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OFFICIAL REPORT

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

Friday 7 February 2020

10 am

Prayers—read by the Lord Bishop of Leeds.

Domestic Premises (Energy Performance) Bill [HL]

Second Reading

10.05 am

Moved by ***Lord Foster of Bath***

That the Bill be now read a second time.

Lord Foster of Bath (LD): My Lords, I am pleased to introduce this relatively simple Bill. I look forward to hearing from noble Lords speaking in the debate.

The Bill is simple: it requires the Government to do a number of things, to which they have already committed in writing, by certain dates, but it does not require them to be done in a specified way. Flexibility is built into the Bill. There will of course be much to decide, from the definition of fuel poverty and the availability of data to how to retrofit listed buildings and how to incorporate the use of new technologies into energy performance certificates, but such decisions do not impact on the Bill.

Some brief background may help to set the scene. As a Minister in DHCLG I was able to build on the work of my noble friend Lord Stunell and introduce a number of measures to improve the energy efficiency of new houses, but we both knew that the really important issue was to improve the energy efficiency of the existing housing stock. Successive Governments have introduced measures to address that issue, particularly in relation to helping those defined as fuel poor. I pay tribute to my noble friend Lady Maddock, who began to address this many years ago in her Home Energy Conservation Act in 1995. Despite all the efforts, though, and in light of the climate change emergency, it has become clear that not enough is being done. As the Chartered Association of Building Engineers, which supports the Bill, said:

"Overall, improving the energy efficiency of existing homes remains one of the key, but still to be fulfilled, challenges facing the property sector and is essential if we are to reduce carbon emissions and ensure all homes are warm and affordable to heat."

Writing of the need for swift action, Elmhurst Energy said:

"Now is the time to make that step change necessary to ensure that our existing housing stock is improved."

Last year the Committee on Climate Change, whose chairman, the noble Lord, Lord Deben, I am pleased to see in his place, published *UK Housing: Fit for the Future?*. It assessed the preparedness of our housing stock for the challenge of climate change, and concluded that the measures to reduce emissions from the UK's 29 million homes, responsible for 17% of all carbon emissions, had stalled; that energy use in homes had increased; and adaptations of the housing stock to meet the impact of changing climate are lagging far behind what is needed to keep us safe and comfortable. Crucially, it went on to say that there needed to be greater policy certainty since the absence of such certainty has led to skill gaps and lack of investment in construction, design and the development of new technologies for the urgently needed major refit programme. As Andrew Warren, chairman of the British Energy Efficiency Federation, recently wrote:

"On far too many occasions the energy efficiency industry has been made promises by Governments, only to see them withdrawn. This has resulted in the laying off of staff, the loss of investment and the closure of factories."

However, it is welcome that recently the Government have announced their intention to meet various ambitious targets: a target to improve the energy efficiency of the homes of the fuel poor; a target to improve the energy efficiency of the rest of the housing stock; and a target to improve the efficiency of heating systems. For some of this at least, significant sums of money have already been earmarked.

The Bill places a duty on the Secretary of State to achieve these targets—the ones the Government have already committed to. Placing them in legislation and requiring annual reports on progress provides Parliament with the means to ensure the delivery of government pledges. It is an approach just like that of the Climate Change Act, which sets overall targets in law for 2050, intermediate targets through the five-yearly carbon budgets and a duty on government to prepare proposals and policies for meeting them and to report on them. Crucially, the Bill also provides the policy certainty that the industry so desperately seeks, so that it can play its part in achieving the targets. Of course, none of this should detract from the steps we should all be taking to reduce our energy consumption, so I welcome the work of organisations such as the Energy Saving Trust, and Citizens Advice with its recent Big Energy Saving Week, in providing helpful tips on how to do so.

Before providing more details about the Bill, I should point out that Sir David Amess recently introduced a similar Bill in the other place. Sadly, events overtook it and it did not make progress, but I thank him. In drafting our respective Bills, we were both helped by civil servants from BEIS and the Sustainable Energy Association, whose president, the noble Lord, Lord Best, is also in his place. I thank them and especially Ron Bailey of the SEA, whose assistance I have declared in my register of interests. I also thank the Minister for the constructive, if challenging, discussions we have had on the Bill.

So, what does the Bill do to increase the energy efficiency of domestic properties? It uses as the benchmark, as proposed by the Government, the achievement of band C on an energy performance certificate. An EPC is an assessment of the energy performance of and carbon emissions from a property. The higher the EPC, the more efficient the property, with less carbon emitted. A lower-EPC property leaks heat, is more expensive to run and emits more carbon.

Part 1 of the Bill deals with the Government's commitment to end fuel poverty by 2030, as stated in the Clean Growth Strategy and on more than a dozen

[Lord Foster of Bath]

occasions. For example, in your Lordships' House, the noble Lord, Lord Henley, answered a Written Question with reference to policy to

"meet the Government's commitment to upgrade all fuel poor homes to Band C by 2030."

The Bill requires the Secretary of State to achieve that commitment with three caveats: where people refuse to allow required works to be carried out; where it is not technically feasible to achieve the objective; and where the cost of doing so is excessive. Bringing fuel-poor households up to EPC band C by 2030 will ensure that some 2.4 million households can live in warm homes with reduced fuel bills, with average savings of around £245 per annum according to studies by Verco and Cambridge Econometrics.

Part 2 deals with the Government's objective to bring all remaining homes up to EPC band C by 2035, where practicable, cost-effective and affordable. One estimate suggests that 19 million homes in the UK do not currently reach this standard. The 2017 Clean Growth Strategy shows that this objective was initially just an aspiration. However, by April 2019, the then Minister, Claire Perry, made clear that all homes reaching EPC band C was a target; indeed, she described it as an "ambitious target".

More recently, the Government said they agree

"wholeheartedly that energy efficiency is a fundamental pillar of our approach to reaching net zero emissions, addressing fuel poverty and cutting energy bills. This is why the Government has set ambitious energy efficiency targets."

The Bill seeks to help the Government deliver on their target to get all homes to EPC band C by 2035, which will lead to average fuel bill reductions of around £400 per year and a total energy fuel bill saving of over £8.5 billion per annum.

Finally, Part 3 deals with ensuring that all new heating systems installed in existing properties have a water return temperature of no more than 55 degrees centigrade, as called for by the committee of the noble Lord, Lord Deben. Again, the Government appear to agree since their *Domestic Building Services Compliance Guide* states:

"Systems with condensing boilers should be designed to have low primary return water temperatures, preferably less than 55°C, to maximise condensing operation."

Again, the Bill merely puts into legislation the Government's own intentions. I accept that the target date of January next year is somewhat unrealistic and, at a later stage, I will propose a more realistic one. Incidentally, I also believe that, although further discussion is needed, an amendment may be required to restrict the extent of the Bill to England rather than England and Wales.

Achieving the three targets set out in the Bill will of course require a great deal of money. However, with the help of the Sustainable Energy Association, we have shared with the Government, and can make available to all noble Lords, costings which show that most of the money required can come from committed government expenditure for existing policies and from non-government sources from existing policies such as the energy company obligation. Although we have several suggestions, it will be up to the Government to decide what policy levers to use to ensure that any remaining amount is found. However, I am confident that the Government will want to find solutions since, as they said in their response to the BEIS Select Committee on 1 October last year:

"Our analysis suggests that our EPC C aspiration for all homes represents good value for money both for Carbon Budget 5, and in the context of achieving net zero."

Overall, if the Bill delivers on its aim and the Government meet their targets, we will reduce fuel bills and the emission of greenhouse gases. We estimate carbon savings of nearly 24 megatonnes, which is roughly equivalent to cutting the carbon emissions of the UK transport fleet by one-third. We will save energy and provide the spur to business investment.

That spur is vital. The industry needs the certainty this Bill will bring. That is why it has the support of over 100 firms including Kingspan, Worcester Bosch, Vaillant, EDF, E.ON, Daikin and NAPIT, as well as installers, housing associations and organisations such as the National Energy Foundation, the Energy Saving Trust, the Solar Trade Association, WWF, the British Energy Efficiency Federation, Power for People and the Sustainable Energy Association.

Two years ago, writing about the similar Bill proposed by Sir David Amess, they collectively wrote to the Government, saying:

"In order for the energy industry to assist the government in achieving its ambitions, boardrooms and banks must be persuaded to invest in long-term infrastructure such as manufacturing and equipment together with research and development. This legislation will provide the certainty needed to trigger this vital investment in our sector."

In deciding whether the Government will support the Bill, I hope the Minister will bear in mind the enormous loss of confidence, and subsequent loss of investment, that rejection will bring. In fairness, I should add that two organisations, Friends of the Earth and the Energy Saving Trust, have been critical. However, their objection is that I should have set earlier dates for the targets to be achieved, so perhaps I should concede to being too reasonable.

In conclusion, the Sustainable Energy Association has said:

"The Clean Growth Strategy demonstrates the current Government's commitment to improving our homes. But introducing legislation is essential to ensure that their ambitions are achieved in the long-term regardless of who is in power. It is a legacy any Government should be happy to leave behind.

Our homes are where we sleep, work and play so ensuring that they are safe, affordable and healthy to live in is of upmost importance. This Bill will help to achieve this today and ensure that we are on our way to having a housing stock that is fit for future generations."

This is a simple and reasonable Bill, but it has far-reaching implications for our quest to tackle climate change and, not least, help the less well-off as we do so. I beg to move.

10.19 am

Lord Best (CB): My Lords, I declare my interests as president of the Sustainable Energy Association and in private rented and social housing, as on the register. I will say a word about the Sustainable Energy Association: it has private sector and non-profit members, and it campaigns for policy and practice solutions for securing

a low-carbon, energy-efficient future. The SEA's website is well worth a visit. I pay tribute to its head of parliamentary affairs, Ron Bailey, who is a wonderful advocate for sustainable energy and worked with Sir David Amess, another passionate advocate, to introduce a similar Bill in the other place. I am sorry to report that Ron Bailey was rushed into hospital this week. I send him best wishes for a speedy recovery. Thanks too go to Sam Crichton, who has also been working for two years on this Bill, now brought forward by the noble Lord, Lord Foster of Bath, whom I thank for his excellent speech and for championing this legislation.

I support this significant Bill. Its adoption would turn the Government's aspirations for the next steps toward a net-zero carbon future into reality. We could move from good intentions and inspiring words to the firm commitments—the essential certainty—needed to harness the energy, investment and innovation of manufacturers, installers, developers, property owners, lenders and investors. I want to add two points to those already covered so well by the noble Lord, Lord Foster.

First, there are the special circumstances of properties in rural areas. These will be in localities where fuel poverty is likely to be a special issue because average incomes are lower, while energy costs are higher, than in the country as a whole. There are 4 million properties off the mains gas grid. Many of these use oil, which not only is expensive but has high price volatility, which makes budgeting difficult, particularly for low-income households. The positive aspect, however, is that a rural setting is likely to be more accessible for solar energy and for ground-source heat pumps. Renewable energy sources may be more expensive but should be easier to tap into than in high-density urban locations; their use will be of greater benefit in these rural communities. So my first point is the need to rural-proof sustainable energy solutions.

Secondly, perhaps I could add some thoughts on the private rented sector, where energy standards are proportionately at their worst levels. The underlying problem is that the upgrading of properties in the private rented sector does not directly benefit the landlord, because more energy-efficient properties seldom generate higher rents. It is true that landlords can expect cost savings from good tenants staying longer, so saving the costs of reletting homes, and from ongoing maintenance bills being lower because they are so often caused by damp and condensation. But persuading private landlords to invest significantly when financial returns are not evident has proved a stumbling block to a series of earlier efforts, including the ill-fated Green Deal.

Currently, and quite properly, private landlords must cover energy-saving costs of up to £3,500, in most circumstances, if properties fall below the EPC—energy performance certificate—band E rating. It will be a big jump to require expenditure of up to £20,000, which may be needed if major works such as external wall insulation are necessary to achieve a band C rating. It is sensible for government to recognise from the outset that enforcing payment from the 2.4 million private landlords, the majority of whom own only one or two properties, will be a difficult and costly task.

As we all know, local authorities are overstretched and under-resourced; enforcement action in the PRS—the private rented sector—is already problematic. It is very different from working with council landlords and housing associations, which manage hundreds or thousands of homes and are fully regulated bodies. I suspect that the necessary co-operation of the private rented sector will be forthcoming only if the Government accept the painful necessity for significant grant-aiding or serious tax concessions for PRS properties. The Bill is flexible on ways and means, and can accommodate such governmental help. Its principles remain absolutely right.

In strongly supporting the Bill, I emphasise, first, the need for rural-proofing of future policy and, secondly, the necessity of engaging with the realities of the most complex sector—the now extensive private rented sector, for which I fear some serious governmental investment will be needed if we are to get things done. However, that investment will be well worth while.

10.25 am

Lord Deben (Con): My Lords, I declare an interest as chairman of the Committee on Climate Change and from the work that I do in other ways to increase sustainability. I thank the noble Lord, Lord Foster, for introducing the Bill, which seems admirable and one which we can all support. If my noble friend the Minister feels that I am a little critical, mine is the criticality of urgency rather than of the nature of what we have to do.

One of our problems is that we all know what we have to do and done for a long time. But we have not done it and we all share blame in that: the previous Labour Government, for putting the date for net-zero homes as far forward as they could so that no Minister would be around when it came; the coalition Government for then getting rid of that very important part of the deal; and the Conservative Governments for not getting on with it when they should have. Just as we can all celebrate the joint nature of the Climate Change Act, we also all have to take responsibility for the lack of urgency in dealing with these matters.

Net zero reminds us that urgency is all, because if we want to get to net zero in 2050 we have to do a great deal of the heavy lifting by 2030. If we do not, we cannot get to net zero by 2050. I have to argue with Extinction Rebellion's claim that we could get there by 2025. When you ask carefully as to how that group thinks we ought to do it, answer comes there none. All the work we have done clearly shows that you cannot do it as immediately as that, but that does not mean to say that you do not have very large numbers of things to do by 2025 and 2030. My doubt about the Bill is that it confirms the Government's targets, which are not good enough. I hope that the Government will not only accept the Bill and assist its passage, but recognise that it is not even a minimum. It is below the minimum that we need to do to achieve our ends.

I make just one comment: we are concerned with houses we already have, but we are making the situation worse by at least 250,000 homes every year because we are building houses today that will not meet our requirements. This is barmy and I am fed up with

[Lord Deben]
people, particularly Ministers of all kinds, telling me that because the other is the bigger issue they do not want to concentrate on the smaller one. Since they have been doing that, the bigger issue has gone up by 2 million. We have not done what we could have done.

One thing we will have to think about in considering the Bill is how we draw attention to the fact that houses should not be built now that do not more than reach the levels referred to in it. No new house should now be built differing much from a Passivhaus level—not a Passivhaus itself, because that has some complications that are not necessary. It needs the simplicity that Hastoe Housing is now giving to it. However, it is that level we should insist upon.

The nine big housebuilders, building nearly 80% of the homes that are bought, have avoided their duty to raise their standards on the basis that the Government have not raised them for them. Their federation is the only organisation I know which in its annual report—the most recent one published in October 2019—does not address climate change. This is the housebuilding business. It now looks as if the housebuilders have made a change; they have had a conference and they are working out how they will meet the target of no-fossil fuel connections by 2025. They have accepted that they are not going to "beat" the Government as they have on every previous occasion when they have tried to set some level from outside. My first suggested addition to the Bill—not objection—is that we make sure we think about that, because I have worked out that, between now and 2035, there will be 3 million new homes which under the present measurements will probably not meet the standards that the Government are trying to reach by that year.

The noble Lord, Lord Foster, raised the important issue of the skills gap. A problem this country faces right across the board in reaching our targets for net zero is in respect of the skills of the people who will do it. The work associated with this is marvellous for new jobs; it is one of the things that can happen so much in the north of England. We can do all the things that we want to do. It is a matter not of extra expense, but of better education, more targeted education, more provision of education, and no longer treating further education as some inferior way of learning. We need to deal with that, but the skills gaps will not be filled unless there is certainty in the industry. That was the point made by the noble Lord, Lord Foster, and anyone who has anything to do with this industry will accept it. It will not happen unless people know that they will need those skills in this year and for that year.

To do that, we have to examine the dates rather carefully. One of our problems is that we think that we are doing things on a certain date, but people who have planning permission, for example, manage to push the date out. I hope that the Government accept that these dates are the final dates, which are not to be moved on—actually, we want to move them back. I congratulate the Government on the remarkable step they have taken in accepting the advice of the climate change committee and saying that we will have a system whereby only electric vehicles will be sold from 2035—if not earlier—instead of 2040, which was manifestly outwith any system that we would need to reach net zero. I think that we can do the same with housing because we have a whole series of levers that I recommend to my noble friend the Minister.

It would be easy to insist that whenever any mortgage figure for monthly repayments is quoted on those banners outside new houses it should include the cost of heating. The mortgage price should never be quoted without the cost of heating, because that is the basic price. That would force housebuilders to admit to people that they are giving them an annual bill which should not be there, that if they built the house better they would not have that bill, both for heating and ventilation—I mention ventilation because that will be an increasing worry in view of the change in the climate which is already part of our existence; it is not something that we will be able to turn back. If we do that, we can make all sorts of arrangements.

I never understand why we cannot say that when you sell a house you have to show that you have raised it one energy performance level during the time you had it, or, if not, the cost of raising it another level will be put in escrow for the person who buys the house. I do not understand why we do not make it necessary for every survey to include clearly the cost of improving the house to the next level. That should be part of what the surveyor does so that people know what the situation is. The noble Lord, Lord Foster, did not refer to the fact that a high proportion—some say more than 60%—of people buying a house do not know what the energy efficiency level is. I have been to a particular housing area in my former constituency with one of my sons, who looked about the age to want to buy a house. We went around a house that was on the market for £500,000. I asked about the energy efficiency and the good lady said, "Very high." I said, "What do you mean by 'very high'? Is it A to F, or one to seven? Give me some idea." It became clear that she did not know whether A was high or low; she had not quite got that right, so she said "very high" again. I said, "Well, can I see what it is?" "Oh", she said, "head office has not given it to us." This was a series of houses that had been on the market for some time, half of which had been sold, and nobody could have known what the efficiency was because they were not provided with the information. That is Britain's second-largest housebuilder, which shall be nameless—although it was Persimmon.

I agree with the points made by the noble Lord, Lord Best, on rural-proofing, but rural-proofing should not be an excuse for not doing it. We should make sure that those things that cannot be done in the normal course of business are done because we have intervened. That is the matter of fairness. I say to my noble friend the Minister that we will not meet our climate change requirements if we are not fair. It is crucial that the people of Britain recognise that this is a battle which we all share, and which does not go on to the shoulders of the poorest. Unfortunately, the system that has been brilliant in bringing forward offshore wind bore much more heavily on those houses that did not have gas or alternative means of heating because their electricity bills were, and are, disproportionately high—because that is how we finance it. We must recognise that this is something for all of us. The benefits have to be seen, because many of them are interim benefits.

Above all, the people of Britain must feel that this is fair dos. When we design this system, this is the minimum that we can do—so much the minimum that it is not enough—but, as we design it, we must build into it the fairness for which the British people are so keen. If we do not do that, we will have gilets jaunes, and perfectly rightly too, because that is a statement not about climate change but about unfairness and unthinking imposition on the nation.

10.38 am

Lord Whitty (Lab): My Lords, I am intervening in this debate to support the Bill, at least as far as it goes, to call on the Government to give it their backing and to ask the usual channels to facilitate its rapid movement through the House. Also, like the noble Lord, Lord Deben, I shall put the Bill in its wider context.

It was 2015 when we last had a fresh, clear and comprehensive fuel poverty strategy. There was the start of a consultation last year, but we have yet to have any clarification as to the outcome of it or what the Government will do about it. Clearly, we need that as rapidly as possible.

Fuel poverty arises from the interplay of three broad aspects: inadequate household income; expensive energy bills, sometimes because of seriously inappropriate tariffs; and the inefficiency of the fabric of the building and its energy supply. A fuel poverty strategy needs to operate on all these fronts so that we get higher income into those households—if necessary, supported by the benefits system; lower prices and appropriate tariffs for those most likely to be affected by fuel poverty; and an effective intervention to improve insulation, energy supply and energy efficiency generally within the buildings in which the fuel-poor live.

It is nearly 20 years since I was the Minister with responsibility for this. We had some success on all three fronts. Specifically, we had a comprehensive taxpayer-funded intervention system to improve the fabric of domestic buildings. We still have a similar system in Scotland and Wales, but not in England. We also benefited from falling gas prices at that time, which was fortuitous and not my fault—at least, I do not claim credit for it. It was clear that fuel poverty was falling considerably under the old definition, although it would have fallen also under the new definition. Unfortunately, since about 2005 or 2006, there has hardly been a year when at least one of those three features has not been conspicuously absent.

Some interventions have undoubtedly taken a number of the fuel poor out of that category. I will not argue again about the new definition; it has some advantages as well as disadvantages. But the fact remains that fuel poverty—30 years on from when we first started defining it—is still an intractable problem for millions of households. Instead of appropriate tariffs, we have had the warm home discount and the winter fuel payment. These are very welcome to households because they help to pay the bill, but they do nothing to change the misguided structure of the tariffs or to engender energy efficiency within the household. Most of the social interventions that are now provided—I pick up on the same point as the noble Lord, Lord Deben, in relation to a subsidy for green energy—are paid for by what amounts to a poll tax on all consumers. This is resented, it is unfair and it is not the appropriate way to fund such interventions, because those who are fuel poor themselves in some cases or who are just above the threshold are effectively paying for the system.

Incidentally, this very morning I half-heard on the news at 7 o'clock that the Treasury might be looking at an income tax-based system. I listened carefully but did not hear that item repeated, but there was an item in relation to the Ofgem review of the cap, so it may well have been in that context. I would be delighted if the Minister could assure me that a move towards funding through general taxation was at least being considered by the Treasury and that I did not mishear it.

In 2014, secondary legislation defined the energy efficiency of buildings—or the target for it—by reference to EPC level C. I think that with a bespoke programme we could do slightly better, but I support this Bill in ensuring that the target is at least put into primary legislation. In broader terms, we need to improve the energy efficiency of all domestic premises, because of our climate change obligations and because heating in housing is a significant part of our total carbon use and is largely gas-based. We need to take some early decisions on how to decarbonise the provision of heating in our housing. Are we going for electrification in some form or other? It would be highly disruptive, given the millions of households with radiators, as compared with gas, but nevertheless may be the better solution, particularly if we cannot find a formulation for biogas or hydrogen-based gas that does not itself cause significant carbon emissions. Either way, a decision on that strategic choice is needed very early.

Other aspects of the Bill deal with energy efficiency of all domestic buildings. I would argue that the obligation should not be on just mortgage holders to describe the house; it should be on all those who are selling, including estate agents and, in relation to new build, it should be on builders, developers and indeed the local authorities that give the planning permission. This is so that we can begin to raise the energy efficiency of all premises. That should be part of a clear dimension for reducing carbon. We also need a clearer dimension for fuel poverty itself. Can the Minister say when we will get a new fuel poverty strategy and also when we will get a statement on energy policy more widely? I would be very grateful if he could give me a date for both of those because, at the moment, there are a lot of aspects of energy policy, including fuel poverty, that are floundering without a sense of direction. I support this Bill and hope that it goes through the House as rapidly as possible.

10.45 am

Lord Redesdale (LD): My Lords, I thank my noble friend Lord Foster for introducing this Bill. Looking around the House at those taking part in this debate, it seems to be a very small group who have been undertaking this work for, in some cases, decades. I remember raising the issue with the noble Lord, Lord Whitty, when he was a Minister, which was some time ago. I must declare an interest as CEO of the Energy Managers Association and as a landowner, as set out in the register.

[LORD REDESDALE]

Although my noble friend Lord Foster has said that this is a simple Bill, the problems associated with the language are anything but. I always have difficulty with the expression "fuel poverty", because it mixes the cost of fuel and the use of fuel. One problem we have of course is that, if the price of gas is low, then fuel poverty is seen as less of an issue, but fuel expenditure increases because people raise the temperature in their houses. This is not to denigrate the issue of fuel poverty; in fact, it was brought to me in stark relief when one of my tenants came to me to say that they were paying more year on year on their energy bill than on their rent. There was of course a simple solution—though not the solution that immediately springs to mind for many private landlords—which was to look at how I could increase the energy efficiency of the building. It was a complicated building to look at, being in a rural area and having been built over a number of centuries, but I realised that work needed to be undertaken. We did that work, but of course it had a 14-year payback compared with the rent. This is an issue that landlords often face. I believe there is an obligation on landlords that, if they cannot afford to rent out a property and the works, they should not own the property in the first place. That is a fundamental issue: we should not be pushing fuel poverty as an excuse.

There are ways of bringing properties up to standard, but there are a couple of issues that I raise in association with this Bill that will have to be addressed by the Government. The first is that, if we are to increase the energy efficiency of buildings, we will obviously have to look at the energy performance certificate. I remember when the legislation brought in that certificate in the first place; it is an excellent tool as far as it goes. The problem is that it was built around Part L at the time and really needs to be updated to reflect the movement that has taken place in terms of building materials—as the noble Lord, Lord Deben, pointed out—and the greater understanding of the use of buildings and what is possible. The EPC rating has been added to estate agents' particulars—I remember putting it forward in a Private Member's Bill, but it was put through in regulations by the Minister at the time, Yvette Cooper, even though there is apparently no such thing in law as estate agents' particulars. The rating was added for houses being sold by estate agents, which is an important point. The rating sets out where the building is now but also the potential that the building can achieve. For a lot of older buildings, which is unfortunately the majority of our housing stock, the potential is in many cases way below the C or B rating that we would be looking for in the future. We have to look either at replacing a large proportion of the housing stock or at how we rate buildings and make sure that they get up to the highest possible level, without making the targets almost impossible to achieve.

There are number of things you can do, especially on older buildings. You can replace the boiler, which is a major element; you can replace double glazing. The latter is a problem which the Government are going to have to address head on and have discussions with Historic England about. English Heritage—I had many discussions with them—and now Historic England are trying to preserve wooden windows because of the look of buildings. However, we should start looking at modern materials mimicking those used in the past. Trying to replace wooden windows is a major problem. Ones you buy now are meant to be of sufficient quality, but they often rot out in five to 10 years. There is a carbon cost associated with that which probably negates the energy you are saving. I hope the Government will have discussions with the relevant bodies on how we should go forward with buildings. A classic example is this building, which is grade 1 listed. I have had discussions with the House authorities on the leaded windows, from which the heat dissipates through the single frame and the lead. Hardly any of them fit properly and there are enormous drafts. The only thing worse than lead is brass. Many of the windows in this building have their joints fitted with that material.

There are always exceptions, but a lot of people go down the rabbit hole of using historic buildings as an excuse for not implementing many of the energy efficiency ratings. However, you can introduce a lot of measures without detrimentally affecting the fabric of the building. As this is a Private Member's Bill, I should direct this to my noble friend Lord Foster, but I hope the Minister will indicate whether the EPC rating is being looked at and whether Part L is still fit for purpose. A review of it against our climate change commitments would probably be the most beneficial step that could be taken. I remember having arguments about whether we should regulate for boilers at G rating and below to be outlawed and condensing boilers brought in. That single measure has had a greater impact on gas use in this country than any other. Part L is difficult. I remember discussing regulating this with DCLG, which argued that there was an embedded cost in the boiler itself which replacing the boiler could bring about in the carbon whole-life cycle. We did the work with Worcester Bosch and found that under 2% of the energy cost is in the boiler itself, rather than the fuel used. There would be a benefit in looking at Part L. This feeds across to the point made by the noble Lord, Lord Deben. The standard of houses being built at the moment is appalling. We have let the housebuilders get away with it because we want new houses, but the quality is very low and, in some cases, shocking.

The Bill is such a cornucopia of issues that I could go on for hours, but my final point is that the Government should look at cavity wall insulation, which is a scandal waiting to happen. If put in properly, it is of massive benefit to the thermal properties of a house. However, there is more and more evidence that a lot of cavity wall insulation has been put in badly so that it soaks up water, makes the house damp and reduces its thermal properties. The problem with insulation is very large and has not been addressed. A lot of the smaller companies who put in badly installed insulation have gone bankrupt or are not covered. This issue is coming down the line and will cause problems to a lot of householders. I spoke to a company whose main work is sucking out old cavity wall insulation and replacing it. That is an industry that we should not have. This comes back to regulation on how insulation is put in in the first place.

I welcome the Bill. Unfortunately, my noble friend Lord Foster will hardly be surprised if it is not taken up with open arms. He has been too long in the game

for that. It was depressing, listening to the noble Lord, Lord Whitty, how many debates there have been on this and the how many pledges broken. I will have been in this House for 30 years next year. I started being involved in energy almost as soon as I arrived. It was assumed, 30 years ago, that we would have passive houses built as standard. It was assumed that the retro-fit which took place in properties would have been at a much higher level over that period. We are now looking to catch up in 10 years, to make that happen. I am not sure that the target is achievable, but if we do not undertake the basics at this point, it never will be.

10.56 am

Baroness Jones of Moulsecoomb (GP): My Lords, I support the Bill; it is well thought out and very well written. The powers and duties would go a long way towards bringing Britain's homes up to truly liveable standards and condition. There is no hope of achieving net-zero targets without tackling our crisis of leaky, cold homes. The Bill would definitely help with that—and we all know that the Government need help with ideas to achieve their net-zero targets. Home insulation and energy efficiency is a core plank of an effective green new deal and a perfect example of how investing in our green future helps to create jobs and improve people's lives at the same time.

I am still fuming that new homes are not being built to net-zero standards, after the Government pulled the zero-carbon homes plan in 2016. Ministers are going to start celebrating their "new" policy of zero-carbon homes by the middle of this decade, but even if they do carry through on this, that is still 10 years of dirty housebuilding compared to what we should have seen. The noble Lord, Lord Deben, was right to draw the House's attention to this, and to name and shame Persimmon for not getting on with what is a social justice issue. That should be part of the business plan.

Of course, the Bill is not about new housing; we are talking about bringing Britain's leaky housing stock up to modern standards of energy efficiency. Britain's fuel poverty crisis is a scandal, and the Government's attempt to provide a solution has sometimes made things worse rather than better. The idea of putting the costs of energy efficiency schemes on to people's energy bills is one of the biggest accounting tricks in history. Shifting the costs of energy efficiency schemes off the Government's balance sheet and on to everyone else's bills has disproportionately harmed fuel-poor homes, especially those which have not received the insulation that their bills have contributed towards. I am happy that the Bill will shift the cost burden on to general taxation, which is a progressive system, rather than shoving it on to everyone else's bills.

I nearly did not speak in this debate—this is such a sensible Bill, why on earth would I? I have lots of fights on my hands with the Government on other Bills. This is so sensible, they ought to welcome it with open arms. It is a good opportunity to put the Government on record about their plans to make homes comfortable and affordable. The Bill goes beyond that, as well. If the Government do not pick it up, I will be nagging them about it for some time. If it completes its stages in your Lordships' House, I hope the Government will at least have the sense to ensure that it passes swiftly through the Commons as well. I have brought several Private Members' Bills here and they have always had quite a lot of opposition, but today, this Private Member's Bill is getting a lot of support. Therefore, the Government really should see this as an opportunity to take advice from a different quarter.

10.59 am

Lord Cormack (Con): Briefly, in the gap, I want to add my support to the noble Lord, Lord Foster, thank him for the way he introduced the Bill and echo his congratulations to my honourable friend Sir David Amess in another place. I want to speak for two main reasons. First, I say to my noble friend on the Front Bench that this Bill may be simple in its aims but it is complex in its implications and I believe that the only realistic way of dealing with this is for the Government to pledge to take the Bill over and give it the time it needs for scrutiny in your Lordships' House and in another place. I think that is essential.

The complexity issue was touched on by the noble Lord, Lord Redesdale, who talked about the majority of houses in this country being already built. He touched on a particular interest of mine: historic houses and buildings. I have the great privilege of living in a listed building in a cathedral close in Lincoln—we call it Minster Yard—where all the buildings are listed and where, at the centre, is one of the greatest buildings in the world: Lincoln Cathedral itself. Of course, all buildings, including all religious buildings, will have to be covered during the next 20 years. I know the Church of England has made a commitment—rather than giving any details on how it will carry it out—but we have to recognise that there is a particular challenge with historic buildings.

The noble Lord, Lord Redesdale, touched on this issue when he talked about wooden windows. My noble friend Lord Deben touched on it obliquely when he talked about the need for skilled workers. I declare an interest as the chairman of the William Morris Craft Fellowship Committee. We are going to need ever more proper apprentices who do a proper apprenticeship and who will be able to work on these buildings. The joy of our country lies very much in our historic towns and villages; not only in the houses but in the churches and cathedrals. We must honour the past, as well as prepare for the future in how we adopt and adapt to the needs of climate change. It is not a simple task.

Of course, the noble Lord, Lord Redesdale, is right to say that Historic England must be part of the team that deals with this. Imaginative solutions are needed. Artificial materials may, in some cases, be adequate, but in many cases they will not, so we will have to address such problems as how to preserve wood for longer. It is a complex issue and I beg my noble friend on the Front Bench to give a commitment to this House today that he will, at the very least, discuss with the Secretary of State the absolute imperative for the Government to take this on.

11.03 am

The Earl of Erroll (CB): My Lords, I also rise to say a couple of words in the gap. I declare an interest: we farm some land and also rent out several old cottages. The Bill makes a lot of sense, especially for new housing, but I would like to make an appeal for some of these charming country cottages. We have discovered that we can do the basics easily—loft insulation, better heating insulation, et cetera—and get them to an F rating that way. To get them further up, I have found that you have to get them on to mains gas, which is much more expensive and more difficult. It depends on whether there is any nearby—and then we hear that this may be banned by 2025, I believe, so what good is that? We have been doing it anyway.

You can draft-proof, but you have to be careful, because you must maintain ventilation. It is very easy, if you hermetically seal these old buildings, to start getting that nasty black mould. It builds up and then people say, "Oh, gosh, we have terrible damp." Actually, all they have done is keep the windows closed. There is a real problem, because then you get into the health issues. How you get over that in an old building, I am not very sure. Many people who live in older houses accept this: you have windows open occasionally and you wear a jersey in winter; your house is heated to 17 or 18 degrees, not 20 degrees—you do not pretend you are in the south of Spain. I, as a Scot, am certainly one of those people: it does save quite a lot of money. Equally, there are limits to all these things.

What I wanted to say is that if you do not allow exceptions, you are going to lose a lot of lovely cottages in lovely settings and that would be a great shame. It will not improve the housing stock for rental, either.

11.05 am

Lord Teverson (LD): My Lords, I declare my interest as a trustee of an organisation in the south-west called Regen SW.

I am someone who loves quizzes—pub quizzes, family quizzes at Christmas—but when it comes to English literature I am useless, except perhaps for two classics, I suppose. One is *A Tale of Two Cities* by Charles Dickens, with its first line:

"It was the best of times, it was the worst of times".

I can get that one. Then of course there is the first line of Jane Austen's *Pride and Prejudice*:

"It is a truth universally acknowledged, that a single man in possession of a good fortune, must be in want of a wife".

It is a quotation that I think is amazingly sexist. I am told that even in 1813, when she wrote it, it was meant purely ironically. However, while working out what I was going to say in this debate, I came across an even better first line:

"UK homes are not fit for the future".

Of course, that is the first line in the climate change committee's report into housing in the UK that was published under the chairmanship of the noble Lord, Lord Deben, exactly one year ago.

Why is the UK housing stock not fit for the future? UK housing accounts for 14% of our carbon emissions, a major amount. Between 2017 and 2018, that actually rose by 1%. One of the outcomes of that, and one of the major themes of my noble friend Lord Foster, is that we still have 2.5 million households in the United Kingdom classified as suffering fuel poverty. My noble friend Lord Redesdale mentioned how many of us have talked through these subjects over many years. If I am right, that number has gone up and down, but it has never gone significantly down. It has changed with the changing price of energy bills over time.

One reason that it is not working is because of the chopping and changing of policies that we have heard about. There was Warm Front under Labour, Green Deal under the coalition and the energy company obligation. ECO, one of the current policies, has taken the low-hanging fruit but is now finding it more difficult to find ways to increase household efficiency. We have had others as well, including the renewable heat incentive, the future of which we do not know. There has been very little continuity of policy in this area.

As other noble Lords have mentioned, that has had a secondary effect in terms of skills. It is not so much that we do not have the skills in the UK economy to do what is needed in this area, it is that we train people, build them up, get them in programmes and when those programmes stop, the companies make them all redundant. They all go and we have to re-employ them two or three years later and upgrade their skills until we have a new programme and, we hope, some stability into the future.

One of the other areas that does not work, as mentioned by other noble Lords, is that where we have the regulations we do not check that they are enforced. There is laziness from contractors, builders, planners and even local authorities in making sure that our intentions, even when they are a regulatory or legislative necessity, are applied. Part of that is due to local government cutbacks but there is also a mentality that, once we have made a regulation, we can almost say "Well, that's it; cheerio, job done" when in reality we have to make sure that it is enforced.

As a result of that, in terms of energy efficiency levels and energy performance criteria just 1% of our housing stock in the UK is A-rated. That means that 99% does not come up to the standards that we will need for the future. That is why our housing stock is not fit for the future. I recommend, having come across it, the Scottish Government's programme of effectively interest-free loans to get a lot of this to move on. Germany has a very effective scheme as well.

I welcome my noble friend's Bill in this area because, as he has explained so well and simply, it puts the obligations the Government have given themselves morally and as targets in such things as the clean growth strategy into legislation. As I have said, that is not everything because we then have to make sure that those regulations are applied, but at least this is a first step. That is why it is very important that this moves forward. As the noble Lord, Lord Cormack, has said, this should really become a government Bill rather than a Private Member's Bill.

I remember that in the Energy Acts during the coalition and afterwards we had a thing called the energy trilemma: the conflict between energy security, the cost of energy and therefore energy poverty, and decarbonisation. The great thing is that, now we are in

2020, it is no longer a trilemma. Renewable energy and decarbonisation are cheaper than traditional fossil fuels and can give us security at the same time. The great vision on energy for the future is that we can go ahead with confidence in that area.

On this Bill we are looking at the opposite of a trilemma—perhaps we might call it a "tribonus". If we manage to do this, we will not only decarbonise our economy and have lower energy bills through energy efficiency, which means less fuel poverty, but have the added bonus of increased health and all the implications that more healthy homes and families will have on the National Health Service.

We all know those first two lines of *A Tale of Two Cities*. The next two are:

"it was the age of wisdom, it was the age of foolishness".

This is the age of wisdom in that we know all the technical fixes that can do what my noble friend Lord Foster is asking, but we have the foolishness yet to have grasped that opportunity and apply it to what we are doing. That is the challenge. It is a truth universally accepted on these Benches that we have to get on with this. I ask the Minister to take this Bill and make sure that it goes through both Houses of Parliament so that we can start this journey.

11.14 am

Lord McNicol of West Kilbride (Lab): My Lords, like many other noble Lords, I thank the noble Lord, Lord Foster, for securing today's debate.

This Wednesday, the charity National Energy Action held the Nation's Biggest Housewarming. While many noble Lords will have attended enjoyable housewarming parties over the years, this event was a bit different; it aimed to highlight all those living in fuel poverty and the importance of having access to a warm, dry, safe home, something I am sure all noble Lords believe in. Therefore, I welcome the Bill's timely Second Reading, which allows us to shine a light on the NEA's work and the important issue of fuel poverty. By creating energy-efficient homes, we can tackle both this and the climate crisis.

The noble Lord, Lord Foster, rightly stated that it is all well and good setting high standards for new homes, but improving the energy efficiency of existing homes and housing stock must take priority. I think we all share the view of the noble Lord, Lord Deben, that homes being built today will not surpass the energy efficiency and future net-zero targets that are only a decade and a half away. That seems bizarre. My noble friend Lord Whitty clearly outlined the three factors that lead to fuel poverty: household income, expensive bills or tariffs, and the fabric of the building. As he said, we must aim to solve all three factors together.

With a few weeks left of winter, it is shocking to think of how many people remain cold in their own homes up and down the country. The noble Earl, Lord Erroll, talked about the choice to wear a jumper. To be fair, he was not talking about fuel poverty but about the properties of people in his area and their choice to put on a jumper, but for many it is not a choice. They cannot afford to heat their homes. They do not choose to put on a jumper or jacket to stop damp coming into the house; they have to do it to stay warm.

According to uSwitch, around 3.5 million UK households live in fuel poverty and are unable to adequately heat their homes. It also found that 1.6 million of these households choose between warming their homes and putting food on the table. The picture is particularly bad in Scotland. Last month, the Scottish Government published figures which showed that 619,000 homes were in fuel poverty in 2018. One in 10 was in extreme fuel poverty. Clearly, this is one of the many areas where the SNP has failed, and its new target of eradicating fuel poverty in 20 years is not nearly ambitious enough.

The worst consequence of this is winter deaths, on which the UK has one of the worst rates in Europe. According to a 2018 study by the NEA, 36,000 deaths over the previous five years could be attributed to conditions relating to living in a cold home. A further 17,000 people are estimated to have died as a direct result of fuel poverty. The NEA has called these deaths "preventable and shameful", and I could not agree more. Fuel poverty can and must end; it should be addressed together with moving towards net zero.

Turning to energy efficiency, as we have heard, decarbonising heat is a massive challenge for any Government, but it is one we must meet if we are to keep global heating way below the two-degree increase. According to the Committee on Climate Change

"It will be extraordinarily difficult to hit 2050"

net zero

"without a plan in place for heat very quickly."

Most homes have natural gas-powered boilers, which need to be replaced by electric or hydrogen boilers. Better insulation and more efficient appliances are other avenues to cut emissions and cut bills. The UK FIRES' report *Absolute Zero* also stresses how real investment in heat pumps is needed. These are already well established in many other countries, yet heat pump installation remains at very low levels in the UK. Do the Government propose any significant expansion in that area?

The broad aims of the Bill are therefore welcome—I say "broad aims" for the very reason that the noble Lord, Lord Foster, mentioned: the Bill's reasonableness. It would ensure that the properties of those living in fuel poverty have a minimum EPC band C rating by the end of 2030, and would force the Government to publish and implement a strategy to deliver on these targets. The Bill would enable the Secretary of State to require mortgage lenders to provide information on the energy performance of properties and new requirements concerning the energy efficiency of new heating systems installed in existing properties. As well as this, the Bill would make it a legal requirement for the Government to ensure that as many homes as possible are improved to EPC band C by 2035. However, Labour has called for us to move faster, and for almost all the UK's 27 million homes to have the highest energy efficiency standards by 2030.

Ultimately, we are discussing this Private Member's Bill because the Government are not doing enough on fuel poverty. Astonishingly, fuel poverty was not mentioned once in either the Conservative manifesto or the Queen's Speech. That is despite the Government's welcome consultation on the fuel poverty strategy, which closed

[Lord McNicol of West Kilbride]
last September. When will a response from the Government be published, and when will they publish their energy White Paper?

The Government have committed to spending £3.8 billion on insulating 2 million social homes, and £2.5 billion on retrofitting 200,000 fuel-poor households. While this is welcome, the spending commitment for social homes is far less than what is needed to fully retrofit a property, and a full retrofit will be offered to only a small fraction of the 3.5 million households in the UK living in fuel poverty. There is also no additional funding for most households. How do the Government plan to cut emissions and bills for the many? Labour has called for the Government to fully fund the retrofit of every low-income property in the country and provide interest-free loans to enable able-to-pay households to do that. We would also introduce a zero-carbon homes standard for all new homes.

In conclusion, everyone has the right to live in a warm and safe home but, sadly, this is not reflected in reality. Both the UK Government and the Scottish Government need to do more to alleviate and get rid of fuel poverty. Excuse the pun, but a lot more energy needs to be put in to eradicate both climate problems and fuel poverty.

11.24 am

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy and Northern Ireland Office (Lord Duncan of Springbank) (Con): My Lords, this has been an interesting and important discussion on a Bill that addresses an issue which I believe we all care very much about. As we look at the challenges facing the country in ensuring that all are able to live in a warm home, there is no doubt in my mind right now that that is a simple statement of ambition for everyone here.

The Government remain committed to delivering on a heat policy road map, and they will do so very soon indeed. It will look at how to both reduce emissions on buildings and address energy efficiency and will come as part of a series of announcements that we will make as we approach COP 26 in Glasgow in November. That heat policy road map is imminent. However, it cannot come alone; it must come alongside a fuel poverty strategy for England—I cannot on this occasion speak for Scotland. Again, that strategy will come very soon. These two combined policies will set out the series of steps which will be taken to bring us toward taking the necessary step to ensure that we have eliminated fuel poverty and addressed the energy efficiency of buildings in good time on our approach to our ambitious net zero target by 2050.

The noble Lord, Lord McNicol, asked when the White Paper is coming. It will necessarily come first, setting each of these policies and a wider range of policies into a broader context. Again, that is also part of our ambitious complete statement ahead of the Glasgow climate change conference.

On the question of ongoing investment in addressing the quality and durability of homes, we continue to invest some £2.5 billion in capital funding to improve the homes of those on lower incomes, and we are seeking to improve the warm home discount and energy company obligation. Each of these will be necessary.

A great deal has changed since the earlier incarnation of the Bill was introduced in the other place, not least that there has been an election, which is one of the reasons why that Bill did not make progress. In that election, the party of government, to which I belong, made a number of serious commitments in its manifesto, and it is worth while rehearsing what they are. There will be £6.3 billion-worth of upgrade for those in fuel-poor homes, particularly in social housing. We will consult on raising minimum energy performance standards in private rentals—again, as a number of noble Lords mentioned today, private rentals are perhaps the most difficult to reach of all properties, since they are in the hands of a large number of individuals. We will consult on setting requirements for lenders to improve the energy performance, which, again, should help us move in the right direction. Finally, we will consult on phasing out the installation of fossil fuel heating systems in off-gas grid properties—again, trying to get to that hard-to-reach final point in moving this forward.

We are putting forward a number of other policies, some of which touch on issues raised by noble Lords today. On the question of insulation, raised by the noble Lord, Lord Redesdale, he is quite right. You can have the best insulation, badly installed, and you achieve literally nothing. The problem with that is that if your kitemarked process does not recognise the installation, you could theoretically have a high quality and yet a low reality, and you might never know that, because there is no way to monitor it traditionally inside your own home. Therefore, we are instituting a new trust mark scheme, which should allow us to examine things such as cavity wall insulation to ensure that it is up to standard regarding not just the materials but the installation itself. That should go some of the way forward. We are also putting £5 million into the green home finance innovation to look at other ways in which we can address some of the issues inside homes, and £10 million to examine how best to retrofit.

A number of noble Lords, including the noble Earl, Lord Errol, questioned how we are able to look at some houses which are listed beyond the ability to address them. To be frank, it is a hornets' nest to try to look at the whole listing process, but that will need to be done. We are sitting in a Chamber that is surrounded by glass held in by pieces of lead. As this building goes through its retrofit, we have to ask ourselves how it shall achieve the highest possible standard, and what it can expect to achieve in that regard.

The noble Lord, Lord Teverson, asked why the number of people who seem to be stuck in fuel poverty does not seem to change year on year. He is right to ask that, and the answer is a more straightforward one, as it is a relative metric. It is always looking at the bottom 10% to 12%, so we will always get a similar sort of figure. However, because what we are measuring inside that will change but the numbers themselves may not, to measure progress within it we need to look at the fuel poverty gap, which is the difference in bills

between fuel-poor and not fuel-poor households. The fuel poverty gap fell from £873 million in 2010 to £812 million in 2017—the most recent statistics that we have. I do not think that is enough, if I am being honest, but it is a move in the right direction. The noble Lord, Lord Teverson, also asked about the renewable heat incentive. My right honourable friend the Prime Minister has committed to a replacement for that, but I do not yet know what that replacement will be, so I cannot give him any more detail on that.

The noble Lord, Lord Deben, made a number of serious points. His chairmanship of the Committee on Climate Change is welcome and his contribution is welcome in that regard. Our future home standards will be introduced by 2025. I know that he will quickly say that that is too late, and I understand why he would, but it will require new-build homes to be future-proofed, with low-carbon heating and world-leading levels of energy efficiency. As it happens, we are consulting on it right now, and consultation on that particular proposal closes today, so I fear those who have not yet put their thoughts on paper may be a little too late.

Lord Deben: Will my noble friend give way on that point? Can he assure me that in 2025, the new standards will come into operation on any house that is under construction, and not wait for people to have fulfilled their planning period; otherwise, it will not be 2025—as history tells us, it will be 2029?

Lord Duncan of Springbank: I will give that commitment; I think I can do that. This may not be in the consultation, but I think that would make perfect sense. We need dates to be meaningful, and 2025 is the meaningful date we are talking about here. If a piece of paper whistles towards me from the Box, noble Lords will realise that I have gone beyond my brief, but I think that at this point that commitment is something I can make—I hope. Yes, I have reassurance from over my shoulder.

The noble Lord, Lord Whitty, asked about the radio programme he heard this morning and what tax issue will come forward. I suspect that it is true to say that all of this area is being examined. The Treasury works in mysterious ways: I cannot tell noble Lords exactly what it is thinking about at this moment, but I am sure it is thinking very big thoughts. When it tells us what they are, I shall be very interested to hear them, much the same as the noble Lord.

What I have to come round to, and have been skirting around just now, is that although the Bill itself is welcome in so far as it facilitates this discussion and our debate today, we cannot support it. I appreciate that a number of noble Lords will be disappointed in that regard, but let me explain some of the reasons why we cannot do that today.

The first is that we have strategies coming which will examine this. I thought that was a piece of paper whistling toward me—good, it was not. I am sorry about that; I am distracting myself. The policies that we will be putting out in a matter of a few months will set the strategic direction and set in place within a road map how we will achieve it. The Bill before us would cut across that and reduce our flexibility when that comes forward.

The other aspect of the Bill is that it gives us no new powers or levers. It does not actually help us achieve the ends; it would simply set the framework within which we are to achieve them. Those dates will be contained within the strategies I mentioned. It will be important to ensure that the strategies have clear dates, and we have a road map with commitments which fit into a legal framework to ensure the certainty which underpins the purpose behind the Bill: to allow the building sector to understand what it is up against, what it has to commit to, and, frankly, what it should be exceeding. These should be setting minimum standards; there should not be any limit on their ambitions to move beyond that point.

I do not doubt that the noble Lord will be disappointed to hear that we do not support the Bill, but I can give assurances that in the development of the strategies to come, I would welcome his involvement and that of all Members of the House who have taken an interest in the Bill today. I would also welcome the involvement of Mr Bailey; I was disappointed to hear that he was ill, but would welcome his involvement in this process as the strategies become more robust. I think elements of the Bill will find a new home in the strategy as it manifests itself as a more solid approach.

I appreciate that that is not the outcome many here would have wished for, but I hope that noble Lords will understand why I am saying that. We are in no way seeking to be less than absolutely ambitious in this area, and we will seek to work with all to ensure that our strategy delivers, as this Bill itself would have delivered.

11.34 am

Lord Foster of Bath: My Lords, I thank all noble Lords who have taken part in this interesting and informative debate. Inevitably, many of the issues raised are in a sense outwith the Bill, but will have to be addressed if the Bill is to go forward. For example, the noble Lord, Lord Best, raised the need for financial carrots to deal with issues in the private rented sector. He rightly raised the importance of rural-proofing, an issue he knows I am very passionate about following the work we were able to do in your Lordships' Rural Economy Select Committee. Of course, it is wonderful to have the support of the noble Lord, Lord Deben. The House may recall that about two years ago, he spoke after me in a debate and began his contribution by saying how great it was to follow the noble Lord, Lord Foster, who always reminded him why he is not a Liberal Democrat. I am delighted that on this occasion, I have his full support.

He rightly raised, as did other noble Lords, issues about not just existing housing stock, which the Bill deals with, but the vital importance of getting it right for new housebuilding and the need, as others, including my noble friend Lord Teverson, said, to address Part L of the building regulations. I just say to the noble Lord, Lord Deben, that his history is slightly wrong in respect of zero-carbon homes. In fact, the policy was introduced—I played a small part in it as a Minister—during the coalition. It was George Osborne and the

[Lord Foster of Bath]
Conservative Government who removed that policy in 2016. Let us hope that in the strategy referred to by the Minister, zero-carbon homes will be coming back in.

Issues to do with listed buildings were raised, as was the need to revise the EPC, and the noble Lord, Lord McNicol, and others talked about the fuel poor. Various charities are doing excellent work to help them, but we need, above everything, for the Government to be doing far more. It is worth reflecting, as it was mentioned, that if we are to move to low-carbon electricity, if no support is given, the average house bill will go up by £200 per annum, placing an even bigger burden on the fuel poor in particular, so that needs to be addressed.

Of course, I am disappointed with the Minister's response. I am delighted that the Government will have a clear road map and that there will be a set of strategies to deal with the various issues in the road map. But, frankly, it seems to me that nothing in the Bill can be cutting across what the Government plan to do. It provides in statute legally binding dates by which certain things should be achieved—things that the Minister has admitted are exactly what will be in the strategy. The difference with not putting that in legislation is that it does not provide your Lordships' House and the other place with the means to hold this and future Governments to account in achieving what noble Lords have demonstrated we desperately want.

I say to the Minister that I am bitterly disappointed and warn him that in that light, the noble Baroness, Lady Jones, will be, as she said, nagging him for a very long time to come—a fate that I suspect he would not wish. Nevertheless, I beg to move.

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

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

Second Reading

11.38 am

Moved by ***Lord Naseby***

That the Bill be now read a second time.

Lord Naseby (Con): My Lords, of course, actually, it is the second time that I have had the privilege of putting an identical Bill before the House. Indeed, the last time was only six months ago. But for the intervention of a general election, I am sure it would have made substantial progress.

First, I thank some of my predecessors who tabled if not an identical Bill, then one very closely reflecting the same thrust. I see that the noble Lord, Lord Dubs, is in his place, as is the noble Lord, Lord Blunkett, and I say a sincere thank you to both of them for the contribution they have made to this cause. We will eventually be successful at some point.

I should like to go back in history just a little because there is a historical dimension to this, which is why we find ourselves in the position we are in. I took the name "Naseby" simply because I was the Member of Parliament for Northampton. Obviously, I could not take "Northampton" because we already have an Earl of that name. I had been involved in the Civil War commemorations, and in particular for the Battle of Naseby itself. All of the wounded from that battle came into my constituency, and therefore it seemed appropriate for me to take the name. That battle on 14 June 1645 was for me one of the key moments in the creation of our democracy. Yes, the "Commonwealth" did not last very long—due, dare I mention it, to the hereditary principle in the sense that Richard, the son of Oliver, did not actually have the wherewithal to run the country. That eventually led to the restoration of the monarchy, and basically that is where we stand today.

I suspect that at the time, Peers were viewed with a degree of suspicion by those in the other place, which is why some restrictions were put on the upper House. I shall quote a number of aspects of that—not at great length, noble Lords will be pleased to hear. The principle that Peers cannot vote in elections to the House of Commons has a long history and the Library has kindly prepared some data. At least between 1699 and 1998, the House of Commons would pass a Sessional Order at the beginning of each Session to the effect that no Peer had any right to elect a Member of Parliament. Then of course we have the well-known case of Earl Beauchamp v Madresfield in 1872. We began to see some progress around that time, and again I pay tribute to the noble Lord, Lord Dubs, who dug out the quote from Benjamin Disraeli, who said that he sought support for extending the right to vote in general elections to Peers because they were taxed by votes cast in the House of Commons.

Things do slowly move forward; that is the principle of life in this great Parliament. In 1999—I was here then, as were a number of other noble Lords—it was held in common law that it was the status of being a Peer that precluded one from being able to vote. Since 1999 and the House of Lords Act, it is the fact of being a Member of the Second Chamber that prevents one from voting. Under the terms of the 1999 Act, hereditary Peers who are excluded from membership of the House are able to vote and, as we know, Members of the House of Lords can vote in all other elections.

More recently, we had the disqualification updated again. The House of Lords Reform Act 2014, which is not very long ago, and the House of Lords (Expulsion and Suspension) Act 2015 extended the right to vote in general elections to Peers who ceased to be Members of the House in a way other than under the 1999 Act, for example through retirement, non-attendance, conviction of a serious offence or expulsion. So I conclude from all that that this is a pathway and that we are making slow progress. I am 83. We do not yet have a retirement age here. To the best of my knowledge, I am fit and well, so I am going to take another look at this particular objective which I share with a number of other noble Lords—and indeed perhaps I may say that I share it with a large number of Members of Parliament in the other place as well.

My basic tenet is still the same: all of us here give leadership in our own communities. There must be very few Members of this House who do not provide leadership in the community in which they live. The very word "Lord" gives us a passport to that. However, we are denied a view about our own elected Member of Parliament. We cannot stand in front of them and say, "I am supporting you … or you." We have to stay quiet. We are denied the right to vote on a manifesto for the political party that we might support—a manifesto that will affect our family and children. Is that not part of our human rights? Only through a general election do the electorate have the opportunity to vote on different spending plans. Yes, we are in the upper House, but we have no voice on these issues, particularly as we do not debate taxation matters and only very rarely do we vote on statutory instruments of a monetary nature. And yet in the society we are in today, money and expenditure are absolutely vital to our everyday lives, as they are in any democracy. We all know the clarion call, do we not? We learned it as schoolboys: no taxation without representation. But about 800 men and women are denied that opportunity to vote in our democracy. The only other people who are denied it are certain categories of criminals, and that of course I find irksome.

In the recent election, 47.56 million people had the absolute right to vote—except for the 800 that we are—and 67.3% of them people took advantage of it. The following is interesting, but if I am honest, I only discovered it yesterday when I looked at a breakdown of voting. There is a category of "anonymous voters" and nationally there are just over 2,500 of them. If we are worried about our names appearing somewhere because we voted, perhaps we could join those 2,500 anonymous votes. I say that just as an aside.

However, matters have shifted since the last election. Here, but with great care, I will draw a parallel with the monarchy and what has been happening there in relation to politics. We know that the Queen by dint of time does not vote—but she can vote. We know that members of the inner circle of the Royal Family are encouraged not to vote—but they can vote. In fact, we do not really know if they vote or not, but all other members of the Royal Family can. There is something of a parallel with our position today, and I am grateful to a lady called Helen Thompson for what she has written in the *New Statesmen*—colleagues may be interested to note that I read it. The following was written in the 31 January to 6 February issue, and it caught my eye:

> "The prorogation crisis last September showed the obvious dangers in blurring the line between the monarch's passive role and democratic politics. By asking the Queen to perform an act that would inevitably be subject to legal challenge, the Prime Minister condemned her to act politically. That the High Court of Justice for England and Wales, an appellate panel of the Court of Session in Edinburgh, and the Supreme Court of the United Kingdom could not agree on the legality of the use of royal powers, or the relevance of Boris Johnson's motives, demonstrated how hard consensus is on constitutional matters involving the Crown, once a political crisis requires them to be scrutinised."

Well, I would suggest to colleagues that there is no political crisis yet, but I draw a parallel to a degree with the slow passage of the Bill of my friend the noble Lord, Lord Grocott, to remove by-elections for hereditary Peers. This whole process has been exceedingly undemocratic, but the last couple of Governments have shilly-shallied around it and delayed it. It is a small but significant measure, as is the measure before your Lordships this morning.

As it happens, the Bill from the noble Lord, Lord Grocott, was number one in the ballot. This Bill was number two. Colleagues will know that I have a great interest in Sri Lanka, where they have a phrase, "auspicious". I think that this was an auspicious happening that may well be beneficial to both parties in the end.

My Government now have more than four years to get on and look at this Bill and at the Bill from the noble Lord, Lord Grocott. We have on our side the same young man, who is my research assistant—although I shall not use the same quotes I used last time. These are a few of the reasons he thinks this Bill should go through. He says in a note to me:

> "Another reason used to defend this appalling law was the scepticism around reform. This came in two main forms, one being that it was a sort of 'slippery slope' to further reforms, and the second was that in 2013 it was not the right time to do such a reform. Well, rather simply there is no evidence for there to be further reforms following this one. It is a single bill, on a single issue, so this line of argument is discounted. Finally, in response to the other side of the reform argument, we are now seven years down the line".

Now is as good a time as any, and he sees no reason why anything should be put in the way to prevent this Bill going forward. That is from Alex Wilkins, and I thank him for the work he has done on that.

We now know that the vast majority of the electorate are on our side. How do we know that? A good number of us have been out on the doorstep recently, and people are amazed. Those who know me say, "You don't have a vote, Michael?" Those who have forgotten that I am here now say, "You don't have a vote, Mr Morris?" I say, "No." No one out there understands it—which is incredible in itself, is it not?

We have lots of friends across the world, and many of us visit other parliaments. In every single second chamber anywhere else in the world, they all have a vote. We are the only Parliament in the whole world where those in the upper House do not have a vote in the key general election.

I am all for tradition—I dress fairly traditionally—but we know the electorate do not understand it; I have just said that. To recap for the benefit of the Front Bench, I am not necessarily saying this morning that the tradition that we do not vote on money Bills should be removed. What I am saying is that we should have the right to vote in a general election. This is a short, small, targeted Bill. In my judgment it deserves to make progress through the House. As I said near the beginning, I have talked to many friends in the other place and believe there is substantial support there for the Bill. I beg to move.

11.53 am

Lord Blunkett (Lab): My Lords, I congratulate the noble Lord, Lord Naseby, on obtaining a place in the ballot, particularly the number two slot. I hope it is a good sign that we can make progress in this Parliament to get this Bill approved. I echo his congratulations to

[Lord Blunkett]
those who, over generations, have sought to return to us the ability to vote in general elections—including my noble friend Lord Dubs, who is here this morning.

I have shared the experience of people's incredulity, as the noble Lord has just expressed, that we do not have the right to vote in a general election. In the last general election, for some of us on this side it might have been an interesting cop-out when people on the doorstep asked us what we were going to do. Of course, it was not. I speak for myself in saying that, were I able to vote, I would have voted Labour—I just want to make that absolutely clear.

I do not intend to delay the House too long, because there are many speakers on this Bill and the subsequent one. The fundamental issue that the noble Lord has raised is that the basic right of any citizen is the right to vote. It has been fought for over generations. The extension of the franchise way beyond what it was in 1699 enabled people who had fought for that right to exercise it. To take it away from those who are ennobled is a historic anachronism that does not bear thinking about.

I tried to examine what arguments have been put in the past. The history of the anachronism does not stand up to scrutiny, nor does the argument—quite a bizarre debate has been had in this House in the past about our right to vote in general elections—that we can represent ourselves. Let us leave aside that before sittings in both Houses, we have Prayers that enjoin us not to look after our own personal interests, and just consider the practicalities of whether people represent themselves in this House. We legislate for the country in a way that enables people to open up the issues and debate. We do not legislate or sit on Select Committees in any sense on our own behalf. I have never heard anyone raise a Question such as: "My child"—or, more appropriately in this House, grandchild—"hasn't got into the school they put as their first choice. What is the Minister going to do about it?" Frankly, it is a non-starter. No one is ever arguing for their own personal rights or raising their own personal representation in this House. They are seeking to do a job—a duty, an obligation—on behalf of the people as a whole.

I hope that, in the reply today, we set aside any of this kind of nonsense and address the central issue: should any citizen have their right to vote withdrawn? There are exceptions, although very few: those who have committed a felony and are in prison, and those who, through incapability, have been described as unable to exercise a meaningful vote. But being ennobled does not fall into either of those categories. As described by the noble Lord, Lord Naseby, if you commit a serious criminal offence or are expelled from this House under the 2014 and 2015 Acts, you regain your right to vote. If you are suspended, you have the right to vote. I wonder whether we are exercising the Fixed-term Parliaments Act in the way originally intended when it was brought in nine years ago. People who really care, as we this morning all care, might get themselves suspended as a general election arises, vote and then return. This is the kind of nonsense we have now got ourselves into. Therefore, recent legislative changes should result in changes in practice in this House to restore our democratic rights.

I have one further thought. If we believe that playing our part in the legislative process and in our scrutiny in any way justifies taking away a democratic right, that could lead to a debate in the country about the role of this House which could take us down very dangerous avenues indeed. Common sense should prevail. This is a simple Bill, as the noble Lord said, with a simple purpose: restoring to those who sit in this House a right that other people take for granted. How can we enjoin them to exercise that right and plead with them to uphold a right that has been fought for over generations, and then have that right withheld from us? How could the Government, who consider themselves to be democratic, actually deny us that right by voting down this Bill? I entirely support the proposal of the noble Lord, Lord Naseby, and I hope that this House will do so as well.

Noon

Lord Sherbourne of Didsbury (Con): It is a pleasure to follow the noble Lord, Lord Blunkett, who speaks on this issue with a powerful voice, as he does on so many issues. I too congratulate my noble friend Lord Naseby on bringing forward this Bill again. A similar Bill was debated on 19 July last year. The Minister who replied to that debate was my noble friend Lord Young of Cookham, who I see is in his new place today. He gave a less than positive response last July. Of course, he was speaking on behalf of the then Government. Five days later we had a new Government and today we have a different Minister, so dare we hope for a more positive response?

I have just reread the speech my noble friend made last year. As noble Lords would expect, it was delivered in the most mellifluous and elegant way. But even that could not disguise the shallowness of the Government's arguments. How could we quarrel, he argued, with the principle enunciated in 1699, which he quoted from the Commons Journal of that year:

"That no Peer of this Kingdom hath any Right to give his vote"?

If that was good enough for us 300 years ago then surely, he implied, it is good enough today. He went on. The principle was justified by the

"ancient, immemorial law of England."—[*Official Report*, 5/7/1858; col. 928.].

Here the Minister was quoting admiringly the Lord Chief Justice in 1858. And then, lest we had forgotten, he prayed in aid cases and judgments from 1872. It is a strange line of reasoning which asserts that if that is what the law said in 1699, 1858 and 1872, then that is what the law should say in 2020.

In my speech last year, I said that I supported this Bill for many reasons, but for one fundamental reason, which is taxation. I argued that while everyone in this House pays tax—income tax, VAT, excise duties and no doubt many others—we have no say whatever on taxation. That is decided by Members of the House of Commons, for whom we cannot vote.

How did the Minister try to justify the anomaly that Members of this House who pay taxes are not allowed to vote for the MPs who impose taxes? He said that taxation is

"not connected to democratic representation in the UK",

and, as if to prove the point, he said:

"An American or Japanese citizen of voting age who works and pays taxes in the UK does not have the right to vote in parliamentary elections".—[*Official Report*, 19/7/19; col. 486.]

Well, of course they do not, for the rather obvious reason that they are not UK citizens. Members of this House are UK citizens, so that argument just does not stand up. By the way, the so-called principle that a Member of the legislature, because they are a lawmaker, should not be allowed to vote for an MP, does not apply to MPs. A sitting MP who, for example, is a registered elector in a seat that he or she does not represent is entitled to vote in a parliamentary by-election in that constituency. If Members of the Commons have the right to vote in parliamentary elections while they are MPs, why should Members of the Lords not have that right?

When he replies, will my noble friend the Minister tell the House what it is about this Bill—you could not wish for a more modest Bill, as my noble friend Lord Naseby said—that worries the Government? What is the worst thing that could happen if Peers were given the vote? What is the downside? What is the danger? What precisely are the terrible consequences that would flow if this Bill were to pass?

The truth is that there are no robust arguments against giving Members of this House the vote. The only argument that the Government have left is that they are opposed to piecemeal reform, and no doubt we will hear that this proposal would best be done as part of a wider and more comprehensive reform of the House of Lords. But if we had set our face against piecemeal reforms we would never have had life Peers or women Peers. It would be much better if the Government stopped trying to argue the unarguable and were a little more honest with the House and just said to my noble friend Lord Naseby, "You've made a good case. Logic is on your side. Let's talk."

12.06 pm

Lord Rennard (LD): My Lords, I am delighted to follow the noble Lord, Lord Sherbourne of Didsbury, whose forensic examination of the case was quite flawless. However, I shall argue that this should not, perhaps, be seen as our highest priority.

The Bill proposes a very modest measure of constitutional reform. It is at the opposite end of the scale from the Great Reform Act 1832, the second Reform Act 1867, the third reform Act 1884 and the Representation of the People Acts of 1918, 1928 and 1969. Over 150 years, those Acts extended the franchise for elections from about 214,000 people—about 3% of the population—to the 47.6 million people who were registered to vote in the general election last December. That figure did not include the approximately 800 Members of the House of Lords, which is why we are here today.

In moving the Second Reading of an identical Bill here last July, the noble Lord, Lord Naseby, made much of the fact that the House of Commons has primacy in legislation, has total control over financial matters, and that its membership effectively decides who forms the Government. If Members of this House have no say in the membership of the House of Commons, then we have no say in who forms the Government of the country, and that cannot be right.

The noble Lord, Lord Naseby, also said, and repeated today, that out of nearly 200 countries with second Chambers, ours is the only one in the world that does not allow its Members to vote at general elections. Recent legislation has confirmed that we are disfranchised in this way, and in replying to the debate last July the noble Lord, Lord Young of Cookham, cited the House of Lords Act 1999 in particular. But when I voted as a new Member of this House for that Act, it was on the basis that it was to be only an interim measure before a second and more fundamental phase of reform. That reform did not happen under Tony Blair and we are still waiting for it because of the failure of the other place to agree a timetable Motion for the House of Lords Reform Bill 2012. That was despite that Bill achieving its Second Reading by a massive 462 to 124 votes of MPs. The process of reform is therefore very frustrating.

It is 109 years since Asquith was Prime Minister and the Parliament Act 1911 promised to replace the hereditary principle with the popular one. It has not happened yet, so those of us who believe in the value added by a second Chamber and that lawmakers would have greater legitimacy if they were chosen by voters must argue for piecemeal reform until we can get what we consider to be real reform.

What this Bill proposes would be a tiny step in a process of incremental reform, but it is not one that we should be making our priority. People will say that it would be inconsistent if we were to demand the right for us to vote for MPs, while voters have no right to elect Members of this House.

There are also other more important issues of democratic legitimacy to address and which must have greater priority than this proposal to add Peers to the voting registers for electing MPs. There are, for example, around 9 million people not on the electoral registers who should be included or who are not correctly registered. The failure properly to include such a large number of people distorts election results and constituency boundaries. We should also be giving more consideration to the uncertain fate of the 3 million EU citizens presently living in the UK. There would be no better way of guaranteeing the promises made to respect their rights than to give them the right to elect MPs in the same way that they have been able to vote for local councillors and members of the devolved Assemblies. You do not need to be a UK citizen to vote in our general elections. More than 300,000 Irish citizens and nearly 1.2 million qualifying Commonwealth citizens resident in the UK are eligible to vote in our general elections. As we continue to debate our future relationship in Europe, we should ensure that the 3 million EU citizens resident here should be able to help choose our MPs.

The Bill addresses an inconsistency in electoral law, but before we think about our own voting rights while we are already Members of this Parliament, we should consider properly the growing inconsistency in the age for inclusion on the voting registers. In Scotland, you can now vote in Scottish Parliament and local elections at the first election after your 16th birthday. In Wales you can now vote from 16 for the Welsh Assembly, and you will soon also be able to vote in local elections

[Lord Rennard]
there. At the very least we must consider all these issues before we consider letting us vote in a general election which is not due until May 2025.

Finally, I refer, as other noble Lords have, to the excellent speech by the excellent former Minister, the noble Lord, Lord Young of Cookham. I am sorry he is no longer in his place. In response to the gracious Speech on January 8 he spoke about the proposed commission on the constitution, democracy and rights and how it is supposed to examine the broader aspects of the constitution in depth and develop proposals to restore trust in our institutions and in how our democracy operates. He said that

"it will have to sit for a very long time and cover a wide range of subjects, including the royal prerogative, judicial review, party funding, the voting system, the future of the union, the ECHR, the role of House of Lords, the freedom of the press, franchise for 16 year-olds and appointments to the judiciary, to mention but a few."—[*Official Report*, 8/1/20; col. 217.]

I suggest that the proposal in this Bill should be considered together with those issues. I hope that in his reply to the debate the noble Earl, Lord Howe, will tell us more about how this commission will be established, its timescale and whether it will consider the issue in this Bill.

12.14 pm

Lord Brown of Eaton-under-Heywood (CB): My Lords, three weeks ago, on 16 January, the new President of the Supreme Court, the noble and learned Lord, Lord Reed of Allermuir, was introduced into this House in succession to the noble and learned Baroness, Lady Hale, and I welcome him to our Cross Benches. However, that very same day, by the very fact of his ennoblement to this House, he found himself wholly disenfranchised. He had already served on the Supreme Court for eight years and, during those eight years, like almost all his colleagues, he enjoyed the right to vote in parliamentary elections, but now, ennobled, although, of course, under our rules, immediately disqualified from speaking and voting in this House, he finds himself without a vote here or in parliamentary elections. So too does the Lord Chief Justice, the noble and learned Lord, Lord Burnett of Maldon, who was ennobled in November 2017 and immediately disqualified. They are worse off in terms of the parliamentary vote than a Member of this House who is convicted of a crime and expelled under one of the extremely desirable bits of incremental legislation—I say that in response to the noble Lord, Lord Rennard—which is gradually improving the situation here. The Bill is another manifestly desirable incremental improvement in our position.

I wonder what those who oppose this Bill say about these judges? Do they say that it is merely an anomaly—possibly a regrettable anomaly, but do not worry about it? I suggest that these anomalies are symptomatic of the deeper illogicality of denying us the vote in general elections. In fact, not all Members are denied the vote; one must recollect that it is only temporal Peers. The Bishops continue to have a vote in general elections. Is that perhaps just another anomaly?

I do not pretend that this is a first-order issue. If and when we get the commission on the constitution that is promised—or do I mean threatened?—it will not be item one on the agenda. No doubt there will be an awful lot of issues, such as those the noble Lord, Lord Rennard, outlined, including the voting age, but this is no occasion to debate all those wider issues. We are here concerned to try to eliminate finally one absurd lingering anomaly. Of course, we retain our seats from one Parliament to another and, if not disqualified like our serving judges, we play some part in the legislative process, most usefully perhaps in the scrutiny and revision of Bills that come from the other place, but we all accept—nobody doubts—that the real power lies there. It has the democratic mandate and its policies, particularly the manifesto promises of an elected Government, rule, and rightly so. As has been pointed out, money Bills—taxation—are for it alone. The old adage "no taxation without representation" is waved aside as an historical accident.

What, then, are the arguments? The noble Lord, Lord Sherbourne, demolished those based on history and tradition. If ever it was justifiable to deny Members of this House the vote, it is impossible to see that it is so now. Can it really be regarded as a privilege of our membership here? I suggest that it is conspicuously elitist. It is implicitly suggested that we are just above all that sort of thing—that we are too important to need a vote and should let the democratic burden fall on lesser folk.

I suggest that, although, as I said, we are not dealing with a first-order issue today, there is a genuine point of principle here. Universal suffrage is the badge and symbol of a healthy democracy. It would help the public to recognise that fact if, finally, it were accepted that your Lordships should indeed have not only the benefit but the responsibility of the vote, thereby playing their part in the democratic process of electing the all-powerful other place.

12.19 pm

Lord Adonis (Lab): My Lords, I cannot quite believe that we are having this debate and wasting Parliament's time on such a monumentally inconsequential reform. However, I at least congratulate the noble Lord, Lord Naseby, on producing what I think, in my 15 years in this House, is the most minor change to the statute book of any that I have yet been a party to. By my calculation, there are 794 Members of the House of Lords and the total electorate of the nation is 45,775,800. That means that the noble Lord's Bill would add 0.00173% to the electorate. If we were able to give an hour or two of debate to every issue in the country that could make a 0.00173% improvement to the relevant public policy of the country, we would sit continuously. Maybe we would do some good but we certainly would not give so much scrutiny to this issue.

Indeed, I was trying to work out whether it would make any difference at all to any constituency. It is just possible that it might have done, although I fear perhaps not in Northamptonshire. However, I note that in Kensington, where many noble Lords live, there was a majority in the 2017 election of only 20. So maybe, if the Bill had become law, in one constituency in the nation in one election in history, it might have made a difference. Perhaps all those who are residents of Kensington should be allowed to cast their vote

retrospectively in the 2017 election and we might have a different Member of Parliament. Otherwise, it will not make any difference. As Ernest Bevin famously said on another occasion:

"If you open that Pandora's Box, you never know what Trojan horses will jump out".

This Bill is not of any great consequence—I could not really care whether it passes. Maybe in Northamptonshire people stop the noble Lord, Lord Naseby, in the street and ask why this great scandal of him not having the vote is allowed to perpetuate. However, I admit to your Lordships that no one has ever said that to me. Far more often, they have said, "Why are you there at all?" What on earth is the argument for the noble Lord, for the noble Earl, Lord Howe—

Lord Blunkett: Who forced my noble friend to come here?

Lord Adonis: Who forced my noble friend Lord Blunkett not to have a vote in a general election? He accepted the peerage and, by virtue of that, he does not have a vote. The reason that the noble Lord, Lord Naseby, does not have a vote is not that some great constitutional outrage is taking place but because he chose to become Lord Naseby. None of us is forced to be here, because we no longer have hereditary succession without the right not to accept the peerage. Everyone is here by choice. The argument made by the noble Lord, Lord Young of Cookham, whom we hold in great respect, and an argument that I assume the noble Earl will make again from the Front Bench—that in our democracy everyone should have a voice, which I argue noble Lords have by virtue of participation in this Chamber—is completely correct. If people want to vote for the other House, they should not come here. The idea that somehow there is a parallel with other Chambers in other countries is completely false, because this is the only second Chamber in the world, apart from China, in which people are here simply by virtue of who they are rather than by virtue of any representative credentials whatever.

As I said, I do not think that the Bill would make any difference one way or the other, apart from to the 794 of us here, but it raises principles. The noble Lord, Lord Sherbourne, said that incremental reform is a good thing. I am in favour of incremental reform that improves things. The reforms that he mentioned—the introduction of life Peers, for example—improved the working of this House significantly, but this Bill will not of itself improve anything at all. It deals with what is arguably an anomaly or arguably not an anomaly—it depends how you look at it—but it would do nothing whatever to improve the operation of the constitution. Indeed, it would do nothing to address any of the issues that were very well put by the noble Lord, Lord Rennard, concerning the working of our democracy. He raised very timely issues such as the right to vote at the age of 16. We should spend the time of this House debating issues such as that, not minor issues of this kind.

As we are being forced to have this debate, perhaps I may make two points.

A noble Lord: We are not being forced.

Lord Adonis: The noble Lord, Lord Naseby, has tabled the Bill and we are doing him the justice of debating it, although, as I said, I think that it is entirely inconsequential. My first point concerns our contribution. We are all here by virtue of being individuals who have been given peerages. I speak as someone who wrote a book on the subject of the operation of the House of Lords in the late 19th century when it was under the almost dictatorial control of Lord Salisbury—the portrait of him addressing the House of Lords on the rejection of the Irish home rule Bill faces the Bishops' Bar. One striking and extraordinary thing about the House of Lords as an institution is how little the operations of this House have changed to enable Peers to make an impact.

In most areas of public policy that matter to this country where we could have an impact, we have zero impact because we have no committee system. We have been here for about eight centuries and have had time to put this right but the only developed committee of this House is our European Union Committee. It is arguable whether over 45 years it made any difference to our membership of the European Union but, unfortunately, it has had no impact at all on most areas of public policy. I was a Minister for five years in this House—indeed, I was a Secretary of State for one year—but never in that entire time did I appear before a Select Committee of the House of Lords because there was no Select Committee of the House of Lords to appear before. I appeared monthly before the relevant Select Committee in the House of Commons, which conducted very good scrutiny, but the great potential in this place, where there were many experts in all fields, was completely neglected.

The way that we organise our business has changed very little since the 19th century. All the changes that have taken place in the House of Commons in the last 50 years have passed us by. We have no proper departmental Question Time; we still have the haphazard business dating back to the mid-19th century of individual Peers tabling Questions that are entirely random, depending on their interests; and there is no proper Question Time. The way that we consider Bills has not changed, including the extremely cumbersome Committee stage process, which is entirely unintelligible to people outside. In particular, the fact that it takes place in the Chamber is a very great occupation of the time of the Chamber that could be spent on other matters. The size of the House has increased but our procedures have not changed at all. We do not really have debates which, by the standards of the House of Commons, constitute debates. We simply divide whatever time there is, no matter the number of speakers, which often means that we have literally four or five minutes in which to speak. For the most part, we read speeches that are reported in *Hansard*, and there is almost no give and take in debates.

We have not undertaken all the incremental changes of the kind that the noble Lord, Lord Sherbourne, referred to. We are a fossilised, atrophied institution that massively plays below its own weight and it needs reform, if we were capable of that. However, the bigger issue that I hope the noble Earl will tell us

[Lord Adonis]
about is the wider context of reform, which might lead to the replacement of this House, as should surely happen in due course.

Lord Naseby: I hope that my noble friend on the Front Bench will remember that the scope of this debate is just this Bill; it is not the wider scope that the noble Lord has been talking about for the last 10 minutes. I say that with the benefit of having been a Deputy Speaker in the other place.

Lord Adonis: I am very grateful to the noble Lord for pointing that out, but he has raised the issue of reform of the House of Lords. He presented this as an issue of reform, so it is perfectly reasonable for those of us who have other ideas about reform to raise those too.

Can the noble Earl tell us about the commission on the wider reform of the constitution? That could be an opportunity for substantial reforms of the House of Lords. When will the commission be set up? Will it be a cross-party commission? What will its terms of reference be? Over what timescale will it deliberate? Those are hugely important issues that I think should engage us, and anything that the noble Earl can tell us on that score will be very welcome.

I make one final point: I had not realised—it is fascinating—why the noble Lord, Lord Naseby, took his title. It was after the Battle of Naseby in 1645 between the parliamentarians and the royalists, which he said was a great advance in the move towards democracy. But of course it was Oliver Cromwell, in his very first act after the execution of Charles I, who abolished the House of Lords as dangerous and useless. Maybe it is time for us to look more widely at the legacy of the Civil War.

12.30 pm

Lord Bourne of Aberystwyth (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Adonis, although on this occasion, despite the rhetorical flourishes, I did not find myself in agreement with much of what he said.

Similarly, on the remarks of the noble Lord, Lord Rennard, I do not understand the argument along lines of: "Let's not do this—it's only incremental. It's far better that we wait and do everything together." Thank goodness we do not use that argument when looking at improvements in the health service. Thank goodness that argument did not prevail when Disraeli was bringing in an extension of votes. Thank goodness it did not prevail when votes for women was an issue. I just do not follow that argument. If I may say so, I regard it as "Lib Demery" at its worst. There are many times when the Liberal Democrats come up with very constructive proposals, but to say, "Let's not do this because it does not achieve everything we want" is not an argument that I follow, or that people outside this place will understand.

I seek to do justice to my noble friend Lord Naseby: he has brought forward a very specific Bill, and we should focus on a very specific issue. The Bill does improve things. Yes, there is an argument of special pleading—how could there not be? I agree very much with the noble and learned Lord, Lord Brown, that there are more important issues to address. There always will be, but that is surely not a reason for neglecting this issue and failing to do something constructive. There is no possible argument against extending the vote to this small group of people. It is not about making a difference to an election in Kensington or anywhere else; it is about the right of individuals to have a vote. Yes, it is true that we came here voluntarily, but that does not mean that we cannot have an opinion. I do not follow that argument; it does not make much sense. The question is, is it right to extend the vote to this small group of people? Of course it is.

We often hear the argument that we remain Members of the Houses of Parliament, so we should not have this vote. What is all that about? If we remain Members here, why do we have to be sworn in in every Parliament? That is something I have never understood. Even if we do remain Members, why should we not have a vote? In every other respect, we are just normal citizens. Many of us will know—it was probably something in our mothers' milk—about the Chartists, who fought for the right to vote; about colonial rights; about extending the vote in Zimbabwe and South Africa; about votes for women.

I feel very strongly at election time that I am denied a vote. Yes, we campaign, but why on earth should we not have a vote as well? This is one small piece of legislation on which surely everyone can unite, and it can be passed into law. I do not understand why that cannot be. Yes, there will always be more important issues—I am sure that is true—but, laser-like, this hits one small group of people. We have votes elsewhere, so the argument that we should not vote because we are part of Parliament does not work. We have votes in local elections and referendums; we have votes in European elections—or used to. Why on earth should we not have this vote? It is a small reform that needs to be carried.

Yes, there will always be more important issues, but this is not about making a small difference in by-elections here or elections there; it is about a fundamental right that we as British people have always signalled, throughout the world, as being central. Whether it was the "wind of change" on the continent of Africa or elsewhere in the world; civil rights in the US; the sight of people queuing up to cast their vote when Obama was standing for President—this is something we should take pride in. It may seem a small thing, but it is fundamental. While it is denied, it represents a rustle through the reeds at Runnymede. For goodness' sake, let us pass this small piece of legislation. I thank my noble friend Lord Naseby for bringing it forward.

12.34 pm

Lord Dubs (Lab): My Lords, I too congratulate the noble Lord, Lord Naseby, on his persistence in bringing this legislation before us for the second time, and my noble friend Lord Blunkett for having previously tried to get it through. I commend the Library on its excellent briefing, which saved me doing a lot of homework. It is all there to quote from.

My Bill got a little further than some of the others; it got to the Commons. I will remind your Lordships of what happened, and I shall be critical of the procedures in the Commons; I think that I am allowed to do that. The normal practice is that, after the Bill is called, it takes one anonymous voice in the Commons to shout "Object", and that kills it. I knew that this was liable to happen, so I wrote to all the Members of the Commons who had a reputation for shouting "Object". I pointed out that my Bill was modest, did not affect them, had the support of this House and was well worth backing. I sat in the Gallery and a voice said, "Object". It is quite undemocratic that one voice can do it, without one knowing who the MP is or what he or she represents. I was quite puzzled, but that is what killed it.

We have already had references to whether change should be incremental, piecemeal or done all in one go. My understanding, or slight suspicion—as I turn aggressively to the Lib Dem Benches—is that it was Nick Clegg who did not want any incremental change to the Lords; he wanted all or nothing. I cannot prove it, but I have some circumstantial evidence which might help. Certainly, the noble Lord, Lord Wallace of Saltaire, when he wound up the debate here on behalf of the coalition, said:

"On Lords reform, we have to look at a package."—[*Official Report*, 5/7/13; col. 1421.]

On that basis, he argued that the Government should resist this "small, partial proposal". That is why I think the Lib Dems had a key part to play in stopping us having a vote in the elections that followed. As has already been said, we have had the right to vote in local elections, the European Parliament and referenda. The Lords Spiritual, of course, are allowed to vote—whether they exercise that right I do not know. Using the analogy of the United States, American senators can vote in elections for the House of Representatives. All these are good arguments for doing it.

My noble friend Lord Adonis spent 10 minutes—10 minutes—telling us that we are wasting our time. I agree with him that this is not the most important issue. I helped in about eight different elections in eight different constituencies. I was out almost every day in the last election, knocking on doors and getting my knuckles ripped off in letterboxes as I put leaflets through—all things that I am sure my noble friend did too. Did he?

Lord Adonis: Yes.

Lord Dubs: Of course, nobody asked me about the right to vote in the Lords. There are no demonstrations in Parliament Square or people marching down Whitehall backing this Bill. They are not saying, "What do we Want? Votes for the Lords! When do we want them? Now!" Of course they are not, but quite a few issues are matters of principle. We do not have to stir up public demos; this just happens to be the right and proper thing to. I feel personally hurt when I tramp the streets trying to get other people to vote and then find myself denied that basic right. I find it personally painful every time there is an election. My own views do not matter much in the scheme of things, but that is how I feel. We pay our taxes. What we surely want to do by voting is to have some influence on who the Government will be. Once the Government are elected, we can influence legislation. I think we can do a better job, as my noble friend Lord Adonis suggested, but we can talk about that another day. It is just that I would like to have some influence on who the Government will be, not just on the legislation that follows, but I have no chance to do that at all. I can influence my local authority, and previously I could influence the European Parliament, but not the Government. Surely that is a basic and simple right, and it will happen sooner or later.

I actually feel sorry for Ministers who have to answer because, in my brief two or three years as a Minister, I found it difficult when my heart was not in the argument that I was putting forward.

Lord Boateng (Lab): Surely not.

Lord Dubs: That does happen, as my noble friend will know. It is quite difficult. There must be boxes in government departments saying yes or no, but then there is a little box that says, "Too difficult for us to deal with; we can't think of any arguments to resist this". This issue is in that category. I say to the noble Earl who is going to answer for the Government that nearly always, his heart is in it and he talks with total sincerity, but I doubt whether he will do that on this occasion.

12.40 pm

Baroness Flather (CB): My Lords, I make no apology for saying that I feel personally deprived. That is the feeling that I get from other noble Lords: we all feel personally deprived. I cannot say that I have had a burning desire to vote in every general election, but in the two most recent elections I wanted to vote because some very big issues were presented to us. However, we had no vote.

The noble Lord, Lord Adonis, said that no one has asked him whether he has a vote. It is not that people come up to you and ask, but when you talk to them it comes out and they are absolutely taken aback that we have no vote. It is not that they think, "Oh well, you shouldn't have a vote because you have a place in Parliament"; they ask, "Why do you not have a vote? Are you not capable of voting sensibly? Have you committed some terrible crime? Are you too mentally disabled to vote?" It is just ridiculous to think that we have to look back to previous centuries, to the Lords who have brought us to this stage. I totally support this little matter being looked at carefully.

There is really no logic to why a mere 900 people cannot vote. It is not as if we are 9 million, or even 9,000. We cannot change anything in the election. Most of us would probably vote for the sitting MP in our area—if that MP was good enough, that is, otherwise we would not—or along party lines. We all have our own views on who we would vote for. It is not as though 900 votes would go to one person and make a difference in their life. My sitting MP is Theresa May and, if I had the vote, I should certainly vote for her because she is extremely popular and a good constituency MP. That is how it goes. It is not as though we are going to change the world. Nine hundred people cannot

[Baroness Flather]
change the world in any way. I do not know what we could do to change the world; if anyone has an idea, please let me know because I will join them.

Seriously speaking, to my way of thinking, it is completely illogical that we do not have a vote. A lot has been said about various Acts of Parliament from 100, 200 or 300 years ago. As has been said, if we had not made changes, where would we have been with those Acts? We would not have functioned at all. In any case, if life Peers had not come, there would be no House of Lords. I think it would have started by removing the life Peers and then removing the women. The best way to start would be with a new House of Lords.

I totally support the Bill of the noble Lord, Lord Naseby, which says that we should get the vote.

12.44 pm

Lord Kennedy of Southwark (Lab Co-op): My Lords, I congratulate the noble Lord, Lord Naseby, on securing a place so high up in the Private Members' Bill ballot and on his Second Reading today. At the outset I should say that I support what the Bill proposes, though it is a very small measure, affecting, I think, only the 800 or so people who are Members of this House. As many noble Lords have said, there are always many more pressing matters that we could deal with in this House. All of us on different sides would say that the issues we discuss every day in the House are not always the ones that we want to discuss at that time.

Although I accept that we are in a privileged position in this House, that in itself is not an argument for denying us a vote in a general election. I am well aware that successive Governments of all colours have proposed this measure in the past. As we have learned today, Peers have been prevented from voting in general elections since 1699 by the passing of Sessional Orders, and since 1999 by the passing of the House of Lords Act.

I agree with my noble friend Lord Blunkett: I would have voted Labour in the election if I had had a vote, but I did not vote Labour because of course I was not allowed to. I will vote Labour in May when I vote for Sadiq Khan in the Mayor of London elections, and I look forward to that very much. However, to suggest that we somehow represent ourselves—we might hear that argument in a moment—and that that is a reason not to give us a vote, is a complete nonsense.

The noble Lord, Lord Sherbourne of Didsbury, made a number of important points. He demolished the arguments against this very well and I congratulate him on that. I agree particularly with the point about taxation. It is a fact that we here all pay our taxes but have no way of affecting that at all, and that is not right. He also made the point that just because something was deemed right in 1699, or on the other dates he mentioned, that is not a reason why it is right today. By that measure, we would not have life Peers today and I certainly would never have made it into this House from the Aylesbury estate at Elephant and Castle. Things need to change, and we should look to change them progressively.

It is a fair point that the 800 of us would probably have had no effect at all on the result of the general election, not even in one constituency. We may have had an effect in one in 2017, but I do not think there was a single constituency that would have been affected this time. Certainly, in the constituency that I live in, Lewisham Deptford, votes from me and my wife would have had no effect at all.

There are other important things which have huge implications and we should look at in the future. My noble friend Lord Adonis made some very valid points about things that need to change in how this Chamber operates and how we do things outside the Chamber. Those need to be looked at by the Government in the future.

Other issues were raised, particularly by the noble Lord, Lord Rennard, which are very important but not in the scope of the Bill, so we cannot get them in. One point that he mentioned was people's right to vote at the age of 16 or 17. In Scotland, people have the right to vote at that age in the Scottish Parliament and local authority elections and in referendums. People now have the right to vote in Welsh Assembly elections at that age and will shortly get it for local elections. The Scottish Parliament led the way in this and the Welsh Assembly followed. At some point, the Government will equalise this right to vote at the age of 16 across the whole of the United Kingdom. The sooner they do that, the better. It is much better if the Government get up and do it, rather than dragging their feet and avoiding the inevitable outcome—equalising the voting age at 16 across the whole of the United Kingdom.

The other matter—again, I believe this will not be in the scope of the Bill and so cannot be addressed—is the completeness and accuracy of the register. It is certainly not complete or accurate at present. This has been shown by many studies and research from several bodies. The noble Lord, Lord Rennard, referred to the Electoral Commission, which found that up to 9.4 million people are either not registered to vote or are registered incorrectly, with major errors. This is wrong and the Government should put it right for the very reason of having an accurate and complete register.

Not being on the register affects many other things, particularly your credit rating, which then has a huge effect if you want to get finance. You might be refused finance altogether, or the more attractive deals might not be available to you, because one major way of identifying you is not there. It can also affect things such as being able to rent a property, because your identity cannot be verified effectively. This is very important.

The noble Lord, Lord Naseby, said that the Government now have four years in power, which is one of the advantages, I suppose. The Government have quite a long period in which they are under no threat in the House of Commons and can do what they want. They should use that time to address a number of issues regarding elections and how we conduct ourselves in them. These include the right to vote, as I mentioned, fake news, democracy, the threat to our democracy from digital advances, the use of data, the role of the Electoral Commission, the threat to democracy from foreign Governments and many

others. I hope the Government will use these four years to address those very important matters, which need to be looked at.

I have one more point. The other implication of the electoral register being wrong is that our boundaries are wrong. Whether the Government stay with 650 seats in the House of Commons or make it 600, if millions of people are not registered to vote, the boundaries are wrong. We need to get that right as well. Getting the boundaries right is very important and we need to get people properly to register to vote.

In conclusion, I suggest one possible reform to the work of this Chamber, which the noble Earl might take back to the Government Chief Whip, who is no longer in his place. We will give the Bill its Second Reading shortly and then move that it goes to a Committee of the whole House. That will carry on. We have 30 or 40 Private Members' Bills, which will all go to Committees of the whole House. They will sit here and that is as far as most of them will ever go. Government Bills sometimes go to a Grand Committee. I have checked with the Clerk of the Parliaments and we could move this to a Grand Committee. If we did that, we would get more Bills through this House. There are many good Private Members' Bills that do not challenge government policy but propose good, sensible things and, if we looked at that, we could get more Bills through this House and off to the other place. That is one of many reforms that we could make.

I leave my comments there and I wish the Bill from the noble Lord, Lord Naseby, well.

12.51 pm

Earl Howe (Con): My Lords, I hope my noble friend Lord Naseby will allow me to congratulate him on his success in the Private Members' Bills ballot and on securing this opportunity to raise the question of the voting right of Peers. He deserves enormous credit for bringing this House back to an issue about which I know he feels strongly. As we have heard today, it is an issue with which a number of your Lordships are in considerable empathy.

As my noble friend made clear, the Bill seeks to change the current position, whereby Peers who are Members of this House are not entitled to vote at elections to the House of Commons. The arguments for that change have been succinctly laid out for us, by my noble friend and many other noble Lords, including the noble and learned Lord, Lord Brown.

There is, however, a long-standing rationale for the current position and I would like to draw on this in setting out the Government's view of the matter. It is a view which I anticipate will come as no surprise to my noble friend or the noble Lord, Lord Kennedy of Southwark. Peers who are Members of this House are already able to represent themselves in Parliament. They do not, therefore, require others to represent their interests, unlike members of the general public. That is the function of Members of the House of Commons: to represent those who cannot be present in Parliament to represent themselves. I therefore have some reservations, if I can put it as mildly as that, about my noble friend's proposal to extend the franchise to Members of this House. But I appreciate that any issue on democratic participation is worth raising and discussing, and I therefore repeat my thanks to him for giving us this opportunity.

The principle that bars Peers from voting in elections to the House of Commons dates back, as has been said, to a 1699 House of Commons Journal entry. I say to my noble friend Lord Sherbourne that that may be an ancient provision but its rationale applies with equal force today. It is based on the premise I have already set out: that Peers who are Members of this House are already able to adequately represent themselves in Parliament. Parliament of course consists of the three estates of the sovereign, the Lords and the Commons. The Lords sit in their own right. The Commons is elected to represent the general public in Parliament. I do not believe that there is a strong case—there are arguments—for Members of this House to be able to vote to elect representatives to the House of Commons, since they are able to sit in Parliament anyway as their own representatives. This principle has long been established in common law.

Of course the bar on the voting rights of Peers in regard to general elections is not absolute; it applies only to Peers who are Members of this House. Hereditary Peers who do not sit in this House are able to vote in general elections, as are noble Lords who have retired or otherwise left the House under the provisions of the House of Lords Reform Act 2014. The basic principle has therefore been reinforced recently in statute, not simply in common law, as my noble friend reminded us. There is nothing to prevent noble Lords who sit in this House being heard in the House of Commons. If a Member of this House wishes to pursue an issue as a constituent, such as in the example cited by the noble Lord, Lord Blunkett, there is nothing barring them from raising it with their local MP. Noble Lords can also use their position to ask Parliamentary Questions and introduce legislation.

To address briefly a point raised by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, Supreme Court judges are able to vote in general elections. However, when those judges who are eligible to sit in the House of Lords return to the House, it is then that they are no longer able to vote in general elections. Bishops in your Lordships' House can vote because they do not have permanent membership of it.

Lord Brown of Eaton-under-Heywood: Can the Minister deal with the specific cases I raised of the President of the Supreme Court and the Lord Chief Justice, who are Members of this House but disqualified? They have no vote here and do not have a parliamentary vote. Would he not at least accept that that is a most regrettable anomaly? What he just said as to how other members of the courts have the parliamentary vote is true, but it does not apply if they are Members of this House.

Earl Howe: The noble and learned Lord has raised a very interesting constitutional point. It is so interesting that I think it is appropriate for me to write to him about it, and copy that to noble Lords who have spoken. As noble Lords who have stood where I am

[Earl Howe]
standing will be aware, there is a point at which the brief in front of a Minister runs dry. That is the case in this instance, but I reserve the right to produce some arguments.

Another issue raised was about the well-worn principle that there should be no taxation without representation. My noble friend Lord Young's comments on that issue in the debate on 19 July last year were cited. I can understand why the point about a Japanese citizen could be attacked, but a British citizen of voting age who is not a Member of the House of Lords but who pays no income tax retains the right to vote. The point my noble friend was making on that occasion, which I echo today, is that there is not a direct connection in law between people who have paid tax and people who have the vote.

The reason why Members of the House of Lords cannot vote on Finance Bills goes back a long way. The financial primacy of the Commons dates back many centuries and was formalised by two Commons resolutions in the late 17th century. The first, from 1671, states

"that in all aids given to the King by the Commons, the rate or tax ought not to be altered by the Lords."

That is quoted in *Erskine May*. The second resolution is more detailed, from 1678—I would love to read it out, because the language is wonderful. Noble Lords suggested that this is an anomaly or even an affront, but none of it prevents this House debating money Bills or tabling debates on a financial matter.

As many noble Lords have pointed out, Peers who are Members of this House can also vote, where appropriate, in elections to the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly; in local government elections; in police and crime commissioner elections; and in both national and local referendums. The difference in those instances, I say in particular to my noble friend Lord Bourne of Aberystwyth, is that those are forums or offices in which Peers do not have an automatic right to represent themselves.

Noble Lords therefore have a say in local, devolved and national decision-making. Enfranchising noble Lords to vote in general elections would give Peers two ways of being represented in Parliament—it would give them double leverage as citizens. My noble friend Lord Sherbourne suggested that there is no possible downside to such a change. The Government believe, on the contrary, that conferring such an exceptional privilege cannot be right.

I was asked by the noble Lord, Lord Adonis, and others to say something about the commitment in the Conservative manifesto to review the relationship between the Government, Parliament and the courts in a constitution, democracy and rights commission. I wish I could provide him with further and better particulars on this commitment at this juncture, but, as I have said on two occasions recently, it is still too soon for me to do so. The scope of the commission will be announced in due course. However, I can tell him that the aim of the commission will be to develop proposals to restore trust in our institutions and in how our democracy operates. I hope I need not say, although I will, that we will continue to promote the UK's interests and its values, including freedom of speech, human rights and the rule of law. It is clear, I hope, to most noble Lords that careful consideration is needed on the composition and focus of the commission.

In light of all that I have said, I must end with a disappointing message to my noble friend. Even if the Government supported the principle behind this Bill, and I hope that I have set out clearly our reservations about it, they do not think that spending further parliamentary time on it is justified when other, more pressing electoral reforms—reforms which the Government are working hard to bring into being—have been so widely called for.

Lord Kennedy of Southwark: I have just been looking at the *Companion*. The Minister said that we do not need any representation because we represent ourselves in Parliament—I accept that we are Members of Parliament in a sense—but the *Companion* and the Code of Conduct talk about acting on personal honour and in the public interest rather than out of private interest. There may be some conflict there. I do not want the Minister to comment on that now, but perhaps he can have a look at it and respond to us in a letter.

Earl Howe: My Lords, I would be glad to look at those passages in the *Companion*. I simply observe that they do not relate to our right to sit in this Parliament; they are much more about how we should behave when we come here.

1.03 pm

Lord Naseby: My Lords, I want to place on the record my sincere thanks to all noble Lords who have contributed today. Nine of them have been in favour of the Bill, with one against—I exclude the Government from that analysis—so that is, roughly speaking, 700 Members of the House broadly in support, which is most encouraging. It is interesting that, quite rightly, the noble Lord, Lord Blunkett—who knows far more about the union world than I do—voiced the view that, if you suspend yourself just before a general election, you could then vote in it, then remove your suspension and come back again. If there are any anomalies, that is one of them.

I have listened to all colleagues who have spoken in support. I pay particular tribute to the analysis of the wind-up last time—I think that ship is now heavily holed and firmly sinking. So I thank my noble friend Lord Sherbourne. My noble and learned friend Lord Brown has also raised something that has certainly caused damage on the ship. I say to the noble Lord, Lord Adonis, that he may not have weighed it up; I do not know his history previously and whether he has been elected before. I certainly fought six elections and, when I was asked and given the privilege to come to this place, I was aware that I would lose my right to vote. I weighed up whether the greater responsibility was to come to take my place here in the upper House and to contribute the experience and knowledge that I have of certain aspects of life—was that more important than my having the vote in a general election? That is a personal decision, and one I took freely. It does not

alter the fact, as the noble Lord, Lord Dubs, said—along with the others of us who campaigned hard—that it is a bad feeling when you look around, particularly in the last few days of an election, and are encouraging everybody else to vote when you know that you cannot vote yourself.

I take heart from this debate. I now realise, as I have been here long enough—23 years—that when the Government, my Government, are facing difficulty, they ask my noble friend Lord Howe to come to the Front Bench. This is no second-rate wind-up; this is the most senior member of the Government in the upper House having to turn out on a Friday to refute this particular Bill. He has already said from the Dispatch Box that he has to look at one or two things. I thank him for the trouble that he has taken; I appreciate it very much. I also thank the Chief Whip for co-operating. I fervently hope that the Bill will have a Second Reading. I am slightly terrier-like—I think the House knows that—and I believe that we will succeed. I am only 83; I hope that we will get there before I am 90. Anyway, enough of that. I beg to move that this Bill be now read a second time.

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

Access to Palliative Care and Treatment of Children Bill [HL]

Second Reading

1.08 pm

Moved by ***Baroness Finlay of Llandaff***

That the Bill be now read a second time.

Baroness Finlay of Llandaff (CB): My Lords, I declare my interests in palliative care, including as vice-president of Marie Curie and of Hospice UK and other roles declared in the register. I particularly welcome the noble Lord, Lord Brownlow of Shurlock Row, who has chosen this Bill for his maiden speech.

Let me make it clear: this has nothing to do with assisted dying. My Bill aims to solve two problems for the Government. The first is the ongoing variable access to hospice and specialist palliative care, with even less available out of hours. The second is to try to avoid some of the very distressing cases that have gone to court where there is disagreement between the clinical team and deeply distressed, loving parents over the best course of action in the management of a child with a serious life-limiting condition.

I will start with palliative care, which the Conservative manifesto committed to support. Last year, over 492,000 people died in England. It is estimated that, at any time, about 0.75% of the population will have palliative care needs, because the majority of those dying will have a significant terminal phase to their illness. Yet about one-third do not receive palliative care when they need it, particularly those with non-cancer diagnoses, or who are from marginalised communities, LGBT+ or of black and ethnic minority heritage. Those facing death are not just older people. Currently around 49,000 children and young people under 18 and over 55,000 young adults aged 18 to 40 are living with a life-limiting or life-threatening condition; almost 13,000 are aged 18 to 25. Even excluding oncology patients, this prevalence had risen by one-third in a decade, yet palliative care support for these young people is even more patchy than for older adults or small children. That is why the Bill covers all ages.

We know what to do, but we are just not doing it. I am grateful to the Minister for meeting me. I fear she will say that the Government feel they can achieve improvements without legislation, but it has not happened for decades. Major health improvements sometimes need the jolt of legislation and this is one of them. Two examples are smoking cessation, which needed a ban on advertising and smoking in public places, and wearing seat belts in cars. In recent years, many reports have highlighted deficits in palliative care provision, referred to in the many briefings which have been supportive of the Bill. The ombudsman's report, Marie Curie's research into inequitable care, and the BMA's qualitative, in-depth study into end-of-life care are examples. Despite 20 years of strategies and policies, my own inquiry five years ago revealed a 40-fold variation in indicative budgets from clinical commissioning groups, ranging from under £50 to almost £2,330 per palliative care patient per annum. Yet almost half the respondents had no plans to update or review their palliative care provision.

Now it is no better; the End of Life Care Coalition found that 18 of 44 sustainability and transformation plans do not even mention end-of-life care, let alone how they would improve it, and only 40% of clinical commissioning groups provided Marie Curie with data on fast-track packages of care. Following Second Reading of a previous iteration of the Bill, the Minister kindly wrote to me confirming that there is a statutory duty to provide maternity services. Indeed, the duty is far wider than only for the ubiquitous experience of being born. In Section 3(1) of the NHS Act 1977 the general duty on the Secretary of State to provide

"to such an extent as he considers necessary to meet all reasonable requirements"

has a list which includes

"such other facilities for the care of expectant and nursing mothers and young children as he considers are appropriate as part of the health service."

A notable aspect of the way this list is written is that it focuses on the diagnosis, treatment and aftercare of those who have suffered from an illness. In 1977, there was a deep culture of death denial. When services only strived for cure, death was a failure. Indeed, only 10 years earlier Cicely Saunders had opened her hospice—St Christopher's—and had begun to shine a bright light on the need for medical research to improve the care of the dying. From that beginning, the hospice movement came about outside the NHS and gradually, as the benefits of all it does became evident, the specialty of palliative medicine was recognised in 1989, 12 years after the 1977 NHS Act mandating maternity care. Now it is time to update the obligations of the NHS and end excessive reliance on voluntary donations to provide care for the only other universal experience after birth, which is death.

[Baroness Finlay of Llandaff]

Hospices renowned for excellent care have sprung up across the UK. Outreach teams go into people's homes and hospital support teams transform patients' experience when faced with a terminal illness. All too often, that is at the time of diagnosis. We all recall our much-loved colleague Lady Jowell and her powerful advocacy for research moving the frontiers of knowledge to improve care and outcomes. Systematic reviews, including one I co-authored, have shown the outcome benefits and cost efficacy of palliative care teams. These services are concerned with far more than just the last days of life.

NHS England has estimated that improved recognition of palliative care needs and services outside hospital could improve care and reduce hospital costs by £180 million a year. Previous iterations of this Bill contained more detail—detail that is better in accompanying guidance. The Bill would ensure that those commissioning services meet the duty to reduce inequalities, as required in Section 1C of the National Health Service Act 2006. It reinforces current strategies, such as the "Ambitions" framework, to meet the Government's commitment, in "Our Commitment to you for end of life care" and the comprehensive personalised care model, to end variation by 2020. It fulfils the pledges of the NHS constitution and the rights of patients to care appropriate to their needs.

Last August's announcement by the Prime Minister of a welcome £25 million to be administered through sustainability and transformation partnerships is a one-off grant. Unless changes are incorporated in strategic plans, as Clause 4 of the Bill requires, improvements will not be sustained. Clause 2 would ensure that a hospice with in-patient beds can access supplies from the drug tariff. There is a wide variation in how hospices access the medication and supplies they need, especially out of hours. Hospices with adequate pharmacy support can provide expert advice on medicine management, particularly for complex treatment regimes, reduce prescribing errors and ensure safe medicine supply and disposal.

Some 27 years ago my hospice was the second in the UK to take on a part-time pharmacist; in her first two years she saved more than the cost of her salary. Now, although many hospices have pharmacy support, the arrangements with CCGs are very variable, ranging from nil to more than 67 hours a week, but many cannot access GP or hospital records. I have been given examples of hospice drug costs being halved when supply was transferred from an FP10 model to a full hospital pharmacy supply.

I turn to the difficulties and tragedy of children who are imminently dying, where conflict results in an application to the High Court under the Children Act 1989. The wording of the Bill has been developed following several publicised cases where the parents of a child with a life-limiting prognosis sought other treatment options. Sometimes, communication broke down to such an extent that court action was instigated over proposed treatment or treatment-withdrawal decisions, or to prevent transfer of the child's care to another reputable provider. I am grateful to Chris Gard and Connie Yates, here today, who generously shared their experience to try to prevent others going through what they experienced, when a polarisation of views made it all the harder for clinicians and Charlie's parents. They had sought a three-month trial of an oral supplement costing £3,000, with a suggested chance of success of more than 50%. They knew it could fail, yet legal fees of more than £1 million, a media circus and acrimony ensued. Three years after Charlie's death, his mum says, "I just wanted to know we'd done everything we could." Such grief does not fade.

Legal action has many detrimental effects. It exacerbates failures of communication, increases stress and has long-term mental health sequelae. Clause 2(2) states that independent mediation must be offered early by the hospital when views are diverging before proceeding to court. Mediation, voluntarily undertaken and with information shared openly between clinicians and the parent or parents, can ensure that parents feel listened to and are less intimidated by the power differential of clinicians with complex medical knowledge. Options for a second opinion can be discussed. Of course, if mediation fails for whatever reason or the child needs urgent life-saving interventions or abuse is suspected, subsection (2) would not apply.

Some major clinical decisions are terribly difficult. Overall, treatment or an intervention is ceased because no therapeutic goal is being achieved or the intervention has become excessively burdensome. Similarly, a proposed intervention that poses disproportionate risks of significant harm would be withheld or the risks minimised by transferring the child to a more suitable setting. However, often things are far from clear-cut. They must be carefully weighed in the balance of harms against benefits, but risk aversion must not deny realistic hope. Prognosis is an inexact science and the ways a child adapts to progressive disability are unpredictable.

When deciding the best interests of the child, all aspects of the child's life and experience must be considered. When the child can express wishes and feelings, these are paramount. When they cannot, it is the parents who normally know the child extremely well, and are aware of the child's wishes and feelings, aspects that comfort the child and the way that the child feels valued. While the child is alive and therefore has interests, those interests are unique to that child; but all interests cease on death.

Clause 2(4) would give appropriate weight to parental views in the court process, in line with societal and medical norms, in the weighing up of the benefits and disbenefits of a proposed course of action. I am most grateful to the noble Baroness, Lady Jolly, for sharing with me a draft amendment that may help clarify this in relation to disproportionate risk of significant harm and improve this subsection, which I know has caused some concern. The subsection does not form a court direction. It is compatible with the Children Act, which emphasises the crucial importance of the child's interests, wishes and feelings. It allows the healthcare provider to have the chance to show that a different treatment plan is in the child's best interests. It does not give precedence to one parent's view over another; the court must decide on an individual basis, as at present.

This Bill solves two major problems for the Government. First, it can show that they are determined to ensure good palliative and end-of-life care for everyone,

everywhere, at all times of the day or night. Secondly, it would resolve some distressing disputes between loving parents and clinicians, rather than proceeding to court. I beg to move.

1.23 pm

Lord Ribeiro (Con): My Lords, it is a pleasure to follow the noble Baroness, Lady Finlay, who has devoted a lifetime to the care of the dying. I thank her for initiating this important debate. It is a pleasure to be able to support this Bill.

As a surgeon, one of the most difficult tasks in cancer surgery was deciding how best to approach a patient on whom you have operated in the hope of achieving a cure, only to discover that their tumour is inoperable. One can buy time and offer radiotherapy or chemotherapy, but inevitably the cancer will win through and the patient will face an uncertain future.

I faced this dilemma in my first month as a surgical house officer when I did not know how to control a patient's pain after surgery. In those days, we called it an open and shut laparotomy because of the inoperable cancer in the abdomen. Distraught by his suffering, which did not respond to the four-hourly doses of pethidine I prescribed, I turned to the ward sister for help. There was a pause. "Morphine", she said. It eased the patient's pain, and they died peacefully.

Dame Cicely Saunders founded the first St Christopher's Hospice in south-west London in 1967—the year I qualified. In 1958, she wrote:

> "It appears that many patients feel deserted by their doctors at the end. Ideally the doctor should remain the centre of a team who work together to relieve where they cannot heal, to keep the patient's own struggle within his compass and to bring hope and consolation to the end."

We would all wish that hope and consolation for ourselves at the end, and that is precisely what the hospice movement has endeavoured to provide over the last 60 years.

As our population ages, more people are reaching an age where the demand on emergency services grows. It is estimated that in 2016 there were 1.6 million emergency admissions for people in the last years of their life. This is a huge burden on hospitals since they account for 30% of all admissions, costing the NHS £2.5 billion. Hospitals should be places for treating patients and, hopefully, curing them. They are not hospices for the care of patients needing terminal care. The provision of hospices nationally is such that many hospitals cannot avoid becoming hospices, for lack of these services.

We need more community-based care to support demand. The Bill is welcome, as it rightly asks for such care to be commissioned in the same way as other care, by the clinical commissioning groups—CCGs. Marie Curie, to which I am grateful for its briefing, estimates that without properly commissioned palliative care by CCGs, the cost of providing emergency admissions for patients in the last year of life is likely to increase by £1.6 million by 2041. We do not have the capacity to meet the extra beds required to support this need, particularly when innovations in medicine and surgery are designed to reduce patients' length of stay, and while maintaining staffing levels is a continuing problem.

There is no clear national strategy for end-of-life care, and, despite the early pioneering work of Dame Cicely Saunders, hospitals are supported in the main by charities and the public, with the NHS providing about a third of the cost of adult hospices. I believe there are 200 hospices in the UK collectively caring for 225,000 people and their families per year, 80% of which is delivered in the patient's home. It is time to provide a comprehensive nationwide service from which all can benefit, through the CCGs.

The Bill will ensure that access to hospice care is not determined by a postcode lottery where some areas are better provided for than others. It is important to recognise that many hospices will be running a deficit budget in 2019-20. As the noble Baroness, Lady Finlay, observed, the Prime Minister's announcement in August 2019 that £25 million will be made available to hospices and palliative care services in England is to be welcomed, but it is non-recurring. It will fix the roof while the sun is shining, but without sustainable funding it is unlikely to fix the roof long term.

A National Health Service which delivers care to all at the point of need should also be able to do so for those at the end of their lives through a better-funded and provided-for hospice service. Perhaps the phrase "from cradle to grave" should have renewed meaning as we all get older and the demand for end-of-life care increases. I believe that the Bill will go a long way to deliver these aims, and I am delighted that it has wide and strong support from the BMA, Marie Curie, Hospice UK and, I hope, your Lordships.

On Clause 2, which has been mentioned, earlier this week, along with the noble Baroness, Lady Finlay, and the noble Lord, Lord Sheikh, I met Connie Yates and Chris Gard, who is here today. They are the parents of Charlie Gard. I was impressed by their quiet determination to avoid legal challenges in these cases which serve only to divide and entrench opinion. Their plea for mediation before litigation, put so eloquently by them on the "Victoria Derbyshire" programme yesterday, puts a human face on a problem that one must address to prevent others suffering the same fate. The BMA has raised concerns about Clause 2(4), believing that any medical treatment proposals put forward by any person holding parental responsibility for a child are in the child's best interests. It believes that this may expose children with life-limiting illnesses to unproven or sub-optimal treatments. It is important to be clear where the balance of responsibility for treatment lies—with the doctors responsible for the child's care or with the parents. I am sure that we will return to this thorny issue in Committee and I look forward to considering the amendment to be tabled by the noble Baroness, Lady Jolly.

With those reservations, I am pleased to give this Bill my full support and I thank the noble Baroness, Lady Finlay, for introducing it.

1.30 pm

Lord Hunt of Kings Heath (Lab): My Lords, it is a great pleasure to follow the noble Lord, Lord Ribeiro, and to lend my support to the Bill. I declare an interest as a supporter of St Mary's Hospice in Birmingham. I will focus on palliative care, but I also support the

[Lord Hunt of Kings Heath]
second part of the Bill in response to the heartrending cases that the noble Baroness, Lady Finlay, mentioned, where disagreement arises between doctors and patients over the treatment of life-threatening illnesses suffered by children. She makes a powerful case for parents and doctors to have early access to mediation. Perhaps the Minister might agree to the possibility of funding a pilot programme to examine whether this might be a sensible way forward.

Like other noble Lords, I have received a briefing from the organisation, Together for Short Lives, which has some reservations about the wording of Clause 2(4). Its initial analysis is that this provision might qualify what we understand as the child's best interests. I think that the organisation has been in subsequent discussions with the noble Baroness and that it now understands the motivation behind what she is offering, but it would be helpful if she could say that she will be in further discussions with it between now and when we reach Committee.

On palliative care funding, I support the main thrust of what the noble Baroness and the noble Lord, Lord Ribeiro, have said. We have a problem with palliative care in this country which is not confined to the funding of hospices; it is about the way the NHS organises palliative care and what happens in care homes. Overall, we do not have a comprehensive palliative care service, and the way I see it, the Bill aims to do just that.

The noble Baroness made some important points about access by palliative care providers to pharmaceutical services. Again, the BMA supports that, and I support its comment that clinicians providing general palliative care advice should have access to specialist care at all times. The other evidence I have looked at is from the Association for Palliative Medicine, which certainly knows what it is talking about. It has warned that access to palliative care services are poor for those of black, Asian and minority ethnic backgrounds and for older people. This is a well-remarked concern about palliative care which, again, argues for a much more consistent approach, and the noble Baroness's Bill points us in the direction of how we might achieve that.

I will refer to St Mary's Hospice in Birmingham because the challenges it is facing are very relevant to those being faced in all parts of the country. Over the past 12 months this extraordinary place has supported 1,756 individuals living with a terminal illness. That case load has risen by 30% over the past five years. The hospice has looked at future projections and it expects demand to rise again over the next decade or even longer. The problem is that NHS funding has not risen to the same extent. Birmingham has had to reduce its service and the number of in-patient beds from 20 to 15 as a result. It costs £8.5 million per year to run the hospice; NHS funding amounts to 36% of this. Rising costs, particularly of drugs and pharmacy services, are not fully covered by the grant that comes from the NHS.

I said that St Mary's Hospice is a wonderful place. I should have said it is a wonderful concept, because most of the work it does is in the community. It has developed the concept of satellite sessions, particularly in the inner city of Birmingham. The noble Lord, Lord Howard, came and spoke about this exciting new development to a reception we held in your Lordships' House a year or two ago. It has a case load of 500 patients living in the community at any one time. When you compare the wonderful service it gives with the fact that too many people—the estimate we have at the moment is 54% of people—are dying in hospital, when most people express a wish to die at home, we clearly have some major problems.

I pay tribute to the NHS, because there is a pan-Birmingham approach. St Mary's Hospice has been given a leadership role across Birmingham and Solihull Clinical Commissioning Group to work with partners to plan and transform the delivery of palliative care and address some of the challenges I have talked about. They have a shared vision which aims to identify everybody who might benefit from palliative care, to enable more people to live independently and to reduce overreliance on specialist and acute resources. That is just in the right framework. I think the Minister will agree that it fits into the philosophy of the NHS long-term plan and is something to be supported. I hope that Birmingham and Solihull CCG and STP will be able to look at this carefully and provide the wherewithal to enable it to happen. Clearly, at the moment patients in acute hospitals or the care sector are really missing out on the kind of service we know could be delivered if we could only shift the resources around in a more effective way.

The Prime Minister's announcement in August of an additional £25 million investment was, of course, very welcome indeed, but I echo the noble Lord, Lord Ribeiro: it would be very helpful if this could become an annual payment rather than a one-off. The Government are reluctant to intervene in the NHS but in this area they need to tell the NHS to get real about funding, to stop having annual contracts and to have long-term, running contracts so that hospices know three years ahead the amount of money they have. When we come to the Second Reading of the NHS Funding Bill, the Minister will talk about the certainty she has given the NHS over five years. I think the Government should give certainty to hospices as well. I very much support the Bill.

1.37 pm

Baroness Jolly (LD): My Lords, I, too, support this Bill. I endorse what the noble Lord, Lord Hunt of Kings Heath, has just said and congratulate the noble Baroness, Lady Finlay, on coming so high in the ballot and getting an early slot in the parade of Private Members' Bills. I am grateful for the many briefings that I have received. I warn the Minister that the noble Baroness, Lady Finlay, is a tenacious individual. Should the Minister decline the Committee stage, for which I have an amendment ready to go, the noble Baroness will return next year, as I am sure will many of the noble Lords speaking today. We will not let this issue drop. The response from the Government last June was unconvincing and disappointing. I fail to see how the Minister today can come up with something that will not satisfy.

As has been stated, Clause 1 of the Bill applies to palliative care and support. Midwifery services are available from the state and mandated in legislation. They are freely available to all women. It seems strange and anomalous that end-of-life services do not enjoy the same ease of access and availability of medication to treat pain and prevent suffering. Why should those of us who choose to end our lives in hospices be treated differently from those who find themselves at home or in a hospital when they die? At the end of our lives, we should all have care that is totally person-centred, not one size fits all, whatever our age, colour or creed. Hospices should have the same level of access to pharmaceutical support as settings where NHS clinicians provide care. That should be the responsibility of the local commissioning body—the CCG—as recommended by the noble Baroness, Lady Barran, when she summed up the last Second Reading debate on this Bill.

I was struck by the point made by Marie Curie that 6 million of us will die within the next 10 years. Commissioners need to face that and plan accordingly. It is not something that should just happen. It is a really big number—I think that it is something like 20,000 a day, which is an awful lot. Many of us would choose to die at home, but for many reasons that is not an option.

As a society we must think more about our deaths than we do currently. Good end-of-life care is expensive and not always available from some CCGs. That should not be the case. A good death should not be a lottery. It should be a right, not an accident of where you die. That anomaly needs sorting and I hope that the Minister will not disappoint. A clarification of the department's thinking on this would be appreciated. If the Minister is not able to offer that now, I would be grateful if she could add it to my letter.

Clause 2 clarifies the situation when treating children with a life-limiting illness. In advance of the previous incarnation of this Bill, I had the privilege of meeting the parents of Charlie Gard, who died so tragically, in the gaze of the public in a media storm, nearly a week short of his first birthday. They were determined that no family should be put through the torment that faced them when there was an impasse between the interests of the child and parents and the clinician and hospital. There was no mediation. Noble Lords will remember the tragedy unfolding on our screens almost hour by hour. Dignity and mutual respect vanished for the dying child, his parents as helpless witnesses, and the clinicians. The Bill of the noble Baroness, Lady Finlay, remedies that, but I am sure that the Minister will tell us that it should be happening anyway. We know that and I am sure that in hindsight everyone involved in Charlie's care knows that, too, but it could happen again unless there is legislation that states clearly how such a situation should be better handled.

I hope that the Bill is committed after this Second Reading debate, as I have an amendment ready to table. The noble Baroness knows that and believes that it sits well within her Bill—I am grateful for her endorsement today. Many organisations in their briefings have expressed concerns about Clause 2(4). My amendment would insert after Clause 2(4):

"Any medical treatment proposals put forward by any person holding parental responsibility for the child must be considered by the court, unless contrary evidence is established that the proposed treatment poses a disproportionate risk of significant harm."

The amendment would ensure that the court is able to prevent a proposed action where it is not in the best interests of the child—in other words, when it is clearly established that the proposed action or medication would cause significant harm. Such harm should be clearly established to outweigh the harms from the alternate proposed course of action.

Fortunately, very few of us have found ourselves in the position of watching a child die. I lost a cousin before his first birthday, well over 60 years ago when I was a small child, and I still remember the impact that it had on the extended family. My mother never forgot his birthday and his parents still remember it now. We owe it to society that any palliative care that is given is properly commissioned. In the case of children receiving palliative care, mediation should be readily available in all situations where parents and clinicians fail to find a meeting of minds and the court should be able to prevent the proposed action when it is not in the best interests of the child.

I am sure that the Bill, when amended in Committee, will offer a way forward that is practical and workable and offers dignity in dying to the individual and their family. The Prime Minister has announced that £25 million will be provided to hospice and palliative care services. That must be commended but, as the noble Lord, Lord Hunt, said, a one-off is fine and dandy, but it needs to be sustained. We need to make sure that facilities remain open and that the quality of end-of-life care is improved. We eagerly await the Minister's response. I hope that we are not disappointed.

1.45 pm

Baroness Meacher (CB): My Lords, it is always a great pleasure to follow the noble Baroness, Lady Jolly, who made an excellent speech. I rise to support the first aim of this Bill, which is to ensure the provision of adequate funding for palliative care services, including hospices, across the country. Who could disagree with that? Hospice UK tells us that the NHS currently provides only 32% of the cost of adult hospice care and just 17% of the cost of children's hospice provision. It is extraordinary that hospices still depend upon charitable funds to support such a high proportion of their vital services. Of course, hospices must have access to pharmaceutical services on the same basis as any other NHS-commissioned service. I hope the Minister can give the House some assurance that progress can be made on some of these injustices.

Adequate funding is certainly a necessary condition for the provision of high-quality services, but it is by no means a sufficient condition. The *NHS Long Term Plan* rightly talks about the need to give patients

"more control over their own health".

Of particular relevance to today's debate is the NHS commitment to personalise care in order to improve end-of-life care. Probably the most distressing feeling of anyone facing death is a sense of helplessness, a lack of control. We all know how much more suffering

[Baroness Meacher]
we can bear if we suddenly realise we have some control over it. I cannot be the only person who has had toothache and found that, the minute I booked an appointment with the dentist, the pain somehow did not seem quite so bad. That applies very strongly, and I suggest that the greater the pain and the greater the suffering, the more it applies.

Your Lordships will not be surprised—here I need to declare my interest, as stated in the register, as chair of Dignity in Dying—that I will argue from evidence of the experience in other countries that one of the most effective ways to increase the funding and quality of palliative care, most importantly the latter, is to give terminally ill, mentally competent patients the right to control the timing and circumstances of their own death if they are suffering unbearably: the right to decide for themselves when, despite high-quality palliative care, their suffering has reached the point where they cannot stand it any longer. It is no accident that nearly everyone—84% of people generally and 86% of disabled people—wants this right. We all fear an unbearable death—I certainly do—and would lead happier lives, as well as die better, without the need for that fear.

Surely relevant to the need for funding was the cash injection of 72 million Australian dollars in Victoria to increase the number of palliative care beds and access to home-based palliative care when assisted dying legislation was passed in 2017. In Western Australia, where assisted dying was legalised last year, the Government provided 17.8 million Australian dollars for palliative care. In California, where assisted dying has been legal since 2016, doctors say that the conversations that health workers are having with patients are leading to patients' fears and needs around dying being addressed better than ever before. The whole point of the assisted dying process and safeguards is that the patients are at the centre. They are the decision-makers, they are consulted at every turn and the result is better palliative care.

Probably the most powerful evidence of the link between legalised assisted dying and enhanced palliative care provision comes from Oregon, where assisted dying was legalised 22 years ago. Oregon is considered to have the best palliative care services in the whole of the United States, and that is not an accident.

An important lesson from Oregon is that patients' experience of palliative care depends not only on funding, as I have already indicated. Studies of Oregon's palliative care services show that the Death with Dignity Act has resulted in more open conversations about death and dying, and more careful evaluation of end-of-life options. In the UK, the—in my experience, massive—taboo attached to dying is inhibiting doctors, and indeed relatives, from having those open conversations. The dying person therefore feels far more alone with their suffering than they should. The safeguards attached to the Oregon model of assisted dying, which we plan to introduce in the UK, with a few adjustments, ensure that patients facing death are encouraged to talk about their wishes, fears and treatment options. Nearest relatives are required to have a conversation with the patient's doctor about their wishes for the patient. Doctors say that since the passage of the legislation, they have made the effort to learn more about the treatment options available. The quality of palliative care increases as a result, and that is what this debate is all about—better palliative care.

It is understandable that many palliative care doctors oppose assisted dying until the relevant law is passed. Then, as they experience their services improving and their patients being more involved in their care, the patient-centred doctors change their minds and support the freedom of dying patients to choose precisely how and when they die. We have evidence of this shift in the attitude of palliative care doctors from Oregon, Canada and elsewhere.

Along with other noble Lords, I want to see the best possible palliative care funding in the UK. However, until patients have some control over their own dying process, their experience of palliative care services will not be as good as it could be and, for a minority, dying will continue to be an utterly intolerable experience, however good the funding. That is what the report *The Inescapable Truth* illustrates in agonising detail. I could read it only in bits, as it was so painful to see what people had gone through before they died.

I turn briefly to Clause 2 of the Bill, which concerns the treatment of children with a life-limiting illness. In general, I am a great supporter of mediation as an excellent way of resolving disputes. However, I am profoundly concerned about this clause and, in particular, subsection (4). It assumes that parents will put the best interests of their child first, but it fails to take account of the very powerful need of any normal parent to keep their child alive. I argue that it is an animal instinct in us all and is essential for the preservation of the species. It is that strong—the feeling that "We just must keep that baby alive." My heart goes out to any parent faced with the dilemma that Clause 2(4) seeks to address—misguidedly, I believe.

In my humble opinion, as the mother of four children, Clause 2(4) is very dangerous for anyone really committed to ensuring that the child's best interests always remain paramount in these almost impossibly difficult situations. No assumption should interfere with the fundamental principle of the primacy of the child's best interests.

1.53 pm

Lord Brownlow of Shurlock Row (Con) (Maiden Speech): My Lords, it is an honour and a pleasure to follow the noble Baroness as I rise, slightly nervous and daunted, to give my maiden speech.

As patron of and donor to the Prince of Wales Hospice in Pontefract and the new Thames Hospice build in Windsor, and as a donor to the Alexander Devine Children's Hospice in Maidenhead, I strongly support the Bill and thank the noble Baroness, Lady Finlay, for bringing it to the Chamber. It is worth noting that, according to Marie Curie, end-of-life care is £280 per day per patient more expensive when delivered in a hospital compared to in a hospice.

I thank everyone in this House from all sides for their kindness, support and advice—as well as Black Rod and her staff, the Clerk of the Parliaments and his staff, our fantastic doorkeepers, the attendants and police officers. All have been incredibly helpful and given me so much guidance and direction. I cannot

thank them and all other parliamentary staff enough. I also thank my supporters, my noble friends Lady Chisholm and Lord Callanan, as well as my noble friends Lord Cormack, Lord Leigh and Lady Rock, and the noble Lord, Lord Donoughue, who have all helped me further understand the workings of your Lordships' House.

My journey to this place started modestly in Anfield in Liverpool, where I was born. Noble Lords will know that Liverpool has gained renown over decades for musical genius, football prowess, sharp wit and a generosity of spirit. I leave it to others to suggest which of these I bring to your Lordships' House, but I admit to being an avid crime fiction reader and, curiously, a builder of complex Lego models, my latest project being the Taj Mahal.

By the time I was 14, my father's job had taken us to Doncaster and then Southport. I read economics at Newcastle Polytechnic, where I was a contemporary of my noble friends Lord Callanan and Lord Bates in student and Conservative politics. After graduating, I became a police officer in Slough. I left the Thames Valley Police in 1988 and became a recruitment consultant, with time spent working around the Home Counties and in London.

In 1996, I started my own business. There were just two of us on day one. Today, that business employs thousands of people and works with clients all over the United Kingdom. We provide specialist resources focusing on governance, compliance and regulation. A few years ago, we passed the milestone of having paid over £1 billion in tax, proudly contributing to the British Exchequer as well as creating jobs and opportunity directly.

To date, I have started or invested in 16 companies, from pubs and restaurants through housebuilding and fashion to travel, technology, documentary filmmaking and education and, most recently, two green technology companies. Between them they operate throughout the UK as well as in Sydney, Shanghai, Singapore and Toronto. A thread that weaves its way through my portfolio is people. While I believe that an invisible hand works best in the market and the economy, I think there needs to be a more visible, gentle hand to protect vulnerable and less aware people.

While legislation and regulation exist to protect these and others, an essential problem is the failure of some organisations to comply. It cannot be right that an employee of the BBC has to go to an employment tribunal to have it ruled that she was denied equal pay on the basis of gender when a male colleague earned six times more than she did; nor that millions of bank customers can have financial products mis-sold to them. These are just two examples of the failure to comply with existing rules, but I believe there is scope to legislate and regulate further to protect people and resolve injustices without trampling on personal freedoms. That is why I look forward to the introduction of the online harms Bill and the much-needed domestic abuse Bill. But more needs to be done as part of our collective duty of care.

It cannot be right that a TV viewer can be enticed through advertising to take out loans that carry interest rates of over 1,000%. It cannot be right that a tenant justifiably granted a council house continues to stay there having married somebody earning £40,000 per year, and is still there today with an even bigger joint salary, as the original tenant is now also earning. It cannot be right that a person can become a fully trained nurse within the NHS only to leave, move abroad, become an agency nurse, commute to the same hospital and earn in two weeks what an equivalent employed nurse earns in a month, allowing the contractor to spend two weeks a month off duty and in the sun. It cannot be right that, for the same train journey, a passenger can more than halve the cost of a ticket by splitting the train journey into smaller chunks with multiple tickets, compared to one ticket bought for the whole journey.

I am very proud of my own charitable foundation, which works to help individuals or communities where there is an element of disadvantage, locally to me and across the country. It is through my foundation that I first started working with my Member of Parliament, Theresa May, as my foundation worked on projects throughout her constituency. Today that work continues, and she and I are also working together on a number of green initiatives as part of the UK's trailblazing goal of achieving net zero emissions by 2050. So my final thanks are to our former Prime Minister, who nominated me to join your Lordships' House. I know I have a lot to live up to.

However, my thanks are tinged with regret—regret that the challenges and circumstances of the last three years have meant that we have not fully benefited from the ideas and initiatives that she had in mind when she stood on the steps of Downing Street wishing for a fight against burning injustices. As she said, if you are born poor, you will die on average nine years earlier than others; if you are black, you are treated more harshly by the criminal justice system than if you are white; if you are a white working-class boy, you are less likely than anyone else in Britain to go to university; if you are at a state school, you are less likely to reach the top of your profession than if you are educated privately; if you are a woman, you will earn less than a man; if you suffer from mental health problems, there is not enough help to hand; and if you are young, you will find it harder than ever before to own your own home.

Much progress has been made over the past three years but these burning injustices remain. That is why, with an inherent sense of optimism, I hope that the Government, with their majority, will deliver on levelling up our society and create one nation that is fairer and more just. I thank noble Lords for the immense courtesy that they have shown me today.

2.02 pm

Baroness Stroud (Con): My Lords, it is a pleasure and a privilege to be able to congratulate the noble Lord, Lord Brownlow, on his excellent and deeply thoughtful maiden speech. The compassion and care with which he has approached this debate are testament to the wisdom and experience that he will bring to this Chamber. His professional success and entrepreneurial track record are matched, as we have heard, by his compassion and philanthropy. His personal charity has been an important driver in addressing disadvantage

[Baroness Stroud]
across the UK, including support for the Alexander Devine Children's Hospice and the Prince of Wales Hospice, showing his deep, long-term commitment to the issues raised in today's debate. It is a pleasure to be able to welcome someone with such experience to this Chamber, and I look forward to his continued contribution to this House.

I support this important Bill. As we have heard, Marie Curie estimates that one in four people in the UK does not get the care and support that they need at end of life. It is estimated that over the next year 118,000 people will die not having received adequate care. If their voices and those of their families could be heard in this place today, it would be declared a national crisis. So I thank the noble Baroness, Lady Finlay, for introducing the Bill and for her tireless work fighting for the dignity and respect of all who are dying.

The Bill does two things: it addresses the concerning gap in our healthcare system around end-of-life care; and it would ensure mediation in instances of conflict between parents and health professionals over the withdrawal or the giving of treatment. Following on from the NHS's 10-year plan, published in January last year, the Bill addresses the failure to include palliative care as a core service of the NHS. This omission has created an unequal system whereby the standard of treatment at end of life is influenced far more by geographic postcode than a commitment to manage suffering and dignity in someone's final days. The Bill addresses this issue by ensuring access to specialist palliative care in hospital, in the community and in places of usual residence.

Without the Bill, the crisis of care will become only more acute. Over the next 25 years, demographic changes will increase the need for end-of-life palliative care, as more people pass away each year with more complex needs. A recent analysis published in *BMJ Supportive & Palliative Care* found that clinical commissioning groups had significantly varying budgets for palliative care services, from approximately £51 to £2,300 per patient per annum. This is largely the result of a consistent failure to build a broad institutional approach to palliative care, as individual founders and local organisations have historically been the dominant forces in creating and funding hospices, for example. This issue is compounded by the fact that, as we have just heard, many hospices do not receive pharmaceuticals from the NHS, meaning that hospice budgets are consumed largely by the provision of essential medicines—a further inequality skilfully addressed by the Bill.

The Bill also addresses the issues raised by the tragic incidents involving the families of Charlie Gard and Alfie Evans. To lose a child is a tragedy that I believe every parent dreads, but I cannot imagine what it is like to lose a child under the glare of intense media scrutiny, with the public and professionals debating your intentions as a parent for your child. I offer those families my sincerest condolences.

For Chris Gard and Connie Yates, the pain and anguish they experienced with Charlie's illness was exacerbated by the feeling that they simply were not being listened to. When they requested mediation and it was refused, and Charlie's treatment was escalated to the courts, they not only felt powerless but were legally unable to access Charlie's medical records to obtain a second opinion.

If mediation was the expected conflict-resolution pathway, the suffering of all families involved in these types of cases could be greatly eased. A recent Dutch study published in the official journal of the American Academy of Pediatrics found that, when there were conflicts regarding end-of-life decisions, by postponing these decisions until the 4% of conflicts within the administering team and 12% of conflicts between medical practitioners and parents were resolved, a consensus was ultimately met in all cases.

When our court system is so strained by parents who are failing their children, surely we want to support as much as possible those who seek to do everything right. Mediation is a crucial instrument in aligning the love and empathy of a parent and the practical medical reasoning of a practitioner. The goal of medicine is to heal and relieve suffering. As Eric Cassell warns in *The Nature of Suffering and the Goals of Medicine*,

"failure to understand the nature of suffering can result in medical intervention that (although technically adequate) not only fails to relieve suffering but becomes a source of suffering itself."

Our adversarial court system is not conducive to the relief of suffering. Charlie Gard received months of intensive care that health professionals felt was contrary to his interests, all the while without receiving the nucleoside treatment that his parents desired. This treatment, I might add, did not involve any invasive surgery but was a simple powder that was to be added to his milk formula. Nobody got the outcome they wanted, and it is evident that the suffering of Charlie and his family was greatly prolonged. The mental anguish in these situations is of a traumatic nature. For Charlie's parents, not a day goes by when they do not wonder whether, if the circumstances around decision-making had been different, they could have done more for their son. This situation could have been avoided with a focus on mediation and by ensuring that consensus was reached before any decisions were made. The Bill will stop this happening again.

Over the course of this Parliament, more than 3 million people will die in the UK. Of these, around three-quarters will have an expected death. They have the right to know that they will get the care they need when they need it and, where there is conflict over that care between parents and physicians, that mediation will be available to them. I commend the noble Baroness, Lady Finlay, for introducing this Bill, which has the power to ensure that children and adults alike receive the dignified and respectful care they deserve.

2.10 pm

Lord Berkeley of Knighton (CB): My Lords, it is a pleasure to follow the noble Baroness, Lady Stroud, and I agree with a great deal of what she said. It is also a privilege to have heard, and be able to salute, the excellent maiden speech of the noble Lord, Lord Brownlow of Shurlock Row. The points he touched on suggest that he will be a valuable addition to your Lordships' House.

I am delighted, too, to support my noble friend's Bill for a variety of reasons. I hope that the Government will find our deliberations constructive, whichever way they feel they must go at the end of our debate, because there is considerable room for improvement in end-of-life and palliative care. My noble friend Lady Finlay is absolutely right about that. I hope she will forgive me but I must say that, curiously, I come to support her through our divergence of views over assisted dying. My noble friend eloquently opposed assisted dying because, as with so many of the medical profession, she felt it incompatible with her role as a doctor but also—perhaps more importantly, relative to our discussion today—because she feels that in this day and age no one should die in pain, given the palliative care that is potentially available. That is at the crux of her Bill.

There was, as I recall, a fairly widespread desire in the assisted dying debate to see better palliative care. I completely accept that assisted dying is a matter of principle that goes well beyond the scope of this Bill; nevertheless, there are several areas where the two debates intersect. They intersect because, though no one should now die in agony, the fact is that they sometimes do. Even if that is seldom the case, which of course we all hope, what is beyond contention is that palliative care and hospice availability is something of a postcode lottery, as we have heard.

Before going any further, I pay tribute to the many quite exceptional staff, up and down the country, who provide absolutely wonderful care and support, which amounts to love and compassion. I have been privileged to witness this and was deeply moved by the generous commitment of staff. We hear all too often about abuse and cruelty in the care of the elderly and vulnerable, and of course that is terrible, but not often enough about examples of best practice in our hospices or the dedication of doctors such as my noble friend. To find oneself at the end of life in one of these hospices with an enlightened consultant is great fortune indeed. But it should not be a question of good fortune or luck, or depend on where you live.

One thing that is certain in this world—even in your Lordships' House—is that every one of us will die. Many of us will not need neurosurgery, cardiac treatment or a new hip but we will, as sure as night follows day, vacate our perch. We should face that unavoidable fact, not morbidly, but with imagination and creativity. We will not all die in our sleep, quietly and peacefully, however much we might wish for that—although palliative care can help. Surely the one thing we all want is the best possible medical assistance to lead us gently from one world to the next, even if the next is only the unquiet grave.

It is odd, as my noble friend has pointed out, that this area of medicine suffers in comparison with other healthcare services. It is good, as we have also heard already, that the Prime Minister announced in August last year that £25 million would be provided for hospices and palliative care services. Unfortunately, spread over these combined care facilities, that does not go terribly far, so I ask the Minister, as others have done, whether there will be a similar figure for 2020 and possibly for succeeding years.

I turn to the second part of the Bill. Clearly, the painful cases—and, oh, how painful they are—where medical advice goes against the wishes of the family of children receiving treatment that doctors might wish to withdraw or alter, and where a High Court application has to be made, are circumstances that we should seek to limit as much as possible. Whether mediation, a necessarily rather amorphous and pliable concept, could assist in reducing such applications I am not quite sure—fortunately, I shall be followed by a much greater legal mind than mine—but anything that helps the relationship between the parties has to be welcomed.

Both these subjects are sensitive, even taboo to some, but airing them with clarity and compassion can only help us to find better ways of living and, indeed, dying.

2.16 pm

Baroness Butler-Sloss (CB): My Lords, I declare an interest as a vice-president of Hospiscare Exeter, mid and east Devon, which works successfully to keep terminally ill people at home, usually to the last week—often, they die at home. We are appealing for money to make this a 24-hour service; currently, it is daily and we hope to do it overnight. The ideal situation for our hospice is where most people die at home.

The hospice work is wonderful. I strongly support the Bill put forward by the noble Baroness, Lady Finlay, except in one matter to which I shall come in a moment. This Bill has absolutely nothing to do with assisted suicide, despite the powerful speech of the noble Baroness, Lady Meacher, supported by the noble Lord, Lord Berkeley. I put it on record yet again that I do not agree with either of them, and I strongly support the way in which the noble Baroness, Lady Finlay, puts this matter forward. I belong to her cohort—I ought to say that because I do not think that the issue of assisted suicide is helpful in our discussions on this Bill.

I entirely support Clause 1 but I am concerned about Clause 2 and an issue that has not been raised, which I shall explain in a moment. Despite what the noble Lord, Lord Berkeley, has just said, mediation is an excellent idea. It works in family matters. These cases come before the family courts. I cannot see why we cannot try mediation. The Government might put a little money forward for a pilot scheme, as the noble Lord, Lord Hunt of Kings Heath, has recommended. I support what he said about that.

As a family judge and then President of the Family Division, I tried numerous, probably several hundred, cases in the years that I sat as a family judge. Those cases were sensitive and often tragic—in the two about which we have heard today, my heart goes out to the families concerned; I have to say to them that I lost a son aged 50 last year and, although he was adult, it was as painful as if he had been a child. For a son or daughter to be cut off as a baby or a young child must be absolutely appalling, and I really feel for them. But it is important when looking at this Bill to remember that the Children Act 1989 makes it the job of the judge trying a child case to regard the welfare and best interests of the child as paramount.

[Baroness Butler-Sloss]

I recognise the trauma for families of going to the court and, I have to say, the great distress of many doctors who are faced with parents with whom they cannot agree. If it is necessary to go to the court, there is a problem for me with Clause 2(4), which says that "the court shall assume"—not the medical profession—

"unless the contrary is clearly established, that any medical treatment proposals put forward by any person holding parental responsibility for the child are in the child's best interests."

If I were sitting as a judge, I would feel that that constrained me from the utmost flexibility that I would need in deciding what, in my judgment, the best interests of the child were. That is what really worries me about this clause. I understand the motivation, but I wonder whether the noble Baroness, Lady Finlay, has really put her mind to how a judge would try such a case. "Clearly established" is a higher standard of proof than the first-past-the-post, more than 50%. It is not as high as a criminal requirement, but it would require a standard that would lead me, if I were sitting as a judge, to wonder whether I had the power to say that I did not really think that the parents had got it right.

It is very important to remember, as the noble Baroness, Lady Meacher, was telling us, that some parents are desperate to keep alive their seriously ill child with the most appalling birth injuries or distortions—we have some like that; the doctors here will know what I am talking about. I have had endless cases of children with absolutely no chance of living beyond two whom the parents wished to keep, and the older children were left at home with somebody while the parents sat at the beside until the child died. These are very sad cases but if they have absolutely no chance of survival, it may be that the doctors have got it right, and that is where the judge has to come in. That would not be the point at which I would want parents to put forward a medical treatment proposal. If it is an individual matter, one would hope it would be cleared by mediation, but I am very concerned about cases where the court has to make the decision.

One also has to bear in mind that it is not just about the parents. There are teenage children with extraordinarily serious medical problems who ought to be heard. They are not covered in Clause 2(4). We really must bear in mind that children—including young children—are people, not packages, as I said when I did the Cleveland child abuse inquiry. They really have to be consulted, particularly if the parents' proposal would put them through a great deal of pain and discomfort, in order to reach a stage where a successful outcome may be less than 50% likely. I have had teenage children say, "I don't want it; let me die in peace", but the parents say, "No, no, you must keep the child alive". This is a problem on which the judge must decide, and Clause 2(4) must not inhibit their exercising their discretion as to what is in the best interests of the child as they see it. That is what worries me about this clause.

I would be very interested in discussing the amendment of the noble Baroness, Lady Jolly, with her. I am not sure I agree with it, but I did not really have the chance to consider it properly. At the moment, I have to say, I would like to see Clause 2(4) deleted in its entirety. Maybe before Committee, we can consider something that does not impede the absolute discretion of the judge to make what he or she thinks is the right decision. With that one reservation, I strongly support the Bill and hope that it goes forward.

2.25 pm

Lord Balfe (Con): I begin by congratulating the noble Baroness, Lady Finlay, an assiduous campaigner who has left her mark on this, the great dividing subject of our age, and will continue to do so. I welcome my noble friend Lord Brownlow and his excellent speech. We heard the voice of responsible capitalism—of a capitalism that pays its taxes, looks after its workers and benefits its country. I am delighted that he has joined us on these Benches and look forward to many future contributions from him.

I shall speak mainly about mediation. When I retired from the European Parliament, I took a course and became a commercial mediator. There is a distinction: a commercial mediator mediates commerce, while a family mediator mediates various bits of family law. The most important thing I learned as a trained commercial mediator was that when we got an agreement, the two parties signed something called a Tomlin order, which had the force of law and could be enforced. My group of mediators saw that one of the weaknesses of family mediation was that it often gave rise to second thoughts within hours of the agreement being reached. Some of our family mediators found it very frustrating that they could spend a huge amount of time coming to an agreement which then did not sustain itself for very long.

In this excellent Bill, there needs to be a clear determination of what is being mediated. Is it the treatment, the future or a particular point of the treatment? If you do not have the question "What are you mediating?" to put before the mediator, it will not work. Once you have decided what is being mediated, the second question that has to be answered is "Who decides the mediator?" In commercial mediation, it is normally the two parties who have to agree. In our corner of the world in East Anglia, the judge in the Peterborough court was very fond of sending things to mediation. He would say to the parties, "If you bring this to court, you will have two sets of barristers' fees for a least two or three days. In the end, I will make a decision; one of you will be dissatisfied because I can make a decision only on what is before me. If you take part in mediation, you can adjust what is decided; you can make a decision between you. You can have a legal basis for that decision, but you have to decide on the mediator." There were panels from which mediators could be chosen. I never quite worked out what my USP was, but I did not go too short of work. I think it was because of having been in European institutions. People said, "He knows beyond East Anglia." I do not know, but the important thing is that you have a clear perspective on how the mediator is to be chosen. Coming out of that, a question that needs addressing—I do not propose to table amendments—is the extent to which an NHS panel of mediators will automatically be acceptable, or whether something wider is needed. That will be quite important.

I take the point about Clause 2(4), but it is always very difficult to decide whose interest is there. A mediator cannot determine something in anyone's interest.

The first thing you have to do is sit people down and listen, generally completely separately in the beginning. My first stage was always a listening session, and it could go on for a couple of hours. The important thing was the people poured out their heart and said what the basis was. You could not cut them off; if you tried to do so, it would not work, because they did not feel committed or that you were listening. They felt you wanted to get home for tea, or something. You had to listen, and only after you had listened to both sides might you bring them together.

You might talk to them separately, but one of my key points is that mediation has to be a flexible weapon. You cannot just say, "You have to go and mediate", because I would find that in about 7% or 8% of cases people would walk into the room determined not to settle, and they would not settle. I found that in about 15% of cases, they walked into the room thinking that they certainly were not going to settle, but once you had coaxed them along, they often would. There was another percentage beyond that where, if you had handled it wrongly, they would have walked out on you and you would not have got anywhere.

I make these points about mediation because I think they are incredibly important for us to take on board. I would be very surprised if the Minister were to jump up and say, "This is a marvellous Bill. Don't bother with Committee—I accept the lot", but within the department I ask her to look at local experiments, as I think of them, or local actions, to see whether the basic principles are roadworthy, to what extent they could work and to what extent we can get feedback. Part of the reason for doing things locally—for experimenting—is to find out whether they work.

I hope that the Minister will at least give the Bill a good welcome and commit, in some form or other, to find a way forward, with the noble Baroness, Lady Finlay, and everybody else, to move this along the road. I end where I started: this is the great debate of the next 30 years. It is about senior citizens, the end of life and how we deal with perhaps the biggest scandal we have today: the lonely elderly.

2.33 pm

Lord Stirrup (CB): My Lords, I support the Bill and I thank my noble friend Lady Finlay for her persistence in seeking improvements to this crucial but neglected area of care. My father spent his final days in a hospice, and while his death was, of course, a matter of great sadness, the care he received, mental as well as physical, helped not only him but his family to deal with an inevitable but always traumatic aspect of life. This last point is crucial. Death is an inevitable, inescapable part of everyone's life, and we, as a society, should recognise that quality of death is an integral part of quality of life.

In considering human rights, we talk about the right to life. I have some difficulty with that notion, since we cannot guarantee life, but we can and should guarantee our citizens help with the experience that every one of them will have to undergo. This seems to me an important part of human rights. There is no doubt that in this country there are many areas of excellent practice in this regard, but it is also clear that much more needs to be done to level up our approach to palliative care. The Bill is an important step in that regard.

The Government's response to previous attempts to introduce similar legislation seems to have been to say that primary legislation is not the best way to deal with the issue. Frankly, that would be a more persuasive argument had they taken the matter forward effectively through some other route. While there has been some progress, I am not persuaded that it has been sufficient.

This is just one aspect of a wider debate over the need to consider physical and mental care holistically rather than as a series of separate issues. Just as social care needs to be considered alongside and be consonant with the provision of health services, so end-of-life care should be an integral part of the way we provide for the physical and mental well-being of our citizens.

Yesterday the noble Lord, Lord Hunt of Kings Heath, initiated in this House a very good debate on the NHS and social care. In it, I said that we were asking too much from the NHS and that this was creating unsustainable pressure on the system. It might therefore seem rather perverse for me to support a Bill that asks it to do even more, but that is not my intent. I am quite clear that the NHS does not and never will have the resources to permit it to do everything it might, but choosing what not to do at random or excluding services because they were the last to be proposed is no way to run any public enterprise, let alone one of such importance.

The evidence shows that the approach of clinical commissioning groups to the provision of palliative care is very uneven across the country, driven, I assume, by budgetary pressures rather than by strategic decisions. This cannot be right, but it is no good simply blaming the CCGs for this. The lack of a proper strategy for the provision of healthcare in England is, as I suggested yesterday, at the root of the problem.

Nevertheless, something needs to be done in the short term to address some of the most serious deficiencies in palliative care. Given the excellent work done by hospices, and considering the burden they lift from the shoulders of our primary and secondary care systems, it seems nonsensical to deny them access to the pharmaceutical services available within the NHS and to patients being treated at home.

If difficulties in accessing palliative care for adults approaching the end of life are distressing and unwelcome, how much worse must they be for children and their families? Yes, we are all going to die, but we expect and hope that it will be the conclusion of a fulfilling life. The death of a child must bring with it an anguish that simply cannot be understood by those who have not gone through the trauma. I accept that parents undergoing such stresses will not always be the best judges of what is right for a child, but sometimes they will have insights crucial to the provision of the best treatment. Cases of dispute between families and medical practitioners will sadly always arise from time to time and resolving them satisfactorily will always be difficult.

I understand some of the concerns that have been raised with certain aspects of the present Bill, but these can surely be addressed in Committee and on

[LORD STIRRUP]
Report. It seems indisputable to me that attempts to reach a conclusion to dispute through mediation must be preferable to immediate court action.

The Bill will perhaps require some amendment if it goes forward and it is no substitute for a proper, non-partisan debate on a strategy for the provision of holistic physical and mental care in England. But unless and until we have such a national debate, the Bill of the noble Baroness, Lady Finlay, is a good vehicle for addressing some important shortcomings in the present system and I support its Second Reading.

2.39 pm

Lord Sheikh (Con): My Lords, I begin by saying that I support this tremendously important Bill. I commend the noble Baroness, Lady Finlay, on her tireless dedication to the improvement of palliative care across the country and on introducing the Bill in your Lordships' House. As someone who has supported the hospice movement for many years, I am glad that we are putting palliative care on the agenda and ensuring that it receives the recognition it rightly deserves.

Death is the only certainty we have in life. However, I believe that life is sacred. We have a duty not to give up on those who are suffering in any way. I therefore feel that we should not debate the ending of lives. This is why I have previously spoken in opposition to the Assisted Dying Bill in your Lordships' House and in other places. The right to die can easily become a duty to die, but no life is less worth living than another.

Dying is an important stage of life, and, unfortunately, almost everyone will experience the passing away of someone close to them. It is regrettable that dying is made difficult for some people, their families and their carers. I therefore believe that our time should be spent discussing how we can better take care of adults and children or the vulnerable in their final part of life.

I am pleased that the Bill rightly places a duty on clinical services commissioners to ensure that palliative care is accessible to all patients of all ages, all over the country. In the next 10 years, over 5.5 million people in England will die, and around 75% of them will need some form of palliative care. For three-quarters of people, death is not sudden but expected. In the National Survey of Bereaved People, published in 2016, patients' families recorded that 81% of patients expressed a wish to die at home or in a hospice. Despite this, nearly half of all deaths occur in hospital, while only 23.5% in England take place in the home.

It is important that we focus on recognising people who would benefit from receiving care in the community and move them away from hospital settings. If the increased palliative care needs are not met, acute and A&E services will take the burden. Indeed, around 30% of emergency admissions are for people in their last year of life, which amounts to 11 million bed days, costing the NHS over £2.5 billion. That is projected to double by 2041, and an additional 8,000 hospital beds will be needed. Therefore, we must actively pursue sufficient access to 24-hour general and specialist palliative care services in homes and care homes that provide the same standard of care as hospitals. We should all recognise that we have a duty to provide palliative care in the same way that we do for maternal health, because we are born and therefore we will at some stage die.

Community end-of-life care allows for a holistic approach that emphasises collaboration between the various health providers. Our hospices and the voluntary sector do not have the resources and capacity to provide palliative care for people of all ages who need it. Some hospice services are running on as little as 10% NHS funding, with the rest being raised by charitable means. In some cases, the funding received by voluntary organisations has not risen in 20 years. I note that the Government have pledged £25 million to protect hospices and palliative care services which support around 200,000 people. This cash boost will be distributed by clinical commissioning groups. I would like to see that sum being paid annually—I reinforce the point made by my noble friend Lord Ribeiro and the noble Lord, Lord Hunt.

We need to ensure that the postcode lottery of access to palliative care services ends. Figures from Marie Curie suggest that each year around 150,000 people in the UK do not receive the care and support they need at the end of their life. Furthermore, its fast-track continuing healthcare analysis found that only 22% of clinical commissioning groups were delivering palliative care packages that fell within the guidance timeframe of two days. We must have parity in accessible palliative care across the country and ensure that hospices are treated on the same basis as any service commissioned by clinical commissioning groups.

I am glad that the Bill would entitle hospices providing palliative care services to access pharmaceutical services on the same basis as other services commissioned by clinical commissioning groups. It has been brought to my attention that people are less likely to receive palliative care if they are over 65, have a non-cancer diagnosis, are from a BAME background or are single. I am therefore pleased to note that the Bill provides for general and specialist palliative care services that are consistent with the duty to reduce inequalities. I am also pleased that it contains a requirement for clinical service commissioners to produce end-of-life statistics that include the provision of specialist palliative care and hospice plans to meet the needs of patients.

I find it shocking that Hospice UK identified that, in May 2016, 25% of clinical commissioning groups did not have a strategy to address end-of-life care. While preparing for this speech in support of the Bill, I communicated with various hospices, as well as the Rainbow Trust Children's Charity, which provides emotional and practical support to families where a child has a life-threatening or terminal illness. I have been made aware that the number of children and young people requiring palliative care is rising. This is due in part to advances in medical science which mean that more seriously ill babies are surviving birth and children are living longer with complex conditions. Children's conditions are also more unpredictable than those of adults.

Another challenge in palliative care for young people relates to the giving up or withdrawal of medical treatment. I am satisfied that the Bill emphasises mediation, with an independent mediator to reduce

and resolve any differences that may arise when a child is ill. Mediation is a transparent and holistic process. I worked as a mediator in disputes relating to contracts, so I am a great believer in the mediation process. I stress that a child suffering from a life-limiting illness has an impact on the entire family—parents and siblings. Court cases in this environment can be traumatic for everyone involved and can often be a lengthy process. I emphasise that children are best when they are alive. Furthermore, court cases can lead to high costs for the NHS if a case is not resolved in time.

I feel that this Bill solves many problems, especially concerning the approval of treatment for children. It is significant that it has provision for an independent mediator, as I feel it is important to have an aspect of impartiality in mediation so that a solution can be found.

I end my contribution today by recognising the contribution of Dame Cicely Saunders to palliative care. She was a pioneer of the modern hospice movement, which takes a holistic approach to palliative care, managing physical symptoms and tailoring care to meet the social, emotional and spiritual needs at the end of a person's life. I met Dame Cicely Saunders and had conversations with her regarding the important role that hospices play in palliative care. In fact, I have a connection with St Christopher's Hospice, which she founded. She emphasised to me that there is so much more to be done to improve palliative care. I agree with her and I certainly do all I can to support hospice movements in this country.

Palliative care focuses on maximising quality of life, and to me it seems inhumane that specialist and generalist palliative care is not accessible for everyone. So I am grateful to the noble Baroness, Lady Finlay, for providing us with an opportunity to remedy this inequality. I hope that this discussion can be continued by this Bill's progression, so that palliative care receives the recognition and support it so greatly deserves.

2.52 pm

Baroness Hollins (CB): My Lords, I congratulate my noble friend on her much-needed Bill. I have been so impressed by the many thoughtful contributions today, including the compassionate maiden speech by the noble Lord, Lord Brownlow. It is a pleasure to follow the noble Lord, Lord Sheikh. Recollections of Dame Cicely Saunders remind me that she taught me when I was a medical student.

Before my retirement as an academic psychiatrist in learning disability, my own research and clinical practice included a focus on end-of-life issues, including decision-making for people with learning disabilities and autistic people. Research at Kingston University and St George's led by Professor Tuffrey-Wijne, the first professor of palliative care and intellectual disabilities, has shown that—just as in life—people with learning disabilities are discriminated against in death. In countries where physician-assisted suicide has been legalised, there is growing evidence that despite the rhetoric of choice, this is just one more situation in which there is a lack of respect and understanding and the wishes, rights and decision-making capacity of people with some developmental disabilities are ignored. I declare an interest as a co-author of peer-reviewed publications on this issue.

Most people with learning disabilities still do not get equitable end-of-life care, despite a decade of inquiries and recommendations. Personalising end-of-life care for everyone is in the NHS long-term plan. The multisystem, multidisciplinary approach needed to get end-of-life care right for people with learning disabilities would almost certainly get it right for everyone else too and should be a benchmark for all services. I hope that my noble friend's Bill will ensure equal access for everybody, including people who are made vulnerable by the ignorance of clinical staff about the reasonable adjustments they can put in place to ensure that this group too can die a peaceful death—a point that I shall spend more time exploring in my QSD on Monday about mandatory training for all health and social care staff on treating people with learning disabilities and autistic people.

I am so pleased that the needs of children such as Charlie Gard and their parents are being considered in the Bill. I have met Charlie's parents several times and applaud their courage in drawing to public attention what happened to Charlie and themselves. To have a dying child and be in conflict with your child's doctors is the worst kind of nightmare—a nightmare that can have long-term emotional consequences for those left behind. No parent should be put through that, especially not in the public glare of the media. Mediation is the least that can be offered. I commend that initiative most strongly and look forward to participating in further debate about how that can work most effectively.

I do not recognise the research quoted by my noble friend Lady Meacher, who is not in her place—I can assume only that we read different journals; nor can I accept that assisted suicide has any place in this Bill. But I thank my noble friend for admitting that she is afraid of an unbearable death. She is not alone, but it should make her a passionate advocate for better services rather than looking for a quick way out. The truth is that some people may feel fearful and helpless at the end of life; indeed, depression and anxiety are quite common. The excellent book *With the End in Mind: Dying, Death and Wisdom in an Age of Denial* by the former palliative care physician, Dr Kathryn Mannix, illustrates that beautifully. The fact is that mental health conditions are treatable and both psychological and spiritual healing are possible, even and perhaps especially when someone is dying. Parity for mental health applies at the end of life too. The well-known author and surgeon, Atul Gawande, says that a life worth living would be possible right to the very end if only we knew how to talk about what really matters and how to make it happen.

In a public lecture that I hosted at the National Gallery in 2018, Dr Mannix chose six works of art depicting death and dying for us to discuss. But she started by asking the audience how many had been present when a person died. About a third raised their hands. Then she asked how many had been present when five people died and I raised my hand. Then she asked how many had been present at 1,000 deaths and hers was the only hand raised. I am sure that my noble

[Baroness Hollins]
friend Lady Finlay is the only one here today who could say the same. We know that fear and unfamiliarity colour perception. Her experience is that many people are afraid of death.

As childbirth approaches, some women are afraid too, but easy access to midwifery and obstetric services reassures most, giving them the confidence that they can manage and that their pain will be well managed. Many women will choose to give birth at home with community midwifery provided by the NHS. Some women will need specialist obstetric help in hospital and some will need help from mental health-trained midwives and liaison psychiatry teams; for example, because of maternal anxiety related to their own past trauma such as a previous stillbirth, unresolved relationship problems and other worries. Childbirth classes are offered to both parents. The importance of family support is well recognised.

Much the same could be said for dying. It is going to happen so, as the noble Baroness, Lady Jolly, said, how will we prepare for it? How will we resolve our own complex unfinished business? Just as in the transition to motherhood, the transition from this life will need varying amounts of support. Some of us will be confident enough to want to die at home with the right support. Many people will die in a nursing home, and too many people will die in hospital. Some people will need specialist palliative care in a hospice and at home, and most people will need death education for themselves and their families. However, unlike at the beginning of life, we as a society do not seem to be shocked by the paucity of provision of end-of-life care. I suggest it is because we live in an age of denial and still fail to understand the nature of death. Last year, when responding on behalf of Her Majesty's Government to a Second Reading debate, the noble Baroness, Lady Barran, argued that no other area of clinical care was mandated in primary legislation, but she was at a loss to disagree with me when I suggested that maternity care was surely mandated. Why cannot end-of-life care be accessed with the same degree of commitment as that provided at the very start?

On 23 July 2019, the noble Baroness, Lady Barran, wrote to my noble friend saying that I was correct. She said that,

"there are a small number of NHS services that are mandated in primary legislation, including midwifery services. These were set out in the NHS Act 1977, was updated by the NHS Act 2006 which replaced certain provisions, and most recently significantly revised by the health and social care act 2012."

Can the Minister still defend the Government's position that mandating care at the end of life is less important than mandating it at the beginning? I suggest it is time for a piece of mature, grown-up legislation. Is it not time that we accept our responsibly as a mature society? Will Her Majesty's Government please support the Bill?

3.01 pm

Lord Kerr of Kinlochard (CB): My Lords, my fox has just been shot: I was going to make exactly the same point that the noble Baroness, Lady Hollins, made at the end of her speech. I, too, congratulate the noble Baroness, Lady Finlay, on her persistence. I, too, looked back to see what happened the last time we had this debate; it was in June. I, too, was struck by how the noble Baroness, Lady Barran, ended by saying that no other area of clinical care was mandated in primary legislation. I had not spotted that that was wrong. I had spotted that the argument she went on to make was rather bad. She said that to put such care in primary legislation would set a dangerous precedent. I recognised that move very well because I used to work in Whitehall and I know that when one could think of no good argument to defend one's department's position, one would resort to "dangerous precedent", "unripe time" and, if one was in the Treasury, which I was for a time, "outwith the ambit of the Vote". Actually, that is the best one because nobody understands what it is and nobody can challenge you on it.

How would it set a dangerous precedent if this Bill were to pass into law and lay this duty on commissioners in primary legislation? I do not understand what Trojan horses will gallop out if one opens that Pandora's box. It seems to me that it is in no way dangerous. It would correct an anomaly. It is clearly the case, and clearly scandalous, that palliative care is so unevenly distributed across the country and that the level of investment in it is wildly uneven. That should be put right. It seems to me that it would not be a dangerous precedent and that the time is ripe. After all, this House has twice passed previous versions of the Bill.

I congratulate the noble Baroness, Lady Finlay, on this time getting the Bill on to our agenda so early in the Session. It seems to me that this time we are going to get it on to the statute book. I very much hope that the Government will assist.

3.04 pm

Baroness Brinton (LD): My Lords, I thank the noble Baroness, Lady Finlay, for bringing this Bill back with some amendments, which have undoubtedly strengthened the one that we debated in this House in June last year.

For far too long, patients across England have been victims of a system of palliative care that lacks not only consistency but the resources to help them. I join noble Lords in being delighted that the Government have announced that they will provide £25 million for hospice and palliative care services, but I am concerned that the Library briefing tells us that the purpose of this investment is to

"help keep facilities open and 'improve' the quality of end-of-life care",

as that is well below the target of this Bill. The Bill seeks to absolutely mainstream palliative care throughout the country. Given the debate and the comments from expert colleagues in the House today, I am sure that if that happens, money will be saved in the acute hospital system as well. What is not to like?

Noble Lords have covered an enormous amount of ground. From the Liberal Democrat Benches I confirm that we consider virtually all the Bill to be important and correct, and it certainly needs to be found a space so that it becomes legislation. I urge the Government, and particularly the Minister, to move us forward from the statement on 29 October that the Government

would work with patients, families, local authorities and voluntary sector partners to ensure equity of access to general and specialist palliative care throughout England. My grandmother often used to say, "Fine words butter no parsnips", and the problem with that statement is that you cannot ensure that equity of access unless the resources are there to support it. Therefore, I apologise to the Minister because, once again, I am going to say that we must have the resources to enable the Government to deliver on their extremely strong words. Let us make sure that Clause 1 is enacted as fast as possible.

Your Lordships will know that I have a particular interest in palliative care services for babies, children and young people. The briefing from Together for Short Lives has a brilliant opening statement:

> "If passed by parliament, this bill would help to overcome many of the barriers children and families face. This bill could also help to make sure that parents of seriously ill children and the professionals and services caring for them resolve conflicts about what is in a child's best interests by mediation and not in court".

Hear, hear—we on these Benches echo that, as does the British Medical Association.

The Liberal Democrats have long sought to fund palliative care and the hospice movement through NHS funding, so we are pleased to support Clause 1 in its entirety. I thank the noble Baroness, Lady Finlay, for putting back on the face of the Bill the stronger form of the legal duty for the relevant bodies—"appropriate health services"—to provide and commission palliative care and psychological supports for patients and their families. That is extremely welcome.

There is still no method of accountability to ensure that CCGs and other health bodies serve patients to the best of their ability. The situation is begging for a catalyst that will empower CCGs and hold them to account in the work that they do. Your Lordships know that I have spoken often about the position of parents with young children in Hertfordshire who need palliative care. We saw a CCG close the respite care centre 100 yards down the road from my house without making arrangements elsewhere for these children. Eighteen months after the provision closed, the alternative beds have only just opened 20 miles away in Hertfordshire, but these beds do not in any way replace the ones that were closed. The standard of variation between the lowest and highest budgets allocated for some patients by CCGs is extraordinary. No patient deserves to receive care so lacking that it is not palliative care at all.

Focusing again on children and young people, the provision in the Bill regarding pharmacies is important. However, we remember that NICE has stated that children with life-limiting conditions should be cared for by multidisciplinary teams. Together for Short Lives has found through its surveys that across England this is sometimes, rarely or never the case. It talks about a number of other facilities but there is not time this afternoon to go through them all.

However, I want to point out one absolutely chronic problem for the children who require these services that has worsened considerably over the last six months. There is a major discrepancy between the services planned and funded between 8 am and 6.30 pm from Monday to Friday, and services commissioned to provide care outside those hours. Some 93% of clinical commissioning groups commission community children's nursing teams but only 67% provide out-of-hours care. This has resulted in parents frequently having to call an ambulance to take their child to A&E—the last place these children need to be—to have their feeding tube reinserted. This is so short-sighted; it needs to be remedied.

Nikki Lancaster, mother to Lennon, who died nearly two years ago, said:

> "Nine to five, my community nurses were amazing, but come five o'clock in the evening, you're very alone. It's a massively overwhelming responsibility keeping a child alive. When you're out there on your own and you've got no support it's hard—emotionally hard. If you were in hospital, it would be a consultant making those decisions. When you are at home, it's you."

Following the death of her son Lennon, Nikki Lancaster faced the other problem that bereaved parents in receipt of benefits face: she got absolutely no benefits from the day he died because they were all linked to his care. During the passage of the parental bereavement Bill, I specifically asked the Minister to talk to DWP to make sure there was comparable provision for parents who had had to give up work to look after their chronically or terminally ill children. That has not happened. So, while we celebrate the parental bereavement Act, there is unfortunately a cohort of parents who are still being left high and dry.

Like other noble Lords, I had a problem with Clause 2(4). I am grateful to the noble Lord, Lord Balfe, for his comments about mediation, which were excellent. Before I came into the Chamber today, I was thinking, "An ACAS for the NHS and patients"; the noble Lord absolutely got that point. The noble and learned Baroness, Lady Butler-Sloss, has taken most of the wind out of my sails but, as somebody who has been a UNICEF trustee, I point out that Article 3 of the UN Convention on the Rights of the Child says:

> "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

The problem with Clause 2(4) is that, no matter how loving the parents are, their views should not come before the interests of the children. That is why I very much welcome the family courts using children's guardians to make sure that the voice of the child is heard, particularly in the case of very small children, who have no voice of their own.

Another, related issue, concerning teenagers, was briefly touched on. I am reminded of the importance of the Gillick competence. What do we do about teenagers, or perhaps even younger children, who could consent to and fully understand the medical treatment proposed? Which would come first—the Gillick competence or the relevant clause in the Bill? I am delighted that my noble friend Lady Jolly has proposed an amendment for Committee stage. I am not quite sure that I support it in its entirety; I do not believe that it passes my two tests of the UN Convention on the Rights of the Child and the Gillick competence. But I hope that the noble Baroness, Lady Finlay, will be open to discussing how we might best improve the Bill to ensure support and satisfaction for parents who

[Baroness Brinton]
are clearly suffering at an extraordinarily difficult time, and support for the rights of the child, which must always remain paramount.

I hope that this Bill will have further space in the Government's schedule and, even if it does not, that it is sufficiently high up in the system. Please can the House authorities make sure that it is scheduled swiftly for Committee and subsequent stages? I hope the Minister can reassure us that there will be more than £25 million available for palliative care, and that the Government will take to heart the detail of this Bill in seeking to mainstream palliative care and ensure that it is available for absolutely everybody in this country who needs it.

3.14 pm

Baroness Thornton (Lab): My Lords, I congratulate the noble Baroness, Lady Finlay, on getting her Bill here and being persistent, which counts for a great deal in this House. I welcome all the contributions today, particularly that of the noble Lord, Lord Brownlow. I echo other noble Lords in saying I am certain that he will make a great and valuable contribution to your Lordships' House. I also thank organisations for their briefings. Like many speakers today, I have had experience of dealing with and accessing palliative care for loved ones, in my case at least twice in the last 10 years.

It is important to focus, as this Bill does, on addressing shortcomings in end-of-life care provision by ensuring that all NHS commissioners make arrangements for general and specialist palliative care services to be available to all those who need them. At this point I probably need to draw the House's attention to my entry in the register of interests as a member of a clinical commissioning group. We all know that there are examples of excellent end-of-life care being provided throughout the UK, but as other noble Lords have said, particularly my noble friend Lord Hunt, there is considerable and unacceptable variation between locations relating to whether people are being cared for in hospital or in the community and their medical condition. The Bill would help in addressing those variations and ensure that high-quality generalist and specialist palliative care is available to all who needed it, as it should be.

We on these Benches welcome the Bill's ambition to place hospice provision on an equitable footing with all other healthcare services provided in a local area. We are pleased to see the Bill specifically mention hospice access to pharmaceutical services. Pain and other uncontrolled symptoms are frequently cited as the main concern about death and dying. We support the Bill's provisions that would ensure that clinicians providing general palliative care had access to specialist palliative care advice at all times.

I am grateful for the briefing that I received from Together for Short Lives. I commend it for its wonderful and hard work in this area. I draw particular attention to the fact that it says the growing shortage of skilled children's palliative care doctors and nurses across England has now reached crisis point so that even the good services are in jeopardy, which is leading to seriously ill children and their families missing out on crucial out-of-hours care and vital short respite breaks. It says that there are too few skilled children's nurses to fill vacant posts in children's hospices, with more than half of children's hospices citing an overall lack of children's nurses as a significant factor in the vacancy rates they are experiencing. I feel bound to ask the Minister why this clearly-needed service that should be available across the country is not being driven by the NHS and the plans outlined in the long-term plan—or is it going to be? Is it possible to take urgent action to address both adult and children's palliative care workforce issues in the NHS people plan?

It is of course Clause 2 that raises the most concern for us, as it did for many noble Lords. I was very struck by the briefings that I received from both the BMA and Together for Short Lives expressing their concerns. I will say that everyone will welcome the Bill's important ambition to support the resolution of differences of opinion through mediation as a non-adversarial approach, although I think the remarks by the noble Lord, Lord Balfe, were pertinent. We would welcome an accompanying commitment from the Government to properly resource mediation and ensure that it is readily accessible across the NHS, because no one wants to end up in court.

The concerns centre on the proposal in Clause 2(4) to change the way that courts consider cases when there are differences of opinion as to what treatment is in a child's best interests. I absolutely understand how painful and difficult these issues are. The BMA says about Clause 2(4):

> "We believe the current approach is preferable and does not need changing. The current approach ensures the court's starting point and focus is on a child or young person's best interests, taking into account all relevant factors, including the views of parents."

Following the remarks of the noble Baroness, Lady Brinton, I think that simply has to be right.

If the current approach is to be changed, we will need to take account of a number of issues. The courts would surely have to consider the views of all those who have a parental responsibility for a child. What happens when people who hold parental responsibilities disagree on what is in the child's best interests? How would the situation of foster carers holding parental responsibility alongside birth parents be dealt with? That may be fraught. I can see that there might be increased conflict if one person's parental responsibility is deemed to hold more weight than others. The way the Bill is drafted could lead to one parent's views being discounted in favour of those of another. The noble Baroness, Lady Brinton, also mentioned the Gillick competence of a 16 or 17 year-old, who may very well wish to cease medical treatment when their parents want to continue it.

Finally, what weighed heavily with me is what Together for Short Lives had to say about this:

> "We have concerns that the level of proof required by this Bill to 'clearly establish' that 'any medical treatment proposals put forward by any person holding parental responsibility for the child' are not actually in a child or young person's best interests would be too high. Parents' views and wishes about the treatment of their children are extremely important and, where possible, should always be sought and discussed.
>
> Where disagreements cannot be resolved and the court is approached for a view, courts frequently support parental decisions that are within the range of what could be considered in the best

interests of a child. Where disagreements reach the courts, parents need to be able to access support to ensure their views and wishes are adequately represented. Whilst it is entirely understandable for parents to want to prolong their child's life for as long as possible, we believe the court has a responsibility to ensure that children with life-limiting illnesses are not exposed to unacceptable, painful, unproven, or suboptimal treatments.

We believe that there is a greater risk of children and young people being exposed to these kinds of treatments if this new approach is adopted."

That is very serious and has to be weighed in the balance when considering this clause.

We on these Benches offer our support to this Bill. We hope that the problems in Clause 2(4) can be resolved and look forward to the Minister's remarks.

3.21 pm

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Blackwood of North Oxford) (Con): My Lords, I thank all noble Lords who have taken part in what has been an important and moving debate. I particularly thank the noble Baroness, Lady Finlay. Her passion and commitment to improve the quality and experience of end-of-life care for everyone in this country are well known, both in this place and outside these walls, where her experience is known for not just the passion that she expresses but the way she has touched individuals' lives. I also congratulate and pay tribute to my noble friend Lord Brownlow on what was an outstanding and moving maiden speech. It is quite clear that he has a great deal to contribute to this place and I look forward to his contributions in many debates to come.

Obviously, the provision of high-quality end-of-life care is an issue that each of us will care very personally about, and I therefore understand the intention of the Bill. It is the third time I have spoken on this matter in as many parliamentary Sessions. In responding, I shall address the provisions of Clause 1, and then Clause 2, which addresses a separate and equally important matter.

In common with previous Bills tabled by the noble Baroness, Lady Finlay—I would like to call her my noble friend—Clause 1 of this Bill seeks to introduce a range of measures relating to the provision of palliative and end-of-life care services, which have already been rightly tested in debate. These would create new primary legislation and amend existing legislation in Section 3(1)(c) of the National Health Service Act 2006, to create new duties on CCGs to provide some specific measures listed in the Bill.

Although I take the points raised by the noble Lord, at the moment, no other clinical area is provided for in such a detailed, prescriptive way as this Bill would create, although there are measures which were noted by the noble Baroness, Lady Hollins. As the noble Baroness, Lady Finlay, will know from responses to her previous Bills, legislating in this kind of detail on what a local commissioner must provide with regard to a clinical area is contrary to the principle of the autonomy of a clinical commissioning body, which was established in the Health and Social Care Act 2012, to determine what services it will commission based on the assessed needs of its local population. CCGs are already subject to the duty to commission health services based on local needs and palliative care is covered by this general stipulation. In addition, there is existing national commissioning and clinical guidance on the delivery of high-quality end-of-life care, which I know many in this House will be very familiar with.

Concerns have also been raised that legislating that care should be provided in a range of locations for patients—essentially, legislating for choice in end-of-life care—risks creating some tension between patients, clinicians and families, where patients cannot receive specialist palliative care in their home or care home because of their level of clinical need or the suitability of the accommodation. That may be debated further.

The Bill contains a separate provision which would mean that hospices can access drugs that would be available on the NHS on a no-cost basis, and that commissioners should pay for this. Currently, a CCG pays for a hospice resident's medicines only, first, where it has commissioned the hospice care or, secondly, where they are prescribed by a GP and the cost has been allocated to that CCG under Schedule 12A to the NHS Act 2006. This would represent an expansion of CCGs' liability—

Lord Kerr of Kinlochard: The duty as defined in Clause 1(1) would require clinical services commissioners to arrange for the provision of palliative services,

"to such extent as it considers necessary and appropriate".

That is not a particularly specific duty in relation to anything else in the Bill. I do not quite follow the argument that if something as specific as the Bill was put into primary legislation, it would create a dangerous precedent—an anomaly, or whatever. The duty is widely expressed here and not particularly specific: they must consider it necessary and appropriate.

Baroness Blackwood of North Oxford: It has been seen that this duty would contradict the other legislation, as it stands, where it allows for autonomy for the CCGs. We have already expressed that we are happy to discuss this further with the noble Baroness, Lady Finlay, to explain it. On the question regarding prescription medications, I was going on to explain—

Baroness Butler-Sloss: I am sorry to interrupt the Minister but, following on from an earlier question, would it be possible to have a more wide-ranging discussion and invite other people to attend, so that the NHS team, plus the Minister and the Department for Health and Social Care, could meet them to discuss this? Currently, I think the Government have got it wrong.

Baroness Blackwood of North Oxford: Given that this discussion would be with the lead Minister for Social Care and the lawyers, I am very happy to make that commitment on their behalf. I am sure that we could drill down into the legal detail of exactly where the conflict occurs to understand that issue. Perhaps I might go on to explain some of the reasons why we think that some of the provisions have been overtaken in trying to improve palliative care, subsequent to the previous presentation of the Bill. That may be reassuring

[Baroness Blackwood of North Oxford]
as well and might help in the debate. Would that be helpful? I will also explain the concerns on the requirement around prescriptions; that was my intent in progressing.

The issue around this representing an expansion of CCGs' liability for the cost of medicines is that it would encompass the medicines needs of all privately funded hospice residents as well. As it is written, there is a concern. It arguably gives special treatment to one group of privately funded health service users over everybody else with some form of privately funded healthcare. This would require CCGs to fund the cost of drugs, which also risks CCGs choosing to stop funding beds through contracts. If that were to be an unintended consequence, it needs to be considered carefully. I am sure that there will be further debate on this.

This Government are committed to ensuring that we improve end-of-life care and recognise many of the issues that have been raised. They published an end-of-life care choice commitment in 2016, which I know has been debated previously, in response to an independent review of choice, and it sets out what everyone should expect from their care and the actions taken to reduce variation, which has also been raised here. It also sought to make more personalised care a reality. Since its publication, NHS England, health system partners and stakeholders have worked through the national End of Life Care Programme Board to provide more data, more tools and more evidence, support and guidance to local areas to highlight unwarranted variation, to improve policy development and to provide better commissioning. The end-of-life care atlas of variation, published by Public Health England, highlights variation across a broad range of measures and indicators such as place of death, admissions, the proportion of patients and identification recorded on a GP register. This allows CCGs to be benchmarked across services against one another and to draw on advice, best practice and guidance to improve service quality. This is a significant improvement and promises to be helpful.

This has led to new investment to support the NHS long-term plan, with new actions to help drive further improvement in end-of-life care and support choice. They include accelerating the rollout of personal health budgets, with up to 200,000 people, including those with palliative care needs, benefiting by 2023-24 and rolling out of training to help staff identify, and provide care for, those in their last year of life. I know that the noble Baroness, Lady Thornton, wanted some numbers on that. The latest available show that more than 600 doctors are qualified in palliative medicine—this is almost 200 more since 2010; there are 1,300 nurses and health visitors working in palliative medicine, which is over 300 more since 2010, and the people plan will have a holistic approach to how we can attract clinicians of all the different levels into the harder-to-recruit areas. We have discussed that a number of times over the Dispatch Box, so I shall not go into more detail now.

A number of Peers asked about funding. We are making £4.5 billion of new investment to fund expanded community multidisciplinary teams, providing targeted support to those identified as having the greatest risks and needs. That is important because the majority of palliative care is provided in the community, as the noble Baroness will know, and it is important that we make sure that GP and community care is properly funded. On the £25 million announced by the Prime Minister in August, this was provided to CCGs in October 2019. It has already been allocated to hospices. The 2019 manifesto set out a commitment to build and provide further support for this, which I hope reassures your Lordships. The reason that the money was provided for hospices and palliative care services was that, as was rightly said, hospices do not exist in all areas, so the intention is to make sure that we can drive down variation and improve services across the system.

In addition, we are upgrading NHS support to all care home residents with the enhanced health in care homes model rolled out across the whole country over the coming decade. We are also making end-of-life care one of the new quality improvement areas for the revised GP quality and outcomes framework to support early identification and personalised care planning. I know that the noble Lord, Lord Sheikh, asked me specifically about those who wish to die at home. We know that most patients express a preference to die at home. Currently, around 47% of patients die in hospital. This has improved since 2007, when the figure was 56%, but it is important to note that there are occasions when admission to hospital may not be preventable because, as a situation progresses, some patients may want to be in hospital as death approaches because they feel safer at that point. In other cases, the family or care giver may not be able to cope at that point, but we are working hard to improve choice.

I turn to Clause 2, relating to the treatment of children, and the issues raised by the noble Baroness, Lady Finlay, my noble friend Lord Ribeiro, the noble Lord, Lord Hunt, my noble friend Lady Stroud and a number of others. The noble Baroness, Lady Finlay, has set out proposals calling for mediation in the tragic cases where there is a disagreement in the giving or withdrawing of any form of medical treatment for a child with a life-limiting illness. Decisions around withdrawal of treatment are never easy and it is difficult for any of us to imagine the pain and suffering that families in such situations go through. At the heart of each of these difficult cases, as the noble Baroness, Lady Brinton, said, is the well-being of the child. That must remain everybody's focus. It is important that we do all we can to ensure that families and medical experts communicate and, where possible, reach agreement on the best interests of the child. My deepest sympathies are of course with any family facing such a difficult decision and trying to navigate the challenges of our healthcare system in such a distressing moment.

Mediation can and does play a vital role in facilitating better communications and creating a space where voices on both sides of a dispute can be heard in a non-adversarial way, which is of course what we all want to achieve. It is certainly important that the legal framework is considered as part of this. The evidence shows that, unfortunately, it does not provide a solution in every dispute, particularly those most serious cases where there is a breakdown in communication or trust between the clinicians in the hospital and the parents, which may lead to animosity and lengthy court battles.

It is incumbent on us all to do what we can to prevent these difficult and sad cases reaching court in the first place, which is extremely distressing for all parties—we have seen those cases.

The Government are very supportive of the many excellent mediation schemes available, including those run by charities and the private sector, and we pay tribute to those who run them. We are not sure that legislation is the answer to making sure that they exist everywhere. They are thankfully rare cases, but none the less extremely tragic. We believe that the lack of statutory prescription so far means that mediation can be tailored specifically to meet the individual needs of families and their children, clinicians and hospitals, reflecting the unique circumstances of each case. We are working with NHS England and the Nuffield Council on Bioethics to look at the effectiveness of mediation and of clinical ethics committees in managing disagreements and at how this could be improved. At this time, there does not appear to be a strong call from experts in the field to make mediation or clinical ethics committees a mandatory requirement. My honourable friend the Minister of State for Care has agreed to attend the Nuffield Council on Bioethics round-table discussion on disagreements in the care of critically ill children. This will bring together high-level health policymakers aiming to agree a set of actions reflecting what NHS leaders should do and further support the creation of healthcare environments that foster good collaborative relationships between parents and healthcare staff.

We absolutely believe that healthcare professionals have a duty to act in the best interests of their patients. When doctors and families do not agree about the best interests of a child, as in the tragic cases we have seen in recent years, the courts can be asked to make an independent judgment on the best interests of the child. We are concerned about the issues raised and that legislating in the way set out in the Bill would create a presumption that, unless it is clearly established not to be the case, the views of the parents represent the child's best interests. There may be instances where this is not necessarily the case. This would be a significant departure from the current situation, which requires the court to make no assumptions and to consider the child's best interests with an open mind. Establishing a default presumption would override the court's sole focus on the interests of the child.

In almost every case of dispute, families and clinicians are able to reach agreement. The rare occasions when cases end up in court are picked up and amplified by the media. They are heartbreaking, which is perhaps why they appear more common than they are. Legislating for those rare but difficult cases would not be appropriate at this time. Our efforts are best directed at ways to avoid them in the first instance. My honourable friend the Minister of State for Care would like to offer to meet the Gard family, or representatives of the Charlie Gard Foundation, to discuss how we can focus our efforts on this important area, if that would be welcomed.

To conclude, I would like to thank the noble Baroness for raising the important issues in the Bill and every noble Lord who has contributed to this significant debate. However, I must advise that the Government have expressed their reservations and will move to oppose.

3.40 pm

Baroness Finlay of Llandaff: My Lords, I thank all noble Lords who stayed behind on a Friday to contribute and who have done so much research behind the speeches they gave in support of my Bill. I can confidently say that the first part of the Bill has full—from many, completely overwhelming—support. I am extremely grateful for that, as will be all those who are trying to provide excellence in end-of-life and palliative care. I single out the noble Lord, Lord Brownlow, for his amazingly warm maiden speech, in which he showed his understanding of vulnerability and of the fundamental principle of the duty of people in society to look after each other. All noble Lords gained a great deal from it.

I know that the hour is late and we all want to move on, but I will turn briefly to the concerns expressed over Clause 2(4). I am delighted that so many noble Lords want to discuss it. I am more than happy to do so, and to amend it. We have to get things right; this was my humble start. We have fantastic expertise. I reassure the noble Lord, Lord Hunt, that I am in conversation with Together for Short Lives. The noble Baroness, Lady Jolly, has been incredibly helpful to date and I am sure would join me when I say that we should expand the discussions to include the noble and learned Baroness, Lady Butler-Sloss, the noble Lord, Lord Hunt, the noble Baroness, Lady Brinton, and my noble friend Lady Hollins, all of whom have enormous experience. There is no conflict; the wording in the Bill is not right. However, we do need to rebalance the way that the voice of the parent who is genuinely concerned can be heard—probably in the pre-court time—and is then represented by barristers speaking on their behalf.

I take slight issue with the noble Baroness, Lady Meacher, over parents always wanting their child to stay alive. I have had in-depth conversations with parents who have said: "Enough is enough. Can we withdraw? Can we stop?". I have been involved in extubating children and looking after them as they die peacefully and gently in their parents' arms. I have helped parents lay out their child after death. It is such an anguishing time, but their overriding concern is to prevent the suffering of the child they love and to have their views and culture respected in the way that that is done.

I am grateful, too, to the noble Lord, Lord Berkeley of Knighton, for highlighting the need for open conversations. I declare an interest in Dying Matters; it is part of Hospice UK and I was part of the group that set it up. It has done an enormous amount to lift the lid off the taboo. People now talk openly about dying. If you go in to any out-patient department, people will sit and talk openly with clinicians about their death and dying. In the gap, the noble Lord, Lord Kerr of Kinlochard, rode into the debate like a shining knight to blow apart the reasons for not legislating for access to palliative care. I would welcome further advice from his vast experience on how we drive this forward. I am sure that that will be in

[Baroness Finlay of Llandaff]
conjunction with the noble Lord, Lord Ribeiro, who brought his experiences and salutary tales of how it used to be. He and I know how awful it was and how it does not need to be like that.

On mediation, the noble Lord, Lord Balfe, made a point about the great importance of listening. Nearly always, things go wrong when people have not listened early on—listened to what people say, listened to their expectations and tried to understand things from their point of view. How true that is. If only people spent 80% of their time listening instead of talking, we might have less misunderstanding.

The noble Lord, Lord Sheikh, brought his experiences of the hospice world and his wide support for it, and also his experience of mediation, to support this. I do think a pilot would be most welcome, as the noble Baroness, Lady Stroud, said in talking about the need for mediation. In fact, there is a Court of Protection pilot going on at the moment over mediation, run by a group of solicitors. There is something to be said for the complete independence of somebody coming in, rather than the clinical team that is already involved and can be perceived as having already taken some kind of stance. Certainly, any kind of pilot needs evaluating, so all those comments were very welcome.

Finally, the noble Baroness, Lady Brinton, highlighted that resources are not just money but also people, and the noble Baroness, Lady Thornton, pointed out that you need people to address the variations: money does not do it, you need trained people. She asked about the number of people in palliative medicine. I just sound a tiny note of warning because, as the shape of training changes, there will be fewer doctors for a time, unless we put the numbers up: they will be doing a lot more in acute medicine and supporting acute medical services, bringing their skills there—but we cannot think that, just because the numbers have gone up from the early days, we have got there yet.

I hope that I have adequately paid tribute to the fantastic contributions of everybody in the debate and I look forward to discussions with the Secretary of State and the Minister with responsibility for this area, because I feel we are at the point where sometimes it needs a jolt. I go back to the analogy with seat belts and tobacco control. Perhaps I have still got too much in the first part of my Bill; I am happy to take it down. But laws send messages, and the variation, as seen in the atlas, despite all the work that so many of us have done over decades, shows that it is now time for that jolt to happen. I beg to move.

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

House adjourned at 3.48 pm.

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