Vol. 850
No. 231

Friday
5 December 2025

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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The following abbreviations are used to show a Member's party affiliation:

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

No party affiliation is given for Members serving the House in a formal capacity or for the Lords spiritual.

House of Lords

Friday 5 December 2025

10 am

Prayers—read by the Lord Bishop of Hereford.

Retirement of a Member: Lord Stone of Blackheath

Announcement

10.06 am

The Deputy Speaker (Lord Russell of Liverpool) (CB): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble Lord, Lord Stone of Blackheath, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House, I acknowledge the noble Lord's contribution to the work of the House.

Dogs (Protection of Livestock) (Amendment) Bill

Third Reading

10.06 am

Motion

Moved by ***Baroness Coffey***

That the Bill do now pass.

Baroness Coffey (Con): My Lords, the farming community will be delighted that so many Peers are here for the Third Reading of this important Bill. Livestock worrying has devastating consequences for both animals and farmers, and it can be horrific, causing brutal injuries that are tragically often fatal. There are instances of stress causing pregnant livestock to miscarry, and separation of mothers and their young, leading to hypothermia and starvation. This modest Bill will modernise the Dogs (Protection of Livestock) Act 1953, ensuring it reflects the needs of modern-day farming. It will strengthen police powers so they can do their job more effectively, giving them powers of entry and allowing them to seize and detain dogs and collect evidence. At the moment, collecting evidence tends to rely on the good will of the owners of the suspected dog.

I was contacted this week by the noble Baroness, Lady Mallalieu, who I see is in her place, about a concern passed on to her—that the word "paths" in Clause 1(a) might be interpreted as referring only to footpaths, bridleways or similar. It is important to make it clear that "paths" had its ordinary meaning, and I intend to do that. Anyone who has driven on country roads will know that farmers move livestock. The Bill specifically extends the scope of the provisions so that they do not apply only to a field a farmer may own or where livestock are kept; it recognises that agricultural practices often involve animals being transferred from one field to another. The current legislation does not apply where animals are crossing a road and a dog is out of control, or in other sections that are not a specific field. In recognition of that, the Bill includes roads and paths as locations where an offence may take place. That will give farmers greater reassurance when moving livestock. I understand that "paths" will have its ordinary meaning. I hope that reassures the noble Baroness, and I am sure the Minister will confirm that in her response.

This Bill originally started two years ago, in December 2023, when I took it through the Commons as an MP. My noble friend Lord Colgrain stood ready last year to take it through this House, and then the election was called. I want to thank the new Defra Ministers, who recognised the importance of this issue and ensured it became a government hand-out Bill. That has allowed it a good passage. In particular, I thank Aphra Brandreth, who picked up the Bill shortly after becoming a newly elected MP in Cheshire and who navigated it through the Commons. I thank the NFU and all those who made multiple representations from right around the country. I particularly thank the officials from Defra, who have been working on this for a considerable time. This Bill is a straightforward way to make sure we help our farmers, whose primary role is to grow food to put on our plates. They should not be worrying, literally, about other people's animals worrying their livestock. I beg to move.

Lord Colgrain (Con): My Lords, before there are any Front-Bench responses, I would like to add my thanks to your Lordships' House and the other place for the speed and constructive nature of the passage of this Bill. As I said at Second Reading, I have borne personal witness to horrible dog attacks on sheep, for which this Bill will make dog owners more accountable. The farming community is facing strong headwinds at the moment, and this small and seemingly innocuous Bill will provide, when it receives Royal Assent, the best possible Christmas present to all livestock owners.

Baroness Mallalieu (Lab): I would like to add my voice to praise the noble Baroness, who has pursued this Bill for some considerable time, and to express gratitude both to her and to the Minister for allowing it to pass. From grateful sheep owners and dog owners everywhere: thank you.

The Earl of Effingham (Con): My Lords, I thank the noble Baroness, Lady Coffey, the first female Deputy Prime Minister in British history, for her work on the Bill, which embodies the steadfast Conservative commitment to farmers. We should also flag the many organisations that have campaigned for and been instrumental in delivering reform in this area. His Majesty's loyal Opposition is fully supportive of the Bill, which is a long overdue update to the law and of genuine benefit to rural communities such as the one that I live in.

The Bill will, among other measures, extend the powers available to the police to enforce the law against incidents of livestock worrying. With an estimated 34,000 such incidents every year across England and Wales, this issue is of key concern, not only because of

[The Earl of Effingham]
the significant financial costs but because of the distress it causes to farmers, who truly care for the animals in their keep and who have to bear both the emotional and monetary scars.

The Bill also includes new protection for the 45,000 alpacas and llamas, whose UK population continues to grow. They will now be afforded the same protections as other livestock under the 1953 Act. By enhancing powers of enforcement, encouraging responsible dog ownership and securing justice for those negatively impacted, the Bill delivers for both farmers and their livestock. We commend the Bill to your Lordships' House, and we look forward to seeing it complete its final stages.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Baroness Hayman of Ullock) (Lab): My Lords, I am very grateful to all noble Lords for their contributions and support for the Bill during its passage through the House. I particularly thank the honourable Member for Chester South and Eddisbury for introducing this very important Bill in the other place—and, of course, the noble Baroness, Lady Coffey, for successfully guiding the Bill through this House, and for keeping at it.

I am pleased that, as we have heard, the Bill makes important changes to strengthen police powers and increase fines as a deterrent, as well as expanding the law's scope to include incidents on camelids. On roads and paths, the noble Baroness, Lady Coffey, mentioned that she had received an email from my noble friend Lady Mallalieu. To clarify, the ordinary meanings of "road" and "path" are broad. We would expect the courts to interpret "road" or "path" broadly to include things like tracks, so that they do not have the narrow meaning the noble Baroness was concerned about.

The passing of the Bill is clearly important for our farmers and their livestock. Its strength and provisions will send a clear message that livestock worrying is a serious offence, and that responsible dog owners must be accountable. The provisions will serve as a deterrent but also restore confidence among farmers and members of rural communities, many of whom live in fear of the devastating impact of such incidents on their livelihoods and the welfare of their animals. The Bill is a truly meaningful step forward in our commitment to animal welfare and to those who work tirelessly to sustain our agricultural sector. I look forward to seeing the positive impact that it will have.

10.14 am

Bill passed.

Pension Schemes Bill
First Reading

10.15 am

The Bill was brought from the Commons, read a first time and ordered to be printed.

Arrangement of Business
Announcement

10.15 am

Captain of the Honourable Corps of Gentlemen-at-Arms and Chief Whip (Lord Kennedy of Southwark) (Lab Co-op): My Lords, as I have done on previous days, I will make a short statement about proceedings today before we start Committee. Everything I am about to say remains in line with how business usually would move forward, and how it has done so on the previous two days of Committee. The Government Whips' Office distributed an updated list of groupings to noble Lords yesterday, and my noble and learned friend Falconer of Thoroton has set a target for today's debate.

The Government remain neutral, but I highlight that we only considered three groups in the two previous days, with only one group debated on the last sitting Friday. I hope that noble Lords can make much greater progress today to ensure that a wider range of important amendments can be scrutinised in the time available. I remind noble Lords that there is significant public interest in the Bill, and there are strongly held views both for and against it. It is right that all sides undertake detailed scrutiny, but also that we seek to make much more progress.

This is Committee, so participants in the debate should address their remarks to the amendments under consideration and not make long Second Reading speeches that go way beyond the substance of the amendments being debated. This should help us make progress at Committee.

Many times before, when standing at this Dispatch Box as Government Chief Whip, and previously when standing at the opposite Dispatch Box as Opposition Chief Whip, I have stressed the importance of the *Companion* to assist us in our debate, and I do so again today. In particular, I refer noble Lords to page 143, point 8.81, which makes it clear that noble Lords should not

"summarise or repeat at length points made by others",

nor "make 'second reading' speeches", and that the points made should be relevant to the amendments being discussed. Furthermore, point 8.82 on page 143 says that, when withdrawing amendments, noble Lords should be brief. We also do not take interventions on interventions. If a noble Lord is intervened on, it is for brief questions of clarification, not a speech. Point 4.29 on page 60 makes that clear for all Members.

I am sure that all noble Lords will want to show the House at its best. I urge all noble Lords participating to continue to debate the issues before the House with the usual courtesy and respect that we all expect, and not to let themselves or the House down by doing anything other than that. As I did on the last sitting Friday, I remind the House that the microphones in the House are sensitive. A noble Lord should take care with conversations and remarks made in the Chamber that they would not want broadcast live. If noble Lords wish to speak to other colleagues, please do so outside the Chamber to avoid disrupting the debate. I recommend the Long Room, the Peers' Guest Room and the Royal Gallery as ideal places to go.

Finally, to help colleagues in planning their day, I expect the House to again rise at a convenient point around 3pm. It could be slightly before or after that, but proceedings will end around that time. I will return to the House this afternoon to make a further statement to help colleagues conclude the debate.

Lord Falconer of Thoroton (Lab): I thank the Chief Whip for his statement. I also express the gratitude of the whole House, especially those involved in this, for the work done by his office, in particular by Michael Bleakley, in tabling groupings in a very difficult situation; I pay tribute to him. We have approximately seven days left to get through Committee, which I believe we can do with good will. For my part, that means that I must ensure that I demonstrate and listen to the concerns of this House, which I will do.

Terminally Ill Adults (End of Life) Bill

Committee (3rd Day)

10.19 am

Relevant documents: 32nd and 36th Reports from the Delegated Powers Committee, 12th Report from the Constitution Committee, Report from the Terminally Ill Adults (End of Life) Bill Committee

Clause 1: Assisted dying

Amendment 4

Moved by ***Baroness Berger***

4: Clause 1, page 1, line 6, leave out "18" and insert "25"

Baroness Berger (Lab): My Lords, my Amendments 4, 249, 257, 304, 337, 446 and 448 raise the eligibility for the provision of assistance under the Bill from 18 to 25.

There is no reason, either in law or in principle, why we should assume that 18 is the right age for eligibility for an assisted death. It is not only an arbitrary starting point; it is contrary to the mounting evidence of when the brain is fully formed, which I shall come to in just a moment. When I asked the Children's Commissioner, Dame Rachel de Souza, whose role it is to promote and protect the rights of children and young people, what she thought of 18 being used as a cliff edge for eligibility under the Bill, she answered:

"The reality of life on the ground, as those of you who work with health will know, is that 18 is not really a thing … when it comes to the most vulnerable, that is extended to 25".

She went on to say:

"I think that we are missing a trick by thinking somehow 18 is the cut-off. I really do strongly think that. I would like the committee to consider that".

Noble Lords will be aware that there are a range of existing circumstances where 25 is already seen as a threshold to adulthood, instead of 18. This is particularly relevant when we consider vulnerable young people with a terminal illness, whom we need to consider in this legislation—lest we forget that children are not currently mentioned in the Bill.

The point was forcefully made to the Select Committee. The Children's Commissioner said:

"They are the children I am worried about: children with special educational needs, children who are already in hospital with life-limiting diseases, children who have EHCPs—education, health and care plans—that provide support for them until the age of 25. The reason they do that is that they are vulnerable, whether it is mental health concerns, whether it is because they have had terrible lives and might have all sorts of problems, including suicidal ideation. It is a real concern".

Noble Lords will know that local authorities are responsible for preparing and maintaining EHCPs for children and young people with special educational needs up to the age of 25. Our local authorities have a statutory responsibility for young people up to this age, particularly those in care and those with special educational needs. It was more than a decade ago that the Department of Health, in its document *Future in Mind*, recommended an extension of child and adolescent mental health services up to the age of 25 to end the practice of discharging young people out of mental health services at 18.

In the context of criminal justice, I am mindful of the words of the noble and learned Lord, Lord Falconer, himself, who said in his speech in 2021 on the Police, Crime, Sentencing and Courts Bill that a whole-life term should never be imposed on an offender aged 18 to 20 but only on "somebody unequivocally an adult". I hope that he will agree with me that death is not a less weighty matter than life in prison.

We have heard concerns during the progress of this Bill from experts who work with teenagers and young adults that it will be safer and more in line with the evidence to raise the minimum age for assisted dying to 25. It is by this point that the brain is more fully developed and decision-making capabilities are more secure. In general, the brain does not finish developing until a person is in their mid-20s, which is particularly the case for the prefrontal cortex, which governs our decision-making functions and our ability to think flexibly about potential outcomes.

Noble Lords may have seen research announced only last week by the University of Cambridge which suggests that the brain is fully developed only in our early 30s. I believe that we are here to make good law, and one way we do this is to listen when experts speak and to take their counsel. The simple fact of having enabled experts to give their evidence to this House over recent months does not amount to adequate scrutiny if that evidence simply languishes on the pages of *Hansard*, instead of being used to shape our work.

Of course, I know that an assisted death would be available only to young people with a six-month prognosis, but we know that it is not always accurate. It is, as I have learned, particularly difficult to get right with young people, who can go on to live for years beyond an initial terminal diagnosis. In its written evidence to the other place, the charity Together for Short Lives wrote:

"We are concerned that the requirement for an accurate prognosis to be provided for a person to be considered as 'terminally ill' may result in ambiguity when considering the eligibility of young people with life-limiting and life-threatening conditions whose prognosis is uncertain. Whilst the majority of adults only need palliative care at the end of their lives, many young people with

[Baroness Berger]

life-limiting and life-threatening conditions require palliative care over a much longer period, often from birth or even in the womb. During this time, it is common for their conditions to fluctuate, meaning many young people may experience relatively long periods of stability. It is therefore much more difficult to provide an accurate prognosis and identify when a young person is moving towards their end of life stage".

Together for Short Lives also recommends that under this Bill we consider how those aged 18 to 25 with EHCPs—education, health and care plans—will be affected.

The Bill as it stands is at risk of pushing young people with life-limiting conditions into thinking that reaching the age of 18 means that they are not obliged to consider whether they should continue to live or not. What does this say about how we value their lives?

We also cannot ignore the unique responsibilities faced by young people today. We know that social media has become a powerful driver of harm. Research from the Molly Rose Foundation, a suicide prevention charity, shows that vulnerable young people are disproportionately exposed to posts that glamorise suicide or present suicidal thoughts as normal, appealing or even fashionable. Alarmingly, 68% of young people with low well-being are being served this type of content. In such an environment, how can we claim to be safeguarding young people if, beyond the hospital bed, the digital world is telling them that their lives are not worth living? If this content is impacting young people when they are well, how much more so will it play on the mind of a terminally ill young person? To allow access to assisted dying at an age when external pressures are so pervasive, and when identity and resilience are still forming, risks compounding vulnerability rather than offering protection.

When families, carers and local services should be striving to provide the very best care, we would instead be sending them the confused and dangerous message that 18 year-olds are instead now ready to choose and plan their own deaths. This is of particular concern when we consider young people with learning disabilities, and how competence should be established in those cases, particularly given the fact that young people with learning disabilities receive worse healthcare in general, as evidenced by the National Child Mortality Database. In its learning disabilities and autism study, it exposed the fact that children aged four to 17 with a diagnosed learning disability accounted for 31% of all deaths, despite only 2.5% of children in the UK having a diagnosed learning disability.

There are challenges with a health service that misses lots of health issues for this group of children and young people because of communication and advocacy barriers. The 2023 report, *Learning from Lives and Deaths—People with a Learning Disability and Autistic People*, found that 42% of deaths of people with a learning disability were rated as avoidable, compared with 22% for the general population.

It is in this context, and for all the other reasons I have set out, that I am strongly persuaded that raising the age of eligibility to 25 is the right thing to do. I am also haunted by the words of one child that were shared with the Select Committee. The young person said:

"I'm in care. I've got disabilities. The Government will pay for me to die under this Bill, but it won't pay for me to live".

I conclude with a final contribution from the from the Children's Commissioner, where she said:

"I would far rather that we erred on the side of caution, protecting those who have had terrible lives, terrible experiences, have been abused, have had their families turn them out, protecting those who are suffering from extreme mental illness, protecting those with special educational needs and disabilities, protecting anorexic children who are heading into adulthood, and saying, 'Let's err on the side of caution and go for 25'".

I am clear that we must continue to say to children and young people, "Yes, your life matters. Even if it will be a short life, it matters". We must amend the eligibility for assistance under the Bill to 25. I beg to move.

Baroness Watkins of Tavistock (CB): My Lords, I support this amendment in principle, based on the research in relation to cerebral development. I think it is well made and an example of something that we are really here to think through to enhance the Bill. However, I point out that the Bill excludes anybody with a lack of capacity, so several of the people that the noble Baroness referred to would not be entitled to consider assisted dying.

10.30 pm

Lord Winston (Lab): My Lords, I suggest that the noble Baroness, meaning absolutely well in a clearly very emotional area, has forgotten the real science. She is not a neuroscientist; indeed, I do not think that the commissioner is a neuroscientist. The greatest expert in the United Kingdom on teenage neuroscience is almost unquestionably Sarah-Jayne Blakemore, who works partly in London, partly in Cambridge and of course has been working extensively at UCL for a long time. She has studied teenagers in great detail, and it is very clear from her work on teenagers making decisions that they can make decisions in the right environment and in the right circumstances. I think one has to be very, very careful about making assertions about teenagers. There are many people well over the age of 25 who cannot make these decisions either. I think we have to be quite clear that we may need to take this sort of thing into consideration, but I do not think it is necessarily relevant to this amendment.

Baroness Stroud (Con): My Lords, I want to speak in support of the noble Baroness, Lady Berger. I will limit my remarks because some of them have already been made by previous speakers. I think the reality is that maturity is a scale and choosing to proceed with assisted dying at the age of 18 poses difficult questions, which we must grapple with, about the neurological maturity required for true, settled and informed consent on a matter of such gravity, and not just particular circumstances. I intend to speak in a subsequent group to Amendment 22 in the name of the noble Baroness, Lady Grey-Thompson, but some of the points I will make then are also relevant to this group.

I note that research undertaken by the Sentencing Council in 2024, which focused on aggravating and mitigating factors in sentencing guidelines, has this to say about age and maturity:

"Age and/or lack of maturity can affect … the offender's responsibility for the offence and … the effect of the sentence on the offender. Either or both of these considerations may justify a reduction in the sentence".

The report goes on to note:

"In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to: … evaluate the consequences of their actions … limit impulsivity … limit risk-taking … Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers".

I do not want to cross over into debate on the subsequent group, but this seems highly relevant to our deliberations on the appropriate age for assisted dying. Of course, age and maturity are mitigating factors only, and therefore discretionary, but it seems extraordinary to me that the principle of maturity is one which is accepted in a legal context, and there remain calls for dedicated sentencing guidelines for 18 to 25 year-olds in recognition of this, yet the Bill as drafted does not seem adequately to account for this in a similar manner with regard to the permanent decision to end one's own life. I would be grateful if the noble and learned Lord, Lord Falconer, could comment on this when he responds to the debate.

The autonomy on which the Bill is purportedly built must be grounded in safeguards commensurate with the irreversible nature of the proposed act. With regards to the age of eligibility, I do not believe the Bill as drafted meets this standard. For these reasons and more, I support the amendments in the names of the noble Baronesses, Lady Berger and Lady Lawlor, as well as those in the name of the noble Baroness, Lady Goudie, and the noble Lord, Lord Moylan.

Baroness Hollins (CB): My Lords, I have an amendment in this group and I support the noble Baroness, Lady Berger, in this. I just want to add to earlier comments. The transition from children's to adult services at 18 is well known to be a very confusing and destabilising period during which key clinical relationships are lost and important elements of a young person's history may not be carried forward. These factors are directly relevant to assessing decision-making capacity and identifying safeguarding concerns for individuals aged 18 and above who may seek assisted dying. I think that raising the minimum age would allow for any medical advances—for example, with emerging new treatments that might change a young person's prognosis. It is important not to be too hasty.

I also want to comment on the Scottish Sentencing Council and to add that, again, there is something about the developmental process which is still under way which can increase susceptibility to influence, vulnerability to risk-taking and the likelihood of short-term, emotionally driven decision-making. We have only to think about the fact that in that age group, the biggest cause of death is actually accidental death. Research done by the Sentencing Council and other research shows that maturity may be delayed by adverse childhood experiences. It is therefore reasonable to assume that some young adults with serious illness may carry such developmental vulnerabilities into their decision-making around the end of life. The Sentencing Council guideline suggesting lower culpability and a greater capacity for change than in older adults endorses the suggestion that we should change the minimum age to 25. This is an irreversible decision. We need enhanced safeguards for this age group, and I support the amendments.

Baroness Fox of Buckley (Non-Afl): My Lords, let me just state that, for very different reasons, although I have a great deal of respect for both the noble Baronesses, Lady Lawlor and Lady Berger, in this instance I have serious qualms about these amendments in relation to raising the minimum age for receiving assistance to end one's own life to either 21 or 25. I think we need to hold on to the standard age where we consider adult responsibility to begin—that is 18—as the Bill does. I worry that we are already getting ourselves into a tangle on age issues. For example, the proposal is now to lower the voting age to 16. I wonder how the sponsor of the Bill will hold the line at 18 when those newly enfranchised 16 to 18 year-olds start demanding equal entitlements from 16. Logically, those teens will have a point when they argue, "If you trust us to decide on the future of our country, why not trust us to decide on the future of our own fate if we fit the other eligibility criteria?" I would like some reassurances from the noble and learned Lord, Lord Falconer, that this age slippage will not happen, but also that 18 is a watertight age in terms of eligibility, and there are other amendments later on.

Conversely, I ask the noble Baronesses whether there is a danger of unintended consequences in using the argument that the young brain has not developed sufficiently at 18 to make such important decisions. It makes me anxious when neurodevelopment research is cited about cognitive development and a lack of maturity about anyone under the age of 25. That is used to challenge the decision-making capacity of anyone below the ages of 21 or 25. I fear that it could be used regressively. How can we trust 18 to 25 year-olds to vote, or be asked to take on any adult responsibilities, if their brain is still developing? Where are we going to end up? I think we need to avoid unintentionally institutionalising state paternalism that robs young adults of their individual rights and limits the choices on their own fate in various ways. The cultural shift to infantilise the post-18 cohort, which is a broader problem, is, in my opinion, regressive.

Finally, I am very sympathetic to the concerns that have been raised here already. It might be worth considering some kind of carve-out for 18 to 25 year-olds on EHCPs, but that would be an exception, not a rule. Viscerally, the idea of any young person of 19 or 20 having a terminal diagnosis and then being offered the choice of an even earlier death fills me with horror, gives me the chills and is tragic. But I still think that 18—if tightly protected by the sponsors of the Bill—is adequate in relation to age safeguards. There are plenty of other safeguards that I am worried about without adding to them.

I also think that there is a problem of the Bill creating a culture, for the young in general, of suicidal ideation. However, these amendments do not resolve those broader problems.

Baroness Butler-Sloss (CB): My Lords, I understand very much the points made by the noble Lord, Lord Winston, and the noble Baroness, Lady Fox. I come to this issue from a rather different position. I used to try a lot of cases, some of terminally ill young people, generally from the ages of 15 up to 25 or more. There were a number of cases of those with terminal illness, undoubtedly with capacity, who were also suffering from depression, not very surprisingly, or were confused as to what they really wanted. They came before me for all sorts of reasons unconnected with whether they should live or die from their perspective. What I was looking at was the medical evidence as to the sort of support that they ought to have.

Despite the neuroscience issue, which is important, and despite 18—or down to 16 under the present Government—being the age at which you are able to vote, I just raise whether you are looking at how much you care about the future of this country and what you care about for yourself. Do you want to die because you are going to die in the next few months? The doctors may be right or wrong about six months; we know that many diagnoses are inaccurate. This may be the most important decision of all to make: life or death? Consequently, I am concerned about the age of 18 from my own experience. Whether it should be 21 or 25 is arguable, but I am worried if it sticks at 18.

Lord Moore of Etchingham (Non-Afl): My Lords, I support the amendment from the noble Baroness, Lady Berger. It is reasonable to have these considerations about the different ways people think and feel at different times in their life. One of the big discussions we have more broadly about the Bill is about the cognitive capacities of old people, which are very important in their freedom of decision.

In a similar way, it is reasonable to talk about the cognitive capacities of very young people. In particular, one of the things that makes very young people different from older people is that they naturally have very little encounter with death; they are much less likely to have come across situations in which people die and people they know have died. They simply do not know what it involves. If it were banned throughout the world that anybody under the age of 25 would fight in a war, we would hardly have any wars. One reason why soldiers are prepared to fight in wars is that they do not understand death when they are very young. They are ready for anything.

There is often a very strong culture of suicide in young people, because it is a romantic idea. The poet Keats expressed it absolutely beautifully in his "Ode to a Nightingale" when he speaks about being

"half in love with easeful Death",

and the joy of ceasing on the midnight with no pain. He knew of what he spoke, in a sense, because he was suffering from a terminal illness, and he died before he was 25.

As the noble Baroness, Lady Berger, and others have brought out, we need to think about the influences on young people who may go in that direction. If they suffer from a terminal illness, that becomes even more acute. Because of their lack of experience in these matters, they will be under greater pressure, quite possibly, to feel that suicide is the way out and is somehow a noble thing to do.

I remember, at school, there was a very brilliant boy who was 18 and wrote a very short poem that just said, "If I should die, think only this of me: ennui". It was a very clever thing to write, and he subsequently committed suicide aged 19. I ask noble Lords to think about what it might be like in such a situation at such an age.

Baroness Hayter of Kentish Town (Lab): My Lords, the people we are talking about are dying, in suffering and in pain. They are not being offered; they are going to be asking. I think of a 23 or 24 year-old in pain and about to die, possibly within weeks or months, and we turn around and say, "I am really sorry. You have had children, taken big decisions in your life, taken career decisions and seen whatever has happened to your parents, but you cannot be helped in your last few days, weeks or months because you are only 24". I find that extraordinary. The age of 18 is probably the right one. Can we remember that these people are dying, and they are suffering? Those are the people who will be applying for this.

10.45 am

Lord Sandhurst (Con): My Lords, I rise with some caution, because these are deep waters. I think we should err on the side of caution. I support the noble Baroness, Lady Berger, because this is an entirely new process. Assuming the Bill comes into force in some form, the age can always be lowered in the light of experience; by experience, I mean that of the human brain and how people are considering these things.

What has prompted me to say this in particular is the report in the *Times* on 25 November of the study by Cambridge's MRC Cognition and Brain Sciences Unit, which compared the brains of 3,802 people aged between zero and 90 years, using datasets of MRI diffusion scans, which map neural connections by tracking how water molecules move through the brain tissues. Very simply, this study found that the topology of the childhood brain runs from birth until the turning point at the age of nine, and then it transitions into the adolescent phase, an era that it found—this is completely dispassionate—lasts right up to the age of 32 on average. Our early 30s see the brain's neural wiring shift into the adult mode, and I emphasise that phrase: adult mode. This is the longest era and lasts over three decades. A third turning point, around the age of 66, marks the start of an early ageing phase and, for those of us who are a bit older, the late ageing brain takes shape at around 83 years old.

I conclude by reading from the report:

"While puberty offers a clear start, the end of adolescence is much harder to pin down scientifically. Based purely on neural architecture, we found that adolescent-like changes in brain structure end around the early thirties".

If that is the architecture, at this stage in the Bill we should be looking at 25 and not a younger age.

The Lord Bishop of Leicester: My Lords, I too rise to support this amendment with some caution, noting that these are deep waters. I hope that noble Lords will

forgive me for pointing out the blindingly obvious: as I look around your Lordships' Committee, I do not see any 18 to 25 year-olds on these Benches, and the voices of children and young people are vital in such a debate.

The role of Children's Commissioner was created to ensure that the voices of children and young people were heard within your Lordships' House and the other place. Therefore, when the Children's Commissioner, whom I know personally, who has visited my diocese and whom I have seen at work listening to children and young people—she and her staff are superbly skilled at that work—urges us to be cautious, I believe we should listen. I therefore urge consideration of that note of caution.

Baroness Berridge (Con): My Lords, I will speak to Amendment 4, in the name of the noble Baroness, Lady Berger, to which I added my name.

As well as this Bill, the Private Member's Bill in the name of the noble and learned Lord has, as a requirement, the safeguard of a six-month prognosis. When one looks at this in relation to those over 18, I am interested in what pre-legislative scrutiny or consultation the noble and learned Lord, or the other Bill's sponsor in the other place, had on the science. I am not a scientist, but I have a researcher who is a scientist, so I took advice on how to treat the science when one speaks in a debate with those who have great eminence, such as the noble Lord, Lord Winston. Having looked at that, I believe it is relevant to the age limit in the Bill. There will be specific types of vulnerability for certain groups of young people—as the noble Baroness, Lady Fox, outlined—but those will be discussed in later groups.

According to peer-reviewed studies—which, I am told, are the best way to begin to treat the science—the brain reaches its full size physically at the age of 14, but the neural circuitry does not develop to enable enhanced decision-making and cognitive function until the age of 25. I am also informed—I am sorry to disagree with my noble friend Lord Sandhurst—that the study that was quoted by the BBC is viewed as an outlier from the peer-reviewed studies that we have in this regard.

When looking at terminally ill adolescents—I am grateful to the noble Lady, Lady Hayter, for reminding us of that—we also need to consider that there are psychological reports that they may have an unrealised concept of the finality of death, which I think is relevant to what the noble Lord, Lord Moore, said. As the Children's Commissioner stated in her letter of evidence to the Select Committee:

> "Compelling arguments have … been made about the additional difficulties present in diagnosing young people in this age group, and predicting with certainty the chance of living for six months".

Of course, if that is wrong, it could lead to an earlier, untimely death, if assisted dying is made available to them.

I was really intrigued by that statement and sought to look at the scientific evidence. I have found peer-reviewed papers, in particular one from the University of Manchester reporting historical data that finds that, even with advanced diseases such as thyroid cancer, this group has a better rate of survival than adults over the age of 25. The report outlines that that may be because a more efficacious response to treatment, as a younger body may be better able to receive it; it may be due to an elevated sense of hope, which is often reported in young adults; or it might be because such a devastating diagnosis at that age is hard to fathom, as it is not a disease they think would ever happen to them. That sense of hope possibly contributes to a positive impact on the immune system, thus resulting in a better response to the administered medication.

The second reason I outline is that—as the noble Lady, Lady Hollins, briefly alluded to—there is a significantly increasing life expectancy in terminally ill young adults due to the incredible advances that we are beginning to see in treatments such as advanced immune therapies and personalised genotype-directed treatment. Both have seen increased survival rates of up to five years in up to 80% of patients with terminal cancers. Although we will come to the matter of young people and the EHCP in a later group, I think it is right to reiterate that we have policies that treat those between 18 and 25 differently in certain situations.

The Children's Commissioner also brought to our attention that young people already often fall into a gap at the ages of 16 and 17. Some community palliative care services end at 16, and then others do not begin at 18. That makes me wonder whether we need to think more about their access to specialist palliative care in this Bill in later groups.

Can the noble and learned Lord outline what process there was, before both Bills were put together, to look into the scientific evidence? It seems to me that the assumption in both Bills is that a six-month prognosis affects or applies to all groups of the population in the same way. Is that indeed the case? We know from evidence from the European Society for Medical Oncology's Professor Stone that a six-month prognosis is inaccurate in over half of cases. Is six months the right level to use—that might be a connected change—or is 18 too young an age? I would be grateful to know whether the noble and learned Lord has already engaged with this science. Perhaps with the assistance of the noble Lord, Lord Winston, this, I think, would be a valuable way of looking at the evidence behind Amendment 4.

Lord Weir of Ballyholme (DUP): My Lords, this is an important group of amendments, particularly to those of us who have an interest in young people. It is very important that we have heard today a range of opinions on where age eligibility should lie. When dealing with age eligibility in this Bill, it seems that there are three critical questions. First, at the lower end of eligibility, should there be an age limit below which it is impossible to access assisted dying? Secondly, if it is agreed that there should be an age limit, is 18 the appropriate age? Thirdly, as has been posed by the two sets of amendments in this group, if we feel that 18 is too young an age, what is the appropriate age that we should set?

On the first issue, I am glad to say that at least the proponents of this Bill have not gone down the line—as has been argued, I think, by some lobbyists and has

[Lord Weir of Ballyholme]
been the case, for example, in Belgium and the Netherlands—that there should be no lower age limit. I welcome the fact that this seems to be accepted by the proponents of this Bill. However, I reiterate the question that has been asked—I look forward to the noble and learned Lord, Lord Falconer, summing up in relation to this—about what assurances we could have if we ended up in the position where the eligibility is at 18. What confidence could we have that that will be stuck to?

On the second issue of whether 18 is the appropriate level, I cannot claim any particular knowledge or expertise on neuroscience, but I have a lot of experience having served twice as Education Minister in Northern Ireland. I am sure that, if you speak to anyone who has served in that sort of role in any of the jurisdictions, they will say that the greatest privilege you have in that ministerial capacity is meeting young people on a day-to-day basis and talking to them about their lived experiences. It is a great joy to meet the many very healthy, confident young people who can look forward to a lifetime ahead of them. However, it is also the case that you come across a number of young people who are very vulnerable, who have extremely life-limiting conditions and who have a terminal illness.

In my experience, the families of those young people reorientate themselves through their love, so that the focus of almost all family activity is on that young person. The by-product of that, at times, can be that some of those young people feel themselves to be a burden on their family: that they are disrupting everything that their family does and not allowing their family to lead a normal life. They sometimes feel a sense of guilt.

While I am sure that we will come on to this in later stages, I note the concern about what might be described as "self-imposed coercion": people coming to the conclusion that they will be doing a service to their loved ones by going down the route of assisted suicide. We know that concerns have been raised in relation to the disabled and the elderly feeling under a particular level of pressure, but it would be naive to believe that young people in that position do not also feel themselves to be pressurised. I do not want us to create a situation where a young person, in the run-up to their 18th birthday, asks, "How can I facilitate my family by taking that ultimate step?" So, on the issue of maturity, I contend that 18 is perhaps not the right boundary point in this case.

Finally, there are competing amendments about whether it should be 21 or 25. While I came to this in a fairly agnostic manner, I have been persuaded much more towards the position of the noble Baroness, Lady Berger. I am also persuaded in many ways by the words of the Children's Commissioner. I have considerable experience of dealing with both the Children's Commissioner in England and her opposite number in Northern Ireland, and I believe that the commissioners tend to have a particular worldview: when they look towards young people, they want the world to be permissive towards them. They are progressive in their nature—and sometimes, I have to confess, they may be a little too progressive on certain subjects for my own liking. But they always look, where possible, to extend rights to children that are normally given to adults. So, when we see a situation such as this, where a Children's Commissioner is, in effect, saying, "Be very careful in relation to the law. Do not extend this to younger people between 18 and 25", we need to pay cognisance to that.

11 am

It is not just the evidence of the Select Committee. I will conclude with some remarks from the Children's Commissioner:

> "Under this Bill, people that children love will choose to end their own lives. They will need compassion and support to navigate the complexity of that grief. And it will shape the way they think about their own lives and deaths, especially those with disabilities, additional vulnerabilities or life-limiting conditions who have shared with me their worries of being treated as 'lesser'. That's why I am calling on the Government to support the proposed amendment by Baroness Berger to extend the minimum age as drafted in this Bill from 18 to 25. Not to do so fails to recognise the protection we grant children who face complexity and adversity until age 25".

I look forward to hearing from the noble and learned Lord, Lord Falconer. If he is to suggest that 18 is still the appropriate age, I would be keen to hear the rationale as to why he will not be accepting the wise amendments of noble Baroness, Lady Berger.

Baroness Finlay of Llandaff (CB): My Lords, the noble Baroness, Lady Berger, has opened up an important point in this debate and her excellent opening speech certainly highlighted many of the issues.

The noble Lord, Lord Winston, spoke about cognitive reasoning. The evidence is that cognitive reasoning is well-developed at the age of 18 but that other aspects—such as being sensitive to stress and social influence, impulse control and emotional regulation—do not develop by that age. The evidence is that these carry on developing until the age of 25.

I found it interesting to hear that noble Lords consider that the age limit for children or young people driving in cars with peers should potentially be raised. That is because of the problem of peer pressure. When I had the pleasure of having a visiting professorship in the Netherlands, I came across a fairly horrifying case of a young man in his late teens who had been diagnosed with a very aggressive tumour. His friends all came round and said, "When are you going to go for euthanasia?" He had not even had discussions on treatment, and this happened to be a tumour that was going to be very chemotherapy sensitive. I was quite shocked at the influence that a peer group can have on somebody.

The noble Baroness, Lady Hayter, spoke about suffering and pain. One of the difficulties we have with the Bill is that neither "suffering" nor "pain" occurs anywhere in it.

I wonder whether the noble and learned Lord, in considering how he manages this group of amendments, will recognise that one solution may be to require an enhanced assessment of those between 18 and 25 if the age limit is not going to be raised. Young people should have a more in-depth assessment, not only of their—

Lord Scriven (LD): The noble Baroness will know that, at present, an 18 to 25 year-old with a terminal diagnosis has the legal capacity to withdraw consent to treatment. Do they go through a different capacity assessment from somebody who is over 25?

Baroness Finlay of Llandaff (CB): I am delighted that the noble Lord has asked me that question, because it reminds me of a patient I had. He was a young man with an advanced testicular tumour and had refused treatment. He was referred to me, and I looked after him for a couple of years, during the time that he became more and more ill with his metastatic disease. He consistently refused treatment. However, when he was moribund, and his parents had come in and were sitting at the bedside, he suddenly asked me, "Is it too late to change my mind and have treatment?" At that point, I was indebted to my local oncologist, who I phoned, and we arranged transfer that day to the Royal Marsden Hospital, which then treated him because that was his wish. My assessment every time I saw him was not to persuade him to have treatment but to allow him to talk about his fears and difficulties. That is the role of specialist palliative care when you are looking after these young people who are very vulnerable. I am simply suggesting that, due to the way the Bill is written, the assessments may not be adequate.

Lord Scriven (LD): I listened to the noble Baroness's individual case. My question was very specific. Is somebody who is 25 or over given a different mental capacity assessment based on their wish to withdraw treatment from somebody who is 18 to 25? That is the specific question based on what the noble Baroness is now suggesting happens in the Bill.

Baroness Finlay of Llandaff (CB): The issue with the Mental Capacity Act is that each assessment must be done individually. It relates to the decision that is to be made, the size of the decision, the time and the personal characteristics. There is no absolute. If we are talking about safety in relation to the Bill and avoiding abuse, I am simply trying to suggest that one way forward may be to ensure that the assessment of young people's eligibility is particularly thorough. That may mean having different criteria and looking at whether they have pain or suffering.

Lord Winston (Lab): I wonder whether the noble Baroness might be kind enough to clarify. She is, after all, a hugely respected individual in the field, of which she is such an expert—I do not doubt that for a moment. Sarah-Jayne Blakemore, a fellow of the Royal Society, has been spending her time looking at peer pressure. That is what her publications have largely been about. Is the noble Baroness really suggesting that a young person of, say, 18, dying of a horrible and painful cancer, would be subject to peer pressure? They might be subject to pressure from doctors but I doubt that they would be subject to peer pressure.

Baroness Finlay of Llandaff (CB): I was simply relating what I found when I was in the Netherlands relating to peer pressure on young people because of the normalisation of euthanasia across that society.

Baroness Cass (CB): My Lords, as Sarah-Jayne Blakemore has been widely referred to, it might be useful to directly quote her. She said:

"Most of these age cutoffs have not been based on what we know about brain development, because they were decided way before we knew anything about how the brain develops during adolescence. So what I would say is that those kinds of decisions about age cutoffs"—

she is referring to the various age cut-offs for drinking, marriage and so on—

"should incorporate the new knowledge about brain development during adolescence. On the other hand, this is a question I'm asked often, I don't think the neuroscience can provide an age for you. We can't say, 'Oh, the neuroscience shows that the brain becomes adult at age 18 or 24' or whatever it might be. It's much more complex than that".

She goes on to describe how different brain regions develop and mature at different rates, and to talk about the individual differences in the speed of brain development:

"So what I would say is that what we know from neuroscience is the kind of age range, the very broad age range when the brain becomes mature and adult. And that's much later than 18, between 20s and 30s for most people. So of course that cannot generate an age at which you become legally adult".

That is what Sarah-Jayne Blakemore has said. On that basis, I support the suggestion from the noble Baroness, Lady Finlay, that, between the ages of 18 and 25, there should be enhanced and careful assessment, taking account of that perspective.

Lord Falconer of Thoroton (Lab): I apologise for interrupting at this stage. This has been a very good debate, and it might be helpful if I indicate what my position in relation to this is. The thinking behind 18 is that that is the age at which you can make your own decisions about medical care. If you are suffering from a terminal illness, you can decide at 18 whether you want to withdraw treatment, for example, or what the treatment should be.

In answer to the noble Baroness, Lady Berridge, we were aware of the different views about when your brain and maturity develop, and what the noble Baroness, Lady Cass, said is absolutely correct—she read Sarah-Jayne Blakemore's view—in that these age cut-offs that the law imposes generally are not based upon a close study of neurology; they are the law's attempt to reflect maturity. I am indeed very aware of the fact that if you are 18, you may be more emotionally impulsive and more easily influenced than somebody of 25, 24 or 23. Equally, anybody who has had contact with people who are young and terminally ill will have found that some 18 year-olds are incredibly thoughtful and mature and some are not, for obvious reasons.

I am very influenced by the fact that I have been listening to people expressing real concern about this issue in this House. I still think 18 is probably the right age, but I am very influenced by what the noble Baronesses, Lady Finlay and Lady Cass, have said: that maybe the answer is some assurance that there is a more intense assessment for people aged between 18 and 25. The Bill says that you can have an assisted death only if you have

"a clear, settled and informed wish to end"

[Lord Falconer of Thoroton]
your life, and it is being done voluntarily. How can we be sure about those aged between 18 and 25? Two doctors and a panel have to make the decision, but some additional thing might be required.

We are slightly going around in circles again and repeating ourselves, so I suggest that I talk in particular to the noble Baronesses, Lady Cass and Lady Finlay, and that we come back on Report and see whether we need a more thorough assessment for people aged between 18 and 25—although I am not saying I am going to change the age of 18. That is broadly my position.

Baroness Lawlor (Con): My Lords, I thank the noble and learned Lord for his intervention, for which I am very grateful. I point out first that I think that many noble Lords feel there is a very great difference between a decision to refuse treatment or withdraw treatment, which may or may not end one's life, and to ask for something which will definitely end one's life. That point is brought up by supporters of the Bill.

I will speak to my Amendment 5 and to the related Amendments 250, 258, 305 and 338.

Baroness Butler-Sloss (CB): I wonder whether the noble Baroness might think it wise for us all to find out, after the discussions with the noble Baronesses, Lady Cass and Lady Finlay, what the noble and learned Lord, Lord Falconer, is proposing to do before we discuss this any further.

Baroness Lawlor (Con): I thank the noble and learned Baroness, but I have a few points to add to the discussion.

Noble Lords: Oh!

Baroness Lawlor (Con): I hope that noble Lords will show the customary courtesy, particularly with regard to views to which they have objections.

Baroness Watkins of Tavistock (CB): Would the noble Baroness consider joining the meeting with the noble and learned Lord, Lord Falconer, to talk about her additional points? I think the majority of the Committee is keen to move on so that we can facilitate further groups.

Baroness Lawlor (Con): I thank the noble Baroness for her question, and I certainly will consider it, but I think it is important that we have a discussion about what I regard as a compromise Motion, which may be useful in the discussions noble Lords have with the sponsor or those who wish to proceed in that way.

Lord Carlile of Berriew (CB): Would the noble Baroness, for whom I have a great deal of respect, consider whether she is really adding anything at all to the debate by continuing? We can read her amendments; we know the difference between 18, 21 and 25. I and the noble and learned Lord, with whom I do not disagree on the fundamental principle behind the Bill, are both of the view that we should have proper discussion on it and get through Committee in the way that is expected of us as the House of Lords, so when the noble and learned Lord intervenes and says he is willing to hold meaningful discussions, we should do that and move on to the next business.

11.15 am

Baroness Lawlor (Con): I thank the noble Lord, Lord Carlile, for his intervention. I recall one of my first horrific experiences in your Lordships' Chamber when I sat on those Benches. We were speaking about a Bill to which the noble Lord was opposed, and he asked the Front Bench to say I was out of order in speaking because I had gone out to get a glass of water, even though I had sat through not only that debate but all the previous debates. That hardened me to those sort of objections to free speech in your Lordships' Chamber, and I was very disappointed in that debate and others to have noble Lords from the other side shouting at me, "Shame! Shame!" if I mentioned a view with which they disagreed. So I will persist with addressing my compromise Motion amendment, and I hope I will be brief, but if noble Lords continue to interrupt me, that will make it more difficult.

We have heard—I will not repeat the arguments—that 18 is too young given what we know about neurological science. I have one piece of evidence to add for the whole House, not for the private discussions which might take place. As I understand the rules, this is a Committee of the whole House. So we have heard about that, and I will return to that with one additional piece of information. We have heard also that the law recognises the special vulnerability of young people until the legal age of majority and how it supports different routes.

I go back to something the noble Lord, Lord Moore, said. He referred to how difficult it was for younger people, and even those who may not have given a great deal of thought to the subject, to address dying. I would add to that: to understand what it is to choose to die. For most, the thought of death is distant, and the way society has been conditioned to see death in rather euphemistic terms, in the very language we use, reinforces that remoteness. In the multigenerational families of the past, where the members shared a house, visited frequently, supported one another in all the challenges they met every day in life, death, with its traditional rituals—the funeral and the period of mourning—were ever-present in the lives of children as they grew up. I remember, as a very young child, seeing a mother who had died in childbirth—

Baroness Blackstone (Lab): I apologise for interrupting the noble Baroness, but I think the Committee has really made it clear—

Noble Lords: Oh!

Baroness Blackstone (Lab): May I finish what I am saying? My noble and learned friend Lord Falconer of Thoroton has already made the concession that he would like very much to discuss this point. Will the noble Baroness please go straight to the compromise she is proposing, rather than referring to various other speeches that have already been made?

Baroness Lawlor (Con): I thank the noble Baroness, Lady Blackstone, for that intervention, and I am going to my point. I think it is important to the whole argument to recall the various arguments; I am not repeating them, although I did make some of the same points or similar ones, and I have cut those.

We have heard also, in the context of the Bill, rare and sad cases of young adults diagnosed with terminal illness. But I do not think we should underestimate the decision, which is one of the suggestions, to end one's own life as opposed to withdrawing treatment, given the very variable assessments we get. The science is very difficult. Consultants will tell you that they get different slides back from the lab, depending on how the various scientists and pharmacological people look at the evidence. It is difficult to know how long people will live.

Moreover, as we have heard today, if the Bill becomes law, it is probable that its provisions will gradually become looser in practice. The idea of killing yourself and having help to kill yourself will become normalised. Under these circumstances—alas, they are not those of a dystopian fantasy but are most likely in future if the Bill, in its present guise, has its way—the common depressions and anxieties of late adolescence, which often translate to thoughts of suicide, will be encouraged.

I speak here as someone who has taught 18 to 21 year-olds in university. People who have suffered terrible emotional stresses with which they cannot cope have been referred to me, for me to teach them history. Their tutors have mentioned privately that they want to commit suicide, saying, "They have already tried, but they want to continue doing their course on whatever. Will you take them on?" It may be objected that, since 18 is the legal age of majority, whatever choices are being opened up for older adults must stretch down to a person's 18th birthday.

I will add just one thing on research in neurosciences. We have spoken a lot about neuroscientists' view of emotional maturity, but—

Baroness Morgan of Huyton (Lab): I am sorry to interrupt the noble Baroness, but she said that she would be coming forward with a compromise. I am not really clear on what that is, because it seems that this is still the same evidence as before.

Baroness Lawlor (Con): I thank the noble Baroness for her intervention.

Lord Moylan (Con): My Lords, I have not spoken in Committee at all so far. I briefly say to those who are objecting—and who take the view that the intervention of the noble and learned Lord, Lord Falconer, should bring the debate to an end—that the debate we are having is about 18, 21 or 25 year-olds. The noble and learned Lord has not said that he is willing to compromise on any of those; as I understand it, he wishes to persist with the age of 18, although he is willing to look at additional safeguards. It does not seem to me, therefore, that his offer of discussions—welcome though it no doubt is—addresses the core question in the debate. So I do not see why the debate should be brought to an end simply by his intervention.

Baroness Lawlor (Con): My Lords, up to the age of 25, people often struggle to grasp that death is irreversible. They understand in notional terms the point that death ends a person's life on earth, but they do not really grasp the sense—both those who accept and those who deny the afterlife know this—that life as we know it ends.

Somebody who has not been mentioned is Professor Leah Somerville, a Harvard academic who specialises in psychology and is the director of the Affective Neuroscience and Development Lab. An article on her research says:

> "Adolescents do about as well as adults on cognition tests, for instance. But if they're feeling strong emotions, those scores can plummet. The problem seems to be that teenagers have not yet developed a strong brain system that keeps emotions under control".

I have suggested the age of 21, not 25, as the lower limit. I regard this as a compromise, and I proposed it at the outset. As I say, the medical evidence points to 25; I am happy to support that.

In conclusion, opponents might say that the seven-year gap between the age at which a person is thought to be an adult for legal purposes and the age at which they become eligible for assisted suicide is simply too long, but no young person should be presented with the option of taking their own life—certainly not those who have been diagnosed as having a terminal illness. They are not physically, psychologically or emotionally developed to the maturity needed to make a judgment devoid of emotion. Although my moderate amendment places the age of eligibility at 21—I stress that it is a compromise—I would be prepared to support other noble Lords on the age of 25.

Lord Harper (Con): My Lords, I want briefly to respond to a point made earlier in the debate by the noble Lord, Lord Winston, whose medical expertise I respect greatly. He quoted a comment from Sarah-Jayne Blakemore, which has not been said already in this debate, and talked about the context in which decisions are made. In a paper, she said:

> "Adolescence is characterized by making risky decisions … This suggests that decision-making in adolescence may be particularly modulated by emotion and social factors, for example, when adolescents are with peers or in other affective ('hot') contexts".

That tells me—it is relevant to an earlier discussion—that it is not just the age of the person that is relevant, which is why Amendment 4 from the noble Baroness, Lady Berger, is very helpful. It is about context in decision-making.

I listened carefully to what the noble and learned Lord, Lord Falconer, said about the thought process that he was going to undertake, having listened carefully to some experts. Like him, I am torn on the age issue. The amendment from the noble Baroness, Lady Berger, is very helpful in setting out some of the issues, but I was also struck by what the noble Baroness, Lady Fox, said, so I am slightly torn on whether age is the right way of doing it. I do not know whether it is an assessment.

My final point is that I was struck by what the noble Baroness, Lady Berridge, said—

Lord Birt (CB): I just want to ask: does the noble Lord think that we should try to reach the 10th group of amendments in the course of today?

Lord Harper (Con): I am trying to make a brief remark. I have been speaking for only one minute and 45 seconds; if I keep getting interrupted, I will not be able to sit down. I was going to make literally one more point, having listened to the debate. After all, this is supposed to be a debate where we listen to what noble Lords say and respond—

Lord Birt (CB): Could the noble Lord please answer my question: should we try to reach the 10th group of amendments today?

Lord Harper (Con): I want to try to make progress, which is why I was trying to keep my remarks very brief; if the noble Lord keeps interrupting me, they will necessarily take longer. All I was going to do was make one further point.

I was very struck by what the noble Baroness, Lady Berridge, said about the differences in the medical prognosis for a number of conditions among younger people. I suggest to the noble and learned Lord, Lord Falconer, that as well as looking at the assessment process, he should look at the extent to which clinical advice and evidence can be brought in to see whether a terminal diagnosis for a younger person is qualitatively different; from listening to the noble Baroness, Lady Berridge, that appears to be the case. That may be the appropriate way to pick up the concerns, which are widely shared. But I also accept—the noble Baroness, Lady Fox, made this point—that the law has to have some clarity to it. Like the noble Baroness, I think that having lots of different ages would be very difficult.

From listening to the points made by the noble Baroness, Lady Berridge, I think that may be a way forward; I commend it to the noble and learned Lord when he undertakes his thought process for what he may bring forward on Report.

Baroness Spielman (Con): My Lords, I have not spoken previously on the Bill, nor tabled any amendments. But as the chief inspector responsible for inspecting children's social care, as well as education in mainstream and special schools, I have visited many institutions with children with life-limiting conditions. I recognise that the Bill has profound implications for many children and young adults.

I support the amendments to raise the minimum age of eligibility—in particular, the amendments from the noble Baroness, Lady Berger, to amend the minimum age limit to 25 throughout the Bill. There are, and always will be, children in their teens with terminal illnesses who are thinking about their own futures, in the context of the choice that they would be empowered to make from their very first day as adults, before they have any experience of adult palliative care.

Even though the provisions now rightly prevent medical practitioners initiating the subject of assisted dying with children, we know that young people seek out and are influenced by all kinds of information freely available online—and we have plenty of precedents. Consider what young people can already see on suicide, eating disorders, puberty blockers, cross-sex hormones and, indeed, claiming invalidity benefits. These precedents show that no matter what constraints are placed, there will be freely available video content promoting assisted dying and some of it will coach viewers in how to pass mental capacity tests. That reveals the unpalatable prospect of children reaching their 18th birthday and immediately demanding their right to a state-delivered death, with little or no opportunity for adult services to be deployed to offer supportive alternatives.

11.30 am

Many terminally ill children will be classified as vulnerable under existing laws. If they have an education, health and care plan, as is highly likely for a child with a terminal illness, or if they are in continuous care, as is the case for many severely disabled children, they receive statutory protections to age 25. In effect, one part of the state would be responsible for safeguarding and protecting the child while another would simultaneously be responsible for providing death on demand. This level of incoherence will tie public services in extraordinary knots and only lawyers will benefit. There has to be some alignment.

It is therefore surely right to give these groups of young people the extra time that the law currently allows to form views and make decisions about their adult lives. More generally, as others have said, the growing body of evidence on adolescent brain development and impulsivity also points us towards a minimum age of 25 for such a fundamental choice. Adolescence is often characterised by heightened emotions and foolish choices, and making foolish choices is a normal and natural part of growing up. In most cases, we survive those foolish choices and can look back and perhaps laugh at our melodramatic younger selves. But it is tragic when these heightened emotions lead children and young adults to end their lives when a little more time and maturity might have seen them through their moments of greatest unhappiness. The young people who have chosen assisted dying in a fit of adolescent bleakness will already be dead. The noble Lord, Lord Moore of Etchingham, made some strong and persuasive points about the adolescent understanding of death.

I, too, fear downward pressure on the age limit; I will not repeat the arguments made. We have not yet reached the groups where capacity will be discussed, but I believe that we need to think particularly about eating disorders in the context of age limits. As CLADD has laid out clearly, issues of capacity will be particularly difficult for this miserable group of disorders, which are relatively common among teenagers. CLADD notes that international practice shows that people with anorexia have been found to have capacity to end their lives using assisted dying frameworks.

The particular problems that the provisions of the Bill present for decisions relating to the capacity of young people with eating disorders will be discussed in future groups. But there is an age-related aspect that we should note here, because we are likely to find that it is impossible to find drafting amendments to capacity provisions that will mitigate or solve the problem.

These disorders most commonly begin in the mid to late teens. For those who recover from them—which is, sadly, not all, but many do—recovery typically takes seven to 10 years, so by their mid-20s, most people who are going to recover from anorexia have done so. This simple increase in the minimum age may well be the most pragmatic and effective adjustment to mitigate a serious risk. For all those reasons, I support the amendments in the name of the noble Baroness, Lady Berger.

Lord Ashcombe (Con): My Lords, I take noble Lords back to when they were young; we have all been there. I suspect that we all remember the odd and what may now seem very troubling ideas that sometimes passed through our minds during those years. Many of us have also watched our children—and for some of us, I dare say, grandchildren, though I am not there yet—navigate that turbulent stage of life. These formative years are full of experimentation, confusion and growth. They are not the years in which irreversible decisions should be entertained. Therefore, I am very much in favour of increasing the age limit to 25, as the noble Baroness, Lady Berger, suggests.

Lord Markham (Con): My Lords, this has been a really good discussion showing the range of views and expert opinion that we have here. I think I heard from the noble and learned Lord, Lord Falconer, that he was willing to look at the age question. I think he said that he was more likely to add safeguards—

Lord Rooker (Lab): The noble and learned Lord, Lord Falconer, specifically ruled out changing the age. He wanted to put qualifications on it; that was as far as he went.

Lord Markham (Con): The point I was making—I am sure he will speak for himself in a moment—was that he was willing to look at that. He said that he was more likely to look at additional safeguards between 18 and 25. But I think he said—again, correct me if I am wrong—that he is willing to have further discussions with a lot of the experts we have here, including the noble Baronesses, Lady Cass and Lady Finlay, and, I am sure, others, to look at the whole question around age, as a product of the good debate that we have had here today.

I think I heard that the noble and learned Lord is taking on board the comments; he is willing to go away and look at this whole question with the experts here and, I hope, come back with something that reflects the reasonable view of everyone here today. I think we are being shown a way forward. I am keen to hear later about a lot of other things, such as the residency question and a lot of the other groupings, so at this point, I think we have what we are looking for—have we not?—in terms of a good discussion on this. I hope that we can go on to talk about some of the other groups.

Lord Falconer of Thoroton (Lab): Just to clarify my position, I was responding to the debate which gave rise to real concerns about the age. I understood the noble Baronesses, Lady Cass and Lady Finlay, to say that perhaps a way forward would be to see whether there were additional safeguards from 18 to 25. That would involve me having a discussion with them and, if they were satisfied that there were additional safeguards and that they thought the age of 18 was right, that would obviously have an effect on me. If they put other arguments, I would obviously take them on board as well. My experience of the House is that, if one sees a way forward, before one continues making the same arguments as before, one sees whether a compromise that sensible Members of the House think would be enough works and whether it could attract support on Report. That was what I was thinking.

Baroness Berridge (Con): May I draw the attention of the noble and learned Lord to the fact that the amendments I have laid in relation to EHCPs and additional assessment criteria are currently in group 7? If he has that meeting and that compromise might be available, that may enable me to withdraw some amendments.

Lord Falconer of Thoroton (Lab): I very much welcome that suggestion. I also welcome the suggestion of the noble Lord, Lord Harper, who, as I understand it, is saying that we should also look at the clinical diagnosis of people. The noble Baroness, Lady Finlay, also raised that point. I am more than happy to include both those things, and if they both want to come, I would welcome them.

Noble Lords: Front Bench!

Lord Kamall (Con): My Lords, I hesitate to rise as I want to ensure that everyone feels that their voice has been heard in this debate. We do not want to make law on a basis on which people look back and say that we did not properly debate a particular issue. If all noble Lords who wish to speak in this debate have spoken, I am very happy to make my contribution, but if there are any other noble Lords who wish to make their point, I should give way.

Well, that answers that question; I tried my best. I want to make that point clear. It is really important that everyone who feels they want to speak can do so, but I also say to noble Lords, including my noble friends, that it is also important to respect the rules and conventions, to speak to the amendments and not to repeat Second Reading speeches or make wider debates. I hope we can get that appropriate balance. I have taken time making those points, so I will try to be brief.

I pay tribute to the noble Baroness, Lady Berger, especially for the way in which she delivered the Select Committee process that preceded our deliberations in Committee. The evidence submitted to that committee will be invaluable to noble Lords as we continue our work to scrutinise the Bill.

Without making a long speech, I will reflect on the specific amendments on changing the minimum age. I was talking to a noble and learned friend about this, and he said that, frankly, the law around age is a mess—and that has come out in some discussions. Sometimes we are speaking from our own experience.

[Lord Kamall]
My two children are in their 20s, and I wonder whether they would really have the capacity to make this decision. But at other times, I sit in awe of them and the decisions they make. They express maturity way beyond 20 years, and, in fact, more maturity than much older people.

It very much depends on the individual in these cases. We have to look at whether there is a way to achieve that right balance; otherwise, we will just be making another age limit. You can join the Army at 16 but you cannot serve in combat until you are 18. The Government are talking about reducing the voting age to 16, but then we are hearing debates on neurological competence and capacity. It is important that we understand and express these points.

The point that came out for me in this whole debate about neurological development is that there is no such thing as "the science". Science is contestable. We heard this from noble Lords who are experts in their field. We must be very careful about saying that "the science says this". It also has implications for other decisions.

I turn to a couple of points which may already be treated in the Bill. I want to check the understanding of the noble and learned Lord, Lord Falconer of Thoroton, on what is in the Bill. The noble Baroness, Lady Hollins, asked: what happens if a new treatment is available? Clause 2 says

"which cannot be reversed by treatment",

which probably takes care of that point, but I would like the noble and learned Lord, Lord Falconer, to share his interpretation and say whether it addresses her concerns. The noble Baroness, Lady Hayter, said that we should think about these young people who will be suffering and in pain, yet nowhere in Clause 2 are the words "pain" or "suffering". We must be very careful to read what is in the Bill when we are making these points.

I welcome the intervention by the noble and learned Lord, Lord Falconer, that while he is quite clear about 18, he is sympathetic to the idea of cognitive development and maturity between 18 and 25, and there might be some discussion. Who knows—I cannot speak for the noble and learned Lord, who has looked into this issue very deeply—but perhaps in those discussions he may be persuaded. He is saying 18 at the moment, but clearly he is open to enhanced measures for those aged between 18 and 25. That is something that I hope the whole Committee will welcome.

There are many other points that I could make, but it is important to hear from the Government and what the noble and learned Lord believes in response to the points that have been raised.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Baroness Merron) (Lab): My Lords, I am grateful to noble Lords for their contributions to this debate on the age of eligibility for those who are provided with assistance under the Bill. I have made it clear previously, and reiterate, that I will keep my comments limited to the issues on which the Government have major legal, technical or operational workability concerns.

The amendments tabled by the noble Baronesses, Lady Berger, Lady Lawlor and Lady Hollins, seek to raise the age at which an individual would be eligible for the provision of assistance under the Bill. The points that I wish to raise here relate to the European Convention on Human Rights. There are potential risks that I am raising to inform the decision-making of noble Lords, but the underlying policies are rightly a matter for Parliament. Under the convention, the amendments in this group could give rise to legal challenge; for example, that excluding people who are under 21 or 25 from accessing assisting dying may not be justified under Articles 2 or 8 of the EHCR, or that this amounts to unjustified discrimination under Article 14.

Noble Lords will be aware that differential treatments, such as raising the age of eligibility, may be lawful if it is possible to persuade the courts to agree that the age limit is justified, necessary and proportionate. There would need to be a reasonable justification for restricting access to assisted dying to people aged either 21 and over or 25 and over. Noble Lords will want to consider this in relation to these amendments.

Lord Harper (Con): Can the Minister be clear? If we decided to limit—whether by age or in some other way that the noble and learned Lord, Lord Falconer, might decide—and put that into primary legislation, is that then not the law of the country? All that the European court could then do is say that it is not compatible but remains the law—or is the Minister saying something different? If we pass primary legislation, that is the law of the land, is it not?

11.45 am

Baroness Merron (Lab): The point that I was making just before I sat down was that noble Lords will want to consider the points that I have raised in relation to these amendments. I am sure that they will take into account what the noble Lord has just said too.

Lord Falconer of Thoroton (Lab): My Lords, I am grateful to everybody who has contributed to the debate. I have made my position moderately clear in relation to what we should do—and I sense that the Committee is happy that we should take that course.

I completely understand the points about people aged 18 being impulsive and often emotionally immature. On the point made by the noble Baroness, Lady Stroud, that is why the Sentencing Council refers to it. However, it is a different question here as to what the age limit should be. If people are emotionally immature, they will not have a settled view about what to do in these circumstances, but some people will. The noble Lord, Lord Kamall, asked: what happens if there are new developments in medicine that would extend life? The answer is that you would not have six months or less to live, which I think was the answer that he was giving in relation to it.

I have made my position clear. I invite the noble Baroness, Lady Berger, in the light of where we have got to, to withdraw her amendment so that we can move on to the next issue.

Lord Mackinlay of Richborough (Con): I raise a mirror to the noble and learned Lord regarding his comments in 2021 during the passage of the Police, Crime, Sentencing and Courts Bill. His view was very clearly that 21 is the unequivocal age of adulthood. I assume that he has heard the views across the Committee. The noble Baroness, Lady Lawlor, had an alternative—18, 25 and 21 were advanced. Would it not be a useful compromise if he were to declare to the Committee today that he would actively consider 21 as the right age—as he did when considering whole-life orders in a previous Bill? That would be very helpful.

Lord Falconer of Thoroton (Lab): On the comments that the noble Lord refers to, in relation to whether you should impose a whole-life term on somebody under 21, I recognise, as the Sentencing Council does, that issues of immaturity might make that inappropriate in certain cases. However, on this position, the question is: what is the age at which you might be capable of taking a settled decision? The concerns that the Committee has expressed about people aged between 18 and 25 make me think that the right course is to consider whether there are ways to deal with that that the House would feel are satisfactory on Report. I think that is the right course.

Baroness Fox of Buckley (Non-Afl): Could I have some reassurance that with changing the franchise to 16, there will not be any slippage in relation to this Bill from 18 downwards? That is a reasonable question because, according to some people, 16 is now mature enough and adult enough to decide the fate of the country and decisions made here. Is there not a danger? Can he guarantee that this will not happen?

Lord Falconer of Thoroton (Lab): I guarantee to the noble Baroness that the age is not going to go down from 18 as far as this Bill is concerned. The future is not in my gift, unfortunately. However, as far as the future is concerned, it is extremely unlikely that a subsequent Parliament is going to reduce that age.

Baroness Berger (Lab): My Lords, this has been an important debate that really has encapsulated what this House is here to do. There are, of course, other amendments in this group from the noble Baroness, Lady Goudie, and the noble Lord, Lord Moylan, that we have not discussed. It is worth just putting on record that these seek to prevent discussions with children and will be an essential question to scrutinise and discuss in the next group.

I just wish to very briefly respond to three points that have been made during this group, because it is relevant and important to conversations that will no doubt continue because of the weight of opinion and support that has come forward for these amendments.

I listened very closely to the noble Baroness, Lady Fox, and I just want to make clear that, for all these young people, it is not the exception. It is impossible to imagine a young person who would not have an EHCP. That is the context in which I presented and spoke to these debates. It is not just a small group: we anticipate all of them, apart from a young person who might receive a terminal diagnosis over the age of 25 and will not have time to have an EHCP. Otherwise, we are considering all young people in this context of an EHCP that local authorities have a statutory responsibility for, and it is in that context that I make those representations.

I listened very closely to my noble friend Lord Winston, and he did make some important comments. It is clear that there are some elements of brain development that do evolve and complete by the age of 18, but there are many others that do not. Global experts and authorities on adolescent brain development such as Professor Laurence Steinberg, Professor Casey, who is the expert on neurobiological maturation, and Professor Jay Giedd, who is the MRI pioneer in adolescent brain research, all say that the prefrontal cortex responsible for executive functions does not reach its maturity until the early to mid-20s, continuing to develop well past the age of 18, and that an 18 year-old does not yet have the capacity.

I am reminded again that we have heard a lot of comments from Professor Sarah-Jayne Blakemore. She is the leading UK neuroscientist on adolescence, and she has said that an 18 year-old does not yet have the fully mature capacity for long-term planning and evaluation of consequences that characterises adult executive functioning. We should listen to her comments very closely.

Finally, my noble friend Lady Hayter said that young people would not be asked—it would be something they would request. I would point out that the Bill does enable a doctor to raise this with anyone from the age of 18. It is in that context that I have brought forward these amendments.

I will not refer to all the other important contributions and comments that have been made, but I want to make one final point. It has been very clear from the debate in the other place that even some of those most in favour of assisted dying in principle are highly concerned about the risk of children and young people being drawn into it. The amendments in this group have sought to act on both their concern and the evidence that this House took during our own Select Committee. In all the debates we have had on the Bill, and will no doubt continue to have, we have to grapple with the simple fact that there is no going back if we get it wrong. For young people in particular, we should, as we have been asked to do, err on the side of caution.

I am very glad to hear that my noble and learned friend Lord Falconer will consider an assessment for those aged 19 to 24, but I urge him to accept the simplest and strongest safeguard of all, which is to raise the eligibility to 25. I look forward to further discussions on these matters. With that, I beg leave to withdraw the amendment standing in my name.

Amendment 4 withdrawn.

Amendment 5 not moved.

Amendment 6

Moved by ***Lord Falconer of Thoroton***

6: Clause 1, page 1, line 6, after "person" insert "has a preliminary discussion with a registered medical practitioner (see section 5) and"

Member's explanatory statement

This is a drafting change.

Lord Falconer of Thoroton (Lab): In this group, which is group 3, there are a number of amendments put forward by me but also two amendments put forward by Back-Bench Peers that are in the same sort of area. These are drafting changes. If anybody objects to any of the drafting changes, I will not move them when the time comes. If there is no objection, I will move them as long as there is going to be no vote at this stage.

Can I just go through them very quickly? Amendment 6 makes it clear that the person, who has to be over 18, has to have the preliminary discussion referred to in Clause 5, and it is making clear something that I say is already explicit in the Bill. Amendments 8 and 9 in the names, respectively, of the noble Lord, Lord Moylan, and the noble Baroness, Lady Goudie, seek to make explicit the same thing, and I hope they will accept that I am giving effect to what they are saying in relation to that.

Going on to another topic of drafting changes, Amendments 290, 366 and 931 in this group get rid of a duplication issue. Everybody wants domestic abuse to refer to coercion and control, and financial abuse. That has been achieved by incorporating the definition of domestic abuse in the Domestic Abuse Act 2021. In some parts of the Bill, as it is currently drafted, we have left in the wider definition of domestic abuse, which is now duplicative because of bringing in the definition of domestic abuse that is at the top of page 1 of the Bill; so Amendments 290, 366 and 931 remove the duplicative effect.

Amendments 332, 417, 418, 419 and 425 deal with the situation where the doctor—one of the two doctors who has got to give the assessment—cannot or will not continue to act. As currently drafted, you can get a replacement doctor only if the doctor who will no longer agree to act or cannot act has either died or suffered illness. These amendments delete the word "illness" and simply provide for a mechanism where, if the doctor cannot or will not continue to act, you can get a new doctor.

On Amendment 405, Clause 12(5) requires that the doctors who are doing the assessment make sure that there is appropriate adjustment for language and literary barriers. I am putting forward a new draft that is clearer but does not in any way change the sense.

Under Amendment 413, where a doctor has a doubt about something and is one of the two assessing doctors, he has to get a second opinion on the clinical diagnosis for the person. In relation to the second doctor, the Bill said that, if he had a doubt, he could rely on the opinion obtained by the first doctor, but that seems to us to be illogical. If the second doctor has a doubt, even after reading that opinion, he should get an opinion of his own, and that is the effect of Amendment 413.

Amendment 416 is the final drafting amendment. It redrafts Clause 13(3), which deals with the situation where the second doctor has said no, he does not think the conditions are satisfied. In those circumstances, you can get another doctor to come in. We have redrafted Clause 13(3) to make it clear that, if the second doctor says yes, he has to give explicit reasons why he is disagreeing with the first second doctor. I commend these drafting changes and beg to move Amendment 6.

The Deputy Chairman of Committees (Baroness Scott of Needham Market) (LD): My Lords, I must inform the Committee that, if Amendment 6 is agreed to, I will not be able to call Amendment 9 by reason of pre-emption. We now come to Amendment 7, which is an amendment to Amendment 6.

Amendment 7 (to Amendment 6)

Moved by ***Baroness Coffey***

7: Leave out first "a" and insert "their first"

Baroness Coffey (Con): My Lords, this is a really important group, and I appreciate that the noble and learned Lord, Lord Falconer of Thoroton, has suggested that quite a lot of the amendments are drafting changes, but I think it goes further beyond that.

Speaking specifically to my first amendment, Amendment 7, the reason I put this in about it the first preliminary discussion is that we just had a significant debate about the issue of age. In the Commons, the sponsor of the Bill and the government Ministers who helped take this Bill through that House, voted against the amendment, which was agreed, and which said that this could be raised with somebody under the age of 18. That is why the debate on age has been significant and why I have put in this particular amendment.

One of my wider concerns is about how many preliminary discussions somebody will have. This is not going to be an easy decision for somebody, particularly a young person, to make, while thinking, "Is this the right time? Is it so unbearable that I actually want my life to end?"

Later in the Bill, there is quite a lot of procedure about recording medical information. The reason why I am interested in making sure it is "their first" discussion is so that we do not have, as can sometimes happen, an informal off-the-record discussion as part of this important process. I will be interested to hear what other noble Lords think about trying to be specific, recognising the concerns that amendments so far have sought to address.

Noon

I am interested in understanding whether there are any other discussions that could take place that would not qualify as "preliminary discussions". For example, does Clause 5(3) permit a practitioner to have a general chat about it? Could this happen before somebody was 18? I expect the answer may become no, but, as I said, I am somewhat nervous because of the new Clause 2 that was debated on Report in the Commons. I am trying to put in an extra safeguard and give clear guidelines to the registered medical practitioners at this point that, in a way, when they have that first conversation, the clock starts ticking and we have to formally start recording.

The noble and learned Lord has tabled a series of amendments. I put it to him that a lot of these amendments go further than just drafting. When I

asked the question in Committee recently, the Government refused to say, or to make it easy to identify, which amendments they have been involved in and helped with. The suggestion was, basically, "Go and read *Hansard*". Well, I have read *Hansard*. There are amendments here, where, in a variety of places, something has been done to amendments that were tabled by Kim Leadbeater that, all of a sudden, have now been watered down. One of them is about the words "through illness". I do not know why, all of a sudden, we are seeing an amendment that was specifically put in now being removed.

I do not want to get into the whole debate about doctor shopping and other things that are being considered in other groups. I am grateful to the noble and learned Lord, Lord Falconer, for indicating that, if any of these amendments are to be challenged, he will not press them or assume that they will just go through on the nod. On that basis, I will seek to withdraw my Amendment 7, but we need to understand what is going on.

On issues around domestic abuse, the noble and learned Lord referred eloquently to other parts of the legislation, but this was a key discussion initiated by Jess Asato—I think others may come in to discuss this particular point—and I am not aware that she has been involved in potential amendments to what she thought she had secured. I will not repeat her Commons speech, but it was very clear about the extra forms of abuse that she specifically managed to get into the Bill. She felt it was important because, currently, not enough healthcare professionals have had training in those.

Jack Abbott tabled amendments in Committee in the Commons that were to do with the interpreters. They are covered in Amendments 170 and 405, which propose removing "must" and inserting "take all reasonable steps". Kim Leadbeater specifically said that she would be "happy" to move the amendments in his name. She said:

> "They seem very sensible amendments, and I am happy to support them. Along with the GMC's 'Good medical practice', which sets out the principles, values and standards of professional behaviour expected of doctors, it is a belt-and-braces approach to an issue that is very important, for reasons that several hon. Members have set out".—[*Official Report*, Commons, 4/3/25; col. 707.]

That is what she said in the other House. Why is this now being watered down?

Lord Falconer of Thoroton (Lab): I apologise for interrupting, but I think there is a profound misunderstanding. Let us look at Clause 8, because the noble Baroness, Lady Coffey, is making a very important point. Jess Asato was incredibly keen to specify that training in respect of

> "domestic abuse, including coercive control and financial abuse, is mandatory".

Clause 8(8) says:

> "The regulations must provide that the practitioner must have had training about the following",

and paragraph (d) says "domestic abuse". Subsection (10) says that training on domestic abuse must include

> "training in respect of … coercive control and financial abuse".

That was the point that Jess Asato was keen to establish.

Noble Lords will see at the top of page 41 of the Bill that the definition of domestic abuse

> "includes behaviour that is controlling or coercive or … economic abuse".

What is happening here is not a watering down of any of that. It is simply avoiding duplication between Clause 8(10) and the wide definition of domestic abuse in Clause 56. I understand why the noble Baroness might be confused about it, because it is slightly complicated, but that is the intention. It is not for one second to water down any of the protections.

Baroness Coffey (Con): My Lords, I do not think I am confused at all. I know what Jess Asato tried to get into the Bill to give her assurances, and that something has changed. I had moved on to talk about the amendment from Jack Abbot, which was very important.

The issue of illness is an example of where the Government said they had worked with the Bill's sponsor. The challenge of this group—I am thinking about what the noble Lord, Lord Birt, said earlier—is that we are covering multiple issues on the basis of drafting changes. I would rather get into the substance of some of this when we get to later groups. However, Clause 14 says that, in the very unlikely circumstances that the doctor who agreed to give a second opinion "dies" or "through illness" is unable to continue, the person has the right to seek a second opinion elsewhere. My point is about removing "through illness", which was specifically included the Bill. I am trying to understand why the noble and learned Lord is seeking to do that. I have already heard him say that you can just find another doctor, but I am particularly keen to hear from the Government their view, because they worked with the Bill's sponsor in the Commons to get this phrasing about illness in.

The sponsor's Amendment 416 is to do with independent doctors and Commons Amendment 459, and there is more than one reference to this issue. There was significant debate when Sarah Olney introduced her amendment in Committee in the Commons seeking to reduce the possibility of abuse by making sure that the second independent doctor has available the reasons why the first independent doctor concluded that the person was not eligible. My interpretation of the amendment tabled by the noble and learned Lord, Lord Falconer of Thoroton, is that that goes away and there will not be two reports, and the amendment speaks further about aspects of the reports.

This amendment brought attention from other MPs. Lewis Atkinson talked about recognising that the provision of five different touchpoints of assessment—I appreciate the effort that has gone into trying to bring in safeguards around these matters—is one of the strengths of the Bill and that each assessment should be done in a way that can be progressed with more information. On the Bill's record-keeping provisions, the assessment should become increasingly informed throughout the process, and therefore there should be an opportunity for a lot of those things to be shared with the panel, as the Bill proposes. Kim Leadbeater said that she was minded to support Sarah Olney's amendment, but, again, some of those changes are being taken out.

[Baroness Coffey]

I am not entirely clear about Amendment 417. I somewhat understand the disability definition, although there is only one reference to Section 6 of the Equality Act 2010 anywhere.

This group of amendments needs careful scrutiny as we go through the different groups for later discussion. One of the aspects that we need to make sure of is that the extensive concessions made in the other House do not all of a sudden, through just a few changes here and there, go away. In fact, as we know, in this House we are even considering what further safeguards there could be. One of my reasons for rising today was to bring this to the attention of the Committee. I am not suggesting that the noble and learned Lord, Lord Falconer of Thoroton, has done this in bad faith. He may well think that this is just being more efficient, but the extensive debate and the support in the other place—indeed, the support of Kim Leadbeater—for several of these amendments as they were originally drafted mean we should be asking him to think again. We will get into some of the detail in the debates on future groups. I beg to move.

Baroness Keeley (Lab): My Lords, my Amendment 420 could sit beside Amendment 419 from my noble and learned friend Lord Falconer, but it has not been put in this group. This group is labelled "drafting changes" but, as we have just heard, the effect they would have goes further than that. I have tabled Amendment 420, to be discussed in a later group, to address a concern that the grounds on which a co-ordinating doctor can drop out are already too wide, but I see that the amendments in this group from my noble and learned friend Lord Falconer compound that problem by expanding the grounds even further. I therefore feel I must speak briefly in this debate, despite the fact that my amendment comes later, because your Lordships' Committee needs to be aware of the concern I am seeking to raise, which the noble Baroness, Lady Coffey, also has.

My Amendment 420 highlights that these provisions should be limited to cases of death or illness. Clause 14 fails to define in which situations it would be acceptable for the state not to be concerned that the doctor is unwilling. As the noble Baroness, Lady Coffey, has highlighted in her Amendment 420A, the danger is that the current wording would allow the risk of changing doctors until the wanted answer is given. These probing amendments are going to be discussed later, and they will focus on the need to restrict the grounds for changing the co-ordinating doctor by excluding the word "unwilling", which Amendments 420 and 420A both address.

It would be helpful if my noble and learned friend Lord Falconer could answer these questions on this matter. How do we distinguish between a doctor who is unwilling due to conscience and one who is unwilling due to suspicion? Without a requirement to record the specific reasons for unwillingness, is there a danger that we are creating a black box? If a doctor steps away because they are uncomfortable, for instance, with a family member's influence, surely the system needs to capture that specific hesitation before a new doctor is appointed. Will my noble and learned friend Lord Falconer specify what circumstances cross the line where the state should be more curious about why the doctor is unwilling?

Baroness Grey-Thompson (CB): My Lords, I originally requested that later amendments that I have on disability language, as defined under the Equality Act, be moved into this group, but they were not. I think it is important that we have a chance to debate them as well. Language is the dress of thought, and "person with a disability" is not language that is used in the Equality Act. However, if the noble Baroness, Lady Coffey, seemed to misunderstand these amendments, I think I have misunderstood them as well.

I am particularly concerned about Amendments 290, 366 and 931 around domestic abuse and coercive control, which I have spoken about in other debates. I believe that these amendments go beyond mere drafting changes. The wording as it now exists waters down what the training around domestic abuse is likely to be. For example, it could be a course on physical or sexual abuse, but that does not necessarily mean that it is as comprehensive as I believe it needs to be. I am conscious of time, but I would be interested to know whether the noble and learned Lord or the sponsor in another place, the honourable Member for Spen Valley, has spoken to the honourable Member for Lowestoft, Jess Asato, about the impact of these amendments on her work. It important that we understand the context of what we thought was coming from the Commons and what these changes might mean to the Bill.

12.15 pm

Lord Moylan (Con): My Lords, I rise to speak briefly to my Amendment 9 in this group. Before I do so, I thank the noble and learned Lord, Lord Falconer of Thornton, for making clear his intentions as regards moving his amendments in Committee. I wrote to him twice about this without getting a clear answer, but there has been a clear answer today, which is that he is not going to press amendments to which there is objection. It is good to know what his intentions are because otherwise we could end up in a situation, which I think would not be convenient to the Committee and would certainly contradict our normal practice, of having to hold Divisions in Committee that normally would be deferred, very properly, to Report. I welcome what he said.

My Amendment 9 is fairly easily disposed of because the noble and learned Lord has explained that both he and I, and indeed the noble Baroness, Lady Goudie, in her Amendment 8, have identified one of a number of blatant errors in the Bill where it says two different things in two different places, and we have drafted amendments to correct that. That is essentially what they do. We have drafted them differently. I think the sensible thing would be if the noble and learned Lord did not press his Amendment 6 today because it would pre-empt mine. Instead, I think the sensible and normal thing, the courteous thing, would be to say that he will discuss the drafting with the noble Baroness, Lady Goudie, and me outside the Committee between now and Report so that we have agreement on the appropriate amendment. I prefer not to have my amendment

pre- empted, since I say, with some humility in front of the noble and learned Lord, that I think mine is better drafted than his.

Baroness Hollins (CB): My Lords, I will speak briefly to Amendment 405 because the Equality Act is relevant to it. It provides a legal duty to provide reasonable adjustments for disabled people, which is defined quite broadly and I think would include a person who was terminally ill. The amendment is currently worded that the doctor must

"take all reasonable steps to ensure that there is effective communication".

Will the noble and learned Lord consider changing his drafting to say that the doctor must "ensure reasonable adjustments are provided to ensure effective communication"?

Lord Shinkwin (Con): My Lords, I rise to speak on Amendment 405. It is a pleasure to follow the noble Baroness, Lady Hollins, and to echo some of the points she touched on. I clarify that of course the amendment is in the name of the noble and learned Lord, Lord Falconer of Thoroton. I do so because, as a disabled person who was on the National Disability Council in the late 1990s developing codes of practice and advising the then Government on the importance of language—a point that the noble Baroness has just mentioned—I fail to see how changing the Bill's wording from

"must first ensure the provision of adjustments for language and literacy barriers",

which was the language of the amendment adopted by the other place, to "take all reasonable steps" can do anything other than weaken this Bill.

The noble and learned Lord would have us believe that this is just a drafting change; indeed, he said in his opening remarks that it makes it "clearer". I contend that this is no drafting change because, yes, it changes the sense of meaning. The amendment would take us backwards because it would fundamentally weaken one of the Bill's safeguards, such as they are, which was inserted as a result of Jack Abbott's Committee amendment in the other place, and which the Bill's sponsor in the other place described as "very sensible"—she was happy to support it.

I have a few questions for the noble and learned Lord that I would be grateful if he could answer in his closing remarks. Is this Committee being asked to believe that today the Bill's sponsor in the other place is happy for the noble and learned Lord, in effect, to overrule her? Can he confirm in his closing remarks that she and Mr Abbott have been consulted, or is it that, together, the noble and learned Lord and Ms Leadbeater have decided to water down one of the few safeguards in the Bill because, well, it is only the House of Lords so no one is going to notice? The whole point of the Bill is to make it as easy as possible for people to have assisted dying, so let us minimise the constraints.

I began my career at the Royal National Institute for Deaf People during the first Blair Government. It was an exciting time. To the credit of Tony Blair and the noble Lord, Lord Hutton, who was Health Secretary, digital hearing aids were introduced on the NHS. The RNID, when I worked there, was listened to, and it should be now. So could the noble and learned Lord explain why this amendment implicitly ignores the finding made this year by the RNID and SignHealth in their report that some patients did not understand their diagnosis or treatment?

As a disabled person, I thank our Labour colleagues most sincerely. I know that I owe a debt to the Labour Party's long-standing and noble—in the true sense of the word—commitment to advancing disability rights. However, this amendment underlines an inescapable but painful truth. The Bill makes a mockery of that fine, noble and honourable tradition. It shreds a tradition that deserves to be preserved, not sacrificed in such a profoundly cynical and misleading way as to make out, as the amendment does, that this is somehow only a drafting change.

There is a reason why not one organisation of or for disabled people supports the Bill; they know that disabled people need the Bill like a hole in the head. I marvel that the noble and learned Lord does not seem to realise that the Bill is dangerous enough already without the removal of provisions that would at least acknowledge the obligation to first ensure that communication adjustments were made; for example, for people with learning disabilities or users of British Sign Language.

The last thing that we as a House should be doing is endorsing an attempt to make the Bill an even poorer piece of proposed legislation than it already is. Noble Lords could be forgiven for thinking that that was not possible, but, as the noble and learned Lord's Amendment 405 clearly states, he is perfectly capable of making his poorly drafted Bill even worse.

Baroness O'Loan (CB): My Lords, could the noble and learned Lord, Lord Falconer, clarify for me the impact of Amendment 290 and whether it deals with matters of coercive control and economic abuse effectively for the purposes of the legislation? I ask this because Amendment 290 would remove

"including coercive control and financial abuse"

from the Bill. The same principle applies to Amendment 366, while Amendment 931 would remove the requirement for members of a panel to receive training on coercive control and financial abuse.

Even taking into account the Domestic Abuse Act, which I will come back to in a moment, there is a difference between coercion and pressure and coercive control and abuse. It is for that reason that I support the comments previously made about, for example, Kim Leadbeater in the Commons being pleased to support mandated training on domestic abuse, including coercive control and financial abuse, and the Health Minister in the Commons Committee noting that the amendment would require training regulations to include

"mandatory training relating to domestic abuse, including coercive control and financial abuse",—[*Official Report*, Commons, 18/3/25; col. 1212.]

which clearly would ramp up the requirement.

However, the definition of domestic abuse in Section 1 of the Domestic Abuse Act 2021 refers to behaviour in the context of personal relationships—persons who

[Baroness O'Loan]
are connected—and there is a list of the persons who are connected. Section 1(4) of the Act does not cover those who are not personally connected but who may be capable of having enormous influence upon people on behalf of those who are. I think, for example, of financial advisers, lawyers and even doctors, people like that, who may be able to put pressure on people, and we have seen situations in which such pressure has been brought to bear. Does the noble and learned Lord consider that the situations in which pressure may be brought to bear by someone not personally connected should be otherwise provided for?

This group also contains amendments to Clauses 10 and 13, the provisions in relation to the situation in which a doctor is unable or unwilling to act as the independent doctor. There are provisions in Amendments 332, 418 and 419 for a further referral if a doctor is unable or unwilling to continue. His reasons for unwillingness could include ethical concerns or suspicions of undue influence on the patient. Despite the fact that there is a provision that he can seek specialist advice on this issue, there may be a situation in which the doctor will simply withdraw from the process. The single additional referral was approved in the other place to protect the patient, but these amendments would enable doctor shopping to occur. We will come back to that in group 44. Moreover, if a doctor withdraws from completing the process because of suspicions of possible or undue influence, the reason must surely be recorded.

Amendment 405 would remove from the Bill the requirement to have regard to "language and literacy barriers", replacing it with the new more general requirement to

"take all reasonable steps to ensure … effective communication".

The noble Baroness, Lady Hollins, explained during the previous debate the extent to which people with a disability have complex needs, which must be satisfied to enable understanding. The inclusion of "all reasonable steps" et cetera introduces a far less specific test, and consideration must be given to setting standards for the level of communication which is required. I have to ask the noble and learned Lord: does this amendment inadvertently disadvantage those with specific learning difficulties and similar vulnerable groups?

12.30 pm

I move to Amendment 413, which proposes the removal of Clause 12(8) and would have the effect of removing the provision that the co-ordinating doctor could seek a specialist assessment for the independent doctor. That is laudable, but there is a question whether, if the independent doctor has concerns about the co-ordinating doctor whom they may have used for a second opinion on capacity or terminal illness, they would, with the removal of subsection (8)(b), be deprived of the ability to seek the truly independent information they need. That was an important safeguard.

Amendment 416 to Clause 13 would remove the requirement to provide a second independent doctor appointed under Clause 13(2) with the report by the first independent doctor, setting out the reasons why the first independent doctor was not satisfied that the application for an assisted death should be granted. It was one of only 25 concessions made to those with concerns about the Bill in Committee in the other place. Dr Elizabeth Davis, a consultant geriatrician, gave evidence that:

"A record of refusal and the reasons for it are vital and this must be traceable and auditable".

That was a view endorsed by the Medical Defence Union, given the concerns that the Chief Medical Officer or subsequent doctors would be unable to identify patterns of doubt. The second independent doctor would therefore be unsighted as to the reasons why a fellow professional reached a different and negative conclusion. This is a further diminution of the protection currently provided by the clause. Otherwise, the state will be unable to inform the new "independent doctor" why the first independent doctor declined to complete the process.

Amendment 416 is described as clarification, since a refusal by a doctor may be because of suspicions of coercion or ineligibility. Can the noble and learned Lord, Lord Falconer, tell the Committee why he wants to remove the opportunity for the second independent doctor to consider the first independent doctor's reason for refusal? This surely provides an additional safeguard, particularly given his amendments to remove the terms

"coercive control and financial abuse"

from the Bill.

Baroness Berger (Lab): My Lords, I will very briefly raise my serious concerns about the three amendments that remove the specification for domestic abuse training. They are Amendments 290, 366 and 931. In the Commons, this was a significant area of concern for all MPs, specifically the risk to those suffering domestic abuse, and, as such, the sponsor of the Bill there accepted the amendment that introduced explicit requirements for training on domestic abuse, including

"coercive control and financial abuse".

I listened very closely to the intervention from my noble and learned friend about the definition contained in Clause 56(2) that refers to control and financial abuse. But just because the definition of domestic abuse in the Bill includes coercive control and financial abuse, that does not mean training on domestic abuse will always include both those things. A training provider would not have an obligation under the Bill to cover all aspects of the definition, whereas the Bill, as currently drafted and as we received it, includes specifically both coercive control and financial abuse in that training. I urge my noble and learned friend to reconsider those amendments, based on the contributions in the other place, and to ensure that training covers and encompasses all those specific elements.

Baroness Finlay of Llandaff (CB): My Lords, I have some questions for the noble and learned Lord, Lord Falconer, about his Amendment 6, because my concerns also relate to the amendment in the name of the noble Lord, Lord Moylan. It does not seem to reflect the way that seriously ill children behave.

I have looked after children dying of malignancies. They knew that they were dying and asked really straightforward questions. They would ask about how

they would die and would want to have in-depth conversations. I recall one little boy who asked me if he could play football in heaven, after another little boy in an adjacent room had died a few weeks earlier. These children asked for explicit details and wanted to have lots of conversations. Another one said that he would die after his goldfish died. Sadly, that was prophetic and when he was close to death, he asked his divorced parents to come in and promise to look after his siblings together. These children know each other; they want to ask questions and need to have them answered.

I am not sure how, with Amendment 6, doctors are meant to respond to these children when they ask questions. At the moment, you respond gently and openly, and explore with them what they are really asking about in an age-appropriate way. I have a concern that this could make people feel risk-averse about having open communication with these children, and let children remain isolated with their fears. They hear about assisted dying on the news and in the media; the ethical aspects are part of the senior school curriculum in some areas. I am really concerned that Amendment 6, while well-intentioned, and the adjacent amendments, might actually make the day-to-day looking after of these children as they are dying more difficult.

Amendments 170 and 405 seem to lower the threshold for communication. I am grateful to the noble Baroness, Lady Coussins, for pointing out that whenever an interpreter is used they must be a registered public service interpreter, to avoid the poor communication scenario which I referred to last week. Speech and language therapists are essential, so can the noble and learned Lord, Lord Falconer, explain how with one would judge "effective", as is listed in his amendment, and assess "reasonable steps"? These seem very subjective and I am not sure how they would be monitored. Others have spoken to the other amendments, so I look forward to hearing the comments from the noble and learned Lord.

Baroness Berridge (Con): I will speak briefly to raise attention to Amendment 170, which has recently been added to the group. In an effort to short-circuit, we will come to the issues of interpreters much later on.

I have laid Amendment 174, which quite simply says that an interpreter must be over the age of 18. It will not surprise the noble Baroness, Lady Merron, that I have a whole cluster of amendments to deal with what may be inadvertent situations that are not covered off for under-18s. I invite the noble and learned Lord to look at that amendment to see whether it can swiftly be clarified and dealt with, along with the others that relate to children.

In this group, I will also speak to the noble and learned Lord's Amendments 332, 417 to 419 and 425, which I believe are a genuine attempt to deal with the report from the Delegated Powers and Regulatory Reform Committee. It advised the sponsor of the Bill to remove the Clause 15 power and to align the other clauses, because there were inconsistent wordings. I want to reiterate that reassurance was given in the other place that there would be one second opinion by another doctor. This goes back to the noble and learned Lord's opener: when we talk about "cannot", we need to cover that off in the Bill. The Bill was covering death or illness—obvious situations where the function cannot be fulfilled—but "will not" is obviously a different scenario.

Unless the doctor is unable to perform that function, for whatever reason, if we do not stick to the word "cannot", we will potentially get the opening up of the ability to choose a number of doctors and maybe having some kind of discussion. Then they may not want to act, which may be for the reasons outlined by the noble Baronesses, Lady O'Loan and Lady Goudie. Then we might have a number of assessments or discussions that do not become a formal refusal which is then documented. I do not think the noble and learned Lord intended, by changing Clauses 10 and 13, to broaden the scenarios where a further referral could be made to any situation in which the doctor is unable or unwilling to continue; I think this has happened inadvertently. I know that my noble friend Lord Harper has laid amendments regarding particular scenarios beyond "death" and "illness", and I think that the Minister in the other place, Mr Kinnock, mentioned family circumstances or emergencies. Perhaps the way ahead here—I am trying to pre-empt a further group, when we get to it—is that we could have a clause that outlines more circumstances than the two that are in the Bill.

Obviously, as lawyers, we know we can never cover every circumstance that would justify a doctor saying, "I can't do this function any more", not "I won't". Perhaps there could be a system whereby a doctor who wants to withdraw, and his or her circumstances are not in the paragraphs, should have to go to the panel and say, "I've got a situation that isn't within the framework of the legislation, but I can't for these reasons perform that function". So I hope the noble and learned Lord will not move those amendments, as he has promised, but we could come back to this in the group that deals substantively with exploring scenarios where the doctor cannot act.

Lord Ashcombe (Con): My Lords, I wish to express my particular concern regarding Amendment 416. The question I must put to the noble and learned Lord is, why should an independent doctor tasked with providing a second opinion not have access to the notes of the first? Is the intention to prevent any influence on the second medical professional, even when the first has identified grounds for dissatisfaction and declined to proceed with the possibility of assisted death?

We have already engaged in lengthy debates on the crucial matters of decision-making capacity and the risks of coercion. What if the first independent doctor had uncovered evidence of precisely such concerns? This situation inevitably calls to mind the troubling prospect that a patient, or indeed another party exerting influence upon that patient, might seek out a doctor willing to endorse the view of the co-ordinating physician. Surely the medical notes generated throughout the process are of fundamental importance to all involved in the medical profession, and it cannot be right that they should be withheld from any participant in the

[LORD ASHCOMBE]
decision-making claim. I therefore earnestly ask the noble and learned Lord to give me his thoughts on this, as I do not really consider this to be a straight drafting issue.

Baroness Lawlor (Con): My Lords, I would like to refer to Amendment 6 from the noble and learned Lord the sponsor of the Bill, because I have concerns with it. In inserting the words

"has a preliminary discussion with a registered medical practitioner",

Amendment 6, which is described as a drafting change, adds to the uncertainty about what discussion takes place with the patient and when. It is a dangerous uncertainty as, if the Bill was so amended, it would be left open for one or more such discussions to take place before the person is 18, so long as the discussion that is required as a preliminary discussion takes place after the person has reached 18.

In particular, the amendment would do nothing to restrict the scope of Clause 5(3), which permits a medical practitioner to engage in preliminary discussion about assisted dying with a patient who raises the subject. Since there is nothing to tie the discussion referred to as "a preliminary discussion" to be inserted in Clause 1 with "a preliminary discussion" in Clause 5(3), the amendment will not stop these discussions taking place with under-18s.

Grammatically, a "such and such" refers to any "such and such", and the word "preliminary" does not imply a restriction on number; there could be one or 100 preliminary discussions. Although Clause 5(3) does not oblige the registered medical practitioner to discuss assisted dying under the Bill's provisions with any patient who raises it, Clause 5(6) obliges the practitioner concerned to direct the patient to

"where they can … have the preliminary discussion"—

and that is the preliminary discussion. Therefore, even as amended, the Bill requires that any patient, whatever their age, who raises the possibility of assisted dying under the Bill is enabled to have a discussion about it. It cannot be objected that in Clause 5(6), the reference is to "the", not "a", preliminary discussion, since here "the" refers back to the preliminary discussion in Clause 5(3) to Clause 5(5), where the phrase used is "a preliminary discussion" or "such a preliminary discussion"—that is to say, any preliminary discussion of the matter.

These points may seem technical and pernickety, but consider how the Bill, even as amended, might lead a young person to end their life prematurely without proper adult consideration of the matter. Take a 16 or 17-year old who is suffering from a disease that makes their life expectancy uncertain, or who has been warned that they might die rapidly or deteriorate and die at any time. We may all try to imagine, but we can hardly know how such a young person might feel: isolated, lonely, afraid, and perhaps hypersensitive to remarks or innuendo, real or imagined, or indeed to some of what we have heard today about social media and pressures from peer groups in the Netherlands. They might share not only the worries about the illness, but the normal doubts of people of that age that even those in the best health who are depressed and unsure of themselves have. How easy for the unfortunate young person to say, "I wish I were dead".

12.45 pm

As it stands, even as amended, the Bill not only allows but requires such a person, although under 18, to be given the chance to discuss assisted dying, allowing them to have everything ready so that, as soon as they turn 18, if their diagnosis is unchanged and their life expectancy is less than six months, they can have a discussion about being assisted to die, as referred to in Clause 1. Had they not been facilitated in having preliminary discussions before 18, and so affirming their resolve to die, the person might well, with added maturity, decide differently. Therefore, I argue, and have already argued, that people are still too young at 18.

If those under the age of 18—or better, a higher age—are to be properly protected, will the Bill not state unambiguously that no discussion involving the revelation of assisted dying is permitted, even if those people raise the subject, on pain of practitioners being made ineligible under the Bill?

Baroness Fox of Buckley (Non-Afl): My Lords, the noble Baroness, Lady Keeley, explained some of my concerns, which I found very helpful. I have a couple of questions for the noble and learned Lord, Lord Falconer.

Why does an independent doctor's report no longer have to say why there was a refusal? I do not understand why the words "reason for refusal" have been omitted; could that be clarified? One of the things that will be very important in reassuring those of us with concerns about safeguarding being taken seriously is having as much transparency as possible in the process and ensuring the constant recording of information.

I am troubled by Amendment 418 and the word "unwillingness", and not understanding, probing or having any way of finding out why somebody is unwilling. I understand that unwillingness might well refer to not being available or not being able to be so. However, if a doctor steps away, maybe because they feel uncomfortable about family members, undue influence or some kind of coercion taking place—all the things we have heard about—it seems relevant that that information be recorded somewhere, because it is a red flag and an early warning. That doctor's opinion is only an opinion—the second doctor does not need to take any notice of it—but it would at least say that something is wrong; whereas, if the information just says that the doctor is not doing it because he is unwilling, we do not know anything.

In this process, there surely has to be a way of checking all the time that everybody knows that things are being done in good faith. I am afraid that some of these drafting amendments seem unintentionally to make things more obscure. The wording does not help to give us more information; rather, it removes information. Therefore, I would like the noble and learned Lord to look at redrafting his redrafting, so that we can have a bit of clarity.

Lord Sandhurst (Con): My Lords, I will be very brief. Having listened to this, I am more and more persuaded that we must have reasons, because there will be no coroner's inquest. We know that some doctors have misbehaved in the past, but that does not always come out. One needs to have a paper trail so that, if concerns start to arise about Dr X, we can see what Dr Y has been saying, as well as Dr X.

Lord Wolfson of Tredegar (Con): My Lords, I can be extremely brief, because of the confirmation given by the noble and learned Lord and also knowing that the substantive issues of domestic abuse, interpreters and various other matters will be dealt with in their appropriate place.

At the risk of underlining my reputation as a legal geek, I invite the noble and learned Lord's attention to his Amendment 350, and in particular the Member's Explanatory Statement. I understand the amendment, but I do not understand the statement. The amendment leaves out from "to" to end of the line and inserts "section 12(4) and (7)", which are about "sharing of specialists' opinions". The Explanatory Statement says:

"This is a drafting change (consequential on subsection (4) being added to clause 12)".

Now, Clause 12 already has a subsection (4), and the noble and learned Lord's amendments to Clause 12 are to subsections (5) and (8). I do not know whether the Explanatory Statement has confused me and in fact the change is not consequential on a new subsection (4) being added but just stands in and of itself. It may be that I am confused unnecessarily, but if the noble and learned Lord could just clear up that minor point, I would be grateful.

Baroness Merron (Lab): My Lords, I, too, shall be brief. All but three of the amendments in this group have been tabled by the Bill's sponsor and, as has been discussed, they make a series of drafting changes to the Bill, including making sure that terms are consistent throughout and removing ambiguity and duplication.

The Government are neutral on all the policy choices reflected in these amendments, as they are on the Bill as a whole, but have as usual provided drafting support to make the Bill legally workable. As a part of the discussion today, it is of course for the sponsor and for Parliament to determine whether any of the amendments that the sponsor has chosen to table have changed the intent of amendments that were debated in the other place.

Amendment 7 in this group, tabled by the noble Baroness, Lady Coffey, seeks to amend Amendment 6 by changing a reference in Clause 1(2)(b) from "a preliminary discussion" to "their first preliminary discussion". It does not make any wider changes to the Bill to provide for more than one preliminary discussion to take place, so this may lead to uncertainty. As with all amendments that have not had technical input from the Government, noble Lords may wish to note that the current drafting of this amendment may require further consideration to make it fully workable, effective and enforceable.

Amendments 8 and 9, on which I raise no major workability issues, appear to be trying to achieve the same purpose as Amendment 6, tabled by the Bill's sponsor. But I would note that Amendments 8 and 9 have not had the technical drafting support from officials and therefore may not be fully workable, effective and enforceable.

Lord Falconer of Thoroton (Lab): My Lords, I am grateful for all the interventions. These changes are only drafting changes. Some legitimate points were made, particularly by the noble Baronesses, Lady Finlay and Lady Lawlor, but they did not really go to the drafting points.

I go to the concerns various Members have expressed. Amendments 6 and 7, tabled by the noble Baroness, Lady Coffey, would prevent doctors having a conversation with people—I am not saying this in a bad or a good way, but that is what she wants to do—particularly before they reach 18. There is a point there, but it is nothing to do with the change I have introduced in my Amendment 6. My amendment would simply make it clear that there has to be a preliminary discussion before you can go ahead to assisted death. I have done that to make it clear that it is one of the eligibility conditions; it says nothing about what should be talked about or whether such a conversation should take place under the age of 18.

In fact, as the noble Baroness, Lady Coffey, said, Clause 6 states:

"No registered medical practitioner or other health professional shall raise the subject of the provision of assistance in accordance with this Act with a person under the age of 18".

I do not think that the noble Baroness's amendment would add to that protection. The key point is that all Amendment 6 is doing is saying that you have to have a Clause 5 discussion.

The next point, raised by a number of Peers, is that I am watering down the protection in relation to domestic abuse. That, as a matter of drafting, is wrong. It is only a matter of convenience that, having defined domestic abuse as including everything so defined in the Domestic Abuse Act 2021, you get coercion, control and economic abuse as forms of domestic abuse. To avoid having to repeat that every time the Bill refers to training, I have simply referred to domestic abuse, and that is then defined at the top of page 41. I very much hope that people will accept that that is the position.

The noble Baroness, Lady O'Loan, who is shaking her head, raises a different point about the position in relation to abuse that is not domestic. Perhaps your lawyer is exercising undue influence on you. That is a point that I will respond to in writing, but it is not a point raised by my drafting change, because all the restrictions have been in relation to domestic abuse, not to what the lawyers would call undue influence. But it is a perfectly legitimate point, which I will come back to in correspondence with her.

Baroness Berger (Lab): On this very point, and for the record, I think many noble Lords will want to hear specifically how my noble and learned friend's Bill will ensure that, when it comes to the training, all elements of domestic abuse as set out will be covered in that training, particularly given the concerns raised both here and in the other place.

Lord Falconer of Thoroton (Lab): The reason it is covered already is that the Bill says that the training must cover domestic abuse. Domestic abuse is defined by reference to the Domestic Abuse Act 2021. Domestic abuse in the 2021 Act includes coercion, control and economic abuse. That is how there is a mandatory requirement in the Bill for all those things to be covered.

Baroness O'Loan (CB): The definition of economic abuse in the Domestic Abuse Act is limited to actions that will prevent the person getting money or being able to spend money, if I remember correctly. There could well be financial abuse, depriving a person of very large sums of money, while they are still able to get money and spend money, so I think it needs further thought.

Lord Falconer of Thoroton (Lab): I will certainly give it thought, but my reading of the definition of domestic abuse in the Domestic Abuse Act 2021 is that it is an effective means of covering the sort of economic abuse habitually seen between domestic partners. I think that covers it but, because of my respect for the noble Baroness, I will certainly look at whether it needs to be expanded. What the noble Baroness is referring to is a problem in the definition of domestic abuse generally in relation to economic abuse, which I do not think is there and was certainly not the intention of the 2021 Act.

I turn to the other issues. First, on "other than illness", this is about when one or other of the two doctors withdraws from the process without giving a reason—simply withdrawing from the process. I completely understand what the noble Baroness, Lady Fox, is saying, which is that if someone is withdrawing because they think the person is being pressured, that must be recorded somewhere and any other doctors must be able to see it. What we are dealing with here is not that situation. We are simply dealing with a doctor who withdraws and gives no reason. Should the patient have to establish that there is a good reason for the withdrawal, or is it enough that the doctor has withdrawn and is no longer willing to participate? All the amendment does is to say, "If you can't or won't go on, you can get another doctor", which is not a change in sense but makes clear what those provisions are. When I say "those provisions", I am referring to those that allow for a replacement doctor when one of the other doctors—the originally appointed one—cannot go on.

1 pm

Baroness Fox of Buckley (Non-Afl): I think I understand what has been said there but, for clarification, is the withdrawal explicitly queried anywhere? I am under the impression that there is nowhere where you say, "Why are you withdrawing? Is it for this reason or that reason?". I am delighted that the noble and learned Lord agrees with me that certain withdrawals suggest something that should be noted down. Where in the Bill—forgive my ignorance—does that happen? I do not see it anywhere and I would be grateful if he could refer me to it.

Lord Falconer of Thoroton (Lab): First, on there being no need to question someone about why they are withdrawing, if there is material relevant to it, I need to check the Bill to see that it should be recorded. But the Bill contains regular provisions that state that everything must be recorded. If it is not adequately covered—if somebody says, "I'm withdrawing because I think you're being coerced", obviously that should be recorded—I will make sure that it is covered.

On Amendment 405—

Lord Deben (Con): I genuinely want to understand this. The worry we had about this being a drafting difference is simply because when you could withdraw only on grounds of illness or death, the situation about why you withdrew did not arise. When you remove that, people can withdraw without giving notice of why. Therefore, there ought to be something—the noble and learned Lord has rightly said that he will look at it—to make sure that if somebody withdraws because there is some serious issue in connection with the decision, they have to say what it is. If we do not have that, this very much becomes a weakening point. I know that the noble and learned Lord does not want it to become that, but without something that insists on the information being given, it does become much weaker. This is not a drafting point until that is put right; when it is, it is a drafting point.

Lord Falconer of Thoroton (Lab): I do not accept that it is not a drafting point, but that may be dancing on the head of a pin. The point that both the noble Baroness, Lady Fox, and the noble Lord, Lord Deben, are making concerns making sure that if you are leaving for a reason that will give rise to problems, it is properly recorded. I completely accept that and we will make sure that that is the position, because it is a valid point.

In relation to Amendment 405, the noble Lord, Lord Shinkwin, said that it is a watering down. It is not a watering down at all, with respect. The current draft says:

> "When carrying out an assessment in accordance with subsection (2), the assessing doctor must first ensure the provision of adjustments for language and literacy barriers, including the use of interpreters".

The new draft says that the relevant doctor must

> "take all reasonable steps to ensure that there is effective communication between the assessing doctor and the person being assessed (including, where appropriate, using an interpreter)".

The noble Lord, Lord Shinkwin, is shaking his head; I am more than happy to talk to him about how that could be a change, and if there is some change that he would like in relation to it, let us put it in. But it is, in legal terms, to my eye, wider. It covers a much wider ambit without providing any inadequate protection. Maybe the right course is for me and the noble Lord, Lord Shinkwin, to sit down and for him to identify the changes that he would like. At the moment, I cannot see them.

Lord Shinkwin (Con): I thank the noble and learned Lord, and I will be very brief. Would he consider withdrawing his amendment? The change I would

simply write, and I imagine the House would find acceptable, is what the sponsor of the Bill in the other place also found acceptable, which is to accept Mr Abbott's amendments.

Lord Falconer of Thoroton (Lab): I do not need to withdraw the amendment, because if the noble Lord objects to it, I will not press it in Committee. It depends on what we get to when we get to Report. What I am saying is that, at the moment, I cannot see the difference. I am more than happy to talk to him before Report. If there are valid points, let us put them in. However, at the moment, it looks to me to offer just as good, if not better, protection.

Baroness Grey-Thompson (CB): I would not be able to accept the amendment as tabled because I have numerous other amendments on disability, language, BSL, different levels of interpretation and Makaton that are all important when having these conversations. Following the offer that the noble and learned Lord made to the noble Lord, Lord Shinkwin, I would be delighted to join the meeting as well, to see how the noble and learned Lord's amendments can be improved to move further down the road. What we are trying to do is to make sure that people go into this decision-making process clearly understanding the decision they are taking.

Baroness Hollins (CB): If such a meeting were to take place, I would be delighted to ask the noble and learned Lord to consider the alternative wording I proposed when I spoke to the amendment.

Lord Falconer of Thoroton (Lab): First, both noble Baronesses would be very welcome to attend this meeting, which is expanding all the time. Secondly, the language the noble Baroness, Lady Hollins, proposed was "reasonable adjustments", which is in the first draft but not the second. The reason we have not used the wording "reasonable adjustments" is that it comes from the disability Act. We want to do that and then go wider, and our amendment therefore gives greater width.

Baroness Hollins (CB): It is the Equality Act, not the disability Act. I suggested that the definition of "disability" in the Equality Act, with respect to something like this, would in fact include someone with a long-term condition or mental illness, as well as any other disabling condition that the noble and learned Lord may be referring to.

Lord Falconer of Thoroton (Lab): The noble Baroness is right that it is the Equality Act, not the disability Act; I apologise for that. If we were to restrict it to that, we would restrict it to a particular thing, and we think that it should be wider that. Again, we can talk about that at the ever-expanding meeting.

On Amendment 416, the noble Lord, Lord Ashcombe, was particularly exercised by the fact that the second doctor would not see the report of the first doctor; he would have some degree of problem with that. The noble Lord will know that, where a second doctor is brought in—where a referral is made to a new practitioner—the co-ordinating doctor must provide the new doctor with a copy of the previous report. If the new doctor is satisfied as to all the matters mentioned in Clause 11 on capacity et cetera, he or she then has to say why he or she disagrees with the previous doctor. The noble Lord's legitimate sharpness in relation to that point was based, I think, on an improper understanding of Amendment 416, which will allow this to happen only once the new doctor sees the report of the previous doctor.

In the light of my exchange with the noble Lord, Lord Moylan, which was right for us to have, I will not move my amendment. Although the noble Baroness, Lady Coffey, was kind enough to indicate that she will withdraw her amendment to my amendment, because the noble Lord, Lord Moylan, thinks his drafting is better, we will have to wait and see what happens on Report. Do not hold it against me when I come back with the same amendment on Report.

Baroness Coffey (Con): I thank the noble and learned Lord for his extensive responses. They reflect that "ensure" and "take reasonable steps" are actually different in law compared with what is expected. I am grateful to him for saying that he will not press his amendments in Committee and that he will allow us the opportunity to meet him and others to discuss some of these issues, where we think the provisions go beyond what might be considered legal drafting. I am slightly concerned that the Government did not reply to one particular aspect, but I will take that up separately with the Minister. But with that, I beg leave to withdraw—

Lord Wolfson of Tredegar (Con): Before my noble friend sits down, I wonder whether the noble and learned Lord might take the opportunity to respond to the point I put to him on confirming the drafting of that amendment. He must have overlooked it.

Lord Falconer of Thoroton (Lab): That is in the notes, but I will write to the noble Lord on that.

Baroness Coffey (Con): With that, I beg leave to withdraw Amendment 7.

Amendment 7 (to Amendment 6) withdrawn.

Amendment 6 withdrawn.

Amendments 8 and 9 not moved.

Amendment 10

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

10: Clause 1, page 1, line 8, leave out paragraphs (c) and (d)

Baroness Finlay of Llandaff (CB): My Lords, we now come to issues around residency. My Amendment 10 is a probing amendment. I had to word this this way, because I was trying to put in other wording about residents in the Crown dependencies who may be treated in England or possibly Wales, but I was told

[Baroness Finlay of Llandaff]
that that was out of scope. After several attempts at wording, this seemed the only way for us to address the issue. I make it clear that I do not want make England and Wales a destination for death tourism. Therefore, I will be withdrawing Amendment 10, but it is the only way I can address this major loophole.

In the Select Committee on the Bill, I raised the issue of those who live in the Isle of Man, Jersey or Scotland, where proposed legislation has different eligibility criteria to the criteria outlined in the Bill. Many patients from across these borders are treated in England. Patients from Jersey regularly go to Southampton in ambulance flights or, if the sea is calm, by sea. Similarly, patients from the Isle of Man go to Liverpool. They go for treatment procedures, including radiotherapy and all types of investigations and procedures, because on those islands the facilities are, understandably, relatively limited. A cross-border flow from Scotland is therefore less than this.

A patient who is seriously ill may be transferred for treatment. When they are aware that they have a rapidly progressive, serious and life-threatening illness, they may want to be transferred back to their home to avail themselves of an assisted death in that area. We know that, at the time of being given bad news, suicidality and thoughts of death are at their most prominent, because patients are shocked and often have not actually considered their own mortality in depth; therefore, it is when they are being treated in England that they are most likely to raise the question of an assisted death when legislation is passed in their own jurisdictions.

In Select Committee, I asked Minister Sackman from the Ministry of Justice what the position would be for a doctor, nurse or other healthcare professional involved in arranging transfer back to the Isle of Man or Jersey, knowing that that transfer would facilitate an assisted death outside England and Wales, and the patient would not be eligible under the parameters of the Bill. The response from both the Minister and from Paul Candler, who was her accompanying official, was that it would indeed be a criminal offence to facilitate such a transfer, because they would be caught by the Suicide Act. As Paul Candler explained, the Bill essentially carves out from prosecution people who are acting in England and Wales in conformity with the scheme set out in the legislation. So an assisted death being arranged outside England and Wales is outside the parameters of the scheme of the Bill and would therefore be caught by the 1961 Suicide Act.

I asked the same question of Sir Max Hill, as he was Director of Public Prosecutions. His reply was that if you are operating as a medical or other professional within the legal jurisdiction of England and Wales, you must obey the law of England and Wales. He said:

"the guidance is simply to obey the law of the country in which you are acting, taking decisions and the rest of it. I think, I am afraid to say, that it is as simple as that".

I ask the noble and learned Lord, Lord Falconer, what is the position for doctors and nurses treating any very seriously ill patient, principally in Liverpool or Southampton, who may say, in the course of an in-depth conversation about their illness, the potential course of it and so on, when they may be contemplating death for the first time, that they want to go home to have an assisted death in their own home? What discussions has he had with the Medical Defence Union and the BMA about this legal liability? What is the legal position of these doctors if they actually accede to the patient's wish to return home?

I will now turn to my other Amendment in this group—

1.15 pm

Lord Pannick (CB): I am sure that the legal advice the noble Baroness has been given is absolutely correct. My point is that surely this problem arises now. This Bill does not change the position in any way.

Baroness Finlay of Llandaff (CB): With all due respect, I am not aware that the legislation has actually been enacted in either the Isle of Man or Jersey.

Lord Pannick (CB): Until it is enacted, there is not a problem. When it is enacted, the problem arises, whether or not this Bill is enacted.

Baroness Finlay of Llandaff (CB): We are discussing the wording of this Bill, with due respect. I raise this as a concern for clarification. It needs clarification because, if noble Lords are anticipating that this Bill and the legislation in the other jurisdictions will pass, we cannot leave a legal loophole or difficulty that might jeopardise the care of patients coming to England from the Crown dependencies. That is why I have raised it.

I turn to Amendment 11. Currently, the Bill speaks of the person being "ordinarily resident" in England and Wales, but there is a problem with "ordinarily". In 1983, Lord Scarman stated in a House of Lords judgment that

"'ordinarily resident' refers to a man's abode in a particular place or country which he has adopted voluntarily and for settled purposes as part of the regular order of his life for the time being".

So far, so good. However, in the healthcare context, the *2012 Review of Overseas Visitors Charging Policy* said:

"The vagueness of the definition means that OR"—

ordinary residence—

"is difficult to interpret and apply on an individual case basis".

People fell through the gaps and the NHS was not recovering its costs. Then, during his time as Immigration Minister, the noble Lord, Lord Harper, pointed out that

"we need to do a better job of making sure that front-line professionals have a simpler system".—[*Official Report*, Commons, Immigration Bill Committee, 7/11/13; col. 290.]

The problem with the definition in the Bill is that it could cover someone who is now living in another country but has an address of convenience in England and Wales for whatever reason. We know that there are thousands of empty properties owned by people who are not living permanently in this country. Apart from the more than 187,000 homes that are owned by people living permanently abroad, there are 5.5 million people who are British passport holders or have residency

visas to live in the UK but are living abroad permanently. What will be the position of these people if they wish to access an assisted death here? Currently, they would not be eligible for NHS treatment if it were to be funded by the NHS. If they came to live in the UK for a year, they would then become eligible for the NHS, but, with the prognosis of six months or less, they would be expected to be dead within that time. Of course, this assumes that there is any accuracy in prognostication, which there is not.

Let me put to your Lordships a scenario that is, sadly, not infrequent. A person working for the Foreign and Commonwealth Office in an embassy abroad becomes seriously and terminally ill and is repatriated to the UK. Their house is rented out and they have to give notice, so they go to live in a different area—one, they hope, with good specialist palliative care services that can provide them with support. However, not being able to be in their own home and surrounded by their own things, and without contact with people who would otherwise have a role in their lives, they easily become very depressed.

Let us look at that scenario under this Bill. Suppose they decide that they want an assisted death. They will not have been resident for 12 months prior to making a first declaration to request an assisted death. Will that person, who may have worked all their life in service of this country, now be ineligible? I see that the noble and learned Lord, Lord Falconer, is nodding that they would. I believe that, under the wording of the Bill—

Lord Falconer of Thoroton (Lab): Hold on—my nods must not be misinterpreted. I understand the question. If, for example, you live in Britain and you go and become the First Secretary in the US, you do not cease to be ordinarily resident in the UK. If you are a soldier and serve for nine months abroad, you do not cease to be ordinarily resident. I was nodding only to say that I have got the question, but I would not necessarily agree with the solution that the noble Baroness proposes.

Baroness Finlay of Llandaff (CB): I am grateful for that clarification and we will come back to the noble and learned Lord's comments on these issues afterwards.

Baroness Butler-Sloss (CB): If one reads Clause 1(1)(c), it not only says that the person has to be ordinarily resident but that they have to have been

"so resident for at least 12 months".

Consequently, unless being in an embassy is still seen as being resident for the previous 12 months, the point that the noble Baroness made is entirely right.

Baroness Finlay of Llandaff (CB): I am most grateful for that intervention, because many people who work in the embassies abroad do not live in the embassy; they live in apartments, houses or whatever in its vicinity.

The wording of the Bill prompted my probing amendment, so I ask the noble and learned Lord, in the light of this, whether he is comfortable with the vagueness of the term "ordinarily" or whether he sees merit in reconsidering this wording carefully to clarify the residency requirement to avoid death tourism and ensure that others are not discriminated against. I beg to move.

Baroness Coffey (Con): My Lords, I had originally tabled Amendment 15, which I withdrew, because it looked like I was trying to be nasty and stop the bucket list for people or stop them going on holiday, but that was not my intention. My intention was to think about residency in a proper way. Bearing in mind previous comments from the Minister, I have ended up replacing one amendment with four in order to be precise throughout the Bill.

In essence, I am not convinced that simply being ordinarily resident is enough. I say that because you can be ordinarily resident in more than one country. You can only be domiciled in one country. The issue here is: who is the Bill trying to cater for? I think, frankly—bearing in mind Amendment 23, proposed by my noble friend Lord Frost—that we should be looking at UK citizens and those whom the Government have decided to give indefinite leave to remain, and keep it at that. The element of "ordinarily resident" is that you can have settlement for a purpose. The single purpose could be that you just state that your settlement—your purpose for being ordinarily resident—is simply to take advantage of this Bill. I do not think that is enough.

As regards the amendments that have been tabled by my noble friend Lord Lansley, I also do not want this extending to someone being able to live anywhere in the United Kingdom. Indeed, my noble friend Lord Moylan has perhaps anticipated some of the situations where people have moved abroad and then want to come back. The essence of the Bill should be that it is focusing on providing provision in this country for people who permanently live in this country, which is why "domiciled" is a better test than simply "ordinarily resident", because, as I say, you can be ordinarily resident in more than one country.

Lord Lansley (Con): My Lords, I have not previously spoken on this Bill, so I hope that noble Lords will understand that I approach the tabling of amendments and speaking to them simply from the point of view of trying to ensure that the Bill is workable. It is of course a Bill which is intended to be provided essentially by the National Health Service, so with these amendments in this group I am entirely saying that we must make this service workable by the National Health Service. If I had to put what I have to say into one sentence it would be: let us have definitions in relation to eligibility by reference to residence that accord with those definitions that are presently used by the National Health Service and let us not try to ask the NHS to become an immigration inspector. I am afraid that there is also the longer version, but I will try to keep it as short as I can.

I have tabled Amendments 11B, 258B, 305A—with my noble friend Lord Howe—306C and 449B. From my point of view, they are not about trying to bring Scots into England and Wales for this purpose; they

[Lord Lansley]
are about aligning the definitions in the Bill for a service provided by the NHS with the definitions that are used day by day in the provision of NHS services. This is not a bureaucratic issue; it is a practical issue. If the NHS is providing somebody with a service which, in the current circumstances, may be something of a substantial character relating to what develops into palliative or end-of-life care, it should be in a position to provide an assisted dying service, if the person is eligible for that service.

I leave aside the question of whether they come from overseas or Crown dependencies because those persons would not be ordinarily resident in the United Kingdom, and they are probably not registered with a medical practice in England Wales, so they would not be eligible for those reasons. It comes back to the term "ordinarily resident", which, as the noble Baroness, Lady Finlay, correctly said, is not defined in statute. It is understood in the National Health Service and wherever it is used by the case she referred to, R v Barnet London Borough Council, ex parte Nilish Shah—the Shah case—in which Lord Scarman said that "ordinarily resident" is where a person normally lives

"voluntarily and for settled purposes",

forming part of the regular pattern of their lives.

It appears in statute, in the sense that the NHS Wales Act requires that services be provided for those persons who, for the time being, are ordinarily resident in Wales, but there is no further definition of "ordinarily resident". The charging overseas visitors legislation is secondary legislation, but it uses the ordinarily resident test.

What is interesting in this context is that, although "ordinarily resident" is in theory a test of whether one has free access to NHS services or is subject to charging, in practice, when somebody registers with a general practice—no pun intended—they complete form GMS1, which asks those from abroad to identify whether they would be subject to visitor charging outside the practice. But the form also states that:

"Anybody … can register with a GP practice and receive free medical care from that practice".

So, as far as the NHS is concerned, primary care—essentially community care and everything other than secondary care—is available free to people who are ordinarily resident, and it does not ask or check. From my point of view, the most important thing we should absolutely have in our minds is: are we asking the NHS to change all the practices of its recent history and do something completely different?

I will turn a longer speech into a short speech. My noble friends Lord Moylan and Lady Coffey have tabled some very interesting amendments. My noble friend Lady Coffey's is interesting, because the question of domicile is a very challenging one in this context. But we would be asking the NHS to become not only immigration inspectors but tax inspectors, since the question of where one is domiciled is a tax issue as well as an immigration issue. I do not think we need to go there at all. All these amendments would do is simply take out all the other amendments, but they also challenge what is in the Bill.

Clause 1 refers to a person who

"is ordinarily resident in England and Wales and has been so resident for at least 12 months ending with the date of the first declaration".

In the NHS, I am not aware that anybody tests whether somebody is ordinarily resident in England and Wales. They simply ask whether you are ordinarily resident in the United Kingdom; it is a matter of whether one is charged for NHS services or not. If somebody from Scotland—a later group will examine this in more detail—registers with an English practice, they do not say, "Are you ordinarily resident in England?" They do not ask at all. If they did, they would ask, "Are you ordinarily resident in the United Kingdom", because that is the only operative test. Further, they do not ask, "Have you been ordinarily resident for 12 months?", less still, with apologies to the noble Baroness, Lady Grey-Thompson, 60 months, as one of the amendments proposes. They do not ask at all, because it is a matter of fact under common law that one is ordinarily resident "for the time being".

1.30 pm

I do not intend to dwell on a large number of the amendments in this group. I simply want to say that, when we come to Report, my hope is that the noble and learned Lord—whose time spent in discussion about this I have valued and thank him for—might, as the Bill's sponsor, recognise that we would better off simply amending the Bill to take out the reference to England and Wales, and likewise for the consequential changes in the subsequent Clauses 8, 10 and 17, and make the eligibility test straightforward: about whether one is ordinarily resident in the United Kingdom, as that is the only test we have in common law at the moment, and that that is "for the time being", as is currently used. We would then rest on those the proposition that one is both ordinarily resident and registered with a medical practice, which aligns it with NHS practice.

I will be among those who, in a later group, will be looking to strengthen the safeguards being applied to the eligibility test, but I do not recognise this question of residence as a safeguard. I regard pretty much all these amendments, other than my own, as devices to create bureaucratic impediments to people's eligibility for this service. Whatever we may think in principle, for or against the Bill, we should not be depriving people who are accessing NHS services in this country of access to this service for reasons of bureaucratic differentiation, rather than because they are eligible or otherwise for substantive reasons. I hope that, on Report, my amendments might find favour with the sponsor of the Bill.

Lord Beith (LD): The noble Lord talked about bureaucratic impediments. A later amendment of mine addresses the bureaucratic impediment that if you are a resident in England and Wales who lives a few miles from a general practice in Scotland, and you are registered with that practice, you are disqualified from the scope of the Bill. It seems to me there is quite a bit of work to be done on these border issues, which I hope the noble and learned Lord might indicate he is willing to see done, to try to sort them out. If he is so willing, I will not need to move Amendment 17, which we come to a little later.

Lord Falconer of Thoroton (Lab): I am very willing to address these border issues, which are incredibly important. The noble Baroness, Lady Finlay, specifically raised them in the context of the Isle of Man patient who comes to, say, Liverpool for treatment. What will happen when Scotland and the Isle of Man have different laws on assisted dying? If, as this draft says, you have to be ordinarily resident in England and Wales to get the benefit of the exception to the Suicide Act, those who offer to help someone get back to the Isle of Man for an assisted death there would be committing a criminal offence because the person would not be ordinarily resident in England and Wales.

The British Medical Association has a proposal that we amend the Bill to say that if you help somebody to go to another part of the country to have an assisted death in accordance with the laws there, that would not be a crime. To answer the point by the noble Baroness, Lady Finlay, I have been in discussion with the BMA as to how one might introduce an amendment to that effect. We need to discuss that, and these cross-border issues definitely need to be discussed. I would very much welcome such a discussion taking place with interested parties.

Lord Beith (LD): What I am talking about is a group of people who live in England, are ordinarily resident in England, but who happen to be registered with a general practice in Scotland. That has no impact on what the Scottish situation would be in other respects—that is a matter for the Scottish Parliament—but it does affect the scope of the Bill.

Lord Falconer of Thoroton (Lab): I was addressing the wider issue, the one that the noble Baroness, Lady Finlay, was talking about. But it goes to those ordinarily resident in Scotland, who come to England for their medical advice—and if the medical advice says, "Go back to Scotland if you want an assisted death", would that be a crime? But I also wish to deal with the GP point. If you live in England but have a GP in Scotland, does it debar you from getting it here? I am more than happy to include that in the discussion.

Lord Moylan (Con): My Amendment 14 in this group seeks to expand eligibility for those of pensionable age who have retired from the UK and gone to live abroad. It is a probing amendment, of course; it is not my intention particularly to expand eligibility under the Bill. I am trying to raise a question of equity and fairness but also legal defensibility. I want to approach the issue from a slightly different angle. I endorse everything said by my noble friend Lord Lansley, the noble Baroness, Lady Finlay, and the noble Lord, Lord Beith, in raising practical issues, but I want to approach it on a slightly different basis.

The intention of the sponsor, I think it is fair to say, is that in creating this Act we do not turn England and Wales into a sort of international capital for quick assisted death. That would be an appalling thing to happen. So we try to put some borders and parameters around it and say that this service is here for the use domestically of people who are established here. One way of looking at that is to put the criteria in about having been here for 12 months and so forth, and being ordinarily resident, and all of that. As I say, I agree that those things raise very serious practical issues, but it seems to me—here I tread very carefully, because I am not lawyer—that they raise legal issues as well. Are we to some extent fooling ourselves into thinking that we, although we are the legislature, can create these boundaries and that they will remain firm?

I am thinking about what the Minister said in her reply to the debate on the first group today, in which she was very careful to draw noble Lords' attention to the fact that certain amendments in that group might be challenged under human rights law or on the grounds of the Equality Act. She said that she could not give assurances that they would not be challenged; that was her being cautious and proper in expressing the Government's view while being neutral about the Bill. But that raises a flag. How many of the limits that we are discussing now would actually withstand legal challenge? I chose my own example on precisely those grounds.

What if you have lived all your life in this country and paid all your taxes in this country and reached your pensionable age and decided to retire to Spain, say? Unfortunate developments lead you to want to come back and you qualify under the Act for an assisted death; you have a terminal illness and six-month prognosis, and you want to come back to the UK to take advantage of that, maybe because it is not available in Spain or because you want to be with other members of your family—who knows, but you want to come back to do that.

Under the Bill, as I understand it, you would be excluded from doing that. But would a court agree that that was a firm parameter; in other words, would a court agree that the criteria we have established are sufficiently rational that they have a sufficient basis in other legislation, in their understanding of human rights or in practical considerations? There might be all sorts of reasons why courts might say, "Yes, these are rational limitations". But it could equally be the case that the court would say, "No, that is an injustice. This person has paid their taxes all their life. They've only been gone from this country for a few months. Of course, they should be allowed to come back and take advantage of it; it is irrational to exclude them". That is the point I want to raise.

The noble and learned Lord the sponsor of the Bill has to put in place criteria which not only sufficiently exclude the possibility that we are going to become an international shop for assisted death—which we would all agree with him is something that we do not want to see happen—but are sufficiently rooted that they will be defensible and durable in a judicial context. That is the matter that most concerns me, apart from the practical considerations, about this whole eligibility debate.

Baroness Whitaker (Lab): My Lords, when considering this group, in particular, perhaps, Amendments 300A and 306A, I realised that the small number of noble Lords who have tabled most of the very large number of amendments to the Bill recognise compassion as

[Baroness Whitaker]
their guiding intention. I hope they are being reassured by my noble and learned friend Lord Falconer's comprehensive and expert reassurance on the many safeguards now inserted into the Bill—more safeguards, I believe, than in the legislation of any other country.

However, I am concerned that very extended delays will betray the hope of the woman who nursed both her parents through agonising and protracted deaths, and who now faces the same fate herself. She mourns the fact that her parents were never given the choice this Bill provides. Her words to me as a legislator were: "Have mercy". Mercy is what this Bill is about, and noble Lords will surely seek the path to mercy. Surely only those whose motives are ideological would want to prevent this Bill from passing, rather than working out the best amendments on a reasonable timetable.

I remain profoundly uneasy at the prospect of Members of this House abrogating to themselves the right to deny the choice of mercy to that large majority of our fellow citizens who want this choice to be available, as reflected in the decisions of our elected representatives. "Have mercy" should be our watchwords.

Lord Harper (Con): The noble Baroness referred to the two amendments that I have on the Marshalled List that I have not yet spoken to. She seemed to be ascribing motives to the amendments. She referred only to two amendments—the two amendments I have tabled—and she seemed to be suggesting they were designed to stop people accessing this service. I hope she will stay and listen to me when I explain what my amendments are about, and she will see that is entirely the opposite of what they are designed to do.

Lord Pannick (CB): I say to the noble Lord, Lord Moylan, that nothing is impossible in human rights law. But it would be exceptionally surprising if the courts were to say that a criterion as well established as ordinary residence were not a justifiable criterion to address the difficult problem of which people ought to benefit from the advantages that this Bill, if enacted, would confer. One other point—

Lord Moylan (Con): I agree that the notion of ordinary residence is very well established. I am more concerned about the subsection which requires a 12-month prior residency. That does not apply to anything we do in any other aspect of the NHS, for example. You might have been resident here a fortnight, but if you get knocked over in the street, you will be looked after and looked after for free. It is more the latter than the former that I was concerned with. I am grateful to have the noble Lord's legal assurance but, as he said, it is not absolutely certain. One might retain him if the case came up.

Lord Pannick (CB): If I were advising the noble Lord, Lord Moylan, as a client, I would say that a court would recognise that Parliament, when it enacts legislation of this sort, has to make a choice and decide what is an appropriate and reasonable period to require a person to have satisfied in order to benefit—to prevent a health tourism that we all wish to avoid in this legislation. We should also remember that if Parliament enacts this legislation, the courts will have no power to strike it down in this country. The most that they could do is make a declaration of incompatibility, but that is extremely unlikely in this context.

1.45 pm

The noble Baroness, Lady Coffey, commended a test of domicile. Domicile is one of the most complex legal concepts that we have. There is domicile of origin, domicile of choice and domicile of operation of the law. In my opinion it would be disastrous for us to incorporate such a concept into this legislation, not least because I can have domicile in this country simply because it was the domicile of my parents when I was born. I could have lived my entire life in the United States, France or wherever, but would be able to come back to this country to benefit as a health tourist and take advantage of this Bill if enacted. That is exactly what we all want to avoid. Domicile should be ruled out. I hope that the noble and learned Lord, when he responds, will confirm that.

Lord Carlile of Berriew (CB): My Lords, I agree with my noble friend Lord Pannick. The concept of residence is clearly understood. I recommend to the noble Lord, Lord Moylan, that he might need a criminal lawyer just in case he was prosecuted for doing something wrong. I would be very happy to act for him, of course.

I recommend that all of us who are considering this matter should have a good look, as I have, at the National Health Service ordinary residence tool, which was revised in March this year. It gives a very clear outline of all the possibilities and where they fall in the ordinary residence judgment. What concerns me about the example that the noble Lord, Lord Moylan, gave, which we will come to on another group, possibly even today, is that if somebody has been living in Spain and wants to come back to their former country of ordinary residence for an assisted dying, if this Bill becomes law, it will prove extremely difficult to detect where there has been undue influence, particularly within a family. It would be extraordinarily difficult to investigate that evidence, whether it was done by a court or by a panel. I would be opposed to it on those grounds.

Baroness Butler-Sloss (CB): I also entirely support, including the word "disastrous", the points that the noble Lord, Lord Pannick, made. As he said, domicile is complex. You would end up in court dealing with the issue of domicile. It really is not a good idea.

Under Clause 1(1)(c), there are two requirements. One is "ordinarily resident". I say to the noble Lord, Lord Moylan, that if I was trying the case I would have no problem at all. If it says "ordinarily resident", that is what I would accept, so long as there was the evidence to support it. I do not think we need to be caught up in the Human Rights Act in dealing with such an issue. What worry me are the two requirements,

"ordinarily resident … and has been so resident for at least 12 months ending with the date of the first declaration".

That seems to be a complete bar for someone who is in an embassy. It is very difficult if they are not ordinarily resident. It looks as though the noble Lord, Lord Carlile, does not agree.

Lord Carlile of Berriew (CB): I hesitate to interrupt my noble and learned friend, whom I regard as being of almost biblical correctness in almost everything. If she were to take a look at the NHS tool that I referred to, which sets out all the requirements to prove ordinary residence, she would find that people who work in embassies, for example, are excluded because they are given fixed-term contracts for a certain time, even though that contract may be extended at some time. It also specifically refers to people who work for charities and who go to work abroad for a temporary period fixed by a contract. I do not think the issue that she has raised is very worrying.

Baroness Butler-Sloss (CB): I am delighted to hear it in relation to embassies and charities, but the other example given was the person living in Spain who wants to come back to die here. It seems to me that needing to be resident in this country for the last 12 months would not allow that person to do so. The noble and learned Lord might just look again at that particular element of residence.

Baroness Andrews (Lab): My Lords, I hesitate to interrupt this fascinating debate between our lawyers. I have no legal experience, but I have investigated the notion of domiciliary status at some length for different reasons. I absolutely agree with anyone who has tried to work their way through the 93 pages of conditionalities and various different criteria.

I come back to the central point in the excellent contribution by the noble Lord, Lord Lansley, about the need for consistency with the NHS and the implications of not being consistent. The terminology is not just about domiciliary status. What is the notion of permanence? We could have an equally long and problematic debate over that other element of the terminology. I completely respect that this is a probing amendment, but just as we had the beginnings of a debate on mental capacity and the necessity for consistency and trusting that what we already know works, because we see it every day in practice, so the notion of ordinary residence should simply, as far as I am concerned, end the conversation. I think there is a welcome consensus around the Committee that this is the only definition that is going to be practicable, workable, known and acceptable. I hope we can move on with the debate in that context.

Lord Moylan (Con): Does the noble Baroness accept that ordinary residence does not end the debate because the Bill goes on to impose an additional qualification about having lived in this country for 12 months prior to the date of signing the first declaration? If it were just ordinary residence, legally no issues would arise—there might be other issues—but we also have a 12-month requirement, which appears to me to be arbitrary and risky.

Baroness Andrews (Lab): The noble Lord is right, and there are specific instances. The noble Baroness raised one in relation to the Crown dependencies, where these definitions will have to be tested in some way. But the purpose of the Bill is to ensure that people living in this country have a right to the security that they will be treated within the NHS and that the normal rules and behaviours of the NHS will apply to the conduct of this Bill as they do to everything.

Lord Lansley (Con): My Lords, my amendments would remove the 12 months, because that would enable greater alignment with practice in the NHS. I make a plea to noble Lords that we might hear from those who have tabled amendments so that we complete the group more quickly. I think it is a discourtesy to those who have tabled amendments not to hear their explanation for them.

Captain of the King's Bodyguard of the Yeomen of the Guard and Deputy Chief Whip (Baroness Wheeler) (Lab): My Lords, while we are on the subject of interventions, I remind the Committee that a Member who is speaking may be interrupted with a brief question of clarification. A Member may justifiably refuse to give way. Let us try to stick to the people who have their names on the amendments and make progress.

Baroness Grey-Thompson (CB): My Lords, my Amendments 13 and 309 are probing amendments. I recognise that the 60 months and the 12 months in my two amendments do not quite tally, but they were tabled at quite different times.

Amendment 309 is quite simple. It looks to open a discussion and seeks to protect asylum seekers, immigrants without indefinite leave to remain, and anyone in the asylum system.

On Amendment 13, it was very interesting to listen to the noble Lord, Lord Lansley. I recognise that 60 months will have raised some eyebrows. It was my clumsy attempt to talk about death tourism and look at how we can provide consistency within the Bill. One of the reasons that we are consistently given for needing the Bill is that those who can afford it can go to Dignitas, which promotes inequality. However, if we do not get this section of the Bill right, that inequality will still exist.

My noble friend Lady Finlay raised some important points on where someone is able to die, and I have other amendments on certification of those areas. This needs more thought because, in many of the letters I receive, individuals who want the law to change talk about wanting to end their lives at a time and place of their choosing. They may get roughly the time that they want, but they may not get the place.

We have been talking about people living in different countries. The latest statistic that I can find online is that at any one point there are between 4.5 million and 5.5 million British people living abroad, and they need clarification about how the Bill could affect them.

I am concerned about the possibility of different processes existing in different parts of the UK and the Crown dependencies, because it could be possible that,

[Baroness Grey-Thompson]
if you have money, you could purchase or rent a small property in another jurisdiction to enable you to access this. That might be totally fine, but people need to understand what this is going to bring, and that inequality could still exist.

The phenomenon of death tourism represents a documented concern internationally. The Isle of Man explicitly incorporated a five-year residency requirement into its assisted dying legislation, following recommendations from scrutiny committees examining the Bill's clauses. That is why I picked 60 months. However, we have to be careful that we are not turning jurisdictions into destinations for accessing end-of-life services. Such relocation could create several problems. It might indicate that the person's wish to die is not deeply rooted in their established community context. It could create practical and ethical difficulties for healthcare systems, which are unprepared to provide end of life to transient populations. It also raises questions about whether individuals are making decisions in isolation from their established support networks.

Whatever we end up with in terms of what residency looks like, we have to take into account what has happened in other jurisdictions. I was pleased that the noble and learned Lord said in the previous debate that in the Bill the age will not drop below 18. It is important that we get the residency right, because in other jurisdictions over time it has changed. In 2014, Belgium removed any age restriction and Vermont lifted its residency requirements in May 2023. At least 26 people have travelled to Vermont to die who were not resident there. Vermont is a tiny US state, but that represented nearly 25% of reported assisted deaths in the state from May 2023 through to June 2024, as listed in Vermont Department of Health data.

In Oregon, the same thing has happened: the residency requirement has been lifted, and around 6% of those choosing to end their lives in Oregon have been from out of state, according to official Oregon Health Authority reports. The oncologist Charles Blanke, whose clinic in Portland is devoted to end-of-life care, has said Oregon's total is likely an undercount and he expects the numbers to grow.

Adequate residency duration enables meaningful healthcare relationships to develop, and I have amendments on relationships with GPs in a later group. For me, it is about providing appropriate healthcare and the right information. It is about being able to look at patterns of depression, changing wishes, family dynamics and coercion, which we have already debated. It is about providing stability and the authenticity of the person's desire for assisted dying. It is also about whether the correct palliative and psychosocial support is there.

I do not think 60 months is the right number, but we have to be careful and clear about what will happen in terms of people being able to access this service. Finally, longitudinal research on end-of-life preferences demonstrates significant variability in expressed wishes over time. That is why we have to be really clear that we get this right.

2 pm

Lord Frost (Non-Afl): My Lords, I rise to introduce Amendment 23 in my name. This amendment obviously goes with the thrust of some of the other amendments that have already been proposed and deals with some of the issues that have come up in this debate. It takes a slightly different route from the others by simply adding a new criterion, paragraph (e), to Clause 1, and would therefore restrict access to assisted dying support to two well-defined and well-understood categories of people: British citizens and those with indefinite leave to remain.

The purpose of couching it in this way is twofold: it is designed to do two things. First, it is designed to provide a way of cutting through the eligibility problem that we have been discussing and the ambiguity of some of the definitions by providing two very clear definitions that avoid the border issues and potential uncertainties of meaning in some of the other definitions. It could be read, as I have drafted it, together with the criteria of ordinary residence—in other words, you must satisfy both these criteria to be eligible for assisted dying support—or we could simply remove the ordinary residence criteria and rest entirely on the fact that you have to be a British citizen or have indefinite leave to remain. Both of those are well-understood categories: they are not susceptible to debate and they are both easily proven. That is the advantage of looking at it in this way.

The other purpose is to provide a very clear barrier, for similar reasons, to death tourism for people who obtain short-term visas, or no visa at all, for the purpose of obtaining an assisted death. It would stop England and Wales becoming destinations for this. I want to briefly summarise why we want to avoid that: the reasons have been taken slightly as read in this discussion, but I want to recall them, although not in great depth.

First, without such a provision as my amendment would provide, it becomes more difficult to enforce the safeguards, whatever they are, that end up in this Bill, for example on past medical history and mental health capacity. It can be difficult to obtain international medical records, they are not always written in exactly the same way and they can, from some countries, be relatively easily forged or faked. It is also difficult to confirm that somebody who has a short-term relationship or no relationship with the UK is not being coerced by people abroad or has consistent capacity. So there is that angle to it.

Secondly, there is also the risk of diplomatic complication, taking in non-permanently resident foreign citizens to commit what may be an offence in their home jurisdiction. Some countries will probably feel more strongly about that than others, but the risk exists and this would exclude it.

Thirdly, there are pull factors, an obvious problem that we are very familiar with in the UK: the global appeal of the English language, the ease of registration with a GP, and, as I have said, the laxity of some of the definitions.

Fourthly, there are resource constraints: our healthcare system has finite capacity for end-of-life care, whoever ends up providing it. This amendment ensures that

those who end up being eligible are those with a very clear connection to the UK, either with citizenship or the clear right to remain here for as long as they wish.

Finally—

Lord Lansley (Con): My Lords, my noble friend is making interesting points, but I am somewhat worried. He is particularly well-equipped to recognise that there are possibly as many as 1.5 million people from the European Union in this country with pre-settled status who are neither British citizens nor have indefinite leave to remain. There are also probably somewhere between 300,000 and 400,000 Irish citizens living in this country who have neither of these qualifications.

Lord Frost (Non-Afl): That is certainly true. The noble Lord makes a good point. The principle that is in my amendment could be expanded to take in other well-defined categories. I will be more convinced about the Irish category than the EU pre-settled status, given this issue was not anything like an issue when we negotiated the EU treaties that created that status, but that is for discussion if the principle is agreed.

Finally, I will just note that the amendment I have put forward reflects norms elsewhere, notably in Australia and New Zealand. It is quite closely based on Section 9 of the Victoria Voluntary Assisted Dying Act 2017, which, whatever its manifold other weaknesses, is at least clear on this point. I will stop there and look forward to the discussion and the views of the sponsor. I offer this amendment as a potential way of providing more clarity and reducing the level of ambiguity in what is obviously going to be a very important provision in the Bill.

Lord Goodman of Wycombe (Con): My Lords, I will speak very briefly in support of Amendment 23, which was spoken to by the noble Lord, Lord Frost, bearing in mind that amendments in Committee very often are probing amendments to test the view of the sponsor.

It is important to recognise at the start that it is, in fact, not clear from the Bill whether the NHS will provide voluntary assisted dying services. This was a point in relation to which the Bill was criticised very heavily by the Delegated Powers Committee, on which I sit. But it clearly is the intention of the noble and learned Lord, Lord Falconer, that it should, and I want to assume for the purposes of this debate, very briefly, that it will.

My noble friend Lady Coffey raised at the start of this debate a problem, which was the question of whether someone might seek to obtain residency under the terms of the Bill in order to obtain what has been referred to as death shopping. This is clearly a problem. The virtue of the amendment from the noble Lord, Lord Frost, is that it would deal with this, imperfect though the amendment may be. I would like to hear from the sponsor of the Bill, the noble and learned Lord, Lord Falconer, what his view is of the problem raised by my noble friend Lady Coffey. I think he accepts that death tourism is a problem. Is his view, like that of my noble friend Lord Lansley, that residency remains the only sensible way of determining these matters? If it is, why has he put the additional safeguard into Clause 1 of the Bill? Or, if he thinks residency is not sufficient, what additional safeguards might he be able to offer? I look forward to hearing from him when he responds to this debate.

Lord Harper (Con): My Lords, before I speak to my Amendments 300A and 306A, let me just pick up, briefly, a couple of issues that have been raised in the debate.

First, I was very pleased that the noble and learned Lord, Lord Falconer, said it was very important, in response to the noble Lord, Lord Beith, that we dealt with these border issues. He will remember that I spoke on that on the first day of debate, using my experience as a former Member of Parliament for a border constituency and I raised some of the very practical issues that there will be if we do not get that right. The noble and learned Lord will remember that when I was raising these issues, there were people on the other side of the argument who tried to shout me down before I had even finished. I am pleased, therefore, that he recognises that the issues I was raising are important and valid ones. To make sure these issues work properly, we have to worry about both the England-Scotland border and the England-Wales border.

Secondly, I am very grateful to the noble Lord, Lord Pannick, for the free legal advice he provided to me in answering the question about what the courts could do about a human rights challenge. I did not get an answer from the Minister, so I am grateful to have had it from him.

Thirdly, on the point that came up in the debate about Crown servants, if you are a Crown servant, you can retain your ordinary residence status when you are posted overseas—that applies to diplomats, members of the Armed Forces and civil servants. It does not usually apply, though, to people who work for the NHS, local government and so forth, but we do not have to worry about people who work in embassies.

Let me deal with the issues raised by the amendments from the noble Lord, Lord Lansley, because they are relevant to the nature of this service. He is absolutely right that, for primary care, we do not have the same test on residence that we do for secondary care. There is a reason for that. When we were putting in place the changes for secondary care in the Immigration Act, we considered whether we should implement similar changes for primary care—that was after he was Secretary of State for Health. We did not change that position because there is a very significant community benefit for allowing people, who are physically in the United Kingdom, to have access to primary care, so that they can access all sorts of services, particularly if they have a communicable disease or illness. We absolutely want them to seek early treatment, not just for their own benefit but for the benefit of everyone else. That is why we have wider access for primary care than we do for secondary care, which we limit to people who are ordinarily resident. We allow others to access it, but only if they pay for it.

I argue that, if this is to be provided on the NHS, this service should be treated more like how we provide secondary care, rather than how we provide primary

[Lord Harper]
care. It is more akin to that sort of treatment than primary care. That is where I respectfully disagree with the noble Lord.

Lord Lansley (Con): I do not think that we are disagreeing, because my amendments would have the effect of applying an ordinary residence test. That ordinary residence test for the assisted dying service would be exactly the same as the one for planned secondary care.

Lord Harper (Con): In that case, I now understand the noble Lord. When he was talking about primary care, I thought he was suggesting that we had a wider remit, so I am very pleased to hear that.

I will now address my amendments and their purpose. They are intended to deal with the fact that under the Bill, as I understand it, it would be the job of the co-ordinating doctor—a clinician—to make the determination about somebody's ordinary residence. The Medical Defence Union has expressed concern that requiring medical professionals to do that could put them at legal risk. Indeed, as my noble friend suggested, it sort of turns them into immigration officers. That concern was pointed out when we were making the changes to the then Immigration Bill, which is why the people who make those decisions are not clinicians; they are overseas visitor managers and administrators in the health service.

Therefore, my amendments would shift the responsibility for assessing residency from clinicians back to administrators. If NHS trusts were providing this service, they would use their overseas visitor managers to do it. That is an existing structure: they are people who know how these rules work. As I think the noble Lord, Lord Carlile, mentioned, a tool already exists, which is well understood, to enable people to check people's eligibility. I think this has already come up in the debate, so I will not dwell on it at length, but I note that ordinary residence is not that straightforward; it is designed in case law, not in statute. When we were bringing forward the Immigration Act, the overseas visitors charging review took place in 2012, which concluded that the vagueness of the definition means that ordinary residence is difficult to interpret and apply on an individual case basis.

I have already been quoted by the noble Baroness, Lady Finlay, and now I am in danger of quoting myself. When I was taking through that legislation, I said that the existing rules were complex. One of the things that came through from the audit was that front-line health professionals find them complex. The evidence we got was not just that this was the opinion of front-line professionals—they were actually complex. We tried to make them more straightforward. It was one of the reasons why we introduced the health surcharge. Rather than try to make it more complex for the health service not to treat people, or to test whether they were treating people, we charged people coming into the country and then let them have access to the health service. That seemed to be a more sensible way of doing it.

That is the essence of my amendment, and I suggest to the noble and learned Lord, Lord Falconer, that he looks at it. On Report, it would be helpful if the Bill was amended to take the test for ordinary residence away from the doctor in charge of this and give it to the organisation that is providing it, so that it can be done as part of an administrative function. From the conversations we had at the time, I know that clinicians and medical professionals feel that it is not for them to gatekeep access to these services, both for legal reasons—as set out by the Medical Defence Union—and, as my noble friend Lord Lansley said, because that is not their job. We already have professionals in the health service whose job is to do that, and it would be better if they were given that task rather than clinicians. That is the purpose of my amendment.

2.15 pm

Baroness Stroud (Con): My Lords, I seek clarity on a point raised in precisely this exchange between the noble Lords, Lord Harper and Lord Lansley, particularly on the issue of "ordinarily resident", following the enthusiasm expressed for aligning the language of the Bill with the usual terms of the NHS.

If we aligned "ordinarily resident" with NHS maternity care, for example, it would act as a definition for who pays but not for who receives the service. All pregnant women are entitled to the service of NHS maternity care; it is only whether it is free that depends on your residency, nationality and immigration status. Those ordinarily resident get free care, while overseas visitors and those not settled may have to pay charges, although care is never refused, and payment plans are available. Can the noble and learned Lord confirm that the enthusiasm for alignment with existing NHS terms would not extend to a widening of service eligibility, and thereby the UK becoming a destination venue?

Lord Meston (CB): I seriously question whether Amendments 11 and 11A are necessary or useful. Following on from what has just been said, my experience in the courts is that the concept of ordinary residence stated in the Bill is well established in our law, workable in practice and well understood by practitioners and judiciary, particularly in family law, where it most often appears. It is a tried and tested expression.

To impose the more stringent precondition of permanent residence, requiring, in effect, unbroken physical presence, could unnecessarily—and, I suggest, unkindly—restrict the mobility of those who are seriously ill, or becoming seriously ill, who might be entitled to the benefits of the Bill if it is enacted. Such people, particularly those who have a clear, stable and lasting residential connection to England and Wales, should not be left to fear that they cannot make even a brief visit away from home, fully intending to return, in case that visit away is said to have changed or interrupted their permanent residence and thereby stopped the clock on their eligibility for assistance under the Bill's provisions, requiring the qualifying period of 12 months to restart from the beginning. That, I suggest, would be a great disservice to such people and would not be any improvement to the Bill.

As for "domicile", as others have already said, it is a notoriously difficult concept to define. You can have only one domicile at any one time. It can be a domicile of origin, a domicile of dependency or a domicile of choice. In the explanatory statement to the amendment seeking to introduce the concept of domicile, it is suggested that it would tighten the eligibility requirements. In reality, it would do little more than complicate them—indeed, in some situations, it could loosen them.

You can retain your domicile of origin in this country even if you have not lived here for years. You can also acquire a domicile of choice or revive a domicile of origin immediately on arrival in this country with no minimum period of residence. I therefore suggest that the substitution of "domiciled" for "ordinarily resident" would not be helpful to anyone. I suggest that we should adhere to the concept of ordinary residence.

Lord Mackinlay of Richborough (Con): My Lords, too often we have vague legislation that comes out of our Houses of Parliament, with phrases such as "shall have regard to". I remember that the Speaker's Counsel examined this at some length and when I was on the Speaker's Committee on the Electoral Commission he said, in rather easy speak, "It doesn't really mean much". The other term that we hear is "reasonable".

Now, I am sorry, but in Clause 1 we have "ordinarily resident", so what does that mean? I am rather disappointed that the Bill has seemingly had a lot of investigation and clarification in the other place, but it comes here with that rather vague phrase within it, which has been examined at some length here and is the reason for this multitude of amendments. Is it a common-law or case-law interpretation? The noble Baroness, Lady Finlay, eloquently opened the debate by saying that it was a vague term and offered some case law. In the Barnet case, it was far from clear.

I have come up with five different types of "ordinarily resident" where there are different rules. There is case law: the one that has been mentioned today, as it should be, is the residence tool that is advanced by the Department of Health. That gives us the closest attempt at explaining what "ordinarily resident" means in healthcare, but it is peculiar because its purpose is to keep people away from healthcare if they are not resident, and hence we charge them, rightly, for those services. One wonders whether that operates as effectively as it might but at least it tries to codify what it means, with guidance.

The noble Lord, Lord Carlile, said that that was easy; I have the guidance here, strangely enough. There are 14 pages, which is blissfully short compared with some guidance, but it has in it the golden phrase: "This list is not exhaustive". I am afraid that that, in itself, is not that clear, but at least it attempts to be. The legislation before us would restrict the availability of assisted dying to England and Wales, so I support what my noble friend Lord Lansley said about the UK being mentioned in the residency tool, so why not keep that concurrency in considering whether people are validly able to access secondary care?

Then there is the availability of DWP benefits, which are restricted in a wholly different legislative way. If people who are fully domiciled but are away from the country fairly briefly return to it, they would face another mountain of rules to be able to claim universal credit, for instance. That is a whole new raft of interpretation about what "ordinarily resident" is.

Voting is a whole different ball game; that came to light most graphically in the 2014 Scottish referendum on independence. Your Lordships may have noticed that my name is Mackinlay, which one would think had some Scottish connotation, but that is long gone in the mists of time, and I had no part in that vote. However, there could be a family who have had generations of attachment to Scotland, which, merely by dint of living in England for a short period, would have disqualified them from having a say in that rather extensive constitutional referendum; whereas had anybody in England decided to go and live in Scotland for the briefest of periods, within a short time they would have gained the qualification to take part in that referendum.

In election law, we have a whole new raft of interpretation as to what "ordinarily resident" is. We see that in live action quite regularly, whenever there is a parliamentary by-election. Parties seem to aim the finger at other parties and say, "Your candidate has lived here for only five minutes; he is renting his auntie's flat and is not properly resident". So even in electoral law, there is complication, but if we are really looking for complication, that would be in tax law.

I support my noble friend Lady Coffey's attempts to assist us by adding "domicile" into the interpretation, a position that the noble Lord, Lord Pannick, does not seem to agree with, saying that it is infinitely complex. If we look at tax, I am afraid that the whole issue of "ordinarily resident" is the stuff of true complication. There was an attempt to codify it in the Finance Act 2013, where we introduced the statutory residence basis, and even that is not without complication. I should know, because I have exactly such a case on my desk professionally, as a chartered accountant, at the moment: HMRC is trying to claim that somebody who has been out of the country for 10 years has suddenly reacquired UK ordinarily resident status and hence tax status.

We therefore have conflicts across those five different interpretations, and it all depends on whether the state is trying to deny money, such as DWP benefits; deny healthcare, such as by qualification for secondary care only; or trying to get someone into the UK as resident because the state will then be able to claim a lot more tax from them. I am afraid that I have to express to the noble and learned Lord, Lord Falconer, my gross disappointment that we have had an hour and a half of debate on this legislation about one concept of what "ordinarily resident" means. Having listened to a wide-ranging debate by people who have infinitely more experience in the law than I do, we are still all at sea as to what this actually means.

When we come back on Report, we must have a properly defined qualification for assisted dying under this Act, whether that is by a helpful amendment, as proposed by my noble friends Lord Goodman and Lord Frost, which adds a little more to at least determine the qualification, or whether it is properly and very clearly under a case law interpretation, which I think

[Lord Mackinlay of Richborough]
my noble friend Lord Moylan has tried to advance and examine. As it stands at the moment, I am none the wiser, after this expansive debate, as to what that phrase actually means. I would appreciate it if, in his summing up, the noble and learned Lord, Lord Falconer, could say which of those five interpretations is meant by the Bill. I have a sneaking suspicion that it is an attempt to copy the healthcare definition of what "ordinarily resident" means. If that is the case, let us have it explicitly stated in the Bill, so that we at least know what we are talking about.

Lord Wolfson of Tredegar (Con): My noble friend Lord Mackinlay of Richborough is all at sea. Let me try to provide a little tabula in naufragio, as we say.

Noble Lords: Oh!

Lord Wolfson of Tredegar (Con): We say that frequently in Liverpool. These amendments all relate to the eligibility of persons accessing assistance under the Bill. Amendment 11 from the noble Baroness, Lady Finlay of Llandaff, seeks to introduce a requirement that a person must permanently reside in England and Wales to be eligible, whereas the Bill currently has a requirement of ordinary residence. Two questions arise from the current definition of eligibility, which I hope the noble and learned Lord, Lord Falconer of Thoroton, will pick up, as he said he would. First, will persons resident in Scotland or Northern Ireland who have moved to England or Wales be able to access assistance under the Bill? Secondly, will UK citizens resident abroad be able to return to the UK early, so to speak, in the event of terminal illness to access assistance during their last six months?

Those questions lead on to Amendment 14 in the name of my noble friend Lord Moylan, to whom I am not proposing to provide any free legal advice, which relates to UK citizens who are pensioners living abroad. The question of access to assistance under the Act is obviously important. It would be helpful to know how the noble and learned Lord expects the eligibility criteria to affect UK citizens who are terminally ill and living abroad. In particular, what steps would they have to take to make use of their rights under the Bill?

2.30 pm

My noble friend Lord Lansley's amendments in the group raise an important point. As he said, they propose that, where the Bill currently refers to a person

"ordinarily resident in England and Wales",

it should refer instead to being ordinarily resident in the United Kingdom. As I understand it, the amendments do not change the policy intention of the Bill but seek to align the language with long-established practice. That seems, if I may say respectfully, to be a sensible amendment, and I look forward to the thoughts of the noble—

Lord Lansley (Con): For the avoidance of doubt, my amendments do intend to change the policy, in that they would remove the 12-month residence requirement.

Lord Wolfson of Tredegar (Con): My noble friend is absolutely right; on that point they do change the policy intention. I am grateful. I would welcome the thoughts of the noble and learned Lord, Lord Falconer of Thoroton, on that.

Finally, in the absence of my noble friend Lord Howe, I have been asked on his behalf to formally speak on his Amendments 301A and 305A. In speaking to those amendments, I want to highlight the threshold which is set for determining whether an individual is in England and Wales at the time of the first assessment. I hope the noble and learned Lord will be able to pick up this point.

As the Bill is drafted, the question as to whether somebody is ordinarily resident in England and Wales rests on what is called the

"opinion of the coordinating doctor".

My concern is that an opinion without any further evidential requirement may be too low a bar, particularly given the need to guard against the risk of what has been called death tourism. In other parts of the Bill, the noble and learned Lord has used the word "satisfied", and I think we would agree that that entails a higher evidential bar than merely "opinion"—indeed, that is also higher than "believes" or "reasonably believes". "Satisfied" is a higher standard. When the noble and learned Lord replies, can he use that opportunity to explain why the test here is only "opinion" and not "satisfied", as that test is used in other parts of the Bill?

Baroness Merron (Lab): My Lords, I thank all noble Lords for their contributions to this debate on the issue of residency and eligibility criteria. As I have already made clear and will now repeat, I will confine my comments to amendments on which the Government have major legal, technical or operational workability concerns.

First, I turn to the amendments which narrow the residence criteria in respect of eligibility for assistance under the Bill. Amendment 11, tabled by the noble Baroness, Lady Finlay, would change the residence criteria for assistance under the Bill from requiring a person to be "ordinarily resident" to "permanently resident". Unlike "ordinarily resident", "permanently resident" does not have a set definition in the context of UK immigration law. It is possible that it would be taken as referring only to those who have citizenship or indefinite leave to remain, which is a much narrower scope than the current wording of "ordinarily resident".

Similarly, Amendments 23, 309, 300A and 306A would restrict access to assisted dying support to British citizens or people with indefinite leave to remain. This may result in migrants on long-term work or study visas who have resided in England and Wales for longer than 12 months being denied access to an assisted death, thereby potentially giving rise to indirect discrimination based on race. These amendments may be subject to challenge under Article 14 of the ECHR when read with Article 8, on the basis that this may amount to unjustified discrimination. This differential treatment would require an objective and reasonable justification.

In addition, under various international agreements, the UK has an obligation not to discriminate against EU, EEA and Swiss nationals on the basis of nationality, although the agreements do not prevent restrictions on the basis of residency. Since these amendments would prevent individuals from those countries from accessing these services on an equal basis to UK citizens in the same circumstances, they are likely to be contrary to the UK's international obligations under those agreements.

Amendments 11A, 258A, 306B and 449A, tabled by the noble Baroness, Lady Coffey, seek to change the residency requirement from "ordinarily resident" to "domiciled". These amendments would add complexity and potential uncertainty to the eligibility requirements. "Domiciled" refers to the determination of a person's permanent home largely for tax purposes, meaning that a person can be domiciled in a place without being resident there. It is not a familiar concept in domestic law outside of taxation, so it is unclear how it would apply in this context. Further elaboration in guidance would be needed to make these amendments workable. It is also unclear what practical impact this change would have when the Bill would still require people to be physically present in England and Wales in respect of the steps under Clauses 8, 10, 11 and 19.

I will next turn to Amendment 14, in the name of the noble Lord, Lord Moylan.

Baroness Coffey (Con): Before the Minister moves on, Kim Leadbeater specifically introduced this concept of England and Wales, and, in Committee, Stephen Kinnock did not raise any issues with it at all in terms of operability or similar. I am astonished to hear some of the other elements that are now coming out for the first time in the consideration of this Bill.

Baroness Merron (Lab): I am sorry to hear of the noble Baroness's surprise. I am simply setting out where the Government have particular concerns within the scope to which I referred. My noble and learned friend Lord Falconer may be able to comment more appropriately, if he wishes to do so, on the points that she raises.

Amendment 14, in the name of the noble Lord, Lord Moylan, would widen the eligibility criteria to include UK citizens of pensionable age who are living abroad. There are two main issues with this amendment. The first is that the UK has obligations under international agreements that enable residents of partner countries to receive certain benefits, including some health service provision, in the UK. These agreements are, as I mentioned, with the EU, EEA states and Switzerland. As I set out, these agreements prevent restrictions based on nationality, although they permit those based on residency. Therefore, the amendment would have the effect of opening access to provision of assistance under the Bill to EU, Swiss and EEA residents of pensionable age, provided that they satisfy other eligibility criteria. Widening access only to UK nationals of pensionable age would be contrary to the UK's obligations under those agreements.

Secondly, by including those who have "moved to live abroad", the amendment would enable pensionable-age citizens from Northern Ireland or Scotland who have moved abroad to access the provision of assistance, in accordance with the Bill, if they satisfy the other eligibility criteria.

For all the other amendments in this group, on which I make no comment, any workability concerns are less significant. For example, Amendment 10 would remove two eligibility criteria from Clause 1, while Amendment 13 would change the requirements relating to ordinary residence in England and Wales. As Clause 1 is largely descriptive, these amendments would have limited legal effect without corresponding amendments being made to operative provisions later in the Bill.

While these are choices for noble Lords, these amendments may introduce inconsistencies and ambiguity into the Bill. As noble Lords will be aware, these amendments have not had technical drafting support from officials, so the way in which they are currently drafted means that they may not be fully workable, effective or enforceable—but, of course, the issues raised are rightly a matter for noble Lords to consider and decide on.

Baroness Finlay of Llandaff (CB): Given that Jersey and the Isle of Man, if I am correct, are not EEA countries, how is the contract for health service delivery affected by this Bill in the light of the problems that I highlighted right at the beginning of what has turned into quite a lengthy debate? I was trying to look at a carve-out for those countries so that those contracts could continue, but I was told that it was deemed out of scope of the Bill.

Baroness Merron (Lab): I am sure the noble Baroness will understand that I am restricted in the comments that I can appropriately make here. I heard my noble and learned friend Lord Falconer say that all these matters needed consideration, and I am sure that he will expand further on that very point.

Lord Falconer of Thoroton (Lab): I will come to that question when I go through the points.

The purpose of Clause 1(1)(c)—namely, that to qualify you have to be ordinarily resident in England and Wales and have been so resident for at least 12 months—is, as noble Lords have said, to avoid people coming here specifically for the purpose of having an assisted death. It therefore would not be adequate to say that people should be ordinarily resident at the moment they apply, because they would have come specifically for that period. Hence you need a period, and 12 months is taken as a reasonable period in relation to that.

The phrase "ordinarily resident" appears right throughout the statute book in a whole range of settings and reflects the policy choice made by regulations or statutes. It says, "We want to give this right to people who permanently live in this country", using the word "permanently" not in a legal sense but in an ordinary sense. In applying that phrase, the courts have not generally had any real difficulty as to what it means. It is a reflection of this Parliament saying that

[Lord Falconer of Thoroton]
we want to give particular rights to the people who live here, and sometimes we say, as we are suggesting here, that we do not care what their citizenship status is—if they live here permanently, they get that right. For example, in relation to the National Health Service we say that if people live here permanently, they get that right.

With the greatest respect to the noble and learned Baroness, Lady Butler-Sloss, the cases have made it pretty clear that you can be ordinarily resident here but have temporary absences abroad—for example, if you go to work as a diplomat abroad, serve in the Armed Forces or take a job that takes you away for two months. The big case is somebody whose family lived here and who went to be educated in India for a period of time, who is still held to be ordinarily resident here. With the greatest respect to the noble Lord, Lord Mackinlay, I do not think that adopting the phrase "ordinarily resident" gives rise either to injustice or to legal difficulties.

I will deal with the points made by individual Peers. I am very sympathetic to the point from the noble Baroness, Lady Finlay, as I made clear in my intervention. I do not think she was putting in the word "permanently" other than to probe the question of those who live on the Isle of Man or Jersey and get all their medical treatment habitually in England. When the doctor in England says, "I will help you go home to the Isle of Man to get an assisted death", assuming that it becomes legal in the Isle of Man, the doctor there will be committing a criminal offence under the Bill unless there is an amendment.

The BMA has proposed an amendment that, if you help somebody go home for an assisted death—home being, say, the Isle of Man or Jersey—and it is legal there, that should not be a criminal offence. I talked to the BMA about that. We need to work together to see whether we can get an amendment that satisfies the point that the noble Baroness, Lady Finlay, has made. I would welcome her input in relation to this.

2.45 pm

Connected with that is the point made by the noble Lord, Lord Beith, which we will come to later, on why we say the general practice has got to be in England; you could have a general practice in Scotland for somebody who lives in England. Again, that point merits looking at. I cannot see why the general practice has got to be in England or Wales, because the purpose of having the general practice in England or Wales is to feed in records to various places. It does not depend on how often you see your GP and, if it is in Scotland, it achieves that. I hope that helps and I am more than happy to talk about those particular issues.

The noble Baroness, Lady Coffey, suggests that ordinary residence be replaced by domicile. I could not have put it better than the various interventions in relation to that. Domicile is complicated and legally driven. I do not say that it is only in relation to tax, but tax is the area which has driven definitions of domicile. It would be an inappropriate test, and therefore, I would be against that.

The noble Lord, Lord Lansley—who I am grateful to for taking time to explain his amendments to me—said to me, and said it again to the Committee, that we do not want doctors to become immigration enforcement officers. Broadly, the test in the National Health Service is, if you are a resident anywhere in the UK, you can access any NHS facilities in the UK. So, if you are a resident of the island of Orkney and you end up in Belfast with a health problem, there is absolutely no problem in relation to it.

I am quite sympathetic to that approach, except for two reasons. First, it does not obviate the need to make a decision about whether you live in the UK or England and Wales. It gets rid of the problem of which bit of the UK you live in, but it does not obviate the problem of whether you are ordinarily resident in the UK that currently exists.

Secondly, I am worried about the devolution aspects. It means that you are giving rights to people in Scotland which Scotland, not England, has to decide. So I recognise what the noble Lord is saying and I will be sympathetic, but there are those two problems.

I also point out that the noble Lord, Lord Lansley, said, "Get rid of the 12 months, just take it as at the moment you make the declaration". The problem with that is that you invite the possibility of—

Lord Lansley (Con): My Lords—

Lord Falconer of Thoroton (Lab): Can I just finish this sentence?

On the tourism point, it invites the possibility that you can come and genuinely live here until you die in order to get an assisted death, and we do not want that.

Lord Lansley (Con): I think the noble and learned Lord knows that the definition of "ordinarily resident" that is used in the National Health Service is defined in common law. It is about living here as part of your normal pattern of life for a settled and continuing purpose. It is not "at a moment in time". That is why the 12 months is particularly inappropriate, because it is a matter of judgment at the point at which a test of ordinary residence happens, and one has to demonstrate that one is here for a settled purpose.

Lord Falconer of Thoroton (Lab): I accept that completely. The reason the 12 months is here is to give some degree of assurance that the reason you are living here is not because of an assisted death but because it is your genuine home.

I come to the proposal from the noble Lord, Lord Frost. The way it is drafted, although I cannot believe he meant this in the way that he put it, you have to be ordinarily resident in England or Wales, you have to be a British citizen and you need indefinite leave to remain. I was surprised he was saying it would be an easier test to apply. It would not be an easier test to apply, because you would have to apply both ordinary residence and whether you are a citizen or have indefinite leave to remain. Even assuming the proposal is the more limited one, namely, that you only have to be a

British citizen or have indefinite leave to remain and you do not have to be ordinarily resident here, that would not be appropriate, for two reasons.

First, the policy choice that the sponsors of the Bill, myself and Kim Leadbeater, have made is that, if you live here—if you are ordinarily resident here—whatever your citizenship or status, you should be entitled to it. Secondly, and separately, I do not think it is appropriate to make it available for people who, for example, have not lived in this country for 50 or 60 years and have no intention of returning. That would invite death tourism, to use the phrase.

The noble Lord, Lord Harper, said that doctors should not be required to make the assessment. If the position is that there has to be some residence requirement, it is perfectly okay for the two doctors who are concerned with this to make inquiries about where someone lives and how long they have lived here. That is not difficult, and in 99.99% of cases it will not give rise to any problems. Let us assume that most people are honest, and say to the doctor, "I actually live in France but I'm coming here because I want this". The doctor will say that it is not available. I hear what the noble Lord says, but I do not think it gives rise to particular problems. If there are particular problematic cases, these can ultimately be resolved by the panel.

Lord Harper (Con): I do not think that is the experience of the National Health Service. There is a whole cadre of staff—the overseas visitors managers—who deal with people who are trying to access a service. I do not think it is the case that this is straightforward and that in the vast majority of cases there will not be an issue. That is not the NHS's experience and I do not think it will be the experience of this service either.

Lord Falconer of Thoroton (Lab): I am surprised to hear that. I will make inquiries, but I am almost sure that that will not be the case with this.

The noble Lord, Lord Mackinlay, gave us an interesting tour d'horizon of the law and said how "ordinarily resident" applies in various areas. "Ordinarily resident" means the same thing in all those areas. For the reasons I have already given, I do not think it will prove a difficult thing to apply in practice. I am grateful to the noble Lord, Lord Meston, for his endorsement of the approach to "ordinarily resident".

The noble Lord, Lord Wolfson, asked me a number of questions, such as about the citizen who was ordinarily resident here and then went to live abroad—I think that was the case raised by the noble Lord, Lord Moylan. If a person decided that they were going to move to Spain and live the rest of their days there, then when they become ill they wanted to come back and have an assisted death, under the terms of this Bill they would not be eligible because they would not have been ordinarily resident in this country for 12 months—this country being England and Wales.

The noble Lord's second question was about somebody from Northern Ireland who comes here and asks for an assisted death. Again, they would not be eligible because the assumption under his question was that that person's ordinary residence was in Northern Ireland. His third question was about why opinion is not satisfied. It seemed to us that opinion is enough in relation to this because it would be done basically by asking a number of questions and you would assume that the answers that you had would be honest.

Baroness Coffey (Con): I notice that the noble and learned Lord has taken interventions. I do not believe that he has addressed my issue about the risk of tourism. He has used interchangeably during his explanations "permanently" and "ordinarily resident". No distinguished lawyer here has countered the view that you can be ordinarily resident in more than one country at the same time. We have the broader issue that case law and NHS guidance can change this. It really needs revisiting. Will he try to address my issues about tourism and this Bill?

Lord Falconer of Thoroton (Lab): My Lords, I honestly think that is a smokescreen. The Bill says, in a way that the law has recognised time and again—because this Parliament has to make choices from time to time about who gets benefits—that the benefits of the Bill should be given only to those who ordinarily live in this country. That phrase has not given rise to problems. The courts understand it, doctors understand it and the panels will understand it. If we in this Parliament cannot say that we will give rights only to those who are ordinarily resident, which is a phrase that means something, we will never be able to determine who is entitled to our rights. I say, with the greatest respect to the noble Baroness, Lady Coffey, that what we are trying to do in the Bill is clear. I invite the noble Baroness, Lady Finlay, to withdraw her amendment.

Baroness Finlay of Llandaff (CB): My Lords, I will now sum up at the end of this very interesting debate. I am relieved to hear that people do not want doctors to be immigration officers. I am a little disappointed that the noble and learned Lord, Lord Falconer, has not accepted the amendment from the noble Earl, Lord Howe, because it is so straightforward. If, as the noble and learned Lord says, it would not be a problem for over 99% of patients, it would not be a problem to be satisfied. It would add a degree of security for doctors who are being asked to provide these assessments of eligibility.

I was also glad to hear from the noble Lord, Lord Harper, that those working for the Foreign, Commonwealth and Development Office, in embassies or wherever, are covered, and that that is not a problem. The noble Lord, Lord Carlile, raised the issue of those working as volunteers abroad for a very long time. I hope that the ability that applies to Foreign, Commonwealth and Development Office workers also applies to those working for charities, such as some of the major charities, who may be abroad for a very long time but view their permanent home as the UK.

I remain concerned about Jersey and the Isle of Man. What conversations has the noble and learned Lord had with the Public Bill Office about how to get this in scope? My attempts have failed, and I understood that here in the House of Lords we are not able to widen the scope of the Bill. I worry that without widening the scope of the Bill, we will not address it,

[Baroness Finlay of Llandaff]
and those doctors treating patients with all kinds of really serious illnesses, particularly in Liverpool, as referred to by the Front Bench, and in Southampton, could inadvertently find themselves in a very difficult position, which would be an unintended consequence of this legislation.

Lord Falconer of Thoroton (Lab): I do not know whether the noble Baroness has discussed with the Public Bill Office the BMA's proposal in relation to this, which is that it is not a crime under the Suicide Act if the assistance you give is not unlawful in the Isle of Man or Jersey. The idea that that is out of scope seems obviously wrong, because the Bill is crafting an exception to the Suicide Act. If the noble Baroness and I go to see the Public Bill Office and explain that, I would have thought that there would be no difficulty about the scope.

Baroness Finlay of Llandaff (CB): I would be delighted to go with the noble and learned Lord, because he may have a little more success. The Public Bill Office has been unfailingly helpful. This is no criticism whatever of it; it has worked incredibly hard. With that and the promise of going to see it with a matter of urgency, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendments 11 to 14 not moved.

Amendment 15 had been withdrawn from the Marshalled List.

Captain of the Honourable Corps of Gentlemen-at-Arms and Chief Whip (Lord Kennedy of Southwark) (Lab Co-op): My Lords, we have completed three groups of amendments, which is fewer than I had hoped for when I spoke in the House this morning. All noble Lords need to reflect on that before we resume consideration of the Bill next Friday.

Lord Pannick (CB): Before the noble Lord adjourns proceedings, can I ask him whether he would give anxious consideration to how we are going to complete Committee on this enormously important Bill, which this House may well want to amend and may well wish to disagree with at Third Reading? It is surely essential that this House is provided with the time that enables us to do our job, because if we do not do our job, it will be enormously damaging to the reputation of this House. Is there any way in which he can give thought to this over the next few days?

Lord Kennedy of Southwark (Lab Co-op): I am very happy to give thought to that. When I came to this Dispatch Box a couple of weeks ago and announced the extra days, I hoped that that would assist the House, but at this rate of progress I think we may still struggle. I am very happy to consider that. My door remains open to anybody for whom I can give assistance on that. The point that I keep making is that, at the end of the day, this is a Private Member's Bill and the Government remain neutral on the Bill itself.

House resumed.

House adjourned at 3.01 pm.