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House of Lords

Friday, 29 June 2012.

10 am

Prayers—read by the Lord Bishop of Birmingham.

House of Lords (Cessation of Membership) Bill [HL]

Second Reading

10.06 am

Moved By ***Lord Steel of Aikwood***

That the Bill be read a second time.

Lord Steel of Aikwood: My Lords, I am conscious that we have two other important Bills to deal with today and I am hopeful that we shall have a short and effective debate. The Bill contains precisely the same three provisions already approved by your Lordships in the previous Session in the Bill that we sent to the other place, where, in the words of the Leader of the House, it languished for some weeks. I hope that that will not happen again. I am reasonably assured that it will not and we therefore wish to send the Bill to the other place as soon as possible—I hope without any Committee or Report stage, given that we have discussed the provisions in detail on many occasions.

The Bill is neither in opposition to nor complementary to the government Bill that was published this week. The Government are dealing with fundamental changes to the House up to the year 2025. This Bill deals with changes to the House that are needed, and could be implemented, in this Session. That is a big difference. In any case, my view is—and I hope that I will not be misunderstood—that the least said about the other Bill during this debate the better.

This Bill has undergone some professional redrafting, including the change to the Short Title, which makes it clear that it has no ambition to be described as a reform Bill. It deals specifically with cessation of membership of the House. It introduces a fundamental change because, until now, all of us in this Chamber, whether we are here created as life Peers under the 1958 Act or as hereditary Peers under the 1999 Act, remain Members of this House for life, and there is nothing we can do about it. The Bill changes that in three important ways. Before I start describing the details, I am conscious that I am in danger of being guilty of tedious repetition, given that I have described the Bill on many occasions. However, let me briefly outline the three provisions.

First, it proposes that Members may cease to be Members of this House on a voluntary basis if they choose to retire. The Bill simply gives statutory effect to the recommendations of the all-party committee under the chairmanship of my noble friend Lord Hunt of Wirral that were published nearly two years ago. The committee recommended a voluntary retirement scheme that would reduce the numbers in this place and save the taxpayer money. There is of course no money provision in the Bill. It would be a matter for the House authorities, as recommended by the committee, to work up a scheme and, at the end of the day, for the House to approve any scheme. It would probably contain not a golden handshake, or even a silver handshake, but perhaps a bronze handshake as a token of recognition of service to the House. However, that is a matter for the House to decide in the future. What is required, as the committee told us, is a statutory authority, which is provided for in the Bill.

The second provision is for compulsory retirement for those who fail to attend in one Session. It may surprise Members to read, as I did the other day, that in the previous Session some 72 Members of the House failed to turn up; but, of course, they still receive papers and the Writ of Summons, and some of them occupy desks. Therefore, a provision that would reduce our numbers by some 10% would save money and administration, and is a sensible measure that every local authority in the land already implements.

The third provision is simply to bring us into line with the other Chamber by removing from Membership of the House those who are guilty of criminal offences and sentenced to a year or more in prison.

Those are the three provisions that we have discussed many times. I hope that we have a short debate and that the Bill will have a quick passage to the other place. I beg to move.

10.10 am

Lord Fowler: My Lords, I congratulate my noble friend on his speech and, above all, on his determination in this matter. I may disappoint him a little in his hope that the debate will not stray on to other issues but I shall at least seek to take his broad advice on this.

It can hardly be denied that the debate on my noble friend's Bill takes place in the shadow of the Bill introduced by the Government on Wednesday. The reaction to those government proposals was heartfelt and I am sure that Ministers took great comfort from that. Not since we introduced the community charge has a political and public response been so unequivocal.

The two Bills bring into sharp relief the different ways in which we approach Lords reform. Do we do what the Government are doing and introduce an omnibus Bill which changes the whole basis of the House of Lords, or do we follow my noble friend's approach and make changes which enable the House of Lords to run more effectively? Frankly, I am strongly in favour of the approach of my noble friend Lord Steel.

I hear that some members of my party are writing to the Chief Whip to say that they will not be supporting the Government's approach. I think that it would probably be more relevant to know that members of my party are writing to the Chief Whip to say that they will be supporting the Government's approach. However, it will come as no terrible surprise to the Front Bench to hear that I am one of the many Conservatives saying to the Government that they cannot rely on my support. I say that for two reasons. First, I strongly agree with the approach, if I can call it

[Lord Fowler]
that, of my noble friend. It is much better to carry out reform in that way rather than through the defective blunderbuss approach of the Deputy Prime Minister. Secondly, as far as I know, my party has never carried out any public consultation on this issue.

Above all, it seems to me that the debate is not about whether there should be reform but about what kind of reform there should be, and my noble friend's Bill concentrates on some of the issues that should be tackled. In particular, I pick out that of non-attendance. The Bill meets one of the main criticisms of this House—namely, that there are too many Members. On paper, the total number is 775 but in practice the number who take an active part is considerably lower. Currently, according to the cost figures in the Government's document, the average attendance is about 63%. There are some who, frankly, are seen as rarely as crested eagles over the Thames. They take part neither in the House nor in any of the Select Committees. However, the fault there lies not with this House but with successive Prime Ministers who have appointed the absentees without getting any kind of assurance that they will turn up to take a part in this House. There is absolutely no reason whatever why we should perpetuate that position. I strongly agree with my noble friend that if a Member does not turn up in a Session, unless there is a very good reason for that, he should cease to be a Member of this House. In fact, I will not make a point of this but I think that my noble friend Lord Steel has set the bar rather too low and that the test could be stiffer. Appointment to this House is a very great privilege and with it come opportunities and responsibilities. I would certainly expect a Member to be here at the very least for 10% of the time and obviously much more than that in order to take a full part. Therefore, I acknowledge that there are some absentees but that is an issue that we can deal with, and the House should not be judged by that minority.

The Members whom I rate are those who are here on most days and who work conscientiously on a whole range of subjects, issues and roles. Here, I come to a serious complaint about a number of the interviews given by the Deputy Prime Minister. For example, in a radio interview last Friday, which I heard, he twice in a few minutes suggested that a characteristic of the Lords is Members coming into the House for a few moments to collect their £300 a day—"immersed in sleaze" is the half-suggestion. It is like saying that all Members of Parliament are fiddling their expenses when they are not indulging themselves in Annie's Bar. The truth, of course, is that the vast majority of MPs are utterly conscientious and work extremely hard, and I do not see why the Deputy Prime Minister cannot accept that similar considerations also apply to the Members of this House.

Members take on demanding and unpaid roles, not least the hereditary Peers. There are Lords Ministers in the Deputy Prime Minister's own coalition Government who are totally unpaid. They do it because they think that it is important and that there is a contribution to be made. To give my own minor example, over the past six or seven years I have been the chairman of three Select Committees in this House. In the other place, chairmen of Select Committees are paid extra for that role; here, we are not. I make absolutely no complaint about that and I would not want to change the position. However, I think that the real situation should be recognised and that the vast amount of entirely unpaid work that takes place in this House and when the House is not sitting should be recognised.

Frankly, I would not mind if the smear tactics aimed at the Lords had been carried out by some obscure Back-Bencher desperate for attention. What is unacceptable is that they should be indulged in by the Deputy Prime Minister of this country, particularly in a coalition Government, who doubtless—I say this to my own Front Bench—expect us to hold our nose and say nothing when a Secretary of State breaks all the rules on acting independently in a quasi-judicial capacity on the BSkyB bid. That is not a very good deal so far as this side is concerned, and I say to those on my Front Bench that, if I say that, they can be sure that there are many more who feel rather more strongly.

The final irony is that, under the Government's proposals for the new House, payment for elected Members will be on the same £300-a-day basis as the Deputy Prime Minister has been criticising. The only difference is that it will be taxed, but a kindly Government have said that "guidance on taxation" will be available, which I think refers to the earnings you can claim against tax.

I support the other measures in the Bill of my noble friend Lord Steel. I certainly believe that those convicted of an offence and sent to prison should have the opportunity, and be encouraged, to rebuild their lives, but it makes no sense to have a disqualification apply to the House of Commons but not to this House. Obviously more could be added to the Bill concerning the appointments process, but essentially I think that my noble friend's approach to reform of the Lords is sensible. Some people will doubtless criticise the Bill on the basis that it is step-by-step reform; I simply claim that over the past 30 or 40 years step-by-step reform in Parliament has probably been the most successful. I think, for example, of industrial relations reform.

The Government's proposals are the big-bang approach, leaving us with Members elected for 15 years and with no prospect of re-election. Whatever else that does, it certainly will not produce democratic accountability. Frankly, it will lead to a perpetual conflict between one elected House and another which no legislation will be able to eliminate.

For my final point, I return to Mr Clegg. In his outside speeches he has made much of the fact that retired politicians make up more than half of the House. He should at least get his insults right. As the noble Lord, Lord Lipsey, pointed out, about one-quarter of Members are retired MPs. What Mr Clegg means is retired MPs, not retired politicians. If the Deputy Prime Minister were to lose his seat at the next election—and who can say how likely that it is?—he would be a retired MP, not a retired politician. If he came to this House—and stranger things have happened—he would find that there are opportunities here for a Back-Bench politician to influence law that are not available on the Back Benches of the House of Commons. I have

managed to achieve two changes to the law here—and if the then Government had listened to what I, my noble friend Lord Crickhowell and the noble Lord, Lord Puttnam, said on the Communications Bill in 2003, we would not be stuck in the media swamp in which we are stranded today.

I warmly support the Bill. I support the detail of it and I support the approach that my noble friend Lord Steel has adopted. The Government would be much better advised to adopt the approach of my noble friend rather than to continue on a course that will lead to conflict and division—and all to no benefit for the public.

10.21 am

Lord Wills: My Lords, the political classes are once again whipping themselves into a frenzy over the Government's comprehensive reform Bill. As the comfortably familiar arguments from all sides roll out once again, the noble Lord, Lord Steel, continues on his quiet and indefatigable quest to reform your Lordships' House piece by piece. Here is the latest instalment.

In my view this is a practical and sensible Bill. It makes provisions for membership of your Lordships' House that are long overdue. The only conceivable reason for opposing it is that it will soon become unnecessary when the Government's proposals for comprehensive reform for the House of Lords are passed into law. That might—I stress "might"—be a problem for the Bill. Why should precious legislative time be spent on a Bill that will soon become redundant?

The cynical may see this as an attempt to tackle an obvious problem with the way your Lordships' House operates in order to weaken the case for more general reform. That might dispose those who favour making the House of Lords more accountable through the election of its Members—I am such a person—to oppose the Bill. However, that would be a mistake. The mishandling by the Government of their House of Lords Reform Bill has almost certainly doomed it. I regret that. I fear that the Government's revised proposals—this is not the time to discuss them in detail—still fail adequately to address the Bill's two fundamental flaws. One is a failure to provide an adequate mechanism governing the relationship between the two Houses of Parliament. The second is the length of term of the elected Members of the House, and the fact that they will not have to stand for re-election. I fear that the Government have botched the legislation so severely that it is too late for the Bill to make any serious progress in either House in this Parliament.

If this gloomy analysis is correct, it follows that the House must reform itself piecemeal—while at least some of us wait for a general election and perhaps another attempt at more comprehensive reform. This Bill contains some necessary reforms. Many noble Lords have long argued that there should be provision to retire. It is absurd that a Member of the House should be forced to remain a Member if they no longer wish to be one. It is a hangover from the days when membership was entirely hereditary, and it has no place in a modern Chamber. Nor can it be acceptable for anyone to enjoy the status and privileges of membership of the House when they cannot be bothered to turn up. Again, the Bill makes sensible, proportionate provision for that.

It is also clear that there must be an ability to expel Members of the House who have been convicted of a criminal offence. The current position, which is that no matter how grave their offence, a convicted criminal can remain a Member of the House, demeans Parliament. However, I should be grateful if the noble Lord would explain in a little more detail how he decided on his criteria for expulsion. I understand from the Library that they differ from those that apply in the other place. There it remains a matter of judgment for the House whether a conviction merits expulsion. In contrast, the Bill seeks to set down objective and immutable criteria. I understand the advantages of removing subjective judgments from the process. There is always a risk that Members of either House will be more sympathetic to those they know and may have been friendly with for many years than the cold facts of the case would merit and the public would consider fair. However, there is also a risk that rigid criteria might in certain circumstances lead to expulsion in cases where such a punishment may not be justified. I find it hard to imagine what those circumstances might be, but there must be at least a possibility that they could occur.

For example, let us consider the case of a Member of your Lordships' House who takes part in a political demonstration for a cause in which they and many others passionately believe—not all passion is spent in your Lordships' House, as we see in debates for example on this issue—and is found guilty of violent disorder. The offence often results in a sentence that would, under the terms of the Bill, lead to expulsion from the House. Such a sentence could be imposed for the offence of throwing a flimsy wooden placard in the direction of the police but not hitting anybody, in the heat of the moment. Would that really merit expulsion from the House when someone convicted in a magistrates' court of head-butting a nurse while drunk in an accident and emergency department would receive a sentence that would allow him or her to remain a Member of the House?

Lord Steel of Aikwood: The answer to the noble Lord's question lies in Clause 3(5), which states:

> "The Lord Speaker shall not issue a certificate under subsection (2) in respect of a conviction … if the House of Lords resolves that subsection (1) should not apply to the conviction by means of special circumstances".

Lord Wills: I am grateful to the noble Lord but, with respect, the "special circumstances" do not take us much further. I would be grateful if he would say why he has not allowed the latitude that the other place allows but has set down specific requirements—for which I well understand the need—while then allowing the get-out clause that refers to "special circumstances". I would be grateful if he would spell out what special circumstances are in his mind. I have given an example from my point of view and would be grateful if at some point—not necessarily today—he would spell that out. With that proviso—

The Earl of Erroll: The noble Lord, Lord Steel, did not quote correctly. This is critical. Clause 5(3) refers to a conviction "outside the United Kingdom". The noble Lord left out those words, which meant that his response to the noble Lord, Lord Wills, was incorrect.

Lord Wills: I am very grateful to the noble Earl. It would be useful to have some further clarification on this point of detail. With that proviso, I am very happy to support the Bill.

10.28 am

Lord Sutherland of Houndwood: My Lords, at this time of Olympic trials, times and records, I shall try to emulate my noble friend Lord Steel and produce one of the shorter Second Reading speeches that will be recorded in *Hansard*. The speech is as follows. Many years ago, reading Aristotle, I learned that politics was the art of the possible. This view was enhanced by reading R A Butler, who chose that as the title of his memoirs. This Bill falls comfortably within the compass of the possible. We should advance it without delay because it does something that all of us want to see in place. I simply add that I hope that the Government will look very carefully at the question of whether other proposals in the pipeline fall equally comfortably within the realm of the possible.

10.29 am

The Lord Bishop of Ripon and Leeds: My Lords, I am very grateful to the noble Lord, Lord Steel of Aikwood, for his sponsorship of the Bill. I, too, will speak strongly in favour of it. I hope that the Minister will be able to respond positively to the Bill. It is a contribution to Lords reform that does not inhibit any of the more radical reforms proposed this week but means that we would not need to wait for the long drawn-out debate on the Lords Reform Bill in order to achieve sensible reforms to our practice.

I recognise that I am among the few Members of the House who are not personally affected by the Bill. As the Explanatory Notes say, rather darkly,

"provision is made elsewhere about retirement and discipline of Bishops".

It sounds rather like a Star Chamber from somewhere or other.

I welcome the proposals in the House of Lords Reform Bill that will bring Lords Spiritual under the tax-deeming, disqualification and disciplinary proceedings of the House, but that debate is for another day.

Meanwhile, I speak as one of the few Members of the House who can and will retire, a provision that Lords Spiritual have found helpful and purposeful in renewing the contribution of this Bench—and which, incidentally, keeps us below the average age of the Members of this House.

This simple Bill provides a necessary reform. It enables those who wish to do so to retire, which must be in the interests of the whole House. It is right, too, that those who deliberately play no part in the proceedings of the House should no longer be Members of it. There may be entirely honourable reasons for this. Members may have moved on from the responsibilities that they had which enabled them to make a contribution to our debates. That is the basis of why Bishops retire. When we cease to have the responsibility for our dioceses that is the reason why we are in this House, then we cease to be Members of it. That seems both sensible and a right use of the provisions of the House.

We should all be reminded of our responsibilities. I rather regret that Clause 2 cannot apply to Bishops if they never attend the House, although I do not believe that any of my current colleagues would be caught by it.

In welcoming Clause 3, I press again the points made by the noble Lord, Lord Wills, and ask the Minister and the noble Lord, Lord Steel, to comment on why it applies only to those sentenced to imprisonment for a year or more, which is a substantial sentence. It is difficult to justify membership of this House with any period of imprisonment. I would like to see the clause toughened, particularly as there is a lack of confidence in our society in Parliament and its Members. Alongside that, like the noble Lord, Lord Wills, I would prefer to have some kind of mechanism for appeals, not only for sentences from outside the UK but for those within it, where a Peer has acted outside the law for reasons of ethical conviction.

We shall have plenty of opportunity to debate major issues around the nature of this House when we are presented with the House of Lords Reform Bill, if it ever gets here. Meanwhile, let us demonstrate our conviction that some reform is right—and maybe even achieve it—by getting behind this excellent Bill.

10.33 am

Lord Trefgarne: My Lords, like the noble Lord, Lord Sutherland, I intend to be very brief. I support the Bill proposed today by my noble friend Lord Steel. This is the fifth or sixth time that he has introduced a Bill along these lines but the one before us today is, in my judgment, considerably the best of them all. I therefore hope and believe that it will go swiftly through your Lordships' House, on to the other place and perhaps on to the statute book in due course.

10.34 am

Lord Soley: My Lords, I will not be quite as brief as the noble Lord, Lord Trefgarne, but I shall do my best to limit my speech. I anticipated the noble Lord, Lord Steel, this morning: I came in thinking that he would not want a debate on the main Bill that we all saw the other day and the phrase on my lips was from the famous Monty Python sketch, "Don't mention the war". However, I shall mention it once and hope that I get away with it.

The noble Lord, Lord Steel, is taking the right approach to reform of the House of Lords. We will achieve far more than we would by bringing in huge Bills that, at the end of day, would cause more problems than they solve. When I have conversations with my colleagues in the Labour Party, we mention from time to time that we have promised for 100 years to either get rid of the House of Lords or reform it. When I am asked why we have not done so, I answer that you

might know what you are against but, if there is a great deal of disagreement about what you are in favour of, it is very difficult to deliver it—and that has been the experience. We all remember, or at least know of, the way in which Enoch Powell and Michael Foot led their campaign, which is a classic example of not moving forward. Without mentioning the war for too long, it is a fatal approach if you do not work out clearly what you want the second Chamber to do, otherwise you will not get the rest of your questions right. If the answer to the question, "What do you want to do?", is that you want this House to continue to scrutinise, as it does now, that would raise the questions of, "Why is it that the House of Commons cannot scrutinise better?"—I say that as an ex-MP with a great deal of knowledge of the subject—and, "Why is it that legislation reaches this place in such a terrible state anyway?". It is an important point. Noble Lords will be pleased to know that that is the end of the war.

The noble Lord, Lord Steel, is taking the right approach, although we ought to consider doing this in other ways as well. There is a lot to be said for allowing a Member to decide when he or she wants to retire. It is not a good idea in any job to allow people to drift; to come in occasionally, less and less, and act as though they are retiring slowly. It does not make sense for the individual either. When I decide to go, I would like to make a clean break and retire. That would make much more sense because you would enter another phase of your life and move on. That is important. I think some of my colleagues here feel the same and would say, "When I decide to go, I want to go". The advantages of this have been made clear.

My noble friend Lord Wills made a point about the expulsion issue. I am not sure, bearing in mind recent history in this House, that we will solve this problem until we have a clear procedure on how we deal with breaches within the House that fits with the rule of law generally and the way in which the courts are likely to interpret it. It is a difficult area. Although I do not dissent from Clause 3(5), it refers only to events outside the United Kingdom. We have either to remove those two words or leave them in and address the bigger issue in the way that I have described.

I turn now to a more contentious issue. I greatly enjoyed the speech of the noble Lord, Lord Fowler, and I agree with his comments about Nick Clegg and other MPs of all parties who slag off the House of Lords; they find it a cheap and easy line. That, though, is a terrible mistake; as the noble Lord, Lord Fowler, pointed out, it would be easy to reverse that and throw it back at them. However, we would get involved in a slanging match, and that does not make sense.

One of our problems—and this is the contentious part—is the name of this place. "The House of Lords" is increasingly seen as a very old-fashioned 17th, 18th or 19th-century name, and we have a problem with it. I remember one of my colleagues in the Parliamentary Labour Party, quite a few years ago, saying to me that his answer to the House of Lords was, "One Peer for every lamppost". It is that kind of thinking that enables people to make insults about one place or the other. It also enables the general public to say, "Oh well, they are all the same". They see a photograph in the paper—it is always the same photograph—of Peers sitting in their robes as though that is the way we are every day of the week.

At some stage we will need to address the name in order to convey to people what our job is and that we are part of the legislative system but we do not pass laws. This is one of the problems about the election issue. We advise, revise and recommend but we do not legislate. At the end of the day, we cannot force through legislation; only the House of Commons can do that. It is an important point.

If we support Bills of this nature and introduce others along the same lines, we might achieve far more reform of this place and win a great deal of public support. The Bill that the Government have brought forward will, quite frankly, confuse the debate and the war will continue.

10.40 am

Lord Tyler: I apologise for being slow to rise, but I was expecting the noble Lord, Lord Trefgarne, to speak next. I note that he is not doing so.

Lord Trefgarne: I have already done so.

Lord Tyler: I do apologise to your Lordships. I was making notes of all the points made but I failed to make a note of the contribution of the noble Lord, Lord Trefgarne.

Lord Trefgarne: I am so hurt.

Noble Lords: Oh!

Lord Tyler: I am so sorry. The noble Lord was a very good colleague on the Joint Committee and I should not have behaved in such a disrespectful way to his contribution. However, I am taken aback by the speed with which this matter is being dispatched. At the outset my noble friend explained that the Bill had been before your Lordships' House on several occasion, and I think I have been present on every one. I do not really know whether to congratulate or commiserate with him today, but I take seriously the important point he made, which is that his Bill is neither in opposition nor complementary to the Government's Bill.

Even so, I note that one or two other speakers in the debate seem to have taken a different view. I absolve entirely my noble friend from that because, after all, he has consistently advocated a 100% elected House and therefore is clearly in favour of far more radical reform than the one proposed in his Bill. Indeed, he has demonstrated that distinctly, by changing the Title of the Bill, that that is not intended to be his case. It is absolutely not a realistic alternative, and I think we should take note of that. Indeed, as a distinguished long-term beneficiary of the support of the electorate through the ballot box, it would be most peculiar if he now turned away from support of the democratic mandate that he has so often enjoyed.

[Lord Tyler]

My noble friend and I have been close colleagues and, indeed, close friends for more than 40 years, so I hope he will take some friendly advice from me. He might create a more favourable attitude to the progress of his Bill in the other place if he were to cease to espouse in the media some curiously ham-fisted, back-of-the-envelope alternatives to the Government's Bill. For example, I noted in the *Independent* on Wednesday this week, I think, that he apparently advocated an electoral college for your Lordships' House that would include Members of the Scottish Parliament from Scotland, Assembly Members from Wales, and Members of the Legislative Assembly from Northern Ireland—and in complete ignorance of the fact that 80% of the United Kingdom electorate live in England. I think that those of us who are there would find ourselves disenfranchised.

I have been consistent in my support of my noble friend's Bill. I hope that not only can we give it a Second Reading today, but that we can avoid nitpicking amendments in Committee or at the Report stage, and proceed smoothly to a Third Reading.

10.43 am

Lord Bates: My Lords, I, too, congratulate the noble Lord on bringing forward this Bill, and I want to support it. It is in the nature of these things that the legislation is seeking to tidy up some anomalies. My only concern is to ensure that we are not laying down future anomalies that successive Parliaments will have to deal with. My noble friend Lord Fowler has highlighted one that relates to the definition of non-attendance. The notion that someone might attend once during a Session and therefore be deemed to have reached the threshold might need to be looked at a little more carefully, lest we find that the 72 Members who were quoted as not having attended during the last Session may have been substantially reduced in number because they came in once in order to keep their membership alive, as it were.

The proposal on retirement is long overdue: people ought not only to be able to leave the House through retirement but to seek election to another place. The Inter-Parliamentary Union database indicated that, as of 28 May 2012 in a survey of 190 countries, the UK is the only country where Members of the second Chamber are disqualified from voting in elections to the lower Chamber. As my noble friend Lord Norton has pointed out, since the 1999 Act there has been a break in the link so that hereditary Peers who no longer sit in this House are now able to vote and, one presumes, to stand for election to the other place as well.

There are other anomalies that relate to the role of the Lords Spiritual because they are not Peers of the Realm, a point already made by the right reverend Prelate in his contribution—

Lord Foulkes of Cumnock: What the noble Lord said just a few moments ago has already happened. My good friend Viscount Thurso, who is still a hereditary Peer, is now the Member of Parliament for Caithness, Sutherland and Easter Ross. I think he owns most of it as well.

Noble Lords: Oh!

Lord Bates: I am grateful to the noble Lord for that clarification. However, I shall return to the point about the Lords Spiritual. They are not deemed to be Peers of the Realm and, as a consequence, have the right to vote in general elections, although by convention they do not exercise the right. However, there are been certain instances such as in 1983 when the then Archbishop of Canterbury indicated that he had exercised his right to vote. I mention this simply because, as we are given these opportunities to clear up certain anomalies, it would be a sensible thing to do.

There is an opportunity in the other place for people to leave the House of Commons by assuming the office of the Chiltern Hundreds. Doing so disqualifies them from membership of that House and thus frees them up. It is like a Trivial Pursuit question: which office has been held by the noble Lords, Lord Bannside and Lord Mandelson, Boris Johnson and Gerry Adams? The answer is, of course, the office of the Chiltern Hundreds, followed by stewardship of the Manor of Northstead, although I am sure it would be a mercy if they did not all assume those offices at the same time. The point is that there is a mechanism for people to leave the other place, but there is no equivalent for Members to leave this House. It is therefore absolutely right that there should be one.

We have mentioned the anomaly of hereditary Peers, but another one relates to service in the European Parliament. By virtue of the law when it was changed in 2008, the noble Baroness, Lady Ludford, from the Liberal Democrat Benches, is no longer allowed to sit or vote in this Chamber while she serves in the European Parliament. There are mechanisms that disqualify certain people and extend certain rights to others. Given that, during the progress of this Bill we ought to look at ways of tidying up these anomalies while we wait for the greater reforms to come. However, in a broad sense I strongly support the Bill as a step in the right direction.

10.48 am

Lord Davies of Stamford: My Lords, this is a timely Bill which has been brought forward by a parliamentarian and colleague for whom we all have the highest regard. I think I am right in saying that the noble Lord has served in three legislatures, over one of which he has presided. On a memorable occasion he sought election to a fourth, the European Parliament. He has enormous experience and, most important, he is a man of great wisdom, integrity and, if I may say so, of humanity. I therefore come to any Bill drafted and presented by him with the greatest respect. But I hope he will forgive me for saying that, though I certainly hope the Bill makes rapid progress, I do not share the noble Lord's hope that it will go through without any amendment and therefore without the need for a Committee or Report stage.

I will take the clauses of the Bill in turn. I entirely agree with Clause 1 on retirement. That is a necessary measure to introduce—no doubt it should have been brought in years ago—and I have no difficulty in supporting it. I also agree with Clause 2 on non-attendance. I take it that the reference there to our

Standing Orders fully provides for the possibility that someone might need to take absence on medical grounds for a year or more but would then be able to come back and resume his or her responsibilities. On that basis, I am extremely happy with Clause 2.

My problems arise under Clause 3. Let me explain: first, I am mystified by the reference to "one year" as being the defining point beyond which a sentence of imprisonment would result in the automatic exclusion or expulsion of a Member. I heard a rumour or suggestion—I do not believe that it is true—that the reason the noble Lord had thought of one year was because it would have caught one individual and excluded another who he had in mind. I cannot believe that that is correct because that would of course be an ad hominem form of legislation. The law should be based on universal principles universally applied. The attempt to simply target one individual rather than another would amount to a Motion of impeachment, or non-declared impeachment. We would not even be able to consider the merits of an individual case or look at the evidence. That would involve the breach of a whole range of the rules of natural justice. I am sure that the noble Lord had not got that in mind. It may be the case, though I am not aware of it, that in sentencing people convicted of criminal offences courts distinguish very specially between sentences of, say, 12 and 15 months and there is generally regarded to be a great qualitative step between those two points. But I have never heard that to be the case and I do not know that it is. If it were, there would not be any assurance that it would remain so, so that would not be good grounds for making that distinction.

I am very worried about the 12 months. I would like to know the rationale for it. I totally understand that the noble Lord wanted to distinguish between a criminal offence and a serious criminal offence. After all, to drive at 65 miles an hour in a 60 mile-an-hour zone is a criminal offence. Even if you did not notice that there was a sign saying that the speed limit was going down from 70 to 60, it is still a criminal offence if you are driving at 65. If traffic violations of that kind were grounds for automatic expulsion, I think quite a lot of us might have an individual problem. So I quite see the need to find some particular criterion but this is not a very satisfactory approach, for the reasons I have mentioned. There is a better way, which I will come on to in a second.

My second problem is much more serious. I do not believe in the idea of automatic expulsion. Here I totally agree with my noble friend Lord Wills, who made exactly the point that I had in mind to make. He said that he could not think of any particular examples but that there could well be some anomalies and injustices involved in having an automatic mechanism of that kind. I can think of some notable examples, not going back to the Middle Ages or the 16th or 17th centuries but to the last 100 or 150 years, when parliamentarians—Members of the Houses of Commons, at least—have been sentenced to prison. Fortunately, they were not as a result excluded from Parliament or from standing again. Had they been so, in retrospect all of us would have regarded that as a national scandal.

Let me mention a few names that will be familiar to noble Lords. Jimmy Maxton was imprisoned for a speech he made in Glasgow in the middle of the First World War. Arthur Jenkins was imprisoned at the beginning of the 1920s for aiding and abetting an illegal strike. George Lansbury—I put it to noble Lords that there has been no finer human being or man of greater integrity in British politics over the centuries—went to jail in 1913, just before the First World War, for a speech in which he supported the suffragette movement. Look at the large number—I think dozens in all—of members of the Irish Parliamentary Party who went to jail under the Coercion Acts that we passed here in the 19th century, including Parnell and Redmond who are two enormous figures of Irish history. Indeed, Parnell is a dominating giant of Irish history. They were also two very great parliamentarians. I think there have been no greater in Westminster and the House of Commons than Parnell and Redmond—fine men who dominated that Chamber for decades. They went to jail under the Coercion Acts and would automatically have been excluded from Parliament for all time if we had had the automatic mechanism contained in the Bill, so I do not believe that it is the right way forward.

What is the right way forward? I think it is the one that the noble Lord, Lord Steel, has resorted to in Clause 3(5). There he has reserved it for Members of the House of Lords who might be convicted in a foreign court with a sentence of more than one year. Of course, I totally see the logic of his making that particular provision in the light of the other provisions of his Bill. Clearly, in some foreign courts, it would be an offence, perhaps imprisonable for 12 months or more, just to criticise the current dictator or the ruling party in a one-party state. It is quite natural that he has decided to make provision for that eventuality in Clause 3(5). By doing so, he has recognised that there might be circumstances in which we need to consider the merits of an individual case. If we can consider those merits when someone has been imprisoned for a criminal offence—or supposed criminal offence—in a foreign court, why can we not consider them when he or she might have been convicted and sentenced to prison in a court in the United Kingdom? The noble Lord has admitted the principle of this alternative approach. I put it to him that he has solved the two problems that I have set out. That particular approach would be the right one to adopt in all circumstances. We should use the opportunity of the Committee stage of the Bill to remove the automatic mechanism and replace it with one along the lines of that he anticipates in Clause 3(5).

I have one final point. I am not clear that the Bill as currently justified would not contain an element of retrospectivity. I am sure that it would not be the noble Lord's intent that it could be retrospectively applied but it does not explicitly say that it should not be. I see from the gestures of the noble Lord that he totally agrees with me on that. It would therefore be desirable to introduce a new clause or provision into the Bill in the course of the Committee discussions making it absolutely clear that there is no retrospectivity. There may be many of us on both sides of the House—I put that in the subjunctive for obvious reasons—who regret

[Lord Davies of Stamford]
that we did not have in place a provision for expulsion when one or two egregious breaches of the criminal law, and what we might all think of as rules of personal honour and morality, were breached by Members of this House recently. Yet we did not have that mechanism in place at the time and we cannot retrospectively apply a penalty that did not exist at the time that those actions were committed. Therefore, we must make it absolutely clear that we stand by that fundamental principle that the law must not be retrospective.

With those few comments and suggestions, and looking forward to the future stages of the Bill—which I hope will proceed as rapidly as possible—I congratulate the noble Lord on the initiative that he has taken. The whole House will be grateful for it.

Lord Norton of Louth: Is the noble Lord aware that the purpose of Clause 3 is simply to bring this House into line with the House of Commons in terms of the triggering mechanism for expulsion? While I am on my feet I will just mention that the wording of subsection (5) is taken from the previous Government's drafting of the original Constitutional Reform and Governance Bill in 2010.

Lord Davies of Stamford: When we consider legislation, we really must consider it on its merits and look at the general principles to which we in this House are attached and which we believe should guide and inspire legislation. It is not a good excuse—if I may say so—for bringing in bad or inadequate legislation or legislation that conflicts with those general principles that one was at some point in the past a member of a Government who in one particular, peculiar situation may have done something that creates a precedent for the bad proposal that is before us. I stick by the comments I made just now, and I do not believe that, whatever may be the case in relation to precedent that the noble Lord cites, we should do other than look at the merits of the case.

Lord Norton of Louth: Is the noble Lord therefore saying that the House of Commons is wrong in its provisions for expulsion?

Lord Davies of Stamford: I do not wish to repeat the speech that I have just made, but I have explained that I think that the Bill as currently drafted is not correct and could be improved. I hope it will be improved along the lines that I have suggested.

11.01 am

Lord Hunt of Kings Heath: My Lords, I, too, warmly welcome the Bill and I hope that we can agree to send it to the other place as soon as possible after due scrutiny. I commend the noble Lord, Lord Steel, on explaining to the House in his introductory remarks that his Bill is neutral concerning the Government's Bill in the sense that it is neither complementary nor competitive. It should be treated on its merits as a stand-alone piece of legislation. I very much support that.

As for the three provisions, it seems very sensible to allow voluntary retirement. It builds on the work of the noble Lord, Lord Hunt of Wirral. We had some very interesting comments from my noble friend Lord Soley and the right reverend Prelate the Bishop of Ripon and Leeds about the benefit of retirement. Given that the average age of your Lordships' House is 69, I am not sure that the precedent of bishops retiring at 70 is one that we altogether warm to. I certainly agree that there may come a time when some noble Lords may feel it is time to move on to other places. I do not think it should be forced on Members of your Lordships' House, but it should be an option.

On non-attendance, it seems absolutely right that unless there are sound reasons, due perhaps to illness, for a Member not attending for a whole Session, he or she ought no longer to be a Member of your Lordships' House. I very much take the point raised by a number of noble Lords that some Members have been appointed who have hardly come here at all. It raises the issue of what conversations take place between the Prime Minister, Downing Street and some noble Lords about the commitment that they were asked to give.

I know we are not really meant to talk about—as my noble friend Lord Soley said—the war, but the Government seem to have got themselves rather mixed up about whether they actually want noble Lords or Members of the House in future to attend. Any noble Lord who has carefully gone through the calculation on the cost of the proposed new second Chamber will note that, remarkably, the Government seem now to want Members of the reformed House to be part-time Members. Indeed, in the calculations that they have made, they are calculating that elected Members would attend only 75% of the time. This goes along with the other remarkable suggestion from the Government that elected Members of this House would not seek to represent their constituents. Seeing that the noble Lord, Lord Wallace of Saltaire, is here today to answer this point, I would like him to comment on the Government's expectation for attendance, either in your Lordships' House now or in an elected House in the future.

There is general agreement in relation to the forcible retirement of those convicted of serious offences, but my noble friends Lord Davies and Lord Wills have raised some important points. Will the noble Lord, Lord Steel, agree to meet my noble friends between Second Reading and Committee so that these matters may be satisfactorily resolved?

On retrospection, the wording of the noble Lord's Bill follows the terminology in relation to the Commons. I understand what he is saying, but it would be helpful if the noble Lord, either in winding up today or in discussions after the Committee stage, could clear up that point to make it absolutely clear that retrospection is not to be applied.

I come to the question put by the noble Lord, Lord Fowler, and my noble friend Lord Wills about whether we prefer omnibus change or incremental change. Your Lordships' House has not been very good at omnibus change since it has never been able to achieve it. Certainly, there is a persuasive case that if substantive reform is unlikely, then sensible incremental change ought to be made. No one sitting here today could say

with certainty that the Government are going to get their Bill through or in what form they are going to get it through. Even the noble Lord, Lord Strathclyde, that champion of democracy in your Lordships' House, has been heard to say in recent weeks that he thinks the Government have only a 50% chance of getting the Bill through.

Lord Dobbs: I am grateful to the noble Lord for giving way. I seem to remember the noble Lord, Lord Strathclyde, standing manfully at the Dispatch Box week after week calling for consensus and, looking around the House, it seems to me that he has achieved it. It is just not the consensus that he wanted.

Lord Hunt of Kings Heath: My Lords, having sat in the place where the noble Lord, Lord Wallace, is now sitting on many debates on House of Lords reform when my party was in government, the only compensation I ever got from defending our position was looking at the faces of the colleagues of the noble Lord, Lord Strathclyde.

The argument that incremental change is important and should take place in this context is persuasive. None of us knows what the outcome of the Government's proposals will be. The proposals of the noble Lord, Lord Steel, are entirely sensible and I hope that we can give them support.

The noble Lord, Lord Fowler, raised Mr Clegg's rather pejorative remarks about your Lordships' House. Well, we are grown up, and I think we can take them. I saw the video clip of him speaking to a group of young people in which we were being condemned for our age, if not for other sins. I wonder why Mr Clegg does it. What is it that he hopes to achieve? Whatever one's views on whether the second Chamber should be elected, surely no one could doubt the integrity of your Lordships' House in the effective scrutiny of legislation. I hope that, whatever our views on Lords reform, we will hold our heads up high about the quality of the work that we do.

On the question that the noble Lord, Lord Fowler, raised about conflict between two elected Houses, I know that we are not really talking about the substantive Bill, but I think I should put it to the Minister that the claim has come from the Deputy Prime Minister that the primacy of the Commons is not affected by the Bill. I refer him to the new Clause 2, which is actually worse than the old Clause 2 because it removes the preamble to the 1911 Act. The significance of the preamble is that it recognises that the Parliament Act was developed to govern the relationship between an elected Chamber and an unelected Chamber. The preamble also states that when an elected Chamber arose, the powers of the second Chamber would essentially have to be codified and restricted. In taking away the preamble, the Government are saying that an elected second Chamber would have all the legitimacy to be as assertive as possible within the constraints of the Parliament Act. Therefore, it could reject every piece of legislation that was brought here. It could take huge chunks out of legislation that was brought here. It could veto every piece of secondary legislation. Given that and given that the reformed House would be elected by proportional representation, how long would it be before the conventions died and the claim came from elected Members that the second Chamber had more legitimacy than the Commons because it more neatly matched the votes cast at a general election? As someone who has supported reform and an elected House, I think the Government owe it to this House and to the nation to set out exactly how their proposals will not eventually challenge the primacy of the House of Commons.

Finally, does the noble Lord not concede that his Government's proposals are a substantial constitutional change to this nation? Given that, what are they so frightened of that they refuse to call a referendum? Surely, in the end, the people should decide. In the mean time, we wish the noble Lord's Bill godspeed.

11.11 am

Lord Wallace of Saltaire: My Lords, this is the sixth sitting day since Easter for us to enjoy being able to discuss aspects of Lords reform. It is a pleasure to hear a number of positive speeches about some degree of Lords reform being made around the House. The noble Lord, Lord Soley, opened up the wonderful prospect of a whole series of extremely modest Bills carrying on for several years, slowly and gently putting through little bits of Lords reform. I am not sure whether that would take more or less time than one comprehensive Bill but it is at least an interesting prospect.

The right reverend Prelate is a very brave man to raise the question of age limits and whether one's relevant and current expertise and responsibilities should be taken into account when considering continuing membership of the House. I have sometimes wondered whether, if the possibility of retirement were put to a vote, the proposal that 95 should be the age limit would pass the House. No one has yet tried; perhaps the noble Lord, Lord Soley, will try it with a Private Member's Bill in the next Session if it is needed at that stage.

I intend to take to heart the opening comment of the noble Lord, Lord Steel, that the less said about the other Bill in this context the better. We are discussing a Private Member's Bill and this is an extremely modest proposal. I will simply answer a few of the questions that have been raised, particularly by the noble Lord, Lord Hunt.

The Government's response to the Joint Committee does indeed say in paragraph 53:

> "The Government agrees with the Joint Committee that allowing individuals to maintain relevant professional expertise and attracting individuals who would not want to commit to a full-time role would strengthen the reformed House, as it does the present House. The Government therefore accepts that it is desirable that appointed members should not necessarily be expected to attend every sitting day of the reformed House".

I do not have to hand the figures for how many Members of the House of Commons attend every day. Of course, Members of the House of Commons often argue that constituency work is more important than attendance at the House every day.

Lord Hunt of Kings Heath: My Lords, the Government have also said that they do not expect elected Members of your Lordships' House to dabble in constituency

[Lord Hunt of Kings Heath]
work. The whole purpose of these elected Members is to be here in Parliament. The calculations do not show 75% attendance by the 20% of appointed Members; they show 75% attendance by Members of the reformed House. It is quite remarkable that the expectation is that elected Members will attend your Lordships' House 75% of the time when their sole purpose will be to be here to scrutinise legislation.

Lord Wallace of Saltaire: My Lords, that is precisely the point that the Government's response deals with. We have a House that consists of a large number of Members who continue to have other aspects to their lives outside. The point has frequently been made on the Labour Benches that the last thing that we want is for Members of a second Chamber to spend a great deal of their time on constituency work. This response deals with that area. However, at present, I do not wish to be drawn further into discussion of a different Bill from the one before us. I merely draw attention to the excellent article by a Conservative—

Lord Reid of Cardowan: I thank the Minister for giving way. In view of his recent comments, will he make it clear that it is the Government's intention that people will be paid around £50,000 a year not only not to do constituency work but not to turn up here? Is it not clear from the logic of what he is saying that the public are being asked to accept that a part-time elected Member should be paid a salary of the order of £50,000?

Lord Wallace of Saltaire: My Lords, that is not the case. We do not need to get into a detailed discussion at this point. Members will be paid for the number of occasions on which they come to work in this House. Some, as now, will be here every single day; others will have a mixture of Lords and other responsibilities.

Lord Reid of Cardowan: I think the Minister misses the point. Is he being quite clear in saying that, by his estimate, the amount of money that will be paid will be for someone who will come here not full-time but part time—75% of the time, or whatever? Therefore, the figures that have been put in the public domain are what the elected Senators—or people with no name, as we must now call them—will be paid for attending, on average, three-quarters of the time.

Lord Wallace of Saltaire: My Lords, I think it is entirely clear. As now, some will receive more than others. The question of how many will be here every day will evolve with the new Chamber.

Baroness Farrington of Ribbleton: My Lords, will the Minister clarify the point that he made? I understood him to say, "not a lot of constituency work". I understand that the intention behind the Bill that was produced this week is that Members of this Chamber, whatever they are called, will not do constituency work. I have yet to meet anyone who, faced with a problem, does not go to the person who they think is most likely to take up their case and fight it. However, I understand that the Bill is predicated on Members not having constituency work.

Lord Wallace of Saltaire: That understanding is entirely correct. The common understanding is that many of us here do a number of activities outside the House that might be considered constituency work. It is not constituency casework, although since becoming a Member of this House I have often received letters and e-mails that would be regarded as constituency casework, to which I have, by and large, said, "Not me". However, in Bradford, York and Leeds, I frequently see Labour Members of this House, such as the noble Baroness, Lady Thornton, at meetings to discuss regional issues. Many of us will rightly continue to discuss regional issues. I meet the noble Baroness, Lady Eaton, and others who come from my part of the world. I wish there were more Members of this House who, like the noble Baroness, come from outside the south-east of England and naturally spend their weekends going around areas other than the south-east of England, picking up what is going on and feeding back what they have learnt—as part of their relevant and continuing expertise—into the House. If that is regarded as constituency work, it is perhaps something that we will naturally continue to do. However, constituency casework does not seem to us to be a necessary part of this House.

Lord Foulkes of Cumnock: I wonder whether the Minister would take the opportunity of answering the point by the noble Lord, Lord Fowler, that whatever one's view of reform, it is not helpful to the discussion for there to be disparagement of current Members of the House of Lords, not just by the Deputy Prime Minister but by Simon Hughes, Tim Farron and, I regret to say, also by a Member of this House, the noble Lord, Lord Ashdown. Can he give us an assurance that he will make his best effort to make sure that this kind of slurring of current Members of this House ceases forthwith?

Lord Wallace of Saltaire: My Lords, I am tempted to say that I would like to give the House an absolute assurance that I will speak severely to the noble Lord, Lord Ashdown, immediately after the end of this debate. It would give me immense pleasure so to do. I will make sure that in his next speech he refers to the immense experience and expertise of the noble Lord, Lord Foulkes.

Lord Lamont of Lerwick: If I understand what the Minister said, under the Government's proposals Members of this House will be paid according to attendance. He has also said that they will not have to do constituency work. Does not this fall into exactly the phrase that the Deputy Prime Minister used as a criticism—that people are being paid just for turning up?

Lord Wallace of Saltaire: My Lords, again, we do not wish to go too far into the other Bill. We are all conscious, if we are critical, that of those of us who turn up regularly, many of us work extremely hard but

not all of us work as hard as the others. That will very likely be the same in an elected House, but we hope that the level of hard work will be even broader than now.

Lord Ashdown of Norton-sub-Hamdon: I apologise to my noble friend for intervening, but since I seem to have uncharacteristically ruffled the feathers of the noble Lord, Lord Foulkes, I suppose that I ought to put matters on the record. I do not insult the work done by Members of this House. The work that noble Lords do is partial, since it is a revising Chamber, but noble Lords do it exceedingly well. I wish that noble Lords also had the power to hold the Executive to account more effectively, since the place at the other end does not do so. That we do not do effectively—that is not noble Lords' fault but the fault of the institution. I do not in any way cast any aspersions on the integrity or hard work of Members of this House. What I cast aspersions on is the way in which we get here.

Baroness Symons of Vernham Dean: I am very glad that I let the noble Lord, Lord Ashdown, speak first, because I am very pleased to hear his admission that this is a revising Chamber and not one that makes the law, as the Deputy Prime Minister has tried to claim.

Will the Minister address the point again about constituency work? What is there to stop elected Members of this House choosing to do constituency work? The fact that the Government would rather they did not do it is neither here nor there. When they are elected, it will be up to them to decide whether or not they do that work. It is very unlikely that I would ever be one, but if I were ever to be an elected Member of this House, I would be tempted to cherry pick the constituency work to choose those high-profile cases that might have a real impact, thereby undermining the position of the constituency MP. The Minister looks puzzled, but I assure him that this subject was discussed over and over again on the Joint Committee of both Houses when we looked at the Bill. It is a matter of real worry to colleagues at the other end of this building, and I would be very grateful if he could answer. What is to stop elected Members of this House doing constituency work?

Lord Wallace of Saltaire: My Lords, there is nothing to stop Members of this existing House taking up individual cases, and they do so. I really do not see what the difference is. There will be no funds for those Members to take up constituency work, but it would be entirely appropriate for Members of a revising Chamber, whatever it may come to be called, to take up particular issues of civil liberties and people in prison, for example. My noble friend Lord Avebury might perhaps be accused of taking up many constituency cases across the country, as might the noble Baroness, Lady Kennedy. That is, perhaps, what we do already.

Lord Hughes of Woodside: My Lords, I know that we have recently been exhorted not to intervene on Ministers' speeches too often, so I apologise for transgressing that rule, but will the Minister look at what happened in the Scottish Parliament? There are two sets of elections—one direct and one top-up. When it was envisaged, it was said that the top-up Members would receive a lower salary than those directly elected because they would not do constituency work. That did not last long; as soon as they got their feet under the table, they changed the rules. As my noble friend just said, the list Members constantly interfered, cherry picked cases that got the headlines and undermined the directly elected Members. It follows as surely as day follows night.

Lord Wallace of Saltaire: My Lords, I look forward to many enjoyable days at the end of the year discussing this and other questions on another Bill than the one before us at present. At the present moment—

Lord Lea of Crondall: My Lords—

Lord Wallace of Saltaire: I have given way a great many times, and I think that I ought to draw what I hoped would be my brief remarks to a close. The Bill proposed by the noble Lord, Lord Steel, is an extremely modest and incremental proposal. The noble Lord, Lord Davies of Stamford, has already given notice that he intends to table amendments in Committee, but I trust that the Bill will pass relatively quickly through this House and will be perhaps an indication that there are at least some ways in which this House is willing to move on reform. On that basis, I hand back the wind-up to the noble Lord, Lord Steel.

Lord Steel of Aikwood: My Lords, I am extremely grateful to all those who have taken part in this debate. I particularly liked the reference by the noble Lord, Lord Soley, at the beginning to not mentioning the war. It was inevitable, of course, that the two Front-Benchers, when winding up on my Bill, would talk of nothing else except the war. As for my noble friend Lord Fowler, he did not just mention the war—he positively conducted it single-handedly. I cannot possibly associate myself with his remarks of support. In the brief moment that he referred to my Bill, he made one point to which I would like to respond. He thought that I had been too generous in the drafting in saying that non-attendance should apply to a whole Session. I remind the House that I rather agree with that and, in the original Bill, the time of non-attendance was six months. But I was giving way to the feeling in the Committee stage on that Bill, which is why it ended up as a whole Session. So I do not think that we can keep going back and revisiting this issue; we discussed it at great length under the previous Bill, which is why we are where we are now. I hope that my noble friend accepts that.

In relation to the general war, let me say that this Bill is required even if the Bill as drafted by the Government were to sail through both Houses and come into full effect in 2025. We would still need this measure up till then. So regardless of any views that Members may have on the Government's proposals, I think that this Bill should be proceeded with as soon as possible.

The noble Lord, Lord Wills, the noble Earl, Lord Erroll, the right reverend Prelate the Bishop of Ripon and Leeds and the noble Lord, Lord Davies of Stamford, all made reference to there being no appeal procedure

[Lord Steel of Aikwood]
for those expelled for reasons of criminal conviction. Initially the intention of my noble friend Lord Norton of Louth and I was to bring the rule in this House entirely into line with that in the House of Commons. If in the course of the redrafting we have somehow lost that, I will certainly look at it very carefully before Committee, in the light of the comments that noble Lords have made, and be in touch with them about it in the hope of trying to avoid amendments—but we may have to have amendments in Committee. It is a reasonable point. I assure Members that the intention was to make the rule in this House exactly the same as in the House of Commons.

On the point made by the noble Lord, Lord Davies of Stamford, about retrospection, I assure noble Lords that I took very careful account of this, because I was concerned that it should not be retrospective. All the legal advice that I had was that it is not retrospective. In fact, no law is retrospective, unless it says so otherwise. So I was advised that it was not necessary to put a provision in saying that it was not retrospective because it manifestly is not. That is what I have been told and, therefore, Members can be assured that it is not retrospective in any shape or form.

My noble friend Lord Tyler was kind enough to refer to my excellent article in the *Independent* last week. That is not so much mentioning the war as, certainly, mentioning guerrilla tactics, so to speak. We certainly should not be trying to debate that now, but I disagree with his comments on my excellent article because the suggestions that I put forward for an elected House avoided a lot of the dangers which are present in the government legislation. However, that would be taking me away from the purpose of the Bill which, as my noble friend Lord Wallace of Saltaire said, is a modest, effective measure. I hope that it will proceed.

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

Smoke-free Private Vehicles Bill [HL]

Second Reading

11.31 am

Moved By ***Lord Ribeiro***

That the Bill be read a second time.

Lord Ribeiro: My Lords, I declare an interest as a past president of the Royal College of Surgeons of England and as a patron. As a doctor and a surgeon, I have seen and treated the long-term effects of smoking in adults and wish to prevent similar harm occurring in children.

I am grateful that so many noble Lords have stayed over on a Friday to take part in this Second Reading debate. We are supported by experts in the health field and others who bring a personal perspective on the effects of second-hand smoke, and I look forward to hearing their contributions.

I was encouraged by my noble friend Lord Howe's response to my question on 19 June on the damage which smoking does to our children. He welcomed this Private Member's Bill, which he hoped would lead to wider debate. He acknowledged the harm that second-hand smoke can have on people's health and recognised the need to eradicate smoking when children are present. Where we differ is on the means to achieve that objective.

I acknowledge the excellent work that the Department of Health has done in undertaking an awareness and behaviour campaign over the past two months, with anti-smoking advertisements on television and the provision of advice to smokers who wish to stop. There were nearly 500,000 visits to the Smokefree website, compared to 100,000 last year, and 60,000 smokers requested Smokefree kits in response to the adverts. I encourage noble Lords to watch them. They are indeed powerful, and I am happy to forward the link to them.

However, awareness and behaviour change needs to be coupled with legislation. In responding to a question in the Welsh Assembly on 26 June this week on outlawing smoking in cars with children present, the First Minister said,

"if we find that people are continuing to smoke in cars, legislation will be required".

He reported that one in five of 11-to-16 year-old children in Wales were being exposed to second-hand smoke when they travelled last year.

Simon Clark, the director of FOREST—Freedom Organisation for the Right to Enjoy Smoking Tobacco—is quoted as saying,

"it's important to encourage parents not to smoke in a car where small children are present"—

but that he believes that a ban would be a step too far. This is a libertarian view that some hold, but for an organisation that promotes smoking to recognise the harm that smoking does to our children in a confined space is an acknowledgement from an unexpected sector, which I welcome.

The Bill is not an attempt to ban smoking for responsible adults in the privacy of their cars. It is intended to raise awareness of the risks of smoking in cars where children are present and to drive home the message that we as adults are responsible for the safety and protection of our children. I hope to convince your Lordships of the need for the Bill and will provide scientific evidence to support my case.

Last week a group of Peers heard evidence from Sharon Gould, a mother who smoked when her son Ben was quite small. She knew about the dangers of smoking when pregnant and stopped immediately she was diagnosed, but the stress of her mother's terminal illness made her start again. She described to us how she never smoked in the same room as Ben and would not dream of taking him into a smoky pub, but felt happy to smoke in her car with Ben in the back because the window was open. She had no idea that smoke was concentrating in the back of the car.

Therein lies the problem. We can see a room full of smoke—we were used to seeing that in pubs when they had smoking, though they do not any more—and we would recognise the dangers that that would have for our children. Somehow, though, driving in a car with

the window open is OK. Why? Because the smoke appears to be going out. In fact, that is not the case. The evidence for second-hand smoke entering the back of cars where children sit is high. Do not forget that these children are strapped in for their own safety and cannot move away from the smoke.

The evidence is compelling. Professor Fong of the University of Waterloo in Ontario, Canada, was able to prove that just one cigarette smoked in a car can provide levels of second-hand smoke many times higher than those in a smoke-filled pub or bar, and that commonly used methods to reduce second-hand smoke in cars—air conditioning and keeping the windows open—fail to reduce levels safely. Cigarettes release small, suspended particles, or particulate matter, less than 2.5 microns in diameter. These are inhaled deeply into the lungs. Particulate matter 2.5, which I will henceforth refer to as PM 2.5, is used as a measure of air quality internationally and was used by Professor Fong to assess the level of PM 2.5 in cars. A monitor was placed behind the driver's chair with a probe between the front seats at the level of the child's head. Recordings were made in five separate conditions: the engine of the car off, windows closed, no air conditioning; driving with windows closed, with no air conditioning; driving with the air conditioning on; driving with the driver's window half open; and driving with all the windows open. Measurements were taken during a 30-minute drive while smoking one cigarette. Results in the two most common driving conditions—with the windows closed and air conditioning on, and the windows half open—showed levels two and a half times greater than a smoky bar when driving with the air conditioning on, and two-thirds the level when the window was half open—still a significant enough level to cause harm.

Children, particularly young children, are still developing physically and biologically. Compared with adults, children have smaller lungs and breathe more quickly. They absorb more pollutants because of their size. They have less well developed immune systems, making them prone to respiratory and ear infections. They are more vulnerable to cellular mutations. As a result, they are more susceptible to the harmful effects of second-hand smoke. A child's immune system compared to an adult is considerably underdeveloped and lacks the necessary defences to deal with the damaging effects of second-hand smoke.

The medical evidence that second-hand smoke harms children is equally compelling, with over 300,000 primary care consultations a year, 120,000 new cases of middle ear infections a year, 22,000 new cases of wheezing and asthma a year, 9,500 hospital admissions a year and 40 sudden deaths a year. This is a huge drain on NHS resources, costing the taxpayer more than £23 million each year.

The impact of the smoking ban in public places has been dramatic. A sample of 41 pubs in Scotland saw smoke levels, as measured by PM 2.5, fall by 86% within two months of the legislation coming into force. Using salivary cotinine, a specific marker of tobacco smoke exposure, there was an 89% reduction in cotinine concentration in a cohort of 126 non-smoking bar workers one year after the legislation. The same study using personal PM 2.5 monitors during working shifts recorded an 86% reduction in exposure to PM 2.5, demonstrating the serious effects of smoking in the period before legislation. In the confined space of a car, levels of exposure are considerably higher than in a bar or pub, and for the children who are strapped in there is no escape from the toxic fumes.

The Bill is intended to reduce exposure to second-hand smoke, which is one of the six internationally recognised strands in the Government's tobacco control plan, by adding legislation to the behavioural change which they seek. A survey of nearly 700 boys and girls between the ages of 11 and 15 by the NHS Information Centre in 2010 found that one in five children had been exposed to second-hand smoke in cars. This was similar to the finding in Wales. A survey by the British Lung Foundation in 2011 of over 1,000 children between the ages of eight and 15 found that only 31% of them asked adults to stop smoking, while 34% were too embarrassed or frightened to ask. Adults can look after themselves; children cannot.

This is, in effect, a public health Bill. It seeks to protect children from the effects of second-hand smoking, in the same way that legislation exists to protect children through the appropriate use of car seats for those under the age of 14. The 2006 legislation, which reformed the car seats law, made it the responsibility of the driver to ensure that children were correctly restrained. I believe it should also be the responsibility of the driver to ensure that children are protected from second-hand smoke. As Sharon Gould explained, it is often mothers who are faced with the day-to-day problems of caring for their children or finding carers for them if they work. Mothers who smoke put their children's health, both in the short and long term, at risk. The Bill seeks not to punish mothers, carers or anyone who smokes in the presence of children but to educate and inform them of the risks.

Internationally, legislation has been in force since 2006. Laws banning smoking in cars carrying children exist in three countries—South Africa, Mauritius and Bahrain—and involve six of the eight states or territories in Australia, nine of the 13 in Canada and four of the 50 states in the United States, although nine municipalities there impose a ban. It is time to apply similar legislation to England and to follow the Welsh Assembly's example by not ruling out legislation if behavioural change does not reduce the incidence of smoking in cars.

The Bill seeks to amend the Health Act 2006 by banning smoking in cars where children are present and to provide further education and awareness of the dangers of smoking through the provision of smoke-free awareness courses in place of a fine for first offenders. We have the evidence to support this Bill and I ask your Lordships and my noble friend the Minister to consider it in the interests of our children and grandchildren, if not ourselves. I beg to move.

11.44 am

Baroness Masham of Ilton: My Lords, I thank the noble Lord, Lord Ribeiro, for this Bill,

"to make provision for a ban on smoking in private vehicles where there are children present".

[Baroness Masham of Ilton]

For a few moments, I want to tell your Lordships why I feel this Bill is so important. I think back to my childhood. One of my first memories, when I was about four years old, is of travelling down by train from Scotland to England. It was during the war and there were soldiers lying along the corridors. Most of them were smoking, and I remember telling them what an awful thing smoking was—how it hurt the eyes and had a terrible smell. I cannot think what they must have thought of me.

However, the Bill will support children. It will give them the power to tell parents or people smoking that they are breaking the law, and that they are damaging their health and that of children if they smoke in a car. It must be even more dangerous for babies and small children who cannot accuse their parents or carers of being irresponsible. Smoke, full of toxins, drifting over babies is of immense concern. I congratulate the British Lung Foundation for all that it is doing to make people aware of the dangers of smoking and passive smoke, and of all the other dangers to the lungs of so many people. Prevention is of utmost importance to try to prevent lung disease in later life. The British Lung Foundation's briefing—I do not think it matters how many times we hear it—says:

"The particular harm that passive smoke causes to children's health is well documented. Although members of the public are protected by smoke-free legislation in public transport and work vehicles, large numbers of children remain exposed to high concentrations of second-hand smoke when confined in family cars".

The BMA states that children are still developing physically and biologically and that compared to adults they breathe more rapidly, absorb more pollutants because of their size, have less developed immune systems and are more vulnerable to cellular mutations. I would add that surely we should want to try our best to protect the delicate and tender lungs of children. I agree that the ideal would be to introduce an absolute ban on smoking in private vehicles. An extension to the ban would also promote the message that tobacco smoke is harmful, regardless of who is present in the vehicle at any time. As has been said, smoke toxins can remain in vehicles long after a cigarette has been smoked. There could be a build-up of harmful toxins in vehicles where children and other passengers sit.

This Bill is a start. Children are more susceptible to the harmful effects of second-hand smoke. A child's immune system is considerably underdeveloped compared to an adult's, and lacks the necessary defences to deal with the harms of second-hand smoke. There is plenty of evidence of the dangers of passive smoking to children. To mention some, there was a report by the Tobacco Advisory Group of the Royal College of Physicians, *Passive Smoking and Children*, in March 2010. The Royal College of Paediatrics and Child Health, the Royal College of General Practitioners, the British Heart Foundation, Asthma UK, Action on Smoking and Health, the Faculty of Public Health and many other organisations have a multitude of evidence.

I am sure that we all know or have known many people who have suffered from lung or organ disease due to smoking or passive smoking. One such case was Lynn, who was an ambassador for the British Lung Foundation. She tragically passed away earlier this year from COPD at the age of 54. Lynn had never smoked a cigarette in her life but had been heavily exposed to smoking as a child, with both her mother and step-father having smoked around her since she was a baby. She suffered from a number of lung problems as a child. She first contracted pneumonia when she was 13 months old and was diagnosed with asthma at the age of 5. The family doctor never asked her parents whether they smoked. He suggested that it was her hair that was causing the asthma, so it was cut off, and then that it could have been caused by the family dog, so it was sold.

Lynn was diagnosed with chronic obstructive pulmonary disease in 2003, by which stage it was already severe and had put a huge strain on her ability to manage her condition for the rest of her life. Lynn said that she had less than 22% of normal lung function and had never smoked a cigarette in her life. She hoped that her experience would serve as a warning to others to think twice before smoking around children. She hoped that children would have a voice. I hope that the Bill will do just that.

Passive smoking results each year in more than 165,000 new episodes of disease of all types among children, 300,000 primary care consultations, 9,500 hospital admissions and around 40 sudden infant deaths. This comes at a total cost of more than £23 million per year in primary care visits, asthma treatment and hospital admissions in the UK. We are not leading the way in banning smoking in private vehicles, as the noble Lord, Lord Ribeiro, said. It is prohibited in four US states, nine Canadian provinces, six Australian states and in countries such as South Africa—for children under 12—and Bahrain. It has been found that educational campaigns in this area are most effective in changing behaviour when accompanied by legislation.

I was one of your Lordships who supported legislation about the wearing of seatbelts. There were some opposing views. In fact my husband, who was then a Member of your Lordships' House, and I voted on opposite sides. The wearing of seatbelts increased in the UK from 25% to 91% after legislation was introduced alongside awareness campaigns. I wish this Bill a speedy journey through both Houses. Surely the Government realise how important healthy children are. They are our future.

11.53 am

Lord Colwyn: I am delighted to be able to support my noble friend's Smoke-free Private Vehicles Bill, but as he is aware, I have some reservations about how such an Act would be policed and enforced, and I regret the imposition of yet more "nanny state" legislation.

The noble Lord is right. He has expertly presented the evidence. It is difficult not to repeat some of the figures. The Royal College of Physicians Report in 2010 showed the extent of the problems that children face due to passive smoking. They found that 160,000 children were adversely affected, costing the NHS in England more than £23 million. Children who grow up with parents who smoke are twice as likely to become smokers themselves.

Cars and other vehicles are a source of high levels of smoke exposure for children and adults and are associated with adverse health effects, including an increased risk of respiratory and allergic symptoms. As the noble Baroness, Lady Masham, said, smoke toxins can remain in vehicles long after a cigarette has been smoked. An international literature review of 15 studies of public attitudes to laws for smoke-free private vehicles found high levels of support, including among smokers. Support for a ban on smoking in cars stresses the widespread desire to protect non-smokers, especially children.

My noble friend Lord Ribeiro has made his case and other noble Lords have made and will make their case. I have made my case, but why limit the legislation to cigarette smoke? What about all the other toxins that surround us every day? Should children be banned from helping in the kitchen, prevented from living below overhead electric power lines or banned from playing in our parks for fear of infection by toxicara canis? I could go on. The truth is that many of us are unaware of the numerous dangers in our homes and do not realise that the cheap poisons that are used in our toiletries, cosmetics, cleaning products and even our furniture are linked to a diverse range of chronic health problems from cancer to chronic fatigue syndrome.

A case in point is a recent study published in the journal *Environmental Health Perspectives*, which found that pregnant mothers exposed to chemicals such as butyl benzyl phthalate—BBzP—are up to 50% more likely to have children who suffer from eczema. BBP is widely used in vinyl flooring, artificial leather and other materials that can be slowly released into the air in our homes. Eczema, which is characterised by dry, itchy red skin on the face, scalp or extremities, is common in early childhood and often allergies lie behind the condition. These findings add to previous research results which found that exposure to BZB, BBz and other phthalates can delay motor skill development in young children and increase the risk of behavioural problems. Phthalates are also known to disrupt the body's endocrine system. There is no doubt that levels of pesticides found in our bodies are dangerously above levels thought to be safe and could be responsible for many cancers and other symptoms. During crop growth, pesticides are used as insecticides, herbicides and fungicides, 40% of which are linked with at least one adverse effect. I realise that I am straying from the subject and have not said anything about the dental issues that I hope my noble friend Lady Gardner might cover in a minute or two.

While supporting my noble friend's Bill, I believe that there are many other ways in which we can be harmed. Banning smoking in cars with children present might surely open the floodgates for other Bills that reflect the many harmful factors which affect us all at different times. I am not sure that the Government will have the time or the inclination to take on so much legislation.

11.58 am

Baroness Massey of Darwen: My Lords, I rise to speak in favour of this slender but important Bill for several reasons. I am most grateful to the noble Lord, Lord Ribeiro, for pursuing this issue and for again setting out today in such a compelling way the danger to health of smoke in vehicles. I accept, of course, as the noble Lord, Lord Colwyn, pointed out, the other environmental hazards of various chemicals. However, I think that smoke in vehicles should be an easier one to deal with first, rather than looking at the others in general.

The serious damage to health from passive smoking is well known, and I shall touch on that briefly. Others have given case studies and other facts but I emphasise the one fact from the Royal College of Physicians that 160,000 are adversely affected each year by being subjected to smoke in vehicles, which costs the NHS £23 million.

The All-Party Parliamentary Group on Smoking and Health said that children exposed to second-hand smoke have a greater risk of all kinds of diseases—respiratory infections, asthma, middle-ear infections and meningitis—leading to about 8,500 hospital admissions a year. The noble Lord, Lord Ribeiro, pointed out that one cigarette smoked in a car during a 30-minute journey gives rise to real danger to children from second-hand smoke, even with the window open; and 19% of 11 to 15 year-olds have been subjected to smoke in cars. A paediatrician has said that most parents would be horrified that even a short car journey when an adult has been smoking would result in breakdown products of nicotine in their child's urine. Do we need more evidence?

As has been pointed out, many countries have laws prohibiting smoking in cars where children are present, and one has banned smoking in all cars carrying passengers. Some may say—I suspect that the noble Lord, Lord Colwyn, would—that such laws interfere with the rights of car users, but we must balance that with the impact on others who are breathing in that smoke. There is public support for measures to ban smoking in cars where children are present, and I hope that legislation such as the Bill would also make drivers and passengers in vehicles think of the effect on adults as well as children.

There are other consequences. I was discussing this subject with a colleague the other day. She said that she had always been sick in her father's car when she was a little girl. He was a heavy smoker. When he stopped, her sickness stopped. I admire the efforts of the British Lung Foundation to enlighten people about the effects of smoking. It conducted a survey in 2011 of more than 1,000 children aged between eight and 15. Forty per cent of the children said that smoking in cars made them feel sick and 44% said that it made them cough. A girl of 15 in Belfast said:

> "I think smoking should be banned in cars because it's bad for the people in the car. And whenever my mum or dad smoke in the car it makes me feel sick and gives me a headache. When I tell them this they don't listen and carry on. They don't know what it actually feels like when someone smokes and you don't".

It may be difficult for children to challenge adults on that. Perhaps most are not as brave as the noble Baroness, Lady Masham, when she was four.

That sends a strong message that we should support the teaching of health education in schools to include assertiveness and persistence to challenge others when they are doing harm. That applies to a number of health behaviours, such as sex, drugs and alcohol.

[Baroness Massey of Darwen]

Parental behaviour can be altered by children. I had a cousin who stopped smoking because one of his daughters cried when he smoked and said, "Daddy, I don't want you to die of cancer"—a tribute to her receiving and understanding health messages. Of course, health education is not the only answer. It often has to be backed by legislation, as the noble Baroness, Lady Masham, said—for example with the wearing of seatbelts and food labelling.

There are serious impacts on children apart from the immediate health impact. Children who live in households where adults smoke are much more likely to become smokers themselves than children in non-smoking households. For every 10 children from non-smoking households who start smoking, 27 children from households where both parents smoke will start smoking themselves. It has been estimated that if there is a smoker in the household, the chance of a child in the household starting to smoke is almost doubled.

There is support for legislation from both children and adults. The British Lung foundation surveyed 1,000 parents on mumsnet.com to assess their thinking on the impact of smoking around children. That showed that 86% of parents would support a ban on smoking in cars carrying children. Recent research by YouGov for Action on Smoking and Health found that 78% of adults and 62% of smokers themselves support a ban on smoking in cars carrying children under 18.

There is good evidence of the harm to children from smoking in vehicles; there is good evidence of the wider impact of smoking. There is public support for a ban on smoking in cars when children are present. I hope that the Bill will have the impact it deserves on government thinking.

12.05 pm

Baroness Gardner of Parkes: My Lords, I am delighted to support my noble friend Lord ibeiro on the Bill. It concerns a very important issue, and I hope that it will find favour and become law. It is most unfortunate that far too many Private Members' Bills meet deliberate opposition when they reach the other place. I was defeated four or six times on my High Hedges Bill before, eventually, the Government agreed to put the whole 19 pages of it into the Anti-social Behaviour Bill, which flew through. It is a great shame that Private Members' Bills are often not considered for their value; some people oppose everything on principle.

My noble colleague Lord Colwyn, who is now on the Woolsack, suggested that I might deal with dental issues. I am not aware of too many specifically dental issues about smoking, although I am sure that they exist. They are part of the general health picture: smoking is pretty bad in almost every way that you can imagine. I am delighted that the noble Baroness, Lady Massey, spoke, and I know that the noble Earl, Lord Listowel, would have done except that he was held up in traffic and did not get here in time to do so. They are two people who have done so much to help children. This House is very keen to do whatever it can to help children. So often in debates, we hear the statement made: "Whatever is in the best interests of the child". Without doubt, the Bill would be in the interests of the child. I believe that it would be in the interest of all of us, but we in this House are always most concerned about children.

I was also pleased that the noble Lord, Lord Colwyn, said that there are widespread home hazards. I would not dare to repeat the names, which I hope that he has given to *Hansard*, of the various chemicals which he suggests are so bad, and I am sure they are, but when he started talking about safety in playgrounds, I thought that he was saying that we are being overprotective. One has to balance being overprotective against not being protective enough.

Smoking in cars is an important issue, but I think that smoking is a real hazard in a lot more places than cars. I tabled an amendment to the Localism Bill to give local authorities the power to state that a certain area, even outside, should be smoke free. I raised that because a woman I know who lives above a group of garages said that she was unable to open her windows because all the local workmen came to sit outside the garages to smoke and the level of smoke going up to her window was such that she could not even open it. I have also heard from various local councillors that they have found the concentration of smoke outside some pubs and cafes, particularly in the summer when everyone is outside, can be so bad that it is hard to believe.

When we first brought in outdoor-only smoking here, you could barely enter the ladies loo on the ground floor, because the smoking area designated for the House was the little area immediately outside its window? It was incredible. Once it was drawn to the attention of the House, of course it was moved, so that problem was solved fairly easily. I noticed that in Australia, they have now banned smoking in some streets. It varies from place to place, but in some areas, they will not have smoking even in streets; it is only in private that you can smoke.

This measure is anything but extreme and deserves the support of both Houses because it is so much in the interests of children. The future of this country lies in its children. I am pleased to support the Bill. I hope that it gets a Second Reading and becomes law.

12.10 pm

Viscount Simon: My Lords, whenever we have a Bill before your Lordships where the issue of tobacco smoke is included, I always declare that I have severe brittle asthma and can become very ill, sometimes within a few seconds, when I inhale tobacco smoke.

I make no excuses for repeating what other noble Lords have said, because their comments are worth repeating. Some parents smoke without realising the damage that they can do to their children's health, nor do they realise that, within the closed space of a car, the concentration of tobacco smoke is much greater than in other areas, resulting in a range of lung diseases. In the case of children, those diseases are aggravated because of their reduced lung functions. Moreover, children have faster breathing and less developed immune systems.

In many cases, people who smoke in cars are not aware of the dangers to their children because they rarely travel in the back of the car while others smoke

in the front. Many children who are aware of the dangers feel unable to influence those who smoke in cars.

There have been a number of studies on smoking. Those on smoking in cars started in 2006. People who smoke will not agree with their findings, but the studies cannot be faulted. They are factually accurate and correct. In 1924, the city fathers of South Bend, Indiana, introduced a special ruling which has never been rescinded. It prohibits any monkey, orang-utan, chimpanzee or ape from smoking in a public place. If they can legislate for animals, is it not time that we protected our children from the effects of second-hand tobacco smoke?

12.11 pm

Lord Crisp: My Lords, I congratulate the noble Lord on bringing forward this welcome and timely Bill. I was about to say that, with my speaking ninth, my arguments have already been made, but I think that I am speaking seventh. Nevertheless, those arguments have been made and I shall detain not noble Lords from lunch by very much.

The evidence is clear. There are five big points: first, passive smoking has been shown to be dangerous; secondly, smoking in the confined space of a car is particularly dangerous even with the window open—that is the bit that I think many of us did not realise; thirdly, children are worst affected; fourthly, we have a responsibility to protect them; and, fifthly, as with our experience of other public health measures, voluntary pressure and persuasion get us so far but legislation is needed to go the whole way. As the noble Lord, Lord Ribeiro, has said, the arguments are compelling.

The noble Lord, Lord Colwyn, is right that many things are dangerous in life, but this Bill is coming to this House because it is an issue of judgment. Where things are dangerous and where we judge that we should do something about them, such as introduce legislation, I would say off the top of my head that there are four questions to be asked: first, is there very clear evidence that it is dangerous? There is in this case. Secondly, are the dangers material and significant? Yes, they are—they affect people's lives. Thirdly and importantly, is it about something that we are doing that affects other people? This is, because adults smoking in a car affects other people. Fourthly, what are the downsides? The downsides are pretty modest. They are about having the freedom to smoke in a car when your children are present. The noble Lord, Lord Colwyn, was right to draw our attention to the fact that there is a judgment to be made, but if those are the criteria by which one makes it, the arguments are compelling. It is a simple judgment.

I spend a lot of time abroad and am constantly gratified by the way in which the UK is held in such high regard in terms of health—everything from the basic principles of the NHS to research, services, professional education and all the great things that we know about. The UK is seen as an example to follow. I was recently with a group of Health Ministers from Asia and Africa who showed great interest in what we were doing to reduce smoking in this country, across the whole range of measures introduced by the previous Government and by this Government. Although some noble Lords have pointed to examples abroad, there are not very many of them yet and people still look to us for examples.

I have no doubt that this legislation, should it be passed, will be used as an example to encourage others in the worldwide campaign to reduce smoking and to implement fully the World Health Organisation Framework Convention on Tobacco Control. As noble Lords may know, this convention is the first international health treaty to be negotiated through the World Health Organisation and it has been rapidly adopted, but there is much more to do in implementation. This Bill provides a very welcome opportunity to show how it can be done and to lead by example. For this and all the other reasons that noble Lords have given, I look forward to hearing what the Minister has to say about the Government's support for this Bill and to securing a speedy passage for it.

12.15 pm

Lord McColl of Dulwich: I congratulate my noble friend Lord Ribeiro on bringing forward this Bill. I worked with him for many years at the Royal College of Surgeons, where he was a very distinguished president. The Bill brings back some memories for me, for, 18 years ago, I proposed an amendment to a criminal justice Bill to ban smoking in public completely. I was very pleased that the House was full, even to midnight. I flattered myself that that they had come to support my amendment. Little did I know that a horde of smoking Barons had come deliberately to vote against it and were waiting for me to say, "I beg leave to withdraw my amendment". The person on the Woolsack would then ask, "Is it your Lordships' wish that the amendment be withdrawn?" and they would all shout no. Unfortunately, by mistake, I said at the end of my speech, "Amendment not moved", and they all looked very puzzled, because I had spent hours moving it. The lady on the Woolsack quickly moved on and they lost the opportunity to vote against the amendment. They were furious, and they came up to me afterwards and asked, "Who taught you that Machiavellian trick?". I said, "No, no, I am just an innocent abroad". Well, they did not believe me after that.

I have had many patients who have died of cancer of the lung who have never smoked at all, but they had spent a lot of time incarcerated in cars where the driver was smoking a pipe. Not only does the smoke cause cancer in those circumstances, but, as has been said, children can easily be precipitated into an asthmatic attack or they can spend their time in the car vomiting their head off. This Bill should have been passed many years ago and I very much hope that it will soon become law.

12.17 pm

Lord Collins of Highbury: I, too, my Lords, thank the noble Lord, Lord Ribeiro, for bringing this important matter to the attention of this House and, I hope, of the public. Since July 2007, as we have heard, it has been illegal to smoke in virtually all enclosed public spaces and workplaces.

[Lord Collins of Highbury]

In May of that year, I had my last cigarette. While I have stopped, I still define myself as a smoker. I have had two periods of eight years each of not smoking. I am now in my third period of not smoking. For long periods, I continued smoking despite being aware of the dangers to my health. It is true that there were times when I really enjoyed a cigarette, particularly after a meal with a cup of coffee, but I knew that the real reason that I smoked was that I was hooked.

For me, the addiction meant that one cigarette smoked always led to more. Even the medical evidence was something I managed to put to the back of my mind. In fact, five years ago my doctor said that I had a 20% chance of a heart attack if I continued smoking. After coming out of the surgery, I convinced myself that that meant I had an 80% chance of not having one. At the time, I thought that that was not bad odds. It is amazing what addiction can do.

While I may have kidded myself about the risks and dangers of smoking, it was not something I ever thought that I should impose on others. However, the car was my space and I always thought that an open window would suffice. Like Sharon Gould, whom the noble Lord, Lord Ribeiro, referred to, I really did not appreciate the harm that I could have caused to the passengers in my car, especially my nieces and nephews. Now I know different. As the noble Lord said, research has shown that a single cigarette smoked in a moving car with the window half open exposes a child in the centre of the back seat to around two-thirds as much second-hand smoke as being in an average smoke-filled pub. I never really appreciated that. Levels increase to more than 11 times those of a smoky pub when the cigarette is smoked in a stationary car with the windows closed. I have also seen from the British Lung Foundation that research from the Chartered Institute of Environmental Health has found that smoking in cars continues to be dangerous even after the cigarette is extinguished.

Unfortunately, my noble friend Lord Rea was delayed today but I know that he would have spoken in more depth about the medical evidence of secondary smoking, particularly from his experience while working at St Thomas's Hospital. He would have reminded us that children are particularly vulnerable to second-hand smoke. As the noble Lord, Lord Ribeiro, has said, children have smaller lungs, faster breathing and less developed immune systems, which make them more susceptible to respiratory and ear infections triggered by passive smoking.

Since the ban in public places, I thought that most people now understood that it is bad to smoke in confined spaces. Even the smokers' lobby group FOREST accepts this. It says:

"It's inconsiderate at least, and where children are concerned it's probably best to err on the side of caution or, as some would say, courtesy".

Although FOREST still does not accept the medical evidence, is it right about people understanding the need to err on the side of caution when it comes to having children in the car? Is it still an issue? As we have heard from many noble Lords today, last year, surveys conducted by the British Lung Foundation and the NHS Information Service for Parents show that 51% of children aged between eight and 15 said that they had at some point been exposed to cigarette smoke when confined in a car. Clearly, we need to do more to raise awareness of the dangers of secondary smoke.

However, I would like to ask the Minister if the Government truly believe that a one-off publicity campaign will be enough to protect children when so many are still subjected to the fumes of others? We have heard in this Chamber and outside both practical and ethical issues as to why we should not extend smoke-free legislation to cover smoking in private vehicles. I am sure that the Minister will highlight some of the practical issues about enforcement. Unlike the current ban in public places, it can hardly be left to public health officials to police. A partial ban no doubt would lead to difficulties over proof and clearly, as we have heard in the debate, a law that is difficult to enforce has the danger of bringing the law into disrepute.

The ethical issues—as I have mentioned, there are campaigners who defend the rights of smokers—will no doubt focus on the potential infringement of the privacy of the vehicle user. I cannot believe that this civil liberties argument can ever outweigh the harm to other private individuals who are in the car. I know that it could be argued that adults can exercise the right not to travel in the car but children rarely are in that position. One issue as regards the Bill, which I hope will be addressed by the Minister, is a possible situation involving a 17 year-old driver who could be subject to the ban. Perhaps the age limit could be looked at in that respect.

It is always argued that an adult can exercise the right not to travel in a car but can a car being driven along a public road be described as a private space? In the interests of public safety, we already accept restrictions on what people can and cannot do while driving. As many noble Lords have pointed out, surely holding a lit cigarette is as dangerous as holding a mobile phone. From my experience, I confess that I have dropped cigarettes while driving and they have gone in the most awkward places. As a consequence, I have nearly caused accidents.

As the noble Baroness, Lady Masham, reminded us, since 2007, vehicles used by more than one person for purposes of work, paid or unpaid, and whether they are travelling in the vehicle at the same time or not, are required to be smoke-free. Why should that right not be extended to children? As many of my noble friends have indicated and as my noble friend Lady Massey has said, awareness and raising awareness is not enough.

We need this debate and I am truly grateful to the noble Lord, Lord Ribeiro, for starting it. I know from personal experience that simply raising awareness of the risks and dangers of smoking is not always enough. Addiction is a powerful enemy. I ask the noble Earl if the Government would consider undertaking a more detailed study on public attitudes, particularly attitudes to smoking in vehicles. One-off public health campaigns did not stop me smoking but the ban in public places did and it has helped me to remain smoke-free.

12.28 pm

Earl Attlee: My Lords, I congratulate my noble friend Lord Ribeiro on securing the reintroduction of this Bill, which seeks to amend the Health Act 2006 to make provision for a ban on smoking in private vehicles where there are children present. The Government welcome the role that my noble friend's Private Member's Bill has played in bringing this important issue to the attention of your Lordships' House.

In answer to my noble friend Lady Gardner of Parkes, the good news is that this House can carefully consider a Private Member's Bill. I have had exactly the same experience as my noble friend with my Road Traffic (Enforcement Powers) Bill. But how another place conducts its business is of course not a matter for me.

In addition, we have seen a valuable contribution to raising awareness and stimulating public debate on second-hand smoke achieved through the introduction of a similar Private Member's Bill last year in another place, the All-Party Parliamentary Group on Smoking and Health's inquiry and report on second-hand smoke, the Royal College of Physicians' 2010 report entitled *Passive Smoking and Children*, and recent campaigns by the British Medical Association and the British Lung Foundation.

Smoke-free legislation has been in place since 2007. These laws have been particularly effective in reducing exposure to harmful second-hand smoke in enclosed public and work places. Smoke-free legislation is popular and levels of compliance are high. We need to maintain that. However, we cannot escape the fact that it is now enclosed places that are not covered by smoke-free laws where people are likely to be exposed to second-hand smoke, including homes and family cars. Importantly, research shows that there has not been displacement of smoking into the home since smoke-free legislation came into place. In fact, more and more people are making their homes entirely smoke free, and that can be only good news.

My noble friend Lady Gardner of Parkes mentioned the problem of smoke from outside smoking areas adversely affecting other residential smoke-free areas. I am aware of this, but it does not mean that the existing legislation is flawed. She asked whether local authorities could be granted powers to introduce by-laws to protect people from second-hand smoke in outdoor public areas. Local communities and organisations may also wish to go further than the requirements of smoke-free laws by creating environments free from second-hand smoke—for example, in children's playgrounds and outdoor parts of shopping centres. This can also help to shape positive social norms and discourage the use of tobacco and has been introduced using voluntary mechanisms by some local authorities. Local authorities that have introduced smoke-free outdoor places will have done so voluntarily—for example, in children's playgrounds that are the property of local authorities, and where a condition of entry is that smoking does not take place and signs are put in place. Local authorities do not need by-laws to do this.

I am sure that we would all like to see the end of smoking in cars in which children are being conveyed. There is a diversity of opinion on how to reduce exposure to second-hand smoke in the places not covered by smoke-free laws. The question is: how do we encourage smokers to modify their behaviour for the benefit of the health of others in private spaces such as the home and family car? For example, many, including my noble friend Lord Ribeiro, have called for legislation to prohibit smoking in private vehicles. Others say that the best way to afford protection from second-hand smoke is to encourage smokers to quit for good. The Government have an assertive and comprehensive tobacco control plan to reduce smoking rates and stop the uptake of smoking by young people.

As we have been reminded today, evidence of the harm to children from second-hand smoke is well documented, and that many children continue to be exposed, whether in family cars or in the home. I am sure that my noble friend Lord Ribeiro has convinced the House on the technical points. A key factor to assess when considering his Bill is that we do not know what proportion of the ill health among children attributable to second-hand smoke results from exposure in cars. It follows that we are not able to estimate what the likely impact on child health would be from the ban that the Bill would introduce. This problem is compounded by the likely problems of whether such a ban could be enforced in practice.

Smoke-free legislation in England, covering enclosed workplaces and public places, including public transport, is enforced by local authorities. Local authority officers do not have powers to stop vehicles in progress or even to detain those that have stopped. Even if the officers had such powers, in practice it is likely that they could not be exercised safely without the assistance of the police, extensive training and resource. Without being authorised to stop vehicles or easily identify offenders, enforcement by local authorities would be difficult. Therefore, we consider that the only realistic option would be for the police to enforce any ban on smoking in private cars. This additional task may not be welcomed by the police, on top of their many other responsibilities. The practicalities of enforcement may also be further complicated by the fact that small children may not be easily visible from outside the vehicle, and it may be difficult to identify whether passengers in a car where someone is smoking are under the age of 18. I do not believe that we should legislate in this area without first identifying how any law could be enforced effectively.

Additionally, there is the issue of creating new criminal offences or extending the locations in which current criminal offences are committed—a point made by my noble friend Lord Colwyn. The Government believe that we ought first to consider whether there are other more effective methods of reaching out to parents and other adult smokers to encourage them to want to modify their smoking behaviour to protect others, particularly children.

When considering legislation that seeks to require changes in the behaviour of people in private vehicles for public health rather than road safety reasons, we also need to consider human rights aspects. These might include whether there might be unjustified interference with people's private space. I acknowledge, however, that such arguments need to be balanced against the rights of children to be protected from

[Earl Attlee]
harm. One noble Baroness suggested a total ban on smoking in a vehicle. In human rights terms, that might well be a step too far, given the current levels of smoking in the general population.

Your Lordships will be aware that in the *Tobacco Control Plan for England*, published in March 2011, the Government undertook to run a marketing campaign aimed at raising awareness about the dangers of smoking in vehicles and in the home, particularly when children are present. This campaign ran after Easter and aimed to encourage positive behaviour change among smoking parents and other smokers in those places. I watch little TV but was certainly aware of the campaign. The Department of Health will be carrying out a full evaluation of the campaign, which will give us further information on changes in attitudes and behaviours in relation to smoking in the home and car and on quit attempts generated by the campaign. The results of this will be available for further consideration in the autumn. In answer to the noble Lord, Lord Collins, we will assess the effects of the campaign before determining what to do next to change behaviour.

The results of the campaign were very encouraging and we have some basic data on its results, including the fact that the campaign prompted nearly half a million visits to the smokefree website, which provided information on second-hand smoke, compared with 100,000 visits the year before. Well over 60,000 smoke-free kits were requested and delivered to families in response to the advertising campaign. We saw a parallel increase in quit-kit orders during the campaign and have sent out almost 40,000 of the kits since the campaign was launched. The evaluation will help to inform decisions about what other action, if any, is required to address the issue of second-hand smoke in the home and family cars.

My noble friend Lady Gardner of Parkes talked about dental issues arising from smoking. There is a clear link between smoking and dental health. Smoking is a cause of peritonitis, as well as oral cancer. However, we are not aware of any evidence that there is a link between second-hand smoke and dental health problems.

I was asked why we do not approach the problem from a different perspective and prohibit drivers from smoking in all motor vehicles on the grounds that this distracts them from driving safely. The noble Lord, Lord Collins, asked whether this was a road safety issue. I agree that smoking at the wheel of any road vehicle can cause driver-distraction, as lighting up and using smoking materials means that one's hands are removed from the steering wheel. However, the Government have no proposals to introduce the same penalties for smoking while driving a vehicle as for using a hand-held mobile phone while driving a vehicle. There are many potential distractions while driving and it remains the driver's responsibility to drive safely at all times.

The police use the existing offence of failing to have proper control, under Section 41D of the Road Traffic Act 1988, to deal with those who are distracted while driving. This attracts similar penalties to those for the specific offence of driving while using a hand-held mobile phone. It is worth noting that introducing a new law to ban smoking in cars only by drivers would not solve the public health problem that prompted my noble friend Lord Ribeiro to introduce his Bill. Other passengers in the car, either in the passenger seat or in the rear of the car, would still be able to smoke, and children and adults would still be exposed to the harms of second-hand smoke.

The Government are not persuaded that legislating for smoke-free cars is the best approach at this time. We believe that some significant issues need to be resolved before such legislation can be contemplated. None the less, I congratulate my noble friend on his efforts.

12.41 pm

Lord Ribeiro: I thank my noble friend Lord Attlee for his reassuring comments—in particular, for saying that the Government are not persuaded "at this time". I brought the Bill forward to raise awareness of this matter and to say that it should be introduced in conjunction with attempts to change behaviour. The Welsh Assembly has set a time limit of three years. I would hope that we would be able to make a decision within a shorter period.

I also thank noble Lords who have spoken in the debate. I know that two were unable to do so because the previous Bill went through much quicker than expected. I was particularly heartened to hear the noble Lord, Lord Collins of Highbury, speak, because he has personal experience as a smoker. It is very important to get that perspective because the feeling is that those who smoke have no concern for young children in cars. That is certainly not the case, as came through very clearly in many of the contributions. Noble Lords have given a general, wide view of the impact of smoking on children as well as, often, on themselves.

I accept the reservations expressed by my noble friend Lord Colwyn about the other toxic elements that children are exposed to, but the car is a very special place because children within a car are confined and unable to get away from the smoke.

The noble Lord, Lord Crisp, put his finger on it when he said that it was a matter of judgment. Have we identified the problem? Yes, we have. Are there downsides? Yes, there are. The question is: who is likely to benefit from such legislation? If you look at the issue in libertarian terms and try to make a decision about whether this is about the rights and freedoms of individuals to do what they want to do in their private space, then I think it is also necessary to consider the rights of the child in that private space and ask who is responsible for that child. Frankly, I am prepared to let my individual liberties go for the benefit of young children. This is something that the Government will need to take away and think about.

On the issue of powers and the police, I was careful to talk to two former chief commissioners of police in this House to find out their views. Their view was that this is a visual matter: you look to see whether somebody is using a mobile phone or whether someone who appears underage is smoking, and then you verify. Therefore, this is not an issue that we should get too worried about.

I agree with the noble Lord, Lord Collins, about the issue of age. I put in 18 because medically that is the age at which you move from being a child to an adult. However, I am perfectly aware that you can drive a car at 17. There may be a loophole here if the law stipulates 18 and a 17 year-old boy or girl driver is pulled over for an offence. There might even be a strange situation where a 17 year-old is driving and an 18 year-old in the car with him is smoking. In that case, the 17 year-old is the person who should have the authority to tell their passenger to stop smoking. This is something that we must come back to and look at.

This has been an excellent debate. I am glad that the Bill has got this far and hope that we will be able to take it further. I beg to move that the Bill be given a Second Reading.

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

Caravan Sites Bill [HL]

Second Reading

12.45 pm

Moved By ***Lord Avebury***

That the Bill be read a second time.

Lord Avebury: My Lords, perhaps I may start by giving the House a bit of history. Under the Caravan Sites Act 1968, local authorities were required to provide sites for Gypsies residing in or resorting to their area. If they failed to comply, the Minister had the power to direct them to provide such number of sites with such number of pitches as was specified in the directions. That Act produced 350 pitches until it was repealed by the Criminal Justice and Public Order Act 1994. No further progress was then made until 2007, when local authorities were required to conduct a Gypsy and Traveller accommodation needs assessment, a GTANA, under the Housing Act 2004, and to produce a strategy for meeting identified needs under the Local Government Act 2003. The needs assessments were subject to public inquiry, and there was a process for redistributing the numbers to take into account the failure of some authorities to make any contribution in counties where general need had been demonstrated.

At the most recent election, the Liberal Democrats were in favour of abolishing the regional spatial strategies. In our manifesto we called for the retention of the numbers that had been agreed for Gypsy site planning permissions in two regions, and of those that were on the way elsewhere. However, the Secretary of State for Communities and Local Government scrapped the plans immediately after the general election, leaving a planning vacuum in which councils had carte blanche to decide whether any sites were needed in their area and, if so, for how many caravans.

As a result, the number of families living in caravans on unauthorised sites is expected to increase from 2,400 in 2010 to 3,000 by 2015. Local authorities are not expected to reduce this shortage by providing sites themselves. In 2010 an Equality and Human Rights Commission survey of local authority provision of caravan sites found that in more than half of local authorities there was either a zero or a negative change in the number of council-provided pitches between 2006 and 2009.

In theory this bleak scenario ought to change as a result of the £47 million that the Housing and Communities Agency will make available to councils and social housing providers between now and 2015 for new and refurbished sites, and the additional £13 million that was to be allocated by tomorrow. However, as we know, the minute that there is any sign of an intention to develop a site, there is an immediate campaign against it by local residents that councillors find it inexpedient to resist. At best, there are long delays in implementing the plan; at worst, it gets cancelled altogether. It would be useful to have a progress report on the HCA's traveller pitch funding scheme—not this afternoon but through placing a copy in the Library—and for the report to be updated quarterly. I ask my noble friend to see that that is done.

Even if the HCA programme is completed in the next three and a half years, the Irish Traveller Movement in Britain calculates that it would produce 520 new pitches rather than the 750 suggested by DCLG. There was a shortage of 2,000 pitches in the latest DCLG caravan count, so only one-quarter of the deficit would be eliminated—even without taking into account any increase in the number of Traveller households over the period. I wrote to the Secretary of State asking for his comments on the ITMB arithmetic and the reply from the Under-Secretary, Bob Neill, did not rebut its calculations, nor did he deny that Essex, Kent, Cambridgeshire, Surrey and Hertfordshire, with one-quarter of England's caravans, had received only 4% of the money.

No doubt the Government will say that private development by Travellers of their own sites will make up the deficit under DCLG's planning policy for Traveller sites, the PPTS. This requires local authorities to produce an evidence-based development plan demonstrating a five-year supply of deliverable sites, with pitch targets, by 27 March 2013. I understand that the local plans team in DCLG has a file listing the progress towards this objective in every local authority in England. I would be grateful if my noble friend would kindly arrange for a copy to be placed in the Library, now and at the end of each quarter until the deadline, so that we can see what progress is being made.

If any local authority fails to produce the required plan by 27 March next year, and thereafter until they do so, PPTS says that that will be a significant material consideration on applications for grants of temporary, but not of permanent, planning permission. To the extent that, as a result, some families may be given a precarious tenure under which they may occupy the land that they own themselves, this provision will merely add to the 1,600 caravans on the so-called tolerated sites rather than contributing to a permanent solution for the shortage.

An inspector has to conduct an inquiry into the local development plan, but this will not make up the deficiency. On the one side of the hearing will be vociferous local objectors to any sites at all, and on

[LORD AVEBURY]

the other there will be the poorly resourced Traveller organisations, who will not be able to appear before 350 separate inquiries between now and the end of March next year.

In parenthesis, much of the blame for the universal hostility to Travellers rests on certain sections of the media that have incited hatred by racist articles and broadcasts. This was discussed at a round-table meeting held in a Committee Room upstairs on 19 June, organised by the ITMB and attended by Travellers and media representatives, at which the media did not deny that there is a cause and effect relationship between the incessantly racist reporting of stories about Travellers and the attitude of settled communities.

However, there are other ways of resisting planning applications built into PPTS. Local authorities are enjoined to strictly limit new Traveller site development in open countryside, and sites in green belts are labelled inappropriate. Thus Dale Farm, from which 60 families were evicted at a cost to Basildon Council of £4.8 million, plus Essex Police costs of £2.4 million, will stand no better chance in future in spite of the fact that its previous use was as a scrap yard.

The National Planning Policy Framework says in paragraph 89 that while construction of new buildings should be regarded as inappropriate in a green belt, there are exceptions,

"including limited infilling or the partial or complete redevelopment of previously developed sites".

There is no express reference to this paragraph in PPTS and the expression "construction of new buildings" is not as wide as "use of land". Can my noble friend give an assurance that paragraph 89 is intended to cover Traveller sites as well as other types of development? Otherwise I suggest that it might be held to be discriminatory under the Equality Act.

Included in the Dale Farm figures mentioned was a grant from DCLG of £1.2 million, originally vetoed by my honourable friend Andrew Stunell but then approved by Grant Shapps. Your Lordships may well think that it was perverse to spend all those millions on that operation at a time when local and central government were supposed to be making cuts. It seems that the mantra about reducing the deficit does not apply to spending on kicking Travellers out of their homes. We were deaf to appeals from the Council of Europe High Commissioner for Human Rights and the UN Committee on the Elimination of Racial Discrimination not to allow this eviction to take place.

The effect of the PPTS restrictions on the location of Traveller sites will be to drive Travellers towards land on the edges of towns and villages, where not only is the resistance to their presence likely to be most intense but the cost of the land is going to be highest. How can the Bill deal with some of these problems? The current indications are that local authorities are likely to produce pitch targets that collectively are significantly lower than the actual need. A survey of 100 local authorities in three regions found that where pitch targets had been developed, they were 82% lower than in the former regional spatial strategies, inadequate as those were. The Bill would address this situation and lead to the development of sufficient pitches to meet the actual need. The Bill translates into statute the policy in the PPTS that states that local authorities should identify specific land for Travellers residing in or resorting to their areas, and requires them to have regard to the needs assessments—the GTANAs that I have already mentioned—produced under the Housing Act 2004. If the figures that emerge from the current process, under which 350 local authorities have been given carte blanche to make up their own minds, are lower than the ones in the GTANAs, that would be a factor in future appeals.

As a longstop, where the PPTS process arrives at a manifestly inadequate supply, the Bill gives the Secretary of State power to direct the local authority to grant planning permission for caravan sites for the accommodation of such number of caravans as may be specified in the directions. This is an analogue of the power in the 1968 Act to direct a local authority to provide the actual sites themselves. The provision of sites under that Act only really got under way when the direction power was used on a few authorities. It had a significant effect in encouraging others to come up to the mark and, in the absence of an equivalent today, the objective that I hope we all share of eliminating unauthorised encampments will be unsatisfied another 45 years from now. The fashion these days is to leave more decisions to the unfettered discretion of local authorities but, with regard to solving the shortage of Traveller sites, the experience of the last half century shows that that does not work.

I draw noble Lords' attention to one other departure from the PPTS in this Bill. The definition of "Gypsies and Travellers" used here is taken from the Housing Act 2004 because it is essential to recognise that Travellers are no longer only,

"persons of nomadic habit of life",

but include,

"persons with a cultural tradition of nomadism or of living in a caravan".

The people who we are dealing with in this Bill may have a cultural aversion to living in bricks and mortar, and that is why sites need to be provided for them, but the majority of them have ceased travelling because there are practically no transit sites left in the whole country. They may visit fairs such as the Appleby Horse Fair, but that lasts for only one week and is more of a holiday destination than a stopping place in an itinerant life. The PPTS definition has led to difficulties in the courts because, in order for a Gypsy or Traveller woman to be treated as such, she needs to be able to show that at some point in the past she has followed a nomadic way of life.

From many points of view, we should welcome the fact that Travellers are now prepared to live mostly in one place because that enables them to access education, health and other public services, in all of which they are severely disadvantaged. In education, for example, Travellers are at the bottom of the scale for attendance, exclusions and achievement and, although some progress has been made in recent years, it has proved far harder to raise standards with families that are still mobile.

Finally, the settled population must surely welcome greater efforts to eliminate the problem of unauthorised encampments. One can understand that people do

not like having neighbours with no access to running water, sanitation or means of refuse disposal, but the stronger powers of eviction that have been granted to local authorities are not the answer. All that has been achieved by the evictions at Dale Farm, for instance, is that many of the families are still there either in the neighbouring Oak Lane or doubled up, still unlawfully, with friends and relatives on the legal site next door. There was literally nowhere else for them to go. You cannot uninvent people, as an official of the ITMB said to me yesterday.

A former resident on the Dale Farm site, Mary Sheridan said:

"For all that money all they've done is move us 50 metres. We will stay on the lane because where else can we go?".

The same will be true on a lesser scale for other threatened evictions such as at Smithy Fen in Cambridgeshire or Meriden in Warwickshire. These and many more evictions are utterly pointless since the local authorities concerned will either have to deal with another unauthorised encampment on their own doorstep, as in Basildon, or manage to pass the parcel onto a neighbouring authority. If the Bill goes into Committee, I will propose an amendment suspending evictions from unauthorised sites that are owned by the occupiers until adequate accommodation has been provided in the county or borough concerned.

The objective to which the Bill is a contribution has been on the agenda for the last half-century and it is about time we solved it decisively, for the mutual benefit of both Travellers and the settled population. I beg to move.

1 pm

Lord Collins of Highbury: My Lords, I pay tribute to the noble Lord, Lord Avebury, for his steadfast campaigning on behalf of the Gypsy and Traveller communities. It is not always a popular cause but that has never deterred the noble Lord. I should also mention my noble friend Lady Whitaker who, unfortunately, is unable to be here today. She would have been strongly supportive of the noble Lord's Bill.

This is fundamentally an issue about planning and whether current policy will deliver sufficient and appropriate sites for the Gypsy and Traveller communities. Our approach in government was to seek to press local planning authorities to set aside enough land for sites through targets in regional spatial strategies. This sat alongside the legal obligation in the Housing Act 2004 for every local housing authority to include in its housing needs assessments an assessment of the accommodation needs of Gypsies and Travellers residing in or resorting to its district.

As noble Lords will be aware, regional strategies have been scrapped by this Government but we should be clear that the duties under the Housing Act 2004 remain. It is important also to ensure that local authorities are mindful of their equality duties. Ample evidence has been provided by Gypsies and Travellers to the CLG Select Committee of the multiple cases of discrimination that their communities endure. The noble Lord, Lord Avebury, referred to that, and particularly the discrimination that is exacerbated by the language used in many of our national newspapers.

Regional strategies may not have been perfect but regional and district targets for additional pitches were beginning to work. What has replaced regional strategies? As we have heard from the noble Lord, in March this year the Government introduced a revised planning policy for Traveller sites to sit alongside the National Planning Policy Framework. The requirement placed on LPAs to undertake an assessment of need and to work collaboratively across borders is not unfamiliar. Use of a robust evidence base and the requirement to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of sites against locally set targets are of course to be commended. But we know that there can be a huge gap between what the paper policy says and what happens in practice. We know that the Irish Traveller movement has expressed concern about the destiny of the evidence base accumulated in connection with RSSs. Given the centrality of local development plans, it has, as the noble Lord, Lord Avebury, said, also raised concerns about its capacity, on a comprehensive basis, to engage sufficiently with local authorities as local development plans are drawn up. Perhaps the Minister can say whether the Government accept this point and how they propose to address it.

We hold to the view, and argued it during the passage of the Localism Bill, that the duty to co-operate is an inadequate replacement for any strategic approach to planning with limited sanctions when LPAs do not take it seriously. Co-operating on the provision of Gypsy and Traveller sites will be a stern test of the policy. Can the Minister say how the Government propose to monitor what is happening in practice? What systems are in place to assess whether local planning authorities are taking this duty seriously?

The Bill is predicated on the assumption that the new policy, in so far as it is new, will not deliver for the Gypsy and Traveller communities. Evidence from history might give the noble Lord some justification for that view. Clearly councils cannot be forced to grant planning permission when they simply do not have sites or where it would be outwith normal planning considerations. We support moves further to accommodate and respect the rights of the Gypsy and Traveller communities, but there are real issues about forcing councils to grant planning permissions in such a blanket manner. A community building approach is what we would support and is what we delivered in government.

At the end of the day, the noble Lord, Lord Avebury, is entitled to know what the Government will do when LPAs do not follow the guidance, do not undertake a robust assessment of need, do not identify sites and do not co-operate with neighbouring authorities to address need. At what point should the Government step in and insist? I look forward to the Minister's reply.

1.07 pm

The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Hanham): My Lords, this is going to be quite a short debate judging by the number of people taking part, but none the less, this is an important issue. I, too, start by acknowledging that my noble friend Lord Avebury has a long-standing commitment to seeking to ensure

[Baroness Hanham]

that Gypsies and Travellers receive a fair deal. He has been persistent in this House in pursuing that point.

As the noble Lord pointed out, Gypsies and Travellers experience some of the worst outcomes of any group across a range of social indicators. That is why the Government set up a cross-government ministerial working group that has made 28 commitments. These commitments will help mainstream services work more effectively with Gypsy and Traveller communities in such areas as education, health, housing, criminal justice and employment.

However, I acknowledge immediately that the noble Lord's concern in this Bill is about having sufficient Traveller sites. Having a safe place for Travellers to live and bring up children is clearly a cornerstone to realising equality in all those social factors. That was a point very well made by the noble Lord.

I say from the outset that the Government are committed to supporting Gypsy and Traveller site provision. Councils have been given incentives, particularly through the new homes bonus scheme, to help the provision of these sites, and there is a £60 million Traveller pitch funding programme to help councils and other providers build new sites or refurbish existing sites. This new fund will allow the creation of more than 600 new pitches and the refurbishment of existing ones.

The Government have also applied the Mobile Homes Act 1983 to unauthorised local authority sites to give Travellers better protection against eviction. As well as that, the Government are already encouraging local councillors to take a far greater leadership role in the provision of sites. I am glad to say that there is a training course to enable them to do so.

Community relations and cohesion in some areas have been and will be undermined by any perception of the unequal treatment of any particular group in the planning system, or by abuse of that system. As the noble Lord, Lord Collins, said, this is very much a planning issue, which involves not only permission but the use and development of local plans. I will come to that in a minute. However, a small minority of Travellers set up unauthorised developments. I use the term "Traveller" in the context of the wider definition used for planning purposes, which refers to,

"persons of nomadic habit of life, whatever their race or origin".

This leads to tension and creates resentment towards the overwhelming majority of Travellers, who are law-abiding and do not live or try to live on unauthorised sites. The Government are concerned, too, about unauthorised Traveller encampments and their effect on local communities. We want to see fair play to avoid conflict between the Traveller and settled communities. That is why the Government published their planning policy for Travellers in March. I will refer to it later.

As has already been said, existing powers are primarily contained in the Criminal Justice and Public Order Act 1994. They include a power for the police to direct Travellers from their unauthorised pitch to a vacant one or an alternative authorised site in the same local authority area. The Government are currently considering whether these existing laws and procedures should be enforced more effectively and whether changes to the powers are required.

The Government are committed to decentralising power, reducing bureaucracy and providing greater freedom and flexibility to local government. This includes passing control of strategic planning from the regional bodies to local authorities and the communities that they represent. The Government are committed to this because they believe that local authorities understand best what is needed for their areas. The provision of sites for local Travellers is very much a local issue. Therefore, it is right and proper that this should be a matter that is dealt with as locally as possible.

The Localism Act means that communities will now be able to have a far greater influence on deciding which developments take place in their local areas. That does not mean that much needed development, which includes Traveller sites, can simply be blocked. The Localism Act contains a minimum level of checks and balances to ensure that the neighbourhood planning process is not used to block development that is needed.

As the noble Lord, Lord Avebury, said, at the moment, some local authorities are particularly strong in providing Traveller sites. Others are much less so, which can create extra pressure for the area in identifying and providing sites. The noble Lord, Lord Collins, mentioned the duty to co-operate, which we believe will ensure partnership working by authorities on strategic planning matters, and will help the process of collaboration in identifying suitable sites and the provision of associated essential services. The latter is very important and does not refer only to schooling and health but to the provision of support for sites so that they are maintained in a proper way.

I was asked whether we would monitor what is happening about this. In the general local plans area, consideration will be given to what is happening in local areas, but there is no specific objective at the moment to monitor the outcome. This is a local matter and the local laws are there; it is up to local authorities to ensure that they are implemented.

I refer to the planning policy for Traveller sites, which was published in March and goes alongside the national planning policy framework. It puts the provision of sites back into the hands of local authorities, in consultation with their local communities. I should clarify, as I have just said, that the new planning policy for Travellers should be read in conjunction with the national planning policy framework, also published in March. Therefore local planning authorities preparing plans for, and taking decisions on, Traveller sites should also have regard to the policies in the framework so far as is relevant to them.

The new Traveller site policy includes a stated aim to increase the number of Traveller sites in appropriate locations with planning permission, to address under-provision—the main concern expressed by the noble Lord, Lord Avebury—and maintain an appropriate level of supply. The new planning policy requires local authorities to set pitch targets based on robust evidence and to identify and update annually, with the local authority monitoring its own work, a supply of specific sites to provide five years' worth of deliverable sites

against their own targets. The policy also requires sites to be identified, based on broad locations, at least for years six to 10 and, where possible, years 11 to 15. This, as a result, aligns planning policies for Traveller sites more generally with those for standard housing. Any failure to be able to identify an up-to-date five-year supply of sites should, after a one-year transitional period, be a significant material consideration in any subsequent planning decision. I hope that that addresses the point about the monitoring as well.

I turn briefly to the clauses in the noble Lord's Bill. It would be fair to say that we think that the provisions in the new policy framework and in local plans are sufficient, which would mean that the Bill was not necessary. However, I am sure that the noble Lord, Lord Avebury, will make his own views known on that.

Clause 1 puts a duty upon every local authority in England to,

"grant planning permission for Gypsy and Traveller caravan sites".

This is unnecessary. Law and policy already impose a duty on local authorities to assess housing need, including that of Travellers, and make appropriate provision and land allocations in the local plan. It would also take us back to before 1964, when it was a requirement for all local authorities to have provision for caravans and Traveller sites, which caused a great deal of resentment and confusion against Travellers. What we are all trying to ensure now is that that does not happen.

Local authorities already have a statutory requirement under the Housing Act 2004 to assess the accommodation needs of Gypsies and Travellers, as they do for the rest of the community. That remains in place.

Subsection (2) states:

"Facilitating the provision of adequate caravan site accommodation shall include the identification of sufficient land for such accommodation".

This is also unnecessary. National planning policy, as set out in the national planning policy framework and the planning policy for Traveller sites, already requires local authorities to allocate land to accommodate housing need in their local plans, using evidence compiled from their housing need assessment. Subsections (3), (4) and (5) are effectively covered by those statements. We do not believe that there need to be further legislative demands on local authorities specifically aimed at accommodation for Gypsies and Travellers. We are, as I have said, fully committed to seeing that provision is made. There is sufficient legislation already to ensure that this happens.

The noble Lord's Bill is, I am afraid, at odds with the Government's priorities to decentralise power, reduce bureaucracy and provide greater freedom and flexibilities, not only to local government but to local people, about what happens in their areas. I contend that the Government's package of measures, via changes in the law on the planning system and through the provision of incentives that I have outlined, will address the developing need and the accommodation required for Gypsies, Travellers and the settled community in the years ahead.

I thank the noble Lord for the trouble that he has taken to introduce this Private Member's Bill. I wait with interest to see whether he carries it on into Committee but, if he does so, he will note the reluctance of the Government to see any further provisions for something for which they believe there are already sufficient.

1.20 pm

Lord Avebury: My Lords, first, I am grateful to my noble friend for reaffirming the commitment that the Government have undertaken to provide adequate planning permissions for Gypsy and Traveller sites throughout the whole of England. However, she did not address the point that was raised by the noble Lord, Lord Collins, about the gaps between what paper policy says and what happens in practice. This has always been the bedevilment of any policy on Gypsy and Traveller sites: Governments profess their intentions of doing the right thing but, when you come to the delivery at the grass roots, it does not happen. Nor did she address the point, which I am glad that the noble Lord, Lord Collins, reinforced, about the capacity of Travellers to engage with local authorities on local development plans. One can foresee that under the system that my noble friend outlined, the PPTS will result in Traveller site plans being produced locally, but the inquiries that will subsequently take place will not be on a level playing field but instead will be severely biased in favour of those who do not want to see any development of Gypsy and Traveller sites, against the pitifully small resources of the Gypsy and Traveller community. The Bill is predicated on the assumption that the Government's policy is not going to deliver the required sites. That is the whole point of it. We should allow the Bill to go into Committee so that we can engage more carefully than we have at Second Reading on the details of these arguments.

My noble friend did not respond to the two points that I asked her about specifically, which were that we should have a quarterly report on progress towards implementation of the £60 million Traveller sites grant, and that we should know what plans the local authorities have under the proposed system. As far as I am concerned, not a single local authority in the country has come up with the figures that were suggested in March this year. We have another eight months to go before they have to produce that arithmetic. All the 350 local inquiries are being condensed into a very short time, which, as I say, will add to the pressures on Gypsy and Traveller communities in being able to contest the plans, if they think them inadequate.

I am grateful to both the noble Lord, Lord Collins, and to my noble friend for their agreement in principle that the task that the Government face is to provide proper accommodation for Gypsies and Travellers and to eliminate unauthorised encampments, which are to the detriment of both the settled communities and the Gypsy population.

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

Draft Enhanced Terrorism Prevention and Investigations Measures Bill

Message from the Commons

A message was brought from the Commons that they concur with the resolution of this House of 28 May relating to a Joint Committee to consider the draft

Enhanced Terrorism Prevention and Investigations Measures Bill presented to both Houses on 1 September 2011 and that they have made the following orders:

That a select committee of six Members be appointed to join with the committee appointed by the Lords to consider the draft Enhanced Terrorism Prevention and Investigations Measures Bill;

That the committee should report on the draft bill by 9 November 2012;

That the committee shall have power:

(i) to send for persons, papers and records;

(ii) to sit notwithstanding any adjournment of the House;

(iii) to report from time to time;

(iv) to appoint specialist advisers; and

(v) to adjourn from place to place within the United Kingdom.

House adjourned at 1.25 pm.

Written Answers

Friday 29 June 2012

Government Departments: Smoking

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government what arrangements there are for officials of the Department for Education who smoke during office hours. [HL555]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The department provides small external shelters for smokers at its Runcorn and Darlington sites. On all other sites staff who smoke are encouraged to do so at a reasonable distance from entrances to the buildings.

Staff who smoke during office hours must do so in their own time.

Schools: Academies

Question

Asked by ***Lord Hoyle***

To ask Her Majesty's Government what information they have received on the consultation exercise carried out by the directors of the proposed Chorley Sixth Form and Career Academy. [HL680]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): The academy trust of the proposed Chorley Career and Sixth Form Academy provided the Department for Education with regular updates about the progress of its consultation, which ran from Wednesday 7 March to Friday 27 April. It received a range of responses to the proposal to establish a new secondary school and sixth form in Chorley which was reflected in the consultation report it provided to the department in May. As a result of a rigorous continued assessment of all free school proposals, we have since decided to withdraw the project as the plans for the school had not progressed sufficiently for it to proceed to opening.

Schools: Teaching

Question

Asked by ***Baroness Sharp of Guildford***

To ask Her Majesty's Government what progress has been made in implementing the commitment set out in paragraph 6.9 of *The Importance of Teaching* White Paper regarding common performance measures for education for 16-19 year-olds. [HL896]

The Parliamentary Under-Secretary of State for Schools (Lord Hill of Oareford): We remain committed to introducing comparable measures of performance for all 16-19 providers of education. We are considering what these measures should be in order to ensure that comparisons are made on the right basis.

Unemployment

Question

Asked by ***Lord Laird***

To ask Her Majesty's Government whether they will discuss with the Office for National Statistics changing the question in the Labour Force Survey measuring numbers of persons out of work, which currently reads "were you looking for any kind of paid work at any time in the past four weeks" to one which qualifies the paid work sought as full-time, to take account of students; and how many students are currently counted as jobless. [HL887]

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Freud): It is already possible to account for students in the Labour Force Survey without changing the question on looking for paid work. The Department for Work and Pensions has previously discussed with ONS the issue of students who are classed as unemployed under International Labour Organisation (ILO) definitions, and prominence is given to separately identifying this group both in table 14 of its monthly Labour Market Statistics bulletin and in the accompanying commentary. Latest figures show that of all ILO unemployed 16 to 24 year-olds in February to April 2012, 305,000 are full-time students and 709,000 are not in full-time education.

Friday 29 June 2012

ALPHABETICAL INDEX TO WRITTEN ANSWERS

NUMERICAL INDEX TO WRITTEN ANSWERS

Volume 738
No. 25

Friday
29 June 2012

CONTENTS

Friday 29 June 2012