to do so in the future means that the issues that I and others have raised certainly need to be addressed. I look forward to hearing the Minister's response.

7.09 pm

Lord Griffiths of Burry Port (Lab): My Lords, I thank the noble Earl, Lord Clancarty, for being as ever a watchdog in this area. He registered his intention to have this debate in February. It is a bit of a pity that it is happening today rather than tomorrow, because some of the results of the Question we are discussing about the outcomes of the National Lottery will be on display elsewhere in the building. We could have lavishly referred to all of that and thus made our case without having to speak about it. There is no doubt that, in terms of the good causes that are supported by the National Lottery, the whole face of our country has been changed, so the object of this debate is to ensure that we do not lose momentum. The expertise of the noble Lord, Lord Foster, and of the noble Baroness, Lady Andrews, speaks for itself.

I have some personal experience of the operation of the lottery. I was the president of the Methodist Conference in 1994 when the National Lottery was established. We have done fire and brimstone about gambling for quite a long time and I think it was expected that I would unleash my Welsh oratory to good effect as I denounced the incoming activity called the National Lottery—and indeed, since I love fire and brimstone, I was very tempted. But I had talked to people and become aware that the lottery was something very much in line with what the public wanted. I remember appearing on a television programme presented by my noble friend Lady Bakewell on this very subject. I limited myself to two areas of serious concern.

One has been mentioned adequately by several contributors to the debate; namely, that we hoped that the income raised would not be at the expense of government expenditure but in addition to it. That was one of the strong points that it seemed appropriate to make. The other point I wanted to make in those days was that it is well attested that gambling as an activity creates problems among a certain percentage of those who indulge in it. There have been many sociological studies and while the percentages vary—I have seen 6% and 12%—let us acknowledge that problems are going to be created. Why should the National Health Service pick up the tab for dealing with problem gamblers? Should there not therefore be a levy on all those involved in the gambling industry which could be given to the NHS to help it cope with the problems?

Having said all that, the Museum of Methodism on City Road whose refurbishment I oversaw benefited enormously from the Heritage Lottery Fund. It is quite right to say that we should get clearer branding on all this so that we know that it is one single entity that provides these moneys. So the chickens have come home to roost as far as Methodism is concerned—but let it be said that of the £2.5 million we spent, £2.25 million was raised elsewhere, with £250,000 from the Heritage Lottery Fund.

On the other hand, at the moment I am struggling with someone to try to raise money for a project to encourage black opera singers to find their way in the high culture world of opera. Of course, it does not have the right cachet and does not meet the criteria,

[LORD GRIFFITHS OF BURRY PORT]
but it is a worthy cause that would widen the pool of brilliance available to us so that when Covent Garden does benefit from the Heritage Lottery Fund, we could have a few performers inside who have also benefited from it—and why not? So tomorrow I shall be down on the Terrace looking at all the wonderful things that have been done with this fund.

Camelot has written a briefing paper, which I—and other noble Lords, as I understand from the speeches so far—have read. It was a nice bit of common reading for us. Camelot recognises the very problems that we are discussing and has had an important set of meetings to evolve a strategy for the immediate future, knowing that there has been some staleness in the way things have been working and that financial returns have not been as good. Its four objectives, which were referred to by my noble friend Lady Andrews and others, include an improved range of products. Who am I to talk about EuroMillions, Lotto and Thunderball with any authority? But they do represent a widening of the variety of products.

Over the years, I have discovered that even something as fresh as a daisy today will be a wilted bloom tomorrow. Keeping things fresh and renewed is a very important part of the exercise. People are familiar with the National Lottery now. They are no longer thrilled by it. I remember "It could be you". Do we not all remember that? All I can say is that I always bought my tickets—by proxy, of course: I am a Methodist minister and you have to be very careful about these thing—but it was never me and has not been thus far. For all that, I remember the thrill of the beginnings of National Lottery very well. I wish the Camelot operation well as it seeks to continue to refresh the product and give it continuing bite on the public mind, as it were. We have talked about the brand. I asked the Camelot members to whom I spoke about its retail activity and broadening its presence in the retail world. When high street shops are all shutting, is that necessarily where it ought to be? But they persuaded me that there are ways in which they can cope with all that.

The question of a balance between the National Lottery and society lotteries has been amply referred to. I have also spoken to people from society lotteries—at least, from one or two of the ones that we can cope with, I should say. There is a way of gathering things together under an umbrella and finding ways to avoid paying tax through loopholes and shortcuts. It is incumbent on the Government to look at that. It has been referred to again and again over the years. I trust that the Minister will assure us that the time has come to take this in hand.

I know that we have an ongoing consultation. I know that Camelot has set strategic objectives. Therefore, it seems that we are on the wrong side of things that are about to happen and which we cannot yet evaluate. I hope that the noble Earl, Lord Clancarty, will put down his name now for another debate in November, when we can see the results of the consultation exercise and how the impact of Camelot's strategic goals is working out. There has to be a balance of some kind between the National Lottery and local expressions of a lottery. If the balance is right, they can be complementary, but it will need the wisdom of Solomon. I look to the Minister; my conversations with him have suggested Solomonic qualities in his character, so let us hope that it all works out well.

Finally, we had a debate on fixed-odds betting terminals. With a sigh of collective relief on all sides of the House, we welcomed the fact that the Government seemed committed to taking a £2 stake as the norm, rather than something between £2 and £100. Then we were all disconsolate because of the time it is taking to implement that decision. None of guessed in that debate that it would be so intricate. I remember the Minister's colleague trying to explain the critical path to implementing what we had all decided was a very good thing. So let us remind ourselves that we have recognised the problematic nature of betting on lotteries and decided to stop it. I hope that it will not be as intricate to deal with what we have decided in this instance as it has been in the other.

Well: gambling. A Methodist minister at the Dispatch Box going on about getting a wholesome approach to all these matters. The noble Lord, Lord Beith, a friend of mine, talked about those projects where the money applied led to the widening of access to the project that was being refurbished. I cannot see why, if that works for a chapel of the north of England, it cannot work for the Covent Garden opera house, which also ought to have its access widened so that little old ladies with Zimmer frames can go in and listen to the treasures of music as much as anybody else.

7.20 pm

Viscount Younger of Leckie (Con): My Lords, I do not know about Solomonic characteristics, but I am pleased to respond to this debate. I sincerely thank the noble Earl, Lord Clancarty, for raising a discussion on the National Lottery at this pivotal point in its history. We have nearly succeeded today in having as many or more speakers in the gap than those who put their names down to speak in the first place, such is the noble Earl's popularity. As he said, we stand on the cusp of the National Lottery's 25th anniversary year and work has begun to consider the shape of the National Lottery when the current licence expires in 2023.

I start by addressing a question raised by the noble Baroness, Lady Andrews, and the noble Lords, Lord Berkeley and Lord Foster, about the importance of the relationship between online gambling and the National Lottery, and the link to the next bidding round. It is an important issue and it will certainly be considered by DCMS and the Gambling Commission as we consider the design of the next licence.

Before we get into the details, I will set the scene. We believe, as some noble Lords have said, that the National Lottery has been an undeniable triumph since it was launched by Sir John Major in 1994 with the objective to raise money to enhance the sports, arts, heritage and charity sectors in this country. It is easy to forget that the lottery also raised funds to help us mark the millennium. Its performance has far outstripped the initial expectations of £1 billion for good causes per year. In fact, more than £38 billion has been raised over the National Lottery's 24-year lifetime, as was mentioned. This has meant that more than 500,000 good cause grants have been awarded

across the whole of the UK. Every single local authority has benefited by an average of more than 1,200 awards.

So many individuals and organisations have benefited. I will select just a few to mention here. The National Lottery has supported the small and seemingly simple, yet very important, such as funding the travel costs to allow World War II veterans who would otherwise not be able to attend to take part in commemorative visits. It has allowed the United Kingdom to excel increasingly at the Olympic and Paralympic Games; supported more than 42,000 heritage projects, including the restoration of more than 19,000 historic buildings and monuments; and of course, as the noble Earl so eloquently mentioned, funded the overarching gamut of art and culture, inspiring and uniting us.

So, as the noble Baroness, Lady Andrews, said, it is vital that the National Lottery continues to thrive, but equally we must acknowledge that this relies on people continuing to buy tickets. As the noble Earl said, while ticket sales, and thus amounts generated for good causes, naturally fluctuate year on year, there have been undeniable challenges recently. Recent years have seen lower levels of good cause income than we might have hoped for. The noble Lord, Lord Griffiths, might be right that there is, as he put it, a certain staleness in it. However, the sums raised are still not insignificant—namely £1.6 billion in 2017-18.

But let me be clear: we are concerned about the fall in income. The noble Baroness, Lady Andrews, raised some points about this. We understand the difficulties this drop in income means for distributors. The Gambling Commission has provided detailed econometric modelling of future national lottery returns to distributors. That modelling was last shared in March this year. She also raised a linked point about the sharing of data by the department, but I reassure her that DCMS is also working with the Gambling Commission to ensure that distributors have all the information they need to plan ahead—it is an important point.

So, what are the Government doing about this? As soon as the income drop became apparent in 2016, the Government engaged immediately with the lottery distributors, with the Gambling Commission, which regulates the National Lottery, and with Camelot, the National Lottery operator, to agree a series of remedial actions designed to return the National Lottery to its strongest possible position. This remains work in progress. Returns to good causes appear to have stabilised in the 2017-18 financial year, following the 15% drop in 2016-17, but the Government know that there is more to do and we continue to drive this strategy actively. Last year, Camelot undertook a thorough strategic review of its business and has brought in a wide range of measures to improve results. This has already seen the return to television of the National Lottery draw results and the introduction of additional games. Further measures are in the pipeline to reinvigorate and extend the portfolio, with new products such as an annuity-based game, allowing winners to receive a monthly prize over a long period. Further details will be forthcoming on this.

Lottery distributors themselves are also working with Camelot to improve the public's perception of the National Lottery and ensure that players are aware of the good causes they are supporting. Some valuable points were made on this by the noble Lord, Lord Foster, who was particularly concerned—this was a clear focus of his speech. Events, such as the Heritage Lottery Fund's "Thanks to You" campaign last December, are building an association between the sale of lottery tickets and the local good cause projects that these tickets ultimately fund. I deliberately use the word "local" because lottery funding has reached all corners of the country. In addition to successful film-making, which was mentioned this evening, and saving the capercaillie, which, as a Scotsman, brought a smile to my face, the lottery funds allotments in Angus, pottery in Port Talbot, theatre in Thurrock, bell-ringing in Belfast, wildlife in Westminster and cricket in Rugby.

The noble Lord, Lord Beith, spoke about the importance of funding our historic buildings through the Heritage Lottery Fund and he is right. I also echo the thoughts of the noble Lord, Lord Berkeley, about the lottery providing important funds for heritage. In the last financial year the Heritage Lottery Fund provided £20 million for places of worship and has ensured that the same proportion will be spent this year, so the breadth is pretty wide.

The noble Earl, Lord Clancarty, voiced concerns that society lotteries, such as the Health Lottery or the People's Postcode Lottery, pose an increasing threat to the National Lottery's monopoly position—this addresses the points raised by the noble Lords, Lord Foster and Lord Griffiths, as well as the noble Earl, about so-called umbrella lotteries. I reassure the House that we continue to look at this issue very carefully and have taken expert advice from the Gambling Commission. The noble Earl may be surprised to hear that current evidence suggests that while players see the two types of lottery as distinct, there is little danger of product substitution. The evidence shows that players are drawn to the National Lottery because of its life-changing prizes and the ability to support a broad range of causes, while they often play society lotteries to directly support a specific charity or cause.

However, to help ensure that this distinction is maintained—as the noble Earl said, this is important—this year the Gambling Commission introduced stricter requirements for branded society lotteries, such as the Health Lottery, to be clear with players about the cause that each draw is being held to support. Society lotteries are now also required to make players aware of how much of what they raise goes to good causes. The Government value the place of society lotteries in raising money for charities and good causes—more than £250 million last year, supporting causes such as the Royal British Legion, the RNLI, and air ambulances across the UK. The noble Lord, Lord Griffiths, made the point that there is a balance to be struck between national and local, and the Government remain committed to ensuring that both society lotteries and the National Lottery are able to thrive side by side; indeed, we have heard from many organisations that receive valuable funding from both.

Lord Griffiths of Burry Port: I think we were worried about the level playing field in terms of taxation and conditions for operating and so on. I wonder if there is an answer to some of those concerns.

Viscount Younger of Leckie: Indeed. Some points have been raised on that issue and I will come to it later, but if I do not manage to address it, I will certainly write to the noble Lord.

The recently launched consultation, which has been mentioned today, outlines measures aimed at finding the right balance between enabling the sustainable growth of society lotteries while protecting the National Lottery's unique position. I invite noble Lords with an interest to engage with the consultation before its closing date of early September. I echo the noble Earl in saying that we welcome all views on this matter. The noble Earl raised some important points about the contributions and this debate will be taken account of in the consultation.

In conclusion on the matter of falling sales, we believe that Camelot's revised strategy will go a long way to address this issue, supported by the distributors and, of course, DCMS.

The noble Lord, Lord Berkeley of Knighton, spoke about disabled access. He made an important point that all areas of visitation must have the correct disabled access. The point has been noted.

As has been mentioned, we will be celebrating the 25th anniversary of the National Lottery in a little over a year's time. Work is under way to ensure that we make the most of this opportunity to further showcase the National Lottery's singular ability to deliver life-changing outcomes, both in the awards it makes to good causes and in the value of prizes that can be won by lottery players. To reassure the noble Earl, the Government are looking forward to celebrating this important anniversary. Working together with Camelot and the distributors, we will make everybody aware of what this great institution has made possible over the past 25 years. Detailed plans are being advanced and further details will be announced in due course.

The National Lottery has had an unparalleled impact on 21st-century Britain. Across the country the lottery is not just well known but has a recognised brand name, as the noble Earl said. This is not surprising if you stop to consider that the majority of National Lottery money goes straight to the heart of our communities, locally and nationally. Some 71% of the grants made are for £10,000 or less; in other words, small amounts of money going to community-led projects that make a big impact. Less than 1% of the grants awarded exceed £1 million.

Furthermore, as the noble Earl said, this week is National Lottery in Parliament week. As the noble Earl did, I encourage noble Lords to visit the Upper Waiting Hall, where one can learn more about the Lottery and its history, and participate in a range of competitive activities—to keep noble Lords on their toes before we break up for the Summer Recess.

More seriously, we must ensure that we retain the warmth of public sentiment for the National Lottery among existing players and attract new participants. It is critical to ensuring that income is maximised to continue delivering awards across the breadth of this country and to the widest array of good causes. There are some questions that I still have to answer and I will write to all noble Lords. Noble Lords can be assured that this is a clear imperative of the Government and is a core objective in the department's single departmental plan—

Lord Foster of Bath: I think there is some confusion in your Lordships' House. I will read the Minister a quote from the Gambling Commission, which said:

> "The relatively low prizes and generally limited distribution footprint are key factors that have traditionally differentiated",

the society lottery sector from the National Lottery. Do the Government still believe that that distinction should be maintained?

Viscount Younger of Leckie: That is a question that should be put to the consultation. This debate will allow these sorts of questions to be put to the consultation. I reassure the noble Lord that that will be taken into account.

To conclude, we hope to see the National Lottery continue to flourish, both now and for the next 25 years.

House adjourned at 7.34 pm.

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