

Vol. 767  
No. 70



Friday  
20 November 2015

PARLIAMENTARY DEBATES  
(HANSARD)

# HOUSE OF LORDS

## OFFICIAL REPORT

*ORDER OF BUSINESS*

Regulation of Political Opinion Polling Bill [HL] <i>Order of Commitment Discharged</i> .....	383
Mesothelioma (Amendment) Bill [HL] <i>Second Reading</i> .....	383
Planning (Subterranean Development) Bill [HL] <i>Second Reading</i> .....	427
Junior Doctors Contract <i>Statement</i> .....	445
Direct Planning (Pilot) Bill [HL] <i>Second Reading</i> .....	449

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

*This issue of the Official Report is also available on the Internet at [www.publications.parliament.uk/pa/ld201516/ldhansrd/index/151120.html](http://www.publications.parliament.uk/pa/ld201516/ldhansrd/index/151120.html)*

PRICES AND SUBSCRIPTION RATES	
DAILY PARTS	
<i>Single copies:</i>	
Commons, £5; Lords £4	
<i>Annual subscriptions:</i>	
Commons, £865; Lords £600	
LORDS VOLUME INDEX obtainable on standing order only. Details available on request.	
BOUND VOLUMES OF DEBATES are issued periodically during the session.	
<i>Single copies:</i>	
Commons, £65 (£105 for a two-volume edition); Lords, £60 (£100 for a two-volume edition).	
Standing orders will be accepted.	
THE INDEX to each Bound Volume of House of Commons Debates is published separately at £9.00 and can be supplied to standing order.	
<i>All prices are inclusive of postage.</i>	

The first time a Member speaks to a new piece of parliamentary business, the following abbreviations are used to show their party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity, the Lords spiritual, Members on leave of absence or Members who are otherwise disqualified from sitting in the House.

© Parliamentary Copyright House of Lords 2015,  
*this publication may be reproduced under the terms of the Open Parliament licence,  
which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

## House of Lords

Friday, 20 November 2015.

10 am

Prayers—read by the Lord Bishop of Birmingham.

### Regulation of Political Opinion Polling Bill [HL]

*Order of Commitment Discharged*

10.05 am

Moved by **Lord Foulkes of Cumnock**

That the order of commitment be discharged.

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

*Motion agreed.*

### Mesothelioma (Amendment) Bill [HL] *Second Reading*

10.06 am

Moved by **Lord Alton of Liverpool**

*That the Bill be now read a second time.*

**Lord Alton of Liverpool (CB):** My Lords, in moving the Second Reading of this Bill, I first thank all noble Lords who will speak today, others who have been in touch to indicate their support for a measure which enjoys all-party support and, in particular, the noble Lords, Lord Giddens and Lord Wills, who have given a great deal of their time in recent months as we have endeavoured to promote interest in research into a disease which, according to the Government, will claim a further 60,000 British lives over the next three decades. This represents the highest rate of mesothelioma anywhere in the world. I also thank Penny Woods and her team at the British Lung Foundation for their support for the Bill and the Minister the noble Lord, Lord Prior, and his officials for meeting with the noble Lord, Lord Giddens, and myself yesterday. My noble friend Lord Patel is among a number of noble Lords who cannot be here today but who wish to record their support for the Bill.

When your Lordships debated the causes and absence of cures for mesothelioma during the passage of the Mesothelioma Act 2014, my proposal to provide a statutory levy on the insurance industry to fund research was defeated by a slender margin of seven votes—199 to 192. When the same amendment was moved in the Commons, it was defeated by 266 to 226. Several noble Lords and Members of another place agreed entirely with the principle of insurance industry funding for mesothelioma research but expressed a preference for contributions to be secured on a voluntary basis. In both Houses, Ministers gave assurances that

a new voluntary research regime would be established. At that time, just four out of 150 insurance companies were voluntary contributors. Far from stepping up to the plate, that number has been reduced to just two. It is to that issue that I return this morning.

Let me begin by saying something about the disease itself. Mesothelioma is an occupationally-related disease. It is an invasive type of lung cancer, primarily caused by prior exposure to asbestos. There is currently no cure. Patients often experience complex, debilitating symptoms and most die within 12 months of diagnosis. Simply put, men and women went to work and were negligently exposed to asbestos when it was known that asbestos caused great harm. As long ago as 1965, the Newhouse and Thompson report provided shocking evidence that a brief exposure to asbestos could result in mesothelioma 50 years after exposure yet scandalously, and with utter contempt for life and health, men and women continued to be exposed to asbestos with little or no protection for decades after that report was made public. Nearly 40,000 British people have died from mesothelioma from past exposures to asbestos and some 60,000 will die from it in the years to come. The UK has the highest incidence of mesothelioma worldwide. Society owes a great debt to those who went to work, often in hard and heavy industries, and built the economy of this country only to suffer terrible consequences.

Our partial and overdue response was the very welcome legislation promoted by the Government in 2014, and we must all continue to insist on proper and commensurate support for those families blighted by the curse of this disease. But surely our most important objective must be to find safe ways of eliminating the danger and to find cures for mesothelioma. Sometimes—and wrongly—it is dismissed as a legacy disease which will simply run its course, claiming about 2,500 lives every year. Despite that, the legacy will be with us in this country for at least 30 years. Neither here nor in other countries is this just a legacy disease. It is quite possible that comparable diseases will emerge from other environmental sources. I repeat that we have the highest rate of the disease in the world. Mortality rates are increasing and have more than quadrupled in the past 30 years. Last year, the *Independent* newspaper reported that fresh figures from the Health and Safety Executive showed a 10% increase in mesothelioma cases and that the number will continue to rise until at least 2020.

There is another mistaken belief that mesothelioma is a disease confined to the tunnellers, masons and manual workers whose cases I first came in contact with 30 years ago as a young Member of Parliament in Liverpool. This occupational disease affects people from diverse and, as we will learn in the course of this debate, unpredictable backgrounds. Members of your Lordships' House have loved ones who have died of mesothelioma. One noble Lord described the death of his wife, a Minister described the death of his father and another noble Lord described how his sister died after washing the dungarees of her husband. The former First Sea Lord, the noble Lord, Lord West, who is involved in graduation ceremonies at his university in Southampton today but who supports the Bill, described how many of his cohort at Dartmouth had

[LORD ALTON OF LIVERPOOL]

played snowballs with asbestos and how some had died of mesothelioma in later years. According to the London School of Hygiene & Tropical Medicine, more than 2,500 Royal Navy veterans will die from mesothelioma in the next three decades.

In parenthesis, let me say that the failure of the 2014 Act to include provision for compensation for our servicemen who die of mesothelioma is a glaring anomaly. The British Legion, the Royal Navy & Royal Marines Charity, the Royal Navy Royal Marines Widows' Association, the Royal Naval Association and others all support calls for change. A 63 year-old civilian could expect to receive around £180,000 in compensation under the 2014 Act, yet one year's worth of war pension paid the maximum rate for a non-married naval veteran amounts to just £31,000. Veterans should be offered compensation at least equal to that which the courts and the Government have decided that civilians deserve. The unequal treatment of our service men and women amounts to a serious breach of the Armed Forces covenant, which is supposed to ensure that veterans are not disadvantaged because of their service. I hope that the Government will use the Bill to rectify that anomaly, that injustice. When the Prime Minister was recently questioned about our obligations to our servicemen, he promised to look at the issue again. When the Minister replies, will he tell us whether that promise now stands? He knows, because I told him yesterday, that I raised it directly with the noble Earl, Lord Howe, who is now the Minister responsible in the Ministry of Defence. I have not as yet had a reply, and I hope that the Minister will be able to give information on that issue.

That this is not simply a disease of the past is a point underlined by the National Union of Teachers, which states that asbestos remains present in about 86% of schools, leading to an estimated 200 to 300 adult deaths a year. Expert advice given to the House of Commons Select Committee on Education estimates that up to 300 former pupils a year die of the disease following contact with asbestos in schools. Jenny Darby, who is aged 71 and who was a science teacher, has contracted mesothelioma. She says that when the ceiling tiles came off in the classrooms,

"the asbestos would come down. I used to stick them back up almost every day".

Christine Blower, general secretary of the NUT, says:

"There is still no recognition that asbestos is a serious problem for schools. Shamefully, the Government's most recent survey of school buildings deliberately excluded asbestos".

Will the Minister tell us what progress the asbestos in schools steering group has made in identifying the dangers in our schools? What research are we carrying out to identify the dangers in other public buildings such as hospitals—and, indeed, in buildings such as the one where we are meeting today? What advice based on science do we give about disturbing or removing asbestos?

As well as better understanding the causes of mesothelioma, we must do much more to find cures. Apart from preventing great suffering and illness, a breakthrough would remove the need for compensation schemes. It is surely therefore in everyone's interest to do that. Throughout the debates on the 2014 legislation,

I was highly critical of the paltry sums of money which have gone into mesothelioma research. Relatively little is spent on that research in the UK, measured against other cancers of comparable mortality. For example, in 2014 the National Cancer Research Institute figures showed that just £820,000 was invested in mesothelioma research by its partners. That is significantly lower than the £9.9 million and £5.3 million spent respectively on skin cancer—melanoma and myeloma, two cancers with similar mortality. Per death, £3,700 is invested for melanoma, whereas for mesothelioma it is only £480.

Data released by the Department of Health and Department for Business, Innovation and Skills in response to Parliamentary Questions also suggests that statutory investment in mesothelioma research is very low. However, speaking for the Government, the noble Lord, Lord Faulks, said:

"It is absolutely not the case that there is insufficient funding for research. As I have said more than once, the case is that, at the moment, there is not a suitable number of applications for research. The funding is very much there".

I cannot agree with that, but I can agree with the remark that:

"There needs to be a certainty that the money is there but the top-level researchers also need to be aware of it so that the money and the level of the research capability are brought together".—*[Official Report, 9/12/14; col. 1711-2.]*

There is neither adequate money nor certainty. The noble Lord, Lord Freud, was right when he said:

"My feedback from the Department of Health and Sally Davies"—

Dame Sally Davies, the Chief Medical Officer—

"is that they are aware that it is odd that so little is spent on this disease".—*[Official Report, 5/6/13; GC 252.]*

I pursued this inconsistency with the noble Lord, Lord Faulks, and he wrote to me to say:

"In the last five financial years, the MRC and NICR have received just over twenty applications for grants or fellowships that relate to research on mesothelioma. Of these eight applications were successful resulting in an average success rate of 40%".

Are the Government really saying that the other 60% of those applications had no merit, and how does this square with the assertion that there have been insufficient applications?

My amendment to the Mesothelioma Act would have secured sustainable and fair funding by charging a small levy on insurance firms. During our debate in 2013, my noble friend Lord Kakkar, from whom we will hear later, said that there had been no strategic approach towards tackling mesothelioma. He told the House about the role of MesobanK and its global significance. He referred to the possible breakthroughs that genetic research would produce, but said that such research would need to be kick-started with adequate funding.

Arising from our debate, the Government held talks with the Association of British Insurers to see whether a voluntary funding arrangement could be reached. As I said, there are about 150 insurance companies active in the employers' liability insurance market, and a small contribution from each could transform mesothelioma research. In January of this year, it was announced that just two of those

companies—Aviva and Zurich—would donate a combined £1 million over two years to the BLF's mesothelioma research programme. This was two fewer companies than had been involved previously. Although I commend Aviva and Zurich, £500,000 a year for just two years does not come close to addressing the multi-million pound funding deficit experienced by mesothelioma research. It does not deliver sustainable funding; it relies on the good will of two companies, which themselves complain that the load is not being fairly shared, and nor does it deliver the promise made to the House when we voted on a statutory provision. It is unfair and unrealistic to ask two firms to be responsible for 100% of the insurance industry's contribution to mesothelioma research. Any long-term funding solution needs to see this responsibility shared more widely, which is what this Bill ensures.

During the passage of the 2014 Bill, Ministers said that the compensation levy on the insurance industry would be set at 3% of the gross written premium. In fact, what Mr. Penning, the Minister in another place said was:

“Three per cent. is 3% and we have no intention of moving away from it”.—[*Official Report*, Commons, Mesothelioma Public Bill Committee, 12/12/13; col. 117.]

This time last year I asked—and I ask it again today—why it has been set at 2.2% when that original 3% undertaking was given by the Government? The effect is to short-change mesothelioma sufferers. What is the shortfall from the insurance industry worth? That was a question that I raised yesterday with the Minister. It certainly will not be a small sum of money.

Lastly, what of the research possibilities themselves? The noble Lords, Lord, Giddens and Lord Wills, have met with some of the most outstanding researchers in the field, and I am sure that they will describe in greater detail the possibilities that are opening up and the exciting chance to create a global hub-and-spoke national mesothelioma research institute. That was something that we flagged up with the Minister yesterday. The British Lung Foundation has been able to instigate research projects which have opened up extraordinary possibilities. By working with researchers in other areas of therapy, it has gained new expertise and insights. Mesobank, Europe's first mesothelioma tissue bank, has been created to collect and store biological tissue for use in research, and work is being funded to identify the genetic architecture of the disease.

Dr Peter Campbell, who is conducting research, identifying which genes are the most important targets for mutations in mesothelioma, says:

“Only by understanding its basic biology will we be able to develop a new generation of drugs targeted at the specific abnormalities of mesothelioma cells. This requires sustained investment at all levels of mesothelioma research, from basic genetics and cell biology through drug development to clinical trials”.

He is sequencing the DNA for all 20,000 genes in the human genome from 75 mesothelioma samples and comparing this sequence to normal blood samples from the same patients.

Meanwhile, Dr Elizabeth Sage has done some promising work, too. I met her with the noble Lords, Lord Giddens, Lord Wills, and Lord Saatchi. She told us that she is the only person working anywhere in the world on an innovatory treatment called TRAIL—a drug linked to stem cells, which can lead to the killing

off of all mesothelioma cancer cells, which may have application in humans with adult stem cells. She told us that it would take £2.5 million to move from the animal stage, with the mice that she has been working on, to clinical trials. That does not seem an outrageous sum of money when measured against the potential outcomes and saving of some of those 60,000 lives to which I referred.

To take all of this work forward requires sustained funding, and it is simply not true to suggest that there are not first-class researchers and research projects waiting to be funded. We do not have to accept that another 60,000 British people will die of this disease; we do not have to accept the suffering, human misery and hopelessness which accompanies diagnosis. Mesothelioma research funding is currently so low that the temptation is to undertake work on other diseases where funding is secure and sustained. But we can do something about that. It simply is not good enough to rely on ad hoc contributions from insurers, charitable donations and modest government funding. This unreliable approach jeopardises the possibilities of life-saving breakthroughs. The stark numbers of people that this dreadful disease kills and the wholly inadequate funding that has gone to address and ameliorate it speak for themselves. That is why this Bill is needed. I beg to move.

10.24 am

**Lord McKenzie of Luton (Lab):** My Lords, it is a great privilege to follow the noble Lord, Lord Alton, on this matter. I had planned to speak briefly, but in support of this Bill, which, as the noble Lord says, has cross-party support. I pay tribute to him for the assiduous way in which he has pursued the issue, and the very comprehensive introduction that he has just given us to his Bill. He did that through the various stages of the Mesothelioma Act 2014, and since, and clearly has a powerful coalition of Peers to support him. That Act is an important milestone in helping sufferers of mesothelioma and their dependants. We should continue to give credit to the Government—then the coalition Government—driven very much by the noble Lord, Lord Freud, who had ministerial responsibility.

Now is perhaps not the occasion to review how the Act is working in its detail, as it is still in its transitional phase; it is understood that payments under the scheme are being undertaken at 100% of the scheduled amounts for claimants, although the noble Lord, Lord Alton, has raised an important challenge on the current levy amount. At the time of the debate on the Bill, it was clear that 3% was the amount to be contributed, and 3% was somehow magically the level at which it would not have to be included in an uplift on charges by the insurance industry. The Act recognised that, although it is not possible to identify in all circumstances each current insurer that would have written employer liability insurance for the various employers over the years, there was a collective responsibility to contribute to providing compensation when there was a nexus with work—and, along the way, there were the various attempts to improve the tracing of policies. There was also a recognition that insurers should contribute to the medical research to address this terrible condition, either to mitigate their risk or to recognise that the

[LORD MCKENZIE OF LUTON]

link to asbestos was known for some time and not all insurance companies have a proud record of preserving employer liability insurance records. The fact is, as we have heard, insurance companies have contributed to resources over the years, and it is on record during the passage of the Mesothelioma Act that the ABI made it clear to us when we were in opposition that it was prepared to match-fund with government research. The noble Lord, Lord Alton, made the important point that ad hoc, one-off contributions are not spreading the burden where it should be, across the industry.

We have heard from the noble Lord about how many die from mesothelioma each year. We know that it is caused by exposure to asbestos, that it is a long latency disease and invariably fatal. We should recognise that, notwithstanding this, it is not just a matter of the past; asbestos still abounds, not least, as we have heard, in our schools. The HSE has campaigned vigorously to alert people to the risk, in the Silent Killer campaign, and there are strong regulations in place. But we know that some will still want to cut corners. The cause of mesothelioma has not gone away.

When the issue was debated on Report on the Mesothelioma Bill, the argument was advanced on behalf of the Government that it was not a question of money, that what was holding back progress on research into mesothelioma was a lack of high-quality research applications, and that there is a long-standing and widely accepted principle that the use of medical research funds should be determined not just by the importance of the topic but by the quality of the research and its value for money. There are those contributing today who understand these issues far better than I do, but it seems to me that the noble Lord, Lord Alton, is not arguing to support mesothelioma research whatever the quality; his Bill does not seek some override of the established principles, but is about getting extra sources of funding.

On Report on 17 July 2013, the then Health Minister, the noble Earl, Lord Howe, set down four steps, which we have heard about today, designed to encourage the bringing forward of high-quality research applications. These were:

“First, the National Institute for Health Research will ask the James Lind Alliance to establish one of its priority-setting partnerships. This will bring together patients, carers and clinicians to identify and prioritise unanswered questions about treatment for mesothelioma and related diseases. It will help target future research, and, incidentally, will be another good example of where patients, the public and professionals are brought into the decision-making process on health.

Secondly, the National Institute for Health Research will issue what is called a highlight notice to the research community, indicating its interest in encouraging applications for research funding into mesothelioma and related diseases. This would do exactly what the noble Lord, Lord Alton, wants, and what the noble Lord, Lord Empey, suggested. It would make mesothelioma a priority area.

Thirdly, the highlight notice would be accompanied by an offer to potential applicants to make use of the NIHR’s research design service, which helps prospective applicants to develop competitive research proposals ... Finally, the NIHR is currently in discussion with the MRC and Cancer Research UK about convening a meeting to bring together researchers to develop new research proposals in this area”.—[*Official Report*, 17/7/2013; col. 786.]

Will the Minister give the House an update on those four areas? What progress has been made? To what extent has this in practice stimulated high-quality applications?

Today, I received in the post a communication from the Asbestos Victims’ Support Group Forum outlining the challenges asbestos victims still face which we should clearly help them address. Supporting this Bill sponsored by the noble Lord, Lord Alton, will help to ensure that the future may hold some hope for those afflicted by this terrible disease.

10.31 am

**Lord Avebury (LD):** My Lords, I, too, begin by congratulating my friend, the noble Lord, Lord Alton, on his masterly presentation of the case for the Bill, and on the assiduity with which he has pursued compensation for mesothelioma sufferers over a great many years with determination and thoroughness. I know how many hours he has spent on this and how many more hours he is likely to spend on it in future, but if we get this Bill through, it will be a major advance in securing compensation for sufferers of this horrible disease.

I started work on mesothelioma 40 years ago with the late Nancy Tait, whose husband died an agonising death from mesothelioma. She formed the Society for the Prevention of Asbestosis and Industrial Diseases, which lobbied hard for tighter controls on asbestos, and she fought for the rights of victims to adequate compensation. We published a pamphlet entitled *Asbestos Kills*, but the use of the material continued here in the UK long after it was banned in other countries of the developed world. That explains why the UK was the country with the highest age-adjusted death rate from 1994 to 2008, with 17.8 deaths per million. The Health and Safety Executive expects the death rate to peak in 2018, after which it will slowly decline, but because there can be a delay of several decades between exposure to asbestos and the onset of mesothelioma, the disease may well be claiming hundreds of lives a year in the decade 2050-60. To put it another way, over the next 30 years, 30,000 deaths are expected from this horrible disease unless new and effective treatments are developed.

At the moment, there is no cure for mesothelioma, and funding for research is woefully inadequate and uncertain. There are said to be government grants of £1.2 million a year, and last January the insurance companies Aviva and Zurich announced one-off funding of another £1 million, but there is no continuity, no assurance that in the years to come there will be even the same level of funding as there is in 2015, with the obvious result that cancer researchers starting out on a career will look for projects in other areas. That may explain the paucity of really high-quality applications coming forward.

Cancer Research UK says it is looking to invest more in rarer cancers, and it would be useful if the Minister could say what has emerged so far from the strategy published in May last year. However, as the noble Lord, Lord Alton, reminded us, in 2014 a mere £860,000 was spent on mesothelioma research—a miserable amount compared, say, with the £9.9 million

spent on skin cancer or the £5.5 million spent on melanoma, which are cancers with similar mortality.

The noble Lord, Lord Alton, has been tireless in his attempts to put this right over the years, and I warmly support his latest efforts in this Bill. In addition to the amounts active insurers are required to pay to fund the diffuse mesothelioma compensation scheme, he proposes, as he did in the summer of 2013, that the levy be increased by an amount not exceeding 1% of the compensation payments to fund mesothelioma research. This is supported by the British Lung Foundation, which points out that by improving outcomes and thereby reducing compensation payouts, insurers would stand to benefit from the research. The BLF tells me that the insurance industry is expecting to pay out more than £12 billion under the existing scheme over the years. A fraction of this enormous amount invested in high-quality research could revolutionise our understanding of mesothelioma and lead to significant improvements in the treatment and management of the condition.

Your Lordships may recall that when we last debated this matter in 2013 there was widespread support for the basic principle of insurer-funded research, and of course we are extremely grateful to the two companies that contributed voluntarily to start the process. However, as the noble Lord, Lord Alton, reminded us, there are another 148 insurers active in the employers' liability market that would contribute if this Bill were passed. Zurich announced a few weeks ago that it was walking away from its £5.6 billion bid for UK insurer RSA. The amounts active insurers would be asked to pay under this Bill are insignificant in comparison with their assets, but they could transform the outlook for mesothelioma patients and their families.

10.37 am

**Baroness Finlay of Llandaff (CB):** My Lords, like others, I congratulate my noble friend Lord Alton on his tireless work in this area and on his perseverance in trying to improve the outlook for the future. I shall concentrate on mesothelioma not as an epidemic of today but as one that is looming because of the problem in our schools. The need for research is ever more pressing as time goes on.

It has been estimated that more than three-quarters of our schools—my noble friend Lord Alton referred to 87% of schools—have asbestos in place. We know that deaths from workplace exposure are more common among healthcare workers, teachers, telephone engineers, shop workers, finance workers and so on. It is estimated that about 20 deaths a year occur among teachers. In healthcare, we are not sure of the exact number of deaths. When I was a junior doctor the lagging was hanging off the pipes in the basement of Westminster Hospital, just across the road from here, and in other hospitals in London in which I worked. To go to cardiac arrests, we would literally run through the dust and sometimes hit our heads on bits of lagging that were hanging down. Everyone was oblivious to the dangers.

The problem is that we have asbestos in our schools and that means children are being exposed. Other countries have decided to have a phased removal—for example, Australia has already implemented that—and

the European Parliament has called for the removal of asbestos from all public buildings by 2028. The Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the Environment reported that,

“it is not possible to say whether children are intrinsically more susceptible to asbestos-related injury. However, it is well recognised ... that, due to the increased life expectancy of children compared to adults, there is an increased lifetime risk of mesothelioma as a result of the long latency period of the disease ... for a given dose of asbestos the lifetime risk of developing mesothelioma is predicted to be about 3.5 times greater for a child first exposed at age 5 compared to an adult first exposed at age 25 and about 5 times greater when compared to an adult first exposed at age 30 ... we conclude that exposure of children to asbestos is likely to render them more vulnerable to developing mesothelioma than exposure of adults to an equivalent asbestos dose”.

The current advice with regard to asbestos is that it should remain undisturbed, and indeed that seems sensible. However, there does not seem to have been a comprehensive assessment of what happens in our schools when children's chairs and desks scrape along the walls and a little shower of asbestos dust comes into the classroom; or when windows or doors are slammed, not because of children behaving badly but simply because the school is a building with lots of boisterous children in it. Assessments have been done when buildings have been empty.

There is an urgent need for research into why some people develop mesothelioma and others do not, and for long-term epidemiological studies, which take money and investment, to understand what is going on in the long term so that we can plan for it if the numbers are going to go up hugely. In my own field, I have made a plea for us to undertake some research into why mesothelioma causes so much pain, and why it appears to be relatively difficult to manage with straightforward analgesics. In my own hospital, the Velindre Cancer Centre, Dr Jason Lester is doing some innovative research on tumour-associated antigens and their expression on the surface of tumour cells, but that research is not cheap—it cannot be done on a shoestring—and needs dedicated cell lines.

The Asbestos in Schools Steering Group was set up by the Department for Education in 2012. What is its position with regard to academies and free schools in relation to their responsibilities for managing asbestos, and where are the levers that the Department for Education has for managing it? I understand that the Health and Safety Executive produces guidelines for how asbestos should be managed, but the responsibility seems to lie with those who are running the schools themselves.

For us in Wales, this has revealed what you could call the “devolution crack” because no one seems to be taking clear responsibility for schools in Wales. In the Senedd on 28 January this year, the First Minister said:

“The responsibility lies with the Health and Safety Executive; that is quite clear”.

He went on to say that,

“in terms of ensuring that the responsibilities are progressed, that is also a responsibility of the environmental health officers”.

However, that appears to be at odds with Answers that have been given in this House. When the noble Baroness, Lady Randerson, was Parliamentary Under-Secretary of State at the Wales Office, she answered a Written

[BARONESS FINLAY OF LLANDAFF]

Question last year from my noble friend Lord Wigley about responsibility in Wales by saying:

“The Health and Safety Executive has responsibility for regulations and guidance as it applies to the management and control of asbestos in all workplaces in Great Britain, including schools. However, within this framework, the development of policies for the management and control of asbestos in schools is a matter for the Welsh Government”.—[*Official Report*, 14/1/14, col. WA 11.]

Your Lordships might think that that would be the end of it and it should all sit with Wales, but I suggest that in the long term the devolution crack that has been demonstrated will affect NHS England just as much as NHS Wales. Wales is a net exporter of young people, particularly into the professions, and a net importer of older people. We have a lot of older people coming to spend their last years in nursing homes, particularly in north Wales and along the coastal strips. So Wales may have a problem today but unless there is joint working between those responsible, and unless Wales is invited to join in and share expertise on these committees, we are not going to solve the problem in the long term for the next generation. I also suggest that the confusion over this has been evident in the complaint that was taken to the Parliamentary Ombudsman by Annette Brooke on behalf of the Asbestos in Schools group regarding the conduct of the Health and Safety Executive following the closure of Cwmcarn High School in 2012, the outcome of which is awaited.

This Bill is very important for the future, not only for the health of the whole of our nation—England and Wales joined together—but because it is important to plan expenditure and demand, and to plan how we are going to manage what may be a looming epidemic among our schoolchildren that we have not even begun to take notice of yet.

10.45 am

**Lord Winston (Lab):** My Lords, it is a pleasure to congratulate the noble Lord, Lord Alton, on introducing the Bill. I agree completely that this is a terrible condition that causes massive injury to a number of people.

I want to take a slightly different tack during this debate; I would like to put the disease into some focus. I was first aware of mesothelioma in the 1960s as a medical student. I worked with a very great physician, the late Donald Hunter, who was probably the first person really to identify industrial diseases as a major issue in medicine. He was very prominent in the field of lung disease—pneumoconiosis in miners, for example. He also had further interests in a whole range of things; he even changed the way that diamond drills were used in South Africa to reduce the dust that would cause lung disease in miners.

Some noble Lords might remember that around 1998 I made a television programme about an Irish individual called Herbie, whom we filmed dying. It was a unique film that was part of “The Human Body”. It was massively criticised before it was shown because it was the first time that anyone had filmed a death on television. We filmed Herbie over the best part of two years. It was an amazing experience for me. He was dying of mesothelioma. Interestingly,

while of course I bow completely to what the noble Baroness, Lady Finlay, points out about the pain, the pain from his abdominal mesothelioma was quite well controlled by pretty heavy amounts of morphine-like drugs. Extraordinarily, the fact that we filmed him for so long probably extended his life. Amazingly, he lived for at least a year or two longer than was expected by his physicians. We all went to the funeral and filmed that as well, and it was a very moving moment. The value of that was partly to show someone dying from a disease of this sort but also to recognise that there is not necessarily a need to have such fear about death, a very important issue on which I think the noble Baroness will understand where we were coming from. Once the film had been shown, it did not receive any more aggressive comments in the press; it was recognised as being quite important.

Mesothelioma is an extraordinary disease. I shall try to make it understandable. Our lungs, or rather the pleural cavity in which our lungs are contained, are lined by a lining that covers the heart and the contents of the abdomen, including the bowel. The tumours arise from this lining. Unfortunately, unlike epithelial cancers—most cancers are on epithelial tissues—cancers that arise from these embryological tissues have always been much more resistant to treatment. They include tissues that grow from the bone, such as sarcoma, although I think that that is now changing a bit in its impact. None the less, there is no doubt that these conditions are recognised as being astonishingly hard to deal with.

There is no doubt that mesothelioma is primarily caused by exposure to asbestos, almost invariably in the lung and probably in the abdomen as well. It is true that about one-fifth of patients claim never to have been in contact with asbestos but, as the noble Baroness, Lady Finlay, eloquently points out, it is obvious why that might not be so. It is also interesting that the epidemic, as it has been called, that we have at the moment may be on the decrease as asbestos—particularly blue and brown asbestos, the most dangerous forms—is controlled and regulated. Sadly, however, we have not done nearly enough, so the pleas for much better understanding of what we must do in public and private places go without question.

I will declare two interests. First, I am still a research academic at Imperial College, and my most recent project grant has a cancer edge to it, although it is not on one of these cancers. It has not yet been awarded—I may not get the money—but I hope that it will be funded in due course. The other reason for declaring an interest is that many years ago I was a trustee of Cancer Research UK and before that the Imperial Cancer Research Fund. I emphasise to your Lordships that Cancer Research UK raises between £300 million and £400 million a year for cancer research. It also has a number of notable scientists; for example, there are at least two Nobel prize-winners I can think of immediately: one is Paul Nurse, and the other of course is the recent Nobel prize-winner, Tom Lindahl. They both look at cells—cell development, cell cycle, cell division, and what interrupts them. I make it very clear that that kind of research these Nobel prize-winners have done, which is typical of many people in cell biology, has a profound effect on our understanding



of all cancers. Their research is not focused on mesothelioma, but it does not mean to say that it is any less relevant. It is very important to understand that an understanding of how cells work is as important as any specific, targeted approach to a particular condition.

There is always a slight risk of targeting one or two particular diseases at the expense of other diseases. We have to be aware of this, particularly when perhaps smaller charities are involved in targeting a particular disease because of an interest group. Cancer Research UK says very clearly that it is very happy to help smaller charities and help fund research where it is properly peer-reviewed, to improve and increase their impact. However, it is also very clear that Cancer Research UK, which is our main cancer research organisation in this country, has not ignored mesothelioma. On the contrary, if you look at its website, you will see very clearly that it is involved with a number of research projects. I will delineate some of the areas, because it is very relevant to this debate.

First, Cancer Research UK has been very clearly interested in the past in seeing whether there might be causes other than asbestos; for example, a viral cause. There is probably not a genetic cause either, but there may be a genetic predisposition to how you react to the tumour once it is being treated. One of the problems with mesothelioma is that it is very difficult to diagnose and often appears late. That patient, Herbie, for example, was diagnosed very late, and when I was active in surgery years ago I opened the abdomen of someone in pain to find that they had a mesothelioma, although there had been no suggestion beforehand that there would be a mesothelioma in that particular patient. Therefore one of the approaches that Cancer Research UK is trying to achieve is slightly earlier diagnosis. In particular, there are two promising compounds: one is osteopontin and the other is the serum mesothelin-related protein, both of which are secreted by these tumours. Unfortunately, one of the problems is that both these markers are secreted by other tumours as well, including, for example, ovarian cancer. Getting a specific marker is a difficulty, but research will continue.

There is no question that in the field of treatment there is a great deal of research. I have a list here, which I have written down, of the number of chemotherapeutic agents which have been looked at. In recent years I can count at least 10 or 11: raltitrexed, gemcitabine, mitomycin, vinorelbine, irinotecan, vinflunine, and there are various combinations of those therapies with other well-known mitotoxic agents. These have included trials; I do not quite understand the figures for funding which have been put round the Chamber, because of course clinical trials, which are often multi-centred, are extremely expensive to carry out, and whether those are included in the figures which are being bandied about is very questionable. The noble Lord, Lord Prior, may have something to say about that issue. We would like to see more trials, and they are expensive, but I do not know whether they are included in the total cost of the research into mesothelioma that is being quoted.

Other treatments have been researched: of course there is surgery, pleurodesis, and there are now attempts to try to reduce the tumour inside the lung membranes.

However, some of the more promising therapies which are being actively looked at by Cancer Research UK are biological therapy and immunotherapy. So far, none of these drugs works particularly well. At least 12 have been looked at; there is some promise, and there is no question but that used in combination they may improve. However, these remain, like so many other of these tumours of similar embryological origin that are not mesotheliomas, quite resistant to treatment, just as they become resistant to therapy. Incidentally, photodynamic therapy has been tried.

I do not want to go on at great length about research, but I will talk about three trials that Cancer Research UK is doing at the moment to emphasise the wide range of stuff that is going on. One is some work with HSV1716, which is a virus that acts against dividing cancer cells. It comes from the herpes virus, if I remember correctly. Therefore that is a very good example of where we might make a breakthrough in treatment. Then there is a different strand of research with ADI-PEG 20, which in combination with other drugs such as cisplatin affects a particular amino acid in the chain of cell division. The amino acid that is of particular importance here is arginine. If that can be inhibited, the cancer cells do not multiply. That has been specifically targeted for the treatment of mesothelioma. A compound, GSK3052230, developed by GSK, is I think about to enter phase 3 trials very shortly. That attacks the FGFR1 gene, and therefore stops cancer cells growing.

It is therefore important to emphasise that we are doing research in this country. Whether we are doing enough remains for other people to decide. However, it is important to recognise that these cancers are very resistant to all sorts of treatment, which is one of the reasons why they are so emotionally as well as physically painful. I also suggest that we have heard so many times before about how it has been decided by Governments to put massive funding towards a particular biological project. I think President Nixon said, "We'll put funds into conquering cancer", and that was a total failure. We need to understand that of course there need to be targeted funds, but there also needs to be an understanding of the basic mechanisms. That is definitely going on with a wide range of cancers, some of which will affect mesothelial cancer research as well as lung cancer, bowel cancer and testicular cancer research. It is very important to understand that it is not just about simply focusing on one disease which is of terrible significance, not least because it is almost invariably fatal.

*10.58 am*

**Lord Kakkar (CB):** My Lords, I, too, join noble Lords in thanking and congratulating my noble friend Lord Alton of Liverpool on introducing the Second Reading of his important Private Member's Bill, and in so doing I declare my own interest as professor of surgery at University College London, an institution with a very active research interest and base in many different cancers.

There is no doubt, as we have heard in this debate, that mesothelioma represents an important burden of disease for our country—there were some 2,500 deaths from mesothelioma in 2013—but also, going forward,

[LORD KAKKAR]

it represents a substantial burden of disease in the years to come, with a predicted 56,000 deaths in the period 2014-2044. We have also heard that mesothelioma represents a particularly nasty form of disease with a very peculiar natural history, potentially seen to develop over many decades in an unpredictable fashion, where there is no therapeutic intervention today that can offer a chance of a cure, where diagnosis is often late, and where palliative care, although advancing, still does not provide patients with any meaningful hope of long-term survival.

Under these circumstances, it was quite right for my noble friend to have put forward amendments in Committee and on Report, when the Mesothelioma Act 2014 was passing through your Lordships' House. I was interested in my noble friend's proposition on that occasion because there is evidence that the research base on mesothelioma is limited. With a disease that we understand so little about, it seemed intuitive that, using the opportunity of mechanisms made available by the Diffuse Mesothelioma Payment Scheme, an additional levy might provide a base for enhanced research funding in this area. This is important because, without such funding, it is impossible for many researchers to make the long-term commitment to create a group and study a disease over many years or decades, to ensure that advances in understanding are made available. The noble Lord, Lord Winston, made important points in this area.

This is not only a question of research into the specific disease of mesothelioma, but of ensuring that understanding generated in other areas of cancer research, and cell biology more broadly, can be applied to it. There is now an increasing emphasis on understanding that, if we are going to improve outcomes for patients with a variety of different cancers, and other chronic long-term conditions, we need to move away from a generalised approach to managing disease towards personalised, precision medicine: understanding, at a molecular and cellular level, the mutations driving a particular cancer, such as mesothelioma, then developing biological therapies to target them. The problem at the moment is there is an insufficient molecular characterisation of mesothelioma, to ensure that this disease can avail itself of all the other advances taking place in research generally.

On 17 July 2013, when the Mesothelioma Act was debated on Report, as recorded in col. 786 of vol. 747 of the *Official Report*, the then Minister, the noble Earl, Lord Howe, answered a number of points. As we have already heard, it was argued then that the correct approach was not to ensure more funding for mesothelioma research but that other mechanisms be used to stimulate more research proposals, which would then be funded if they were of sufficient quality. That seemed a reasonable argument. We have heard the four principal mechanisms that were suggested: first, that the National Institute of Health Research convene a workshop of the principal funding charities, such as Cancer Research UK, the Medical Research Council and others—I understand that that took place in May 2014; secondly, that a highlight notice be published by the National Institute for Health Research, identifying this as a priority area for research—this happened in

September 2014; thirdly, that a priority-setting partnership be convened—the James Lind Alliance did this with a variety of stakeholder groups in December 2014. Fourthly, it was suggested that the National Institute for Health Research make its research design service available to help researchers come forward with research studies which were properly designed from a methodological point of view and so would enjoy a greater chance of research funding. What progress has been made in each of those areas; what were the outcomes of those four specific initiatives?

In that same debate, in 2013, we heard that MRC funding for mesothelioma had increased from £0.8 million in the financial year 2009-10 to some £2.4 million in 2011-12. Has the increase in Medical Research Council support for mesothelioma research continued on that upward trajectory, or has funding fallen back? How many more applications have been received by the funding councils, by the National Institute for Health Research or the research charities, as a result of the four specific initiatives that were offered to your Lordship's House at the time of that debate? It would be very reassuring if there were evidence that there have been more high-quality applications; that more groups are coming together to study mesothelioma; and that there is greater collaboration between those dedicated groups and other groups working on more fundamental areas of cancer biology, or other tumours that share a similar characteristic and biology to mesothelioma, such as some of the sarcomas. If that has not happened, the assumption that by facilitating this type of conversation we would see more research is not going to deliver the kick-start in activity that we require. It may therefore be important to revisit the question of a specific levy, providing more funding and greater incentive and reassurance for researchers to come together and focus on this area.

Ultimately, research is about helping patients, and large numbers of our fellow citizens will suffer from mesothelioma in the years to come. If we can provide greater hope that they might have a better quality of life or, indeed, be cured of this disease, through an enhanced research effort, then we should proceed along those lines.

11.06 am

**Lord Ribeiro (Con):** My Lords, I too thank the noble Lord, Lord Alton, for introducing the Bill, and my erudite medical colleagues for their lectures and exposition on the research which supports work on mesothelioma. I confess to being a bit of a cowboy movie fan. One of my idols was Steve McQueen, whom noble Lords may remember in "Bullitt", "The Great Escape" and "The Magnificent Seven". The noble Lord mentioned Navy workers and the involvement of the noble Lord, Lord West, and others in this. Steve McQueen enlisted in the United States Marine Corps in 1947. In those days, warships coming out of the war were covered in asbestos. It was in every single compartment: the roofs, eating messes, everywhere. He was also required to strip out asbestos from the old ships. He died, at the height of his acting career, at the age of 50 of abdominal mesothelioma. We do not know exactly when he contracted the disease—it could have been at any time, but it was presumably between

1947 and 1950 when he was in the Navy. He was also very interested in racing cars and in those days they had asbestos masks in case of fire. It is most likely that it took 30 years before the disease was diagnosed in December 1979. He died less than a year later, in 1980, aged 50. He had malignant mesothelioma of the perineum, to which the noble Lord, Lord Winston, referred earlier. He tried desperately to find a cure, going to Mexico and other countries to do so, but sadly he died. His death was a huge shock to those of us who admired his acting skills, and it raised the profile of the disease of mesothelioma. It is a shame that you need such icons to bring people to understand how deadly such a condition is.

As a surgeon, I had very little experience of mesothelioma. I did a cardiothoracic job in which most of the time would be spent draining fluid from around the lungs, because this condition would compress the lungs as it spread around the pleural cavity and cause all sorts of problems. Unlike peritoneal problems due to tuberculosis, where we would strip off the pleura and try to stop any further fluid collecting, with mesothelioma, whatever you did made very little difference. All we could do was effectively to palliate. So my experience of the disease was very limited.

Curiously enough, we still see advertisements featuring Steve McQueen, with him advertising watches or driving a Ford Mustang. His image is still there. But the condition that he died from is not as well known as it should be. I would hate people to think that, just because this was something that happened before restrictions came into being, we will not see more of this condition. A projected figure of 60,000 deaths has been given but, as the years go by, although there may be a slight fall, I predict that there will be many more. It is also important to remember that it is not just in this country that the deaths will occur. Many countries do not have the regulations or restrictions on the use of asbestos that we have. It is important that we take a lead in trying to discover the causes of mesothelioma and getting to the bottom of how to treat it in order to benefit not only us but many people overseas.

I do not know how many noble Lords have accepted the offer of a tour of the basement of the House. If they have not, I suggest that they do, as they will find evidence of asbestos in this building that they will not believe. We are all likely to be exposed to it. The noble Baroness, Lady Finlay, mentioned her time as a medical student. When I was a medical student, I worked in a hospital where we would walk through underground tunnels with asbestos pipes along the sides. The hospital porters would push the patients on trolleys down those tunnels, bang into the asbestos and bits would fly off. As medical students, we often had a game of rugby as we went flying through the tunnels and, again, chunks of asbestos would come off. To my knowledge, one medical student who never worked in the industry subsequently died of mesothelioma. I can only assume that that was associated with exposure to the asbestos. We have it right beneath us in this building and we should all be very aware of it.

Noble Lords will remember the valiant attempt by the noble Lord, Lord Alton, to introduce his amendment the last time round. On that occasion, the Government suggested that a more voluntary approach was the

way forward, with contributions being made on a voluntary basis, but the noble Lord demonstrated clearly that that has not come about. At that time, four insurance companies were bearing the burden of providing payments to sufferers of the disease. That number is now down to two—Aviva and Zurich, which have both contributed £1 million towards research, but only for two years. There are 150 other insurance firms actively involved in employers' liability which have yet to step forward. It should not be the responsibility of two insurance companies to shoulder the burden of this condition, and it is extremely important that we find a way through this.

I know that charities are able to raise huge amounts of money towards the treatment of cancer. We are all well aware of breast cancer—it is visible and we all know of people who have been affected by it. Hundreds of millions of pounds are spent on research into breast cancer and other cancers. Mesothelioma is an insidious condition that has a sinister outcome, yet very little research has been done into it. Perhaps it is not a very sexy area for researchers to go into. I am afraid that most people do medical research because they wish to explore a particular area for which they have a passion. If we are to generate the necessary funding for this disease, it is important that we stimulate more people to take an interest in it.

There are questions to be asked. Why does a wife who launders the clothing of her husband, who works in an area with asbestos, contract and die of asbestosis whereas her husband does not? Why can some people survive for up to 20 years? The current longest survivor is a man who contracted the disease 18 years ago and is still going strong. Why is that? Clearly the answer lies in the genes, and we need to do genetic research. Testa et al in *Nature Genetics* reported in 2012 research suggesting that people with a germline mutation on their BAP1 gene are at a high risk of developing mesothelioma. We need to follow through such areas of research to try to get the answers. My erudite medical colleagues have explained to the House some of the stages that need to be gone through.

I wish to mention the British Lung Foundation, which I worked very closely with when I took through my Private Member's Bill on banning smoking in cars with children present. It has done a huge amount in supporting the battle against mesothelioma, and it needs to be recognised, acknowledged and supported. As was mentioned, one of its researchers, Dr Peter Campbell, receives a grant for work on identifying the important genes to target for mutations in mesothelioma. Notwithstanding what the noble Lord, Lord Winston, said about the need not just to target one area but to recognise that high-level research may benefit many other conditions and not just mesothelioma, this area needs far more support than we have seen hitherto.

On the previous occasion when this matter was debated, the noble Lord, Lord Alton, missed taking through the proposed levy by just seven votes. It was a very narrow vote and he had a lot of support in the House but, unfortunately, it did not go through on that occasion. At that time, the Government assured us that it would be possible to achieve the ends we wanted through a more voluntary approach. To date,

[LORD RIBEIRO]

those 150 insurance companies have not stepped up to the plate and we need to do slightly more than rely on that approach. A levy is the missing piece of the puzzle. It is key to essential research into this killer disease, which, as we all know, affects tens of thousands of people. It is important to discover its exact causes and how we can benefit patients in the future.

Why does the UK have the unenviable record of the highest mesothelioma mortality rates in the world, and what are we doing wrong that we could do better? I believe that only research can answer these questions. As I said, it cannot be left to charitable organisations to raise the money for such research, and it is important that we find a way of achieving the necessary funding. Winston Churchill once said, “Action today”. I think we have reached the point where we need to move towards “action today”, and I hope the Minister, having listened to the debate and the comments that have been made, will be more inclined to take a harder line on this and to consider finding a way of introducing a levy on the insurance companies.

11.19 am

**Lord Wills (Lab):** My Lords, I, too, rise to support this Bill. I congratulate the noble Lord, Lord Alton, on his persistence in pursuing this issue and on the compelling case that he has made this morning for this Bill. It is a privilege to follow the noble Lord who has just spoken and to have heard all the knowledge and experience that he brings to this debate. Indeed, it is a privilege to have heard all the previous speakers.

As your Lordships’ House has heard many times before, and as we have heard again this morning, mesothelioma is a terrible disease. It is remorseless, and it usually kills within 12 to 18 months by gradually strangulating the lungs and heart, bringing severe, constant pain and progressive and dreadful shortness of breath. The strongest painkillers and multiple operations to drain fluid from the chest bring their own side-effects and, unfortunately, as we have already heard this morning, do little to mitigate terrible suffering. This is among the most cruel of all fatal illnesses. As we have heard again this morning, it is all too often inflicted on those who have contracted it through their occupation and all too often through public service. Factory workers, such as those in the railway works in my former constituency, have been disproportionately affected by it. But so too have members of the armed services and teachers.

Despite this, for decades, those suffering from mesothelioma, and their families, have been appallingly badly treated by the insurance companies that should have been looking after them and neglected by successive Governments. It has taken decades to force insurance companies to discharge their obligations to pay compensation. In the end, it took legislation, beginning with that introduced by the last Labour Government and then by the coalition Government, to force them to discharge those obligations. I take this opportunity, if I may, once again to pay tribute to the noble Lord, Lord Freud, for all he did to bring the Mesothelioma Act to the statute book. It really was a very considerable step forward. Yet after all the debates, stretching back years, and after all the calls for Governments to act,

there is still no significant progress being made on the adequate resourcing of research into effective treatments for this dreadful illness.

The facts are well known, and we have heard them again this morning. So how can it be justifiable that, based on figures from Cancer Research and the National Cancer Research Institute, more than twice as much per sufferer is spent on, for example, breast cancer research than on mesothelioma? There is no good reason for government inaction on this. Given that the groups this illness strikes hardest so often work in the public sector, the Government have surely an ethical obligation to ensure adequately funded research is carried out.

It may be felt that because asbestos is no longer used in the UK, the actuarial peak of the incidence of this disease is being reached in this country; that this is a legacy disease and, therefore, significant investment in research is not justified. I have heard this suggested, but waiting for sufferers to die off in excruciating pain is an unacceptable basis for any healthcare system. Moreover, the numbers are significant; we have heard them again this morning. Although these are projections—and given the long gestation period for this illness they could well be underestimates—more than 50,000 people are projected to die in this country alone and many more times that number in the rest of the world. Mesothelioma is a global problem. It affects almost everywhere in the world, including some of the poorest countries in Asia and Africa, countries which are ill-equipped to provide and develop such research on their own.

As we heard from the noble Baroness, Lady Finlay, future generations of children in this country are particularly at risk. The figures vary, but at least 75% of schools in this country are estimated to contain asbestos, and the Health and Safety Executive has conceded that a minority of those schools are not doing all they possibly could to manage it. Teachers, caretakers and other school staff are already dying in their hundreds from mesothelioma, and at an escalating rate. We are likely to see that rate escalate still further given the long gestation period for this illness. The noble Baroness, Lady Finlay, has already given these figures, but they are so important that they bear repeating: it is estimated that a child of five is more than five times more likely to develop mesothelioma by the age of 80 than their teacher aged 30. It is also thought—although again there is some argument about exactly how this works—that they are at greater risk because their bodies are still developing, which may make their lungs more vulnerable.

Hundreds of thousands of sufferers all over the world will go on suffering from this illness for many decades to come, which is why the research that this Bill promotes is so necessary. I, and many other noble Lords, have heard Ministers justify this lack of investment in research on the grounds that no good research proposals come forward. But if that really is the case, and there is some dispute about it, the Government need to do whatever is necessary to create structures and an environment in which such proposals will come forward. That would not compromise the Haldane principle—it is simply what the Government should

be doing. The most important single action that they could take in that respect is to increase the sums of money available for research. The absence of adequate, secure, long-term funding must clearly be a deterrent to talented researchers committing their careers to research in this area. By turning their back on investing adequately in mesothelioma research, the Government are missing an opportunity to build on our leading position in biomedical research and in an area of such global importance.

The Government are also missing an opportunity to save taxpayers money. I am sorry to bring money into this debate, but it is a matter that must be of concern to the Government, particularly at the moment. Of course, there is no guarantee that any research will produce results, but the experience of research into other cancers suggests that a combination of money and time, and the extraordinary and rapid progress in interpreting the human genome—the noble Lord, Lord Ribeiro, just mentioned the importance of genetics in this field—and huge progress in the size and power of computers, will produce significant advances in treatment. We have already heard this morning from the distinguished medical Peers who spoke about many of the exciting possibilities opening up. This would help save taxpayers some of the huge sums that are involved in treating mesothelioma sufferers.

These are broad-brush estimates, but taking into account the costs of diagnosis, surgery, chemotherapy, radiotherapy, stays in hospital with multiple operations to drain fluid, community care costs, the loss of earnings and so the loss of tax revenue for the one-third of sufferers who will still be of working age at diagnosis, the costs are likely to be upwards of £75,000 per patient. As some 2,500 patients are currently diagnosed in the UK every year, annual costs are likely to exceed at least £185 million. With perhaps up to 70,000 new cases between now and 2050, the total could well rise above £5 billion.

There is a clear ethical imperative for the Government to act now on research into this terrible illness. There is a clear humanitarian imperative. There is a clear financial imperative. There is simply no reason for the Government not to act. The Government and their funding agencies could easily find the funds themselves, even in these difficult times: £3 million a year would more than treble the amount currently spent and help fund a national centre to co-ordinate and develop research.

This Bill offers an alternative route to funding, through a levy on insurers. It will raise money from all those insurance companies that evaded their obligations for so many years, and it will share the existing burden more equitably between those very few companies that have, so commendably, honoured their obligations and the rest of the insurers. Quite apart from the continuing moral responsibility of that industry as a whole to atone for its historic mistreatment of sufferers of this dreadful disease, the sum of money to significantly improve the research effort on a sustainable basis is a tiny fraction of the overall amounts that those insurers saved for decades, and an even tinier fraction of the sums that they will probably have to continue to pay out for decades to come. Does anyone seriously think

that £3 million a year would trouble an insurance industry that pays out £187 million a day to its customers, which is more than £68 billion a year?

Despite all these arguments for action, as we have heard, the Government appear to have done nothing since the noble Lord, Lord Alton, raised this issue in your Lordships House two years ago. Their lack of interest is, I am afraid, demonstrated by the Whitehall reaction to the work that I and the noble Lord, Lord Alton, and my noble friend Lord Giddens have done on exploring the possibility of setting up a national mesothelioma institute, which the noble Lord, Lord Alton, referred to in his opening remarks. This would be done on a hub-and-spoke model, involving worldwide collaborations to drive forward research into tackling this terrible disease on a global basis.

We made considerable progress with medical researchers and non-governmental organisations and the possibility of significant funding from charitable sources, but the time is now right to involve government. The sums are relatively small, but it needs some limited participation from government. The Department of Health has been supportive; in particular, I pay tribute to the Chief Medical Officer and her officials, who have been extraordinarily helpful and demonstrated great empathy with the need to do something to improve outcomes for those suffering from mesothelioma.

But the global dimensions of the problem and the nature of the spending review mean that other Whitehall departments need to take an interest as well. The two other key departments, DfID and the Treasury, have refused to meet us. It is one thing to refuse to do something; it is quite something else to refuse even to meet to discuss doing something to alleviate terrible suffering. It might have been thought that anyone going into public service, in whatever capacity, for whatever reason, might have wanted to spend a few minutes exploring the possibility of helping those suffering so terribly from this illness, but obviously not. To be fair to the DfID officials, I should say that they emailed to say that we could look at their website—next year—to try to identify funding opportunities.

In the short time that he has been in your Lordships' House, the Minister who will reply to this debate has won respect from all sides of the House for his knowledge, for his experience and for his willingness to engage in dialogue, but he has done so perhaps above all for his determination to seek continuing improvements in healthcare. Although he may not be able to commit to support this Bill in its entirety today, I hope that he will at least feel able to recognise that it seeks to put right a long-standing injustice, and that there must now be action to promote research that might bring relief to all those who have suffered from this illness and all those who will suffer in the future. I hope that he will say today that, if this is not exactly the way in which the Government prefer to address the problem, they will find some other way of addressing it and do so now without any further delay.

*11.32 am*

**Lord McNally (LD):** My Lords, I think that all speakers have paid tribute to the noble Lord, Lord Alton; I will take a slightly different tack. I know

[LORD McNALLY]

exactly when I first met the noble Lord: it was as we queued to take the oath in the other place for the start of the 1979 Parliament. Instead of heaping more praise on him, let me give a Gypsy's warning to the Minister: the noble Lord may look like a superannuated choirboy, but he has the tenacity of a seasoned political streetfighter.

My noble friend Lord Avebury referred to Nancy Tait, who campaigned for more than 30 years on behalf of asbestos victims after the death of her husband, Bill. In her obituary in the *Guardian*, she was described as having "genteel bloody-mindedness". I give the Minister fair warning that there could be no better description of the noble Lord, Lord Alton, when he adopts and champions a cause. If the Minister has a reply that offers sympathetic words but no action, I recommend a rapid rewrite.

I mentioned Nancy Tait and her long fight for justice for victims of asbestos, but, as the noble Lord, Lord Wills, has just reminded us, the truth is that neither big business nor successive Governments have a good record in response to public, and particularly worker, exposure to toxic products and substances. The historic London match girls' strike of 1888 was in part about the dangers of working with phosphorus, which caused severe health conditions such as "phossy jaw". In the USA in 1917, there was the case of the "radium girls", who took the United States Radium Corporation to court because their job had been to paint radium on to the watch dials of luminous watches. Fifty years later, Erin Brockovich campaigned against water contamination caused by Pacific Oil & Gas. In this country, we had the long battle of our coal miners for compensation, and an equally long battle to get the tobacco industry to accept culpability for the health damage done by its products.

All those campaigns have one thing in common: we are dealing with everyday products—a match, a wristwatch, the water we drink, the coal we burn, the cigarette we smoke, the place where we work, our classroom or a government office. Each time, there is a denial of culpability by companies and slowness of action by government. It has often taken action by a small group or even an individual to change the law.

Asbestos is slightly different, although I remember in my childhood thinking of it as having super qualities, not least for its fire resistance—I was probably playing with lead soldiers at the time. My interest in this matter, as the noble Lord, Lord Alton, hinted, is that my sister Betty died of mesothelioma in her 70s. Betty was 14 years older than me and had none of the advantages that I had, either of being the baby of the family or of being a beneficiary of the Education Act 1944. She left school at 14 and went to work in the local ICI works, helping to spin asbestos into synthetic fabric for fireproofing. Thirty years later, after raising her family, she went to work at the Ministry of Pensions in Norcross near Blackpool as an office cleaner. She worked in the asbestos-riddled prefabs that were put up just after the war to house the department and was working there when they were demolished. She mentioned at the time that she thought it was rather strange that those who were doing the demolition were wearing protective clothing but that the office cleaners were not.

At the time of Betty's death, to gain compensation you had to prove where you had been contaminated, who had done it, et cetera, and of course there was no possibility of such proof. Quite frankly, with Betty gone, the family was not looking for compensation. It was a relief to see that kind of dilemma solved by the 2014 Act. Much progress has been made in recent years across the board, in this country and abroad, with countries and Governments accepting responsibility and providing compensation for industrial and workplace illness. However, as we have heard today, there are still in waiting more victims of mesothelioma and more need for compensation. This Bill is a suitable tailpiece that should probably have been in the original Bill.

The noble Lord, Lord Ribeiro, quoted Churchill—I think that he slightly misquoted him; I think that Churchill said, "action this day". I always treat the noble Lord with great respect, since he rescued me when I collapsed at that Dispatch Box about four years ago, and now refer to him as my personal physician.

As has been mentioned, there are in waiting many thousands more victims. We have been given by the noble Lord, Lord Alton, a simple and effective way of funding. He has also done something that is equally important, which is to remind us that culpability and responsibility lie not just with the private sector but with government. There is both a moral and a legal responsibility on the part of government to address some of the problems that have been mentioned in relation to public servants. I am pleased to give my support to the Bill.

11.39 am

**Lord Freyberg (CB):** My Lords, I support the Bill and I, too, congratulate the noble Lord, Lord Alton, on bringing this issue back to Parliament following its narrow defeat in this House in 2013.

Like the noble Lord, Lord McNally, my interest in this subject is personal. Just over three years ago, in June 2012, my sister, Annabel Freyberg, a journalist, was diagnosed with mesothelioma. Her diagnosis followed one month after the death of her nine year-old daughter, Blossom, from a particularly virulent cancer, neuroblastoma. The process of her diagnosis was long delayed as the symptoms of her severe lung problems were initially put down to pneumonia and stress. Over the next 18 months there followed a succession of treatments: a course of chemotherapy; attempts to join various drugs trials; and introductions to different specialists who might have been able to operate on the tumour, but, sadly, by then it had progressed too far for this to be possible. On 8 December 2013 she died, aged 52, leaving behind her husband, Andrew, and her 13 year-old son, Otto.

Statistically, Annabel is an anomaly—one of only 415 women out of 2,538 people who died of the disease in 2013. Most people with mesothelioma are men in their late 70s who worked in areas such as the building industry and were exposed to asbestos. It is rare for a woman in her early 50s to have the disease. To this day we still have no idea where and when she came into contact with asbestos. However, for many women and their children, the link is all too clear and

especially cruel. As the noble Lord, Lord McNally, and others have said, they are the wives exposed to deadly asbestos fibres while washing their husband's clothes, or children exposed to asbestos after greeting their fathers from work.

One of the troubling aspects of Annabel's illness, which was highlighted by successive visits to oncologists, was how little research there was into mesothelioma, as with most of the rarer cancers. It is surprising that although the UK has the highest rate of the disease in the world, relatively little is spent on research in the UK, measured against other cancers of comparable mortality. As the noble Lord, Lord Alton, and others have already mentioned, the British Lung Foundation estimates that in 2014 only £860,000 was invested in mesothelioma research by its partners, compared with £9.9 million for skin cancer. The consequence of this was that many of the trials available to Annabel took place outside the UK.

However, the story of consultant anaesthetist Andrew Lawson, who survived seven years with mesothelioma, shows that it does not have to be this way. Given a year to live, he investigated the evidence and took advice from colleagues from all round the world. There followed three operations and six different chemotherapy courses. He signed up for clinical trial gene therapy treatments in Philadelphia and dendritic cell vaccine treatment in Holland. At his own instigation, he was the first mesothelioma patient in the country to have regular treatment with intravenous bisphosphonate after promising results on mice in Western Australia. Of course, none of these is readily available on the NHS and, indeed, most patients are simply not told about such trials or know of such basic research.

However, it demonstrates the need to rethink how we carry out our research. The present system of trials is far too slow, too expensive and unsuited for rarer cancers such as mesothelioma. The fastest way to save lives is to see if the drugs for common cancers work on the rarer ones as well, given the shared mechanism of disease across cancer. This is off-label research and until we fix the issue of liability, as advocated by the noble Lord, Lord Saatchi, we will continue to send thousands, like my sister, to an early grave.

One promising aspect of my sister's treatment, however, was an early use of broad-panel molecular diagnostics. There was no facility in the UK at the time to do this and so her tumour sample was sent to America, where her DNA was genotyped. The results were very revealing but, in her case, proved too late for her to benefit. She had started a course of cisplatin, the standard cancer treatment for the disease, to which she had an adverse reaction. The test results, which we received five months later, suggested that that would happen as she was not suited to the drug and should not have been given it.

I was pleased to read that in Cancer Research's strategy paper for 2015-20, *Achieving World-Class Cancer Outcomes*, a key recommendation is the use of such diagnostics to improve cancer treatment. I hope this will be facilitated, for without it we will give many more patients like my sister expensive, toxic and ultimately futile therapies. More importantly, I hope that the data from such national molecular tests can be gathered into SACT, the national database in Oxford which

tracks cancer outcomes. This will only improve survival rates and provide, if properly managed, a powerful resource for clinical research.

I warmly support the Bill and hope that it will have an opportunity to be enacted.

11.46 am

**Lord Giddens (Lab):** My Lords, this has been a terrific debate so far and I congratulate all noble Lords who have contributed to it. I do not usually like to write out my speeches but, for some reason, I made an exception in this case—although I did not write it out but dictated it to a computer and the computer typed it out, which is utterly amazing and relevant to what I am going to say. However, I have noted down so many contributions from other noble Lords that the whole strategy has been completely messed up.

I pay tribute to the superannuated choirboy, the noble Lord, Lord Alton, for his extraordinary work. I am not sure whether or not that was a compliment, but it will stick with him. I join others in congratulating him on the extraordinary work that he has done to promote the cause of those suffering from this horrible disease. I also thank the noble Lord, Lord Wills, for the work he has done alongside us and the British Lung Foundation for being an enormous source of support so far.

As other noble Lords have said, it is difficult to calculate with any accuracy the true level of risk of mesothelioma to members of the population. The usual estimates suggest that 60,000 people will die of the disease in the UK by 2025 if appropriate treatments are not found. However, the real number could be considerably higher because, as other noble Lords have said, asbestos is coming to light in buildings and enterprises where its existence was previously unsuspected. I was glad that the noble Lord, Lord Ribeiro, spoke up as he did because we must accept that this is a global issue and that we must contribute to it on a global level. The number of people scheduled to die of the disease in the developing world if we do not find breakthroughs is 1 million, but that is a minimum estimate and it could be several times that. We should make a contribution to research not only in this country but should network with researchers across the rest of the world.

As other noble Lords have said, mesothelioma is often seen essentially as a phenomenon of the past. After all, asbestos is no longer used in industry—at least in this country—or in construction. Hence many of the debates about it have concentrated on providing compensation for sufferers who, after all, developed the malady through absolutely no fault of their own. In my view, it is still right and proper to press the industries responsible, plus the insurance industry, to increase the existing levies that have been agreed, and other noble Lords have made this point. My noble friend Lord Wills effectively pointed out that it would save the country money rather than produce extra costs.

However, I argue strongly that we should see mesothelioma as a disease that is relevant to our future, not just to the past, and not accept that it is a malady for which there is no possible cure or effective mode of treatment. Unlike the noble Lord, Lord Kakkar,

[LORD GIDDENS]

and my noble friend Lord Winston, I am not a medical expert. However, I have spent the past few years working on the digital revolution and studying its likely impact on the outer edges of medicine. I have said this before in your Lordships' House: the digital revolution is the greatest, fastest and most global technological revolution we have ever lived through. It is moving vastly faster than the original Industrial Revolution and has amazing potential applications to the frontiers of medicine.

For that reason, I think that we are living through what could well be a period of quite unparalleled innovation in medicine and other frontier areas of science more generally. There are three reasons for this and they are all bound up with the digital revolution. The first is that the emergence of hugely powerful supercomputers gives us an opportunity to decode genetic chains in a way that would have been impossible even a few years ago. Secondly, these capacities overlap with major advances in fundamental areas of genetics as such. My noble friend Lord Winston made the point really effectively in the debate, as did the noble Lord, Lord Kakkar. Mesothelioma should no longer be treated as simply an isolated disease. Thirdly, because of the advance of digital technologies and global communications, scientists are able to share data sources in an immediate fashion across the world.

Because of the advances in genetics, as I have just mentioned, we have come to see that mesothelioma is not a disease apart. As my noble friend Lord Winston stressed, research into mesothelioma can draw on work from outside the sphere of the illness itself and, crucially, it can contribute to our understanding of other forms of cancer. We have made significant advances in our understanding of the mutations that allow uncontrolled cellular multiplication and spread. Some such mutations are shared in common by a range of tumours, so our understanding of the genetic components in question can in principle be generalised. In the near future, cancers are likely to be identified by their particular mutations rather than by their site of origin—for example, lung cancer and breast cancer. Treatments developed on this basis are already so successful in some areas that they allow for normal life until a person dies of other causes.

In the past, we know that at least some talented researchers tended to steer clear of mesothelioma precisely because it was seen as a residual disease. Given the innovations mentioned above, the situation could be very different in the future. Therefore systematic research into mesothelioma could have a crucial impact on medicine going forward. It could be relevant to other environmental diseases because it takes 30 or 40 years to come out. We live in a world in which we are ingesting any number of new substances, so we have to try to have a proactive, preventive strategy for that. Studying mesothelioma could illuminate these areas too. I therefore hope very much that the Minister will investigate the possibility of the Government providing funding to help to establish a national mesothelioma research centre, as other noble Lords have mentioned. I have reason to believe that we can get substantial funding from private sources, so if that could be matched we could get the whole enterprise off the ground.

Everyone else has mentioned Winston Churchill, so I may as well end with a Winston Churchill story, given that I have not spoken for that long. I used to be the head of the London School of Economics, one of whose founders was George Bernard Shaw. He had an acerbic relationship with Winston Churchill. The story goes like this. George Bernard Shaw wrote to Winston Churchill saying, "Dear Winston, here are two tickets for the first night of my new play. Please bring a friend, always assuming you have a friend". Winston Churchill wrote back saying, "Dear Bernard, I am sorry, I cannot make the first night. Please send me tickets for the second night, always assuming there is a second night".

11.54 am

**Lord Cormack (Con):** My Lords, exactly what the relevance of that story is to the debate is unknown, but it is one that I have heard in the past and have much enjoyed hearing again. I will begin, as others have, by warmly congratulating the choirboy—not superannuated—because he has a wonderful and youthful enthusiasm, as the noble Lord, Lord McNally, said, and he is doughty campaigner. I am reminded when thinking of campaigners of Sir Walter Raleigh, who made the famous remark that it is not the beginning of a cause for which you should be praised, but for continuing with it to the end, until it is thoroughly, not thoroughly, finished. I do not think that the noble Lord, Lord Alton, is going to give up his campaign until it is indeed thoroughly finished.

The noble Lord outlined graphically the need for this modest measure to supplement the Act that is already on the statute book, and we have heard in the debate a number of moving testimonies, not least from the noble Lords, Lord Freyberg and Lord McNally, whose personal family lives have been tragically affected by this ghastly disease. We have also had something of a medical teach-in because the noble Lord, Lord Winston—I am sorry that he is not in his place; oh, he is in his place. I am so sorry. The trouble with the noble Lord is that he moves; he made his speech from the back and now he is sitting elsewhere. He gave us a treat of a lecture. Then the noble Lord, Lord Kakker, and my noble friend Lord Ribeiro gave us supplements to that lecture. It has been a privilege and is indeed an illustration of the value of your Lordships' House that we have such expertise in all parts of the Chamber. That has been demonstrated today in a splendid way.

I want to address most of my remarks to my noble friend the Minister. Quite rightly, complimentary things have been said about him. He made his mark before he came into the House when he was chairman of the Care Quality Commission. In a sense we are talking about quality care here, but we are not appealing to the Minister to come to the Dispatch Box and agree to large extra expenditure from public funds. What we are asking him to do is recognise that there is a very real problem that we cannot adequately quantify. In her splendid speech, the noble Baroness, Lady Finlay, talked about schools. How many five year-olds in this country today might already be stricken by this disease, which perhaps will not manifest itself for many years to come? We all know that in our youth—I am sure



that I speak for most of your Lordships—asbestos was regarded as a good thing. It was a fire retardant material that brought great benefit. But now we know that it is one of the most lethal of killers. Of course the Minister knows that, but we are asking him to recognise that more must be done to combat this evil within our midst, the full and devastating results of which none of us knows.

That there should be a levy on insurances is a very sensible suggestion, but I would say to the Minister that that should be just the starting point. There are many substances from which we all benefit in some ways—some we regularly imbibe and others we eschew—that damage the health of the nation. Why should there not be a specific levy for medical research on alcohol, tobacco, petrol or diesel?

As my noble friend knows well, I have argued, as have many in your Lordships' House in various debates on the health service, that we must have a plurality of funding if the National Health Service is going to be the service we need in the years ahead. We have to get away from the sticking-plaster approach that we have often referred to in this Chamber. Here is a wonderful opportunity to begin something by having a specific levy for a particular disease that could then be extended. I commend this to the Minister. When I talk to him about these funding issues, he always indicates the difficulty. Of course we all know there is a difficulty. We all know that there is a degree of cowardice in all political parties when we start talking about charges and compulsory insurance, for example. This is not one of those things the Minister has to fight shy of, because here, we are saying that those who have a degree of culpability should be made to acknowledge that by making a contribution.

Of course, that may not have helped the sisters of the noble Lords, Lord McNally and Lord Freyberg, but there will be others in the future whom it might help. We might be able to avoid some of the tragedies about which they movingly spoke, if only we could grasp this particular nettle. I do not want from the Minister the soft answer that turneth away wrath. I want a determined commitment on the part of the Government to recognise the overriding importance of medical scientific research, and to recognise that this is one way properly to meet the needs that we all acknowledge.

*12.02 pm*

**Lord Howarth of Newport (Lab):** My Lords, I admire the passionate commitment of the noble Lord, Lord Alton, and his tenacity, to use the word that the noble Lord, Lord McNally, used about him in his own moving speech. I will only say of the noble Lord, Lord Alton, that he is a highly experienced and effective politician. I also applaud and thank the British Lung Foundation for the essential work that it continues to do and I thank noble Lords, particularly my noble friends Lord Giddens and Lord Wills, who have worked alongside the noble Lord, Lord Alton, to try to ensure that we get a better disposition of forces in the field of mesothelioma research.

Like other noble Lords, I am scandalised by how little funding has been made available for research into mesothelioma. The noble Lord, Lord Alton, described

it as a paltry amount. My noble friend Lord Winston suggested that it might have been rather more than some of us have hitherto understood. Whatever the case, there has been a lamentable failure to make the progress that we would all have wished to see towards better understanding of the essential nature of this disease—its prevention and diagnosis, its cure, ideally, but otherwise mitigation of the horrible suffering that it causes.

As we have been told, the prospect on the best estimates is for not fewer than 60,000 deaths from mesothelioma in this country over the next 30 years and of very many more deaths globally in newly industrialising countries, where health and safety standards are not what they ought to be. I would have thought that this would be an interesting challenge for researchers and that they would have seen important opportunities in this field. But for whatever reasons, it appears that mesothelioma research remains a relatively unfashionable area of research for people to go into.

On Report of the Mesothelioma Bill on 7 July 2013, the noble Earl, Lord Howe, the predecessor of the noble Lord, Lord Prior, responding to an amendment moved by the noble Lord, Lord Alton, to the same effect as his Bill today, pinpointed the issue as being the problem of encouraging sufficient high-quality research applications. I made the same case in that debate and I continue to believe that that is at the heart of the problem. The noble Earl outlined four initiatives that have been rehearsed for us by my noble friend Lord McKenzie of Luton, to whom we owe so much—without his preliminary work, we might not have had the Mesothelioma Act 2014—and the noble Lord, Lord Kakkar. Those were the priority-setting partnership, the highlight notice, the availability of the Research Design Service and the convening by the National Institute for Health Research, the Medical Research Council, and Cancer Research UK of researchers to gather new ideas about how to go forward in this field. As the noble Lord, Lord Kakkar, said, it will be extremely interesting if, when the Minister replies to this debate, he is able to tell us about any progress there may have been in consequence of the initiatives promised by his predecessor and how effective they look like being.

I continue to think that the problem is not essentially one of lack of publicly provided funding for research. Admittedly, Professor Dame Sally Davies acknowledged to the All-Party Parliamentary Group on Medical Research, in a rather confessional moment quite recently, that following the decision by your Lordships' House to advise the elected Chamber to think again about the appropriateness of cuts to tax credits, she was having nightmares that the Chancellor might turn and rend the budget for medical research. If he were to do so, that would be a grotesque non sequitur, and I do not expect it to happen.

I understand why the noble Lord, Lord Alton, charges the Government with inadequate commitment in this area and why he has tabled his Bill, which would impose a supplementary levy on industry. But we should think very carefully before rushing to legislation. It is still relatively early days. The 2014 Act has been on the statute book for only 18 months and we should proceed in this area with caution. The typical structures

[LORD HOWARTH OF NEWPORT]

that we have for mobilising funding for research in this country are broadly the right ones—the arm’s-length principle, peer review, and quality of proposed research being the criterion for funding. It is true that they do not guarantee perpetuity of funding, but they do produce high-quality research. I continue to think that the issue is how to attract the right applications for funding for research into mesothelioma

That brings us to the role of the employers’ liability insurers. I have no hesitation in saying that they have a very strong moral duty in this area. It is one of the great business scandals of the past 50 years that the contracts that should have secured compensation for people who were exposed to asbestos and developed mesothelioma in consequence—contracts written by the employers’ liability insurers—in so many cases somehow evaporated. The documentation could not be found when it became time for people to make their claims. The insurers did not want to face their long-tail obligations, so it was right that the levy was introduced.

I would like to see the employers’ liability insurers take upon themselves the responsibility of funding the process, which noble Lords have talked about, of attracting high-quality researchers into this area to develop the strategy initiated by the noble Earl, Lord Howe. They should not make their contribution conditional on the Government matching what they have to put in. They should willingly provide funding to supplement what the publicly funded research councils and the national institute find themselves able to provide for research in this field. They should supplement and, indeed, be willing to surpass what publicly provided funding is made available, just as the medical charities do.

Charitable money has been lacking in this area. My noble friend Lord Winston pointed out that some of the major cancer research charities are funding generic, high-level research that will have a very important relevance to mesothelioma. Where more specific disease-related funding is concerned, it has been notably lacking. The noble Lord, Lord Alton, gave us the comparative statistics. Why this should be one can only speculate, but I suspect that it has to do with class. Mesothelioma is perceived as a blue-collar, working-class disease. Its incidence is mostly found in the old industrial areas. Regrettably, it is apparently very much harder to raise charitable money for research in this kind of area. It is one more instance of what has been called the hideous injuries of class. Of course, the National Health Service and publicly funded research exist to overcome these kinds of imbalances and disparities.

I want to see the employers’ liability insurers voluntarily create a charitable endowment, but we appear to be very far from a situation in which that is imminently to happen. We have been told that out of 150 employers’ liability insurers, the number willing to make a voluntary contribution has declined from four to two. We are now left with only Aviva and Zurich taking that responsibility. We should certainly congratulate and thank them, and recognise what they are doing.

I hope that it will not be futile to appeal to the better nature of others in the industry in this area of the insurance business. They ought to be good citizens

and decent human beings. They ought also to be mindful of their own business interest. If they fail to make a decent contribution to research, they will have to pick up the cost of compensation—unless, somehow, the contracts go missing again in the future; we should be vigilant to make sure that that does not happen. They ought to be concerned about their reputation. They have an opportunity to rehabilitate their reputation and they can certainly afford to do so. I hope that they will be willing to make a major contribution to the cost of establishing the national mesothelioma research centre that other noble Lords have spoken about and which they are trying to establish. We therefore need the whole sector to rise to the moral responsibility that they have and continue to do so. The situation as it is is profoundly unacceptable.

There will also need to be continuing determination on the part of the department. There is an imperative for more research and the department must do all it can strategically to encourage the channelling of funds towards research applications and research proposals of the quality needed. However, whether there should be legislation seems to me, as I have said, doubtful. It is relatively early days, but if the insurance sector now fails to rise to this responsibility I put it to the Minister that he and his ministerial colleagues in government really must respond to the challenge that the noble Lord, Lord Alton, has set. I would regret the necessity of it because it would be anomalous. It could be argued that it is invidious for government to accept that Parliament should legislate to provide funding for one particular disease. There are so many terrible diseases and areas where research is urgently needed. It would be inconsistent with the way research is, I believe rightly, funded in this country.

The challenge is there for the insurers. It is still not too late for them to act voluntarily to provide funding to stimulate the passion among researchers—of which the noble Lord, Lord Ribeiro, spoke—to encourage them to work in this field and to maintain that support, challenge, stimulus and effort over the years to come. Early action is needed. I hope that the industry will respond. If not, I will add my support to the measure proposed by the noble Lord, Lord Alton.

12.15 pm

**Baroness Murphy (CB):** My Lords, I am the last person to speak before the winding-up speeches and the fifth doctor in this debate. Noble Lords will all be highly relieved to know that I will not say anything medical.

Unfortunately, I was unable to participate in the debates on the Mesothelioma Bill last year, so I very much wanted to come along and add my personal support for the initiative of the noble Lord, Lord Alton. Everyone has said that he has been tireless; he is not only tireless but energetic and focused in a way that has brought great rewards for people with mesothelioma. I also wanted to add my personal thanks to the noble Lord, Lord Freud, for the work that he did, and we must not forget the noble Lord, Lord McKenzie of Luton, before him, who also made great strides during his time in office. The noble Lord, Lord Prior, the Minister today, will not be surprised to know that we want to see the same from him.

Why am I here today? Like the noble Lords, Lord McNally and Lord Freyberg, I have a personal story. My father died of mesothelioma. I was a young doctor in the 1970s when I first realised that my father had this appalling constricted breathlessness. He had worked as a powerhouse engineer during the war. He supervised the powerhouses for Boots Pure Drug Company, which was a massive manufacturing plant during the war, making not only the pharmaceuticals needed, from antidotes to chloramine to aspirin, but gasmasks on military contracts. As noble Lords know, military gasmasks had the worst sort of asbestos in them during the war.

There is no doubt that it was the powerhouse lagging and that factory work that produced the illness that killed my father 35 years later. My mother well remembers him coming home with his overalls drenched in white and grey powder, which she washed, of course. She was darned lucky not to get it. As a result of this illness and because of his early death from this terrible disease, she was widowed for 37 years. It is a terrible thing, as a young doctor, to watch somebody dying of this appalling constriction. As the noble Lord, Lord Ribeiro, said, at the time all they could do was keep taking the fluid off. That was the only way to help him through this terrible time.

The mean survival rate has gone up by no more than 2.8 months over the last 30 years. That gives some indication of the desperate need to research. Normally, rather like the noble Lord, Lord Howarth of Newport, I would not have supported the Bill, but we are now at the point where we are seeing a resistance from the insurers. They are not coming to the table. They are not stepping up to the mark and supporting it.

I want to bring home to the Minister what has happened with regard to dementia research because of all the arguments we have heard about why people are not coming forward with good proposals—for example, this is not a fashionable area of research or there are issues about funding. We heard all these arguments in relation to dementia but what made the difference is the point that the noble Lord, Lord Wills, made—namely, there was political focus. Somebody in the Department of Health took an interest in dementia and said that for all kinds of economic and other reasons, and given the seriousness of the disorder, we must focus our efforts on tackling it. Only the Department of Health can get people round a table and ask them, “What are you doing? How can we make this work?”. It does not take a great deal of a Minister’s time to do this. I challenge the Minister to provide a political focus on this issue. He will no doubt tell us how we can tackle the research deficit, but I believe that Ministers need to take an interest in this issue and provide the political focus to make the research happen. Money is important, but providing political support to make the research happen is what is really required.

12.21 pm

**Lord Campbell-Savours (Lab):** My Lords, I wish to speak briefly in the gap. Like the noble Baroness, Lady Murphy, I have personal experience of this issue. My father at the age of 19 turned down the opportunity to study marine engineering at Royal Holloway College

to join the Merchant Navy. He joined in 1939 and, by 1943, according to the South Wales press, he was the youngest chief engineer on merchantmen crossing the Atlantic, carrying oil, primarily, I understand, from Galveston to various parts of the world, including ports in the United Kingdom. He died in 1989, having been diagnosed with mesothelioma in 1984. He spent five years being treated, I think in the Brompton Hospital. He had repeated operations on his pleura to try to alleviate all the pain and the difficulty he was experiencing. He left many letters and diaries, in which he explained why he had insisted on working on lagging in the boiler rooms of the SS “Penhale” and the SS “Duke of Sparta”, the two tankers on which he spent much of the war. He explained that he insisted on doing the lagging work himself—of course, he paid the price for it—because he was always uneasy about the use of asbestos but could not quite define it.

In the correspondence that he left behind, he expressed his shock over the lack of research that was being conducted in the whole area of cancer treatment. I have read the letters that he wrote to various authorities requesting that additional resources be allocated to that area, not particularly for himself—I will come to that in a minute—but for others. He also complained extensively about the lack of support that was given to those people—in his case it was not so much of a problem—who found it very hard to establish who was commercially liable for compensation given that they were suffering from this disease. His concerns about the research were in part motivated by his regard for the many Chinese crew members on the ships who worked under him when he was chief engineer. It is clear that he worried that they would never receive treatment and, in many cases, would never know what they were suffering from. This was not necessarily the case on the ships on which he served, as he was doing the lagging work, but he was not to know what would happen to the Chinese crew members on other ships in the Merchant Navy, where they were doing a lot of this work. He worried about what was happening to those people. There must have been tens of thousands of Chinese crewmen who served in the Merchant Navy who never knew to the day they died what they had suffered from. They were probably said to have died from something coming under a general cancer heading.

I say to those who have gone, and to their relatives, wherever they are in the world, that at least we in the United Kingdom are now treating these matters very seriously. Indeed, the speech of my noble friend Lord Winston was absolutely fascinating. It contained information that many of us had never heard before. I am sure that my father would have been fascinated to hear this debate today. As I say, I hope that additional resources can be found, if only in memory of those who have died in the service of their country.

12.26 pm

**Lord Hunt of Kings Heath (Lab):** My Lords, this has been a very moving debate. We are indebted to all noble Lords who have shared their personal experiences and brought home the distressing nature of this condition to those of us who perhaps were not so aware of that as we should have been. As some noble Lords have

[LORD HUNT OF KINGS HEATH]

said, this is not just a legacy disease. We can see stretching ahead over the next 30 and 40 years many thousands of people being affected by this distressing condition. That is why we are so indebted to the noble Lord, Lord Alton, for his campaign in this area and for bringing this Bill to your Lordships' House. I also echo the tribute to my noble friend Lord McKenzie for his work in this area over the years.

Clearly, the aim of the Bill and our debate concerns research. I hope that the noble Lord, Lord Prior, will be able to update us on exactly what is the state of research in the United Kingdom. We have heard, if not conflicting views, a slight divergence of view about how much research is being conducted. My noble friend Lord Winston is a little more optimistic about where we stand than many noble Lords and the briefings we have received. If the noble Lord could update us, that would be very helpful.

It would also be helpful if the noble Lord could tell us about the outcome of the work by the NIHR, following previous debates in Parliament, in its efforts to stimulate more research. If he can say that the NIHR is now confident that it can see a pipeline of research coming forward in the next year or two, that would be hugely important to our debate. But if his view is that so far there is less optimism about the number and quality of research projects being undertaken, clearly we need to think very carefully about how to stimulate some more.

I agreed with the comments of the noble Baroness, Lady Murphy, on dementia research. That is an excellent example of the pharmaceutical industry finding it difficult to see a way to fund research projects given the failure of many research projects in the past, and where the Government took the initiative in that area. The result is that we have something that seems to work very successfully. We know that the Chief Medical Officer is a very persuasive, strong champion of research. If she were to make it clear, with the authority of Ministers, that the department wants to stimulate research in this area, and the resources are available, I think one could then expect to see a very strong pipeline of research applications coming through.

On funding, the department has consistently said that there is enough money available for the research projects coming forward. But has the Minister picked up the point, which my noble friend Lord Winston raised, that once you put in the clinical trial costs we are talking about potentially many millions of pounds? So while the decision of Aviva and Zurich is to be commended, the kind of money we are talking about here—a combined £1 million over two years, together with whatever the Medical Research Council and other medical charities can come up with—does not really seem sufficient to generate the kind of long-term research projects that we clearly wish to see.

The overall performance of the insurance industry has clearly been lamentable and indefensible. At every point, it has had to be cajoled and kicked into doing anything at all, so if the noble Lord, Lord Prior, is still relying on voluntary discussions and agreements with the industry, he will have to show that he is pretty confident of success over the next few months for the noble Lord, Lord Alton, not to pursue his Bill.

The insurance industry has form. The Minister will know from our collective disappointment in relation to the care sector that the industry is very good at warm words, but I am afraid that it sometimes does not follow up with decisive action.

I understand the caution from my noble friend Lord Howarth about whether legislation is the right way to go down, but I wonder whether the example of the pharmaceutical industry and the agreement on drugs might be one way to go forward. The negotiations with the Department of Health on the amount of money that the health service gives to pharmaceutical industries, known as the PPRS, is a voluntary agreement. But it is backed up by statute because, if agreement is not reached, in the end the department can impose a settlement. I suspect that this was in the mind of the noble Lord, Lord Alton. If we have a statutory provision, that is a kind of backstop. It would not stop the Government saying, "If you don't want a statutory levy, then you have to come up with a proper voluntary scheme". I say to my noble friend that sometimes there is a case for legislation.

I hope that the Minister will respond to three or four other points that have come up in debate. On veteran issues, there was a very interesting debate in the Commons yesterday to which his honourable friend Mr Mark Lancaster responded, where the argument came that,

"the Ministry of Defence should offer veterans with mesothelioma the option of a lump sum in compensation ... broadly comparable to that awarded"

to individuals who have no existing employer to sue. The Minister there said last night that the MoD has,

"commissioned advice from the Independent Medical Expert Group".

Although, as the Minister said, it is a complex position, it will require,

"consideration, and close consultation and engagement with colleagues across Whitehall".

He said that he hopes,

"to be in a position to make an announcement as soon as possible",

and,

"to update the charities at the forthcoming central advisory committee meeting next month".—[*Official Report*, Commons, 19/11/15; col. 935-36.]

Perhaps the Minister might update Members of your Lordships' House who have taken part in this debate, because the point raised about the veterans is very important.

The second point is about schools. The noble Baroness, Lady Finlay, suggested that the general advice where asbestos is in buildings is essentially to leave it at rest. Does that advice seriously hold when it comes to schools? The problem she raised is that the research which led to that advice may not have been undertaken in schools. I hope that, at the very least, the Minister would be prepared to discuss this with his colleagues in the Department of Health.

The third point is about Wales. The noble Baroness, Lady Finlay, also raised the interrelationship between the HSE, as a UK body, and the Welsh Government's responsibilities. My noble friend Lord McKenzie and I have wrestled with this issue over the years but,

again, it would be good to know whether the Minister could discuss this with Ministers in the Welsh Assembly Government to see whether there is a gap that needs to be addressed.

In conclusion, this has been an extraordinary and very powerful debate and I want to echo a point raised by the noble Lord, Lord Cormack. Essentially, it is a plea for the Minister to tear up his lines to take. The department will have its answers, but I think that the House is looking for something more. At the very least, it is looking for a sense that the Minister recognises that here we need leadership from Ministers to make something happen. We very much hope that the noble Lord will be able to give it.

12.35 pm

**The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con):** My Lords, it is always very dangerous when you are told to tear up your lines to take, however tempting that might be. The noble Lord, Lord Alton, whom I have only met once before, which was quite briefly yesterday, told me that he was a street-fighter so I come here forewarned that he is not as he appears. I suspect that as I stand here, he is sharpening his knife and polishing his knuckledusters to set about me in a few minutes' time. I thank him, though, for bringing this issue to the House. It has been a fascinating debate. I am by no means an expert in mesothelioma but I feel much better educated about this issue now than I did two hours ago.

The debate has been trebly compelling because it has brought together people with authentic and tragic personal experience: the noble Lords, Lord McNally and Lord Freyberg, and the noble Baroness, Lady Murphy—and, right at the end, the noble Lord, Lord Campbell-Savours. That personal connection with this terrible disease is very powerful. The debate has brought that together with the clinical and medical academic knowledge of the noble Baroness, Lady Finlay, and the noble Lords, Lord Winston, Lord Kakkar and Lord Ribeiro, which is a very powerful combination. When you add to that the broad knowledge of other noble Lords who have contributed, whose interest in the subject goes back many, many years, it produces a very powerful cocktail.

Clearly, mesothelioma is a terrible and devastating condition. There is no cure and, as the noble Lord, Lord Winston, reminded us, it is a very difficult illness to tackle. Uncertainties remain about the best available approaches to diagnosis, treatment and care. It affects thousands of people. In my mind before this debate, I thought of it very much as a legacy disease—one that would gradually wither away. The noble Baroness, Lady Finlay, commented that many children will be suffering from this disease in 20, 30, 40 or 50 years' time. As the noble Lord, Lord Giddens, mentioned, this is not just an English disease, although we have a particularly high incidence in this country; it is an international, global illness. The noble Lord mentioned it affecting literally millions of people.

It is therefore absolutely right that mesothelioma research has been discussed many times both in this House and in the House of Commons. I suspect that whatever the outcome of today's debate and when we discuss the matter again in Committee, knowing the

reputation of the noble Lord, Lord Alton, he will never let this sleep. I imagine that we will be hearing from him on many future occasions.

I want to talk about two aspects at the beginning. The first is funding. Funding is needed for research—that goes without saying. The four largest insurance companies have previously made a donation of £3 million between them and more recently, as has been pointed out, Zurich and Norwich Union have donated a further £1 million. That has helped to support valuable research into the disease, but a much higher level of funding has come from the Government through the Medical Research Council and the NIHR. Together, those funders spent more than £3 million in 2014-15. The MRC is supporting ongoing research relating to mesothelioma at its toxicology unit. It is also funding one current fellowship. The NIHR is funding three projects through its research programmes, and its clinical research network is recruiting patients to a total of 11 studies. In view of the comments of the noble Lord, Lord Winston, I can highlight that the NIHR is co-funding experimental cancer medicine centres with Cancer Research UK. These centres are supporting studies in mesothelioma. Money is also available through European Union research funding programmes. I am delighted that the University of Leicester is a partner in a successful bid for nearly €6 million for research on immunotherapy to treat malignant mesothelioma.

**Lord Wills:** I thank the Minister for giving way so early in his speech, but these figures are very important. Is he aware that the British Lung Foundation has done its own study on how much money is specifically directed to research into mesothelioma? A lot of the work that he just described may well have implications for mesothelioma, but it is generic. The British Lung Foundation figure specifically for mesothelioma research is £820,000, not the millions he has been talking about. Does he accept those figures in the context of what I have just said?

**Lord Prior of Brampton:** It is hard to know what the right figures are. After this debate, we need to sort out exactly what the figures are.

**Lord Winston:** I hate to disagree with my noble friend, but one problem with mesothelioma research is that Cancer Research UK, for example, puts such funding partly in the box of lung cancer funding—it is a different form of lung cancer. There is a risk that we may be underestimating the amount of money being spent. That always happens when these figures are bandied about. I am not suggesting that we should not be spending more—or less—but it is very difficult to be precise about the figures sometimes cited.

**Lord Prior of Brampton:** We probably cannot today sort out the figures in the way we would like. It will be very difficult to allocate some of the more generic research expenditure. Let us move on from funding, if we can.

**Lord Giddens:** Will the Minister get to work on this and send something back about what the precise figures seem to be in the light of the questions raised? This is a serious issue, so it would be good to get a response from the Government.

**Lord Prior of Brampton:** Perhaps I can take that away and come back to the House. I think it will be difficult to come up with precise figures, to be honest, because of the difficulty in allocating some of the more generic research to particular areas. I think that we can encapsulate some of the comments made by the noble Lords, Lord Winston and Lord Wills, and come back to the House with a more thought through, considered figure.

**Lord Alton of Liverpool:** I can see that the Minister wants to move on from the issue of funding, but before he does I should point out that the House has been given figures. It is important to record that in our debate, because they are figures that his predecessor, the noble Earl, Lord Howe, gave the House in reply to a Parliamentary Question tabled by my noble friend Lord Wigley, and referred to by my noble friend Lady Finlay earlier. The figures in the reply to Parliamentary Question HL5852 show that funding from the NIHR on, “research centres and units, and research training awards on mesothelioma research”, as the Minister said, in 2006-7 was £0.0 million; in 2007-8 was £0.0 million; in 2008-9 was £0.0 million; in 2009-10 was £0.0 million; in 2010-11 was £0.0 million; in 2011-12 was £0.0 million; in 2012-13 was £0.2 million; and, in 2014, was £0.4 million. Those are the Government’s own figures, which have already been given to Parliament.

**Lord Prior of Brampton:** I think that we are into some definitional issues here, to be honest, from what the noble Lord, Lord Winston, said, and from the figures that I gave earlier, which I am not making up—they are figures that have been given to me. We should come back with some greater clarification and perhaps some closer definition of what the funding figures are.

My impression, although it may be wrong, is that the essential problem is not a lack of funding but a lack of sufficient research applications. Of course, I accept that there is a connection between the two, which I shall perhaps come back to in a minute. The MRC received no mesothelioma applications in 2014-15, and only one in the current year. I want to clarify and stress that the work being funded is of high quality, consequent to high-quality applications. In response to questions raised by the noble Lord, Lord Kakkar, and others, the Government have taken measures to stimulate an increase in the level of research activity. Patients, carers, clinicians, academics and funders have worked in partnership with the James Lind Alliance to identify what the priorities in research should be.

I imagine that some noble Lords will have read the report by the James Lind Alliance, but for those who have not I can say that, following a survey and a workshop, the top 10 mesothelioma research priorities were announced in December 2014, and the NIHR published a final report from the priority-setting partnership in July. In advance of the identification of research questions by this partnership, the NIHR highlighted to the research community that it wanted to encourage research applications in mesothelioma. The NIHR subsequently invited researchers to apply for research funding, in particular to address the research

questions identified by the partnership. Eight NIHR programmes participated in this themed call. Fifteen individual applications have been received, of which two have been approved for funding to date, two are under review, and 11 have been rejected. Some noble Lords may think that that is a very high level of rejection, but it is broadly consistent with the overall funding rate for applications to NIHR programmes, which is roughly about one in five.

In addition, the NIHR Research Design Service continues to be able to help prospective applicants to develop competitive research proposals. This service is well-established and has 10 regional bases across England. It supports researchers to develop and design high-quality proposals for submission to NIHR itself and to other national, peer-reviewed funding competitions for applied health or social care research.

The Government are not predisposed to support the Bill, but there is something that we ought to consider—perhaps outside the Chamber. We believe that the existing process for accessing research grants works well; we do not believe that money is the real shortage. It is interesting to note that the Government’s spend on research for medicine is a little over £1 billion—a very significant sum—but the Government are not keen on hypothecated grants for research. However, I have been thinking about this very carefully over the last couple of days, and the noble Lord, Lord Alton, touched on it slightly obliquely at the beginning, but it is an important point.

When the 2014 Bill went through Parliament, it was felt by the Department for Work and Pensions that the highest levy that could be taken from the insurers without forcing them to pass it on through higher premiums into industry was 3%. I understand that there is a shortfall between that 3% and the actual level of claims being made. I wonder whether the 1% that is being asked for in this Bill could be funded through the shortfall within the existing levy. That might be an avenue worth exploring. I say that because at the moment the fact that we are relying on two insurance companies is not equitable. Why should Zurich and Norwich Union cough up £1 million when other employers’ liability insurers are not contributing? This needs further discussion, but I wonder whether there is a way through this and whether we could not use the shortfall in the existing levy.

**Lord Wills:** What the Minister has just said is so profoundly important that I want to ask him to clarify it a little further. I moved an amendment to the then Mesothelioma Bill precisely to that effect: if there was this gap between the 3% that the insurers were prepared to pay and the 2.25% that the government actuaries thought would be needed, that would be devoted not to the insurance industry’s profits but to the relief to this terrible illness. At the time, the Minister in this House was quite resistant, but when it was debated in the other place the Minister there was quite clear. We heard the quote from the noble Lord, Lord Alton. Some months ago, when I asked a Parliamentary Question for Written Answer about this point, I recall that the Government said that they were not yet in a position to say whether there was a shortfall. I think I heard the Minister say that he believes there may be

such a shortfall. If he said that, this is profoundly important as a way forward, as he suggests, so I would be grateful if he would clarify that.

**Lord Prior of Brampton:** If there is a shortfall—and there may be a shortfall—given that that levy is raised from the industry on an equitable basis rather than relying upon two or three insurers to do it on a voluntary basis, that strikes me as a better approach. The point has been made that compensation payments are somehow different from funding research, but it strikes me that the two are very closely related. I am just putting it out there for further discussion, and I would like to pursue that discussion with my noble friend Lord Freud, who is probably the expert on our side of the House on this matter and was intimately involved with the Bill which came through the House in 2014. I would like to have that discussion with him and perhaps with the noble Lord, Lord Alton.

I have not dealt with the veterans issue or the schools issue. I shall deal with them by letter, if that is all right. They are both extremely important. The situation with the veterans and the MoD is under active consideration by my noble friend Lord Howe. I will write to the noble Baroness, Lady Finlay, if she happy with that, setting out the situation on schools in Wales.

The instinct of the Government is not to support the Bill, for the reasons I have given, but there may be a way through this which we are able to explore over the next month or two.

**Baroness Finlay of Llandaff:** When he writes to me, will the Minister include in the correspondence the noble Lord, Lord Wigley, who has done a lot of work on schools in Wales? He might want to meet him. Will the Minister clarify who has responsibility for free schools and academies? They are in a different position from maintained schools, yet they often occupy buildings which contain asbestos.

**Lord Prior of Brampton:** I think the answer to that question is that the Health and Safety Executive would have prime responsibility for them. I think the point that the noble Baroness is making is that the local authority no longer has the responsibility it would have over local authority schools. I will look into that issue and write to the noble Baroness.

**Lord Winston:** Before the Minister sits down, and I apologise for prolonging this debate for longer than necessary, does he agree that medical advances in every field are often very serendipitous? The classic example would be the completely unfunded discovery of penicillin when it was first produced, and it was subsequently only mediocreatly funded until we had a wartime crisis.

In about an hour's time the Minister will be answering a Question about doctors' overtime. One of the critical issues that has not been discussed in that debate has been raised by Jeremy Farrar, the director of the Wellcome Trust, who points out that one of the real issues is the problem with young doctors being able to do research in a very generic way, which has all sorts of benefits, including clinical mesothelioma research. That is a fundamental problem. We in this country are very good at medical research and on the whole we

fund it quite well, although obviously we would like to have more funding, but providing the environment for continuing research is essential for what we are discussing in this Second Reading debate.

**Lord Prior of Brampton:** I thank the noble Lord for that comment. We in this country are often highly self-critical but actually we have a remarkable record on research. We have three of the top medical academic institutions in the world in this country: Oxford, Cambridge and Imperial. We have UCLH, King's and Manchester. We have some extraordinary research organisations in this country. There is, I guess, an issue over quality and quality control. There are an awful lot of clinicians who do research that may not be to the—

**Lord Giddens:** I am sorry to give the Minister such a torrid time, but I hope he recognises that he should look internationally. There are important models in other countries, such as the Pacific Lung Health Centre, which is integrated with the wider lung foundation and has produced significant research. We should not just think nationally; we should look at other models and see how they could be adopted here to deal with the issues that the noble Lord, Lord Winston, rightly raises. As I tried to stress, mesothelioma shares things in common with other cancers and, now that we have got to a deep enough genetic level to be able to understand why some of these processes happen, I think it would be worth while to get some information on what exists elsewhere to see how far it could be applied here.

**Lord Prior of Brampton:** I agree.

12.57 pm

**Lord Alton of Liverpool:** My Lords, this has been at times a deeply moving debate, with some very stirring personal stories being told to your Lordships' House. It has also been thoughtful, amazingly well informed and, as the noble Lord, Lord Hunt of Kings Heath, said earlier, powerful at times in the way that we have addressed this deeply troubling issue. Some of the contributions, such as that of the noble Lord, Lord Winston, have been slightly above my pay grade, but I shall read them afterwards with great interest, as I know will many people, particularly in the asbestos victim support groups, the British Lung Foundation and others who campaign up and down the country on these issues.

I assure the Minister, who has given us what could be a small opening of the door on this question—I will come back to that later—that I brought no knuckle-dusters and I have no knives. Despite the curtain-raiser that the noble Lord, Lord McNally, gave us earlier, the reality is that when he was Minister at the Ministry of Justice he was incredibly helpful on this question when the LASPO legislation was before us. I still bear some of the scars from that period. Yes, I will persist in presenting this, though not just by myself; there are many people, as the noble Lord knows, not the least of whom was the late Member of Parliament, Paul Goggins, who took up this cause so strongly in the other place. As a curtain-raiser to assure the Minister that the issue is not going to go away, I can tell the House that

[LORD ALTON OF LIVERPOOL]

Paul Goggins's successor in the other place, Mike Kane MP, will be introducing a comparable Bill in the House of Commons in January.

This issue will not go away, and Members of both Houses want progress to be made. It may be that the formula in this particular Bill or the way we have expressed it is not exactly what needs to be done and there may be other ways of doing it, but it is important that something is done about it. That formidable alliance brought a defeat for the Government during the proceedings of LASPO. It was ping-ponged up and down the corridors, and was a very good example of how by concentrating on an issue which had not even been debated at earlier stages in the Commons, your Lordships were able to bring about change. The noble Lord, Lord McNally, said that perhaps the missing tail-piece in the legislation was a commitment to funding. Perhaps, therefore, we are right to keep returning to that issue until something is done about it.

The noble Lord, Lord McKenzie of Luton, was very much the godfather of the compensation arrangements that were introduced in the Mesothelioma Act. He reminded us that we are not seeking research whatever the quality, and that we need to make this a priority area.

The noble Lord, Lord Avebury, has been raising this issue for more than 40 years. I always like to think of him as the inspiration for some of the things I try to do in politics. Being just a chip off his block is sufficient. He reminded us that there has been woefully inadequate funding, no continuity, and only a fraction of the necessary resources.

My noble friend Lady Finlay, one of five medics of a very distinguished nature who have contributed to our debate today, said that this is an epidemic that is looming—not a historic disease—and, as many noble Lords have said, it has worldwide implications. She reminded us of the risks to our children, a point returned to by the Minister in his reply to the debate.

The noble Lord, Lord Winston, told us the story of Herbie, whom he had filmed during his death from mesothelioma, which drew to the public's attention more about this often unknown and unfamiliar disease. Even the name is difficult for people to get around their tongue, let alone to understand its nature. To shine a light on these things, as we have done in your Lordships' House today or through the media, is always an important thing to do.

The noble Lord, Lord Kakkar, said that this is a particularly nasty disease which we understand so little about. He reminded us of the crossover between this and so many other diseases and of the importance of personalised, precision medicine. He also reminded us of what happened during the debate on the Mesothelioma Act on the issue of precedent.

I want to say a word about precedent and levies, because the Minister himself touched on this. I refer to the HGV Road User Levy Act, the Gambling Act levy, the fossil fuel levy, the Gas Levy Act 1981, and the levy on the pig industry to eradicate Aujeszky's disease. Under Section 24 of the Betting, Gaming and Lotteries Act the levy board has a power to place a charge on all bookmakers involved in horserace betting, and Parliament requires a levy to be spent for the purpose of improving

the breed of horses. If levies are good enough for dealing with horse breeding or pig disease or indeed in this legislation itself—it is hypothecated legislation and that is the whole point: there is a levy, which the noble Lord referred to, which is to raise money to deal with compensation—we can refer to plenty of precedents if we want to follow this path.

The noble Lord, Lord Ribeiro, reminded us of the story of Steve McQueen, which helped to give this whole issue some public profile, but he also said that it should not just fall to two insurance companies to have to deal with this—a point which has been reiterated throughout the debate. He said that the levy could be the missing piece of the puzzle and that only research can answer the questions in that puzzle.

The noble Lord, Lord Wills, described this as a terrible and remorseless disease and reminded us of the moral duty of the insurance industry, a point returned to by the noble Lord, Lord Howarth, in his contribution. The noble Lord, Lord Wills, said that there is a clear ethical, humanitarian and financial imperative, and talked about the contrast between the £3 million for research and the £68 billion a year paid out by the industry.

The noble Lord, Lord Freyberg, and other noble Lords, have referred to their own personal stories, which I found deeply moving. They were a reminder to us all that this disease is not just confined to those who worked in heavy industries in the past. I felt challenged by what he had to say, particularly about the “toxic and ultimately futile” therapies which are currently available. Surely we can do better than that. The noble Lord, Lord Giddens, told us to raise our game and raise our sights. I am always excited when I talk to the noble Lord about the huge possibilities from supercomputers, from the collection of data and the worldwide networking that we can be involved in. The noble Lord, Lord Cormack, said that I had shown “youthful enthusiasm” in bringing forward this measure.

**Lord McNally:** Only in the Lords—

**Lord Alton of Liverpool:** It is only in the House of Lords that you could possibly be accused of youthful enthusiasm. I think it was Robert Kennedy who said that youth is not a time of life, it is a state of mind, a temper of the will, a quality of the imagination. Your Lordships all have plenty of that, to a very high degree, although the noble Lord, Lord McNally, reminded me that we first met in 1979 as we took the oath. We were both a lot younger then. We have sung in the same choir on many occasions over the years and I was very pleased that we were doing so again.

The noble Lord, Lord Cormack, said that we have a moral duty to future generations. This point was reiterated by the noble Lord, Lord Campbell-Savours, who referred to what happened to his father and the implications for those who continue to work on our ships, in the Merchant Navy or Royal Navy, today. My noble friend Lady Murphy told us about the 2.8 month survival rate and how nothing had improved from the time that her late father died, leaving a widow of 37 years. I will take that story away and remember it. The contrast with dementia research, to which she and the noble Lord, Lord Hunt, referred, is incredibly important.



The noble Lord, Lord Hunt, talked about the case for legislation as a backstop, and I agree that one does not want to resort to it as the first thing. This was the missing tail-piece when we had the chance to legislate, but the only way that parliamentarians can keep issues of this kind before the public, and the Government, is by issuing Bills of this sort. He said that the House is looking for something more. The Minister said that there may be a shortfall within the existing levy and, if so, it might be something we could use towards the research that is so desperately needed. I would be very happy to participate in talks with the noble Lord, and the noble Lord, Lord Freud, and I am sure other noble Lords who have been following this would want to be invited too.

There was argument about the figures. I quote from the British Lung Foundation:

“Contrary to some claims made previously in the House, the quality of research applications has been very high—indeed the number of applications funded by the British Lung Foundation would have been a third higher, had more funding been available. Although previous BLF and insurer research has made some progress and is a cause for celebration, it is frustrating to think how much further along we’d be towards new, effective treatments had mesothelioma research funding been on a par with funding for other cancers. It is sobering to consider how many lives that might already have cost”.

I also asked about the possibility of overestimates, a point referred to by the noble Lord, Lord Winston. On the contribution being made at the moment by the MRC, the BLF says:

“We believe this is a significant overestimate. Figures provided to us by the National Cancer Research Institute ... this year state that spending by all NCRI partners—which includes both the NIHR and MRC, as well as other major funders of cancer research—totalled just £820,000 over the same period”.

There is dispute but these figures have been given by the British Lung Foundation, which is at the very centre of these arguments and follows the issues day by day.

I hope the Minister will clarify those questions as we proceed. He has also promised to return to the issues of veterans, which was raised today, and schools. My noble friend Lady Finlay raised the issue of Wales and the noble Lord, Lord Hunt, pressed the Minister further for information about that. We look forward to the correspondence which will precede the debate in another place in January. I know that our colleagues there will read the speeches that have been made today with a great deal of interest. I am deeply indebted to all those who have participated and I ask the House to give the Bill a Second Reading.

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

## Planning (Subterranean Development) Bill [HL]

### *Second Reading*

1.10 pm

*Moved by Lord Dubs*

That the Bill be now read a second time.

**Lord Dubs (Lab):** My Lords, anyone looking at their newspapers will see, at frequent intervals, articles about basement excavations. Invariably they will describe

the anger of neighbours who are fearful of being subjected to noise and disturbance. If these basement excavations have not reached the parts of London where your Lordships live, there will not be long to wait at the present rate of progress—they are sweeping through from borough to borough.

In yesterday’s papers, there was an item about an application to build under a house in Primrose Hill—a pretty affluent part of London. The extension would stretch under much of the garden, and house a swimming pool, a plunge pool, two massage rooms, a sauna and a steam room. It would also feature, among other things, a Jacuzzi, a gym juice bar, cinema room, games room, bar, cigar humidor, wine store and banqueting hall. It must be tough living without these things in one’s home and I suppose that some of us are still learning to cope. My understanding is that such developments already require planning consent, so, although some of them are pretty awful and are appalling for the neighbours, my Bill is not aimed specifically at them.

My concern is directly mainly at basement excavations that do not require planning permission, leaving local authorities powerless to stop such developments. They come under what I think is called “permitted development”. If the basement excavation is within the footprint of the house and there is no light-well, it is a permitted development and the local authority is pretty well powerless to stop it. If I am wrong, I shall be delighted, but that is what local authorities have been telling people who have come to me complaining about developments in their area.

In the recent past, Private Members’ Bills have been introduced in both Houses dealing with this topic. As recently as September this year, my honourable friend Karen Buck, MP for Westminster North, put forward a Bill, as she has done on a number of occasions. A year or two earlier the noble Lord, Lord Selsdon, also put forward a comprehensive Bill. That resulted in certain undertakings from the Government but, as I understand it, so far nothing has happened, and the noble Lord will no doubt describe this in more detail when he speaks later on.

My point is that this is not a party-political matter; it has support across the political spectrum because we might all suffer, or our neighbours and friends may suffer. It may be seen as a Bill against millionaires, but that is not the intention; it is simply intended to give local authorities more powers than they have in certain circumstances. I am trying to protect those in many of the smaller houses.

There has been a positive epidemic—I use that word carefully—of basement excavations in recent years, and not just in Westminster and Kensington and Chelsea, which have attracted the most publicity. Now, they are extending to Camden, Hammersmith, Wandsworth, Lambeth and Richmond—and probably further. While walking here from my office in Millbank House, I spoke to a Member of this House. He apologised that he would not be able to take part in this debate, as he would have liked to have done so, but he confirmed that these excavations had reached Richmond.

The reason for the spread of these developments is pretty obvious. Given the rise in house prices, it is significantly cheaper to enlarge a house than to move

[LORD DUBS]

out and buy something bigger, with stamp duty and all the other costs that that involves. So the trend is likely to extend to other parts of London and elsewhere in the country unless checked by giving local authorities a bit more power in their areas.

All building work clearly disturbs neighbours. Nobody wants to have any building work next to them, but roof extensions or rear extensions are not nearly as disturbing as digging into basements, and I base that on evidence from people who have experienced it. Many people are very upset about the present situation, and I shall quote from what people have written to me:

“I live in a small road, where houses are close together. My two neighbours opposite and I are at home all day, working. In the last few years, three houses very nearby have had basement floors dug out. Ordinary extension building, roofing etc are shortlived. Basement digging is a truly industrial undertaking, and plunges everyone around into that world for 3-4 months, whether they like it or not”.

To my knowledge, it often takes longer than three or four months; builders start and they go away, and it goes on for a long time. I go on quoting:

“Unlike other building work, this creates a truly intolerable noise, which continues all day including Saturday mornings, (large generator, squeaking belt, lumps of earth falling into empty skip, daily skip deliveries, industrial scale material deliveries, scraping, shouting, banging, clamouring, clanging and general mayhem). This continues for 3 months or more. So far two summers and one winter have been made utterly miserable. In summer it has been impossible to be in the garden, or to have any windows open. The latest digging (next door) has obviously been the worst for me, despite windows being shut. I am rigid with tension, every activity inside my house is disrupted, including thinking: creating a catalogue of breakages, things forgotten, or abandoned in mid-stream. I am trying to ignore it all, and sometimes go out on pointless errands for an hour or so of peace, but am frequently in tears, or on the phone trying to support my elderly neighbours opposite”.

Another neighbour was trying to sleep in the daytime because she was in hospital every night with a sick child—she was also pregnant. She did not get any peace during the day.

Businesses can be affected. Recently, there was dramatic media coverage of the owner of a music recording studio who said that he would have to close his business if a neighbouring property has a basement excavated. So these things affect residential properties but they also affect people conducting business in the area.

The key point is this: I understand that “disturbance to neighbours” is not a reason for refusal by a local authority under present planning laws. That applies whether, in other respects, a planning application would be necessary or whether it is a permitted development and would not be. My Bill seeks to establish a new principle for local government planning: “disturbance to neighbours” should be a consideration that local authorities can take on board.

There is nothing novel in that principle. Take large infrastructure projects, which do not come under local authorities. For example, people living near the Crossrail construction spent a lot of time complaining, arguing and lobbying about the noise and disturbance that would be caused by the digging and ongoing work. The argument about disturbance is a key factor in the debate about a third runway at Heathrow and the effects of HS2. For large infrastructure developments we are prepared to say that local people can have a say.

For smaller things, such as basements—although they are not always small—in many cases local authorities do not have the power. In principle, there is nothing new in this, except that I apply it now to local authorities.

I believe that there is a need for new legislation. However, it has been put to me by the noble Lord, Lord Selsdon, who will speak later, that regulations might be sufficient. That may be the case, and I am open to persuasion.

Certainly, when I asked a Question on this subject earlier this year, the noble Lord, Lord Ahmad, said:

“My Lords, this Government consider that powers already available to local authorities are sufficient to control the planning and construction processes of basement development”.—[*Official Report*, 12/3/15; col. 753.]

I challenge any Minister to say that to people who are suffering. Tell them, “It’s okay; it’s all under control”—they will know that it is not.

The present position is sometimes misunderstood. Certainly, near me in Hammersmith, neighbours were complaining about a development and they misunderstood the position. They thought that the local authority could do something but the local authority said that it could not, for the reasons that I have said: the development was within the footprint of the building above and did not involve a light-well.

My Bill is not against all basement excavations. I argue that, in certain circumstances, there should be a presumption to refuse if certain things apply. The first of these is if the house is on a flood plain—maybe that is partly covered, but not totally. The second factor is terraced housing. If one has a free-standing house, it is quite easy because one does not disturb people so much and it is not going to damage the house next door. But with terraced housing, the concern is not just the disruption of the work but also the knock-on effect of having a basement dug and then cracks appearing in neighbouring houses. I am not sure that party wall agreements are sufficient to cover it—certainly, that is what people have told me and they suffer for years from the damage done.

As I have said, the presumption to refuse in my Bill applies if the development is on a flood plain, if it is terraced housing, if there is significant local opposition and/or if it would cause unreasonable disruption to neighbours—the last two are pretty well linked. These criteria would give local people a say in something that affects their lives. After all, the people who are not digging basements get no benefit from it, yet the people whose basements are excavated move away. They find somewhere else to live while it is going on; they do not suffer any of it. It is the people living next door who have to put up with the noise and the nuisance, and then the knock-on effect of possible damage to their building.

I have had people say to me, “We support your Bill so that others do not have to suffer as we have done”. I beg to move.

1.20 pm

**Lord Selsdon (Con):** My Lords, I am most grateful to the noble Lord, Lord Dubs, for his Bill because he has taken an enormous weight off my own shoulders. Four years ago I introduced a Bill in your Lordships’

House, having worked in the construction industry for some time, to look at development. We had one of the best teams that I have ever come across, from the Pyramus & Thisbe Club, which I am sure your Lordships will know well and was founded when a big building block collapsed and brought down Lloyds Bank. This was effectively the origin of the club, which looked at rules and regulations relating to development.

Your Lordships will be aware that this great building here, on Thorney Island, is built on not very much—logs of wood. Downing Street is, I believe, built on faggots, and the average depth of a building in the Greater London area is approximately 12 inches. So there is a problem with foundations. The purpose of my Bill was to introduce some regulations that could be followed voluntarily. We had great confidence in the Civil Service. We said, “Let’s not move on to having a Committee stage; let’s do this all by regulation”, because there was no need for any new legislation. However, what happened within the Civil Service when we sat down to meet was that people could not attend a particular meeting or another—we had a whole range of meetings—and no one got anywhere. All it needed was regulation.

That is where we are now. I should explain that I spent many years in the construction industry. My latest experience of a subterranean development is of minding my own business in our house in London—near to which eight subterranean developments are now taking place and I am not one of them—when the wall where all my confidential parliamentary papers were stored half-collapsed and a bald head appeared through the midst of *Hansard* documents. It was a Romanian builder, who with a hammer drill had by mistake hammered too hard and knocked down the party wall.

The point made by the noble Lord, Lord Dubs, about the lack of comfort that comes with development is pretty serious. You have a scene with television lines being ripped up, telephones going wrong and the vibration, and no bother and no regulations. So what is needed is regulations, and what I am going to ask the Government for is very simple: I will give them again a copy of this particular Bill and of the documents from the party wall team, which is one of the best you will find in the world, and ask whether we could have another meeting. Within a week or four weeks, we could produce the regulations which would solve all those problems.

I wanted today also to speak on the asbestos Bill, because I started my time in the construction world working for a company called Universal Asbestos—because asbestos was one of the best insulation materials of all—but having listened to what was said today, I think that I have survived so far so well and feel much better.

This could be done by regulation. We are talking of the underground situation in London—I will make available, if your Lordships wish, the routes of all the rivers and where they go from. Water became a problem because the foundations were linked to beer. When the breweries were in London, they consumed an enormous amount of water, and they pumped and sucked out and kept the subterranean surfaces from being damp. One of the reasons why foundations were not deep was because of the presence of water in all those areas.

I do not need to waste your Lordships’ time. I am totally supportive of the Bill and expect the Government, within a matter of weeks, to arrange to hold the meeting we originally planned two years ago. The details are all on file—if they do not wish to look for them I can provide them—and we could meet and do something before Christmas.

1.25 pm

**Baroness Gardner of Parkes (Con):** My Lords, my interest in this subject is long standing. It dates back to the time when I asked the then Secretary of State what his views were on subterranean development. His response was to ask what I was talking about. This was not surprising as he lived well outside London and, at that time, only London was impacted by the issue. Everyone now seems to have a view on basements. I certainly do and I am sorry to say that this Bill will not be helpful.

I strongly oppose Clause 1—“Presumption against subterranean development”—as it is not in the best interests of the public in general and homeowners and is the wrong way of dealing with planning applications. In addition, the part of the clause about the application being,

“reasonably necessary for the proper enjoyment of the property to which the application applies”,

is far too subjective. Why should councils not be able to deal with applications and applicants on an objective basis and under present planning procedures? Why should the applicants be subjected to intrusive inquiries about their lifestyles, and what is meant by “proper enjoyment”? At the very least, this clause should become objective.

A detailed construction management plan is essential for the granting of any basement application, and this must be submitted in full at the time of the application and before any attempt is made to commence. Like the noble Lord, Lord Dubs, I, too, know of people who have been awoken by the sound of neighbours drilling through their wall. There was no party wall agreement and they had no idea any development was proposed. The necessary agreement should be reached about waste removal by trucks, and minimal disruption to local roads and homes should be planned for. All work must be under the supervision of a suitably qualified engineer and the quietest available equipment should be used during the works. The noise nuisance element can badly affect neighbours whereas, as the noble Lord, Lord Dubs, said, the owner of the property is not usually in residence when the major excavations and noise take place because the house is uninhabitable then.

The two central London boroughs—Kensington and Chelsea, and the City of Westminster—probably receive more of these applications than other boroughs. They have implemented excellent guidelines and conditions for those wishing to build underground. I have studied the 54-page Westminster document on basement policy, which came into force on 1 November. It is comprehensive and I shall add a few more comments in a minute.

Kensington and Chelsea’s policy dates back to its acceptance in January 2015. It has been in operation for nearly a year, and there has been a considerable drop in the number of applications in that time—possibly

[BARONESS GARDNER OF PARKEs]

due to a surge of applications determined to beat the deadline. This morning I spoke to an officer of its planning department, who was clear that any presumption clause limits the right of a local authority to deal with applications in the way most relevant for its community. That is an important point. Why should local authorities not have control of these applications through the normal planning process, as now? Two boroughs have already set the scene by drawing up clear and definite conditions, which is valuable. I pay credit to Dr Thompson, a resident in Kensington and Chelsea, who did a great deal to draw attention to this and to gain the support of the local amenity societies.

Kensington has issued general criteria stating that it will look favourably on a development of a single storey along with 50% of the garden only if all the other conditions are met. Given that Westminster is now following suit, Kensington is probably the leading borough on basement applications policy. But, times have changed dramatically. When the noble Lord, Lord Dubs, mentioned large Victorian houses, I should say that I lived in one and, sure enough, I could have had a huge basement. But the first thing I did when I moved into the house in the 1960s was to move out of the basement because I could manage without it. Various nice people rented it from me and were happy to have it as their full dwelling. Those houses had plenty of space. It is the terraced houses that are more in need of extension into the basements because, on the whole, a family will occupy such houses fairly fully. As children grow older, they need a bit of space away from their parents, or indeed the general household may reorganise itself. Terraced properties are important, and the presumption against subterranean development is just too sweeping.

I should like to respond to the comment by the noble Lord, Lord Dubs, about angry neighbours. That is true, and it is typical that everyone is more concerned about what is happening on their own doorstep than they are about general principles. Permitted development is covered on page 11 of the Westminster document, where there is a chart with 29 boxes, set out in five different colours, which allow you to trace which requirements are relevant to whatever application you are making. The exact list is also set out on another page. It is essential that all these details be submitted with the application. It is not a case of putting in the papers and hoping to have done what is needed—or else get away with it.

I do not often agree with my noble friend Lord Ahmad, and I crossed swords with him when he was in the department dealing with this issue, but I did agree with his statement to the noble Lord, Lord Dubs. The present planning powers are sufficient if used correctly. I have mentioned terraced housing. Local people have a say now. Dr Thompson has done a huge amount to stir up local people to take an interest, but different things can happen. For example, the area I have just moved away from is unusual, in that it is not part of a conservation area but the houses on one side of the road back on to a square of listed buildings. On the business side of the single street, as I will call it, every building was rebuilt during the 10 years I was there, and now every one of them has an extra four storeys

on top—and probably beneath as well, but I do not know about that. But on the residential side, where I was, there is a little terrace of five houses. The terrace has been bought by someone who is going to redo all five houses because apparently, the council wants everything to match, so no one will suffer any inconvenience. But no upward development is allowed on that side of the road because that would impinge upon the listed buildings in the square. Those residents object to upward development, so it is a very unfair situation. If the developer is not allowed to develop downwards, there is no way of extending the properties at all, and yet the people in the listed buildings have all been allowed to add an extra floor to their properties. The situation is very strange.

Around the corner from where I used to live is a hotel, built for the Olympics, that goes six storeys underground. It caused no bother to anyone while it was being built and when you enter that part of the hotel, you have no idea that you are underground; it looks the same as any other part. These things are complicated, but it is important that before people start their developments, the planning application is considered and party wall agreements are in place. For that, I think that the powers are sufficient.

I shall make one more comment, because I am lucky enough to be able to speak for longer than the three or four minutes we had for some recent debates. I believe there is a misprint in the Bill. Clause 4(3) states:

“The Secretary of State may be regulations,

which I think should read, “may by regulations”. I look to the Minister to tell me whether that is really meant to be there, but I think it is just a typo.

As I say, I worry about presumption and I am opposed to it. The answer is to deal with these issues under the present system.

1.34 pm

**The Earl of Lytton (CB):** My Lords, I welcome the opportunity to discuss this Bill. I congratulate the noble Lord, Lord Dubs, on his success in the ballot and thank him for bringing the Bill forward. I declare my interest. As noble Lords know, I am a practising chartered surveyor and I am actively involved in party wall cases, including basements. I had the privilege of taking the 1996 party wall legislation through your Lordships’ House in my previous incarnation. I also chair my professional body’s specialist panel—the RICS Boundaries and Party Walls Panel—which covers this particular area. I participated in a consultative group set up by the Royal Borough of Kensington and Chelsea to look at its policy on basements. However, my views are entirely my own and not those of any other person or body.

A high proportion of my party wall casework involves basements. In London, that almost always involves terraced or semi-detached properties. The drivers behind all of this will be well known to many of your Lordships. Certainly, in central London what can be correctly described as an epidemic is deriving from very high residential floor-space values; for example, in central London, even at basement level, these are likely to be 10 times the value of above-ground floor space in my

part of West Sussex. There is a lack of remaining opportunities to build out at the back or above pre-existing roof heights because of planning constraints. I was interested to hear the noble Baroness, Lady Gardner, who has so much experience in this area, talk about the rather differential way in which some of these things are applied. Considerations such as daylighting and protection of what we might call the street scene above ground very often lead to pressures to go down as a last resort.

Of course, there is also the attraction of high and growing property values in the UK, particularly in London, to high-net-worth individuals or companies perhaps seeking a safe haven for money that might otherwise be lodged in less stable jurisdictions. But I particularly think of long-term existing residents, for whom the transactions and other costs, not least of stamp duty, of moving house in central London and a need to accommodate growing families are particularly acute.

The Bill perfectly legitimately addresses some of the most difficult areas commonly encountered to avoid them slipping through as permitted development. That is the nub of the issue. It does not say no to development but simply brings it within the conscious consideration of the local planning authority. That is an important distinction because, if the view gets out that this is anti-development per se, in terms of the Environment Agency's flood map alone there is a large amount of blue ink all around central London, particularly south of the river.

On the geotechnical side, where there are risks of flooding, ground-water, mentioned by the noble Lord, Lord Selsdon, is an associated matter. It is connected with infiltration, natural subterranean watercourses and ground-water migration routes, to which the noble Lord, Lord Selsdon, has drawn attention in the past. Deep basements in particular can intrude into ground-water dynamics. These schemes are often high-risk, involving demanding piling and other techniques on friable, unstable or waterlogged soils. Often, in urban environments, they are in incredibly tight spaces within the envelope of buildings.

On building stability—and I am particularly thinking of the terraces where so often I have been involved with such matters—the basement may be constructed effectively under a property which forms part of a larger hole, with shared structural elements such as party walls. An exacerbating factor is that the ground floors of terraced houses have often long since been opened up to make through-living accommodation, so that the living room runs from front to rear, including the kitchen and breakfast area, in one large open family area. Of course, that means that the original design criteria of the building are compromised because of the lack of internal rigidity—the internal webs of walls that would otherwise have held the walls apart. Although there are beams and other things that take account of that, it means that you are dealing with weaker structures.

Imagine, then, a situation where basement construction is taking place next door, with the potential implications. I have spoken to many consulting engineers who have been really quite worried about the implications of this. However, the same family of consultants can

readily justify the safe execution of basements, notwithstanding the demanding and constrained sites and difficult soils. I have seen this. However, it relies ever more on the diligence and knowledge of a building contractor. Once the building contractor is on-site, the project is then in a different regulatory regime. If the supervision that has been put in place under the contract is not robust, the only way it can be policed is if there is a breach of health and safety, or the local authority, through its building control functions, has it brought to its attention that something irregular is taking place.

I turn to the question of local opposition. The continued enlargement of residential buildings by excavating downwards eventually means that many modestly sized properties no longer fall into the category of “modest”. They may in relative terms, particularly in the London context, no longer be affordable. The term used is “iceberg homes”, where a sizeable proportion of the accommodation sits underground. Nobody should be arguing, and I do not argue, that basement construction per se is bad. After all, as we heard from the noble Baroness, Lady Gardner, many commercial buildings do this ab initio and have multiple basements constructed as part of the original planning. It is the problems and implications of widespread serial retrofit on existing, older technology construction that are the issue here.

I turn to amenity. Because of the popularity of basement construction and the difficulty and duration of its execution, residents in quiet streets can be subjected to construction works that go well beyond the norms of renovation, decoration and modernisation, to the point where it becomes a major construction project. I admit to being professionally involved with these as well. Excavating on tight sites through narrow frontages—sometimes necessitating loading of the excavated material and delivery of incoming materials in narrow, possibly one-way streets, with bins for loading and unloading stuff in the street itself and obstruction to access to adjoining properties and along the pavement—can be coupled with the inevitable noise, vibration, dust and dirt. A series of these projects in a street can, as I have seen, turn a quiet, leafy residential area into something akin to an industrial zone for perhaps a decade or more. That requires addressing.

Even were the Bill or provisions in it to become law or become subject to regulation, the current range of safeguards is not failsafe or comprehensive. Even policies such as those of the Royal Borough of Kensington and Chelsea can be circumvented in certain circumstances. Of course, appeals can overturn even careful wording. Many other planning authorities have less robust policies. I do not include Westminster City Council in that, nor the London Borough of Camden. The developer of a basement scheme does not now even have to go through local authority building control. It can go to some other, possibly favoured person as an approved inspector.

I have listened to a lot of tales recently of poor construction standards. Indeed, the firm I now work for has a lot of involvement with such things and so I know that construction standards are an issue. The Party Wall etc. Act 1996 has been referred to. This is often seen as the fallback when other regulation does not work. However, it has a very narrow focus and

[THE EARL OF LYTTON]

governs the manner and the timing of the execution of specific adjacent works within tight statutory parameters, but not the wider project as a whole. Furthermore, environmental health and other functions of planning authorities are often at full stretch and they have limited ability and resources, particularly those which may be needed when prosecuting a wealthy owner of a property.

Certainly, the Bill warrants further discussion in Committee. I have some reservations; for example, I would like the local opposition provision to be subject to something a bit more specific and more robust than the rise of some ad hoc ginger group pitched against a mega-rich oligarch. I would not want to encourage that. That said, I support much of the sentiment of the Bill, if not all the detail, and certainly look forward to discussing it in Committee.

1.46 pm

**Lord Marlesford (Con):** My Lords, I support the Bill, particularly Clauses 3, 4 and 5. I now have no interest to declare but do have an experience to relate. I have for 47 years lived in a small house in Battersea. The noble Lord, Lord Dubs, was for many of those years the most efficient and excellent local Member of Parliament responsible for my welfare.

Our house is a Victorian terraced house in what is now a conservation area. On 12 December 2013, out of the blue I received a letter dated 5 December from a junior planning officer in the planning department of Wandsworth Borough Council, advising me that my neighbour, who had recently bought the adjoining house, had applied for the construction of a basement and an extension over the very small gardens that these houses have at the back. The letter told me that I had to make any comments by 26 December. That gave me 14 days, including the Christmas holidays.

A couple of days later, I had a letter from a surveyor, telling me that he represented the new owner and that he intended to start work within a month—that was, early in January 2014. That suggested to me that the council had already indicated that planning permission would be granted, long before it got in touch with me. I had never met the new owner, or heard from him. I echo the great Dr Johnson, who said that he, “did not care to speak ill of any man behind his back”, but I had heard that he was a banker.

The council is supposed to post notices of planning applications in the street. It had omitted to do so: an omission consistent with the timescale it was trying to impose. My wife and I were really upset, especially when my neighbour’s surveyor then wrote to me saying that unless I appointed an independent surveyor to represent me, he would appoint himself in this role. Fortunately, our friend and neighbour on the other side of the developer is a charming and brilliant barrister. He leapt into action. First, we jointly appointed a wonderful planning surveyor, who held our hands from then on.

I may say that despite representations to Wandsworth council, it did absolutely nothing to help at any time. I never did discover what lay behind that extraordinary attempt to rush through the planning application.

And our own councillor—a Tory, I am ashamed to say—despite repeated applications, never found time to come and see us.

Fortunately, we were able to prevent the extension being built, which would have taken the light from the gardens, and although the inside wall of our ground floor room was cracked by the basement work next door and had to be reinforced with steel bars and redecorated, all is now well. However, we had a most unpleasant 18 months which I would have gladly paid several thousand pounds to have avoided.

I should add that during this worrying time I had a lot of advice and support from my noble friend Lord Selsdon, who I recognise as one of the leading experts in this area, particularly in this House. So your Lordships can see why I want to support the Bill proposed by the noble Lord, Lord Dubs.

1.50 pm

**Lord Kennedy of Southwark (Lab):** My Lords, I congratulate my noble friend Lord Dubs on securing this Second Reading for his Private Member’s Bill to day. I should declare that I am an elected member of Lewisham Borough Council and serving on the planning committee. Although subterranean development has not come before the committee as of yet, as my noble friend said, it may well be on its way very soon.

This development appears to have broadened out from being a matter largely confined to parts of Westminster and Kensington and Chelsea. As we have heard today, it is now being considered in the boroughs of Camden and Hammersmith and Fulham, and has crossed the Thames to Wandsworth and Lambeth. I can offer my noble friend Lord Dubs my support for his Bill, as it seeks to offer some protection to people from what is a relatively new concept of subterranean development. I first recall this development being discussed in your Lordships’ House during the passing of the Localism Act in the last Parliament.

My noble friend’s Bill is short and to the point. It places a duty in a presumption of not granting permission for subterranean development unless it is reasonably necessary for the proper enjoyment of the property to which the application applies, where at least one of four specific conditions apply. Those four conditions are: where the property falls within the floodplain; where it is a terraced house; where there is significant local opposition; and where there is unreasonable disruption to neighbours. I will deal with each of these in turn.

Floodplains can contain unconsolidated sediment and there are many rivers running underground in London. Earlier this year, I visited the building site at Victoria Tube station. I saw first-hand and heard from the engineers there about the problems of building underground and dealing with unconsolidated sediments, as they are so close to the River Thames. These sediments are just an accumulation of sand, gravel, silt and clay. The noble Lord, Lord Selsdon, made the point in his contribution about the foundations of buildings in the London area and very close to this noble House. With his professional hat on the noble Earl, Lord Lytton, also made reference to the foundations of buildings and underground rivers, and the effects those can have on any construction.

Terraced housing is a particular problem and a worry for owners of adjoining properties, who fear that their property's foundations could be damaged and undermined. I agree very much with the comments of the noble Lord, Lord Marlesford, on the problems he has had in his property in the Battersea area, where residents were not consulted properly, nor their views taken account of. I recall in our discussion of what became the Localism Act cases of this work being started and then, for whatever reason, the work stopped. The funds run out and people can be left with a dangerous situation, with a property excavated next to them and no proper form of redress.

Significant local opposition might be demonstrated by the submitting of a petition from local residents. The Bill would give the Secretary of State powers to make regulations to set out the circumstances in which a planning authority shall be deemed to have reasonable grounds to believe that there is significant local opposition to subterranean development. Finally, the planning authority may have reasonable grounds to believe that this development is likely to cause unreasonable interference to the use of land and its enjoyment by others. My noble friend Lord Dubs outlined the noise and disruption that people have suffered during basement excavations and how intolerable that can be. He is right that disturbance should be considered when looking at planning applications.

The noble Baroness, Lady Gardner of Parkes, made a number of important points that can be explored fully during Committee. We ought to get the balance right on procedures and regulations to make sure that residents are protected.

My noble friend's Bill does not say that permission cannot be given. Measures can of course be brought into play to mitigate each of the points outlined. However, by changing the presumption it means that specific and detailed work will have to be done before getting over the hurdles to have permission granted.

I have on numerous occasions stood at the Dispatch Box when discussing Private Members' Bills and suggested that it is not very helpful to the House or to the Member presenting them that all such Bills are referred to a Committee of the whole House, and that the Government should consider referring some Private Members' Bills to a Grand Committee. We could get a lot of detailed work done in Grand Committee and bring it back for Report. This Bill would in my view do very well with a day or two in Grand Committee. I hope that the Government will finally look at that.

When the noble Baroness, Lady Williams of Trafford, responds, it would also be useful if she would comment on the point made by my noble friend Lord Dubs about the relaxing of permitted development: has that actually made the situation worse, as my noble friend outlined? I also think that the Bill could be improved by including specific protection for residents if a subterranean development is approved. It may also be worth strengthening Clause 3 on terraced housing to include specific protection for the owners of adjoining property—perhaps specific insurance that protects individuals if the development goes wrong or work stops. That is really important. I would also like

the regulations to be very specific about the petition that needs to be completed to demonstrate support in the area.

The noble Lord, Lord Selsdon, says that what is needed is regulation. I very much hope that he is right. If he is and we can get it all sorted out by Christmas, everyone in this House will be absolutely delighted. I am sure that in her response, the noble Baroness will update the House on whether she thinks that that is achievable.

*1.56 pm*

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con):** My Lords, I start by thanking the noble Lord, Lord Dubs, for introducing the Bill to the House and for setting out its purposes. In response to a question from my noble friend Lady Gardner of Parkes, he confirmed that there is a slight error in the Bill, which I hope will be corrected.

I take most seriously the concerns that noble Lords have raised today. I declare an early interest in Primrose Hill, being one of its residents, but I assure the noble Lord, Lord Dubs, that I am not au fait with what has been dubbed the Death Star basement development—because I am probably not rich enough to live anywhere near it. I do not underestimate the disturbance and distress that subterranean development can cause. I know that it is a particular problem in some areas, including some London boroughs. As some noble Lords said, it is a problem that appears to be spreading out to areas such as Camden.

The issues around subterranean development can be very complex and cover many aspects of the planning and construction process. They include concern over noise and general disturbance, as well as the consistency and effectiveness of enforcement of existing regulations. The Bill before us is intended to prevent the granting of planning permission for subterranean development where certain specific conditions apply, as the noble Lord set out. However, as noble Lords, particularly my noble friend Lady Gardner, have said, we must recognise that subterranean developments can, where appropriate, provide much-needed additional family accommodation without leading to lasting visual effects from the development.

It is often when the works are in progress that the issue of concern to neighbours arises. The noble Lord, Lord Dubs, my noble friend Lady Gardner of Parkes and the noble Earl, Lord Lytton, pointed that out. Clearly, the public expect effective and responsible management of developments and swift action when things go wrong. My noble friend Lord Marlesford mentioned people drilling through his wall, so I apologise for not mentioning him before.

Existing legislation already provides for that, and local authorities have a wide range of powers under the statutory nuisance regime set out in the Environmental Protection Act 1990. I hope any other noble Lords who have problems in this area will contact the local authorities and, should they need to refer to me, I would be very pleased to hear—or, rather, not very pleased to hear—of any particular problems arising. Used correctly, I think they can address some of the problems that we are considering today.

[BARONESS WILLIAMS OF TRAFFORD]

Local authorities can adopt local planning policies by which planning applications for basement developments will be determined, reflecting the specific priorities of the area. This would allow for consideration of the impact of the proposed development. On comments made by my noble friend Lady Gardner of Parkes, they can condition individual planning consents to restrict hours of working and limit noise and disruption. They can also publish—and they should publish—codes of conduct for responsible contractors. Local planning authorities are required to undertake a formal period of public consultation prior to deciding a planning application, which anyone can respond to, in particular those who may be directly affected by the proposal. My noble friend Lord Marlesford referred to the Christmas period—and other noble Lords raised it as an issue—by which developers sneak in planning applications, hoping that they will not be noticed.

As for the time for consultation under party wall issues, under the Party Wall etc. Act, building owners must serve notice on adjoining owners of at least one month before the work begins. Again, the owners have 14 days to reply; if a reply is not received, a dispute is deemed to have arisen, and surveyors will need to be appointed to draw up an award. The period for making comments on a planning application is not and should not be less than 21 days.

On flood risks, the *National Planning Policy Framework* sets out strict tests to protect people and property from flooding which all local planning authorities are expected to follow. This states that inappropriate development in areas at risk of flooding should be avoided. Planning practice guidance supporting the framework is clear that basement dwellings should be classified as highly vulnerable development in terms of flood risk; as such, they are inappropriate and should not be permitted in areas with a high probability of flooding, and allowed only exceptionally in areas with a medium probability of flooding. When nationally set permitted development rights apply, we have ensured there are powers for local authorities to be able to remove them, through the making of an Article 4 direction, with reasonable limits on compensation liability. This brings development under the local authority's control. When planning permission is granted, local authorities can condition consents to restrict hours of working and limit noise and disruption to neighbours. In addition, they can address noise and other potential nuisance from construction sites. A number of noble Lords brought that up.

The Control of Pollution Act 1974 ensures that local authorities can enforce on matters such as equipment type—that has been brought up today—hours of working, and acceptable noise levels, in accordance with a code of conduct approved by the Secretary of State for the Environment, Food and Rural Affairs. Similarly, local authority environmental health departments are able to act, under the statutory nuisance regime set out in the Environmental Protection Act 1990, when there is excessive noise and other nuisance.

The Party Wall etc. Act 1996 applies to most basement developments. In such cases where a dispute arises, it is important that a detailed and thorough party wall agreement between a building owner and a neighbour

is prepared, to ensure that all parties are clear on the detail of the work being carried out, the time and manner of executing any work and the arrangements for resolving any disputes, including compensation in some cases. The noble Lord, Lord Selston, asked about updated guidance. We updated our guidance on the Party Wall etc. Act in January 2015 to make it easier to use and to provide additional information on the role of surveyors and on matters to take into account in making a party wall agreement. That was the second update of the guidance. The Basement Information Centre has also published guidance on basement developments.

Once development is under way, all works need to comply with the Building Regulations 2010 and relevant health and safety at work legislation. Work on basements also needs to be carried out in accordance with the Construction (Design and Management) Regulations 2015. Buildings that become structurally unsafe while building work is being carried out can be dealt with under the provisions in the Building Act 1984, which allows local authorities to act where there are dangerous buildings.

The Health and Safety Executive's guide for small builders on safety issues during basement work, which was published in 2012, will also help ensure excavation works are carried out safely. In addition, by carrying out safety checks at sites where works are under way, the HSE continues to ensure that any breaches of the legislation are identified and quickly acted on. Many local authorities, such as Kensington and Chelsea, which has been mentioned, produce guides or supplementary planning documents on basement development to ensure that householders and their neighbours understand the processes and consents required for basement development. This will be complemented by our work with the Basement Information Centre to augment the guidance it provides about the construction of basements to cover the concerns that have been raised about them.

Some very specific questions were asked. I will attempt to answer them. The noble Lord, Lord Dubs, asked whether basement extensions can be carried out under permitted development rights. They can; a recent court hearing found that. The general permitted development order includes permitted development rights for house extensions within specific parameters. It does not explicitly include basement development, but it is not excluded. The court cases have included basement development within the GPDO's permitted development rights for house extensions. Where such rights apply, a local authority can consult on removing the permitted development rights through issuing an Article 4 direction.

The noble Lord commented that the Party Wall etc. Act is not sufficient to cover damage caused by basement development, for example, cracked walls. Under the Party Wall etc. Act, a building owner must pay compensation to adjoining owners for any loss or damage caused by the works, but that would be between the two parties concerned.

The noble Earl, Lord Lytton, talked about structural weaknesses. Basement developments are required to meet the relevant requirements of the Building Regulations 2010. This means that the person in control of works will have to submit plans or give a notice to building



control about the development to enable the works to be inspected by the local authority building control or a private sector approved inspector. The building inspector will have to be satisfied that the basement structure complies with the relevant requirements of the regulations.

The noble Lord, Lord Kennedy, brought up a number of issues that noble Lords raised but asked for a specific comment on whether permitted development made basement development worse. Permitted development covers lower-impact development, not the megabasements that we are talking about, such as the Death Star one in Camden. Where local authorities are concerned, they can consider removing permitted development rights through an Article 4 direction.

The noble Lord also talked about developments where the money runs out before the work is finished. Under the Party Wall etc. Act, adjoining owners can request building owners to carry out work under the Act to make available such security as agreed, for example, insurance that would ensure that all the work would be done.

**Baroness Gardner of Parkes:** On that point, it is important to have on record that it is essential that the builder and the other party must both be recorded as being part of that policy. Where the claims have arisen, the builder has just said, “No, sorry, I’ll just go into liquidation”, and you have no right to claim on the policy. People should be aware of that.

**Baroness Williams of Trafford:** My noble friend makes a valid point. With that, I hope that what I have said offers reassurance to noble Lords that where there are particular issues regarding basement developments, there are already existing provisions through which they can be addressed. I conclude by thanking the noble Lord, Lord Dubs, and all other noble Lords who have taken part in this Second Reading debate.

2.10 pm

**Lord Dubs:** My Lords, I am grateful to all Members of the House who contributed to this debate. I must say that I thought I had done my homework quite well but I learned a lot about some of the issues from the comments that were made—which shows how useful it is to have a Second Reading.

Perhaps I could refer to one issue that I do not know how to handle. My noble friend Lord Kennedy on the Front Bench said that he thought a Committee of the whole House was a blunt instrument—although those were not his words—and that a Grand Committee would be better for dealing with this sort of Bill. I am not sure that I have the powers to change anything; I am merely dealing with the bit of paper I was given. I think that he is right, but I will have to deal with that outside the Chamber.

I am moderately unhappy after this discussion. First, the noble Lord, Lord Selsdon, who has done a lot of work on this, still believes, if I am quoting him correctly, that a lot of this could be achieved by regulations. I am not totally clear from what the Minister said that regulations are quite the way forward, although if it were possible then of course it might deal with some of the difficulties.

I have known the noble Baroness, Lady Gardner, for a long time. We sat on opposite sides of the chamber when we were councillors in Westminster, so I am used to having little disagreements with her. I thank the noble Earl, Lord Lytton, who sent me the Kensington and Chelsea guidelines this morning, I have had a brief chance to look at them. I agree that the guidelines are very interesting. I am grateful to the noble Baroness for having mentioned them because they are certainly helpful, and I hope that other local authorities will take note.

I understand her argument that the smaller your house, the more you need to build a basement—I think that is what she said in relation to terraced housing. That is okay as far as it goes. The trouble is that the smaller your house, the more likely you are to disturb your neighbours and have a damaging effect on them, so it works both ways. I am also grateful to the noble Baroness for spotting a printing error, a typo. I feel embarrassed about that and can only apologise unreservedly.

I listened with great interest to the speech of the noble Earl, Lord Lytton. He certainly is an expert and I wish that I had had a couple of hours’ discussion with him before this debate. What he said bears a lot of thinking about. He referred to ground-water and to trying to improve provisions for local opposition, and I agree that they need to be spelled out in more detail. He was also very supportive in what he said about the structural difficulties of terraced housing. Not very far from where I live in Hammersmith there is a basement excavation going on, and I got some of my information from neighbours who told me how much they had suffered.

I was delighted with the contribution made by the noble Lord, Lord Marlesford. I thank him for the compliment that he paid me, but that is by the way. The experience that he described is exactly—to the letter—why I put this Bill forward. I could almost call it “the Marlesford Bill” because what he said and the accurate way he described it reflects what I have been told by people in a similar position. Unfortunately, local authorities have not always proved as helpful. The Kensington and Chelsea guidelines for local authorities set down ground rules that applicants should talk to neighbours and have a discussion with them to try and get agreement. That is pretty good stuff but local authorities do not do that, so in this respect Kensington and Chelsea is certainly ahead of the game.

Turning to the Minister, I had no idea that she lived in Primrose Hill, otherwise I would have been more circumspect. I did not for a moment assume that the house was hers. However, I hope that she is not too close to it, because if this proposal goes ahead, she will suffer.

The issue that I have not resolved in my mind is this. Unless Article 4 directions are easy and not too costly, it seems that we are still in the difficulty that where some basement excavations require planning permission, with all the safeguards that local authorities have the right to apply, covering hours of work, noise levels, and so on—although I am bound to say that if one shortens the hours of work, one extends the period of

[LORD DUBS]

weeks or months when it goes on, so it is not a total benefit. But a lot of the concerns that I have expressed are about permitted developments, where local authorities have said, as they did in Wandsworth and to my friends in Hammersmith, that there is nothing they can do. Article 4 did not come into it; if Article 4 is simple and straightforward, that may be the answer, but if it is more difficult than that, I am afraid that it will not help much.

Lastly, as regards party wall agreements, the problem is that some of cracks develop after everything has been signed off. It can happen much later, possibly through ground-water and so on. So although party wall agreements may be fine within the period they cover, people who suffer damage to their properties may go on suffering it for a great deal longer.

May I bowl a fast one at the Minister? Could she arrange for some of us, before we get to Committee, to have a meeting with some of her officials to talk about this? Would she be agreeable to that?

**Baroness Williams of Trafford:** Yes, I would be very happy to meet the noble Lord and others who may be interested in this area.

**Lord Dubs:** I am sorry—I should have warned the Minister that I was going to ask her that question. However, that would be helpful, because some issues may be better resolved if some of us could have such a meeting than if we simply put down a series of amendments in Committee, which may not be a subtle enough way of doing it. Having said that, I hope that the House will give the Bill a Second Reading.

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

## Junior Doctors Contract Statement

2.17 pm

**The Parliamentary Under-Secretary of State, Department of Health (Lord Prior of Brampton) (Con):** My Lords, I shall now repeat as a Statement the Answer to an Urgent Question given in another place by my right honourable friend the Minister of State for Community and Social Care on negotiations for a new junior doctors contract. The Statement is as follows.

“Three years ago negotiations began between the BMA, NHS Employers and the Department of Health. This was based on a common view that the current contract, agreed in 2000 when junior doctors were working very long hours, was outdated and needed reform. Between December 2012 and October 2014 an extensive and patient negotiation took place with an agreed target date for implementation of August 2015. These were abruptly terminated by the BMA’s unilateral withdrawal from those negotiations without warning in October 2014. This led to the independent and expert doctors’ and dentists’ review body being asked to take evidence from all parties, including the BMA, on reform of the contract and to make recommendations. This happened because of the unwillingness of the BMA to agree sensible changes

to the contract and allowed an independent expert body to recommend a way forward.

The DDRB report, with 23 recommendations on the junior doctors contract, was published in July this year. The Secretary of State then invited the BMA to participate in negotiations based on those independent recommendations. Unfortunately, the Junior Doctors Committee of the BMA maintained its refusal to negotiate even though it was now on the basis of an independent report to which it had had an input. Both the Secretary of State and NHS Employers have invited the BMA repeatedly to participate in negotiations. It was made clear that there was a great deal to agree based on the DDRB recommendations.

We deeply regret that the BMA chose the path of confrontation rather than negotiation. While we continued to try to persuade it to develop a new contract with us, it instead chose to campaign against the independent DDRB’s recommendations including issuing a calculator, which it subsequently withdrew, which suggested wholly falsely that junior doctors would lose 30% of their pay. Instead the BMA issued demands, including a right of veto on any contract change, and was in effect asking us to ignore the DDRB’s recommendations, the heads of terms that were agreed back in 2013, and start again. Given the BMA’s refusal to engage and its wholly misleading statements about the impact of a new contract, NHS Employers issued a contract offer to juniors earlier this month. This offer has safety at its heart, strong contractual safeguards to ensure that no doctor is required to work more than 48 hours a week on average, and gives juniors the right to a work review when they believe hours are being exceeded. It reduces the maximum hours that a doctor can work in any week from 91 to 72. It pays doctors an 11% higher basic pay rate according to the hours that they work, including additional payments for unsocial hours. It reduces the number of consecutive nights that can be worked to four and long days to five, ending the week of nights.

The honourable lady has called for the parties to go to ACAS. The Secretary of State is not ruling out conciliation. We have always been willing to talk. The Government have repeatedly appealed to the BMA to return to the negotiating table and that offer is still open. We believe that talks not strikes are best for patients and for junior doctors. The Secretary of State has said that talks can take place without preconditions other than that an agreement should be within the pay envelope, but the Government reserve the right to make changes to contracts if no progress is made on the issues preventing a truly seven-day NHS, as promised in the manifesto and endorsed by the British people at the last election. It is regrettable that junior doctors have voted for industrial action which will put patients at risk and see between 50,000 and 60,000 operations cancelled or delayed each day. I would, therefore, call upon the honourable lady to join the Government in calling on the BMA, as it prepares for unprecedented strike action, to come back to the table for talks about the new contract for junior doctors. The Government remain firmly of the view that a strike by junior doctors is entirely avoidable and calls upon the BMA to also do all it can to avert any action that risks harm to the patients we all serve”.

2.22 pm

**Lord Hunt of Kings Heath (Lab):** My Lords, I am grateful to the noble Lord. The fact that we are here today, with 98% of junior doctors having voted to take significant industrial action for the first time in 40 years, is a matter of very serious concern to the NHS and its patients. Does the Minister agree that, over the course of the next week, everything that can be done should be done to stop the three days of planned industrial action? The *Guardian* this morning says that the noble Lord, Lord Prior, has urged on the Secretary of State the need for a settlement. Will the noble Lord confirm that? Will he also say why the Secretary of State appeared to dismiss the idea of independent mediation yesterday, has said today that they have not ruled out conciliation, but has again set preconditions, including the imposition of a contract? I have been bemused by the Secretary of State's approach. Does he understand that the junior doctors are particularly angry about the way the Health Secretary has repeatedly conflated the reform of the junior doctors contract with seven-day services, including the highly selective and misleading use of statistics which has been disowned by the very authors of the research he quotes from?

Junior doctors already work weekends; they already work nights. Why on earth are the Government picking a fight with the very people who are so crucial to keeping the NHS running? There are nine days left before the first day of planned industrial action. I have one message for the Minister: it is time to talk.

**Lord Prior of Brampton:** My Lords, the noble Lord said that this was a serious concern. It is a tragedy that we are in this situation. Of course I want a settlement, as does the Secretary of State. The last thing we want is a strike. We want the junior doctors to come back to the negotiating table and not to go on strike. The only people who will suffer from a strike are patients. I cannot believe that there are many junior doctors who want to go on strike, so it is in all our interests to find a settlement, and the Secretary of State, myself and others are very keen that we do so. The Secretary of State has made it absolutely clear that there are no preconditions, save that we settle this issue within the existing pay envelope. The door is open to the BMA to come back for talks at any time.

**Lord Fowler (Con):** My Lords, is my noble friend aware that in 1982, when I was Health Secretary, there was lengthy industrial action not involving doctors. When I went to St Thomas' Hospital over the river, I was met by a deputation of doctors protesting at the damage that was being done to the health service. It is the successors of those very doctors who are now threatening industrial action. Should we not all, quite irrespective of party, condemn industrial action, which will damage patient care? Should we not also recognise that this action is not just against the Government? It also involves the rejection of the independent doctors' and dentists' remuneration review body, which is valued and respected throughout the health service and which doctors over the years have pressed to have. Surely we are faced with a failure of BMA leadership in this case, and the obvious course is to go back to the negotiating table very quickly.

**Lord Prior of Brampton:** I agree entirely that industrial action is the last thing that any of us want. I have worked with trade unions of one kind or another off and on since 1980—for 35 years. I think that the Junior Doctors Committee of the BMA is behaving in an extraordinary fashion.

**Baroness Finlay of Llandaff (CB):** My Lords, can the Minister say how sincerely the Government are considering going to ACAS, which, as far as I understand it, is acceptable to the BMA Junior Doctors Committee, and can he explain why there is resistance to doing that? Given the threat of terrorism that we now face, have the Government assessed the impact and the security that would be needed on the strike days both in the event of a terrorist attack on the population at large, when those who are well versed in managing it will not be working, and in the event of a terrorist attack specifically targeted at demonstrations by junior doctors, when they will be injured and the hospitals will be empty?

**Lord Prior of Brampton:** The Secretary of State has said that he is open to conciliation. Frankly, it would be so much better if we could sort this out ourselves rather than go to conciliation, but he has said that he is open to it. If there is a terrorist attack, speed will be of the essence if people are severely injured. Junior doctors care hugely about their patients, so I think we have to rely on junior doctors to be available in hospitals in the event of some awful terrorist outrage, even if they are on strike. I will certainly draw the attention of COBRA and the relevant authorities the question of the impact of terrorism on a demonstration by junior doctors.

**Baroness Barker (LD):** My Lords, if, as appears to be the case, the Government's proposals discriminate against junior female doctors who take time off to have children or against doctors who devote some of their time to research, will the Government be prepared to reconsider their proposals?

**Lord Prior of Brampton:** I probably did not make the situation clear enough. The Secretary of State said that there are no preconditions. If there are concerns about time off to have children or to carry out research, those are absolutely the kinds of issues that should be discussed around the table.

**Baroness Wall of New Barnet (Lab):** I declare an interest as chairperson of Milton Keynes Hospital. Where in all this are we talking about patients? I am not going to enter into any discussion about who should be doing what. I spent this morning at Milton Keynes Hospital with my chief executive, medical director and all the consultants discussing this. I obviously associate myself with everybody's plea that this does not go ahead, but if it does, how are we going to ensure that our patients get the best possible experience? I am equally surprised that the Minister has not referred to the letter from Sir Bruce Keogh, which went out to the chairman of the BMA and provided us with many opportunities. I am anxious that the Minister understands that the prime thing in this is patients. Whatever we have to do, patients need to be looked after.

**Lord Prior of Brampton:** I completely agree with the noble Baroness. I am not going to stand here and be sycophantic about the Secretary of State for Health, but the one thing he has prioritised above all else since he has been there is patient safety and patient quality.

**Lord Ribeiro (Con):** My Lords, Sir Terrence English in his excellent article in the *Telegraph* made the point that medicine is a vocation and doctors who enter the profession should recognise that patients always come first. The Armed Forces do not go on strike and neither, I believe, should doctors. On the issue of preconditions, in response to a question from Sarah Wollaston in the other place, the Secretary of State made it clear that there are no preconditions. I have looked at *Hansard*, and that is what he said. There are no preconditions and the BMA should recognise that and go back to the table.

**Lord Prior of Brampton:** My Lords, the threshold for strike should be very high because of the vocational and professional dedication of doctors. Certainly, the threshold should be higher than it usually is for pay and conditions issues such as the one before us today.

**Lord Winston (Lab):** My Lords, I deeply regret the tone of the statement. I understand that that is not the responsibility of the noble Lord, Lord Prior. I also respect very much his attitude, which is, I think, respected by the whole House. We have to say very clearly that this is an unprecedented situation. I do not think the nature of how junior doctors feel is understood. Already, there are more doctors in medical schools looking at going overseas—they are actually asking me whether they should be working in this country. The key issue is one we discussed in today's earlier debate: the backbone of a good NHS is the good research we do. Research is massively threatened by what the Secretary of State is proposing. That has been emphasised by Jeremy Farrar, who, after all, is a very independent person as head of the Wellcome Trust. Would the Minister be kind enough to address that issue?

**Lord Prior of Brampton:** I agree. It is tragic that we are in this situation. My son is a medical student and I meet many of his friends; they do not want to be in this position. Concerns have been raised about whether junior doctors will have time to do research or will lose out on their progression if they do. That should be discussed and argued out with the BMA sitting around the table.

## Direct Planning (Pilot) Bill [HL] *Second Reading*

2.33 pm

*Moved by Lord Lexden*

That the Bill be now read a second time.

**Lord Lexden (Con):** My Lords, I beg to move that this Bill be now read a second time. I am deeply grateful to those noble Lords who will be speaking in today's debate and to my noble friend the Minister,

who will reply to it. I am also grateful to many other noble Lords from the Government, the Opposition and the Cross Benches who have expressed support for or interest in the Direct Planning (Pilot) Bill but cannot be here today.

I stress the range of interest that this Bill has attracted in order to emphasise its strictly non-partisan character. It builds strongly on the well-established principles of neighbourhood planning, and on the Localism Act 2011 passed by the coalition Government. That Act's neighbourhood planning components were largely supported, I think it would be fair to say, by the Labour Party. Indeed, last year, the Labour Party called for an extension of neighbourhood planning. This Bill represents such an extension and would pilot a practical way in which communities could channel support more effectively to the types of new housing that they want.

The Bill has also attracted interest and support from a wide range of civic society organisations which have day-to-day experience of community planning. These include Civic Voice, the Historic Towns Forum, the Prince's Foundation for Building Community and Create Streets, to which I am particularly indebted since it helped craft the Bill.

I think that it is neither controversial nor surprising to say that the need to build more housing in a socially acceptable fashion is one of the gravest political challenges facing parts of modern Britain today. When the neighbourhood planning process was started some years ago, many optimists supported it, but many pessimists decried it as nothing more than a new way for communities to prevent new housing. I am happy to say that the optimists have been proved right. A whole new national movement has been called into existence, with more than 1,600 English communities taking the initiative and starting to produce neighbourhood plans.

Communities are, on the whole, for more housing, not less. As the Minister for Housing and Planning reported only the other day, the 100 areas which have now voted on their neighbourhood plans have on average voted for 10% more housing. This Bill seeks to harness the energy of this emerging movement to help build more new housing of the types that local communities prefer and will support. Most people do not like, in urban areas, the type—typically, flats—with its lay-out, its arrangement with few “normal” streets, or its style of too many new homes. In a survey conducted for the Royal Institute of British Architects in 2009, two-thirds of British adults said that they would not even consider buying a newly-built home. Other surveys have indicated that more than twice as many people prefer older homes to new ones. Research by Create Streets shows that most British citizens crave a “sense of place” that so much contemporary housing just fails to provide.

The highly supply-constrained nature of British housing means that most value attached to land comes from getting it zoned for housing or by securing planning permission. The approval of planners and the compliance with a not small bible of codes and regulations tend to trump what people want in the built environment. So what actually gets built, what

most easily wins planning permission, often does not match what people like. In a recent poll by Create Streets on what types of housing people would wish to be built near them, 87 % said that they preferred homes that were clearly conventional in design. Of the 13% who preferred less historically-referenced buildings, 43% worked as planners, architects or in the creative arts.

The process of consultation as currently required and practised too often descends into a PR sham exercise which creates public mistrust and opposition to new housing. For example, Derrick Chung, chair of the West Hendon Residents' Association, last year told a session of the London Assembly housing committee:

"The decision-making process for the regeneration of West Hendon was a consultation that was an ultimatum: you either take it or there is a bus going that way. We were not allowed to take part in the decision-making process".

A 2014 research exercise by the Prince's Foundation for Building Community consultation reached the same conclusion. It found:

"In several recent examples in London we have encountered a justifiable scepticism about the validity and intent of "consultation" exercises. Too often the real choices being given to communities are superficial ('where would you like the trees?') and the subsequent presentation of evidence is carefully chosen to underplay the overwhelming level of discontent or opposition".

Interviewees were asked how much they valued consultation and how it could best be done. A very strong preference emerged for consultation from the start, as opposed to the end, of the development process; this scored 87 out of a possible 100.

The good news is that people are far more prepared to support new housing when they are genuinely, not belatedly or superficially, consulted. There are different ways of achieving this, leading to better, more popular, more highly valued development, with no loss of speed in carrying it out. They involve sitting down properly with local residents at the start of the process, not just asking carefully selected questions at the end of it. This is the so-called charrette process incorporated in the Bill to secure wide local participation. Charrette, an attractive French word meaning a cart or chariot, has now been harnessed to describe a most important process of local consultation.

There are numerous examples of this approach leading both to better and more widely supported development. Dave Smith, the former director of the East London Community Land Trust, which helps secure popular support for more housing in east London, has said:

In several recent examples in London we have encountered a justifiable scepticism about the validity and intent of "consultation" exercises. Too often the real choices being given to communities are superficial ('where would you like the trees?') and the subsequent presentation of evidence is carefully chosen to underplay the overwhelming level of discontent or opposition".

They are more effective if they use design codes—a set of agreed rules for what things will look like—in order to create more certainty than the current system permits. Design codes define the range of possible scales, shapes, materials, lay-outs, urban forms and styles of development in a certain area. This means that a community view can continue to exert influence beyond an initial development, permitting a strong, clear definition of how a city will function and appear.

A 2006 assessment by the Government compared 15 different design codes with four non-coded approaches. Conducted by Professor Matthew Cremona of University College London, it found:

"Significantly, where codes are being implemented on site, schemes have been delivering enhanced sales values and increased land values. When set off against the up-front investment, this to a large degree, determines the value added by coding, at least in crude economic terms".

As the pioneering work of the community group Look! St Albans shows, it is entirely possible for neighbourhood forums and groups to work up design codes. Activity of this kind will be further supported and extended by a most valuable tool kit which the Prince's Foundation is currently testing.

So that is the context in which this modest, but I hope significant, Bill is being brought before the House today. Its aims are to improve the character of local consultation in order to empower what citizens want; to extend and enhance the progress that has been made by neighbourhood planning; to encourage more building and more popular support for building; to reduce the cost of planning by engendering more popular consent; to increase the speed of building; and to make it easier for people and communities to influence what gets built.

The first main element of the Bill, which is set out in Clause 1, involves strategic planning. The Secretary of State would be placed under an obligation to authorise pilot schemes to enable local residents acting through neighbourhood forums or community organisations within designated areas to participate more directly in developing planning policies. Residents would be able to develop form-based design codes which would provide a set of rules to define how buildings and streets will appear and function in their neighbourhoods. They would also encourage revitalisation of popular and walkable neighbourhoods.

Clause 1(4) would establish a pilot fund of £2 million from existing DCLG funds to support neighbourhood forums in developing form-based design codes for future developments in their neighbourhoods. Under Clause 1(5) residents would be able to bid for grants from the fund under a rolling application system up to a total of £100,000.

The second main element of the Bill, embodied in Clause 2, involves development control to bring about the participation of a much wider cross-section of society for strategic development projects via the charrette process. A charrette is defined in Clause 2(5) as,

"a collaborative series of meetings conducted over a period of less than four weeks between those who have an interest in development in a designated area including but not limited to developers, architects, residents, local businesses and community groups and unincorporated associations, for the purpose of developing and agreeing to a master plan for a particular development".

The third main element of the Bill, which also finds expression in Clause 2, concerns estate regeneration. Provision is made for fully supported charrette approaches to estate regeneration in contrast to the current standard protracted and inadequate consultation exercises. There is an enormous opportunity to regenerate unpopular, unviable post-war estates by creating traditional streets of houses and medium-rise flats at higher densities. Clause 2(1)(b) and (4) require councils or registered

[LORD LEXDEN]

social landlords embarking on an estate regeneration to fund and support the creation of neighbourhood forums of residents and neighbours working together via a charrette through inquiries by design. Form-based design codes, as defined in Clause 3, that resulted from the process would have the same status, although set out in more detail, as neighbourhood plans. They would require support in a local referendum in the same way as neighbourhood plans.

The fourth main component of the Bill, provided for in Clause 4, involves budgeting to permit and encourage local planning departments to aid neighbourhood forums. At present, the £8,000 available to neighbourhood forums is rarely sufficient to manage and run the consultation process unless material pro bono professional time is given. This has resulted in most neighbourhood plans coming from middle-class communities. There is a widespread perception that some local planning teams are antagonistic to community planning. New funding arrangements could turn that relationship around so that local planners start to be dependent on communities, not threatened by them.

Clause 4(4) earmarks 5% of every council's planning budget to support local neighbourhood forums. In order to unlock this fund, local council planning departments would have to provide support to neighbourhood forums or community development teams and submit evidence to show that they were doing so. Local authorities would be allowed to spend all the money allocated to them for local planning purposes only when they have received evidence of practical and effective support for neighbourhood forums and community groups. The Secretary of State would be required by regulations to make rules to determine what types of evidence are acceptable. In the absence of such evidence, 5% of the money allocated for local planning purposes would be distributed as a rolling grant to support the work of neighbourhood forums or community groups.

It is right that a Bill like this should be modest in scope. It has been conceived as a cost-neutral pilot and has a sunset clause, Clause 6, which would take effect after five years. Those who are experts in this area of policy will recognise that elements of the approach set out in this Bill might sit well alongside the "permission in principle" clauses of the Government's new Housing and Planning Bill.

In conclusion, if the research evidence on which this Bill is based and if the ideas that inspire it were by one means or another incorporated in planning policy, I venture to suggest that we would not just build more homes in this country, we would do so with more popular support. Is that not an aim for which we should strive? I beg to move.

2.49 pm

**The Earl of Lytton (CB):** My Lords, it is a great pleasure to follow the noble Lord, Lord Lexden, and to be able to take part in this debate. I profess no real expertise in this and I am extremely grateful for the briefing from Create Streets, in what was an inspirational document. My declarable interests are in the past—my involvement with the National Association of Local Councils and its Sussex County Association, as a

former trustee of Action in rural Sussex, and with the Sussex Rural Community Council—but also currently as a vice-president of the LGA and through my professional work, particularly in so far as I advise owners and others of potential development sites at community scale. I am also a member of the All-Party Parliamentary Group for Excellence in the Built Environment, chaired by Oliver Colville MP. I had the privilege to serve under the noble Baroness, Lady O'Cathain, on the ad hoc Select Committee on National Policy for the Built Environment. I gained some particular insights from those, but I do not speak as a representative for either.

The construct of placemaking has been a long-growing feature. The term may be modern, but it was clear to me from my years working in the West End in the early 1980s that a sense of identity and belonging were themes in estate agency jargon, as they were in the reality of association with place and community. That it encompassed the social, physical, economic and administrative facets was evident even then.

I am a strong advocate of community and neighbourhood engagement and empowerment. I have a preference if not a prejudice in favour of the parish council model as a lead organisation, as it is based on a statutory foundation for its existence, with a clear structure, independence, and democratic and financial accountability as the first tier of local government. But in metropolitan areas, parish councils are almost entirely non-existent, as the noble Lord, Lord Lexden, well knows. I am also an advocate of further planning devolution to community level—something often resisted by principal authorities.

The question about what is special about a locality is often subsumed, as the noble Lord said, in a stock-take of assets—strengths, weaknesses, opportunities and threats—frequently of a spatial rather than a societal nature. Placemaking operates on a number of different levels. It particularly requires a small number of visionary, committed and knowledgeable individuals who will galvanise and lead that process of placemaking in the context of neighbourhood plans and the other tools available. I agree with the noble Lord that neighbourhood plans are in a sense mired in the circumstances in which they come to be created. Revitalising and galvanising that process and driving it forward as the business-planning process on behalf of the community is what the Bill is all about. I welcome design statements, which are often rather flat and sometimes negative in their sentiments, being lifted out to a better state and the whole thing being better funded.

The physical dimensions—spatial layout, design, attraction and so on—are no less important to placemaking, but they sit alongside the property economics, durability, security, local history and collective memories of events, and that sense of pride and a feeling of ownership of processes that bring it about and foster and maintain it. Viability is always a key point in this and I know that there are differences of opinion on what viability might mean when it gets to the bottom line—a matter that has been much under scrutiny. In parallel with that, what actually counts as quality in terms of the built environment? So often, we have seen so-called landmark developments that have not stood the test of time. If we are to deliver not just

any old housing, business space or civic space but rather places to live, work, enjoy and be proud of in 40, 60 or 100 years' time, we need a different model from what is it effectively a very short-term, expedient system. I cannot think of many communities that would not love to have an across-the-board upgrade to the attractiveness of their area and their property values, and the sense of belonging and societal cohesion that goes with that.

The proposals in the Bill go well beyond current practice and would vest in communities a far wider group of toolsets than has customarily been used or been available to them. I am particularly interested in business as a significant stakeholder in this. I believe that the Bill, or something like it, will incentivise action and bring critical assessment and analysis of a process to a wider range of people than would customarily be privy to the rather opaque—I was going to say murky—planning system that we currently have, with all its policy and other constraints. The fact that the principles, such as charrette, have been tried and tested in other environments and found to work means that, as a pilot—bearing in mind that that is what it sets out to put in place—this is a Bill whose moment has come. It is time to put it into wider action.

The Bill will require wider commitment in situations where the incidence of taxation or the way in which things are handled by other administrative organs of the state can cut across what would otherwise be a necessary and desirable fast-tracking of the operation. It has to be designed in such a way that there is buy-in to the principle by all sectors of government, not least ones such as HMRC. I am particularly pleased to see that the Department for Communities and Local Government appears to be on board with that. The Bill is well worth supporting. I look forward to further discussion in Committee.

2.57 pm

**Lord Kennedy of Southwark (Lab):** My Lords, I congratulate the noble Lord, Lord Lexden, on securing a Second Reading for his Private Member's Bill. I should also say at the start of my remarks that I am an elected councillor in the London Borough of Lewisham and I serve on the planning committee of that authority. The Bill has the support of these Benches. We wish it well and a speedy passage through your Lordships' House.

The Bill essentially seeks greater support for the involvement of local people in the planning process through use of charrettes, form-based area codes and neighbourhood planning. It seeks to get people involved in the planning process in a positive way to find the best solutions for their local community. A charrette is a technique used in planning for consultation with stakeholders. It can be intensive and mean multiday meetings involving planners, developers, businesses and local residents. It is about seeking agreement on the way forward in a more collaborative way.

The Bill states that charrettes must be included in estate regeneration programmes. I very much welcome that. I grew up on the Aylesbury Estate in south London and I can confidently say that if we had had a consultation and community involvement programme like a charrette, as outlined in the Bill, then all the

streets of houses would not have been knocked down to build the estate in the 1960s. The noble Earl, Lord Lytton, talked about landmark developments that do not stand the test of time. The Aylesbury Estate won awards. People came to visit it from around the world in the 1960s. Of course, we know what happened there in the end.

As a family we were very happy on the estate and the design of the property inside was actually very good. The problem was the environment outside the estate. You had no interaction with your neighbours as you would have if you lived in a street. I remember as a child they talked about having walkways in the sky, where you could walk from Peckham because all the council estates would be linked up. You would not have had to cross a road until you got to Elephant and Castle. Thankfully that never came to fruition and these estates are either being knocked down or have undergone transformational work to make them more acceptable to live in. That means that we basically bring streets back into these areas.

In the 1980s, I recall talking to two former councillors in Southwark who said how proud they had been to announce the building of all these new homes, but then how quickly it had all gone wrong. Of course, that story was repeated all over the United Kingdom in the 1960s and 1970s. What is being built in place of these estates is newer homes with a much more traditional street design or small blocks of flats with proper security measures and a door entry on to the main road. I am confident that that will produce better and happier communities and will be much better than what was there before.

Form-based area codes are a means of regulating land developments, producing predictable results and a high-quality public realm by using physical form as the organising principle with a lesser focus on land use, and can produce more consistent and predictable patterns of development in the public realm. There are good examples of that as well.

As I said earlier, I am a local councillor in Lewisham and represent the ward of Crofton Park. We have begun the process of setting up a neighbourhood forum in that ward. That takes a lot of work and can be challenging, but I am very much of the opinion that it will produce better outcomes for local people as they are more fully involved in the planning process rather than being spectators. For many years we have had an awful development site covered with pink hoarding which we have never been able to sort out. Indeed, we have spent years trying to sort it out. It has been the centre of battles between local residents and various developers. If we had had a charrette, we could have dealt with that problem much more quickly than we finally managed to do earlier this year.

I am pleased that the Government Chief Whip is present. I am sure that this Bill will receive a Second Reading but there will then be 11 Private Members' Bills waiting for Committee stage. They will all be Committees of the whole House. But then those Bills will struggle to get any further. Will the Government Chief Whip consider putting some of these Bills into Grand Committee? It can be done. I have asked the Clerk of the Parliaments whether that

[LORD KENNEDY OF SOUTHWARK] can be done and it would move the Bills on much further. I hope that the Government Chief Whip will consider that.

**Lord Taylor of Holbeach (Con):** It is the custom that, after Second Reading, Bills have a Committee stage of the whole House. But, of course, if no amendments are made, it is perfectly possible for those Bills to proceed.

**Lord Kennedy of Southwark:** That is absolutely right; that is the custom. However, we certainly could move these Bills into Grand Committee. I have had a long conversation with the Clerk of the Parliaments but I will leave it there. However, I keep making the point that there are some very good Private Members' Bills that could be moved along much quicker if we wanted to do so.

In conclusion, I again congratulate the noble Lord, Lord Lexden, on his excellent Bill and hope that he will get a positive response from the noble Baroness, Lady Williams of Trafford.

3.02 pm

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government (Baroness Williams of Trafford) (Con):** My Lords, I begin by thanking my noble friend Lord Lexden for setting out the purpose of the Bill, and for his interest in promoting community engagement in the planning process and in supporting high-quality design in the built environment. I also thank my noble friend for providing the Government with an opportunity to set out their position on a very important issue.

First, I express the Government's recognition of the good intentions behind the Bill and note the work that Create Streets undertakes to promote high-quality design in new development. We strongly support empowering communities in shaping new developments in their area in a way that reflects local need, and in improving the design of new homes. Of course, this Bill comes at a time when local support for housebuilding has doubled in the last few years from 28% in 2010 to 56% now, while opposition has commensurately halved.

There are millions of hard-working people for whom the aspiration to own their own home is becoming further out of reach. This is a result of the decades-long failure to build enough houses. I am sure that noble Lords will agree that a fully functioning and efficient housing market is vital for meeting the aspirations of working people and raising the productivity of our country. That is why we are committed to encouraging home ownership, building homes that people can afford to buy and supporting all areas of the housing market. And how we do this is equally important. We need to deliver more new homes of good quality with well thought out design, and which are built quickly and efficiently.

I have absolutely no doubt that good design has a fundamental role in the success of boosting housing supply, which is critical to improving affordability. Community-led processes can change perceptions and involvement in planning and development more widely. I therefore wholeheartedly support the Bill's aim of

improving the quality of new development and encouraging closer engagement with the local community on the design of housing schemes. Like my noble friend, we want to see new homes and places that communities can be proud of and, as other noble Lords have said, that stand the test of time.

The Government have put in place a robust framework that supports high quality design. The National Planning Policy Framework is very clear. Good design is a key aspect of sustainable development, is indivisible from good planning and should contribute positively to making places better for people. Our planning guidance has a strong focus on design, and supports the use of a range of planning processes and design tools to help achieve good design. We also ask local planning authorities to have local design review arrangements in place in order to provide assessment and support to ensure high standards of design.

We are encouraging high-quality design through our ambitious housing programmes, whether it be the starter homes initiative, new housing zones or our work on larger sites such as Ebbsfleet. The Minister of State for Housing and Planning has also created a design advisory panel, involving leading figures from the design and architecture sector, to set the bar on housing design across the country. I am very pleased to say that Create Streets has a place on the panel and is able to play an active part in driving up design quality. However, as my noble friend points out, local communities can be very reluctant to accept new development in their area. One of the reasons for this is poor design—soulless development that will destroy the character of their area. This is something that must be changed. It is therefore important that local authorities and developers work with communities to ensure that they get the quality of new housing development that they want.

The Government have continued to devolve power to local people. Through the Localism Act 2011, we introduced neighbourhood planning. This put control over development back into the hands of local people, enabling them to play a much stronger role in shaping the areas in which they live and work. As my noble friend also noted in his speech, more than 1,600 communities across England are now engaged in the planning of their areas through neighbourhood planning. That represents more than 8 million people in 68% of local authorities. We also marked the 100th neighbourhood planning referendum in October.

As part of a neighbourhood plan or order, there is also extensive and ongoing community engagement led by the communities themselves. Indeed, many communities are already being highly imaginative in how they engage in shaping the development of their areas. For example, in the inner-city area of Heathfield Park in Wolverhampton, those preparing the neighbourhood plan needed a way to engage those living on the local estates. Working with local specialist manufacturers, they produced a 3D model of the area and its buildings, alongside models of proposed new developments. The models of existing buildings allowed people to understand the impact of development and the power that they had to shape it, and inspired high levels of engagement with the neighbourhood plan.



Through our £22.5 million support programme for neighbourhood planning over the next three years, funding is available to neighbourhood groups that wish to participate in shaping the development of their areas. More than £2.8 million in grants has been awarded to such groups since March. Neighbourhood forums, many of which are in deprived urban areas, want their neighbourhood plans to include policies on designs or to produce masterplans. They can also apply for funding to receive technical support. This also applies to parish and town councils that are classed as priority groups. These forums, any other neighbourhood group or even a local planning authority are able to prepare a design code if they so wish. Indeed, as my noble friend is undoubtedly aware, national planning policy and our planning guidance encourage design codes where they can help to deliver high-quality outcomes. Furthermore, local communities have a say in how community infrastructure levy funds raised in their area are spent. For example, communities that draw up a neighbourhood plan will benefit from 25% of the levy that arises from the development that takes places in their area.

The Bill would require a specific form of engagement through conducting a charrette, or inquiry by design process, wherever a significant number of new homes is proposed. Charrettes are certainly a useful tool for engaging communities in development proposals that affect them and they are widely used in Scotland. But they are only one tool in the toolbox that is available, and it should be for local areas to decide which tool is most appropriate for them. Up and down the country we are seeing a range of innovative approaches, including charrettes, being used to engage communities on different proposals. For example, in Uppingham in Rutland, communities have been trialling Community VoiceBox, which is a new approach for guiding the design of housing development in local areas. In Bordesley Green in Birmingham, Accord group has been using the Planning for Real tool with the local community to identify the community's priorities for the local area, building on local knowledge, skills and networks.

We also recognise that the best estate regeneration projects actively involve local residents, so that the new homes and the area are redeveloped to meet local needs, provide well-designed and high-quality new homes and reflect a sense of community identity. In the New Union Wharf development in Tower Hamlets, the developer, East Thames Group, ran a mini-competition for ideas for the future of the estate, facilitated resident training, visited other projects and opened up meetings where residents identified what they wished to change and the priorities for the new development. A residents' future group was set up, subsequently holding monthly open meetings, which engaged with the developers. In

the Grahame Park estate development in Barnet, there has been extensive community engagement and consultation over several key stages. This has taken the form of community events and workshops, newsletters, an interactive design website, drop-in sessions, a full master plan and a full ballot about the final proposals. The aim has always been to ensure full community participation and buy-in.

Those examples alone demonstrate that a range of tools is already available, and we firmly believe that the specific process of engagement should not be prescribed centrally. We do not believe that the Government should legislate to require local authorities and developers to undertake specific processes.

We recognise the good intentions behind the Bill, but feel the community groups already have the powers to achieve its aims. Design codes are already a legitimate tool that local planning authorities and neighbourhoods can use to shape design in their area. Communities can already and should continue to be able to engage with development proposals in the manner that they see is most appropriate. It is not for government to prescribe the method by which communities should engage with proposals in their area. Given that, I must express my reservations with regard to the Bill. However, I conclude by adding that if my noble friend would find it helpful, my departmental colleagues and I would be very happy to meet him to discuss the potential for further practical non-legislative measures to improve community engagement in the design of new development schemes.

3.12 pm

**Lord Lexden:** My Lords, I have been greatly heartened and encouraged by the support—indeed, enthusiasm—with which the Bill has been greeted. I am profoundly grateful to the noble Earl, Lord Lytton, and the noble Lord, Lord Kennedy of Southwark, who expressed with enthusiasm the Labour Party's support for the Bill. I am of course grateful to my noble friend for setting out the Government's thinking so fully and clearly. I would very much like to take up her generous offer and look forward to doing so.

This short but important Bill bears upon one of the great issues of our time. In 1950, Churchill said:

“Upon good housing depends the health and happiness of every family”,

in the land. I ask the House to give the Bill a Second Reading.

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

*House adjourned at 3.14 pm.*





---

## CONTENTS

Friday 20 November 2015

<b>Regulation of Political Opinion Polling Bill [HL]</b>	
<i>Order of Commitment Discharged</i> .....	383
<b>Mesothelioma (Amendment) Bill [HL]</b>	
<i>Second Reading</i> .....	383
<b>Planning (Subterranean Development) Bill [HL]</b>	
<i>Second Reading</i> .....	427
<b>Junior Doctors Contract</b>	
<i>Statement</i> .....	445
<b>Direct Planning (Pilot) Bill [HL]</b>	
<i>Second Reading</i> .....	449

---