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21 November 2017**

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**HOUSE OF COMMONS
OFFICIAL REPORT**

**PARLIAMENTARY
DEBATES
(HANSARD)**

Tuesday 21 November 2017

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The House met at half-past Eleven o'clock

PRAYERS

[MR SPEAKER *in the Chair*]

Oral Answers to Questions

FOREIGN AND COMMONWEALTH OFFICE

The Secretary of State was asked—

Mr Speaker: I call Mr Chris Bryant. Not here.

Commonwealth Summit: London

2. **Derek Thomas** (St Ives) (Con): What progress he has made on preparations for the Commonwealth summit in London in April 2018. [901941]

The Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): We are delighted to be hosting next year's Commonwealth Heads of Government meeting, which will be one of the biggest summits that the UK has ever hosted. All the venues have been agreed, all member states have confirmed that they will be sending high-level delegations, and we are discussing an ambitious agenda. We want a great celebration for the Commonwealth that is underpinned by real substance, and we are working closely with young people from across the Commonwealth to put youth at the heart of the summit.

Derek Thomas: I thank the Foreign Secretary for that response. The summit provides a real opportunity for young people. Given that 40% of the world's young people live in the Commonwealth, what more can the Department do to nurture aspiration and create opportunity in the interests of prosperity, democracy and peace across our Commonwealth partners?

Boris Johnson: I thank my hon. Friend for putting his finger on the huge opportunity to focus on young people that the Commonwealth summit provides. We should focus in particular on the education of young women and girls. That presents an opportunity to change lives most dramatically across all Commonwealth countries, and indeed across the world, and to promote the objectives of freedom, opportunity, democracy and peace to which he rightly subscribes.

Wes Streeting (Ilford North) (Lab): I am delighted that we are hosting the Commonwealth summit next year. Following the most recent meeting of the United Nations Human Rights Council and in relation to our bilateral relationship with Sri Lanka, will the Foreign

Secretary take this opportunity to reiterate our Government's position that the Sri Lankan Government must ratify the Rome statute of the International Criminal Court and that international judges and prosecutors are involved in the prosecution of historical war crimes in Sri Lanka in order to build confidence that war crimes will be properly investigated and prosecuted?

Boris Johnson: I have indeed raised those questions with my opposite number and with the Sri Lankan Government. We believe that they are making progress, but we will continue to insist that more needs to be done.

23. [901963] **Daniel Kawczynski** (Shrewsbury and Atcham) (Con): One sees the huge economic growth of some Commonwealth countries, so does the Secretary of State agree that it is important to use the Commonwealth summit as an opportunity for us to start talking about how we are going to recalibrate our exports policy to focus on the Commonwealth?

Boris Johnson: With 2.4 billion people and some of the fastest growing economies in the world, my hon. Friend is entirely right that the 52 countries of the Commonwealth represent a superb opportunity for this country to do free trade deals. However, that does not mean that we will necessarily be in any way relaxing our desire to do a fantastic free trade deal with our European friends and partners. We believe that this can be a win-win.

Patrick Grady (Glasgow North) (SNP): I wonder whether the Commonwealth summit will be discussing the welcome appointment of an Indian judge to the International Court of Justice at the expense of a judge from the United Kingdom. Perhaps the summit will therefore also discuss how that is another sign of the sun setting on "Empire 2.0" before it has even risen.

Boris Johnson: On the contrary, I am sure that the whole House will join me in congratulating the Indian judge on his election. I am sure that the House will also agree that it is a fine thing that another common-law judge has joined the International Court of Justice.

Sir Hugo Swire (East Devon) (Con): I refer the House to my entry in the Register of Members' Financial Interests as the deputy chairman of the Commonwealth Enterprise and Investment Council. Does my right hon. Friend agree that a positive way of showing how a post-Mugabe Zimbabwe could be rehabilitated into the international community would be for it to attend the next Commonwealth summit as a rejoined member? To that end, will the Foreign Secretary begin to have discussions with his partners in the Commonwealth and with the Commonwealth secretary-general to ensure that there is a path to new membership for a post-Mugabe Zimbabwe?

Boris Johnson: My right hon. Friend rightly sets out what would be a fine and noble aspiration both for the Commonwealth and for Zimbabwe, but I must caution him that several steps need to be gone through before that can happen. There must be free and fair elections next year, and it then falls to Zimbabwe to apply to the Commonwealth secretariat and to make it clear to the

Commonwealth and the world that Zimbabwe fulfils the criteria on human rights, rule of law and democracy that are necessary for Commonwealth membership.

Jim Shannon (Strangford) (DUP): Will the Secretary of State further outline the discussions he has had with the Secretary of State for Exiting the European Union on the need for a solidified trade deal between the 52 Commonwealth countries, including Pakistan, India, Australia and New Zealand as four examples? Does he agree that must be a priority for London 2018?

Boris Johnson: I fully support the hon. Gentleman's aspiration. Free trade deals and the prospect of increased trade with our Commonwealth friends and partners will, indeed, be at the heart of the summit next year.

James Duddridge (Rochford and Southend East) (Con): Prior to the Commonwealth Heads of Government meeting, parliamentarians from across the Commonwealth will meet in February, organised by the Commonwealth Parliamentary Association. Will the Foreign Secretary consider hosting a reception for those 150 parliamentarians, either at the Foreign Office or maybe even in No. 10 Downing Street?

Boris Johnson: I am always grateful to my hon. Friend, who is full of knowledge on these matters. I will certainly consider the possibility of holding just such a reception, and I can think of all sorts of suitable venues.

Rohingya People

3. **Jessica Morden** (Newport East) (Lab): What recent representations he has made to his counterpart in Myanmar on the treatment of the Rohingya people in that country. [901942]

The Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): I have made repeated representations, as the hon. Lady can imagine, to the Government of Burma, and particularly to Aung San Suu Kyi—I have now spoken to her three times—to urge the return of the refugees. We secured the first UN Security Council statement on Burma in a decade, and I know that is a subject in which you take a particular interest, Mr Speaker. Burma must heed these calls from the international community and take the necessary steps that we have set out.

Jessica Morden: Three months on from the start of the current crisis, we all continue to be shocked and horrified by the tragic stories of the plight of the Rohingya people fleeing to Bangladesh and by the scale of the crisis. EU member states, as well as the US Congress, are reportedly considering reimposing some sanctions against Myanmar's leaders. What discussions have Ministers had on that with EU member states, and what will be the Government's position?

Boris Johnson: I have indeed raised this already, as the hon. Lady can imagine, with our European friends and partners. At the Foreign Affairs Council on 16 October we got agreement around the table that we will suspend Burmese military visits and review all defence co-operation. We got a further agreement to consider additional measures if the situation does not improve, and we will indeed now be doing so.

16. [901955] **Mike Wood** (Dudley South) (Con): The UN has made it clear that Muslims in Rakhine state should receive a legal status that allows them to lead a normal life and, in time, be granted full nationality, with freedom of movement and access to labour markets, education and health services. Will my right hon. Friend continue to press those demands through the United Nations and directly with the Burmese authorities?

Boris Johnson: My hon. Friend is absolutely right that that is critical. If those 608,000 people are to have any confidence about the prospect of their return, they must have clarity about their citizenship and their treatment when they come back to Burma and Rakhine. That is why the Annan plan makes it absolutely clear that there must be citizenship rights and investment in the development of equal treatment for all of Rakhine's ethnic groups.

21. [901960] **Tracy Brabin** (Batley and Spen) (Lab/Co-op): This morning Amnesty International released a report highlighting repression of and rights violations against the Rohingya people every single day. Amnesty compares Myanmar to an open-air prison. Can the Minister tell us whether the Government will support sanctions against Myanmar? What discussions has he had about that with other member states?

Boris Johnson: In answer to the hon. Member for Newport East (Jessica Morden), I detailed what we have been doing with our EU friends and partners. We have secured agreement to suspend military visits, and we will review matters with our friends and partners as things develop.

Mr Speaker: I would have called the hon. Member for Cheadle (Mary Robinson) if she had been standing, but she was not, so I did not, but now she is, so I will.

17. [901956] **Mary Robinson** (Cheadle) (Con): Thank you, Mr Speaker. Since the outbreak of the recent shocking violence in Rakhine more than 600,000 Rohingya refugees have crossed the border into neighbouring Bangladesh, where there is an urgent need for additional land for shelters to provide life-saving services and aid. In the light of the desperate situation, what support are the Government offering to the Bangladeshi Government so that refugees can have access to the basic essentials of existence, such as clean water, medicine and shelter?

Boris Johnson: My hon. Friend is entirely right. The UK is one of the biggest participants, having been either the biggest or second biggest donor to the humanitarian crisis in Bangladesh. We should all congratulate the Government of Bangladesh on the forbearance and energy they have put into coping with this appalling crisis. The UK is contributing £47 million, which has helped to provide for 174,000 people. We have provided safe water and sanitation for more than 138,000, and emergency shelter for 130,000; we have provided aid, counselling and psychological support that will reach more than 10,000 women suffering from trauma and 2,000 survivors of sexual violence; and we have provided medical help for more than 50,000 pregnant women to give birth safely. That is a record of help and support for the crisis of which the whole House can be proud.

Yasmin Qureshi (Bolton South East) (Lab): There has been potent evidence of the fact that ethnic cleansing and genocide is taking place in Burma, so what actions or steps have our Government, with the United Nations, taken to bring about prosecution in the international courts of the Buddhist monks and the generals for carrying out ethnic cleansing?

Boris Johnson: I agree very much with the hon. Lady that, unless the refugees are allowed to return, this crisis—this purge—will indeed satisfy the definition of ethnic cleansing. As for genocide, I am afraid we have recently received evidence of a very troubling kind, and we will make sure that such testimony of what has been taking place is collated and used so that the proper judicial authorities can determine whether it answers to the definition of genocide. As she will know, genocide is a strict legal term, and we hesitate to deploy it without a proper judicial decision.

Ms Nusrat Ghani (Wealden) (Con): The Burmese military have produced an absurd report claiming that not a single innocent life has been lost and that they have not been involved in any violence against the Rohingya. Does my right hon. Friend agree that no whitewash report will cover up all the mounting evidence of the atrocities carried out against the Rohingya?

Boris Johnson: I absolutely agree with my hon. Friend that it is vital that the Burmese Government acknowledge the scale of what is happening and the horror with which events are being greeted around the world. For many years, the world has looked to Aung San Suu Kyi as a great moral leader. We still salute her for her struggle for democracy in the face of the generals, but it is vital now that she stands up to condemn what is happening and brings the nation together. I am sorry to say that so far the Burmese Government have failed to do that.

Colombian Peace Process

4. **Ellie Reeves** (Lewisham West and Penge) (Lab): What assessment he has made of the obstacles to the implementation of the Colombian peace process. [901943]

The Minister for Europe and the Americas (Sir Alan Duncan): Significant progress has been made since the signing of Colombia's historic peace agreement last November—the FARC has disarmed and is now a political party; and a temporary ceasefire has been negotiated with the National Liberation Army—but difficult challenges remain and it is vital that momentum continues, especially as the country prepares for elections next year.

Ellie Reeves: In the light of the current crisis in the implementation of the Colombian peace agreement, including the killings of former FARC combatants and social leaders, the changes to the special jurisdiction for peace and the lack of re-integration opportunities, will the Minister make urgent representations to the Colombian Government about their international obligations to implement the agreement as it was signed?

Sir Alan Duncan: We fully support the Colombian Government in doing their utmost to implement the agreement as was signed. We are concerned by increasing attacks on human rights defenders, which are interrupting the passage towards a lasting peace, but we are in no doubt that responsibility for the majority of such attacks lies with illegal armed groups.

Crispin Blunt (Reigate) (Con): Does my right hon. Friend agree with the current and former Presidents of Colombia, Juan Manuel Santos and César Gaviria, that the continuing failed global policy of prohibition of drugs and the creation and sustaining of vast criminal enterprises serves to undermine the peace, stability and institutions of Colombia and its neighbours? Will the Government work to move towards an evidence-based policy response?

Sir Alan Duncan: My hon. Friend is absolutely right to point to the fact that drug smuggling and trading is becoming a main threat to the implementation of the peace agreement. I am reassured that the Colombian Government are investigating the deaths of several individuals who protested against coca eradication in Tumaco on 5 October.

Tony Lloyd (Rochdale) (Lab): Will the Minister see what he can do to drive concerted European action to bring supportive pressure to bear on President Santos? The President's legacy could be an implemented peace deal, but at the moment the legislative process to underpin the peace process simply is not there. We must have action in the last six months of his term.

Sir Alan Duncan: We are actively supporting the Colombian Government. We have provided almost £20 million from the conflict, stability and security fund. I am also proud that UK-led work has led to the UN Security Council resolutions to assist the peace-building process that we all want to see succeed.

Yemen

5. **Dr Philippa Whitford** (Central Ayrshire) (SNP): What steps he is taking to support a long-term political solution in Yemen. [901944]

The Minister for the Middle East (Alistair Burt): Only a political solution will bring the long-term stability that Yemen needs. Yemeni parties themselves must engage constructively with peace opportunities when they come along. The United Kingdom is playing a leading part diplomatically, at the UN and elsewhere, to try to bring other parties together so that we can see the political solution that is needed.

Dr Whitford: Yemen is in the grip of a humanitarian disaster, with another 50,000 children expected to die before the end of the year because of famine and cholera, yet the UK's arms sales to Saudi Arabia have been worth 18 times the aid given to Yemen over the past two years. What will the UK Government do to ensure that the blockade is lifted now and to contribute to Yemen's reconstruction, rather than to its destruction?

Alistair Burt: The efforts being made with the coalition are not only to give its members assurances about the security they need to ensure that there are no further

missile attacks like the one on Riyadh on 4 November, but to seek to relieve the restrictions that are preventing humanitarian access from getting through. No one doubts the scale of the humanitarian crisis that already exists in Yemen and that faces its people if those restrictions are not lifted. The United Kingdom is working with others on both the security for the coalition in the area and the need to relieve the restrictions to make sure that humanitarian access can be given.

18. [901957] **James Morris** (Halesowen and Rowley Regis) (Con): The conflict in Yemen is clearly a proxy war between Saudi Arabia and Iran for achieving regional hegemony. Does the Minister agree that the UK should use all its diplomatic leverage with its allies and players in the region to de-escalate the conflict and get a genuine peace process under way in Yemen?

Alistair Burt: My hon. Friend is right. A process is under way, led by the UN special representative, and we are supporting that. It requires both sides to recognise that there is no military answer to what is happening in Yemen. There has to be a political solution. We are working steadfastly through our ambassador in Yemen and through the UN to try to ensure that the parties get together to make sure that there is a political solution. We are doing everything we can because we recognise the urgency of the situation.

Stephen Twigg (Liverpool, West Derby) (Lab/Co-op): The scale of the humanitarian crisis is truly frightening and the Saudi blockade could result in thousands of further deaths. A political solution is vital. Will the Minister tell us whether the Prime Minister has spoken to the Crown Prince of Saudi Arabia? If she has not, can she do so as a matter of urgency to get the blockade lifted?

Alistair Burt: Ministers, including the Prime Minister, have spoken to the Crown Prince of Saudi Arabia. Repeated representations have been made by other Ministers since 4 November and continue to be made. We recognise the need for security for the coalition, but we also recognise the urgent need to lift the restrictions and make sure that humanitarian access is given.

Tom Tugendhat (Tonbridge and Malling) (Con): Does my right hon. Friend agree that the situation in Yemen very much points to the fact that we have a failed Iran policy? We have a capital in Tehran that is taking British hostages, that is developing missiles, that is threatening its neighbours and that is destabilising the region, and our policy is what? There is none.

Alistair Burt: There is a significant policy in relation to Iran, which a number of different debates and conversations in this House have detailed. Work is going on to explore what opportunities there are for Iran to play a more constructive part in the region, but in relation to human rights sanctions, to criticism about its activities with terrorist groups in the area and to its ability to destabilise the region, the United Kingdom's position is very clear. However, there is engagement with Iran, which is important both for the UK and for others. The policy of that constructive engagement is very clear.

Fabian Hamilton (Leeds North East) (Lab): Yesterday, the Minister of State said that the Saudi blockade of Yemen did not breach international humanitarian law because it is intended to stop the smuggling of missiles to the Houthis. How does he respond then to the leaked briefing by the United Nations Panel of Experts on Yemen, which says that there is no evidence of such smuggling and that this is just another attempt by the Saudi coalition to justify obstructing the delivery of commodities that are essentially civilian in nature?

Alistair Burt: I do not agree with the conclusion—*[Interruption.]* No, I do not agree with that UN assessment. It is perfectly clear that weapons and weapons parts have been smuggled into Yemen, and have been used to fire against parties to the coalition. We are quite sure that that is the case. However, the point is not only to give some security to those who do not want to see such missiles pointed at their airports, but at the same time to ensure that the coalition partners realise that the restrictions being put on entry to ports may not assist them in dealing with all the smuggling they are concerned about, but will certainly damage the humanitarian situation and make it worse. That is what we are trying to persuade the coalition partners to relieve.

Human Rights

6. **Faisal Rashid** (Warrington South) (Lab): What steps he is taking to promote human rights in discussions with his counterparts in other countries. [901945]

11. **Afzal Khan** (Manchester, Gorton) (Lab): What steps he is taking to promote human rights in discussions with his counterparts in other countries. [901950]

The Minister for Africa (Rory Stewart): We defend human rights in a variety of ways. That involves not only funding human rights advocates and training judges and the police, but ourselves as Ministers raising directly with heads of states and our opposite numbers human rights issues across the world and across the continents.

Faisal Rashid: Last February, the Foreign Secretary said that he wished to be a champion of President Sisi of Egypt. With mass arrests, torture, disappearances and deaths in custody now the norm in Egypt, can the Minister tell the House what exactly the Government find to champion in Sisi's record on human rights?

Rory Stewart: We continue to raise very strongly with the Egyptian Government our concerns about these issues. The hon. Gentleman is absolutely right to raise them. There are some very troubling issues in Egypt. We continue to study them and we raise them with our US and EU partners all the way—*[Interruption.]* As the Foreign Secretary says, he raised it directly with President Sisi at his last meeting.

Afzal Khan: Similar to the horrors that we witnessed last year in eastern Aleppo in Syria, today we are confronted with the brutal siege of eastern Ghouta by the Assad regime. What action will the Government take to protect civilians and to ensure compliance by reasonable actors with the human rights obligations, most particularly the Assad regime and its regime backers?

Rory Stewart: We absolutely agree that the Assad regime is horrifying in the way in which it treats civilians. It has an extraordinary record of brutality and murder. We will document very closely the abuses that it has committed. We continue to call on it through every single channel not to conduct these operations, and we will make sure that people are held accountable for their crimes.

Mr Philip Hollobone (Kettering) (Con): Christian communities are under attack in a number of developing countries to which we give very large amounts of international aid, including Pakistan. What steps will the Government take to ensure that that aid is given on condition that these communities are protected?

Rory Stewart: That is absolutely correct. Indeed, Christian communities and many other minority religious groups are increasingly under threat across the world. That is true of Christian communities in the middle east. It is true of Christian communities in Africa. It is true of Christian communities in Pakistan. We will support civil society organisations. In Pakistan, we support the rights of Christian communities, Shi'a minority communities and other groups. We continue to advocate for them with the Government of Pakistan, and we will continue that civil society support.

19. [901958] **Alex Norris** (Nottingham North) (Lab/Co-op): This month, FIFA's advisory board urged FIFA to press the Qatari Government on the impact of the kafala system on migrant workers building stadiums for the 2022 football World cup. Do Ministers support this call? Will they press the Qatari Government on this and other important human rights issues?

Rory Stewart: We have looked seriously into this issue. We have pressed the issue with the Qatari Government, and we will continue to press exactly this issue with the Government of Qatar.

20. [901959] **Mr Jim Cunningham** (Coventry South) (Lab): What progress has been made in Sudan regarding the political situation and the human rights situation?

Rory Stewart: We have a renewed dialogue with the Government of Sudan. As the hon. Gentleman will be aware, the US Government have now lifted sanctions in relation to Sudan. I met the Sudanese delegation in October as part of the renewed dialogue. We had a human rights workshop at the centre of that dialogue, and we continue to press with the special rapporteur on human rights for progress on exactly these issues.

Mr Khalid Mahmood (Birmingham, Perry Barr) (Lab): In August, the American Government withheld \$290 million of military and economic aid from Egypt because of its recent track record on human rights. I thought I would never say this, but will the Minister ask the Secretary of State to learn some lessons from Donald Trump and to force President Sisi to clean up his act?

Rory Stewart: We thank the shadow Minister very much for raising that issue. We agree very strongly that there are very disturbing signs in Egypt. That is why my

right hon. Friend the Foreign Secretary raised this issue directly with President Sisi, and we will continue to do so on every occasion.

Antarctica

7. **James Gray** (North Wiltshire) (Con): What steps he is taking to raise the level of international protections for the Antarctic region. [901946]

The Minister for Europe and the Americas (Sir Alan Duncan): Maintaining the integrity of the Antarctic treaty is fundamental to protecting Antarctica. The UK's leading role within the Antarctic treaty system has allowed us to push consistently for increased levels of protection for the continent's vulnerable environment, and we are committed to continuing to do so.

James Gray: "Blue Planet II", among other things, reminds us all of the very delicate and extremely vulnerable biodiversity of our deep oceans—particularly those around the Antarctic continent. Yet, when the nations of the world proposed there should be a marine protected area for the Weddell sea—an area seven times the size of Germany—that was resisted particularly by two nations, namely Russia and China. In the Secretary of State's forthcoming visit to Russia, will he take the opportunity of pressing the Russians to support the rest of the international community in pressing for a marine protected area for the Weddell sea?

Sir Alan Duncan: I am very happy to put that on our agenda, but may I also reassure my hon. Friend that the UK is a co-proponent of the proposal to establish a marine protected area in the Weddell sea, and that is being developed by the European Union and its member states? British scientists are taking a leading role in preparing a final MPA proposal, which is to be presented to the Commission for the Conservation of Antarctic Marine Living Resources in October next year.

Helen Goodman (Bishop Auckland) (Lab): The hon. Member for North Wiltshire (James Gray) mentioned "Blue Planet II", and 12 million people watched it on Sunday. We want to know what the Government are going to do to protect the beautiful environment around South Georgia and the South Sandwich Islands. Will the Government now commit to establishing a marine sanctuary around this British overseas territory?

Sir Alan Duncan: This issue has been championed very much by my right hon. Friend the Member for Newbury (Richard Benyon). Indeed, it is not just in the Antarctic that the UK is championing marine protection. The UK is on track to deliver our Blue Belt manifesto commitment around the overseas territories. We will have protected 4 million sq km of ocean by 2020, and the South Georgia and the South Sandwich Islands were designated in 2012 as a sustainable use MPA covering 1 million sq km. The first formal review of that will take place next year.

Catalonia

8. **John Lamont** (Berwickshire, Roxburgh and Selkirk) (Con): What recent discussions he has had with the Government of Spain on events in Catalonia. [901947]

The Minister for Europe and the Americas (Sir Alan Duncan): The Foreign Secretary met Spanish Foreign Minister Dastis, and I met Europe Minister Jorge Toledo, at the UK-Spain Tertulias conference in Bath on 3 November. The Prime Minister spoke to Spanish Prime Minister Rajoy by phone on 27 October. The Foreign Office is actively engaged with the Spanish Government through our embassy in Madrid and the Spanish ambassador in London, including when he and I met on 11 October.

John Lamont: I think the whole House is united in our concern about events in Catalonia and how this has been handled over recent weeks. Scotland is of course no stranger to independence referendums. Does the Minister share my belief that the success of our referendum in 2014 demonstrates the importance of having such referendums conducted according to the rule of law and subject to the rules that were agreed by both sides beforehand?

Sir Alan Duncan: I absolutely agree with my hon. Friend. Catalonia is a matter for Spain in the same way as Scotland was for the United Kingdom. The Scottish referendum was a legal referendum following the signature of the Edinburgh agreement between the Scottish Government and the Government of the UK. The referendum in Catalonia was not legal in that way. We fully support Spain in upholding the rule of law and its constitution.

Alison Thewliss (Glasgow Central) (SNP): The right hon. Gentleman makes the point about the Scottish referendum being a legal referendum, but Catalonia has had no legal routes from which to have a referendum. Will he put pressure on his Spanish colleagues to look at Scotland's referendum as a shining example of how democracy can be respected, as well as the rights of the people of Catalonia?

Sir Alan Duncan: This is entirely a matter for Spain. It has rules under its own constitution that should be upheld and not challenged in an illegal way, as they have been in Catalonia.

Michael Fabricant (Lichfield) (Con): Whatever the rights and wrongs of the action that the People's party took, does my right hon. Friend agree that the heavy-handed action of the Spanish police exacerbated matters? Does he take heart from news breaking in Spain at the moment that it now intends to give fiscal powers to Catalonia similar to those of the Basque country—something that has not been offered before?

Sir Alan Duncan: Of course no one wants to see violent scenes such as we saw on our televisions, but if there is to be progress on this and it is what the Spanish Government legally and properly decide to do, of course we will support any such legal democratic action.

Leaving the EU: Foreign and Security Policy

9. **Mike Amesbury (Weaver Vale) (Lab):** What recent discussions he has had with his EU counterparts on foreign and security policy co-operation after the UK has left the EU.

[901948]

The Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): The Government published a paper on 12 September which sets out our vision for a future partnership with the EU on foreign policy, defence and development. I am pleased to say that in my discussions with our EU friends since then, that paper has had a very good reception.

Mike Amesbury: The so-called future partnership paper on foreign and security policy published by the Brexit Department in September had plenty of positive things to say about the value of EU-UK co-operation. Will the Secretary of State therefore update the House on what progress, beyond the mighty fine warm words, has been made on the Brexit negotiations?

Boris Johnson: If, by that, the hon. Gentleman means progress on the foreign policy and defence policy side, I must remind the House that that is not at the absolute centre of the negotiations, but it is widely understood that the UK, contributing as we do 20% of European defence spending and 25% of European aid spending, will be there in a supportive way whatever the outcome of the negotiations. As the Prime Minister has rightly said, our commitment to the defence and the security of Europe is—I think this is the word that was particularly warmly received by our friends and partners—unconditional, as it always has been and always will be.

Wendy Morton (Aldridge-Brownhills) (Con): Foreign and security policy will remain as vital as ever when we leave the EU. Can my right hon. Friend confirm categorically that we will remain as committed as ever to European security after we leave the EU?

Boris Johnson: We certainly shall. My hon. Friend asks an important question. The answer cannot be repeated too often, and it needs to be heard particularly in the countries that emerged from beneath the shadow of Soviet domination. They need to hear that we are there for the long term, as we are there on the borders of Estonia. We are committed, above all, to NATO, which is the guarantor of peace and stability in our continent. The UK, let the House never forget, is the second biggest contributor to the NATO alliance.

22. [901961] **Gerald Jones (Merthyr Tydfil and Rhymney) (Lab):** EU funding has enabled an African Union peacekeeping force to play a vital role in helping to stabilise Somalia during its transition to democracy, but we cannot be complacent and it is essential for the Government to maintain some influence on EU policy in Somalia as we prepare to leave the European Union. What reassurances can the Foreign Secretary give us that this important issue will not be forgotten during the Brexit negotiations?

Boris Johnson: The hon. Gentleman will recall that, earlier this year, in May, we held the Somalia conference, working with our European friends and partners particularly to make sure that the Somali central Government in Mogadishu collaborate more closely with the federal member states on a new national security architecture for Somalia, so that the fight against al-Shabaab can be prosecuted more successfully. That is the work we are doing with our European friends and partners, and that will continue under any circumstances.

Michael Tomlinson (Mid Dorset and North Poole) (Con): Is not that the point: we do not have to be inside the European Union to be concerned about and committed to European security, and we will remain as committed as ever even if we are outside the EU framework?

Boris Johnson: My hon. Friend is exactly right. I have compared the support that we will offer in the future to a flying buttress, as it were, outside the main body of the cathedral but supportive of that cathedral. That is how the UK will continue to be, on an unconditional basis.

Stephen Gethins (North East Fife) (SNP): Last week, Sir Simon McDonald told the Select Committee on Foreign Affairs that more civil servants—unelected bureaucrats, in the parlance of the Conservatives—would be sent to Brussels. Can the Foreign Secretary tell us how many of those officials will focus on foreign and security policy co-operation with the EU, how much it will cost and whether it will be part of the £40 billion settlement with the EU?

Boris Johnson: I can tell the House—I am sure that all Members will be pleased to hear this—that we will be beefing up our representation in Europe. We will have 50 more posts, at least, in other EU capitals, and they will strengthen and intensify some bilateral relationships that, in my view, have been allowed slightly to ossify under the EU arrangements that we have pursued over the last 45 years.

Stephen Gethins: More Brussels bureaucrats with Brexit. Sir Simon McDonald did say that there was an initial Treasury pot—I will try to help the Foreign Secretary here—of £250 million. How much of that has the Foreign Secretary secured to go towards security policy co-operation—or has the Chancellor told him to “go whistle”?

Boris Johnson: I do not think that the hon. Gentleman was listening to my last answer, because I said that the increased diplomatic representation that we would make in the rest of Europe would be dispersed not just in Brussels, but around the rest of the capitals. Of course, each and every one of those individuals will be working on our common foreign and security objectives, and making the case, which I made in an earlier answer, that our support for European defence and security is unconditional.

Emily Thornberry (Islington South and Finsbury) (Lab): It is now nearly 50 long years since the start of the troubles in Northern Ireland, and none of us who lived through that era ever wants to go back to it again. In February 2016, the Foreign Secretary gave his guarantee to BBC Northern Ireland that a vote for Brexit would leave arrangements on the Irish border, and I quote, “absolutely unchanged”. There were no caveats, and no “I hope that this will happen”; there was just an unequivocal commitment that nothing would change. Can the Foreign Secretary give us the same promises today?

Boris Johnson: I think, if I may say so, that the right hon. Lady is right to ask that question. I was recently in Dublin talking to all the political groups there, and there is no question but that the issue of the border is

very live in Irish politics. I repeated exactly the pledge to which she refers: there can be no return to a hard border. There can be no hard border. That would be unthinkable, and it would be economic and political madness. I think everybody, on both sides of this House, understands the social, political and spiritual ramifications of allowing any such thing to happen. That is why it is so important that we get on to the second phase of the negotiations, that we get sufficient progress at the European Council in December and that we are able to debate these issues properly.

Emily Thornberry: I thank the Foreign Secretary for that answer. No one will have missed the fact that, like on so many of his initial promises over Brexit, he has turned this from an unequivocal guarantee to an aspiration dependent on a successful deal—[*Interruption.*] I did listen to the right hon. Gentleman.

It seems to me that, like his jogging partner from *The Sun*, the right hon. Gentleman is now saying that it is up to the Irish to find a solution, but why should that be? It was his promise that border arrangements would not change, so it is up to him to make sure that that works. That is why I want to challenge the Foreign Secretary today. In September, he laid down four personal red lines for the Brexit negotiations. None of them related to the Irish land border, which is a crucial issue to 1.8 million of our own citizens and 4.8 million of our friends south of the border, so may I—

Mr Speaker: Order. We are immensely—indescribably—grateful to the shadow Foreign Secretary, but I think she is approaching her peroration, with a question mark at the end of it. I am happy to indulge Front Benchers to a degree, but I want to accommodate Back Benchers. I am determined to get to the bottom of the list today, and I shall do so.

Emily Thornberry: Let me urge the Foreign Secretary to announce a fifth red line today by promising unequivocally what he promised last year—that Irish border arrangements will not change—and to say that if those arrangements do change, he will refuse to stay in the Government.

Boris Johnson: If I may say so, I think the right hon. Lady prepared her supplementary question before she heard my first answer. There can be no return to a hard border. We do not want a hard border north-south, or indeed east-west.

West Bank

10. **Julie Elliott** (Sunderland Central) (Lab): What recent discussions he has had with the Government of Israel on the status of Palestinian communities in area C of the west bank threatened with demolition. [901949]

13. **Alan Brown** (Kilmarnock and Loudoun) (SNP): What recent discussions he has had with the Government of Israel on the status of Palestinian communities in area C of the west bank threatened with demolition. [901952]

The Minister for the Middle East (Alistair Burt): We are seriously concerned by the continued demolition of Palestinian property by the Israeli authorities, which

causes unnecessary suffering and is harmful to peace. We regularly raise this issue, and our embassy in Tel Aviv most recently raised our concerns with Israel in a joint démarche with European partners on 2 November.

Julie Elliott: I thank the Minister for his answer. As we know, we have recently seen a very clear indication from Israel's Defence Minister about the intention to demolish the communities of Khan al-Ahmar and Susiya, and the military has issued a demarcation order signalling the intention to evacuate communities in the Jordan valley and E1 areas. Does the Minister agree that Israel must be held to account if those things actually take place?

Alistair Burt: This is the subject of a continued conversation with the Israeli authorities in which we make it clear, as do others, that the threat to settlements is unacceptable. I have visited both places—Khan al-Ahmar some years ago, and Susiya quite recently—as have representatives from the embassy. We wait to see further developments. There is a lot of talk about further demolitions, but then the legal process holds them back. However, Israel can be in no doubt of our concerns about the demolition of Palestinian properties and the damage that that does for the prospects of a peaceful settlement.

Alan Brown: The reality is that 100,000 hectares of Palestinian land have been taken for settlements and 50,000 homes have been demolished. Will the Minister at least call on the Israeli Government to lift the demolition order on the Bedouin village of Susiya, to which he referred? Will he put in place measures, such as guidance to UK businesses that they stop trading with illegal settlements, in a bid to break this cycle?

Alistair Burt: We will keep our existing trade relationships, which allow customers to make their own decisions about where the goods they buy come from. We are making our position on settlements extremely clear, and we will continue to do so.

Bob Blackman (Harrow East) (Con): I thank the Minister for his answers. When Prime Minister Netanyahu was in London recently, what discussions did my right hon. Friend have with him about face-to-face peace talks between the state of Israel and the Palestinians so that we can create a state of Palestine alongside a secure state of Israel?

Alistair Burt: When the Prime Minister met Prime Minister Netanyahu on 2 November, she reiterated our continued opposition to settlement activity, and also encouraged him to make the most of the likely opportunities that will come up when the Americans bring forward the proposals they have been discussing privately for some months about the prospects of peace. This chance should not be missed by either side.

Ross Thomson (Aberdeen South) (Con): This year marks 40 years since Egyptian President Sadat's historic visit to Israel, which led to a lasting peace between Israel and Egypt. Peace has only lasted when Israel's neighbours have reciprocated its goodwill gestures, with land swaps a key aspect of that. Does my right hon. Friend agree that there can be peace between Israel and

Palestinians only following the resumption of direct peace talks in which issues including land borders can be resolved?

Alistair Burt: The short answer is yes, but I do not think we should miss the 40th anniversary of the extraordinary activity that took place between Israel and Egypt. What we would give now for a similar gesture of peace on all sides to bring this long-standing conflict to an end.

Catherine West (Hornsey and Wood Green) (Lab): Does the Minister believe, with particular reference to Israel and the west bank, that holding children in detention constitutes a breach of the United Nations convention on the rights of the child?

Alistair Burt: We express repeated concerns to Israel about the treatment of children and ask it to adhere to UN principles on that. We continue to raise this matter of long-standing concern.

Foreign Online Activity

12. **Mr Barry Sheerman** (Huddersfield) (Lab/Co-op): What steps he is taking to tackle foreign online interference in UK political activity. [901951]

The Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): We have seen no evidence of any country successfully interfering with our robust electoral system, but we know, of course, that Russia seeks to undermine our institutions by using disinformation to further its ends, including through social media. The best guarantee against that is a free, open press and an accessible media.

Mr Sheerman: How does the Foreign Secretary square that with the comments made by the Prime Minister herself only last week at Mansion House? She said that she believes that there has been Russian interference in our political system. Will he do something about that? Does he not think it is a disgrace that not one member of the security services has been interviewed by any Committee of this House about what the real facts are?

Boris Johnson: When the Prime Minister spoke of "meddling in elections", as she did in her Mansion House speech, she was referring to examples outside the UK. The hon. Gentleman will recall that she made that clear at Prime Minister's Question Time on 15 November.

Freedom of Expression

14. **Nigel Huddleston** (Mid Worcestershire) (Con): What support his Department provides to strengthen freedom of expression in other countries. [901953]

The Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): This question follows on almost directly from our comments and criticisms about what is going on in Russia. Freedom of the press is absolutely indispensable for prosperous societies around the world. That was why on 2 November we announced FCO funding of £1 million over the next financial year to support projects that promote freedom of expression and the work of journalists.

Nigel Huddleston: I am very proud of the Government's activity on freedom of expression around the world and warmly welcome the £1 million funding for areas of the world where press freedoms are curtailed. Will the Foreign Secretary confirm whether the £1 million funding is a one-off, or will it be reviewed and perhaps increased if it is deemed successful?

Boris Johnson: We will review the success of the funding, but it is there to show the Government's commitment, as part of our global Britain values agenda, to a free press around the world. I mean that very sincerely. Across the world, more journalists are being killed and locked up, and that is not only a political disaster but an economic disaster. The most prosperous and successful countries are those that also have a free press that is able to expose corruption and enable democracy, which allow the economy to flourish.

24. [901964] **Geraint Davies** (Swansea West) (Lab/Co-op): In Hong Kong, press freedom and the freedom of expression and assembly are guaranteed by article 3.5 of the Sino-British joint declaration, yet last week Beijing basically said it would imprison people for up to three years for booing or disrespecting the Chinese national anthem. President Trump said nothing about that during his visit. What will the Foreign Secretary do to uphold the fundamental values that the United Kingdom is legally obliged to uphold?

Boris Johnson: We have made it absolutely clear to our Chinese partners that the joint declaration is absolutely valid and operative, and that one country, two systems, enshrining all the values the hon. Gentleman rightly draws attention to, remains in force.

Mr Speaker: Our early lunchtime exchanges would be incomplete if we did not have the participation of the right hon. Member for New Forest West (Sir Desmond Swayne).

Bangladesh

15. **Sir Desmond Swayne** (New Forest West) (Con): When a Minister of his Department last visited Bangladesh. [901954]

The Minister for Africa (Rory Stewart): Ministers regularly visit Bangladesh, with which we have a very special relationship. I have had the pleasure of visiting, as have my right hon. Friends the Ministers for the Middle East, and for Asia and the Pacific, who visited Bangladesh on 27 and 28 September.

Sir Desmond Swayne: Is the Minister satisfied with the level of support we are providing for the Rohingya?

Rory Stewart: More support can always be provided for the Rohingya. The situation is horrifying: nearly 600,000 refugees—Burmese citizens, we should emphasise—driven out of their homes by horrific actions provoked largely by the Burmese military. We are providing £47 million of assistance, which makes the UK the largest bilateral donor, and we have just sent experts on preventing sexual violence in conflict to the camps in Bangladesh, but there is always more to be done.

Topical Questions

T1. [901930] **Diana Johnson** (Kingston upon Hull North) (Lab): If he will make a statement on his departmental responsibilities.

The Secretary of State for Foreign and Commonwealth Affairs (Boris Johnson): Last week I visited Dublin, where I discussed how to strengthen the bonds between our countries and address Ireland's unique circumstances, including the land border, as the UK leaves the EU. I am closely following the situation in Zimbabwe, where our primary goal is for the country's people to be able to decide their own future in free and fair elections next year. I am deeply concerned by the suffering in Yemen. Britain supports Saudi Arabia's right to protect its security, while urging that emergency supplies get through to the millions who depend on them.

Diana Johnson: The United Nations special rapporteur on freedom of expression and human rights reports that the Iranian regime is undertaking a campaign of harassment, persecution and intimidation against staff of the BBC Persian service and their families that is aimed at preventing them from doing their jobs. What representations has the Foreign Secretary made to the Iranians about this?

Boris Johnson: We have made repeated representations to the Iranians about human rights concerns, but I will certainly be happy to take up the issues the hon. Lady raises in person during the course of my projected visit to Iran in the next few weeks.

T3. [901932] **Vicky Ford** (Chelmsford) (Con): With coalition talks breaking down in Germany and the increasing possibility of a second German election, and given that any new UK-EU trade deal needs the unanimous consent of all EU Governments, is the Foreign Secretary being advised that we might need a bit more time to secure a new trade deal?

Boris Johnson: My hon. Friend asks a very thoughtful question about what is happening in Germany, but I do not, as it happens, think that the German Government will be in any way incapacitated when it comes to the negotiations in December or, going forward, doing a great free trade deal with the UK over the next 18 months.

Liz McInnes (Heywood and Middleton) (Lab): Last Wednesday, the Prime Minister was asked about the recent elections in Somaliland, but in response she talked about the entirely different country of Somalia. Will the Foreign Secretary take the Prime Minister to one side and ask her to leave the foreign policy gaffes to him? On a more serious note, will he tell us how the Foreign Office is working to help to preserve peace and democracy in Somaliland in the wake of last week's post-election violence?

The Minister for Africa (Rory Stewart): Somaliland is in fact a rare beacon of peace and stability in the region, and we congratulate it—in the end—on the conduct of the elections. We also congratulate the extraordinary steps taken by the election candidates to commit to ending female genital mutilation and to putting in place the legislative framework to achieve that.

T5. [901935] **Kelly Tolhurst** (Rochester and Strood) (Con): In April last year, I had the pleasure of visiting Palestine, but also the sadness of witnessing a young Palestinian boy being tried in an Israeli military court for throwing stones, with no choice of representation and the whole process conducted in Hebrew. We stand up for fairness, so will the Minister tell me whether his Department plans to review the “Children in Military Custody” report that was funded by his Department and published in 2012?

The Minister for the Middle East (Alistair Burt): We continue to urge Israel to implement the recommendations in the “Children in Military Custody” report. I raised the issue with the Israeli authorities during my visit to Israel in August 2017, and Ministers and the British ambassador to Tel Aviv have spoken and written to the Israeli Justice Minister and the Israeli Attorney General. The UK continues to have strong concerns about reports of the ill treatment of Palestinian minors in Israeli military detention.

T2. [901931] **Daniel Zeichner** (Cambridge) (Lab): The Foreign Secretary will be aware that despite last week’s climate change talks, the world is still not on track to limit global warming to less than 3° C. What steps is he taking to ensure that we get back on track?

Boris Johnson: As the House will know, the United Kingdom has been in the lead in championing measures to mitigate climate change. We can be very proud of the impact that we have had in cutting our own carbon dioxide emissions and, of course, working with our friends and partners around the world to implement the Paris accord, which is the way forward.

T7. [901937] **Sir Nicholas Soames** (Mid Sussex) (Con): Does the Foreign Secretary agree that there are several very important preconditions for the successful expression of a global Britain? Does he agree that, quite apart from the need for a better-funded Foreign Office, there needs to be far more effective co-ordination and expression of Britain’s truly formidable soft power?

Boris Johnson: My right hon. Friend raises the absolutely fascinating conundrum of how effectively the Government could marshal the extraordinary panoply of UK soft power. I never normally disagree with him in any way, but I tend to think that our soft power is so huge that it would not necessarily benefit from any political attempt to co-ordinate it. What I can say is that I believe the work of the British Council is often unsung, although it is hugely important. I think that all Members want to support that organisation and to see it properly funded.

T4. [901933] **Neil Coyle** (Bermondsey and Old Southwark) (Lab): In April last year, my constituent Sharon St John’s son, Adrian, was murdered in Trinidad. He was just 22. The police investigation has been shrouded in secrecy amid allegations of corruption, and the case against one of the alleged killers has now been adjourned 20 times. Sharon and I have met FCO officials and the Trinidad and Tobago high commissioner here in London, but what more can our high commission do to support Sharon and her family, and what further pressure can our Government exert on the Trinidad authorities to ensure that the case will now be heard?

Rory Stewart: This is a genuinely troubling case. There is an additional horror in being a relative of a victim of homicide when the event has taken place abroad because of the unfamiliar context, all the complexities of dealing with it, and the problems with the justice system. We will continue to monitor that case very closely. We now have a specialised unit in the Foreign Office to deal with cases of exactly this sort.

T8. [901938] **Andrew Bowie** (West Aberdeenshire and Kincardine) (Con): My right hon. Friend will no doubt be aware that over the weekend Antonio Ledezma, the former mayor of Caracas and leading opponent of President Maduro, fled his house arrest, evaded security forces and made it out of Venezuela, managing to reach Spain. Any claim now that Venezuela constitutes anything like democracy is fantasy. Will my right hon. Friend join me in sending the best wishes and thoughts of all Members to the brave opposition politicians in Venezuela, and to Mr Ledezma, who said at the weekend that his new aim was

“to spread the hope of all Venezuelans to escape this regime, this dictatorship”?

The Minister for Europe and the Americas (Sir Alan Duncan): I totally agree with my hon. Friend. Antonio Ledezma is but the latest opposition figure to flee from Venezuela. On 10 October, I raised our concerns with the Venezuelan Foreign Minister, who denied that Venezuela was in crisis. That is immoral, it is wrong, and it is why this Government consistently argued for targeted EU sanctions, which were adopted on 14 November.

T6. [901936] **Lilian Greenwood** (Nottingham South) (Lab): We continue to hear reports of violence and human rights violations in Kashmir. Tensions in the region remain high, and there seems to have been little or no progress towards peace and security. What recent discussions about Kashmir has the Minister had with the Indian and Pakistani Governments, and what assessment has he made of prospects for any improvement in the security situation in the region?

Rory Stewart: The situation in Kashmir is still tragic, as it has been for many decades. The position of the British Government remains that this is an issue to be resolved between the Governments of India and Pakistan, but we continue to champion issues relating to human rights abuse with both Governments whenever they occur, and we will continue to monitor the situation extremely carefully.

T9. [901939] **Henry Smith** (Crawley) (Con): We have a lot to thank the Kurdish administration for, such as protecting minorities and its fight against Daesh in recent years. Will my right hon. Friend the Foreign Secretary speak to his counterparts in Baghdad to stop the intransigence of the federal Iraqi Government towards the aspirations of the Kurdish people for independence?

Alistair Burt: This has been a difficult recent chapter between the Kurdish region and Iraq. So far, because of good sense on both sides and a desire to reconcile, there has been no physical conflict at the border area. It is essential that both the Government in Baghdad and those in Erbil find a way through the present constitutional

difficulties to make sure that the long-standing concerns of the Kurdish people are recognised within a united and strengthened Iraq. The United Kingdom will do all in its power to make sure we put our words to that effect.

Several hon. Members *rose*—

Mr Speaker: Who shall we have? I was going to call Mr Burden, but he is not standing, so I can't and I won't. I call Jo Swinson.

Jo Swinson (East Dunbartonshire) (LD): At the last Foreign Office questions, the Foreign Secretary told me that the UK could not pinpoint any direct Russian cyber-attacks on this country. Today, he tells us the Prime Minister's comments last week about Russia's sustained campaign of cyber-espionage and disruption refer only to other countries. Why does he think the UK is uniquely immune to Russian interference, or is he just complacent about the threat?

Boris Johnson: I should be clear with the hon. Lady that, because of the sensitivity of the intelligence involved, it is impossible for us to pinpoint these attacks in public. When the Prime Minister referred to "meddling in elections", she was referring to meddling in other countries.

Several hon. Members *rose*—

Mr Speaker: If the hon. Member for Newark (Robert Jenrick) will confine himself to a short sentence, I will call him, but if he won't, I won't.

Robert Jenrick (Newark) (Con): There is no hiding from the fact that the loss of a British judge on the International Court of Justice is a major failure for British diplomacy. What lessons will the Foreign Office learn to ensure that this does not happen again?

Boris Johnson: I cannot quite agree with the construction my hon. Friend places on events, but I repeat my congratulations to the Indian judge. As the House will know, a long-standing objective of UK foreign policy has been to support India in the United Nations.

Richard Burden (Birmingham, Northfield) (Lab): The military orders issued against the Bedouin villages of Jabal al-Baba, Ain al-Hilweh and Umm el-Jimal will involve the forcible transfer of over 400 people, which the director of the Israeli human rights organisation B'Tselem has described as a war crime. If Israel believes such actions can continue without consequence, what reason will it have to think it should do anything other than carry on with such actions with impunity?

Alistair Burt: The hon. Gentleman's words and concerns are echoed by the United Kingdom. As has repeatedly been made clear, we believe that concerns about demolitions, threatened demolitions and movements make a peace settlement more difficult, and we are repeatedly in contact with Israel about that. We still hope that current events in the region give Israel an opportunity to recognise that it can have a secure viable future with a two-state

solution. We will do everything in our power to press it to take that opportunity, as the Palestinians should as well.

Bob Blackman (Harrow East) (Con): What representations has my right hon. Friend made to the Government of Pakistan about human rights abuses and the desire for freedom in Balochistan? [*Interruption.*]

Rory Stewart: Badakhshan is of course a region of Afghanistan, so interference in Badakhshan from Pakistan would be a serious issue. My hon. Friend may perhaps be referring to Balochistan, where we continue to raise reports of human rights abuses with the Government of Pakistan.

Karl Turner (Kingston upon Hull East) (Lab): My constituent Laura Plummer has been imprisoned in Hurghada, Egypt, for several weeks, having taken Tramadol with her to help to manage her boyfriend's back pain. She might be tried on Christmas day. We make no criticism of the Egyptian authorities, but will the Foreign Secretary continue to make representations to them to make it known that this was a very naive young woman who has made a very bad mistake, but has not in her mind committed a crime?

Boris Johnson: I recognise the work that the hon. Gentleman is doing on behalf of his constituent and I thank him. We are providing every consular assistance to Laura Plummer and, as he may know, I have intervened in the matter with the Egyptian Foreign Minister, Sameh Shoukry.

Nigel Huddleston (Mid Worcestershire) (Con): Does the Foreign Secretary regret the Russian veto of the UN vote on an investigation into the use of chemical weapons in Syria?

Boris Johnson: I do. It is shameful, and another aspect of Russia's continual abetting of some of the worst excesses of the Assad regime. That is certainly one of the things that I will take up when I go to Russia at the end of next month.

Mr Speaker: The right hon. Member for Cynon Valley (Ann Clwyd) should not worry; I have preserved her contribution for the belated adoration of the House.

Ann Clwyd (Cynon Valley) (Lab): Thank you, Mr Speaker. What assessment has the Foreign Office made of the current political situation in Cambodia?

Rory Stewart: As the House will be aware, the opposition leader in Cambodia has recently been arrested and imprisoned. Cambodia continues to be a one-party state. There is a closing space for civil society, and there are increasingly brutal crackdowns on the opposition. This is an area of extreme concern for the international community and Cambodia remains an outlier in Asia.

Ross Thomson (Aberdeen South) (Con): The humanitarian crisis for the Rohingya represents a critical test for the US Administration. Although Secretary Tillerson's condemnation of abuses is welcome, action is needed to bring about a comprehensive end to the crisis. Will the Secretary of State update the House on

what discussions he has had with our US allies to urge them to take an international lead in addressing this crisis?

Boris Johnson: My hon. Friend is absolutely right that any pressure on Burma and the Government in Naypyidaw would be greatly assisted by more pressure from the United States. Rex Tillerson is now actively engaging. Burma is not an area where the US has traditionally been in the lead, but the UK, working with the US, is building pressure internationally. I have already mentioned to the House some of the things that we have done at the UN and elsewhere to exert pressure on the Burmese Government.

Martin Docherty-Hughes (West Dunbartonshire) (SNP): Will the Minister tell us what discussions he has had with the Government of India about their human rights

record in the state of the Punjab, critically in relation to my constituent, Jagtar Singh Johal, who has been in custody since 4 November without charge? There is now a possibility—or accusation—of torture, and the Prime Minister indicated the Government's personal interest on BBC radio yesterday. Will the Minister advise me and the House how the Secretary of State is working with the office of the Prime Minister to assist my constituent and his family in Dunbarton?

Rory Stewart: We have taken this issue very seriously. The deputy high commissioner managed to gain access, and we have now had a meeting with the hon. Gentleman's constituent. We take any allegation of torture seriously, as, indeed, do the Indian Government. It is completely unconstitutional and offensive to the British Government. We will work very closely to investigate the matter and will, of course, take extreme action if a British citizen is being tortured.

Automatic Travel Compensation

Motion for leave to bring in a Bill (Standing Order No. 23)

12.42 pm

Huw Merriman (Bexhill and Battle) (Con): I beg to move,

That leave be given to bring in a Bill to make provision for passengers to receive automatic compensation from travel operators in certain circumstances; to require train operators to ring-fence certain funds received from Network Rail for service disruption and planned possessions for the development of ticketing technology to facilitate the payment of automatic compensation for passengers; and for connected purposes.

In short, my Bill would ensure that passengers on trains, flights and other domestic transport systems automatically received in their bank account the delay repay compensation due to them without first having to work out their rights or apply for it. The mechanism for claiming refunds for delays and cancellations is complex and cumbersome. As we found with Ryanair, the rules are not always explained correctly—or explained at all—to passengers. This comes at a time when innovation in technology should be lessening the need for passenger administration and red tape. Let me use rail and flights as examples, although this Bill would also apply to trams, ferries and other paid modes of transport.

Let me first turn to rail, in which I declare my current interest as a 12-year veteran of the daily commute from East Sussex to London. Nearly 67 million rail journeys last year were either cancelled or were significantly late. These delays can lead to lost output, financial hardship and stress. Passengers expect adequate compensation for these difficulties. To implement this fully would incentivise the train operators and Network Rail to do more to prevent these issues from occurring in the first place. This would, in turn, increase our nation's productivity.

A number of steps have been taken in the past year, including the strengthening of the Consumer Rights Act 2015 and the introduction of Delay Repay 15 for Southern and new franchises, but only a third of rail passengers who are owed compensation make a claim. Network Rail currently makes payments to train operators for all the delays that it has caused through track and infrastructure failures. However, if only a third of the passengers who experience the delay claim for it, the remainder must be retained by the train operators. My Bill would require the train operators to ring-fence this excess so that it could be used only to advance technology that would allow every passenger to touch on, and off, their train. Having pre-registered account details, the passenger would automatically receive compensation in their bank account on the day they were inconvenienced.

None of this should be particularly complicated. Six of the 27 train operators have some form of automatic compensation for certain passengers. Among the six, I understand that Virgin Trains West Coast offers it to passengers who book directly, and that Govia Thameslink, via its three operators, and c2c offer automatic compensation to season ticket holders. Providing compensation as some sort of perk to certain classes of ticket-holders is missing the point, and distorts competition in the ticket-buying market. Every passenger is entitled to compensation. If the technology exists, it must be applied to all. Where compensation is not going to the

passenger, the taxpayer-funded compensation coming from Network Rail must be used by all train operators to get us to a place where compensation is automatically delivered to every passenger so entitled.

Let me now turn to flights. The situation is arguably worse with airlines, as the recent debacle at Ryanair demonstrated, with 2,100 flights being cancelled and 315,000 passengers of Ryanair being left completely out of pocket. However, the company's website failed to mention the word "compensation", stating only that it would comply with EU regulation 261/2004. Unless passengers happen to be experts in EU regulations, they will not realise that this rule-set provides compensation and assistance to passengers in the event of denied boarding, cancellation, delays and downgrading when flying. The Civil Aviation Authority had to threaten enforcement proceedings before Ryanair informed its customers of their compensation rights.

This is not new ground for the CAA. In the last six years, it has successfully taken action against a number of airlines, including Ryanair, for a range of issues including non-payment of compensation and providing limited information to passengers. All of this can be avoided. It must be possible to put the onus on the airline to calculate compensation and credit it automatically. For security reasons, every airline must know which flight a passenger is booked on, and know whether that flight has been delayed or cancelled. They also know a passenger's account details, or can find them via the flight booking agency.

I put this contention to the chief executive of British Airways when he appeared before the Transport Committee last month, and asked him why automatic compensation could not be brought into his industry. His response was to state that

"we will pass that cost on to the consumer, like we always do. We do not operate as a charity."

That defensive response was revealing. For there to be a cost to pass on suggests that many passengers are not claiming for delays or cancellation because they do not know their rights or find it too cumbersome to claim. We simply do not know the position, unlike in the rail industry. From what the chief executive of British Airways said, it seems that we are unlikely to find out without a change in approach or legislation. When I asked him what proportion of passengers claimed and were paid compensation, he remarked:

"I am not prepared to disclose that. That is commercially sensitive".

Despite my asking him repeatedly why an answer would give his rivals the upper hand, no additional information was forthcoming.

The previous week, the Transport Committee had heard from the Secretary of State for Transport—who, I should add, does an excellent job, and I hope that the adoption of this Bill by the Government will further his ascent to the skies. I asked the Secretary of State for his views on automatic compensation. He took the view:

"This is not a one-size-fits-all industry. It is a big step for Government to intervene to try to tell businesses how to operate. If there is an absolutely compelling reason to do so, Government act sometimes".

That, to me, summarises the situation, and it provides the justification for the Bill.

[Huw Merriman]

The airline industry has to adopt a one-size-fits-all approach from rules driven by UK Border Force, the Civil Aviation Authority, NATS, the European Union and other agencies and regulators. I believe that the airline industry can take this additional step, and I believe that train operators and those running our ferries, trams, buses and other modes of transport could do likewise. The compelling reason for Parliament, and the Government, to do so is that millions of passengers not only are being inconvenienced by delays, but are not being compensated. It is time for those responsible for the passenger to give something back without further work for the passenger.

I thank the 50 right hon. and hon. Members—many of them are here this afternoon—who have pledged their support for this proposal. It follows the murmur of approval across the House when I asked the Prime Minister to support this change during Prime Minister's questions. There are many things that the arithmetic of this place will not allow us to deliver. This is one change where the consumer will benefit from our working together, cross-party in Parliament, to cause the industry to change its approach.

Question put and agreed to.

Ordered,

That Huw Merriman, Tom Brake, Maria Caulfield, Douglas Chapman, Sir Jeffrey M. Donaldson, Lilian Greenwood, Peter Kyle, Ben Lake, Caroline Lucas, Tim Loughton, Iain Stewart and Daniel Zeichner present the Bill.

Huw Merriman accordingly presented the Bill.

Bill read the First time; to be read a Second time on Friday 16 March 2018, and to be printed (Bill 129).

Chris Bryant (Rhondda) (Lab): On a point of order, Mr Speaker. I am sorry about this, but I have had so many people come up to me and ask, “Are you all right, Mr Bryant?” or “Were you abducted by the Russians?”, that I thought I should explain why I was not present for the first question in Foreign and Commonwealth Office Question Time: it was my own incompetence—nothing more than that.

Mr Speaker: Well, that is very gracious, extremely welcome and almost certainly unprecedented—unprecedented for the hon. Gentleman to be incompetent, and indeed unprecedented for him to profess his own incompetence. Nevertheless, we are absolutely delighted to know that he is in fine fettle—physically, mentally and doubtless spiritually.

European Union (Withdrawal) Bill

[3RD ALLOCATED DAY]

Further considered in Committee.

[MRS ELEANOR LAING *in the Chair*]

New Clause 16

CHARTER OF FUNDAMENTAL RIGHTS – GOVERNMENT REPORT

“(1) Within one month of Royal Assent of this Act, HM Government shall lay a report before both Houses of Parliament reviewing the implications of removing the Charter of Fundamental Rights from domestic law after exit day as set out in section 5(4) of this Act.

(2) The report under subsection (1) shall set out the policy of Her Majesty's Government specifically in relation to the fundamental rights of—

- (a) dignity, the right to life, to freedom from torture, slavery, the death penalty, eugenic practices and human cloning,
- (b) freedoms, the right to liberty, personal integrity, privacy, protection of personal data, marriage, thought, religion, expression, assembly, education, work, property and asylum,
- (c) equality, the right to equality before the law, prohibition of all discrimination including on basis of disability, age and sexual orientation, cultural, religious and linguistic diversity, the rights of children and the elderly,
- (d) solidarity, the right to fair working conditions, protection against unjustified dismissal, and access to health care, social and housing assistance,
- (e) citizens' rights, the rights of citizens such as the right to vote in elections and to move freely, the right to good administration, to access documents and to petition Parliament, and
- (f) justice, the right to an effective remedy, a fair trial, to the presumption of innocence, the principle of legality, non-retrospectivity and double jeopardy.”—
(*Mr Leslie.*)

This new clause would require Ministers to produce a report reviewing in full the implications of removing from UK law the Charter of Fundamental Rights – and the rights for UK citizens which it has help to guarantee.

Brought up, and read the First time.

12.54 pm

Mr Chris Leslie (Nottingham East) (Lab/Co-op): I beg to move, That the clause be read a Second time.

The First Deputy Chairman of Ways and Means (Mrs Eleanor Laing): With this it will be convenient to discuss the following:

New clause 78—*Consequences of leaving the European Union: equality*—

“(1) This section comes into force when the power under section 14 to appoint exit day for the purposes of this Act is first exercised.

(2) The purpose of this section is to ensure that the withdrawal of the United Kingdom from the European Union does not diminish protection for equality in the law of the United Kingdom.

(3) All individuals are equal before the law and have the right to the equal protection and benefit of the law.

(4) All individuals have a right not to be discriminated against by any public authority on any grounds including sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

(5) The following provisions of the Human Rights Act 1998 apply in relation to the rights conferred by subsections (3) and (4) as they apply in relation to Convention rights within the meaning of that Act—

- (a) section 3 (interpretation of legislation);
- (b) section 4 (declaration of incompatibility);
- (c) section 5 (right of Crown to intervene);
- (d) section 6 (acts of public authorities);
- (e) section 7 (proceedings);
- (f) section 8 (judicial remedies);
- (g) section 9 (judicial acts);
- (h) section 10 (power to take remedial action);
- (i) section 11 (safeguard for existing human rights); and
- (j) section 19 (statements of compatibility).

(6) A court or tribunal must have regard to any relevant decisions of the European Court of Human Rights in considering—

- (a) the application of this section generally, and
- (b) in particular, the meaning of discrimination for the purposes of this section.”

This new clause would ensure that the rights of equality presently enjoyed in accordance with EU law are enshrined in free-standing domestic law after the UK leaves the EU.

New clause 79—Provisions relating to the EU or the EEA in respect of EU-derived domestic legislation—

“(1) Notwithstanding the provisions of section 5(1), HM Government shall make arrangements to report to both Houses of Parliament whenever circumstances arising in section 2(2)(d) would otherwise have amended provisions or definitions in UK law had the UK remained a member of the EU or EEA beyond exit day.

(2) Notwithstanding the provisions of section 5(1) and having reported to both Houses of Parliament, HM Government is bound to consider whether it should incorporate amended provisions or definitions into UK law, in order to ensure that the rights of workers and employees in the UK are no less favourable than they would have been had the UK remained a member of the EU or EEA beyond exit day.

(3) Such circumstances arising in section 2(2)(d) include but are not limited to—

- (a) any future EU Directives relating to family-friendly employment rights; including but not limited to rights for pregnant workers and employees, and those returning from maternity leave,
- (b) any future EU Directives relating to gender equality,
- (c) the proposed Directive of the European Parliament and of the Council on work-life balance for parents and carers.

(4) Reports presented under subsection (1) must include—

- (i) an assessment of how such amendments to UK law would have impacted sex equality in the UK had the UK remained a member of the EU or EEA beyond exit day and
- (ii) an assessment of how a failure to implement amended provisions or definitions in UK law will impact the ability of families to combine work and care in the UK and gender equality in the UK.”

This new clause would ensure that Parliament is informed of changes in EU and EEA provisions that might have amended UK laws around family-friendly employment rights and gender equality and their potential impact, as well as committing the Government to considering their implementation. This is to ensure that rights of

workers and employees with caring responsibilities, and women's rights, are no less favourable than they would have been had the UK remained a member of the EU or EEA beyond exit day.

Amendment 297, in clause 5, page 3, line 11, leave out “or rule of law”.

This amendment would remove the reference to a rule of law passed or made before exit day.

Amendment 285, page 3, line 12, after “exit day” insert—

“as appointed for the purposes of this section (see subsection (5A)).”

This paving Amendment is intended to allow for transitional arrangements within the existing structure of rules and regulations.

Amendment 298, page 3, line 15, leave out “or rule of law”.

This amendment would remove the reference to a rule of law passed or made before exit day.

Amendment 299, page 3, line 17, leave out “or rule of law”.

This amendment would remove the reference to a rule of law passed or made before exit day.

Amendment 8, page 3, line 20, leave out subsections (4) and (5).

To allow the Charter of Fundamental rights to continue to apply domestically in the interpretation and application of retained EU law.

Amendment 46, page 3, line 20, leave out subsection (4).

This amendment would remove the exclusion of the Charter of Fundamental Rights from retained EU law.

Amendment 151, page 3, line 26, at end insert—

“(5A) Within three months of the commencement of this section, the Secretary of State must lay before Parliament regulations to create a fundamental right to the protection of personal data.

(5B) A statutory instrument containing regulations under subsection (5A) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.”

Clause 5(4) of the Bill excludes the Charter of Fundamental Rights from the ‘incorporation’ powers in the Bill. This amendment would require the Secretary of State to replicate Article 8 of the Charter (the Right to Protection of Personal Data) in UK domestic law within three months of the commencement of Clause 5.

Amendment 286, page 3, line 26, at end insert—

“(5A) The exit day appointed (in accordance with section 14 and paragraph 13 of Schedule 7) for the purposes of this section must not be before the end of any transitional period agreed under Article 50 of the Treaty on the Functioning of the European Union.”

This Amendment is intended to allow for transitional arrangements within the existing structure of rules and regulations.

Clause 5 stand part.

Amendment 10, page 15, line 5, in schedule 1, leave out paragraphs 1 to 3.

To allow challenges to be brought to retained EU law on the grounds that it is in breach of general principles of EU law.

Amendment 101, page 15, line 17, leave out paragraph 2 and insert—

2 (1) Any general principle of EU law will remain part of domestic law on or after exit day if—

- (a) it was recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case);
- (b) it was recognised as a general principle of EU law in the EU Treaties immediately before exit day;

- (c) it was recognised as a general principle of EU law by any direct EU legislation (as defined in section 3(2) of this Act) operative immediately before exit day; or
- (d) it was recognised as a general principle of EU law by an EU directive that was in force immediately before exit day.

(2) Without prejudice to the generality of sub-paragraph (1), the principles set out in Article 191 of the Treaty on the Functioning of the European Union shall be considered to be general principles for the purposes of that sub-paragraph.”

This amendment clarifies that all the existing principles of EU law will be retained within domestic law whether they originate in the case law of the European Court, the EU treaties, direct EU legislation or EU directives. It also makes clear that the key environmental law principles in Article 191 of the Treaty are retained.

Amendment 336, page 15, line 17, leave out paragraphs 2 and 3 and insert—

2A (1) Any general principle of EU law will remain part of domestic law on or after exit day if—

- (a) it was recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case);
- (b) it was recognised as a general principle of EU law in the EU Treaties immediately before exit day;
- (c) it was recognised as a general principle of EU law by any direct EU legislation (as defined in section 3(2) of this Act) operative immediately before exit day; or
- (d) it was recognised as a general principle of EU law by an EU directive that was in force immediately before exit day.

2B Without prejudice to the generality of paragraph 2A, the principles set out in Article 191 of the Treaty on the Functioning of the European Union shall be considered to be general principles for the purposes of that paragraph.

2C For the purposes of paragraphs 1A and 1B the exit day appointed must be the same day as is appointed for section 5(1) of this Act and must not be before the end of any transitional period agreed under Article 50 of the Treaty on the Functioning of the European Union.”

This amendment would retain the existing principles of EU law within domestic law whether they originate in the case law of the European Court, the EU treaties, direct EU legislation or EU directives. The freeze date would be at the end of any transitional arrangements.

Amendment 105, page 15, line 21, leave out paragraph 3.

This amendment leave out paragraph 3, thus retaining the right of action in domestic law in relation to general principles of EU law.

Amendment 62, page 15, line 28, leave out paragraph 4.

This amendment would remove the proposal to end rights in UK domestic law after exit day in relation to damages in accordance with the rule in Francovich.

Amendment 139, page 15, line 29, at end insert—

“except in relation to anything occurring before that day”.

This amendment, together with Amendments 140 and 141, would restore the right to obtain damages after exit day in respect of governmental failures before exit day to comply with European Union obligations.

Amendment 302, page 15, line 29, at end insert—

“except in relation to anything occurring before that day.

- (2) “Anything occurring before that day” in sub-paragraph (1) shall be taken to mean any action commenced before or after exit day in relation to any act before exit day.”

This amendment would enable actions to be brought under the Francovich rule either before or after exit day if they related to an act before exit day.

Amendment 335, page 15, line 29, at end insert—

“, except in cases whereby the breach of Community law took place on or before exit day.

4A For the purposes of paragraph 4 the exit day appointed must not be before the end of any transitional period agreed under Article 50 of the Treaty on the Functioning of the European Union.”

This amendment ensures that the right to obtain damages if the Government fails to uphold its obligations continues as long as the UK remains under the existing structure of rules and regulation.

Amendment 126, page 15, line 32, after “Rights” insert “or”.

This amendment is consequential on Amendment 62.

Amendment 127, page 15, line 33, leave out

“or the rule in Francovich”.

This amendment is consequential on Amendment 62.

Schedule 1 stand part.

Mr Leslie: The measures in this group have a number of things in common, and they relate largely to the rights and freedoms that many of our citizens enjoy, without debate or discussion—they are sometimes taken for granted—but that could well be threatened if we do not get this legislative process right.

Of course, the Bill was supposed to be merely a “copy and paste” piece of legislation. We were told that there were no fundamental changes in Government policy and that it was all very straightforward. The Government said, “We are leaving the European Union and becoming a freestanding United Kingdom, so we will simply cut and paste all the EU regulations and laws as they stand into UK law.” However, you will notice, Mrs Laing, particularly in schedule 1, that a number of things are not to be transposed. The Government have specifically chosen not to bring across the charter of fundamental rights.

Sir Desmond Swayne (New Forest West) (Con): When I was sitting in the hon. Gentleman’s place, Labour Ministers told us that the charter would have no more influence in the United Kingdom than a copy of “The Beano”—those were the words used—because it would not apply here. Does he not look forward to a time when what Labour Ministers say will bear a greater approximation to truth?

Mr Leslie: It turns out that the charter does have value, and it certainly does have effect within the UK. I will shortly give some practical examples to show how we cannot simply airbrush this part of our current legislative framework. Many citizens, companies and organisations recognise the value that the charter brings.

Hilary Benn (Leeds Central) (Lab): Is not an example of the use of the charter of fundamental rights the one given by our right hon. and learned Friend the Member for Holborn and St Pancras (Keir Starmer) when he referred to the case that the EU brought against the Government, in which the current Secretary of State for Exiting the European Union, as part of his argument, prayed in aid the charter. If the Secretary of State thinks that it has use, should not that same use be available to everybody else?

Mr Leslie: Indeed. My right hon. Friend has stolen the punchline that I was building up to, because that is the one example that I thought would surely clinch the argument. Of all the people who really should value the charter of fundamental rights, surely it is the Secretary of State.

Mr Kenneth Clarke (Rushcliffe) (Con): Given that the charter has been part of British law for some years now, the case for repealing it must be based on some harm that it has done. I have never heard anyone describe any harm that the charter is supposed to have done to any public interest in this country, so presumably the hon. Gentleman, like me, awaits some examples to justify the proposed change.

Mr Leslie: Absolutely. We might hear a different argument from Ministers, but traditionally the Government's argument has been, "Don't worry about the charter of fundamental rights; it doesn't have any effect, it isn't necessary and we can do without it because it is already there in British law." It is rather like what the right hon. Member for New Forest West (Sir Desmond Swayne) said in his intervention. Of course, if that is the case, why are the Government deliberately excising it from UK law, and why would they resist new clause 16? The new clause does not even require the charter to be retained—I happen to think that it should be retained—but simply states that Her Majesty's Government should lay before Parliament within one month of Royal Assent a review of the implications of removing it.

Kate Green (Stretford and Urmston) (Lab): Does my hon. Friend agree that one advantage of the new clause is that we could explore properly the impact of losing the access that the charter gives to UN conventions, for example on the rights of persons with disabilities and on the rights of the child, which currently are not fully incorporated into UK law? We will therefore lose the way in which they are currently accessible through the charter.

Mr Leslie: Indeed. We need a far more detailed analysis from Ministers of the consequences of deleting the charter of fundamental rights, which are potentially myriad and far ranging. I pay tribute to my hon. Friend for her tireless campaigning on children's rights. She has tabled several amendments in relation to the UN convention on the rights of the child, and she will know that many non-governmental organisations that campaign for children's rights, the Children's Society in particular, have several anxieties about the deletion of the charter of fundamental rights and the lack of clarity that would exist around protecting children, who are sometimes in vulnerable circumstances.

1 pm

Mr David Lammy (Tottenham) (Lab): When children in the world are still subject to slave labour or trafficking, or are working as child soldiers, does my hon. Friend agree that the message being sent that the UK would simply do away with rights that we campaigned for, which led to the charter of fundamental rights, is an abhorrence? We need Ministers to come to the Dispatch Box and say that they have changed their mind.

Mr Leslie: People will have many legitimate anxieties. We cannot simply erase a provision that currently has legal effect and provides legal protections without a statement from Ministers about the effect that that could have in law.

Sir William Cash (Stone) (Con) *rose*—

Mr Mark Harper (Forest of Dean) (Con) *rose*—

Mr Leslie: What a choice. I will give way to the hon. Member for Stone (Sir William Cash).

Sir William Cash: One of the most fundamental questions is the notion of disapplying Acts of Parliament and the supremacy that the European Court of Justice asserts over our parliamentary Acts, which the amendments would effectively transfer to the Supreme Court. As for child protection, I was in part responsible for the Protection of Children Act 1978 and I presented the International Development (Gender Equality) Act 2014, which are intrinsic Westminster Acts. We do not need the charter to do such things; we can do them ourselves.

Mr Leslie: In no way would I wish to diminish the hon. Gentleman's contribution to child protection and ensuring that legislation is as good as it possibly can be, but we currently have that extra level of protection that the charter of fundamental rights provides. New clause 16 simply asks for an analysis from Ministers of what would happen to child protection and to many other rights if we delete the charter from our current set of legal protections.

Wes Streeting (Ilford North) (Lab): Does my hon. Friend agree that this is about not just the application of the charter of fundamental rights in British law, but the message that we send to the rest of the world? That goes to the heart of the problem with the so-called British Bill of Rights. There are no British rights; there are universal human rights. That is the message that this Government and our continent should send to the rest of the world and to places where people do not enjoy those human rights, which should be inalienable.

Mr Leslie: My hon. Friend makes a good point. If the Bill contained a provision to copy and paste many of the charter's general rights into UK law to preserve the current arrangements, the Government would have a reasonable case to make, but there is no alternative provision. The legislation simply deletes the charter of fundamental rights.

Mr Harper: I have two points. First, when the charter of fundamental rights was introduced, it was said that it simply restated existing rights that were elsewhere in European Union law. Secondly, the argument that if rights are not given to us by the EU, we in Britain could not somehow manage to create them ourselves is utter nonsense. We are signed up to the European convention on human rights, we have the Equality Act 2010, and we are a signatory to many UN treaties. The notion that if we somehow do not adopt new clause 16, we somehow do not have any human rights is offensive nonsense.

Mr Leslie: It might well be the case that Parliament could salvage many of the protections over time and put them on our statute, but the Bill seeks to delete the

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charter of fundamental rights from the point that the legislation is enacted. In other words, it would take away rights that we hope may eventually be replaced, but there are none of the guarantees that we currently enjoy by virtue of our membership of the charter.

Anna Soubry (Broxtowe) (Con): As an old lawyer who enjoyed jurisprudence, I know that our laws and rights come from many different sources. I am an old common lawyer, so I actually do not like stuff being written down too much; I like things to develop over time. I would really need persuading about new clause 16, because it just asks for a report, which seems awfully wet.

Mr Leslie: I was trying my best to offer a hand of friendship across the Chamber and to say, “Let’s meet halfway and find a way of forging a consensus.” If the right hon. Lady wishes, there are other amendments today that ask for the charter of fundamental rights to be kept. I will certainly be voting for those, but she obviously knows that I would like to find a way, in the spirit of compromise, of reaching a consensus. I agree that a report is only a small step in that direction—hence the drafting of new clause 16—but I am massively impressed by her strength of commitment to the protection of rights in our country.

Chris Bryant (Rhondda) (Lab): One of the differences between the charter of fundamental rights and the European convention on human rights lies in article 8 of the charter, which relates to the protection of personal data. Is it not a particular irony that the Secretary of State for Exiting the European Union relied on precisely that provision to sue the British Government?

Mr Leslie: It is probably time to elaborate on that example, because the Secretary of State—for it is he—sued the then Home Secretary, who hon. Members will know is now Prime Minister, to challenge the Data Retention and Investigatory Powers Act 2014 as being inconsistent with EU law. The Secretary of State himself used the argument in court that the charter of fundamental rights needed to be prayed in aid in that case. By the way, he was successful at that point in time.

Victoria Prentis (Banbury) (Con): As a Government lawyer at the time, I was honoured to present that case on behalf of the Government. My real worry about bringing the charter of fundamental rights into English law is that it is too complicated and does not add sufficient rights. Everybody in the House is in favour of the rights in the European convention on human rights that have been incorporated into English law. We are very keen on those and want to protect human rights, but we do not feel that the charter adds sufficient rights to take us much further, and we found that in an enormous number of arguments during that court case.

Mr Leslie: I have no reason to question the hon. Lady’s capabilities in court, and I am in no way saying that she was a loser in that particular case, but the charter is not complicated. The rights are simple and clear. For example, “Dignity” covers the right to life and to freedom from torture, slavery, the death penalty, eugenic practices and human cloning. “Freedoms” covers

liberty, personal integrity, privacy, protection of personal data, marriage, thought, religion, expression, assembly, education, work, property and asylum. Other freedoms relating to “Equality” include the prohibition of all discrimination, including on the basis of disability, age and sexual orientation, and cultural, religious and linguistic diversity. “Solidarity” includes the right to fair working conditions, and protection against unjustified dismissal. Other rights include “Citizen’s Rights” and matters relating to “Justice”. Those are simple, important rights.

Several hon. Members *rose*—

Mr Leslie: I will give way to my hon. Friend the Member for York Central (Rachael Maskell)

Rachael Maskell (York Central) (Lab/Co-op): I agree with the right hon. Member for Broxtowe (Anna Soubry) that we need more than a report; the rights should be enshrined. On article 25 and the rights of older people, does my hon. Friend agree that having limited protections for older people at a time when so many older people need, but cannot get, things such as social care means that we need to enshrine those rights?

Mr Leslie: My hon. Friend is correct. While we have powers on the statute and while rights accrue from case law and court conclusions, the charter of fundamental rights fills many of the gaps, particularly in certain circumstances.

Stephen Timms (East Ham) (Lab) *rose*—

Mr Leslie: I will give way to my right hon. Friend in a moment, because he has a great amendment relating to data, but I want to give an example about the protection of public health. The tobacco manufacturers sought to challenge the Government’s introduction of plain packaging for cigarettes—of course the tobacco manufacturers hated the idea and wanted to stop it—and the Government, in defence of that legislation, prayed in aid of their case the charter of fundamental rights and its protections for public health. The courts therefore upheld the UK’s plain packaging arrangements and legislation on the basis of the protections of public health rights laid out in the charter. That is a very specific example of how the charter has benefited the rights and protections of our citizens in this country.

Stephen Timms: I thank my hon. Friend for his kind reference to my amendment 151. Going back to the case brought by the now Secretary of State for Exiting the European Union, does my hon. Friend agree that, if the Secretary of State had not been able to rely on article 8, the likelihood is that he would not have won his case and that the hon. Member for Banbury (Victoria Prentis) would have won for the Government? Does that not give the lie to the suggestion that the charter has no impact?

Mr Leslie: My right hon. Friend is absolutely right. If the hon. Member for Banbury (Victoria Prentis) had won her case, would she be here today? Perhaps she would be higher on the judicial ladder.

Joanna Cherry (Edinburgh South West) (SNP): The hon. Member for Banbury (Victoria Prentis) suggested that the charter of fundamental rights contains rights

that are too complicated to be incorporated into English law. Will the hon. Member for Nottingham East (Mr Leslie) reassure her that those rights have been incorporated into Scots law, which is a separate legal system, and into all the legal systems of the other member states of the European Union? In fact, it is not too complicated to incorporate the rights into English law.

Mr Leslie: The hon. and learned Lady makes the point very well, but perhaps the hon. Member for Banbury would like to respond.

Victoria Prentis: My point is not that we do not approve of the rights, nor that we thought it was not possible to make the case without the charter, but that the charter has been part of English law since the Lisbon treaty. As good, responsible lawyers, whether acting for the Government or for anybody else, of course we use whatever tools are available to us, which in recent times have included the charter.

My point is that we do not need the provisions of the charter. It is true that it can be argued the charter can do one or two more tiny things, such as widening the class, making what we can get back greater and possibly widening the possibilities for claimants, but my case is that it is possible to do what we need to do to protect people's human rights within the law as we have it in this country.

Mr Leslie: I hear the hon. Lady's case that somehow the charter is not necessary, which is very much the case that Ministers have made in the past, but she has conceded that there are differences that the charter can apply. She characterises those differences as very small, but what she perceives as small or minuscule rights are not necessarily small or minuscule rights to our constituents, to members of the public or to the most vulnerable in society, who may depend on the very rights provided by the charter in crucial circumstances.

Wera Hobhouse (Bath) (LD): Does the hon. Gentleman find it odd that we are transposing all EU law into our own law while taking away the thing that underpins all EU law? We are taking away the fundamentals and foundations of the body of EU law. Is that not an odd way of going about things?

Mr Leslie: I agree. I find it odd that Ministers are saying that, somehow, the charter does not matter but are then saying that we must delete the charter in the Bill. They would almost die in a ditch to defend clause 5(4), which simply says:

"The Charter of Fundamental Rights is not part of domestic law on or after exit day."

If the charter is so benign and so irrelevant, why not have the report? It may be tedious to some, but the report is necessary to explain whether those rights do or do not offer protections. If the charter is so ineffectual, and if this is supposed to be a copy-and-paste exercise to transpose EU law, I do not see the argument for deleting the charter.

Mr Jacob Rees-Mogg (North East Somerset) (Con): Has the hon. Gentleman paid attention to protocol 30? Article 1(2) states:

"In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to Poland or the United Kingdom except in so far as Poland or the United Kingdom has provided for such rights in its national law." The whole point of the charter of fundamental rights, subject to the protocol, is that it does not apply in our national law.

1.15 pm

Mr Leslie: I am not quite sure that is the interpretation of the courts, which have referenced the charter of fundamental rights in a number of cases. If the hon. Gentleman listens to the case that my right hon. Friend the Member for East Ham (Stephen Timms) will make in respect of amendment 151, on the free flow of data across borders and on the protections we have, he will hear how the very backbone of our data protection laws, which go alongside the general data protection regulations, is represented in the charter of fundamental rights. It is not me making the case; it is techUK, the trade bodies and the organisations that campaign and fight to protect data and privacy rights. Many organisations and non-governmental organisations will be bombarding the inboxes of Conservative Members as we speak about those protections.

Suella Fernandes (Fareham) (Con): Will the hon. Gentleman give way?

Mr Leslie: I want to make a little more progress, if I may, because I need to reference a number of other amendments.

I hope this is not the case, but it seems to me that the Prime Minister, worried that hard-line Eurosceptics and Brexiteers on her Benches are champing and nipping at her heels, had to throw them a bone. There was a need to give them something, and therefore the charter of fundamental rights was the scalp she felt she had to throw in the direction of some, but not all, Conservative Members. I hope that is not the case, because significant protections on data, on children's rights and on public health—even the protections that the Secretary of State for Exiting the European Union himself has used—are rights and privileges that we should jealously guard. It is our job in this Parliament to stand up and point out when the Executive are potentially trying to erode many of those rights. I hope we can keep the charter or, at the very least, have a report on its effect.

Amendment 62 also addresses changes in rights. This is not a pure copy-and-paste exercise, and the amendment seeks to preserve something known as the Francovich rule in our legal system. Essentially, it is a fundamental principle of any democracy that Governments should not be above the law. In EU law, the principle is made real by the Francovich rule, which was established by case law that provides citizens with tools to recover damages when their Government fall short of legal obligations. In this case, again, the Government are trying to do away with those protections, and I tabled the amendment—other hon. Members have tabled similar amendments—to probe the Government and to find out what will be the effect of removing the Francovich protection.

Kerry McCarthy (Bristol East) (Lab): The recent prosecutions of the Government under clean air laws, for example, might not have been possible if the Francovich

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duty were not enshrined in law. The result of the Bill, as drafted, is that, the day before Brexit, people will have the right to claim damages from the Government for the harm they suffer, but there is a danger they will not have that right the day after Brexit.

Mr Leslie: My hon. Friend makes the point well. We can all imagine circumstances in which the Government could be in part responsible for failures to comply with various legal obligations—as she says, it might well include failure to comply with air quality directives—and those who suffer harm as a consequence of those Government failures may no longer have the right of redress. Those rights exist not only in environmental legislation but in, for instance, equal opportunities legislation. I can foresee circumstances in which a same-sex couple seek retroactively to claim their right to pension arrangements that might not have existed in the past so that they can accrue their pension rights, but they would not have redress to do so under the proposed arrangements.

The other big one is competition law, which relies very much on the right to challenge the Government, particularly on procurement arrangements. Companies that say they did not get a contract for such and such a reason may well feel that it was partly because they were unfairly treated by Government. Under the Francovich arrangements we have protections so that contracts can be let fairly, be it for house building, transport infrastructure or anything else we can name. A number of protections need safeguarding there.

Perhaps the biggest one that has not been addressed by Ministers and where Francovich may still be required is the protection of the rights of EU nationals after Brexit. A number of EU nationals will continue to reside in the UK after Brexit, but what will happen if their residency rights or definitions change, if their children are affected by changes of arrangements with the Government, or if rights to claim various tax reliefs or other things change in an unfair way for them, as EU nationals? There should be some level of redress against malfeasance by Government in that respect, so at the very least we need to hear from Ministers a better justification for the deletion of this Francovich protection.

Mary Creagh (Wakefield) (Lab): My hon. Friend is making some excellent points. His amendment on Francovich echoes my own, although mine is slightly different on time limitation. Does he agree it is unthinkable that a Government who throughout this Bill have said, “All rights and protections would be guaranteed,” are now seeking to remove the ability to sue the state for imperfect administration, mostly of directives, at a time when they are about to incorporate hundreds if not thousands of pieces of EU law into our UK law? They are saying, “If anything goes wrong with any of that, you’ve got no right to sue us in the future.”

Mr Leslie: My hon. Friend is correct about that and she has tabled a very good amendment on this issue. Ministers need to do better and explain why they would seek to wrench out of the protections for our citizens this potential right-to-redress arrangement, particularly as it may well affect malfeasances and the need for

redress that takes place before exit day. This is not just saying that this rule will not apply to situations that occur after exit day; its drafting would prevent that right to redress, even if the claim itself relates to an occasion prior to exit day. All hon. Members, regardless of political party, should therefore think of their constituents, the cases we pick up and the surgery discussions we have with people who ask what they can do. The Government are a large and powerful organisation—many Conservative Members often make that point about the size and power of the state—and individuals need rights in order to protect themselves in some of those circumstances. This is something that really should transcend the normal party political issues.

Suella Fernandes: As the hon. Gentleman will know, the threshold for claiming damages under Francovich is that the breach needs to be “sufficiently serious”, which is a principle stemming from EU jurisprudence and case law from the European Court of Justice. Is his position that claims will be interpreted under UK law even in the event of a lack of provision of “sufficiently serious” in UK statute, or is it that UK courts would be applying ECJ jurisprudence in that event?

Mr Leslie: Would it not be great if we were having a proper debate about retaining Francovich protections, albeit possibly making an amendment? The hon. Lady may well have a case for increasing or decreasing the level of the damage thresholds in place, but that is not what we are debating; we are debating simply the deletion of this Francovich protection—that right to redress—from our laws and protections. I would be happy to discuss with her where that level should be set, as there is a debate to be had about that, but we are talking about the principle, yes or no, and whether this should be retained within this legislation.

Mr Lammy: My hon. Friend rightly suspects that the Government will say that removing the charter from the UK will not affect the substantive rights that individuals already benefit from in this country. Does he agree that the problem is that the Government do not go on to say what those substantive rights are? If we simply leave it to the common law, a future Parliament—it may not be this one—could determine that it is right to erode those rights. That is why it is important we stick with the charter.

Mr Leslie: We need to make sure that if we are transposing legislation, it is a true copy and paste, but that is not what has been proposed. I am not in favour necessarily of cutting off our relationship with the single market or the customs union. There are a lot of debates on the Brexit choices we have before us, but here we are dealing with a set of separate discussions about the rights that our citizens—our constituents—could have in a post-Brexit scenario, and we need a better justification in order to be convinced than that we should just throw these overboard at this stage.

Anna Soubry: I hope this will be a more helpful intervention. The hon. Gentleman is making a good point. The point about Francovich is that we will not be able to have a claim arising from a directive that we have accepted into substantive British law because we will have left the European Union, and that is simply not fair.

People would have had a claim but we will have left, so someone who sought to make that claim afterwards will not be able to do so. It is right that we will not be subjected to any new directives, so people could not raise them, but it is bad to take away a right that people would have had as we had accepted the directive into substantive law. That is the point here.

Mr Leslie: Yes, the right hon. Lady makes a good argument about how we are transposing certain bits of European legislation into UK law but not necessarily the protections to go alongside them. That is the point we need an explanation on. Why not bring those with us?

Charlie Elphicke (Dover) (Ind): I have been listening carefully to the hon. Gentleman's argument on transposing the charter of fundamental rights into British law. Is it his case that it should be transposed as a cut and paste or that it should be adapted? Article 39 talks about the right to stand for the European Parliament, article 44 talks about the right to petition the European Parliament and article 45 talks about freedom of movement, all of which would presumably no longer be relevant after we leave the EU.

Mr Leslie: I have been in Parliament since 1997, on and off, and I find that amendments can often be rebutted for a number of reasons but when people say there is a technical deficiency that tends to be the last refuge of the Minister. There may well be arguments that say that we need to cut and paste the charter of fundamental rights or the Francovich provisions, but to do so having regard to changes in the language to take account of new circumstances. Everybody can recognise the need for consequential or supplemental amendments to the legislation sometimes, but let us not kid ourselves: we are talking about some far bigger principles here. I hope the hon. Gentleman would not diminish the importance of the charter of fundamental rights and those myriad legal rights and protections we have that are so essential for the specific and general reasons I have given in this debate.

Mary Creagh *rose*—

Mr Leslie: I will give way one more time but I want to make sure that other Members have a right to speak today as well.

Mary Creagh: I am in violent agreement with the right hon. Member for Broxtowe (Anna Soubry) on the issue of Francovich, and I will be speaking to those points in more detail when I come to talk to my amendment. Does my hon. Friend share my concerns that certain rights in the charter such as environmental rights, consumer rights and the rights of the elderly in particular, which are not highly developed in UK case law or in any other sort of legislation, are gently being thrown out with the bathwater in this removal of the charter of fundamental rights?

Mr Leslie: That is an exceptionally important point. Our legal system is one of the finest in the world. It is a dynamic legal system and is not simply reliant on statute; it can relate to cases as they evolve. The charter of fundamental rights, which could equally be a charter

within the UK law, according to this Bill, if it were transposed, could help to maintain that dynamism and the protection of rights to fill the gaps when those unforeseen circumstances arise. We do not know what issues our constituents will bring to us from one week to the next, but we may well have a constituent who has found that their rights have been deprived unfairly and who needs redress to protect them from the Government or others. In our surgeries and discussions, what will we say to our constituents in such circumstances? What will we say when they say, "But you had the opportunity to transpose and retain the protections under the charter of fundamental rights"? Will we say "Oh, well, it was a very busy day. I didn't really notice what was going on in the Chamber. There were lots of complex things going on to do with Brexit"?

This really matters. I am delighted and proud that many Members from all parties in this House are voicing their concerns and are not prepared to see these rights just swept away on a ministerial say-so.

1.30 pm

Mr Dominic Grieve (Beaconsfield) (Con): It is a great pleasure to follow the hon. Member for Nottingham East (Mr Leslie). If I may say so, I do not take the view of my right hon. Friend the Member for Broxtowe (Anna Soubry) in her description of new clause 16. It seems to me that in tabling it for consideration by the Committee the hon. Gentleman has accurately sought to stimulate an extremely important debate on the consequences of getting rid of the charter.

I sometimes feel that there is perhaps a failure of some Members to look at what has been happening in our society and country over a 40-year period. On the whole, western democracies have tended in that time to develop the idea of rights. I know that for some Members that appears to be anathema—it makes them choke over the cornflakes—but it is a development that I have always welcomed and that, it seems to me, has delivered substantial benefits for all members of our society, particularly the most vulnerable.

In this country we have had a long debate about how we reconcile rights with the doctrine of parliamentary sovereignty. Indeed, in 1997 the Labour Government sought to craft—extremely ingeniously, I thought, which is why I was very supportive of it at the time—the legislation that would become the Human Rights Act in an effort to achieve that reconciliation. I think most people in this House would argue that that Act has worked very well by preserving parliamentary sovereignty for primary legislation, enabling secondary legislation to be struck down if incompatible and with the mechanism of a declaration of incompatibility when required.

The truth is that because of our membership of the European Union there are some things that many of us would regard as rights but which fall outside the scope of the Human Rights Act and the European convention, and those things have developed over the same period I mentioned as a result of our European Union membership. I appreciate that that leads to double choking over the cornflakes, because not only have those rights come from what some people might regard as a tainted source—although I am blown if I can think why: it is just another international treaty—but on top of that is the fact that once in place the charter has no regard for our

[*Mr Dominic Grieve*]

parliamentary sovereignty. It has the capacity to trump our domestic laws if there is an incompatibility between our domestically enacted laws and the principles of, or anything that has come from, the charter. That is part of the supremacy of EU law to which we have all been subject.

All that should not make us ignore the benefits that the charter of fundamental rights has conferred. Whatever we may think as we talk about parliamentary sovereignty, I venture the suggestion that if one goes out into the street and asks people whether they think that equality law, which is largely EU-derived, has been of value to this country, most people would give a resounding note of approval. I am sure they would do the same with respect to the recent *Benkhrouche* case in relation to the disapplication of the State Immunity Act 1978 for the purposes of enabling an employment case to be brought against an embassy that had mistreated one of its employees. Of course, as has been cited, the Secretary of State for Exiting the European Union has availed himself of the provisions of the charter and the rights that the EU has conferred in relation to questions of data privacy and the way data is handled.

Mr Lammy: Is the right hon. and learned Gentleman also aware of the simple rights that many of us will have used on behalf of a parent, such as the right to wheelchair accessibility at our airports? There are also rights that came up in the course of the youth justice review I did for the Government, to do with making courts child-friendly so that, for example, they do not intimidate a young woman having to relay a terrible case of sexual assault. Such rights did not exist in British law but now exist as a result of the charter. For that reason, we ought to give due respect to our European friends for giving us the charter.

Mr Grieve: I place great respect on the fact that, for all the faults I can sometimes identify, when the European Union was established its founding fathers wished it to be based on principles not only of the rule of law, but of a vision of human society of which I have no difficulty approving.

Sir William Cash *rose*—

Mr Grieve: I will just make a little progress.

I do not have any problem with that vision at all. It worries me that, in the course of this debate on Brexit and our departure from the European Union, in this massive upheaval of venom about the EU that I have experienced personally in the past week, which seems to have no relation to reality at all and troubles me very much, we seem to be at risk of losing sight of these aspects of real progress within our society as a result of our EU membership. They are overlooked.

Sir William Cash: I have listened to my right hon. and learned Friend with great care and interest. Will he explain why the matters to which he and the right hon. Member for Tottenham (Mr Lammy) have just referred could not be enacted? In fact, they often are enacted; I referred to the Protection of Children Act 1978, the

International Development (Gender Equality) Act 2014 and so forth. Does he not understand that it is terribly important to remember that implicit in the charter—as a distinguished lawyer, he knows this—is the power of the European Court to disapply Supreme Court enactments? The *Factortame* case was a good example of that in respect of the Merchant Shipping Act 1988.

Mr Grieve: I thought *Factortame* would come along at some point in this debate. My hon. Friend is of course right about that. I know that he has spent most of his career in this House agonising over the issue of the loss or diminution of parliamentary sovereignty. That is not a matter to be neglected, and if he will wait just a moment I shall come to that point.

As I said, by raising the points he has through tabling new clause 16, the hon. Member for Nottingham East has done the right thing, because we need to focus on what is going to happen after we have left the EU. Of course my hon. Friend the Member for Stone (Sir William Cash) is correct: the laws that we have enacted, as at the date of exit, as a consequence of our EU membership and the requirement for us to adhere to the charter, will remain in place, but it is interesting that they will thereafter be wholly unprotected. For example, they will not even enjoy the special protection that we crafted in the Human Rights Act for other areas deemed to be of importance.

One solution may be that, in due course, we ought to think carefully about whether there are other categories of rights additional to the European convention on human rights—heaven knows we have been here before—that ought to enjoy the sort of protection that the Human Rights Act affords other rights. That might well be the way forward. I agree with my hon. Friend that it is slightly strange that, in leaving the EU for national sovereignty reasons, we should then say that we will continue to entrench certain categories of rights protected in the charter and give them a status even higher than, for example, prohibiting torture under the ECHR. That might strike people as rather odd. On that basis, I am forced to conclude that, if we are leaving the EU, as we intend to do, the sort of entrenchment that has previously existed is not sustainable. We will have to come back to this House to consider how we move forward, but, in saying that, I think that this is a very big issue indeed.

It worries me that, when we leave in March 2019, there will be a hiatus. There will be a gap where areas of law that matter to people are not protected in any way at all. It is no surprise, therefore, that non-governmental organisations have been bombarding MPs with their anxiety. I think that that anxiety is misplaced, because I cannot believe that any Member on the Treasury Front Bench intends to diminish existing rights. However, we are in danger from two things. One is sclerosis—that the rights development will cease. Secondly, because those rights do not enjoy any form of special status—many, not necessarily all, should certainly do so—there will be occasions when we nibble away at them and then discover that they have been lost. For that reason, it is a really urgent issue for consideration by this House, preferably before or shortly after we leave.

Victoria Prentis: My right hon. and learned Friend and former pupil master is making a speech with his characteristic intellectual honesty. Nothing passes him by.

In that spirit, does he agree that the charter is not really the solution to incorporating the rights that so many of us want to see incorporated, such as the new views of sexuality and children's rights? Possibly the way forward is not to vote for this new clause, but to continue to put pressure on those on the Treasury Bench to ensure that those rights are protected in a modern and suitable way for the current world.

Mr Grieve: My hon. Friend makes a good point. As has been pointed out, this new clause just asks for a report, which means it is trying to concentrate minds on an issue. In our debate last week, one point that I made on my new clause 55, which is still hanging over the Treasury Bench like the sword of Damocles, is that there may be some ways in which we can provide—even now as we leave, as a temporary measure before we can return to the issue—some greater reassurance on the protection of key rights in the fields of equality. I strongly recommend that my hon. and right hon. Friends pay some attention to that, because the issue will not go away. If we do not seek to act on it, the idea of a modern Conservative party starts to fray at the edges, and I do not wish my party to gain a reputation for ignoring these key issues.

Catherine West (Hornsey and Wood Green) (Lab): Might I use as an example very cash-strapped services, which might not naturally wish to be extending the rights and the costs of services? For example, in the aged care sector, a couple who traditionally had to be split up due to the needs of one or other of them can, under European rights, remain as a couple. We can imagine that, in a time of cash-strapped services, that sort of right might not necessarily fall into the lap of service users.

Mr Grieve: The hon. Lady makes a valid point, but it is worth bearing in mind that that is covered by the Human Rights Act and the ECHR, so let us not get too worried. We must also face up to the fact that some socio-economic rights that require levels of cost and economic policy decisions are legitimate areas in which Parliament and Government can say that, however ideal they might be, a balance must be struck. That is why I am always careful—this probably marks me out as a Conservative—about the infinite extension of rights, because thereby we dilute their importance. That is very important to bear in mind.

1.45 pm

Mr Harper: My right hon. and learned Friend raised the issue of the extension of rights. Is not one of the problems with the charter and its interpretation by the courts that, because it is a very general set of rights, it can be extended by courts? Unlike with the ECHR and the Human Rights Act, it is not just about declaring incompatibility, but about striking down Acts of this Parliament too. This does not get the balance right, which he accepts is very important.

Mr Grieve: That of course was one of the great anxieties when the charter was enacted. Indeed, it is the reason for the UK's so-called opt-out, but it is not an opt-out because, in so far as the charter reflects general principles of EU law, we are bound by it. One example, which my right hon. Friend will remember, was the case of *Chester and McGeoch* and prisoner voting rights.

There was an attempt to invoke EU law as a tool in order to force the UK Government to bring in prisoner voting, at least in relation to European elections. I think that it is fair to say that it caused much disquiet in government as to the possibility that that might be the outcome of the court case. Indeed, I went to argue the court case as Attorney General on the Government's behalf in our Supreme Court. Invoking EU law was used as a tool, but it did not lead to that outcome.

Looking back over the history of the charter, I do not think that some of the fears that were expressed—that it would be used for an expansionist purpose by the European Court of Justice in Luxembourg—have been proved to be correct. In any event, we are leaving the jurisdiction of the Court of Justice of the European Union, unless we have to stay in it for transitional purposes. When we are gone it will be our own Supreme Court, in which I have enormous confidence, that will carry out that interpretation. I do not want to labour this point much further. I simply want to say that there is a really important issue for us to debate. It is about what happens to the sorts of rights that have come to us through the charter and through the EU. The matter cannot be ignored. In the short term—the sword of Damocles moment again—the Government must think about it before the Bill has finished going through this House.

Sir Oliver Letwin (West Dorset) (Con): I just want to make sure that I understand what my right hon. and learned Friend is suggesting. Are there some items in the charter which are not going to be retained through the retention principles of the Bill, but which should be retained in the form effectively of becoming an amendment to the HRA, so that they are subject to the HRA's protections?

Mr Grieve: That could be a solution, but even if we do not have time to move to that and to have the necessary debate—as we highlighted in the question about the statutory instrument powers that the Government are taking to change law—some comfort and reassurance might be provided with the fact that there are some categories of EU-derived law that could do with at least the assurance that they would require primary legislation to change them. That might go some way to providing reassurance to some of the perfectly worthy organisations that have been writing to us that there is no malevolent intent towards this important area in which rights have developed.

Mary Creagh: The general principles of European law do not cover the principles of environmental law. That was made clear to us in terms from the Dispatch Box last week. The charter does guarantee those environmental rights. Does the right hon. and learned Gentleman agree that environmental principles are one area in which this Bill is deficient and in which our rights will be lost?

Mr Grieve: I agree that environmental law is an area that could do with the scrutiny that I have just outlined.

Sir Oliver Letwin: I just want to follow what my right hon. and learned Friend was saying a moment ago, because it seemed to be a very useful suggestion. Is he saying that, as part of what he and I sometimes call the triage process, certain items that are classed as rights

[Sir Oliver Letwin]

could be subject to primary legislation in full for amendment, whereas others, which are important but not rights, might be subject to the affirmative procedure and others, which are technical, will be left over for the negative procedure?

Mr Grieve: Yes, absolutely, and that was what new clause 55 sought to achieve, although it did provide the opportunity of looking at purely technical amendments—those would be really technical, and I do not wish to burden the Committee with complete trivia.

Charlie Elphicke: My right hon. and learned Friend is making a typically thoughtful and deeply considered speech. On a point of clarification, would it be right to say that there are, effectively, three different categories in the charter of fundamental rights? There are those rights that, as I indicated earlier, do not make a lot of sense in transposition, such as the right to petition the European Parliament. There are those rights that are already covered by the Human Rights Act, such as the right to life and the right to property. However, there is a third category of rights, such as that in article 41, that are not covered by our own jurisprudence and legal system, and they might usefully be so in due course.

Mr Grieve: My hon. Friend is absolutely right. He has correctly analysed what the issues are and the categories of rights on which we probably ought to focus.

Mr Bernard Jenkin (Harwich and North Essex) (Con): Some of these rights are going to be incorporated in different statutes. For example, there is going to be an environment Act, which will create a new regulator and, we hope, protect those rights. Is the present proposal not a very broad brush, which is ill fitted to dealing with these rather detailed matters? Can my right and learned hon. Friend give us some reassurance that Supreme Court judges will not be left dealing with more legal uncertainty, rather than less, because they will have to adjudicate between two different rights regimes—one that is directly applicable from our own statute, and the other where they may have to declare an incompatibility with European convention rights? How will that diminish legal uncertainty, which is what Supreme Court judges are looking for?

Mr Grieve: If I understand my hon. Friend's question, it goes to the point I made a moment ago, which was that it ought to be possible to consider whether some of these rights should be incorporated in a Bill of Rights that provides equivalent protection to that currently provided in the Human Rights Act. I think it is possible to distinguish between what matters and what does not. I am not suggesting that all environmental law would have to enjoy that protection, but I think it is possible, and an exercise that this House and the Government will have to carry out—the pressure will build for this—to give this issue some consideration. Equally, the House may decide that it is not concerned about some categories of rights and that it just wants to stick to things such as equality, data privacy and children's rights. We will need to debate that.

Mr Jenkin: But it will create uncertainty.

Mr Grieve: No, I do not think it will create uncertainty, any more than the Human Rights Act has created uncertainty. I have to say to my hon. Friend that I do not think that that is an issue. However, as I say, I do accept that it will take time to draft and debate these things, and it is not in this current forum that we will be able to achieve that.

Mr Rees-Mogg: On the point my right hon. and learned Friend is making, I think I am in complete agreement with him. It is right for this place to consider, debate and legislate on these issues, because this is the right forum for doing that, rather than by implementing a whole slew of rights, which would then be entirely in the hands of the courts.

Mr Grieve: Yes, and there we are in agreement. It is inevitable and regrettable that we face this situation, but that is why simply to convert the charter, which, in any case, has lots in it that is unconvertible, and to say that it should maintain entrenched rights, seems to me, in the light of what we are debating in the context of Brexit, to be an impossibility. That is not something that commends itself to me.

Let me now move to a slightly narrower issue. We have to accept that, in the course of what we are doing, we are going through a complex period of transition. Forget about the transitional arrangements we may be negotiating with our EU partners—the truth is that we are creating a whole category of transitional law. By the concept of retained EU law, we are doing some very strange things indeed with our ordinary legal principles.

Clause 5(2) allows EU law to have priority over domestic law in certain circumstances. In fact, it allows for the possibility of UK law enacted prior to exit day being quashed for incompatibility with EU law that is retained on exit day. I simply make the point that, leaving aside our EU membership, which of course will have ceased, this is an utterly unique development in our legal system—it has never happened before. We are about to create a species of domestic or semi-domestic law—I would not quite describe it as feral law—which will have the unique quality of being able to override our own laws. Clause 6(3) will also allow CJEU judgments given before exit day to be binding, but not on our Supreme Court—a matter that my right hon. Friend the Member for West Dorset (Sir Oliver Letwin) and I have been worrying about quite a lot in the course of the passage of this legislation.

So although the CJEU will rightly lose jurisdiction, it and EU law will keep a special status. However, that is intended to be only temporary, although how temporary is speculative, and I of course note clause 5(3), which says that this law can be modified and still retain this special status, as long as the modification, I assume, is not so dramatic or drastic that it is made explicit that it should lose it. That is different from replacement. That, I suspect, is because the Government know very well that this situation may continue for decades to come.

Yet, in the middle of that, the charter is removed. Leaving aside the other issues concerning the charter, which I have touched on, and which I do not want to go back over, that creates an unusual circumstance. EU law was always intended to be purposive, and one of the purposes is to give effect to the fundamental principles under which the EU is supposed to operate. Yet we are

removing the benchmark under which this law is supposed to operate, because the charter will no longer be there, although, interestingly—I think this is an acknowledgment by the Government of the problem they have—they have then, in the next clauses, essentially allowed the charter and general principles of EU law to continue to be used for the purposes of interpretation.

It is very unclear how all this, in practice, is going to work out. That is why I tabled my two principal amendments. Amendment 8 would allow the retention of the charter. It provides an easy route to ensuring that this legal framework is retained, but for the reasons we have just been debating, there are serious issues surrounding it, which is why I think it is probably wrong to pursue it.

However, there is then the question in schedule 1 of what we do with general principles of EU law. What they are is totally undefined, but I assume—I have to assume—that if the Government are content to articulate the existence of general principles, they have done enough research to establish to their own satisfaction that general principles do exist—they are the result of court judgments interpreting the law and, indeed, the fundamental principles in the charter, but not the ones that are going to disappear on the day we leave.

John Redwood (Wokingham) (Con): Is not the important point about clause 5 that any future Act of this Parliament takes supremacy, so if there is a muddle or a problem, this Parliament can sort it out definitively? I should have thought that that would deal with the interests of all parties concerned.

Mr Grieve: My right hon. Friend almost makes my case for me. He is absolutely right that, in so far as we want to depart from anything, this House, once we have left the EU, can do what it likes, and as regards anything we enact thereafter, the supremacy of EU law is entirely removed. We can do exactly what we please, except, I am afraid, in so far as we may find ourselves still locked into trying to maintain comity with the EU when the penny drops about the economic consequences of not having it. However, I will refrain from straying too far into that area.

So the question is: is there some merit in keeping the right to bring a challenge using general principles of EU law? I would have thought that there is. I tried to work through in my mind the importance of this. First, we may have retained EU law that is deficient, defective or does not operate properly, or a court might be forced to conclude that it operates in a capricious or even unfair manner, or is disproportionate. At the moment, the only remedy for the court, unless it can bring in the Human Rights Act, will be to apply the law and somebody points out to a Minister that that law is working very badly.

2 pm

Sir Oliver Letwin: In my right hon and learned Friend's observations about schedule 1, paragraph 3(2), is he referring to retained general principles of EU law or to new ones post Brexit? If he is talking about the retained ones, I have a great deal of sympathy with his position, whereas importing rights of challenge that rely on later developments of EU law would be quite against the principle of Brexit.

Mr Grieve: My right hon. Friend is absolutely right and we are completely of one mind on this. I am talking about retained principles—the principles that were seen to exist at the date of exit.

Sir Oliver Letwin: I am delighted, though not surprised, that my right hon. and learned Friend and I are thinking alike on this, as we have thought alike on many of these issues. Does he think, in that case, that his amendment 10 ought to be recast when, as I hope, it appears as a Government amendment on Report, so as not to remove paragraph 3 but to say, instead of “general principles”, “retained general principles”, with similar consequential adjustments?

Mr Grieve: I am grateful to my right hon. Friend for his intervention. As I have said on many previous occasions, whatever merits I may have as a lawyer, I am not a parliamentary draftsman. On top of that, I gently point out that, in an effort to get my amendments in early, they were, in the usual way, drafted with a wet towel around my head at about 30 minutes past midnight on the night before Second Reading. I am therefore quite sure that they are all capable of substantial improvement. Indeed, in my experience, it is very unusual for an amendment ever to be accepted just like that, apart from when it adds a comma, particularly in Committee.

Yes, of course there are different ways in which this can be approached. Indeed, my hon. and learned Friend the Solicitor General, with whom I have had an opportunity for a bit of a chat—I shall look forward to talking to him further about this—has made it clear that he thinks I have been a bit too draconian in deleting paragraphs 1, 2 and 3. On the other hand, there are some other things in paragraphs 1, 2 and 3 that I find rather concerning. However, I shall confine myself to paragraph 3 for the moment.

Mr Kenneth Clarke: On whether the drafting is entirely right, so far, as far as I am aware, the Government have had absolutely no answer to the extremely clear case that my right hon. and learned Friend has made about the proper way to protect these cases in future. The obvious thing is for the Government to accept these amendments today, because they can come back on Report and start correcting and redrafting amendments to which I am sure that he will be wholly receptive. What I would not welcome is some vague assurances from Front Benchers that they will think about it and then might come back with something on Report. The drafting can be corrected later; the points that he is making need to be confirmed today.

Mr Grieve: My right hon. and learned Friend makes a very good point. He highlights the difficulty faced by all Back Benchers, particularly Government Back Benchers, in presenting amendments—namely, the extent to which they should accept assurances from Front Benchers. That largely depends on how detailed the assurance is—whether it is woolly and vague or has some specificity to it. My judgment on whether I might press amendment 10 to the vote will depend on how specific Front Benchers can be in providing an assurance that they recognise that, even if there may be areas that remain to be debated, there is a core issue that must be addressed about the ability to bring a right of action in domestic

[Mr Grieve]

law based on a failure to comply with a general principle of EU law when it concerns the operation of retained EU law.

Furthermore, because retained EU law has supremacy over domestic law, it must be possible that there might be instances in which our domestic law would have to be altered. The Government cannot then argue that that is an extraordinary thing to do, because they have themselves drafted this Bill in a way that allows for the possibility of UK domestic law being quashed. That will, I hope, be for a temporary period. Nevertheless, I am unable to understand how, during that temporary period, we can end up with a situation where the Government are perfectly happy to allow for the supremacy of EU law but remove the very principles that moderate it, ensure that it cannot be abused, and, in those areas that were within EU competence, provide a framework under which the Government are undertaking to operate unless or until they repeal the bits of retained EU legislation that they are bringing into our law.

Sir William Cash *rose—*

Mr Grieve: Before my hon. Friend intervenes, let me say this to him. The big argument against EU law is that it was either created by “this foreign body” or it was inflicted on us and we had to enact it in order to comply with our international legal obligations. In those circumstances, it is a bit odd if we start arguing that, in view of where it comes from, the possibility of, for example, knocking it on the head because it does not comply with its own general principles should be entirely abandoned.

Sir William Cash: I hope that my right hon. and learned Friend will not go down the rabbit hole suggested by my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke), which is that we should accept this incongruous proposal when in fact it involves a fundamental principle of constitutional supremacy. I am sure that my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve) understands that. He is identifying a number of questions, and I entirely encourage him to continue to do so. I suggest, however, that it would be very unwise indeed to follow the advice of my right hon. and learned Friend the Member for Rushcliffe as regards the Government accepting these amendments for the time being.

Mr Grieve: I understand my hon. Friend’s point. However, the purpose of this Bill, as I understand it, is to put together a package that enables a smooth transition from our presence within the European Union to our presence outside of it. That, of necessity, requires adjustments to the purity of his thinking about parliamentary sovereignty, which the Government have been required to acknowledge in the way that they have drafted this Bill. In those circumstances, it does not seem to be pushing the boundaries very much further, nor should it be seen as some treasonable article, for us to consider whether the general principles of EU law ought not to be capable of being invoked when they are probably the very thing that has, over the years, prevented the EU from turning into an even worse tyranny, as my hon. Friend would see it. *[Interruption.]* Well, I have to say, having listened to him, that that is usually the

impression that has come across. He sees it as tyrannical because it is not moderated by the doctrine of our parliamentary sovereignty. I simply make that point; I do not wish to labour it.

Mr Rees-Mogg: Is there not an important change once we have left the European Union in that the European Court of Justice would not accept the jurisdiction of the European Court of Human Rights because it would not accept that a higher court could intervene in any of its rulings? It therefore needed protections within its own system that within our system are provided by the European Court of Human Rights and the application of that in domestic law.

Mr Grieve: My hon. Friend makes an interesting point. I slightly question the extent to which we have had clear evidence of that, although I know that there has been a reluctance on the part of the European Court of Justice to accept any higher authority, despite the intention of the parties that it should become subordinate, ultimately, to the ECHR. He is right that one reason why the charter came into being was to secure compliance. I think it is rather more of a hypothetical than an actual state of affairs, although such a problem might exist in future. In any event, I do not think we are dealing here just with matters covered by the ECHR, for the very reasons that were discussed earlier in relation to new clause 16, which was tabled by the hon. Member for Nottingham East. I simply say to my right hon. and hon. Friends that the issue has to be addressed.

As I said earlier, I recognise that my amendment is not as good as it might be, and could be improved on. If the Government can give me an assurance that is adequate and goes beyond vagueness, I will be content not to press amendment 10 a vote. The issue is not going to go away, however, and when one is in this sort of dialogue with the Government, one does not want to be soft-soaped off. If that happens, there will be a road crash when we come to Report, in which I will be unable to support the Government on a whole series of matters. I hope that those things can be resolved by consensus.

I have spoken for quite long enough, but I have explained why I think that, on the important issue that we are debating today, the best solution in the interim is to use something along the lines of amendment 10 to ensure that general principles of EU law can continue to be invoked. Of course, as the transition goes on, I assume that so much EU law may disappear, but I venture the suggestion that it will continue to be relevant for some time to come.

May I, finally, touch briefly on the three other amendments—297, 298 and 299—that I have tabled? They are very simple, and they concern the use in clause 5 of the words “any enactment or rule of law”.

I simply say that nobody I have spoken to understands why the words “rule of law” appear in the Bill. Ultimately, a rule of law is a rule of the common law; and in so far as a rule of the common law is displaced by statute, that rule will be displaced, of itself, by the courts. It does not require to be spelled out in legislation. I draw some comfort, on that, from the fact that a very distinguished lawyer who previously worked in this building shares my view that the inclusion of those words is incomprehensible. I do not think that that is a matter that I would necessarily put to the vote, if I was required

to do so, but I hope that the Government might be able to provide a positive response on it. I am grateful to the Committee for listening.

Paul Blomfield (Sheffield Central) (Lab): It is a genuine pleasure to follow the right hon. and learned Member for Beaconsfield (Mr Grieve), who made his case extremely well and very convincingly—it is supported by many hon. Members on both sides of Committee.

I rise to speak to amendment 46, which is designed to ensure that we keep the charter of fundamental rights in EU retained law; amendment 335, which would maintain the principles of the Francovich ruling after exit day for pre-Brexit cases; amendments 285, 286 and 287, which make provision for existing arrangements to continue during a transitional period; and, finally, amendment 336, which makes provision for retaining existing principles of EU law within domestic law until the end of the transitional arrangements.

Sir William Cash: Will the hon. Gentleman give way?

Paul Blomfield: I think I could probably get a few more sentences into my stride before taking an intervention, but I certainly anticipate that I will take interventions from the hon. Gentleman.

The debate raises fundamental principles about the transposition of EU law and the important role of this House in holding the Government to account for their commitments. Last week, the focus of the debate was on the Government's attempt to unravel the Prime Minister's pledges on the transitional arrangements in her Florence speech, by the imposition of a defined exit day for all purposes. The Minister, the hon. Member for Esher and Walton (Dominic Raab), made a good attempt to defend the indefensible and not commit to the application of the jurisdiction of the Court of Justice of the European Union throughout the transitional period; that was not the Government's line at the time. It would have been helpful if No. 10 had said a week ago what it said this morning, namely that the Court of Justice will have jurisdiction throughout the transitional period. If that had happened, the Minister would not have been left in such a mess.

2.15 pm

That was the focus of last week's debate, but this week the debate is about securing the proper transfer of the rights and protections of EU law on to our statute book. That is something on which the Government have made strong claims. They have made two very clear propositions about this Bill. The first is that it serves to provide certainty and legal continuity, through the creation of the new category of retained EU law. Indeed, on Second Reading, the Secretary of State for Exiting the European Union said:

"The key point of this Bill is to avoid significant and serious gaps in our statute book."—[*Official Report*, 7 September 2017; Vol. 628, c. 344.]

The Government's second claim is that the Bill

"does not remove any underlying fundamental rights or principles which exist".

And yet clause 5(4) of this Bill flies in the face of both those claims. That subsection, as has been pointed out, omits from domestic law after exit day the charter of fundamental rights, through which all EU law is interpreted.

A failure to transpose the charter into EU retained law creates a gap in our statute book. As the Equality and Human Rights Commission has stated, the Bill, as it stands, will not achieve the Government's stated aim of non-regression on social justice issues. That is a serious matter, which the House must take account of.

We recognise that steps will be required to make the charter operable in domestic law, and there has been some debate on that already. There is no reason why this House could not direct courts in the UK to interpret retained law by taking into account Luxembourg's interpretations, such as is the case with the Human Rights Act and the ECHR in the Strasbourg Court. That matters, and I will explain why the inclusion of the charter in retained EU law is critical to maintaining and upholding those rights.

Sir William Cash: Is the hon. Gentleman about to move on to explain why Tony Blair and Lord Goldsmith fought so hard to obtain protocol 36—I think it was that one—in the Lisbon treaty, which the Conservative party opposed? At the same time as advancing the charter of fundamental rights, will he explain why we cannot pass such legislation as we wish to in this place?

Paul Blomfield: I was not about to go on to that, but clearly I am now. The hon. Gentleman knows that the charter was not binding when it was first adopted in 2000. It was made legally binding by the Lisbon treaty of 2007, which entered into force in 2009. It has, as the right hon. and learned Member for Beaconsfield pointed out, increased in significance, and the rights that it contains have become more visible and correspondingly more effective. Labour supported the charter then, and we support it now, because it has enhanced and improved European human rights protection, and by doing so it has significantly developed the quality of human rights protection in the UK. The wider point that the hon. Member for Stone (Sir William Cash) makes is not relevant to the issue under discussion.

Alex Chalk (Cheltenham) (Con): The charter applies only when national authorities are implementing EU law. Does the hon. Gentleman not agree that if it is retained, it risks creating a confusing inconsistency by giving citizens powerful rights to strike down some pieces of legislation, but not others? Is it not a case of doing either the whole thing, or nothing at all?

Paul Blomfield: I will come on to this point, but the charter is key to ensuring that retained law is treated properly and that the same rights of enforcement continue in the future. Without the charter, those rights are significantly diminished and access to them is diminished.

Let me proceed with the point I was making about how the charter goes wider than the Human Rights Act and the European convention on human rights, which I hope I am right in saying the Government accept. As other Members have already pointed out, it was the Secretary of State for Exiting the European Union who relied on the charter in the case he brought before the High Court in 2015, against the then Home Secretary and now Prime Minister, when he was worried that the Data Retention and Investigatory Powers Act 2014 would impact on MPs' ability to communicate with constituents confidentially. He cited the charter, and his lawyers argued that it went beyond the European convention

[Paul Blomfield]

on human rights and granted further protection. He relied on the charter precisely because it provided greater human rights protection than was provided for by UK law and even by the case law of the European Court of Human Rights.

Despite this, the Government have not indicated which decisions of the Court of Justice of the European Union under the charter they disagree with. Moreover, the explanatory notes to the European Union (Withdrawal) Bill justify the decision to exclude the charter from retained EU law by saying:

“The Charter did not create new rights, but rather codified rights and principles which already existed in EU law. By converting the EU *acquis* into UK law, those underlying rights and principles will also be converted into UK law, as provided for in this Bill.”

If that were the case, it would be fine, but it is clearly not the case.

Drawing on existing rights, the charter set out a new framework for human rights protection under EU law. The rights contained in the charter may have existed in EU law for decades—the Government are relying on that point—but that is not enough. The whole point of the charter was that nobody could verify those rights or their sources, and as the lawyers among us will know, identifying the source of a right is imperative in securing effective recourse. In his speech, will the Minister therefore clarify whether the Government have succeeded, where others have not, in comprehensively identifying every single source of these rights? If not, how do they plan to uphold the same level of protections for these rights once we have left the European Union, because a right without effective recourse is rendered effectively meaningless?

By compiling and codifying these rights in a single document, the charter in effect created new rights and certainly created new protections. In short, the charter is the most effective key to unlocking vital rights, and to fail to transpose it and make it operable in UK law is to lock away those rights and deny UK citizens the key to accessing them.

On the data protection point on which the Secretary of State relied—my right hon. Friend the Member for East Ham (Stephen Timms) raises it in his amendment 151, which we support—the right to data protection exists in various documents, such as directives and regulations, but it was only by virtue of the charter creating the expressed right to data protection in article 8 that we were given the right to be forgotten.

The rights extended by the charter are not only data protection rights. Such rights start in article 1, which includes the right to human dignity. This does not exist as an enforceable right in common law or statute law applicable to retained law post-Brexit. Will the Minister, when he responds, explain how this right will be enforced after exit day if the charter is not retained?

Suella Fernandes: Will not the hon. Gentleman’s proposals create more uncertainty and raise more questions than answers? For example, considerable reference has been made to the Union, to citizens and to the right to vote and stand in European elections, but is that not at odds with our being a non-member state on our leaving the European Union?

Paul Blomfield: No. The right hon. and learned Member for Beaconsfield answered that point when it was raised by other Members. There are clearly provisions in the charter that would have to be amended to become operable—I made that point a few moments ago—but it includes fundamental rights, so the protections of our citizens will be reduced if the those rights are not carried forward. I will illuminate that point a little further.

Suella Fernandes: The hon. Gentleman proposes that part of the charter should be erased and that it should undergo some kind of surgery before it is applied through UK law. Is it not right that questions of principle and policy should not be debated in relation to this Bill, the purpose of which is to provide legal certainty and continuity, but left for wider parliamentary debate and scrutiny, and indeed the wider democratic process?

Paul Blomfield: I am genuinely puzzled by the hon. Lady’s point because she could make it in relation to all of the several thousands of laws that are being transposed. It could relate to every other part of the Bill. We will have to go through processes of adjustment to ensure their effective operability, but the question that needs to be answered—I hope it will be answered by the Minister when he rises at the Dispatch Box—is: why, uniquely, is the charter of fundamental rights being treated differently and being removed at this stage?

Hilary Benn: My hon. Friend is making a very powerful case, and my anticipation of the Minister’s speech increases minute by minute as the case is advanced. Does my hon. Friend share my puzzlement, first, that given that the Government’s stated objective for the Bill was to move everything across, the one thing they have decided to leave behind is the charter; and, secondly, that Conservative Members have argued that nothing will be lost by the disappearance of the charter, yet we have already heard powerful testimony in speeches to the contrary? That testimony includes the point raised by my hon. Friend the Member for Nottingham East (Mr Leslie), when he referred to the judgment in the tobacco case, in which the charter clearly had an important impact in enabling the Government to enforce their rights in relation to their desire to have plain packaging—never mind its being the reason why the Secretary of State, in a former life, decided to call on it in trying to sue the Government. Is there not an incompatibility between the two positions?

Paul Blomfield: My right hon. Friend is absolutely right. Like him, I am looking forward to hearing the Minister attempting to square the circle on that one. It is one thing for the Government to argue that the charter needs to be removed, but it is another for others then to argue that it makes no difference. Let me illustrate a few other areas in which the charter does make a difference.

Let us take article 24—it was mentioned earlier—which gives effect to the UN convention on the rights of the child. While we are a signatory to the convention, that does not provide the same legal protection—simply as a convention signatory—as would be provided by the incorporation of the charter. Let us take the right to a fair hearing, which goes beyond article 6 of the European convention on human rights on the right to a fair trial,

because it applies to civil rights and obligations, as well as to criminal charges. In the ZZ case, with which the Minister will be familiar, the Court of Justice of the European Union held that the right to a fair trial in article 47 of the charter applied to immigration cases. Significant issues are therefore at stake.

Let us look at article 13, which requires that academic freedom shall be respected. With the possible exception of some Government Whips—the Vice-Chamberlain of Her Majesty’s Household, the hon. Member for Daventry (Chris Heaton-Harris), was keen to see the reading lists and curriculums of university lecturers to make sure they were teaching Brexit correctly—I am sure that Members on both sides of the House agree that academic freedom is an important principle, and it is not secured anywhere else. How do the Government anticipate that these rights will be enforced in the absence of the charter, and which aspects of the EU *acquis* or UK domestic law could be used to guarantee these rights? That is an important question.

It is not just that excluding the charter will diminish rights; the charter has transformed access to human rights protection. As the House of Commons Library briefing makes clear, it is not just that the charter contains more rights than the European convention on human rights and codifies existing rights in one place. When we compare the charter with the Human Rights Act, we see that it has a wider class of applicants who can use it. Anyone with a sufficient interest can apply for a judicial review based on the charter, and it can also be relied on in other types of case—for example, employment tribunal claims—that are within the scope of EU law. By contrast, claims under the Human Rights Act can only be made when an individual is a victim of a rights violation.

2.30 pm

John Redwood: Our rights always used to be guaranteed, and will be guaranteed once we have left, through a combination of common law and statute law. I do not understand what threat the hon. Gentleman has in mind regarding these rights, because if any threat emerged it would be struck down either by the Supreme Court or by Parliament.

Paul Blomfield: I am puzzled by that point, because EU-retained law will effectively become statute law, and that will be carried forward by the application of the charter. It is not quite clear what the right hon. Gentleman is getting at.

Mr Harper: I listened carefully to what the hon. Gentleman said about article 6 of the European convention. I think that he said it applied only in criminal cases, but having looked at the article it enforces civil rights as well. I remember from my own experience that we took it into account in immigration cases, other tribunal cases and, I think, in some applications of procedures of the House that may or may not be compatible with that right. The measure is much wider than he suggests, so I do not think he was exactly right about that.

Paul Blomfield: As I understand it, it does not apply in all civil cases—only civil rights and obligations under the convention, so it is effectively a narrowing if we lose it.

John Redwood: The hon. Gentleman said that he did not understand the point I was making. Our rights will be guaranteed once we have left by our Supreme Court, and by common law or the application of our statute law. I cannot think of a right that he and I value that will be destroyed because we have not incorporated the charter. I think that they will be guaranteed by those ancient and tested methods.

Paul Blomfield: We are talking about statute law, and about rights such as the one on which the right hon. Gentleman’s friend and colleague, the Secretary of State for Exiting the European Union, relied. I think that that point is clear.

Returning to the comparison of the charter with the Human Rights Act, as well as the wider class of applicants for which it provides, it allows for stronger remedies. If any national court finds that any national law is incompatible with a directly effective provision of the charter, it must disapply contravening primary legislation or quash secondary legislation. We have exercised some of the arguments around that issue, but that is much stronger than a notification of incompatibility. We should be in no doubt that losing the charter means losing rights.

Sir William Cash: Has the hon. Gentleman considered the impact in relation to alleged and actual terrorists on the question of national security and case law? Many people who would like those individuals to be deported would find that extremely difficult under the principles of the charter because of the provisions relating to the protection of family life, which have been badly abused.

Paul Blomfield: In his keenness to tackle the argument, I think that the hon. Gentleman has missed the point. That has nothing to do with the charter.

Let me turn to a separate but related point on schedule 1, which states:

“There is no right of action in domestic law”

post exit

“based on a failure to comply”

with EU general principles. The schedule also prevents courts from ruling that a particular Act was “unlawful” or from quashing any action on the basis that it was not compatible with the general principles. Damages are not allowed, so general principles are rendered irrelevant, which also reduces rights. Our amendment 336 seeks to address that by retaining the existing principles of EU law regardless of whether they originated in case law, treaties, EU legislation or directives. The date on which that retention would end would be the end of a transitional period.

Let me turn to our amendment 335 to schedule 1 on the Francovich rule. I shall be brief because others have tabled similar amendments, which we support, and I want to give them a full opportunity to make their case without my anticipating what they are going to say.

Sir Oliver Letwin: On a point of clarification, the hon. Gentleman said that the date on which the retention would end under the amendment would be the end of the transitional period. Did he mean that no new general principles of EU law formulated after that date would apply, or did he mean the retention would end at the end of the transitional period?

Paul Blomfield: If the Prime Minister's words are to be taken at face value—we continue to operate during the transition practically as if we were still part of the membership—new principles would apply during the transitional period, although not after it had ended.

Mr Grieve: The hon. Gentleman has touched on an important point. If we are going into a transitional period retaining the architecture of EU law, or the vast majority of it for that period, to try to leave at the end of the transition and go back to the status of retained EU law on the date on which we moved into transition would be utterly unrealistic. It would have to be from the date on which we moved from transition to final departure.

Paul Blomfield: I thank the right hon. and learned Gentleman, who has made the point much more effectively than I did. That is absolutely right.

Briefly, Francovich raises some important issues of accountability. Surely there is oversight by Government, because I would expect them to accept that the right to damages should be available in cases where the breach of Community law took place before exit day, and indeed before the end of a transitional period, but discovery only took place afterwards. I am therefore seeking clarification from Ministers on that point, and I hope that they accept what hon. Members are seeking to do in amendments on Francovich.

We are pleased to support new clauses 16, 78 and 79, as well as amendments 297, 298, 299, 8, 10, 101, 105 and 62 and the consequential amendments 126, 127, 129, 140, 141, 302 and 9—just for clarity. In conclusion, I return to amendment 46, because we need some honesty from the Government. The House has not authorised the Government to use Brexit as a vehicle to deplete human rights in this country. If the Government want to reduce rights and protections, they should say so and we can debate it. What is not acceptable is to pretend that the Bill provides for the transfer of rights and protections when it clearly does not.

Antoinette Sandbach (Eddisbury) (Con): The Secretary of State for Exiting the European Union has made a number of statements about the fact that if Opposition parties can identify rights that will not be covered he is willing to look at them and legislate for them. We have discussed a third category of rights—not those protected by the Human Rights Act or those that will be irrelevant because they are in the charter and will no longer apply—so is the hon. Gentleman prepared to take that at face value and work with the Government to ensure that those rights that have been identified are protected?

Paul Blomfield: If the Government can identify the sources of rights covered by the charter and can explain exactly how any deficiencies or gaps left as a result of failure to transpose the charter will be identified, and if they outline what remedies they might make at a later stage, we would be happy to sit down with them and talk about that. It is absolutely clear to us that the Government should stick by their word and their claims in relation to the Bill on the need for the existing level of human rights protection to be preserved in UK law. As it stands, central to that consolidation is retaining the charter as part of the retained EU law. I hope the House will agree and I hope the House will support our amendments.

The Minister of State, Ministry of Justice (Dominic Raab): It is a pleasure to follow the hon. Member for Sheffield Central (Paul Blomfield). At the outset, I would like to thank hon. Members from right across the House for their contributions to today's debate, whether in speeches or in amendments. The Government will approach the Bill in the spirit of collaboration, and I certainly welcome the constructive contributions and diligent scrutiny hon. Members are rightly providing today. I shall seek to address clause 5, and the Solicitor General will address schedule 1 a bit later in the debate, to make sure we dwell adequately and with due consideration not only on the provisions of the Bill, but on the various issues and amendments, for which I am grateful to hon. Members, that have been raised.

Clause 5 serves two key strategic objectives: taking back democratic control over our laws and making sure we leave the EU in a way that facilitates a smooth Brexit and minimises legal uncertainty. The Bill aims to provide that the laws which apply immediately before exit day will continue to apply in the same way after we leave. Of course, the act of leaving the EU in itself means it is inevitable that some things will not and cannot stay the same. The changes made by clause 5 relate to certain aspects of EU law which are no longer appropriate, or which will not make sense when we leave the EU because we will then cease to be under the obligations that apply to us as an EU member state. The provisions are therefore essential.

Clause 5(1) ends the supremacy of EU law in relation to new law from the date of exit. That is crucial if we are going to give effect to the mandate from the referendum. At the same time, clause 5(2) makes sure that EU law passed before exit still applies as before, for the sake of legal certainty. That is important for mitigating the risks of legal uncertainty that are inevitable and inherent in departure from the EU. The rest of clause 5 reinforces those critical objectives, including by removing the instrument of the charter on fundamental rights as part of domestic law. I want to come on to address that in detail.

Mr Jenkin: May I refer my hon. Friend to clause 5(2)? My right hon. and learned Friend the Member for Beaconsfield (Mr Grieve), in his rather amazing speech which I think we all found very illuminating, said that this was a completely new principle to be applied in British law. Is it not just a translation of an existing principle in EU law into United Kingdom law for the purposes of a smooth Brexit? Is it not, in fact, less exceptional than being a member of the European Union and allowing a court in a wholly different jurisdiction to impose itself on parliamentary sovereignty?

Dominic Raab: I thank my hon. Friend for his intervention and I will come on to address very carefully the speech made by my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve). I agree that there is an inherent sense that, as we move to change, things are not going to be exactly as they were before. I want to draw a very important distinction. We are leaving the EU and taking back control over our laws and the way we make our laws, so that Members across the House can exercise proper democratic control. At the same time, the substantive law—the rules and the principles—will remain the same, because of the snapshot we are taking on exit day and retaining in UK law, thereby avoiding the putative legal cliff-edge.

Mr Kenneth Clarke: Will my hon. Friend give way?

Dominic Raab: I will just make a little bit of progress and then I will give way to my right hon. and learned Friend.

I will address the detail of this by reference to the new clauses and amendments that have been tabled, because they usefully highlight and flag up the different concerns of hon. Members. As a matter of guiding principle, I hope all hon. Members can agree that we should not make changes that exacerbate the risk of legal uncertainty, which I think goes to the point my hon. Friend the Member for Harwich and North Essex (Mr Jenkin) was making in his intervention. Our substantive law will remain the same on exit day, but it would be wrong in principle—indeed, I think we would find it counter-productive in practice—to seek to cling to all the procedural mechanisms that are inherent, intrinsic and inextricable institutional features of EU membership.

Joanna Cherry: Will the Minister give way?

Dominic Raab: I will not give way just for the moment, but I will give way to the hon. and learned Lady shortly.

2.45 pm

To do so would sow greater, not less, legal confusion and I know that that is not the intention of any hon. Member.

I will first address new clause 16, tabled by the hon. Member for Nottingham East (Mr Leslie), which relates to the charter and, in particular, would introduce a reporting requirement. I will briefly explain why that is unnecessary. The hon. Gentleman, in his perfectly constructive and considered way, has concerns that I want to address. Let me start by saying the Bill will reinforce our UK human rights framework, not diminish it, precisely because we are making sure that the substantive rules of EU law will be retained on day one of exit. This country has a long-standing tradition of liberty and rights, and we intend to build on that following our departure from the EU. The Government are resolute in that commitment. We have always been, and will continue to be, a beacon of freedom for the world, as we have demonstrated since Magna Carta, through the 1689 Bill of Rights, and up to and including more recent commitments to respecting and, yes, remaining a party to the European convention on human rights. The addition of the hon. Gentleman's reporting requirement would not enhance those substantive rights protections, nor would it give the House any better ability to scrutinise and clarify how rights will be protected after exit.

I will come on to say more about some of the underlying points the hon. Gentleman addressed and on the substance of the charter in the context of amendments 8 and 46, but let me give him the reassurance that the reporting requirement is redundant. Excluding the charter from the body of retained EU law does not affect the underlying and underpinning substantive rights. They are the primary source of rights that existed prior to the charter coming into force and which any citizen will be able to rely on in practice after we leave. That is not just this Government's position; it was the last Labour Government's position. In fact, Tony Blair went far further than I have today, telling the House:

"It is absolutely clear that we have an opt-out from...the charter".—[*Official Report*, 25 June 2007; Vol. 462, c. 37.]

Before all Opposition Members start to run away from the promises made by the previous Labour Government, I just remind them that the current spokesperson on constitutional affairs for the Labour party, the noble Lord Falconer—he is still a spokesman, according to the Labour party website—said:

"the charter lays down existing rights; it is not a legally binding document."—[*Official Report, House of Lords*, 14 December 2005; Vol. 676, c. 1252.]

It later became clear, of course, that there was no opt-out, but it is right that we will be retaining the substantive rights and principles that the charter merely sought to codify. I will explain that in more detail shortly, but I hope that on that basis I can urge the hon. Member to withdraw his procedural amendments.

Joanna Cherry: Will the Minister give way?

Dominic Raab: I will give way shortly to the hon. and learned Lady, because I know she supports some of the amendments.

I turn now to amendments 297, 298 and 299, tabled by my right hon. and learned Friend the Member for Beaconsfield, and to amendments 285 and 286, tabled by the leader of the Labour party, the right hon. Member for Islington North (Jeremy Corbyn). My right hon. and learned Friend the Member for Beaconsfield wishes to remove any reference to "any rule of law", which is a reference in the Bill to common law rules in relation to provisions addressing supremacy of EU law. In effect, his amendments—at least as I have understood them, and I stand to be corrected—would allow EU law to continue to trump the common law after the date of exit. However, this would undermine both of the key strategic objectives of the Bill. It would mean in relation to common law rules articulated after exit day that retained EU law trumps them, undermining the UK's basic constitutional hierarchy that we are seeking to restore and affirm.

Mr Grieve *rose*—

Dominic Raab: Allow me to make the point and then I will give way, because there are two sides to my right hon. and learned Friend's amendment.

Paradoxically, with respect to the relationship between retained EU law and common law rules made up until exit day, my right hon. and learned Friend's amendment would skew the clear and certain snapshot the Bill will take, because retained EU law would no longer supersede common law rules. By removing the common law from the operation of the Bill, I am afraid the amendments would—at least on the Government's analysis—create considerable uncertainty for business and individuals alike.

Mr Grieve: No, I want these words removed because they are completely unnecessary. To use that wonderful word that lawyers like to apply, they are otiose—they add absolutely nothing to the Bill. The common law will be adjusted according to the statutory framework in which it operates, so I say with some regret—because someone clearly came up with the idea—that it seems rather poor drafting. Others, whom I consulted because I was puzzled by this, and who have spent their lives drafting precisely this sort of legislation, seem to agree with me. I was trying to help my hon. Friend, not create some devilish plot to scupper Brexit.

Dominic Raab: I am not sure where this devilish plot has come from—I have made no such suggestion; I was simply pointing out to my right hon. and learned Friend that, as my hon. Friend the Member for Harwich and North Essex, the Chair of the Public Administration and Constitutional Affairs Committee, mentioned earlier, some of the amendments run the risk of creating more, not less, uncertainty, notwithstanding their perfectly laudable and genuine aims.

If my right hon. and learned Friend's amendment were passed, it would no longer be clear how common law rules would interact with a particular provision of retained EU law in the event of a conflict between the two. Across a range of issues, from animal welfare to competition law, the concern is that such an approach would create uncertainty about the legal position of citizens and businesses. I am sure that this was not his intention. I am not looking for devilish plots on either side of the House, but I do fear that that would be the practical reality.

Sir William Cash: On the subject of devilish plots and “The Screwtape Letters”, may I refer my hon. Friend to chapter 12 of Lord Bingham's magisterial work, “The Rule of Law and the Sovereignty of Parliament”? In this context, its reference to the rule of law is highly relevant, simply because it refers, indirectly or directly, to the issue of the constitutional supremacy of law making and the construction placed upon it by the courts themselves. On that issue, the rule of law does, I think, have considerable salience.

Dominic Raab: My hon. Friend makes a considered and thoughtful point. Given the changes we are making—for the purposes of greater certainty and clarity—I respectfully suggest to my right hon. and learned Friend the Member for Beaconsfield and other hon. Members across the House that it is worth having some clarity and certainty on this point.

I turn now to amendments 285 and 286. We discussed similar amendments from the leader of the Labour party on day one of the Committee in relation to clause 6, and for the same reasons given during that debate, we cannot support them. I note again what the Prime Minister said in her Florence speech:

“The United Kingdom will cease to be a member of the European Union on the 29th March 2019”.

I will not speculate on the contents of the withdrawal agreement. The Government will do whatever is necessary to prepare for our exit and have already made it clear that separate primary legislation will be brought forward to implement the terms of the withdrawal agreement and any implementation period. With that in mind, the amendments would pre-empt and prejudice the outcome of the negotiations and introduce a straitjacket of inflexibility for the duration of any implementation period. We are all in the House committed to securing the very best deal with our EU friends and partners, and I respectfully suggest that the amendments would undermine that objective. I urge the leader of the Labour party not to press them.

Joanna Cherry: The hon. Gentleman said earlier that one of his guiding principles was not to exacerbate any legal uncertainty, but the Exiting the European Union Committee has heard evidence from a senior lawyer that the body of retained law will contain instruments that

make explicit reference to the charter. If the charter is not part of retained EU law, how are the courts supposed to interpret the body of retained law that refers to it?

Dominic Raab: The hon. and learned Lady makes a perfectly respectable and legitimate point, but I will address it in the context of amendment 8, tabled in the name of the my right hon. and learned Friend the Member for Beaconsfield, and amendment 46, tabled in the name of the Leader of the Opposition, both of which, in different ways, seek to retain the charter of fundamental rights in domestic law after exit by removing subsections (4) and (5) of Clause 5. I understand and appreciate the sentiments behind the amendments. Hon. Members are understandably concerned that as we leave the EU we do not see any diminution or reduction in the substantive rights we all enjoy. The Government are unequivocally committed to that objective. I remind the Committee again of the country's record of pioneering, defending and protecting human rights standards since well before the EU existed and of our ability as a nation to withstand the darker moments in European history that have touched other less fortunate nations.

Mr Kenneth Clarke: My hon. Friend reassures us that even without the charter of fundamental rights the House of Commons can be relied upon. That was the argument when the Lisbon treaty was being ratified. There was a widespread feeling that it was not clear whether it would add anything, but we now see that it has added quite a lot, particularly around privacy law, on which the House had never done anything, and now data protection. The lobbies brought to bear on the House if ever we look at privacy by sections of the media and so on are very considerable. Why are we getting rid of a convention that has done no harm and actually has run ahead of this House of Commons at various stages? What will be gained by not leaving open that opportunity for the future?

Dominic Raab: I will come shortly to my right hon. and learned Friend's substantive generic point and also touch on the data protection issue he raised.

The Government reaffirm and renew our commitment to human rights law. It is reflected through UK national law, including, most recently, the Human Rights Act, as well as a range of domestic legislation that implements our specific obligations under UN and other international treaties, from the convention against torture to the convention on the rights of the child. Of course, the principal international treaty most relevant to the UK's human rights laws is the European convention on human rights. I again make crystal clear the Government's commitment to respecting and remaining a party to the ECHR. There will be no weakening of our human rights protections when we leave the EU.

In fact, we have an opportunity to reinforce and build on our proud tradition of liberty and the protection of rights. We are already in the process of paving the way to ratifying the Council of Europe convention on preventing and combating violence against women, the Istanbul convention. We are leaving the EU, but our commitment to pan-European standards, human rights and the European co-operation in this area remains undimmed. Furthermore, as the my right hon. and learned Friend the Member for Beaconsfield is aware, we will introduce an amendment before Report stage, dealing explicitly with the Equality

Act 2010 issues that hon. Members have raised, including by requiring Ministers to make a statement before the House on the consistency of any Brexit-related legislation with the Equality Act.

It is worth reinforcing the point that the charter is not the original source of the rights contained within it. It was only intended to catalogue rights that already existed in EU law. Indeed, I am glad that my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) intervened, because he wisely noted, as recently as 2011, before a European Committee, that protocol 30 governing the application of the charter

“sets out the boundaries around the charter by confirming that it neither creates nor extends any rights to EU citizens outside those that had existed pre-Lisbon, and it emphasises that member states are required to comply only when giving effect to EU law.”—[*Official Report, European Committee B*, 14 March 2011; c. 5.]

These rights, codified by the charter, came from a wide variety of sources, including the treaties, EU legislation and, indeed, case law, that recognised fundamental rights as general principles. All those substantive law principles and rights, of which the charter is a reflection not the source, will already be converted into domestic law by the Bill.

It is not necessary, therefore, to retain the charter in order to retain such substantive rights. With that in mind, it is right—this deals with the issue that the hon. Member for Nottingham East raised at the outset—for me to reaffirm the Government’s commitment, which the Secretary of State for Exiting the European Union made to the Select Committee, to publish a detailed memorandum setting out how each article of the charter will be reflected in UK law after we leave. I can confirm that we will publish that by 5 December. I hope that that reassures the hon. Gentleman and the hon. Member for Sheffield Central, both of whom raised this point. Let me say to my right hon. and learned Friend the Member for Beaconsfield that I am very willing to continue my dialogue with him on these important matters.

Sir Oliver Letwin: Will that report arrive before the Bill’s Report stage?

3 pm

Dominic Raab: Yes, it will, and, as I was about to say, there will indeed be a Report stage. If my right hon. Friend, or any other Member, feels that our analysis is deficient, or that we have missed out a substantive right that risks being removed if the charter is not retained, once the memorandum has been considered I will be happy to sit down with my right hon. Friend—and any other Members—and discuss the issue again.

Vicky Ford (Chelmsford) (Con): This has been a long and complex legal argument, but let me summarise it. The issue of data protection is vital to many of my constituents, especially young people online, but it is also vital to our tech and financial services sectors. Can my hon. Friend assure me that there will be no risk of a legal challenge in relation to data protection because of the way in which these provisions are being brought into British law?

Dominic Raab: I know that my hon. Friend is an expert on these matters because of her time in the European Parliament. I shall be addressing data protection directly, but I shall be happy to give way to her again in due course.

The other argument that has been made about the charter is “If it does nothing wrong or does nothing by itself, where is the harm in keeping it?” However, as was pointed out by my right hon. and learned Friend the Member for Rushcliffe, the charter applies to member states only when they are acting within the scope of EU law. Indeed, it is a specific device intended to codify—not create—rights, and apply them to EU member states and other EU institutions operating within the framework of EU law. It would be curious, if not perverse, to incorporate that instrument directly in UK law, or implement it, at the very moment when we ceased to have the relevant obligations as a member of the EU.

Wera Hobhouse: Will the Minister give way?

Dominic Raab: I will make a slight bit of progress, and then I will give way.

Seeking simply to transplant the charter into our domestic law as it stands, dislocated from EU membership—given all the other points that Members have made about the way in which it would apply in practice—would not be appropriate, and, indeed, could introduce needless complexities that all of us, on both sides of the House, should legitimately seek to avoid.

Mr Kenneth Clarke: My hon. Friend has addressed my question, but, with great respect, he has failed to give an answer. It is true that the charter was originally proposed as a statement of European values to which all members of the European Union could adhere, but, as we have heard, it has developed. If it is doing no harm, why are the Government going to such lengths to get rid of it as the one specific change in the Bill? Presumably it is because it contains the words “European” and “rights”, and this was intended as a *Daily Telegraph* gesture to the hard right wing of my party.

Dominic Raab: My right hon. and learned Friend’s intervention was not in quite the spirit in which we have conducted our proceedings so far, but I shall try to address his underlying concern, and I shall be happy to take another intervention from him shortly if he thinks that I have still not addressed it. He is a demanding customer, but I shall keep on trying.

John Redwood: Will my hon. Friend give way?

Dominic Raab: I am going to make a bit of progress, but I will give way shortly.

Let me, again, be clear about what the Bill does. It takes a snapshot of substantive EU law, including the underlying fundamental rights and principles at the point of exit. It converts those into UK law, where they will sit alongside the Human Rights Act and other UK legislation on human rights. That is a crucial point. As my right hon. and learned Friend the Member for Beaconsfield rather perceptively asked during debates on the Lisbon Treaty in 2008,

“Will the Lord Chancellor confirm that every country that is a member of the European Union is also a signatory of the European Convention on Human Rights? Indeed, I believe that every single one has incorporated it. In view of that, what is the purpose of the charter of fundamental rights?”—[*Official Report*, 5 February 2008; Vol. 471, c. 804.]

During the same debate, my right hon. and learned Friend made the point, far better than I can—and I say

[Dominic Raab]

this with all due deference—that the risk of adopting the charter was that it would, at least potentially, run into conflict with domestic human rights law, thereby creating at least the potential for legal confusion. This is the point that I want to make to my right hon. and learned Friend the Member for Rushcliffe. If we incorporated or implemented the charter, we would in effect be triplicating human rights standards in UK law, opening up wide scope for uncertainty. My right hon. and learned Friend the Member for Beaconsfield was right about that then, and I think he is right about it now.

Joanna Cherry: With all due respect, I do not understand the point that the Minister is making. The charter is already part of UK law, because we are a member of the European Union.

Dominic Raab: As we leave the European Union, it will make no sense to retain the institutional framework of membership. What we will do is retain, in the way that I have described very carefully, the substantive rights that were codified in the charter. If, when we publish the memorandum, the hon. and learned Lady, or any Member on either side of the House, thinks that there is a gaping gap, we will be able to address that.

John Redwood: Will the Minister confirm that the evolution of our rights through history shows that the best way in which they are created and defended is through the democratic instincts of the British people, and that they then trust this Parliament to make sure that those rights are fully entrenched? As the Minister has assured those rights, I really do not see what the problem is. What is the threat to those rights? We have a free Parliament representing a free people.

Dominic Raab: I suppose the theory is that a majoritarian dominance—a Government with a huge majority—would trample on rights and rattle legislation through the House of Commons, as the last Labour Government did with identity cards and proposals for 90 days’ detention without charge. We saw most of that off.

Hilary Benn: Will the Minister give way?

Dominic Raab: I want to make a little bit of progress, but I will of course give way to the Chair of the Select Committee.

Hilary Benn: I am grateful to the Minister. He said a moment ago that one of the arguments he was advancing for not incorporating the charter was that it might then come into conflict with our own human rights law. Given that, as we heard from the hon. and learned Member for Edinburgh South West (Joanna Cherry), it has been part of our law for some time, can he give the Committee one single example of that happening?

Dominic Raab: I think that the right hon. Gentleman should look at, for example, the Devine case on prisoner voting. It is very unclear how the case law in the Luxembourg and Strasbourg Courts meshes together. It is possible to argue in favour of one or the other, but they are not entirely consistent or compatible. When

giving evidence to a House of Lords Committee in 2015, my right hon. and learned Friend the Member for Beaconsfield defended the Strasbourg Court very validly by contrasting it with the “predatory” habits of the European Court of Justice in Luxembourg. I think that even those who have been the most enthusiastic human rights defenders, and those on the remain side of the argument, will recognise the clash and the inconsistency between those jurisprudences.

Hilary Benn rose—

Dominic Raab: I am not going to give way again.

The point I wanted to reaffirm is that, given that the substantive rights codified by the charter will be retained in EU law, it does not make sense to incorporate the EU charter itself, an element of the EU’s institutional architecture designed to regulate EU membership, at precisely the moment when we are leaving.

Antoinette Sandbach: Does my hon. Friend accept that there may be a third category of rights that are in the charter but are not in the Human Rights Act, and require protection, and that the source of those rights cannot be identified other than in the charter? If so, will he accept the suggestion made by my right hon. Friend the Member for West Dorset (Sir Oliver Letwin) that there should be an Act of some sort to deal with them?

Dominic Raab: As I have made clear, we will publish a memorandum containing article-by-article analysis of the charter and how the substantive underpinning rights at the point at which it is codified can be reflected in UK law. I am happy to continue the dialogue with my right hon. and learned Friend the Member for Beaconsfield and my right hon. Friend the Member for West Dorset if they believe that any rights have been missed out.

I think that this is probably the right moment to deal with amendment 151, which was tabled by the right hon. Member for East Ham (Stephen Timms), and which relates to the protection of personal data.

Anna Soubry: Will the Minister give way?

Dominic Raab: I am going to make a bit more progress, but I will give way shortly.

The amendment relates to privacy and protections, an issue that has been mentioned by a number of Members on both sides of the Committee. I suggest to the right hon. Gentleman, respectfully and humbly, that the amendment is not necessary. It is not required because the Data Protection Bill will set high standards for protecting personal data, linked to the general data protection regulation. We will continue to maintain the highest standards of data protection after we leave the European Union. The Bill will also preserve in domestic law existing EU fundamental rights, including data protection rights and underlying case law, which were already part of EU law before the charter came into force. Individuals in the UK will continue to have access to well-established domestic and international mechanisms to bring their cases and obtain appropriate remedies, whether in Strasbourg or under the Human Rights Act, when they consider that their rights have been breached. That includes the right to seek a judicial remedy against data controllers or processors.

Vicky Ford: I thank the Minister for his words on the Data Protection Bill, which will give strong data protection in the UK. However, my understanding of general data protection regulation in Europe is that it is based on the fundamental principle that people own their own data, whereas the Data Protection Bill does not, as we have drafted it here, start with that fundamental principle. So we either need to amend that Bill or still recognise that principle in order for them to be equivalent; that is what we need to aim for if we want to achieve equivalence.

Dominic Raab: I thank my hon. Friend; she has made her point in a very careful way. I suggest that that is something for the passage of the Data Protection Bill in due course, if she feels there are gaps in it, and if, after having looked at the memorandum we are publishing, she is not persuaded that we will be reflecting in UK law after exit all the rights.

Stephen Timms: I am grateful to the Minister for addressing my amendment. Does he accept that it is essential that we avoid a declaration from the European Commission at some point in the future that data protection arrangements in the UK are not adequate, and we must therefore secure an adequacy determination? Does he also accept that not having article 8 somewhere on the UK statute book is an invitation to those elsewhere to find against us when that crunch decision comes?

Dominic Raab: The right hon. Gentleman is absolutely right that we need to be very careful to navigate our post-Brexit period in a way that minimises litigation. I cannot see that such litigation would be good for the UK and its taxpayers, and it is not good for sustaining a healthy relationship with our EU partners.

We do, of course, have article 8 in the ECHR, which is directly incorporated via the Human Rights Act, but, as I have said, if the right hon. Gentleman feels that any elements of it are not properly transposed into UK law when we publish the memorandum, the correct place for that to be considered will be the Data Protection Bill. The wider point is that the removal of the charter from UK law will not affect—

Stephen Timms *rose*—

Dominic Raab: I am going to make some progress, because I have been speaking for over half an hour and the Solicitor General will want to speak again to address schedule 1.

The substantive rights that individuals already benefit from in the UK when their data is processed will be retained under this Bill. As I have pointed out, the charter is not the source of rights contained within it; it was intended only to catalogue those that existed in EU law at that moment in time.

Finally, I want to address the late new clauses tabled: new clause 78, tabled by the right hon. Member for Carshalton and Wallington (Tom Brake), and new clause 79. On the impact our departure from the EU might have on equalities legislation, I again reaffirm the commitment I made on day one in Committee to my right hon. Friend the Member for Basingstoke (Mrs Miller), the Chair of the Women and Equalities Committee, when we discussed this issue at some length. I understand the intention behind this amendment and can reassure the right hon. Gentleman that there will be no reduction in

the substantive equalities protections when we leave the EU. Equally, the right hon. Gentleman's amendment presents some very real practical difficulties, not least his attempt effectively to copy and paste the procedural model used in the Human Rights Act and then put it into this Bill for the equalities purposes.

The Human Rights Act assesses compatibility according to an international instrument, the ECHR, which is not the same. There is not an equivalent that applies to the Equality Act, but I am more than happy to reaffirm the commitment I made to my right hon. Friend the Chair of the Select Committee that the Government will bring forward an amendment before Report stage that will require Ministers to make a statement before this House in the presentation of any Brexit-related primary or secondary legislation on whether and how it is consistent with the Equality Act. I hope that reassures the right hon. Gentleman that the Government are serious about addressing the issue he has rightly raised.

New clause 79 suggests a procedural device for incorporating certain EEA-related rules into UK law. This is entirely unnecessary given the wider snapshot of EU law this Bill will take at the point of exit.

I hope I have tackled, or at least have endeavoured to tackle—

Mr Grieve *rose*—

Dominic Raab: I give way to my right hon. and learned Friend.

Mr Grieve: Is my hon. Friend about to move on to schedule 1, or is another Minister going to deal with it, and at what stage of this afternoon's debate? I thought the Government would wrap this all up in one, seeing as it is a single debate.

Dominic Raab: As I said at the opening of my remarks, given the intention to address clause 5 in some detail and all the underlying amendments, we have split this up and the Solicitor General will address schedule 1 and all my right hon. and learned Friend's concerns around Francovich and general principles in due course.

I hope I have tackled hon. Members' concerns, at least in relation to clause 5 and the charter, and I urge hon. Members not to press their amendments to a vote. This Government and the ministerial team have listened, and we will continue to reflect carefully on all the arguments made today. Equally, the Government believe the exceptions to retained EU law contained in clause 5 are right as we carefully seek to separate our legal system from that of the EU, restore democratic control to this House, and do so in a way that leaves more, not less, legal certainty. I urge hon. Members to withdraw their amendments and to pass clause 5 unamended.

3.15 pm

Joanna Cherry: I rise to give my support and that of the Scottish National party to the amendments designed to retain the charter of fundamental rights in domestic law, and those designed to preserve legal remedies for individuals and businesses to enforce these rights in the courts and to be compensated when the rights are breached.

It is heartening to see such strong cross-party support for these amendments. I very much hope that the Conservative rebels will have the courage of their convictions

[Joanna Cherry]

to push these amendments to a vote tonight, despite the unpleasant pressure they have been subjected to as a result of the actions of certain newspapers. That is a matter for them. There are other cross-party amendments on the charter that I am sure will be pressed to a vote if those in the name of the right hon. and learned Member for Beaconsfield (Mr Grieve) are not.

Before I address why the SNP supports these amendments, I have a crucial question for the Minister. It needs to be answered, not for my benefit, but for the benefit of the whole House and, indeed, the country. The clause we are debating revolves around the supremacy of EU law and whether the charter will be part of domestic law after exit day, but, as has already been mentioned in our debate, this morning the Prime Minister's official spokesman told a routine Westminster briefing that the Government expect

"the ECJ's role to be unchanged during an 'implementation period' of around two years following the official Brexit date in March 2019".

Are those on the Treasury Bench aware of that statement? Can they explain to us how it impacts on what we are debating today? If the Prime Minister is of the view, as her spokesman has said, that the Court of Justice's role will be unchanged during a two-year implementation period from exit day, not only is the rather ridiculous amendment brought to this House by the Government last week defining exit day rendered utterly meaningless, but much of the debate we are having this afternoon about clause 5 and, indeed, the debate we had last week about clause 6 and other clauses are rendered meaningless.

I am not trying to score a party political point here. This is a matter of legal certainty which is of the utmost importance to all UK citizens and to UK business and universities. Which is it? Is what the Prime Minister's official spokesman said this morning correct? Is the Court of Justice's role going to continue unchanged during a two-year implementation period and, if so, how does that impact what we are debating today? I am very happy for the Minister to intervene on me to clarify that, but if he wishes to take advice, I am sure that his ministerial colleague the Solicitor General will clarify that vital point and the impact of the Prime Minister's statement this morning on the entirety of this Bill, and most particularly the clause we are debating.

In any event, if this somewhat holed-beneath-the-waterline Bill is to survive and limp on, the SNP commits itself wholeheartedly to the amendments to keep the charter of fundamental rights, to keep individuals' and businesses' rights to sue and enforce, and to make those rights meaningful, because that is what the individual right of enforcement and Francovich damages are all about: making rights meaningful. For anyone who has studied law, a right without a remedy is a pretty useless thing; it is trite law.

The Scottish Government published their programme for government earlier this year, and reiterated their commitment to international human rights norms. It is important to remember that human rights are not wholly reserved by this Parliament when it comes to the devolution settlement, so what the Scottish Government choose to do could be very important, particularly if Scotland is to be taken out of the European Union against her will. My colleagues in the Scottish Government have

emphasised that it is essential that existing safeguards are not undermined by Brexit, and that the rights enjoyed by everyone in these islands, as EU citizens, need to be permanently locked into a future deal. That is why we oppose the removal of the EU charter of fundamental rights from domestic law, and why we opposed the Government's previous desire to repeal the Human Rights Act.

I was interested in the Minister's reiteration—in fairness, this has been reiterated by the Government several times as part of this debate—that there is no intention to withdraw from the European convention on human rights. But, as I have already said, rights without remedies are not much use. The great thing about the Human Rights Act was that it gave UK citizens the opportunity to enforce their rights by raising actions in the courts of their own jurisdiction. Will the Minister—or the Solicitor General, when he gets to his feet—confirm the Government's intentions regarding the Human Rights Act?

Dominic Raab: I think I have already said this, but I am very happy to reaffirm for the hon. and learned Lady that the Government have no plans to withdraw from the ECHR, or to revise or repeal the Human Rights Act.

Joanna Cherry: I am grateful to the Minister for that. I had understood that the revision and repeal of the Human Rights Act was on the back burner, but Members on this side of the House and many Conservative Members can celebrate a great victory if that plan has now been dropped and the Government are backing down on it. Unfortunately, I very much doubt that we will be in the mood for celebration as we are facing the Government's chaotic plans for Brexit, and that is what we have to discuss today.

My colleagues in the Scottish Government in Edinburgh have recently reiterated their firm commitment to the idea that international human rights norms should not just be signed up to by the jurisdictions of these islands, but should be given direct effect by giving individuals and businesses the opportunity to raise and realise their rights in the courts. The Scottish Government have indicated that they intend to

"implement the socio-economic duty in the Equality Act 2010 by the end of this year, placing a requirement on key parts of the public sector, including Scottish Ministers, to have due regard to reducing the inequalities caused by socio-economic disadvantage when taking strategic decisions. This is a key component of our approach to tackling poverty."

The Scottish Government also committed in their programme for government to look at how they can further embed human, social, cultural and economic rights, including the UN convention on the rights of the child. That is an indication that the Scottish Government's direction of travel on international human rights norms is very different from the UK Government's. It reflects the fact, as I said earlier, that human rights are not a reserved matter save in so far as the repeal or amendment of the Human Rights Act is concerned. Indeed, the Scottish Government have the power to legislate to protect human rights and intend to do so.

That leads me to comment briefly on new clause 78 and a new right in relation to equality that is intended to apply across the United Kingdom. There is a laudable

intention behind the new clause, but its application in Scotland, Wales and Northern Ireland would require discussion with and the consent of devolved Administrations, if it were to be incorporated into the devolution statutes. The Scottish Government's and Scottish National party's position on human rights also reflects the wishes of voters in Scotland, who voted to remain in the EU by a considerable margin and voted in considerably larger numbers for parties that support international human rights norms than for those that do not.

It is about time that this Parliament started to recognise that views across these islands are quite divergent from the sort of Brexit that the Government are proposing. The cross-party amendments would go some way towards the aim of keeping us in the charter and keeping remedies for UK citizens. Of course, that is not to say that there are not many people in England and Wales who voted to leave and also wish to see the charter of fundamental rights preserved. We heard, if I may say so, a typically eloquent speech by the right hon. and learned Member for Beaconsfield, who said that the rights that have come into our law as a result of our membership of the European Union have done good across these islands, particularly for the most vulnerable people in our society. One would hope that we could agree on that on a cross-party basis.

A lot of misinformation is going around about the charter, and that stems from a resistance to the idea that it is either desirable or necessary for international human rights norms to have direct effect in the United Kingdom. We have to recognise that the logical result of that antipathy to giving direct effect to international human rights norms is to take away rights, and the ability to realise them, from British citizens and businesses. That is surely not a desirable state of affairs, no matter which side of the House one sits on.

As we have heard from a number of hon. Members, the Government have tried to reassure us that importing EU law without also importing the charter will make no difference to the protection of rights in the various jurisdictions of the United Kingdom. Indeed, they state in paragraphs 99 and 100 of the explanatory notes to the Bill that it is unnecessary to include the charter as part of retained law because it merely codifies rights and principles already inherent in EU law. That is what the Minister told us from the Dispatch Box. As others have said, that rather begs a question: if it is just a simple codification, why bother not incorporating the charter?

As I pointed out in an intervention on the Minister, the Exiting the European Union Committee heard evidence from a senior legal academic who said that there will be legislation in retained EU law that refers to the charter, so there will be a lack of legal certainty if the charter is not there. The Minister would no doubt say, "Yes, but the general principles will still be there." But the charter existed as a codification of the general principles in order to make them more readily accessible.

I am interested to see the list that the Minister is going to produce on 5 December, but he could make his life a lot easier—I know that he and his colleagues have a lot on their plate at the moment—if he just incorporated the charter, rather than running around with bits of paper listing the general principles when they are all listed in the charter anyway. Surely that would be the

logical and practical thing to do; unless there is, to use someone else's phrase, some devilish plot, whereby removing the charter of fundamental rights means that rights will be removed. There is some evidential basis for believing that at least some Government Members think it is a good thing not to incorporate the charter of fundamental rights because it includes rights that they do not like. I am sorry to single out one Government Member, but I did read the article in *The Sun* yesterday by the hon. Member for Fareham (Suella Fernandes). I am not normally a reader of *The Sun*, but it caught my eye on Google that it contained an article about the charter of fundamental rights and I thought that every newspaper should be given a chance from time to time, so I had a little look. Like me, the hon. Lady is a lawyer, and she writes:

"This week Parliament will be asked to vote on whether to incorporate the EU's Charter of Fundamental Rights into UK law. If Labour, acting with others, manage to force this through there will be legal chaos. Not only will it hand new and long lasting powers to UK courts",

but it has also

"crept into many areas of UK law, from asylum to even national security."

So there we have it in the words of at least one Conservative Member. There are things in the charter of fundamental rights that some on the Government Benches do not wish to be incorporated into our law.

Suella Fernandes: I am flattered that the hon. and learned Lady is quoting me in the Chamber. Does she not find it odd that the effect of her proposals would actually be legal chaos and uncertainty? We would have interacting rights regimes, with the convention through the Human Rights Act, and the charter. This would be precisely at the time at which the Bill is designed to provide legal certainty for businesses, individuals and other Governments.

Joanna Cherry: With respect, we have all that at present. The status quo is that the ECHR and the charter of fundamental rights are part of domestic law, and I do not see any legal chaos in our courts, although I do see an awful lot of political chaos.

Wera Hobhouse: Does the hon. and learned Lady agree that there is some kind of misunderstanding here, and that it is the gaps that we are addressing? We are not creating uncertainties. The situation proposed by the Bill will create gaps, and that is the main problem that we are addressing.

Joanna Cherry: The hon. Lady makes her point eloquently. Some of those on the Government Benches say that incorporating the charter into domestic law would cause uncertainty and chaos, but our point is that not incorporating it while we are incorporating everything else at the point of the snapshot is what will cause uncertainty. I do not know whether I would go so far as to call it chaos. After all, there is going to be so much chaos around after Brexit, and a difficulty in establishing the difference between fundamental rights and general principles might not be the biggest example of that chaos. However, there will be legal uncertainty. The Minister himself said that one of the Government's guiding purposes in the legislation was to avoid legal uncertainty.

3.30 pm

Antoinette Sandbach: Our independent judiciary is clearly quite capable of balancing the rights contained in the charter, the Human Rights Act and other pieces of domestic legislation, and it has done so successfully for many years.

Joanna Cherry: Indeed it has; that is its job. In particular, judges at the higher level such as the Supreme Court and the High Court of Judiciary in Scotland are used to grappling with the complex interplay of international treaties and international human rights protections.

I mentioned earlier that the Exiting the European Union Committee had heard evidence from a variety of witnesses about the effect of not incorporating the charter. I have to be honest and say that some of them were happy for the charter not to be incorporated, but even they said that something would be lost by its going. Hon. Members on both sides of the House have given a number of examples of what would be lost, and I would like briefly to add to that list.

Lady Hermon (North Down) (Ind): Just before the hon. and learned Lady comes to her list, may I add one more item to it? The Government have made great play of their commitment to the Good Friday agreement—the Belfast agreement—and stated that they are going to uphold all their obligations under it. One of those obligations relates to respect for human rights; indeed, that element has quite a large chapter in the agreement. Part of that obligation involves having, at the very least, an equivalence between human rights protections in Northern Ireland and in the Republic of Ireland. It is obvious that when the UK leaves the European Union, Northern Ireland will not have the protections afforded by the charter that we are discussing, but that the Republic of Ireland will. I hope that the hon. and learned Lady will therefore press the Government to fill that gap in Northern Ireland's protection of fundamental rights.

Joanna Cherry: Indeed I will. The hon. Lady has, in her usual clear and incisive way, anticipated something that I was going to come to in a minute. Perhaps I will deal with it now, before I come to my list. As she says, the protection of fundamental rights is absolutely central to the Good Friday agreement, and has its own section in that agreement. The fact that the Bill will take the charter out of retained law raises concerns in this respect. The Good Friday agreement requires at least an equivalent level of protection of human rights in Ireland and Northern Ireland. If the charter is taken out of domestic law, there will be no such equivalent protection of human rights in Ireland and Northern Ireland, because once the UK withdraws from the EU, Northern Ireland will no longer benefit from the charter's protections. This could pose significant problems for the Good Friday agreement—[*Interruption.*] The Solicitor General is shaking his head—

The Solicitor General (Robert Buckland): I am listening with great care to the hon. and learned Lady's remarks and to the interventions that she has taken. Let us not forget that the Good Friday agreement was written in 1998, and that the charter of fundamental rights appeared in 2007. It is the European convention on human rights that is the key governing principle here, not the charter.

Joanna Cherry: I beg to differ. The Solicitor General is right about the dates, but as we know, the charter is merely a codification of various general rights and principles. We have significant concerns about not incorporating it, notwithstanding the little list that the Minister is going to give us on 5 December, because with all due respect, a list prepared by a Minister does not have the same weight in a court of law as a codification that has been signed up to by a number of countries.

It is not just my view and that of the hon. Member for North Down (Lady Hermon) that there will be an issue for the Good Friday agreement. A briefing produced by none less than the Bingham Centre for the rule of law has raised the question of whether non-retention of the charter will impact on Northern Ireland. It has raised a series of questions, which I have just paraphrased, and I look forward to the Solicitor General answering them in more detail, rather than merely saying that there is not a problem. If I may say so, this illustrates the whole problem with the British Government's approach to the unique situation in which Northern Ireland finds itself as a result a Brexit. There is a constant parrying, and saying, "There is not a problem, it can all be sorted out. It will all be fine." This is what is causing us problems in the negotiations with the EU27, and particularly with the Republic of Ireland. Mere platitudes and assurances are not enough. We need some detail as to why removing the charter of fundamental rights from domestic law in the United Kingdom and Northern Ireland will not pose a problem for the Good Friday agreement. However, I am sure that as we have the Solicitor General here, we will hear that detail later.

Mr Jenkin: I wonder whether the hon. and learned Lady recalls the Mostyn judgment of 2013, in which a very senior member of the judiciary expressed astonishment that there was direct applicability of the charter in UK domestic law, given that the protocol had been attached to the charter when we originally signed up to it. Given the rather temporary nature of the charter rights, how can it be so fundamental to the Good Friday agreement? It did not exist in law in this country, and was not recognised by the judiciary, even after it had been brought into force in the treaties.

Joanna Cherry: If I may say so, I think that that is to misunderstand. I am not responsible for the false assurances that were given about the opt-out when this country signed up to the charter. They did not come from the Scottish National party, and I think it is fair to say that they have now been disowned by the Labour party. In reality, the incorporation of the charter in our law has meant enhanced direct effect. I use the term "direct effect" rather than "direct applicability" because people are able to take an action and refer to those rights in the course of their action, as we saw in the Supreme Court case last summer when a gentleman named Mr Walker was able to realise equal pension rights for his husband, despite a loophole in UK law about the equalisation of pension rights for gay couples, because the EU charter closed that loophole.

I want to give the House a brief list of some of the rights involved. We have heard a lot about data protection, and I know that others will want to address that issue, but it is worth remembering that the right to be forgotten on Google and other search engines—which I believe is of interest to some Members—stems from the EU charter.

There is more to it than that, however. Let us look at the words of others, rather than simply accepting the argument on my say-so.

When the Exiting the European Union Committee took evidence on these matters, Caroline Normand, the director of policy at Which?, told us that

“the Charter of Fundamental Rights contains some really important principles for consumers. The particular ones that I would highlight are the right to a high level of human health protection, which is article 35, and a right to a high level of consumer protection.”

She referred to the case last May—it has already been mentioned today—when the large tobacco companies brought judicial review proceedings challenging the regulations that introduced standardised packaging for tobacco products. The High Court dismissed the case, referencing the public health and other rights set out in the charter. That is a pretty meaningful right for public health in these islands.

Dr Charlotte O’Brien, a senior lecturer at York Law School, told the Select Committee that she had produced an approximate count for the number of times the charter was referenced in case law. She found that the charter was cited in 248 cases in England and Wales, 17 in Northern Ireland, 14 in Scotland and 98 in the European Court of Human Rights, and in 832 EU judgments, 515 of which were from the Court of Justice. Her point was that that is an awful lot of cases that would have to be read differently, and it is not clear how they are to be read differently.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): The hon. and learned Lady and I both sit on that Committee. I would like her views on another point made by Dr O’Brien, which was that the school of thought that says that excluding the charter might not make that much difference is misleading because of the extent to which it is embedded in a lot of what we would consider to be retained EU law, and disentangling that would be extremely complicated.

Joanna Cherry: Dr O’Brien did indeed make that point, and I think that anyone interested in the detail of why removing the charter from domestic law would take away rights would be well advised to read her evidence.

Mr Geoffrey Cox (Torridge and West Devon) (Con): The number of cases in which the charter is cited—248 in England and Wales—does not mean that it has had the slightest practical effect on the outcome of judgments, as the hon. and learned Lady knows quite well.

Joanna Cherry: I do know that, because I have sat through cases—so, too, has the hon. and learned Gentleman, I suspect—in which case law has been cited and it is hard to see its relevance. However, Dr O’Brien made her point advisedly, having taken care to prepare for the Select Committee hearing, so it is not an isolated point—as the hon. Member for Feltham and Heston (Seema Malhotra) has indicated, there was quite a bit more to her evidence. She touched in some detail on data protection issues, but I will leave it to other Members to discuss those, because the right hon. Member for East Ham (Stephen Timms) had a very interesting exchange with her on these issues and will no doubt address them later, because he has tabled an amendment.

Mr Cox: The most familiar rejoinder of a judge when one cites the charter in the High Court is, “What does it add?” The most familiar response of counsel is, “Nothing.” The most familiar course of the judge thereafter is to ignore it completely, in 95% to 99% of cases.

Joanna Cherry: The hon. and learned Gentleman is no doubt commenting on the English jurisdiction, and I cannot comment on that because I have not appeared here, except in the UK Supreme Court. But certainly in Scotland it is sometimes referred to, and sometimes it is relevant and sometimes it is not, but that applies to all references made in cases. However, to counter his point, there are hard examples of where the charter has made a huge difference. The right hon. and learned Member for Beaconsfield referred earlier to the Benkharbouche case, which concerned the rights of an employee in an embassy in London, and another against the embassy of the Republic of Sudan. The individual complained of unlawful discrimination and a breach of working time regulations, and she would have been denied remedy had it not been for the charter.

One may forget Dr O’Brien’s evidence about the number of references if one wants to, but look at the hard examples of where the charter has made a difference. We have also heard about the tobacco packaging legislation. There are many examples relating to data protection, perhaps the most celebrated one being the litigation of the Secretary of State for Exiting the European Union.

Darren Jones (Bristol North West) (Lab): I hope that the hon. and learned Lady can help me with a point of confusion that I am struggling with—I hope that I do not embarrass myself in front of more learned Members of the House. Is it not right to say that the application of charter rights in the European Court of Justice creates case law that, under this Bill, we are saying has UK Supreme Court-level status, so in effect are we not copying across ECJ case law on the charter into UK common law while not copying across the charter, and is not that nonsensical?

Joanna Cherry: The hon. Gentleman is absolutely right, and that point was also made by Dr O’Brien in her evidence. If, in the snapshot of retained EU law that will be taken on exit day, we are taking across all sorts of aspects of EU law that refer to the charter, it is nonsensical not to take the charter across as well, particularly if the Government insist on sticking to what they say in the explanatory notes, which is that the charter does not really add anything that is not already in the general principles. What it does add is clarity.

The process of leaving the European Union is already extremely complex and unpredictable, and the removal of the charter of fundamental rights simply risks creating an additional level of legal uncertainty and instability. So why do it? Why not reconsider? The Government have bigger issues on their plate, such as the Prime Minister’s spokesperson’s admission this morning that we will be in the European Court of Justice for another two years after exit day, which as I said earlier renders a lot of what we are discussing this afternoon somewhat irrelevant—at least in the short term. The Government have bigger fish to fry, so why remove the charter? Why take away from ordinary British citizens and businesspeople the right to sue to enforce their rights and to realise

[Joanna Cherry]

damages if their rights have been breached? Why do that unless it is part of a wider agenda—one bigger than Brexit—that is about rolling the United Kingdom back from its adherence to international human rights norms? The Government need to think carefully about the message they are sending out.

3.45 pm

It was reported just last night that a distinguished British jurist who had been put up to be a judge at the International Court of Justice has had to withdraw from the race, because other countries in the UN are keener on somebody from another country. Even as a Scottish nationalist, I can see that that is a setback for the United Kingdom's world standing. For so long as Scotland remains part of the United Kingdom, I would like it to be an outward-looking country—indeed, I would very much like the rest of the UK to continue to be outward looking even after Scotland leaves the UK—but that sort of thing does not inspire confidence in the British Government's adherence to international human rights norms. I invite the Government to think again, and I look forward to hearing their response to several questions that I have raised this afternoon, the most important of which relates to the statement by the Prime Minister's spokesperson, but equally as important is the situation of Northern Ireland.

Sir William Cash: As I have already suggested, both Tony Blair and Lord Goldsmith strongly resisted the charter of fundamental rights being made part of UK law, as made clear by my European Scrutiny Committee in its report of April 2014, which anyone can read, so it is impossible to understand why the Labour party has now taken retaining the charter as its position—although as someone said to Alice said in “Through the Looking Glass”:

“I’ve believed as many as six impossible things before breakfast.”

The Conservative party categorically ruled out bringing the charter into UK law in our manifesto, and we also voted against the Lisbon treaty. That included the charter, which the European Court of Justice has since ruled did apply to us, because it includes the application of EU law as applied by the European Court of Justice, including assertions of constitutional supremacy over our Acts of Parliament and the vicarious power to disapply those Acts. An example of that—I mentioned this in my exchange with my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve)—is the striking down by the House of Lords of the Merchant Shipping Act 1988 in the *Factortame* case. For all those reasons, it would be unconscionable to include the charter in this Bill.

With great respect to those who have tabled amendments, the European Court of Justice's interpretation and the case law, which is so greatly liable to EU jurisprudential elasticity by the Court itself, would thereby enable the UK Supreme Court to disapply Acts of Parliament. That is absolutely fundamental, and it would also be completely undemocratic. It has already happened under the present aegis in the case of the 1988 Act, but it would happen more and more frequently, and we would simply have to accept it, because it is not a question of opinion; it is a question of law and of fact.

Mr Jenkin: It is for the European Court of Justice to continue to interpret what the charter of fundamental rights actually means within the European Union, so if the charter was incorporated into our law, what relationship does my hon. Friend think would exist between our Supreme Court and the interpretations that would continue to be developed in the European Union?

Sir William Cash: The Supreme Court would be applying the European interpretation in that context, and I simply say that it will involve disapplication of law. It is a matter not of assertion but of fact and law that that is precisely what will happen.

I urge my right hon. and learned Friend the Member for Beaconsfield and others not to press their amendments on the charter, because to do so would be totally unacceptable. I refer to what I have alluded to already: the principle set out by Lord Justice Bingham in chapter 12 of his magisterial book on “The Rule of Law and the Sovereignty of Parliament?”, in which he publicly criticised the attitude of Baroness Hale, now President of the Supreme Court, and Lord Hope of Craighead in suggesting that the courts have constitutional authority, as against an Act of Parliament. With respect to the whole question of parliamentary sovereignty and the issue of the courts, he says that various remarks had been made but:

“No authority was cited to support them, and no detailed reasons were given.

I cannot for my part accept that my colleagues' observations are correct... To my mind, it has been convincingly shown”—

by Professor Goldsworthy, one of the greatest authorities on this subject—

“that the principle of parliamentary sovereignty has been recognised as fundamental in this country not because the judges invented it but because it has for centuries been accepted as such by judges and others officially concerned in the operation of our constitutional system. The judges did not by themselves establish the principle and they cannot by themselves change it... What is at stake”—

said Professor Goldsworthy—

“is the location of ultimate decision-making authority... If the judges were to repudiate the doctrine of parliamentary sovereignty, by refusing to allow Parliament to infringe on unwritten rights, they would be claiming that ultimate authority for themselves.”

Moreover, Lord Bingham went on to say that they would then be transferring the rights of Parliament to judges:

“It would be a transfer of power initiated by the judges, to protect rights chosen by them, rather than one brought about democratically by parliamentary enactment or popular referendum.”

With some irony, the Bingham Centre for the Rule of Law has put some of the contrary arguments.

Sir Edward Leigh (Gainsborough) (Con): My hon. Friend is making some excellent points about parliamentary sovereignty, but I am not sure the point has yet been made that there has been a cosy consensus in this debate so far that everything about European human rights is wonderful and that we want to transfer those European human rights into our own law. Actually, many of us think that the advancement of European so-called human rights has been to the detriment of the rights of other people, particularly religious people, to find their own space, because European equality laws trump all other laws. When we regain parliamentary sovereignty, in this House and through our democracy, we can start asserting real human rights.

Sir William Cash: I agree with my hon. Friend's general proposition, to which I would add that it is up to us to make our own laws. We can listen to the arguments, we can make the amendments and we can recognise human rights, as well as all the other things, as I did with the International Development (Gender Equality) Act 2014. I entirely agree with his sentiment for that reason.

Lord Bingham went on to say:

"We live in a society dedicated to the rule of law"—

I note the reference to that by my right hon. and learned Friend the Member for Beaconsfield—

"in which Parliament has power, subject to limited, self-imposed restraints, to legislate as it wishes; in which Parliament may therefore legislate in a way which infringes the rule of law; and in which the judges, consistently with their constitutional duty to administer justice according to the laws and usages of the realm, cannot fail to give effect to such legislation if it is clearly and unambiguously expressed."

I ought to add that, in fact, Lady Hale revisited that territory, before she was made President of the Supreme Court, in a speech in Kuala Lumpur on 9 November 2016.

The Conservative party opposed Lisbon, which conferred treaty status on the charter. I say this to my right hon. and learned Friend the Member for Beaconsfield with all respect, because we get on pretty well and we have had several chats over the past few days, but I trust he will recall his opposition to the Lisbon treaty and, therefore, to the charter when he was shadow Attorney General—he followed me in that post. More specifically, I hope he will recall the evidence he gave to the European Union Committee of the House of Lords, which was cited in its report published on 9 May 2016—

Mr Grieve *rose*—

Sir William Cash: I know my right hon. and learned friend knows what I am about to say, but may I finish the quotation? He said that

"the European Court of Human Rights is a very benign institution, whereas I happen to think that the European Court of Justice in Luxembourg has predatory qualities to it that could be very inimical to some of our national practices".

I would suggest that those are in respect of the question of disapplication of Acts of Parliament.

Mr Grieve: May I gently say to my hon. Friend that although this is fascinating, we are actually talking about retained EU law which will not be subject to the jurisdiction of the Court of Justice of the European Union? I do have criticisms of the CJEU and the way it has operated at times, and I have had the pleasure, or misfortune, of appearing before it. Its teleological principles and its purposive interpretation of law have often been challenging in our national setting, although it is not a pariah court and by international standards it is a pretty good tribunal. So I stand by the points I made on that occasion, but they in no way diminish or undermine anything that I have said here this afternoon.

Sir William Cash: I simply add that I understand this with reference to the European Court in its existing situation, because not until we leave the EU are we able to avoid the jurisdiction of the European Court, so that applies at least for the next two years and probably for the two after that. God knows what they will do in the meantime. My European Scrutiny Committee has been holding meetings already on the European laws that have been proposed since the general election, but the problem is—

Wera Hobhouse: Will the hon. Gentleman give way?

Sir William Cash: No, I will not, because, as the Chair will appreciate, I have taken a lot of interventions, as I did last time, when I took six or eight. It is impossible to get the arguments out in reply to my right hon. and learned Friend the Member for Beaconsfield, with whom I have been discussing this for an extremely long time—for the best part of 20 years—if I am constrained in this way, so I am not going to take any further interventions.

What lies behind these amendments is not only the charter itself, but the whole role of judicial interpretation and jurisprudence in its application to the UK; by virtue of the way in which the amendments would apply, the Supreme Court would inherit the power to invalidate and disapply Acts of Parliament. This is a matter of the gravest constitutional significance and it goes to the heart of the stability of this country and its rule of law. In turn, that goes to the heart of our democratic system and the right of the British people to govern themselves, whichever party they come from, in respect of how they vote in free elections, exercising their freedom of choice as to whom they decide to govern them until the next general election.

All this is intrinsically bound up with the claimed virtues of the European Court itself—it is not impartial. As I said in the previous debate, when the European Court adjudicated on the *Van Gend en Loos* case and *Costa v. ENEL* in the 1960s and early 1970s, and the *Internationale Handelsgesellschaft* case, it was doing so on its own initiative, without any basis in EU treaties, until the Lisbon treaty, which we on this side of the House, including my right hon. and learned Friend, opposed. That is what did this. We opposed it. He opposed it. I simply make that point to put it on the record.

This Lisbon treaty, as the European Scrutiny Committee also demonstrated, was the Giscard d'Estaing proposal for a European constitution by any other name. It is part and parcel of the other characteristic of the European Court, which is the drive towards political integration and its interpretation of law by the purposive rule, even when the wording in question is neither obscure nor ambiguous. Furthermore, many different purposes may, from time to time, be in conflict with one another, but the driving force for them is the integrationist road map from which it never deviates and never will. It is the ultimate engineer of European integration. Equally, it has adopted a method of interpretation that neutralises the principle of the conferral of powers that were meant to be limited under articles 4 and 5 of the treaty on European Union. By doing so, it has extended the range and effect of European law by leaps and bounds. With that comes the extensions of competence, which in turn are everlastingly overarching and limitless. The European Court has never once annulled a general EU legislative act, except on one occasion, and when it did so, it was re-enacted almost immediately. It is permanently on the march in favour of political integration and by any standard is therefore more a political than judicial court.

4 pm

The interaction of case law and the effect it will have in relation to our Supreme Court is of enormous importance. Professor Ekins, an associate professor of law at the University of Oxford, recently gave evidence to the Exiting the European Union Committee. He said in written evidence:

“Responsibility for deciding whether to repeal or amend EU-retained law should be with political authorities not with courts and it is unwise to maintain the Charter to allow for challenges to this law.”

He went on to say:

“The Charter is a major destabilising legal source.”

Later in his written evidence, he said:

“It would be much better, and safer, to remove the Charter from our law on exit day.”

So there we are.

It would be totally unacceptable to include the charter formally at the time of our repeal of the European Communities Act and effectively to provide for our own version of the European Court to apply the charter and empower the Supreme Court to disapply enactments. In any case, there are many provisions in the charter that expressly involve EU laws and so are themselves inconsistent with our leaving the European Union. The proposed changes to the Bill would be not only incongruous but contradictory.

The European Court is under attack from substantial, experienced and external authorities. For example, Judge Dehousse is a former European Court judge of 13 years who had previously been an adviser to the European Parliament, Commission and Council. In his farewell address to the European Court of Justice he expressed withering criticism of the Court, using expressions such as,

“everything in this episode was shocking”.

He also said:

“In the name of hierarchy, this nonsense was maintained for many years.”

He referred to the lack of consultation and to questionable and secret letters that left him “speechless”, and ended with the accusation that

“the Institution’s governance system remains out-dated, obscure, and devoid of sufficient controls.”

In my judgment, the further we keep away from the European Court, the better.

Judge Dehousse made another speech in 2017 on the future role of the ECJ in the context of Brexit, in which he said that the ECJ’s role in relation to the citizens’ rights issue is “dangerous”. He said that article 50 was invented

“to show that the EU was not a prison”,

and that the guidelines for the negotiations include

“a connection with the desire to keep some aspects of EU law applied in the UK”,

which he said

“could create an incredible legal vipers’ nest”.

He said that the UK would become the only third state to submit to the jurisdiction of the European Court, and concluded by saying that

“one wonders how this is considered acceptable for a sovereign state.”

Such comments demonstrate a real problem with the EU guidelines because, as he points out and as is clear, the EU institutions do not seem to be able to accept the massive change that the triggering of article 50 made to the European Union itself.

On amendment 10, the general principles are legal principles recognised by the European Court, which I just described in the words of Judge Dehousse, and have been regarded by the EU as essential to the EU legal order. They are the EU’s primary law, with the

same status as the treaties with primacy. As it stands, under schedule 1, which we are debating with this group, the European Court would no longer be able to disapply UK Acts of Parliament or other legislation on the grounds that they conflicted with the general principles, and nor could they be made the basis of judicial review.

Given the referendum and the Second Reading of the repeal Bill, for which my hon. Friends, including my right hon. and learned Friend, and some Opposition Members voted, I do have the greatest difficulty in understanding how it can be proposed in amendment 10 to schedule 1 to

“leave out paragraphs 1 to 3”.

Therefore, despite the fact that my right hon. and hon. Friends voted in favour of the Second Reading of the Bill, this amendment attempts to protect retained EU law from challenges on the grounds of a breach of the general principles of EU law, and that seems unacceptable. The general principles under the Bill would only be part of domestic law if recognised as such by the European Court before exit day. The Bill would remove the jurisdiction of the European Court over the UK after Brexit.

Clause 6 (3) states:

“Any question as to validity, meaning or effect of any retained EU law”

must be decided by our domestic courts, including the Supreme Court. In effect, the amendment seeks to make our courts continue to follow the general principles of EU law and ECJ jurisprudence, increasingly making us conform to EU law, particularly to the general principles of that law and the outpourings of the European Court, enabling the laws passed in this Parliament to be challenged where it diverges from EU law. That would include many matters relating to national security and terrorism, which EU case law already covers.

For all those reasons, I strongly urge my right hon. and hon. Friends—I say this with all sincerity—not to pursue these amendments. If those amendments are pressed, I call on the Committee to reject them. I say that because, as my right hon. and learned Friend the Member for Beaconsfield has already conceded, they are technically defective and would not make sense.

Mr Grieve: As I said, the drafting of amendments is quite a complex matter, and I am the first to accept that an amendment may not meet the exact needs of the Government, even if the Government were to seek to accept it. None the less, the position is very simple and I can only repeat it: amendment 10 will be put to the vote unless the Government give some satisfactory assurances that they will respond to it.

Sir William Cash: Let me conclude. I do hope that my right hon. and learned Friend will not do what he has just suggested. I say that because those measures are defective not only in the way that he has described, but in respect of paragraph 5 of schedule 1. Amendment 10 refers to paragraphs 1 to 3, but there are also difficulties in relation to paragraph 5, which I will not go into now because I have made all my remarks.

I sincerely urge my right hon. and learned Friend to listen to the arguments and to accept the fact that, for very good reasons, it would not be appropriate to press these amendments to a vote.

Stephen Timms: I rise to speak to amendment 151, which, at first sight, looks rather technical but actually references, as we have already established in this debate, a hugely important issue for the UK economy. I am very grateful to all those Members, from all parties across the House, who have signed the amendment, and to the Chairman of Ways and Means for selecting it for debate.

The amendment deals with future electronic communication between the UK and the remaining member states of the European Union. The Government's future partnership paper on this topic, published in August, was absolutely right to highlight just how important an issue this is for the UK economy. That paper pointed out that the UK accounts for 0.9% of the world's population, 3.9% of the world's GDP, and 11.5% of the world's cross-border data flows, 75% of which is with other EU countries. This is an enormously important issue, particularly for the UK economy given its reliance on its digital aspects.

The Government are absolutely right to argue that we must avoid restrictions on cross-border data flows because they would affect the UK more than almost any other country in the world. It is also right to point out that the UK has very strong personal data protection. That is currently being strengthened by the new Data Protection Bill being debated in the other place, which will bring our arrangements into line with the EU's general data protection regulation, or GDPR, and the Government are absolutely right to make that point.

Nevertheless, we face a serious potential problem: the edifice of data privacy law in the UK rests on article 8 of the charter of fundamental rights. Under clause 5(4) of this Bill, article 8 will not be part of domestic law after we have left the European Union. Will the omission of article 8 from our law make any practical difference to how the law works in the UK? There have been some suggestions that it will not, but the evidence is that, in fact, it will.

In the exchange between the hon. and learned Member for Edinburgh South West (Joanna Cherry) and my hon. Friend the Member for Feltham and Heston (Seema Malhotra), we heard about the evidence given by Dr Charlotte O'Brien, a senior lecturer at York Law School, to the Select Committee on Exiting the European Union. She said:

"exclusion of the charter is problematic for a number of reasons", and I want to quote a couple of the points that she made.

Dr O'Brien said that a large number of appeal cases in UK courts cited the charter. She added:

"That is a lot of cases that have to be read differently and it is not clear how they are to be read differently."

One of the appeal cases under discussion—we have referred to it a number of times in the debate—involved my hon. Friend the Member for West Bromwich East (Tom Watson) and the right hon. Member for Haltemprice and Howden (Mr Davis), now the Secretary of State for Exiting the European Union.

Mr Harper: I was just listening to what the right hon. Gentleman said about the court cases. Would it not be the case, if we did not have the charter of fundamental rights and article 8, that all those cases would simply cite the other pieces of legislation he mentioned—the

general data protection regulation and the Bill we are currently passing through Parliament? I do not really see the problem he is trying to fix.

Stephen Timms: The right hon. Gentleman gets right to the heart of the case. I believe that the answer to his question is no they would not, or at least we do not know what the outcome would be. I suggest that the right hon. Member for Haltemprice and Howden might well not have won his case against the Government if he had not been able to rest on article 8. The hon. Member for Banbury (Victoria Prentis), who intervened earlier, might have persuaded the court that the then Home Secretary, now the Prime Minister, was right in what she was doing and that the right hon. Member for Haltemprice and Howden was wrong. We do not know what that Appeal Court would have decided, but I put it to the right hon. Member for Forest of Dean (Mr Harper)—I think he is rather implicitly accepting the point—that if article 8 had not been there for the right hon. Member for Haltemprice and Howden to rest on, the outcome of that case and of lots of others could well have been different.

To quote Dr O'Brien again, she made the point that the gap that is created by no longer having the charter of fundamental rights in UK law is probably clearest in the case of data protection because of the charter

"creating fairly specific, concrete rights that are not necessarily enunciated in exactly the same terms elsewhere."

I think that is the answer to the intervention I have just been responding to: actually, these rights are not readily available elsewhere.

I was delighted to hear from the Minister that we will get a document—I think he said by 5 December—setting out all the rights in the charter of fundamental rights and where they can be found elsewhere in UK law. That will make very interesting reading. I simply make the point at this stage that a number of experts are saying that some of the rights—this is particularly the case with article 8—are not elsewhere. It will be interesting to see what that document says.

It is worth reminding the Committee of what article 8 says. The first two of the three points within it state:

"Everyone has the right to the protection of personal data concerning him or her...Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified."

As has been mentioned in this debate, there is a right to be forgotten, and that is provided by the right to have data rectified. It goes on to say that there needs to be an independent body in charge of all this. That is what article 8 says, word for word. My amendment says that that needs to be on the statute book in the UK. I do not think that those forms of words would cause great difficulty to the Government. We all agree that these are appropriate things, but they need to be explicitly set out in the law so that they can be drawn on in future, because they are not set out clearly elsewhere.

4.15 pm

The Minister, in responding to an earlier intervention prompted by a comment from the Solicitor General, suggested that article 8 of the European convention on human rights was good enough. That certainly is not correct, as it sets out the right to respect for private and

family life. While I can see that there is some sort of vague connection, article 8 of the ECHR does not even mention data. If the Government think that they are going to get the European Commission to confirm that our data protection is adequate on the basis of article 8 of the ECHR, they really are in for a very rude shock in due course. It does not cover that at all.

The right hon. and learned Member for Beaconsfield (Mr Grieve) suggested that a way forward could be to incorporate the words I read out from article 8 of the charter of fundamental rights in a Bill, thereby giving them a status on a par with the Human Rights Act. Certainly, if the Government were to move in that direction, it would meet the aims of my amendment. If this is no longer spelled out clearly in UK law, there will be some uncertainty about how UK data protection law will work after Brexit, and that would be unfortunate.

However, there is a far more serious issue at stake than a bit of difficulty in how we interpret the law in future, because this lack of clarity would put at risk the outcome of the European Commission's determination of whether data protection regulation in the UK is "adequate"—a technical decision that the Commission will be called on to make in due course. Failure to secure such a determination would be catastrophic for the UK economy.

Darren Jones: Does my right hon. Friend recognise that if the European Commission makes a decision on equivalence, that recommendation has to go to a committee of information commissioners from the 27 EU member states, and it is for them to decide whether there is equivalence? As the Institute for Government says, when making their decision, they will check whether data adequacy is met by considering respect for fundamental rights and a scope for judicial redress. Both redress and respect are mentioned in the EU charter of fundamental rights, are they not?

Stephen Timms: My hon. Friend, who is a lawyer specialising in these matters, is absolutely right. I understand that the European Parliament also has a role in all this, and so there is a political dimension to it as well.

The position at the moment is that as an EU member state we can exchange personal data freely with others in the EU—Governments, businesses and individuals. The Under-Secretary of State for Exiting the European Union, the hon. Member for Wycombe (Mr Baker), told the Select Committee that the Government would seek to include data flows in the wider negotiated agreement for a future deep and special partnership between the UK and the remaining member states of the EU. I welcome that confirmation. However, as we keep on being reminded, we might not get a deal, so what then? If we do not get a deal and an adequacy determination, it will be unlawful to send personal data from the European Union to the UK, and, at a stroke, there will be no lawful basis for the continued operation of a significant chunk of the UK economy. I hope we all agree that we must avoid that outcome at all costs. Already, we hear that hi-tech start-ups that need access to personal data are starting to look at Berlin in preference to London because of the possibility that that problem might, in due course, arise.

The Government have argued that because we are fully implementing the GDPR, the Commission will be unable to find fault with UK arrangements even if we

lose article 8. I have to say to Ministers that the UK technology sector does not agree, and my judgment is that it is absolutely right to be worried. The danger is not a theoretical one, as we see in the case of Canada. A very long-running series of negotiations has led to a pretty ambitious agreement between Canada and the EU, but Canada has only got a partial adequacy determination.

If we ended up with only a partial adequacy determination on data, it would be extremely damaging for the UK economy. The US arrangements known as "safe harbour" were famously struck down as inadequate by the European Court of Justice in a case brought by an individual Austrian citizen in 2015. That caused an enormous upheaval and led to the very rapid introduction of new arrangements in US regulation called "privacy shield", which I understand are being called into question in a new case at the European Court of Justice by the same Austrian citizen.

The European Court of Justice is particularly sensitive about UK bulk collection of personal data. That issue featured prominently in the Appeal Court case, which we have touched on several times in this debate, brought by the right hon. Member for Haltemprice and Howden. The Court considered whether the powers in the Data Retention and Investigatory Powers Act 2014 went too far, allowing the state to breach personal data privacy, and concluded that the powers introduced by the then Home Secretary went too far. Article 8 of the charter, specifically, was the basis for that conclusion. If article 8 is no longer in UK law, it may make life easier for future Home Secretaries who wish to do the kind of thing that the previous Home Secretary tried to do, because they are much less likely to be found in breach. That rather bruising experience at the hands of the right hon. Member for Haltemprice and Howden may well be one reason why the Prime Minister wants to keep the charter out of UK law.

Hilary Benn: My right hon. Friend is making a very powerful case. The Select Committee heard evidence from the Under-Secretary of State for Exiting the European Union, the hon. Member for Wycombe, who said that the Government would seek a data adequacy agreement. Like him, I would welcome that, but it is not entirely clear whether that can be achieved, should there be a deal.

I had always understood the data adequacy decision to be a regulatory decision of the Commission in respect of a third country, as my right hon. Friend has made clear in his previous remarks. Therefore, if there is no agreement or it is not legally possible to override the decision with an agreement, all the points that he has made—that the Commission has to decide, and that the decision is subject to legal challenge and could go to the Court or to other member states—merely demonstrate how much is at stake when it comes to getting this right.

Stephen Timms: I absolutely agree with my right hon. Friend. My understanding is that the shortest period in which a data adequacy agreement has ever been achieved is 12 months, in the case of Japan. Very often, these things take a good deal longer.

By exactly the same token, and precisely because it may be a source of satisfaction to Home Office Ministers, excluding article 8 will constitute an invitation to the European Commission and the European Parliament

to find fault with UK data privacy regulation. The cases brought by the right hon. Member for Haltemprice and Howden and others would not have succeeded if they had not been able to rely on article 8. Those who look at these matters on behalf of the European Union will have no doubt in their minds, as far as I can see, that that is the case.

Daniel Zeichner (Cambridge) (Lab): My right hon. Friend is making an excellent case on a very complicated set of issues. Does he agree that the conclusion we should draw from the points he has made and from the observation I am about to make, which is that this has so far been a very lawyerly discussion, is that this will end up being a highly political decision? Whatever the rights and wrongs as expressed by the lawyers today, we are politicians who face a political set of choices, and we are absolutely offering those who do not have our best interests at heart the opportunity to frustrate us in future. It is a very risky endeavour, and it would be much easier to keep the charter.

Stephen Timms: My hon. Friend is absolutely right. This is such an invitation, and it is a terrible risk to take. Frankly, I think it is playing fast and loose with a very important part of the UK economy.

Let me finish by quoting the industry body representing this part of the UK economy, techUK, which is very deeply concerned about this issue and supports amendment 151. It makes the point that

“the Government must do all it can to ensure that we are in the best possible position to secure adequacy, and this includes making clear, at every opportunity, that the UK’s data protection framework is equivalent to the one we have operated as an EU Member State.”

Leaving article 8 off the statute book seriously imperils the future achievement of such an adequacy determination. We will of course argue that our arrangements are adequate, but for data exchanges with EU countries, it will not be our call; it will be their call. They will make the decision: the call will be made by officials and politicians in the European Union and by the European Court of Justice. It is running too great a risk for our digital economy—at 10% of GDP, it is proportionately the biggest digital economy anywhere in the G20—and I urge the Committee not to run that risk or to play fast and loose with the UK economy, but to accept amendment 151.

Mr Harper: I should probably declare whatever the opposite of an interest is, in that unlike many of those who have spoken so far, I am afraid that I am not a lawyer. I am a humble accountant, so I hope colleagues will forgive me if I do not always get the exact legal points they have made absolutely spot-on. However, I will do my best to do justice to the debate.

I will run through the new clauses and amendments in broadly chronological order as the debate has flowed, making comments that I think are pertinent based on the arguments that have been made. Let me start with new clause 16, which was moved by the hon. Member for Nottingham East (Mr Leslie). I listened carefully to what he said, and I think the Minister dealt with it effectively by committing the Government, quite explicitly, to producing the memorandum promised by the Secretary of State in evidence to the Select Committee by 5 December.

There was a bit of an exchange in one corner of the Chamber when my right hon. Friend the Member for West Dorset (Sir Oliver Letwin) sought clarification on whether that would be before Report. I fear, having done a little mental arithmetic, that it will be well before Report, because there are five remaining days in Committee and given the Budget debate, even if we sat every day and fitted them all in, we will not get to Report by 5 December.

We will therefore have the memorandum while we are still in Committee, so we will be able to see whether what the Minister and the Government say is correct, as I believe it is, which is that all the articles in the charter of fundamental rights are underpinned by a retained EU law foundation that will be brought into UK law. I do not know how the Government will lay out the memorandum, but we will be able to see how each of the rights is underpinned and its legal basis. We will be able to have a debate about that, and if Members are not satisfied with the memorandum that the Secretary of State has brought forward, that will leave open the opportunity for tabling further amendments on Report. I therefore hope that the hon. Member for Nottingham East will not need to press his new clause.

The right hon. Member for Tottenham (Mr Lammy) is not in his place, but I want to pick up his remarks about the signals and messages sent out. I do not think that that is a helpful way of looking at this issue. The charter of fundamental rights came into force with the Lisbon treaty. Unlike some hon. Members, I sat through 10 of the 12 days of debate on the Lisbon treaty—much like the debates that we are having now, although we were in opposition then. Before that measure came into force, we did a pretty good job in this country of protecting rights, and we were one of the best countries at protecting rights. The idea that if we do not have the charter of fundamental rights somehow dreadful things will befall us does not stand up.

The right hon. Gentleman’s specific example of people, including children, who were held and used in slavery and servitude around the world, was a particularly poor one. This country introduced the Modern Slavery Act 2015 under the leadership of my right hon. Friend the Prime Minister when she was Home Secretary, and demonstrated that it did not follow the world on human rights matters but led it. That groundbreaking piece of legislation introduced a significant number of measures for businesses to be able to understand supply chains, and introduced considerable legal powers to deal with human trafficking and modern slavery. It stands as a positive beacon in the world, rather than the negative one that the right hon. Member for Tottenham suggested.

4.30 pm

I wanted to touch on two aspects of the thoughtful speech of my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve). My hon. Friend the Minister has dealt with many of the points that arise in clause 5, and we will hear later from the Solicitor General, who will deal with schedule 1. I shall deal with both provisions, as I will have only one opportunity to speak. I hesitate to disagree with my right hon. and learned Friend the Member for Beaconsfield, but I do not think he was entirely right about equality rights in our legislation being underpinned by a European origin. I would draw on an example that I know better than others: the rights

for disabled people in our legislation. Although those are now incorporated in the Equality Act 2010, we first introduced them in their full breadth in the Disability Discrimination Act 1995, which was passed by William Hague, now Lord Hague of Richmond, supported by Sir John Major when he was Prime Minister. That was derived not from measures with a European basis but from the Americans with Disabilities Act, which William Hague studied as he looked at how we could introduce its provisions in UK law. The entire measure was copied and put into the Equality Act when the Labour Government consolidated equality rights in one piece of legislation. I guided the legislation through Committee as a then Opposition spokesman. It is simply not the case that all our equality rights derive from European legislation. In fact, a considerable number are domestically generated or are based on examples around the world.

My right hon. and learned Friend's speech highlighted some important issues, and he teased them out very well. I would disagree with him, however, about the Court. I am comfortable with the Government excluding the charter but keeping the underlying legislation because the language of the charter is drawn very loosely and is capable of expansive interpretation. Both the charter and the European convention are living documents and are updated as time goes forward. I have no complaint about that but, as my right hon. and learned Friend accepted, the way in which the European convention and the Human Rights Act dealt with that struck the right balance: the Court can make a declaration of incompatibility with primary legislation, but cannot strike down the legislation. It effectively presents the House with a clear challenge either to deal with the legislation or to respond in some way to the declaration of incompatibility. I fear that in trying to right a wrong there is potential harm—a point flagged up by my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke). The risk of leaving the charter in place, rather than the underlying rights, is that it allows the European Court of Justice, while it still has jurisdiction over us, or our Supreme Court to expand the scope of the charter into areas where we do not yet think it might wander.

I will come on to data protection later, but article 8 is a very good example. All three points under article 8 are comprehensively dealt with by the Data Protection Act 1998. The one addition is:

“the right to have it rectified.”

A plain reading of that is dealt with in the Data Protection Act. The right to be forgotten, which I believe is the extension the European Court of Justice read into that, is arguably not a right to have it rectified at all. In fact, there is an argument that it is the opposite of rectifying the record: taking facts that are in the public domain and expunging them; deleting and getting rid of accurate information that is not misleading and should be in the public domain. We can argue about whether that is right or wrong, but I do not think it exists on a plain reading of the article. It is an example of judicial expansion and I think it is that mischief the Minister is trying to deal with when he suggests we remove the charter from the underpinning rights and just leave the original rights as existing in European law in place. I think that that is the harm he is trying to deal with.

Stephen Timms: May I just challenge one point? If the right hon. Gentleman looks at the Data Protection Bill currently being debated in the other place, he will see that it does not say that everybody has the right to have their personal data protected. It does not set the right in the terms set out in the article. From a European perspective, and from an Appeal Court perspective, that is potentially a problem.

Mr Harper: I will come on to that at the end of my remarks. I followed the right hon. Gentleman's speech very carefully. He is absolutely right that we should deal with this in a serious way, because it is a very significant part of our economic present and, I hope, an increasing part of our economic future as we in this country are particularly well placed to take advantage of the digital economy.

The other interesting point flagged up by my right hon. and learned Friend the Member for Beaconsfield is the fundamental argument about rights legislation. He pointed out that some decisions on potentially striking down Acts of Parliament would have to be taken by the UK Supreme Court, not the European Court of Justice. He said he was very relaxed about that because he had great confidence in our judges, as do I. For rights legislation, however, there is a different argument to have, which is not about the nationality or otherwise of the judges or the court, but whether such decisions should be taken by judges or by democratically elected politicians in this House. We had this argument when we debated prisoner voting—not on the nationality of the judges and the court, but on whether that was a proper decision to be made in this democratically elected House or by judges interpreting a living document. That was a point my right hon. and learned Friend teased out in his remarks.

Listening to the debate as it progressed, my right hon. and learned Friend accepted that his amendments may not be the best way to deal with the potential problems he flagged up. The exchange between him and my right hon. Friend the Member for West Dorset was very interesting and spoke to the debate on schedule 1, to which the Solicitor General will reply. Amendment 10 would get rid of paragraphs 1, 2 and 3 of schedule 1. The reason my right hon. and learned Friend gave for removing paragraph 3 was that it talked about the general principles of EU law and not the retained principles. Paragraph 2 tries to deal with the retained principles by saying that we keep all the general principles that have been reflected in decided case law before exit day.

That was an interesting discussion. It suggests that it might be possible for the Solicitor General to find a way for the Government to amend the Bill on Report. Clearly, my right hon. and learned Friend wanted a little specificity on that, although I do not agree with my right hon. and learned Friend the Member for Rushcliffe, who tempted the Government just to accept the amendments and then correct them. Having been in the Solicitor General's position at the Dispatch Box, I would prefer the risk-averse approach of inviting the House not to be tempted by the amendments and then coming back afterwards, but I accept that those tempted by the amendments will want a little specificity and detail from him about the nature of what he will reflect on and bring forward. I hope that he can produce the right level of specificity to give my colleagues that confidence.

Anna Soubry: Does this debate not show how technical this is and how good it is—I know people get a bit agitated about lawyers—to have so many lawyers, especially constitutional lawyers, on these Benches? Actually, most people are keen to get the Bill right on a constitutional level, and the more we can debate it, thrash it around, get it sorted and reach sensible compromises, the better it will be for the Bill, for Parliament and for this whole Brexit business, because it will stop some of this division and bring us all together.

Mr Harper: I am grateful for that intervention. Actually two other useful points came out that I had not previously heard in this debate. One was about rights. A discussion is under way, which will be dealt with partly in this Bill and partly in the other withdrawal Bill, on the extent to which certain important matters will only be dealt with in primary legislation. Ministers will be clear that they will not use the ability to change those important rights in secondary legislation. To some extent, that has been dealt with by the fact that we will have the other withdrawal Bill. I think that the Secretary of State has given a commitment that certain things will only be dealt with in primary legislation.

On the second point, I hope the Treasury Bench will forgive me—tempting a discussion about amending the Human Rights Act is probably not something that in my previous job as Government Chief Whip I would have wanted to encourage—but a sensible argument has been made for saying that, if there are important rights that we think are not adequately reflected in legislation, at some point, in due course if not perhaps immediately, some of them might benefit from being brought into the Human Rights Act. That might be worth thinking about, although it would have to be done very carefully, because once we start down that process of amendment, I do not know where it will end. Those two avenues for dealing with this were, I think, very sensible.

I think that my right hon. and learned Friend the Member for Beaconsfield accepted that it might not be right to pursue amendment 8, but, on amendment 10, although I would not agree with the approach of my right hon. and learned Friend the Member for Rushcliffe, a point has been made on which Ministers could sensibly reflect. I hope that when the Solicitor General responds he will be able to make a sufficiently specific commitment to persuade my right hon. and learned Friend the Member for Beaconsfield and others not to press amendment 10.

The hon. Member for Sheffield Central (Paul Blomfield), who is not in his place but whose Front-Bench team are more than adequately represented, said that rights were not as effective if their source or root was not clear. I am afraid that this is a lawyerly point that I did not quite follow, but I hope that the Minister dealt with it. The memorandum he is going to bring forward should make clear the source of each of the rights in the charter of fundamental rights, so we should be clear about the retained law being brought forward. I hope, then, that that central point of the hon. Gentleman's argument will be dealt with.

Let me return to article 8 of the charter of fundamental rights, to the point made by my hon. Friend the Member for Chelmsford (Vicky Ford) in an earlier debate and to the fundamental underpinning of the argument advanced by the right hon. Member for East Ham (Stephen Timms). I think that my hon. Friend the Member for

Chelmsford slightly overstated what the article says. She claimed that it said that everyone owned their data, whereas it actually says that people have the right to protect their personal data. She also spoke about the level at which it was necessary for our law to be exactly the same as ongoing European legislation.

4.45 pm

That, of course, is one of the arguments that we are going to have about our trade and future relationship with the European Union, and it is pertinent to the points made by the right hon. Gentleman. It is the argument about whether we are to have exact regulatory matching and stick to the letter of each piece of European legislation if we are to trade successfully—whether in goods, services or data—or whether we are to have equivalent legislation which adequately protects and matches those rights, which we may deliver in a different way, but which is equivalent to those rights.

Antoinette Sandbach: The Business, Energy and Industrial Strategy Committee heard some very interesting evidence today from representatives of the aerospace and airline manufacturing sectors. They said, “We want identical regulations for the safety of passengers. It is vital to the industry for our regulations to be exactly matched with those of Europe.” There will be some areas in which we shall need regulatory matching.

Mr Harper: That is a very helpful point. There may well be areas in which, because of the nature of the product or service involved, the exact matching of regulations will be judged to be right, but that may well not be the case in every single area. Perhaps what we need is a sensible structure that allows us to have some debates and decide what is the right thing to do, and then have conversations with our European neighbours. That will be one of the big arguments as we negotiate the trade deal, because it is relevant to the extent to which we can then have different arrangements that will enable us to seize the opportunities that are undoubtedly available to us around the globe.

I was on the remain side, as, indeed, was my hon. Friend. There is also the argument that if we continue to match every single regulation introduced by the European Union, particularly when we have no say in the process, we shall not be gaining any of the benefits of not being in the EU, which would rather defeat the point of leaving in the first place. I certainly believe that, given that the country decided to leave, we need a good, deep relationship with our EU partners so that we can continue to trade with them, but we also need to be able to take full advantage of every opportunity of securing that incremental business from around the globe. My hon. Friend is right, however: we should listen to the businesses that are involved in these sectors, and make the right decisions.

Let me now deal with the specific points made by the right hon. Member for East Ham about amendment 151, which would require the laying of

“regulations to create a fundamental right to the protection of...data.”

There is an argument here about what will or will not be the behaviour of our European partners, both the member states and the Commission. It seems to me that, if we deliver legislation according with the general data protection

[Mr Harper]

regulation in our Data Protection Bill, along with other provisions that protect such data, the European Commission may decide, for what will be political reasons, to rule that there is some incompatibility. If the Commissioners have made up their minds, for political reasons, to be mean and horrible to us and try to damage our economy, there is not very much that we can do about that. Even if we were to do what the right hon. Gentleman has suggested, they would just dream up another excuse to damage us.

If that is how the Commission is going to behave, it is not an organisation I would want to be a part of, but I do not take the view that that is what the Commission or the other member states are going to do. It is certainly not the way we have approached the negotiations. The Prime Minister has been very clear that we want a deep and special partnership with our European neighbours. We have made clear—this is relevant on the data issue—that we will have an unconditional relationship with our EU partners on security and intelligence co-operation: we will use our assets and resources to help to defend and protect European security. On that basis, it would be very churlish if the European Commission were to take the approach the right hon. Gentleman set out.

Stephen Timms: I agree: I do not think the Commission will be churlish or needlessly spiteful. But the problem is that if we do not have a clear right in law that everyone's personal data will be protected—if article 8 is not there any longer, we will not—that is an invitation to the Commission to find against us. My point is that we should not be taking that risk.

Mr Harper: I accept that we should not take unnecessary risks, but it seems to me that we could deal with that. I confess that I am not completely across the content of the Data Protection Bill—I hope the right hon. Gentleman will forgive me—but it seems to me that we could make sure we deal with that concern in that Bill, and Ministers on the Treasury Bench will no doubt listen to that point.

My final point is about something that has been brought up on a number of occasions. One benefit I have from being on the Back Benches is that I do not feel the necessity to defend every aspect of Ministers' behaviour, particularly things they did before they were Ministers. The case that keeps being cited—[*Interruption.*] The Ministers on the Front Bench are looking very worried now, because they do not know what I am about to say. I happen to think that the Secretary of State for Exiting the European Union was not correct in the case he brought against the Government, and I happen to think that the Prime Minister when she was Home Secretary was right to defend it.

We also dealt with any potential defects in the Data Retention and Investigatory Powers Act 2014 in the ground-breaking legislation this House passed more recently, the Investigatory Powers Act 2016. I am reasonably familiar with that legislation: I had to consider it when I was a member of the Government, and dealt with how we approached the House. The way we proceeded with that legislation was by bringing forward a Bill that was in good shape at the start of the process, and then having a very thorough scrutiny process across parties. The Opposition took a sensible, grown-up approach

on it, because it was very important legislation. We dealt with the concerns, and that is the right way to proceed. This House is perfectly capable of dealing with such concerns, and this House is the right place to deal with them.

The Modern Slavery Act 2015 is a model for legislation to deal with people being kept in servitude, and, similarly, the Investigatory Powers Act is ground-breaking, world-leading legislation on how to balance individual freedoms and rights to privacy with the legitimate rights of the state to ensure it protects those citizens from those who will do us harm. This House and the other place got the balance right in that legislation, and we should have more confidence in the ability of ourselves as parliamentarians.

The hon. and learned Member for Edinburgh South West (Joanna Cherry), who speaks for the SNP, harrumphed a little a bit—she is not in her place to harrumph again, probably—when my right hon. Friend the Member for Wokingham (John Redwood) spoke about this House being the place where we guarantee those freedoms. She was not hugely impressed by that argument, but the two examples I have given show that we should have a bit more self-confidence about this House being the place where we defend those essential rights. I therefore commend the Bill in its present shape to the House and hope that hon. Members on both sides of the Committee do not press their new clauses and amendments to the vote.

Several hon. Members rose—

The Temporary Chairman (David Hanson): Order. I have no power to impose a time-limit in Committee, but I do have the power to advise. We have 20 hon. Members who wish to speak, and if we continue to have speeches of the current length, we will disappoint at least half of them. I therefore advise Members to try to keep the length of their speeches to between 10 and 12 minutes; that is a voluntary instruction.

Ellie Reeves (Lewisham West and Penge) (Lab): I rise to speak to new clause 79, which is in my name and those of my right hon. and hon. Friends and hon. Members from other parties.

First and foremost, I recognise that the UK has voted to leave the European Union. It is an outcome that I did not vote for, but it is the position in which we find ourselves. It is now incumbent on us to strengthen this legislation ahead of our exit from the Union. We can only achieve this fully by recognising what European integration has done for us over the past 40 years, and the ways in which we can help one another.

Before entering Parliament, I was an employment rights lawyer for many years. I represented trade unions and their members for 10 years. More recently, I ran my own business providing advice on maternity discrimination and flexible working to mums and families. So I know at first-hand how many of our employment rights come from Europe. As my explanatory statement points out, my new clause would ensure that Parliament was kept abreast of changes in EU provisions regarding family-friendly employment rights and gender equality, as well as committing the Government to considering their implementation.

It is clear that working parents and carers in the UK are struggling. The Modern Families Index 2017, which examined the lives of 2,750 working parents and carers,

found that more than a third of working families say that they do not have enough time or money for their family to thrive. Half of parents agreed that their work-life balance was increasingly a source of stress. A third said that work had a negative effect on their relationship with their partner, and a quarter said that it led to rows with their children. One in 10 parents would consider resigning from work without having another job to go to. Research by the Equality and Human Rights Commission shows that 54,000 new mothers in Britain may be forced out of their jobs each year as a result of pregnancy and maternity discrimination. The Fawcett Society, Working Families—the work-life balance charity—and trade unions, among others, continually fight to protect against these types of discrimination.

We have a collective responsibility to ensure that we help to protect the rights of workers and employees amid the cut and thrust of the Brexit negotiations. People voted to leave the EU for many varied reasons, but they did not vote to be worse off. Our laws on these matters must be no less favourable than they would have been had the UK remained a member of the EU beyond exit day. Indeed, the EU may well go on to legislate in ways with which we do not agree. The wording of new clause 79 is clear; it is there to inform, not to commit.

As many of my hon. Friends pointed out during the previous Committee sitting, we must make every effort to keep this House fully aware of the advancements that occur in Europe. To be clear, the new clause is not about binding the UK into implementing future EU directives in the family-friendly employment and gender equality space. Rather, it would ensure that Parliament was informed of any developments and would commit the Government to considering their implementation.

In the Prime Minister's Florence speech, she signalled that the UK and the EU will continue to support each other as we navigate through Brexit. I have much to say on the work that we have collectively achieved in Europe, strengthening workers' rights, maternity rights and employment practices. For example: the 1976 equal treatment directive established the principle of equal treatment for men and women in access to jobs, training and working conditions; the 1992 pregnant workers directive provided for statutory maternity leave, protected the health and safety of pregnant workers and breastfeeding mothers, prohibited dismissal due to pregnancy or maternity, and introduced paid time off for antenatal care; the 1993 working time directive provided a maximum 48-hour working week, and the right to rest periods and paid holiday; the 1996 parental leave directive provided for the right to unpaid parental leave, as well as time off for dependants; and the 1997 part-time work directive prevented part-time workers from being treated less favourably than full-time employees. All these measures have helped to improve the work-life balance and family-friendly employment rights in the UK, and it is vital that we do not fall behind Europe in the years ahead. To dismiss the last four decades of progress without looking to the future would set a dangerous precedent, which fills me with deep concern.

5 pm

For some time, UK law has been ahead of the EU on certain employment rights—most notably, in my view, in the Employment Act 2002, which introduced the right to request flexible working—but we cannot assume

that that will always be the case. Those involved in politics know how quickly things can change. For example, several legislative and non-legislative initiatives relating to the work-life balance and aimed at giving parents more choice, increasing women's participation in the labour market and allowing businesses to benefit from talent attraction and retention have recently been put forward at EU level. They suggest that parental leave should be paid at a minimum of statutory sick pay levels. This leave is currently unpaid in the UK, and nearly three quarters of young mums and dads told the TUC earlier this year that they were worried about the potential loss of earnings that comes with that. The EU has also suggested carers leave of five days per year, paid at a minimum of statutory sick pay levels. It is worth noting that Carers UK has recommended a right to between five and 10 days per year, to be taken as needed to look after an older, seriously ill or disabled relative or friend in need of care and support.

Further measures to support women's participation in the labour market are crucial. I do not need to remind hon. Members that the UK's gender pay gap remains at 18%. There are 11 million working parents in the UK—more than a third of the workforce—yet, as Working Families research shows, many are considering downgrading their career. We cannot have a successful post-Brexit UK economy if such a sizeable proportion of the workforce are unable to reach their economic potential. In addition, the EU is consulting on access to social protection with a view to closing some of the gaps in rights that have opened up between workers on different employment contracts. It is exploring extending the provision of a statement of day one rights to more workers. That is something that Matthew Taylor called for in his review of modern employment practice, and it has been called for more recently by the Business, Energy and Industrial Strategy Committee and the Work and Pensions Committee.

The proposals coming down the line at EU level are in step with the direction of travel that Parliament has indicated it would like to take, and Members have nothing to fear from this new clause. The family-friendly rights that come from Europe are not the bureaucratic, over-zealous red tape that some Members would have us believe. They encapsulate the idea that individuals can be employed without discrimination and treated fairly at work, and that expectant mothers can be given the right to maternity leave without fear of losing their job. At the general election in June, Members of this House stood on a manifesto that pledged to protect workplace rights, and I hope that we will consider those pledges. If I am not satisfied with the Government's response, I will seek to divide the Committee on this issue later this evening.

Mr Jonathan Djanogly (Huntingdon) (Con): I believe that, taken as a whole, the Bill works and will do what it says on the tin. Indeed, I note that no one has come up with a better plan to extricate us from the EU. Furthermore, the recent Government announcement that we should have a Bill to set out the terms of withdrawal and the implementation period will provide a good opportunity to readdress any legal complexities and tweaks that become necessary—for instance, through the proposals on human rights changing due to EU negotiations. However, the detail is what counts, and I think that this legislation is still something of an unpolished gem.

[Mr Jonathan Djanogly]

Clause 5 would change the role of the principle of the supremacy of EU law post Brexit and act as a carve-out to the concept of having retained EU law. Many of the related issues were debated on day one of our Committee proceedings in relation to clause 6. With clauses 5 and 6 in place, once the UK leaves the EU, EU law will no longer be supreme over new laws made by Parliament, and the UK courts will not need to follow European Court of Justice judgments made after exit day. However, it is time for a gripe, Mr Hanson. Ministers' decision to speak twice on different issues within the same group has been somewhat unhelpful, because it disconnects the various parts of what we are debating. I agree the two groupings might have been preferable, but that was not on offer from the Chair. Having had my gripe, I will now move on.

Amending clause 5 to deal with the requirement of the withdrawal agreement, or even an incompatibility with it, could be activated by use of the Henry VIII powers set out in clause 9, or alternatively by delaying implementation of clauses 5 and 6 using the power in the Bill—a power that the Government currently wish to amend, but which I hope they will not—to set different exit days for different purposes.

Of course, having the position ironed out in the newly proposed implementation Bill could also be an option. This is a likely issue to be considered, as the Prime Minister did, of course, on 22 September, support a transition period, noting that

“the framework for this strictly time limited period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations.”

The Government have since complained that the EU has been slow to talk about an implementation period, which is certainly concerning. It has been described as a wasting asset, but this should not reduce our urgent need to consider how we would actually implement it.

There is no doubt, from reading the views of the significant number of experts, and from what the Exiting the European Union Committee has heard in evidence, that there is some level of confusion about the meaning of clause 5(1) to (3). I hope that the Government will clarify the position, although I have to say that much of the evidence that the Select Committee received was itself conflicting as to its importance. For instance, witnesses queried the intended effect of clause 5(1): is it only a declaratory statement, or is it setting out the position for the retention of the principle in clause 5(2)?

The point is that the relationship between the supremacy of EU law and retained law is not clear to a number of people. As Professor Mark Elliott noted,

“if retained EU law is domestic law, can it inherit the ‘supremacy’ of the ‘EU law?’”

Would retained law under clauses 3 and 4 benefit from the supremacy of EU law as provided for in clause 5(2)? Professor Syrpis backed that up in his written evidence to the Committee:

“The Bill may be handled in various ways; for example Clause 5(4) excludes the Charter, Clause 6(2) states that: courts need not have any regard to anything done on or after exit day by the European Court”

and schedule 1 excludes Francovich damages.

But it remains unclear whether these exclusions relate only to the retention of EU law in UK law, in clauses 2 to 4, and the interpretation of retained EU law, in clause 6, or whether they also apply to the principle of supremacy of EU law, in clause 5. In effect, I have seen enough indecision on this to think that the Minister needs to expand on his interpretation of the supremacy principle.

Of course, if domestic courts decide on the content and meaning of law post Brexit, domestic judges are going to have to respond to the challenge, as I am sure they are very capable of doing. Clearly we should help them on their way, so far as possible, by giving clarity on such issues as scoping the supremacy of EU law, although ultimately they will have to judge—

“judges will simply have to do their best”,

as Lord Neuberger put it. Frankly, I do not see what could be put in the Bill that would make this an easy process for judges in practice. However, as Sir Stephen Laws and Dr Charlotte O'Brien told our Committee,

“there is already an existing principle whereby, when deciding on law, the courts will look at foreign judgements and treat them as persuasive but not binding”.

Professor Richard Ekins took this a stage further and thought that the provision is only there

“to make it the case that no one thinks the judges are doing anything wrong if they read them”—

meaning Court of Justice judgments—

and that

“you could delete the clause and I think the judges would, properly, do the same thing”.

Clause 5(4) exempts the charter of fundamental rights from being converted into domestic law. The first point here is that, whether or not one agrees with the provision, one could ask whether this is the right Bill to insert it into. That argument was made by the hon. Member for Sheffield Central (Paul Blomfield). The Bill is about converting EU law into UK law in order to have a functioning rule book, rather than dealing with policy issues—providing legal certainty rather than reshaping rights. We could have had a stand-alone Bill to deal with that, but I am not convinced that it would have helped the process, or indeed the outcome. In fact, to the contrary, I think that having the benefit of the clause 5 debate running contemporaneously is helpful—if only Ministers had thought the same when grouping today's amendments.

As for the charter itself, it is a matter of fact that it contains certain extra rights other than those that exist in the Human Rights Act, such as the right to dignity and, as the right hon. Member for East Ham (Stephen Timms) elaborated, the right to protection of personal data. There is also a wider class of potential applicants, because it includes anyone with a “sufficient interest”. Also, stronger remedies are arguably available in certain circumstances, but all that still has to be within the scope of EU law, and I agree with the Government that the charter will lose its relevance after Brexit. However, in the wider context and while it is important to debate the issue, I have strong doubts that we will be losing much by removing the charter if we get the drafting of this Bill right, because many charter rights will form part of the general principles of EU law, as has been explained, and will thereby be retained by clause 6(7) and schedule 1 for the purpose of interpreting retained EU law.

Retention of the charter would also go against the principle of English courts taking control. There may be initial teething problems, but I note that the Under-Secretary of State for Exiting the European Union, my hon. Friend the Member for Wycombe (Mr Baker), told the Exiting the European Union Committee that an EU legal source exists for each charter right, such that judges will be required to look at the underlying source law or rights when considering cases post exit, rather than the charter. However, I am not sure that that is quite adequate, as it seems as though the Bill will contain no right of action in domestic law based on a failure to comply with any of the general principles of EU law and the courts will not be able to disapply any new law because it is incompatible with any of these general principles, including fundamental rights. Amendment 10, tabled by my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve), would address that by allowing challenges to be brought to retained EU law—law after Brexit—on the grounds that it is in breach of the general principles of EU law.

Sir Oliver Letwin: Does my hon. Friend agree that a different amendment—perhaps a Government amendment on Report—could achieve the same purpose by restricting that part of schedule 1 to dealing with non-retained general principles of law, so that retained principles could form the basis for a right of action?

Mr Djanogly: Yes, my right hon. Friend made that fair point in an earlier intervention. I am happy to say that I am open and willing to hear what the Government have to say on that, and I look forward to the Minister's contribution later.

The concept of amendment 10 sounds reasonable to me—not least if we are to get rid of the charter—and I shall be listening carefully. However, I agree that the charter has significantly added to the complexity of human rights applications and that in removing the charter the Bill will provide an opportunity to simplify things outside the EU. The Minister has promised to deliver to the Exiting the European Union Committee a memorandum on charter rights, and I note the idea provided by new clause 16, tabled by the hon. Member for Nottingham East (Mr Leslie), of a report to review the implications of removal of the charter. I would happily accept Ministers' assurance on that, rather than to legislate for it, and I hope that the document to be delivered to the Committee by 5 December will cover the two issues, as I think the Minister of State, Ministry of Justice, my hon. Friend the Member for Esher and Walton (Dominic Raab), said earlier.

My underlying acceptance of the Bill's position is premised on there remaining, as now exists, a significant and meaningful body of human rights legislation in this country. That would include common law and the Human Rights Act and would be underpinned by the European convention on human rights. I am therefore pleased that the Minister took the opportunity to accept the need for retention of the ECHR in the post-Brexit period.

Wera Hobhouse: I rise to discuss new clause 78 and the amendments that are designed to retain the charter. I listened carefully to what the Minister said earlier, but if the Government are not inclined to retain the whole charter, I urge him at least to look again at new clause 78, because it would protect some equality rights.

Conservative Members like to argue that, when Britain decided to join the European Economic Community in 1975, what the British people voted for was an economic union—no less, no more—and that only afterwards the EU became a political union that we should now leave. However, if one looks at the fundamental role played by the British in drafting the European convention on human rights in 1950, this is not true. The convention aimed to protect fundamental freedoms for all Europeans and was driven by British values.

5.15 pm

Our post-war involvement in Europe has always been far more than just an economic marriage of convenience. We British have worked diligently with our European neighbours to ensure that anyone joining the Union of European countries has to guarantee its citizens' social, political and civil rights, which we believe are necessary to create an equal and just society—I say that because it troubles me that we sometimes use “them and us” language.

We have essentially created European legislation with our partners. It is ours, and we should be proud; we should not be afraid of it. It is precisely due to that legacy that other countries look to us here in Britain as a global leader on equality rights, and it is why we must ensure today that the Bill does not leave the door wide open for our rights to be eroded if we leave the EU. At the very least, the Bill must replace the equality protections we are currently afforded through EU law.

The Government's stated intention for the Bill is to safeguard certainty and continuity of the law, including in relation to equality and human rights. It is therefore important to address any potential gaps, and today's debate has very much been about whether gaps will arise from the process of transposing and amending the whole body of EU legislation and the way we apply retained EU law if we leave the EU.

The Government's plan not to retain the EU charter of fundamental rights is a big concern. Removal of the charter will affect substantive rights and legal protections for individuals in the UK, and therefore the Bill, as it stands, does not honour the Government's commitment to protect existing rights.

As we have heard several times today, the process of leaving the EU is already extremely complex and unpredictable, and the removal of the charter risks creating an additional level of uncertainty and instability. The Government have not managed to persuade me that that instability and additional uncertainty do not exist. I am a member of the Brexit Committee, and I know that legal opinion is divided on this issue.

Charter rights form part of the general principles of EU law. As we are retaining all other EU law, why not the charter? It seems irrational to transpose the wide and complex body of EU law without transposing the fundamental principles underpinning it. Doing so will create significant uncertainty about the meaning of retained EU law when, in future disputes, retained EU law is interpreted. I am not a lawyer—there are many legal experts here—but I understand at least that.

The Government have pledged that removal of the charter will not lead to a reduction in the rights we enjoy in the UK, yet a number of rights contained in the charter either do not have an equivalent protection in our existing domestic law or have significantly broader

scope than rights found elsewhere, such as in the European convention on human rights. Charter rights without equivalents include specific rights relating to children; the free-standing right to non-discrimination, including on the ground of sexual orientation; the freedom to conduct business; the right to protection of personal data, about which we have heard a lot today; the right to physical and mental integrity; and the guarantee of human dignity. Those extra rights are not replicated so far in our own legislation.

The charter also gives explicit effect to rights in a way that is not matched elsewhere. As I understand it, charter rights have their origins in United Nations treaties, but the UK has not incorporated UN human rights treaties into domestic law, so those treaties do not have direct effect and do not provide equivalent protection to that currently provided by the charter. If the Bill is not amended, the charter rights will be unenforceable in UK courts. The loss of the charter means the Government risk failing to fulfil the general international responsibility to which they signed up to avoid any regression in human rights. I may be misquoting the right hon. and learned Member for Beaconsfield (Mr Grieve) here, but perhaps one day the penny will drop that we are living in a global world and we do have international responsibilities.

The removal of the charter without a like-for-like replacement would amount to a reduction in legal rights, particularly domestic remedies, and the Government have not done enough—

Mr Shailesh Vara (North West Cambridgeshire) (Con): The hon. Lady rightly speaks of our living in a global environment, but she will acknowledge that, as has been said by Members on both sides of the House, Britain leads the way in laws for equality? Therefore, what is her concern, particularly as the Human Rights Act 1998 will remain operative?

Wera Hobhouse: I thank the hon. Gentleman for making that point. Legal experts the Select Committee has listened to have made the point that there are gaps, so what is the point of not taking the charter into our retained EU law as a whole, because we are taking everything else, and making sure these gaps do not exist?

Joanna Cherry: Does the hon. Lady agree that it is hard to substantiate the claim that Britain leads the world in equality rights, given that we have so often had to fall back on the charter to fill gaps in our equality laws, as, for example, in the Walker case before the Supreme Court in the summer?

Wera Hobhouse: The hon. and learned Lady makes a good point. I am proud of the British legacy of fundamental rights, but as is clear, and as seems to be stated in a lot of legal cases—as I say, I am not a legal expert—lawyers are using different kinds of law because different laws apply to different cases. That is why we have this charter and we would lose a fundamental protection if we did not have it.

Lady Hermon: I do not wish to criticise the UK Government, because in many ways and instances they do lead the way in signing up to the UN conventions. As Ministers made clear last week, in terms of international law the UK adopts a dual system. So it is all well and

good for the UK Government to sign and ratify UN conventions and treaties, but they do not actually become part of our domestic law unless there is an implementing Act of Parliament, because of the principle of parliamentary sovereignty. So we send out a signal that we lead the way but in terms of enforceable rights the hon. Lady is quite right: rights for the children are not enforceable before our courts.

Wera Hobhouse: I thank the hon. Lady for making that valuable point. As someone who is not a legal expert, I believe this is about having a safeguard. We are keeping the law in the charter because it fills a gap that we would have otherwise. That is why we should retain the charter.

Let me give an example: the charter provides specific rights for children that are not replicated elsewhere in UK-wide human rights law. It requires that the child's best interests must be a primary consideration in all actions relating to children; that children's views may be expressed and shall be taken into consideration; and that children have a right to maintain a personal relationship with both their parents, unless this is contrary to their interests. The latter right was used in a case relating to two British children, whose father's deportation was successfully challenged by focusing on the major negative impact on the children of loss of contact with a parent. Cases of this kind might become more common if Britain leaves the EU and EU nationals lose the automatic right to reside in the UK, with the consequent risk of family separation.

The charter also contains a prohibition on child labour which is not replicated elsewhere in UK human rights law. Another example of the charter providing greater protection is on disability rights. Disabled people would no longer be able to use the charter to support their right to independence, integration and participation in the community. This interpretive tool in the charter goes much further than the non-discrimination provisions in the Equality Act 2010. On healthcare, as we have heard, the charter was decisive in ensuring that bans on tobacco advertising were permitted. The list goes on, so why not retain the charter? Let me be a bit flippant here: I cannot help but wonder whether the Government are making this obvious omission from our statute books because some time ago the Prime Minister, when she was Home Secretary, had a ding-dong over the charter when she unsuccessfully tried to extradite Abu Qatada and this is a bit of late comeback.

To be serious again, what I worry about most in all the discussions about Brexit is that everything is being done in a big hurry because some eager Brexiteers would rather leave the EU tomorrow and not think about any consequences, even those that would mean real harm for this country. New clause 78, tabled by my right hon. Friend the Member for Carshalton and Wallington (Tom Brake), would specifically provide an overarching domestic guarantee of non-discrimination by the state. It would be a domestic replacement for the safety net for equality rights currently provided by EU law. The new clause would serve a distinctive and different purpose from the rights protected by the Equality Act 2010, and I urge the Minister to consider it again. It would provide a guarantee that our laws must be non-discriminatory in their purpose and effect, along with a mechanism to challenge them if they were. Currently, that cannot be done under the Equality Act.

Providing greater protection of our human rights has nothing to do with losing sovereignty but everything to do with doing the right thing by our own people. I am fed up with being branded undemocratic or unpatriotic for merely pointing out that the Government will be failing their own people if the Bill passes unamended.

Mr Cox: What exactly would the new clause add to the rights that already exist under article 14 of the European convention on human rights?

Wera Hobhouse: The new clause has been promoted by the Equality and Human Rights Commission. I take it that the commission has done careful research into how it would provide an extra guarantee that is not currently provided. The hon. and learned Gentleman should look at it carefully to understand how it is meant to work, but it is an overarching tool that, as I understand it, we currently do not have. As I said before, as a non-legal person, for me the most important thing is the safeguarding of our equality laws and the need to match what has been done so far at European and international level.

Brexit is increasingly nothing to do with what leave politicians promised to the people. I fear it is becoming an ideologically driven process to turn this country into some sort of deregulated free-for-all, in which the progress we have made over the past four decades to protect individuals from exploitation and discrimination, in tandem with our European neighbours, is sacrificed on the altar of sovereignty. The British people did not vote to give away their fundamental rights and protections. If Parliament does not amend the Bill, let nobody claim that this is the will of the people.

Theresa Villiers (Chipping Barnet) (Con): I apologise for my brief absence from the Chamber during the debate—it was because of the excitement of a Delegated Legislation Committee.

I wish to say a few words about why I feel unable to support the proposals to bring the charter of fundamental rights into UK law, but before I do so I acknowledge the huge importance we should all place on the scrutiny of this historic piece of legislation. The Bill is of course a critical part of the implementation of the huge decision made by the people of the United Kingdom in the referendum last year, and it obviously has a crucial role to play if we are to avoid a regulatory gap in relation to aspects of our law that are currently covered by EU legislation. Although I do not feel able to agree with the new clauses and amendments we are debating, I fully respect the intentions of those who have tabled them.

At a time of great change for this country, it is important that we find ways to work across party divides to come together to make a success of the process of implementing the referendum result and leaving the European Union. My goal for a successful outcome is a new partnership with our European neighbours, with which I hope those on both the leave and remain sides of the debate can be comfortable. It will, of course, be important for Ministers to listen to a spectrum of views before the final terms of our departure from the EU are settled, and I know they are strongly committed to doing that.

5.30 pm

Turning to the amendments on the charter, as others have pointed out, we already have a very extensive legal framework for providing strong protection for individual

rights and freedoms in this nation. As well as the legal developments of the 20th century with the adoption of the European convention on human rights followed by a series of world-leading equalities statutes, we have a tradition of protecting the individual against arbitrary power by the state dating back to the middle ages. That includes common-law remedies such as the writ of habeas corpus to protect against unjustified detention, and the Forcible Entry Act 1381 which established that every citizen of this nation can close their door to the authorities unless those authorities have a warrant.

This long-established commitment to the protection of rights undermines the case for the charter. I welcome the Minister's assurance that he will work to ensure that if there are any gaps in the coverage of our human rights legislation, the Government will give the matter due consideration.

Secondly, the retention of the charter would lead to real problems of uncertainty and instability in our legal system, as a number of Members, including my hon. Friends the Members for Stone (Sir William Cash) and for Huntingdon (Mr Djanogly), have mentioned. This includes the potential confusion between the charter and the European convention on human rights. The effect of the charter, whether applied to UK laws before or after exit day, cannot easily be predicted. We had a bit of a debate on the continuing role of the ECJ, but certainly retention of the charter would give rise to the risk of continued influence over our courts by the rapidly evolving and expansionist case law of the ECJ on the charter.

As Martin Howe, QC, said recently, there is a risk that we would open the door to “judicial adventurism in our own courts”.

Even assuming that only pre-existing case law has relevance here, we have seen that the court has decided that the charter should be given a broad interpretation. Some of our laws and statutes could have a precarious status in the future if these amendments are passed.

My third concern is that the amendments would give the courts power to strike down a statute on the basis of incompatibility with the charter. Although this strike-down power has been an aspect of EU membership, it is not, as hon. Members have pointed out, given to the domestic courts in relation to compatibility with the Human Rights Act. Granting our domestic courts this power in relation to the charter would be a significant constitutional step, as has been acknowledged by my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve), requiring a more extensive national debate than we have currently had.

There are pros and cons in determining whether the final say on our laws should rest with Parliament or with judges, but I hope that many will agree that this is a significant constitutional question. Before we could embark on that course of action, we would need to establish a stronger national consensus than we currently have for the charter.

Antoinette Sandbach: I am grateful to my right hon. Friend for giving way. We are told by the Treasury Front Bench that these are existing rights which apply now, and that they are rooted in legislation from before the European Court. Given that those are rights that are applied now, why does she not wish to protect them and ensure that they continue?

Theresa Villiers: That was certainly the stated intention when the charter was originally drafted, but the judicial activism of the ECJ has seen the scope of the charter expanded. Essentially, what we are talking about is the division of power between our courts and our legislature. I do not believe that we have the national consensus to deliver such a significant change to our constitution as to enable our domestic courts to strike down our laws.

Robert Neill (Bromley and Chislehurst) (Con): My right hon. Friend talks about the expansion of the charter through the role of the ECJ. Can she give us an example where it has actually been the charter that has caused that expansion? In reality it is the European convention on human rights rather than the charter of fundamental rights that has tended to lead to an expansion.

Theresa Villiers: Of course, the key expansion as far as the United Kingdom is concerned was the confirmation by the European Court of Justice in the *Åklagaren v. Hans Åkerberg Fransson* case that the charter did actually apply to the United Kingdom and that the opt-out that was supposedly obtained by Tony Blair was not valid.

That brings me to my final reason for scepticism about the charter and the amendments. I was an MEP during the period when the charter was drafted in the EU constitutional convention with a view to inserting it in the abortive EU constitution.

Lady Hermon: As a former and, I have to say, very distinguished Secretary of State for Northern Ireland, who did a really good job in that office—I mean that most sincerely, although I rarely have the opportunity to say it—the right hon. Lady will know that the UK withdrawing from the charter of fundamental rights will have an impact on the Good Friday agreement and on the perception that half of the community in Northern Ireland will have of respect for human rights, rightly or wrongly. Will the right hon. Lady therefore encourage the Government to draft a Bill of Rights for Northern Ireland, which is, of course, also a key part of the Good Friday agreement?

Theresa Villiers: I can assure the hon. Lady that this Government and, I am sure, all successive Governments will remain strongly committed to the Good Friday agreement and to the protection of individual rights. As she will appreciate, of course, the agreement expressly referred to in the Good Friday agreement in relation to human rights is the European convention on human rights. However, I fully understand her point of view on this matter, and it will always be important for us as a Chamber to respect individual rights. The tenet of my speech is that we do not need the charter to enable us to do that. We have extensive legal frameworks available to us as a Parliament, and through our judiciary and legal system, and that will ensure that we properly protect our citizens, whether in Northern Ireland or in the rest of the United Kingdom.

Let me turn to my final reason for concern. I well remember the clarity of former Prime Minister Tony Blair about the fact that the charter would not be given legal force. As far back as 2000, the Prime Minister and the Europe Minister of the day stated that very clearly for the House. In 2003, the Labour Government's lead negotiator on the convention, Peter Hain, said there was no possibility of the Government agreeing to

incorporate the charter. In 2007, Tony Blair told Parliament that we had an opt-out from the charter, and this approach was supported by a number of pro-EU groups, such as the CBI. Even my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) expressed scepticism about the charter and described it as “a needless diversion”.

While the ECJ may since have ruled that the opt-out secured by Mr Blair was nothing of the sort, we now have the opportunity to see those promises fulfilled. We have a long history of protecting the rights of the individual against the arbitrary exercise of power by the state. We have ample means to do that in the future, with hundreds of years of case law and statute establishing strong principles of accountability in our unwritten constitution. We can legislate in the future if we ever find any gaps in our current framework. We do not need the charter to protect our citizens, and I appeal to Members not to accept the amendments being debated today.

Kerry McCarthy: It is a pleasure to see you in the Chair, Mr Hanson. I rise to support amendments 101 and 105, tabled in my name. They relate to the debate we had about environmental principles on day two of the Bill's Committee stage, and particularly about new clauses 60 and 67, and new clause 28, which I also tabled.

As it stands, UK laws that arise from EU laws such as regulations and directives and that do not comply with the general principles of EU law can be challenged and disapplied. Administrative actions taken under EU law must also comply with the general principles. I say that by way of clarification, because I think a lot of people are trying to follow the debates in this Chamber during the Committee stage, and they are perhaps wondering what on earth we are talking about, so I am trying to make things as simple and as clear as possible for the public out there—and perhaps for some of us in the Chamber as well.

That is the situation while we are members of the EU. Post Brexit, though, schedule 1, as I interpret it, places unnecessary and unjustified restrictions on how these principles will be applied. That is what my amendments seek to rectify. Paragraph (2) states that retained principles will be only those that have been recognised or litigated by the Court of Justice of the EU in a case decided before exit day. Only those principles will be retained in domestic law; others will not, even if recognised in treaties. In the debate on day two, the Minister said in response to new clause 28 that this was because we needed a cut-off point and could not have ongoing interpretation of directives that would affect the situation in the UK. However, I would argue that there is still a real lack of clarity, and a danger that if we allow only principles that have been litigated on to apply after exit day, the non-controversial ones that people do not have a problem with will end up falling away, while only the controversial ones are retained. It is also unclear whether these general principles include environmental principles, as the term “general principles” has not been defined by the ECJ or by the treaties. If environmental principles are not explicitly recognised as general principles, they could be lost entirely. I hope that the Minister can give us a bit of clarity on that.

Paragraph 3 of schedule 1 explicitly limits the legal remedies available when general principles are contravened. Under this paragraph, UK courts will no longer have

the power to disapply domestic legislation on the grounds that it conflicts with these general principles. They could only be used like the pre-exit case law of the CJEU to inform the interpretation by UK courts of retained EU law. Paragraph 3(2) therefore appears to narrow the scope for judicial review that currently exists. In the previous debate, some of my colleagues argued very eloquently as to the importance of judicial review in environmental cases but also highlighted the fact that it is often inadequate, and increasingly so, given the cap that is imposed. Paragraph 3(2) would further narrow the scope of judicial review and make it harder for the public to hold the Government to account. As discussed last week, it is vital that the courts are able to enforce the environmental principles.

Amendments 101 and 105 speak to those points. Amendment 101 clarifies that all existing principles of EU law will be retained in domestic law, whether they originate in the case law of the European Court, EU treaties, direct EU legislation or EU directives. It also makes it clear that the key environmental law principles in article 191 of the Lisbon treaty are retained. Amendment 101 therefore expands the meaning of general principles to specifically include the environmental principles. Following on from that, amendment 105 seeks to retain the right of action in domestic law for the public to hold the Government to account for their breaches of the principles.

I know that the Government are proposing an environmental principles policy. I have lots of questions about how that would operate—whether it would be on a statutory footing and so on—but at this stage I ask the Minister to confirm whether they will publish at least an outline version of what that principles policy would look like while there is still time to consider it and its implications for this Bill. So far in Committee, Ministers have been very fond of asking us to take their word for it, but I am simply not prepared to do that: I want to see what these policies would look like.

Will the Minister also explain the Government's objection to the idea of having internationally recognised principles of environmental law enshrined in UK statute? The Government could include the basic principles in UK law by accepting my amendments. Not least, that would provide us with much needed reassurance that the Environment Secretary will win out against the International Trade Secretary in ensuring that future trade deals with countries such as the US will not lead to imports of chlorine-washed chicken and hormone-pumped beef on our shelves. The Environment Secretary has encouragingly said that the UK should say no to chlorine-washed chicken from the US and that we are

“not going to dilute our high food-safety standards or our high environmental standards in pursuit of any trade deal”.

But as was pointed out during last week's debate, the environmental principles set out in the EU treaties have been instrumental in decisions such as the EU ban on imports of hormone-fed beef, the moratorium on neonicotinoid pesticides, and the control of the release of genetically modified organisms in the EU.

The debate on day two saw a degree of political consensus emerging around the value of environmental principles such as the precautionary principle, as well as in other areas, particularly the Environment Secretary's mooted plan for a new independent body to hold the Government to account. I hope that when we consider the governance gap on a future day, we will hear more

about his plans for that body. I think we also got confirmation from the Environment Secretary, although it was only a nod from a sedentary position, that he intended to follow the Environmental Audit Committee's recommendation and introduce an environmental protection Act. I hope that we will hear more about that and the timetable for it. I understand that the much delayed 25-year environment plan may be with us in the first quarter of next year, a fisheries Bill is coming from the Department for Environment, Food and Rural Affairs and the agriculture Bill is due, I think, after the summer recess. If the Government are going to introduce an environmental protection Act before exit day, they will have their work cut out for them. I would be grateful to hear a bit more about that.

5.45 pm

As I have said, the Bill, as it stands, does not protect those environmental principles, and environmental protection after exit day will not be as strong and rigorous as it was before exit day. I seek the Minister's reassurance that he intends to make sure that that does not happen.

Mr Cox: Broadly speaking, there have been two means of protecting human rights in international law. The first, which is generally followed by civil and continental law systems, has been to adopt charters of general rights with very broad statements of those rights and then to turn over to the courts the interpretation, in specific circumstances, of how those rights should be applied. The second, which is generally followed by common-law traditions, has been to proceed not by general statements of rights, but by specific statutory remedies in defined circumstances and by case law that defines the facts and allows the remedy to be extended by analogy with the facts of the particular case.

With due respect to Opposition Members, it seems to me as though some of them have made a mistake in equating the need for the incorporation of the charter with the protection of fundamental rights in this country. Article 7 of the universal declaration of human rights provided in 1948 that all subscribing nations to the United Nations should respect the principle of equality. But it has never been suggested that the United Kingdom, because it did not incorporate that principle into a general statement of an equality right, was not compliant with its obligation in international law, under the declaration and subsequently the covenant, to respect equality.

That is because there are two ways in which one can protect human rights. One can either adopt a general statement of rights and leave the protection of it to the courts, or one can adopt specific remedies in given circumstances that cumulatively and substantively protect those rights. Nobody has suggested that because the Soviet Union incorporated a right to equality into its constitution, equality rights were better protected there than they were in this country, which did not. Therefore, the absence of a general statement of rights, such as that in the charter—I do not say that there is not a function for such statements, but let us begin with first principles—is not to be equated with the protection of human rights. We have to look at the substantive effect of the cumulative common-law and statutory protections in our law.

That is why my right hon. Friend the Member for Forest of Dean (Mr Harper) suggested that the Government's approach should not be to incorporate

[Mr Cox]

this charter of wide, broad and, quite frankly, vague general statements of rights and allow courts to take those statements, which are often rich with value judgments, and apply them to the facts. That is why the approach of my right hon. and learned Friends on the Front Bench is right and, I suggest, consistent with the common-law tradition of this country.

Joanna Cherry: I am wondering which country the hon. and learned Gentleman is talking about, because the common-law tradition melds with the civilian tradition in Scotland. I take nothing away from his erudite explanation of the background to all this, but the point that hon. Members seek to make is that, as is the case with the Human Rights Act, having the charter of fundamental rights as part of our law gives ordinary citizens and businesses the opportunity to go to court to enforce those rights, which this Bill will take away from them.

Mr Cox: No such charter existed with binding legal force before 2009, even in the European Union, but let us look at the circumstances. I contend that there are two ways of proceeding, of which the first is to have a broad and general statement of human rights—indeed, extended human rights under the charter—and to allow the courts simply to interpret them in given circumstances.

Some Government Members and—I think—some Opposition Members believe that the proper place to resolve moral dilemmas is not necessarily in a court. As someone once said, why should a majority of five or nine judges take precedence over a majority of the 650 Members of this House on questions of moral dilemma? Many of these—

Joanna Cherry: Will the hon. and learned Gentleman give way?

Mr Cox: No, I am not going to give way again. This will become a debate between lawyers, and that is not the point.

Joanna Cherry: It is actually on a moral point.

Mr Cox: No, no. [Interruption.]

The Temporary Chair (David Hanson): Order. The hon. and learned Gentleman is not giving way.

Mr Cox: The point is that these broad and general rights are ripe with value judgments. Quite often, they are not appropriately dealt with by six or seven elderly white judges in a Supreme Court; they are better resolved on the Floor of this House and by a democratic vote in this Parliament.

Sir William Cash: Will my hon. and learned Friend give way?

Mr Cox: If my hon. Friend will forgive me for a moment, I need to develop an argument, because I want to move on.

Let us accept for the moment that there is a second and perfectly legitimate way, which international law accepts. International law does not require subscribing nations of the United Nations to adopt a Bill of Rights,

and neither does the European Court of Human Rights—it never did require us to do so. It looked at the substantive and practical effect and how those rights were substantively protected in the jurisdiction. If we accept that for a moment, why should we not proceed by means of the Government's proposed policy of examining specific statutory remedies and specific rules of common law, and considering whether the right is satisfactorily protected?

Some of us believe that the courts are not always the right place in which to deal with these matters. For example, article 20 of the charter of fundamental rights simply contains a right to equality before the law. That right has been enshrined in the common law in this country for centuries. Why should we have it in the charter of fundamental rights? Some say that there will be a problem between the two charters—

Lady Hermon: Will the hon. and learned Gentleman give way?

Mr Cox: I will give way to the hon. Lady, but not now.

Some say that there will be a collision. I am not sure that I buy the argument that there will be too much of a conflict or collision between the charter and convention. Quite frankly, my experience in the courts is that when both are relied on, the judge usually ignores the charter. As I said to the hon. and learned Member for Edinburgh South West (Joanna Cherry), the judge asks, "What does it add?" One may hum and haw, and try to come up with something, and the judge thereafter says, "Well, let's concentrate on the Human Rights Act and the convention, shall we?"

The truth of the matter is that I do not deny that a modest—I repeat, a modest—extension in the courts has been effected in very recent years by the charter. The case of *Benkharbouche* is an example of an applicant being able to set aside part of the immunity from suit that the State Immunity Act 1978 conferred on a foreign embassy. Article 6 of the convention did not apply to the employment context, but article 47 of the charter, which guaranteed an effective remedy and a fair hearing in circumstances covered by the scope of European Union law, allowed that lady to argue that part of the statute should be set aside, and it was set aside.

Similarly, in the *Vidal-Hall* data protection case, the restriction under section 13 of the Data Protection Act 1998, which this House had imposed—it said that if people wanted to bring an action for damages under the Act, they had to show they had actually suffered damage—was set aside by the court on the basis that the data protection directive contemplated cases in which people suffered not merely damage, but distress. However, whether somebody should be able to sue the state or anybody else for damages because they have suffered distress or has to prove that they have suffered pecuniary distress is a matter for this House.

That is what I mean when I say that these matters are resolvable in numerous ways. Many Members on both sides of the House would disagree on the question of whether it was a legitimate public policy judgment that we should restrict an action for the breach of the Data Protection Acts to cases where actual damage was suffered or whether distress was enough. Why should it be resolved by a court? Why should it not be resolved by the House? That is part of the reason why Members on

both sides of the House voted to leave the European Union in the first place. We believed that those kinds of decisions needed to be taken here, not by courts and not by the imposition of a law in which we did not have a majority say in this kind of question.

I want to develop what I hope is a coherent argument. I was addressing the question of whether or not there was a conflict between the human rights order—a disharmony imposed by the convention—and that which might be imposed by the incorporation of the charter. There could be real problems ahead. There will be cases in the broad and expansive definitions of European Union law, under which the charter applies when it falls within the scope of EU law, when a moral dilemma confronts a court that is asked to disapply an Act of Parliament. The supremacy principle is retained, as my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve) observed, by the Act. In cases in which it is covered by the charter, and in which such a dilemma has arisen, the Act is set aside because of *Benkharbouche* and *Vidal-Hall*. If the charter is incorporated, its vague and general statement of rights will have binding force, so the Act will be set aside.

If I bring a case under the convention and I say that the Act should be set aside because I have suffered inhuman and degrading punishment, or some of the worst violations of human rights that could be conceived by a state, I cannot have the Act of Parliament set aside, which introduces an element of absurdity in our law. Apparently one can torture someone and not have the Act of Parliament set aside, but I cannot have my workplace rights infringed: in that case, I can have the whole caboose set aside—a whole Act of Parliament and statutory apparatus. It makes no sense, and it will bring our law into disrepute if we tolerate for long a situation in which a court faces a moral dilemma when a case is brought under a general statement of human rights. In some cases that are litigated, the court can set aside Acts of Parliament, but in other cases, it cannot do so, even when it involves the most serious violations of human rights imaginable.

Everyone accepts that the Bill legislates for an unsatisfactory situation—we can all agree on that. I tell my friends on the Conservative Benches with whom I have far more in common than that which divides us, even though we may have been on different sides of the debate on the question of belonging to the European Union, we can all agree on some fundamental things. It cannot be right to go on for long with a body of law in our overall legal order that permits and allows higher, special and better rights in certain circumstances. Incorporating the charter will exacerbate that problem. The protection of the rights that Opposition Members have rightly identified as worthy of protection can be accomplished by a different means. The right hon. Member for East Ham (Stephen Timms), who is not in his place, spoke so well on data protection. It is absolutely right that we need to make certain that our data protection laws are no less important than those we find on the continent, but we do not need to do that by incorporating a general statement of a right and leaving it to the courts to enforce.

6 pm

In any event, I disagree with the right hon. Gentleman about the effect of article 8 of the charter, which covers data protection, and even the Council of Europe's

convention No. 108, to which we are signatories. The directive itself refers to article 8 of the charter as an underpinning source of protection of privacy rights in the data field. If we approach it in the manner the Government suggest—let me say to Opposition Members that I concede completely that this requires collaboration and co-operation in an honest and transparent spirit by those on the Conservative Front Bench—let us work together to ensure that these rights are protected, but we do not need a broad, general and vague statement of rights incorporated into our law through the charter that will produce anomalies in our law in a fashion that will not do it credit.

I will conclude by saying, if I may, that we face a political choice. I urge Conservative Members to reflect on the fact that, provided these rights are protected, it does not matter the means by which that is done. General states of human rights are not necessarily consistent with the common-law tradition. I remind Opposition Front Benchers that when the Human Rights Act was introduced by their Government—a signal achievement of their Government—they deliberately left out article 13 of the convention, which required an effective remedy. They did that for a very good reason: the careful constitutional balance of the Human Rights Act meant that they wanted to avoid courts deciding, under the influence of the European Court of Human Rights, that they would have to lean towards striking down Acts of Parliament. It was a possibility at that time. Indeed, in New Zealand, under its Bill of Rights, the courts were moving towards believing that they were obliged to strike down its Acts of Parliament. Leaving out article 13 meant that there was no risk of that, but article 47 puts it back. It allows the disapplication of statutes of this House. There was a good reason why the Labour Government of the day thought that that was imprudent and there is a similarly good reason today.

Anna Soubry: I thank my hon. and learned Friend for giving way. He makes a very passionate and highly informed speech, which explains so much about the basis of law and the merits of the common-law system. Surely the point he did not address, however, is this: the Bill enshrines EU law into domestic British law. Therefore it does not make sense not to incorporate the charter. That is the contradiction that concerns many.

Mr Cox: It does make sense, because all that does is restore us to a position pre 2009 in the European Union. The general principles will still apply. There is no inconsistency by allowing the general principles—subject to amendments, which I am not speaking on; I have some sympathy with the amendments tabled by my right hon. and learned Friend the Member for Beaconsfield—but I am convinced that incorporating the charter would be wrong and unwise. As a matter of policy, I urge my right hon. and hon. Friends and Opposition Members not to vote for that.

Brendan O'Hara (Argyll and Bute) (SNP): I rise to participate in this debate as something of a rarity: a non-lawyer. I will try to keep my comments within the allotted time of between 10 and 12 minutes.

I wish to follow the compelling and intelligent case made by the right hon. Member for East Ham (Stephen Timms), and I am delighted to speak in support of his amendment 151, which highlights, in particular, the

[Brendan O'Hara]

consequences facing millions of British citizens and thousands of companies if the UK's data protection legislation cannot be reconciled with EU law post Brexit. If clause 5 is passed unamended, and should the UK crash out of the EU on 29 March 2019 without a deal, I fear that the UK will find itself non-compliant with EU law and the charter of fundamental rights, and that therefore the framework that affords us the unencumbered free flow of data—not just within the EU, but with the safe nations with which the EU has reciprocal deals, including the United States—will immediately be under threat.

The consequences for the businesses and individuals who rely every day on that free flow of data across international boundaries—a free flow that needs to occur safely and without delay, cost or detriment—are unthinkable. As the Software Alliance said in its recent report,

“The benefits of cross-border data transfers are vital, not only for the technology sector but also for financial services, manufacturing, retail, healthcare, energy and most other sectors”.

The Data Protection Bill impact assessment, published last month, recognised the huge economic importance of the UK being able to guarantee effective unrestricted data flow and predicted that being at the forefront of data innovation could benefit the UK economy by up to £240 billion by 2020. Despite the warnings of businesses and their own impact assessment, however, the Government, in implementing clauses 5 and 6, seem determined to make the UK some kind of digital island, cut off from the rest of the global digital economy.

One would have thought, at a time of so many data breaches and cyber-attacks, that ongoing data co-operation with our European partners and others was not just desirable but essential post-Brexit. If creating a digital island is not the Government's aim, I strongly suggest they make securing a workable compliant data protection deal with the EU one of their main priorities. It is not enough for them simply to assume that we will attain the status of adequacy by default—because we will have implemented general data protection regulations—or that, come what may, the minute we leave the EU our data protection laws will automatically be harmonised with the EU's. That is simply not the case.

As we heard from the hon. Member for Nottingham East (Mr Leslie), the right hon. Member for East Ham and others, the European Court of Justice has already ruled, in both the Watson and Tele2 cases, that the implementing of a GDPR simply is not enough automatically to secure an adequacy by default agreement from the EU. The only avenue I can see for the Government, therefore, if they wish to achieve adequacy by default status, which they claim to desire, is to secure a deal with the EU that complies with European law before we leave. To do that, we would require a transitional period, during which we could negotiate a deal while remaining inside the single market and customs union and under the jurisdiction of the ECJ. That is one way for the Government to find time to negotiate the adequacy by default status. Of course, the other, and much more straightforward, option would be for the Government to commit to the UK remaining inside the single market and customs union and under the jurisdiction of the ECJ, given that no one in the UK ever voted to leave the single market or the customs union.

To be clear, the consequences of the UK crashing out of the EU without a deal would be catastrophic, particularly for businesses in the telecommunications and financial sectors, which are heavily reliant—almost entirely dependent—on the unrestricted free flow of data. The right hon. Member for East Ham detailed the importance of data to the UK economy. In the decade to 2015, the amount of cross-border data flow increased twenty-eightfold in the UK, and currently digital and data-intensive sectors of the economy account for 16% of UK output and 24% of our total exports. But as the clock ticks down to Brexit, I know that businesses that rely on the free flow of data are becoming increasingly concerned. They need to know now what is happening: they cannot plan for the future simply on the basis of a vague Government promise that somehow it will be all right on the night. I fear that, if they do not have guarantees about exactly what is happening well ahead of Brexit, they will vote with their feet and leave, like the European Medicines Agency, which announced last night that it was moving 900 high-tech, high-value jobs from London to Amsterdam.

Businesses cannot afford the risk of finding themselves outside the EU data protection area, and they cannot and will not wait until the last minute to find out what is happening. That is not commercially viable. Contracts would have to be rewritten and bills renegotiated, and things like that do not happen overnight. I fear that, if there is no agreement on an issue as fundamental as data protection, many large, high-net-worth companies which provide high-value jobs will begin to seek the stability that they need outside the United Kingdom.

As I said earlier, I seriously question whether maintaining a frictionless cross-border data flow is attracting enough of the Government's attention during their Brexit negotiations. My alarm bells began ringing a number of weeks ago, when the Minister for Digital told the House that the Government were seeking “something akin” to an adequacy agreement. I had absolutely no idea what he meant then, and I am no closer to understanding now. “Something akin” to an adequacy agreement simply does not exist. An adequacy agreement is a formal legal position. It cannot be bent, moulded, or used as a quick fix to get a country, or a Minister, out of a sticky situation. The leading data protection lawyer Rosemary Jay said of adequacy agreements that the EU

“has to go through a legislative process. It is not simply within its gift to do it in some informal way”.

EU law is very clear: an adequacy decision can only be given to a “third country”—a country that is outside the EU and the European economic area—to allow it to operate securely and freely within the framework of the general data protection regulation, and an adequacy decision can only be given to a third country that meets the European Union's high standard of data protection and whose domestic legislation is deemed compatible with the European Union's charter of fundamental rights. The most obvious difficulty is that an adequacy decision is designed for third countries. The UK is not—yet—a third country, and it will not be a third country until the very end of the Brexit process.

There is a whole lot more to be considered. I cannot see how, without negotiating and securing a deal before leaving the EU, the UK can qualify for any sort of adequacy agreement, whether by default or otherwise.

Even if the Prime Minister does secure a transitional period and is given time to sort out the UK's adequacy problems, there is still no guarantee that adequacy by default will be achieved, because before granting an adequacy decision to a third country, the European Commission is obliged to consider a variety of issues such as the rule of law, respect for human rights and legislation on national security, public security and criminal law. That means that any deal that we reach with the EU will have to require at least a complete reworking—and, at best, a complete ditching—of the UK's Investigatory Powers Act. In its present form, the Act leaves UK law incompatible with the charter of fundamental rights, which, as we have often heard, includes a chapter on the fundamental right to data protection.

On that basis alone, I am almost certain that the Act, which has already been accused of violating EU fundamental rights, will seriously call into question the UK's ability to receive a positive adequacy decision. Eduardo Ustaran, a respected and internationally recognised expert on data protection, has said:

“What the UK needs to do is convince the Commission—and perhaps one day the European Court of Justice—that the Investigatory Powers Act is compatible with fundamental rights. That's a tall order”.

The Government are understandably desperate to secure an adequacy decision by default or otherwise, but the harsh reality is that, at the very least, a lengthy and challenging legal process will almost certainly have to be undertaken before that can happen. That is why it is essential that the Government first secure the transitional period to keep the UK within the single market, the customs union and the jurisdiction of the European Court of Justice. We have to redraft the Investigatory Powers Act to make it comply with the charter of fundamental rights—if that is even possible, given the current form of the Act. Should that not happen, we will crash out of the European Union without a data protection deal, with all the devastating consequences that that would have for individuals and businesses.

6.15 pm

Despite the Government's oft-stated desire to secure an adequacy agreement that will retain the UK's status as a safe recipient of personal data from the EU and further afield, I fear that their lack of action in preparing the ground properly to secure such an adequacy agreement by default or otherwise following the negotiations is causing great concern to businesses that rely heavily on the free flow of data. I urge the Government to accept amendment 151.

Charlie Elphicke: I had occasion to consider deeply the matter of rights and human rights when I drafted, tabled and had debated in this place a British Bill of Rights—the Human Rights Act 1998 (Repeal and Substitution) Bill. People said to me that that could not be done, that it could not be drafted and that it was an impossible project. However, with the help and counsel of many hon. and learned Friends—not least my hon. and learned Friend the Member for Torridge and West Devon (Mr Cox), who has just spoken with power, force and vigour—I was able to construct and present a Bill of Rights to this House. That is relevant to this debate because there were three key questions involved. The first

question was: what are the rights? The second was: how do we interpret them? The third was: which court should decide on those rights?

Let us take the first question. What are the rights? Some rights are so basic and self-evidently true that they are not even rights at all. They are values. They go to the heart of our constitution, of our foundations, of what we believe in as a country, of what we are about and of our way of life. They involve basic stuff such as the rule of law, natural justice, the right to a fair hearing and the presumption of innocence. Those are the fundamental values of what we are about as a nation and of what we hold to be self-evident and true. When they are trampled upon, there is uproar in this place and across the country because we know in our hearts that those are the values that we hold dear. They are not rights; they are values.

There are also rights, in the Human Rights Act 1998, that we hold to be self-evident and true. They are called second amendment rights in America, and they include the right to a free press, the right to free speech, the right to determine one's religion and the right of association. Those are important rights that go to the heart of what we are about and that we call values. Then there are the many rights set out in the European convention on human rights that have been built mainly in our own constitution and our own history. They did not just begin in 1998. They are rights that we have taken to be self-evident and true for many years, and they have found their way into the Human Rights Act, and the human rights code—a document to which it is hard to object.

Then we come to the issue of interpretation, and that is where the problems begin. The European Court of Human Rights adopts an interpretation mechanism that I call objective. It asks: do we have the right to family life, yes or no? If we have that right, we cannot be extradited in certain cases. In our own system, we tend to take what I call a more subjective view. We look at all the facts and circumstances of a case. In interpreting that right, we ask whether someone should be able to stand on that right to family life, given their conduct if, for example, they had committed a crime or run someone over. Having examined all the facts and circumstances of the case, we would say that they should not be able to stand on that right because their conduct means that they should not be allowed, ethically and in equity, to do so. That is where the British people were in so many extradition cases. They thought, “These are European rights and they are all wrong.” They are not necessarily wrong, but their interpretation was not right and did not sit well with our values, our way of life and our understanding of how principles of law should be interpreted.

The third question is: what is the proper court? I made sure that my British Bill of Rights included a clause on interpretation. It stated: first, that all facts and circumstances of a case should be considered, giving judges a wide discretion to make a full decision; and secondly, that the court should be the Supreme Court. For me, it was about making the Supreme Court supreme. I did not see why our rights as a nation should be subject to the European Court of Human Rights, or indeed to the European Court of Justice, when our own Supreme Court can determine those things very effectively. I agree with my hon. and learned Friend the Member

[Charlie Elphicke]

for Torridge and West Devon that it should be this House that constructs rights, that their interpretation should be in line with our own canons of interpretation as a nation, and that the Supreme Court should be supreme.

However, I would not reject the charter of fundamental rights out of hand. Let me explain why. There are rights that make no sense here, such as the right to petition the European Parliament. If we are leaving the European Union, why would we want to petition the European Parliament? On the right to free movement, to seek and have employment anywhere across the continent, that will be a matter for us to determine as a nation state when we leave the European Union. It makes no sense to include those rights in the charter—a point I made to my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve), who agreed with me that we would need to adapt it.

The charter contains rights that draw on the European Court of Human Rights, so there is unnecessary duplication. Then there is an intermediate set of rights, which I think this House should look at. If we are to take back control, we should ask ourselves, “Is it right that some of the rights in the charter should be brought into our own system of law?” That might not be for this Bill, but it is something we should definitely consider.

Antoinette Sandbach: As we are in effect transposing the whole of EU law, with all the regulations that people have complained about for years, for example on bendy bananas, and the regulation of electrical items and consumer protections, does it not make sense to look at this third category of rights?

Charlie Elphicke: I agree with my hon. Friend. I think that it does make sense to look at this category of rights, whether in this Bill or more widely; it is something the House should consider.

Where is the balance to be struck on article 8, which relates to the protection of personal data? My view, for what it is worth, is that I should own my own data and decide what happens to it. It is my own data about me, so I should not have the Government or big businesses saying, “No, it belongs to us.” That is a debate that we should have as a country. This Bill is probably not the right mechanism for that debate, but we need to consider where the balance should lie.

Article 41 sets out the right to good administration. The Minister will say, “Well, of course we administer correctly; we are honourable men”—so are they all. But it is important that, as a matter of principle, every person

“has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies”

and that the right includes

“the right of every person to be heard, before any individual measure which would affect him or her adversely is taken”.

It seems to me that these rights are self-evident and true, and that we ought to ensure that they are written into our codes, from the point of view of executive action, if they are not already. They include

“the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality”

and

“the obligation of the administration to give reasons for its decisions.”

Those things, it seems to me, are self-evident and basic about what we are and should be about. These are rights that are not written into our system fully and properly, but I think that there is a strong case that they should be. I have of late had reason to ponder such matters in more depth, and the House should consider them to ensure that we execute such things properly in our system, our way of life and the values that we hold dear. The House should take back control to ensure that the rules of law and of executive action apply to each and every person in this nation and that we strike the right balance as we take on the great responsibility of restoring sovereignty to our sovereign Parliament.

Mary Creagh: It is a pleasure to follow the hon. Member for Dover (Charlie Elphicke). I voted against this Bill on Second Reading due to the powers that it puts into Ministers’ hands and the fact that it sidelines Parliament in many of these moments of incorporation. We have heard Government Members waxing lyrical about putting things back into the hands of this sovereign Parliament, but the Bill puts into the hands of Ministers the power to pass or strike out almost any law, and that point has been missed in this debate.

I am not a legal expert. I am not a barrister. I do not have a law degree. What I have is a semester spent studying Government law and policy at the London School of Economics as part of my master’s in European studies, and I have a massive book by Craig and de Búrca, which is still on the shelf in my office. As I was reading through the Bill, I noticed “Francovich” and that rang a little bell in the reptilian core of my brain. I thought to myself, “Ooh, that is one of those really important cases that I learned about 20 years ago,” and it turns out that that master’s has been the best money that I ever spent.

Francovich is one of the areas where the Government break their promise to cut and paste the whole body of EU law into UK law. Schedule 1 is their get-out-of-jail-free card and includes the things that they do not like and are not going to incorporate. There are a lot of words about why things will be difficult, why judges will be confused and why everyone will be getting themselves into a twist, but it is a rights grab and it must not be allowed to stand. We must not allow schedule 1, which is essentially a list of the ways in which the Government are curtailing legal rights and remedies that we have enjoyed as a result of our membership of the EU. Admittedly, however, some of those rights and remedies did not exist when we joined and have evolved over time through European Court of Justice jurisprudence and through the treaties.

For the last 25 years as EU citizens, we have enjoyed the right to state compensation when the Government fail to implement EU law correctly and an individual suffers a serious loss as a result—that goes back to my big green textbook. The rule was established after Andrea Francovich took his Government to court for failing to protect his rights at work. He worked for an electronics company in Italy, but he was paid only sporadically, and he was still owed pay when his employer went bust. The insolvency protection directive gives workers the right to be paid if their employer goes bust and they are

owed wages, but Italy had failed to implement the directive, and the European Court of Justice ruled in 1991 that the Italian Government must make good the pay owed to Mr Francovich and, presumably, his colleagues. Since then, if an EU member state has failed to fulfil its obligations that come with membership of the EU, citizens can obtain compensation if they suffer damages as a result. I think the reason why that stuck in my mind was that the EU case law was relatively fresh 25 years ago.

How did the ruling apply in the UK? There is a particularly sad case that any one of us could have had as constituency MPs: the case of Ben Byrne. Since 1984, the second motor insurance directive has required member states to provide compensation arrangements for victims of untraced drivers and that the protection must be equivalent to that which is available for victims of insured drivers whose identities are known. In 1993 the then three-year-old Ben Byrne was hit by a car while crossing the road with his father. The driver sped off and was never found. Ben's parents were not aware of his right to claim compensation until eight years after the accident.

We get such difficult, knotty cases in our constituency surgeries, with people being unaware of their rights and remedies under the law. Many of us will have held the hand of a constituent in terrible cases to ensure that they get justice.

6.30 pm

Had the driver's identity been known, Ben would have been able to bring a personal injury claim because the Limitation Act 1980 provides that the clock does not start ticking against a minor with a personal injury claim until they reach the age of majority—18—but under the UK's arrangements for victims of untraced drivers, Ben was not entitled to any compensation as more than three years had passed following the accident. At the tender age of six he was supposed to know his full rights under the law and to have made a claim.

Ben's parents, presumably, and Ben successfully claimed damages from the Government using Francovich to argue that the Transport Secretary had failed correctly to implement the EU's second motor insurance directive. Francovich has been crucial to people in this country getting the compensation they deserve. Ben's case is important because it shows that knowledge of the remedies, or even of the breach, often occurs only many years later.

At the moment, Francovich depends on the European Court of Justice deciding that a breach of the law is "sufficiently serious", that a person's rights have been infringed and that the claimant has suffered a loss. There is a triple lock, so people cannot bring a case frivolously. People cannot clog up the system with such cases, because Francovich depends on the triple lock. Of course, if Francovich were incorporated into UK law, the ECJ's role could be taken on by the Supreme Court. There is nothing to stop the Supreme Court making that judgment.

I am delighted to see the Attorney General in his place, because the Law Officers are effectively saying that they are happy with the Bill bringing down a guillotine on people's rights and remedies. I would like to hear what the Law Officers have to say about transitional

cases—cases that have already started and that are making their way through the courts—and about the difficult issue raised in my amendment 139, in which the circumstances giving rise to a breach take place on exit day and where a claimant will not have this remedy. I would be grateful if the Attorney General could explain why that is right.

The Trades Union Congress has said that workers might have no legal remedy in future if the Government fail to protect their workplace rights, such as their right to holiday pay and equal rights for part-time workers and agency staff. The May 2017 European Commission decision on the negotiating paper for its negotiations with the UK on these issues specifically mentioned such cases. Part III.3, paragraph 35(c) of the negotiating paper basically says that judicial and administrative cases going through the ECJ should continue and that the ECJ will continue to have a role. It strikes me that schedule 1 directly contradicts the Commission's negotiating principles. I am not a legal expert, so will someone please explain it to me?

This is both a retrospective and a prospective removal of rights. In the future, the measure will retrospectively apply. In terms of legal certainty, that creates problems for our courts in interpreting the law. This is a blatant example of the Government seeking to avoid responsibility for past breaches of EU law, which is not the underlying purpose of the Bill. The purpose of the Bill is to copy and paste all our existing rights and remedies under EU law into UK law.

Anna Soubry: There is genuine concern across this House about this matter, because it cannot be right that people cannot raise a claim on EU law "retrospectively", as the hon. Lady puts it. My right hon. Friend the Member for Chesham and Amersham (Mrs Gillan) has raised this problem, so I hope the Government will examine it and come up with proposals that will satisfy this concern from right across the House.

Mary Creagh: I thank the right hon. Lady for that intervention. Often the simplest sentences raise the biggest alarm bells, because things can be missed if we blink, and substantial rights are engaged in this. The Brexit Secretary said in his speech to UBS last week that the UK would remain

"in all the EU regulators and agencies"

during the transitional period. That leaves us with a further conundrum, because transitional rights are mentioned in the European Commission's negotiating paper and it says that the ECJ will continue to be able to decide, presumably on Francovich, during any transitional period. The issue of the transitional period is stretching the elastic limits of the Conservative party and of the Cabinet at the moment in terms of which wing of the party is going to succeed, but from the point of view of economic stability and job stability in this country I certainly want to see a transitional period. This Bill raises questions about the loss of those rights if there should be, as we all hope there will be, a transitional period.

The problem is that those rights start to erode as exit day looms, because the incentive to follow the EU directives will be diminished for the Government as they will be let off the hook, given that there will be no retroactive right to sue under Francovich.

[*Mary Creagh*]

Schedule 1 therefore fails the basic test of fairness. For example, if the Government are in breach of an air quality directive, perish the thought, and people are suffering a substantial loss as a result, only those who start legal proceedings before exit day would be entitled to those damages. My amendment 139 would ensure that the right to sue the state and to obtain a remedy under Francovich is still available for those who have suffered that loss or damage before the UK exits the EU. This would allow the victims of a Government failure to uphold their rights that took place before exit to obtain those damages. It would bring fairness to this process, as well as, crucially, legal continuity and legal certainty. Brexit must not be used as an excuse to abolish citizens' rights and protections under the law. In the referendum my constituents did not vote to reduce their rights, and I hope the Committee will be able to test the matter this evening.

Sir Oliver Letwin: I have considerable sympathy with the points just made by the hon. Member for Wakefield (*Mary Creagh*). Exactly at which point to create which cut-off when dealing with Francovich is a knotty issue, but the idea that people whose rights already exist and who are damaged before exit should be prohibited from pursuing causes that they would have been able pursue now had they had the wit to start them now is pretty offensive to natural justice, and I hope that those on the Treasury Bench will come forward with some adjustment to paragraph 4 of schedule 1.

I mainly wish to dwell on the two other issues that have been raised in this interesting debate, which has been much more of a genuine Committee stage debate than some of the debates, or some parts of them, that we have had in the previous two days' consideration. The first is on the charter of fundamental rights, where I thought the argument was largely being won by those who argued that it was not productive to have the general principles in that charter brought into UK law, provided that we could satisfy ourselves that case law and statute between them would cover off all the material and substantive rights contained within the charter. I was therefore extremely heartened to hear the Minister of State, Ministry of Justice, my hon. Friend the Member for Esher and Walton (*Dominic Raab*), say that there was going to be a full analysis, which I hope will be sufficient to persuade us all that all the rights are covered off in some other way. If they are, the points that were made about the dangers of judicial activism, which is positively invited by the charter of fundamental rights, would outweigh any advantage to the charter's incorporation.

Before I come to the main point I want to make about paragraph 3 of schedule 1, I wish to observe, as a slight qualification to some of the things that have been said in Committee, that an element of judicial activism will not only be made possible but actually be required by the Bill, because it refers repeatedly to retained principles and it is impossible for judges to engage in the application of principles without their engaging in judicial activism that goes beyond simply reading the plain face of statutes and the like.

This is all a very grey area. With that in mind, I come to amendment 10, tabled by my right hon. and learned Friend the Member for Beaconsfield (*Mr Grieve*), and

paragraph 3 of schedule 1. His amendment refers to paragraphs 1 to 3, but in my view it refers mainly to paragraph 3. There is currently a great oddity in the way the Bill is cast. I very much hope that not too long from now my hon. and learned Friend the Solicitor General will come to the Dispatch Box and resolve this problem, but it is important to set out the nature of the problem.

Clause 5(2) clearly establishes the principle of the supremacy of EU law so far as the past is concerned. It spells it out in awesome terms, by including the "disapplication or quashing of any enactment or rule of law"—if that phrase has any meaning—

"passed or made before exit day."

Clause 6(3)(a), which we discussed on a previous day, makes it entirely clear, at least in relation to the ordinary operation of the lower courts—my right hon. and learned Friend the Member for Beaconsfield and I are still discussing with Ministers on the Treasury Bench the vexed question of the Supreme Court—that not only retained case law but

"any retained general principles of EU law"

are to be applied by the courts.

It is therefore a strange state of affairs that if we look at schedule 1, we discover that no court or tribunal will be able to do the very things that the combination of clauses 5(2) and 6(3) require. No court or tribunal will be able to apply the general principles of EU law to quash or be supreme over any existing UK law. We can have a Bill that says one thing or we can have a Bill that says the opposite, but we cannot properly have a Bill that says in one part of it one thing and in another part the opposite of that thing, so some change is required. That much is, I think, simply a matter of analytical fact.

My preference, which I hope the Solicitor General is going to reflect in his remarks, is for a change of the kind that has come up in various exchanges this afternoon. It is considerably more modest than the rather uncharacteristically complete, sweeping amendment tabled by my right hon. and learned Friend the Member for Beaconsfield. I would simply amend paragraph 3(2) of schedule 1 in such a way as to ensure that it refers to general principles of EU law other than retained principles. At that point, it seems to me, rationality would re-enter the scene, because we would then be saying that after exit day a court in the UK could not use later principles developed by the CJEU—or indeed, while we are at it, any charters or other documents produced by the EU—to overrule English statute, which would of course be a natural and proper consequence of our leaving the EU.

6.45 pm

Sir William Cash: For the sake of the record, I would be grateful to my right hon. Friend—I nearly said "learned" because he is doing such a great job—if he also looked at paragraph 5, which, in terms of interpretation, does relate to schedule 1 as well, and so cannot be left out.

Sir Oliver Letwin: Oddly enough, I was going to say that, so I will not do so now. I agree with that. While we are at it, I hope that the Solicitor General will also tell us that paragraph 3(1) of schedule 1 will be similarly adjusted, because, clearly, we need the same principle to apply to a private right of action as applies to the quashing of an enactment.

Provided that those changes are made, I think that the basic articulation of clause 5 and schedule 1, unlike clause 6, is in reasonably good shape and therefore I hope that, as well as the very splendid offer of a full analysis of the rights, we will get a very clear statement from the Minister about the kind of amendments that will be brought forward on Report. That would certainly make me more than willing to support the Government tonight.

Helen Hayes (Dulwich and West Norwood) (Lab): I rise to speak in support of amendment 46 in the name of my right hon. Friend the Leader of the Opposition; amendment 8 in the name of the right hon. and learned Member for Beaconsfield (Mr Grieve); and new clause 16 in the name of my hon. Friend the Member for Nottingham East (Mr Leslie).

The charter of fundamental rights is the most up to date, and therefore, in many respects, the most fit for purpose framework for the protection of human rights that UK citizens currently enjoy. It is broad based and comprehensive in its coverage but also specific in many aspects of its scope. Although the charter of fundamental rights draws together many rights and principles that are to be found elsewhere in legislation and case law, it also augments the legislation that predated it, and in doing so provides additional rights and protections to UK citizens that are not found anywhere else. It is not simply an amalgam of rights legislation that exists elsewhere in UK law, as the Government would have us believe.

The history of human rights legislation is cumulative. It has developed over centuries. Since Magna Carta, our understanding of the inalienable rights of all human beings has been growing, expanding and evolving, and legislation has been fought for and established in response. The charter of fundamental rights is the clearest articulation that we have of a 21st century commitment to human rights. It was developed painstakingly and collaboratively by all EU member states prior to its ratification in the Lisbon treaty, and it is therefore also a clear statement of our shared values and the aspects of our common humanity that bind us together and underpin the respect that we have for each other both within and across national borders.

The charter of fundamental rights is a deeply practical framework, which UK citizens rely on for protection every day. Article 1 enshrines human dignity as a right. Few would disagree that human dignity is a right, but the charter of fundamental rights is the only place in legislation that enshrines that right, affording the most basic protection to people in receipt of social care or medical treatment, among many other circumstances.

Article 8, the protection of personal data, is a new 21st century right, which provides a foundation of principle for the development of further specific legislation to protect the privacy of individuals and to regulate the use of data. Indeed, the right hon. Member for Haltemprice and Howden (Mr Davis) made use of that provision when making his case against the Data Retention and Investigatory Powers Act 2014, and I would therefore hope that he has no wish for this provision to be rescinded and for others to be denied this opportunity.

Article 21(1) is of particular importance for LGBT people as it is the only provision in international law ratified by the UK that expressly protects people from

discrimination on the basis of their sexual orientation. It adds a layer of protection over and above the provisions contained in the Equality Act 2010 and the Human Rights Act, and that protection would therefore be diminished without it.

Article 28, the right of collective bargaining and action, establishes the right of workers and employers to negotiate and conclude collective agreements and to take collective action to defend their interests, including strike action. Workers can also rely on the charter to challenge laws that breach fundamental rights. For example, individuals working in the Sudanese embassy in the UK used the charter to successfully enforce their employment rights in the UK courts. There are countless such examples and workers would lose such powers if the charter no longer applied in the UK. This Government have already proved their commitment to weakening workers' rights in their pernicious Trade Union Act 2016, so I am afraid we can have no confidence that the protection of such rights can be taken on trust for the future.

There are many other provisions that are unique to the charter of fundamental rights and without which the human rights protections afforded to UK citizens will be weakened. The charter applies to EU law, and the Government say that the Bill places all EU law on the UK statute book, but if the Government have their will, and the charter is not part of domestic law after exit day, the important additional rights it affords the British public will be lost. It is therefore simply not the case that this Bill is the simple cut-and-paste job the Government would have us believe it is.

Liz Saville Roberts (Dwyfor Meirionnydd) (PC): Stronger children's rights protections exist in the devolved nations, and Ministers in Wales are statutorily obliged to have due regard to children's rights, as expressed in the UN convention on the rights of the child, when exercising any of their functions, unlike in England. Does the hon. Lady share my concern that the Bill as it stands will remove the basic children's rights safeguards offered by the EU charter of fundamental rights and prevent devolved nations from upholding the present arrangements and commitments to children's rights into the future?

Helen Hayes: I thank the hon. Lady for her intervention, and she cites yet another powerful example of the extension of rights that is afforded by the charter to all our constituents, including those in the devolved nations.

I want to say a word now about the views of my constituents and to represent their views. My constituents voted overwhelmingly—by more than 75%—to remain in the EU. They did so for many reasons—some very practical, and others deeply principled—but in all of the many conversations I have had with my constituents since the referendum, the word they have used most often is “values”. My constituents voted to remain in the EU because the EU represents their values of tolerance, diversity and internationalism, and there is no clearer articulation of these values than the charter of fundamental rights.

Many of my constituents are deeply distressed by the EU referendum result, and they have been looking to the Government for comfort and for a negotiated Brexit deal based on the values we share with the EU. Adopting

[Helen Hayes]

the charter of fundamental rights into UK law would send a strong signal about a continued basis of shared values with the EU and a commitment to uphold the highest standards of human rights protections as the foundation for any future trade deal with the EU. Without this commitment and this level of protection, the Government demonstrate once again that they have no commitment to high standards and that the UK's relationship with the rest of the world risks being based on a race to the bottom in terms of protections for UK citizens.

Mr Mark Francois (Rayleigh and Wickford) (Con): My constituents voted overwhelmingly, by 67%, to leave—there were variations around the country. I am listening carefully to the hon. Lady's speech, but is she seriously suggesting that the main reason most of her 75% voted to remain was the charter of fundamental rights?

Helen Hayes: I thank the right hon. Gentleman for his intervention. That is not my contention; my contention is that the charter of fundamental rights is a very clear articulation of one of the many reasons why my constituents voted so overwhelmingly for remain, and I seek to represent their views today, as I am sure he seeks to represent the views of his constituents in this important debate.

The charter is the most up-to-date human rights framework from which UK citizens benefit, and it is incomprehensible that the Government should not want to commit to the same high standard as the basis for all future human rights protections for UK citizens post Brexit and as a basis for continuing to develop UK human rights law. That they will not do so is revealing and deeply concerning.

My constituents did not vote for Brexit. But, above all, they did not vote for Brexit on any terms. They seek reassurance from the Government, and they do not find it in this deeply flawed Bill. It is essential that UK citizens can continue to rely on the highest standards of human rights protection post Brexit. I will continue to fight for that, and I will vote for these amendments.

Antoinette Sandbach: It is a pleasure to follow the hon. Member for Dulwich and West Norwood (Helen Hayes). I agree with her that human rights law is a developing area of law, but I do not agree that this Government have any intention of trying to undermine it.

We have heard a very interesting exposition of why the charter should not be translated into UK law. I accept that there are flaws with amendment 8, but I want to speak to it none the less because it is quite clear that, as I believe the Government have now accepted, the third category of rights needs some form of protection and incorporation, if it is not already protected.

The development of human rights law started out in the 1920s with the Geneva conventions. Those conventions were signed by a limited number of countries and were basically the fundamental guarantees of the rights of citizens when all law and order has broken down and they are facing the worst circumstances of war and chaos. That is the true meaning of the word "chaos", I would say to my hon. Friend the Member for Fareham

(Suella Fernandes). The law has moved on and changed, and countries that were never signatories to those conventions are now subject to their requirements because they are the basis of the minimum rights that should be guaranteed in any civilisation. Countries that fail to guarantee those rights get prosecuted under the International Court of Justice in The Hague. In future we will no doubt see actions on Syria, and other actions. The 1950 convention that we originally signed, which forms the basis of our Human Rights Act, has therefore moved on, and there are rights contained in the charter that are not in the Human Rights Act.

Mr Simon Clarke (Middlesbrough South and East Cleveland) (Con): The extra rights, or third-category rights, in the charter seem to be predominantly matters of social policy such as healthcare and schooling. While we might all agree that those things should happen, they should not be rights in a charter but matters of policy for Government to determine. That is why I take exception to my hon. Friend's argument. This is not really about rights but about policy.

Antoinette Sandbach: I am afraid that the Walker case demonstrates exactly the opposite. Somebody was discriminated against because they were in a same-sex marriage, and the charter guaranteed the partner's right to the pension. That was not a matter of social policy; it was enforced because of the charter. That is why this debate is incredibly important. There will potentially be some areas that are a matter of policy, but it is important for the Government to go away and look at the amendments because serious points are being made that will affect people's everyday lives. This is not a debate on principles that do not matter; these are really important, fundamental issues that, as a democracy, we should be looking at in a sensible and reflective way.

Sir Oliver Letwin: I entirely agree that there are anti-discriminatory rights contained in the charter. However, does my hon. Friend agree that the issue which is not yet resolved, but which the Government's analysis may resolve, is whether those rights are already encoded in the case law and the general principles emanating from that case law, and therefore do not need to be in a separate charter for our purposes, or are not yet in the law and therefore would need to be in the charter?

Antoinette Sandbach: I do accept that that needs to be looked at. The problem with the sovereignty of Parliament is that we always get to the point where the Parliaments of the future can change and erode these rights. I agree with my right hon. Friend's earlier suggestion that in due course the Human Rights Act ought to be amended to include the broader category of rights. We are seeing an evolution and a change in our rights, and it is important to reflect that in that Act.

Mary Creagh: The hon. Lady is making some excellent points. Several of her Conservative colleagues have argued that some of the rights contained in the charter are otiose—one of them being, perhaps, the right not to be subjected to forced expulsion. That is, thankfully, not something that we have seen in this country, but it was a persistent feature in 20th century Europe. We are now at a stage where the Home Office is sending out letters to EU nationals threatening them with deportation.

Although some of those individuals may yet have recourse to their rights under the European charter, they will not be able to exercise them after we leave.

Antoinette Sandbach: The hon. Lady does my colleagues a great disservice. The rights that my colleagues described as otiose were, for example, the right to petition the European Parliament or the right to stand in EU Parliament elections. I think she is also being unfair to the Home Office, which has made it very clear that the letters to which she refers were sent out by mistake and did not accurately reflect the position.

Nothing that the hon. Lady has said takes away from the point that the charter of fundamental rights contains a third category of rights that may not have protection. I am encouraged that the Government are going to undertake the exercise that has been mentioned, which they need to do, before Report. It is important that the Committee takes very informed decisions about where the gaps are. For that reason, I very much support amendment 10.

7 pm

Mr Francois: This situation has evolved over a number of years, and it continues to do so. I do not want to introduce too much of a partisan element into the debate, but I want to give an example of how the situation has changed over the past few years. When we debated the Lisbon treaty in this House in 2008—something that I was actively involved in at the time—the policy of the then Labour Government was that the charter should not be justiciable in the United Kingdom's courts. In fact, the then Government were at great pains to stress—

Antoinette Sandbach: Is this an intervention?

Mr Francois: It is. The then Labour Government said that they had a protocol that specifically ruled that out. That is how much things have changed.

Antoinette Sandbach: There has been much misrepresentation in the House of the protocol, but it is quite clear what it said: the rights contained in the charter were existing rights. In other words, the charter did not create any new rights that had not previously existed. The position of those on the Treasury Bench is that the rights are of long standing, and they apply to UK citizens. I am very keen to ensure that where those rights may not be adequately protected, the gaps are filled. But to say that protocol 30 was an opt-out, which is how it has been portrayed in the debate, is, quite frankly, inaccurate and not right.

Tom Brake (Carshalton and Wallington) (LD): The hon. Lady is being generous in giving way. Can she expand on how she sees us getting from our current position to the point at which the Human Rights Act includes the rights that she thinks it should include? What sort of transition period does she envisage, and how will the rights be protected in the interim?

Antoinette Sandbach: I very much hope that those on the Front Bench will go away and undertake their promised exercise, from which we will be able to see exactly where the gaps are and where the third category of rights may fall. It seems to me ridiculous that we are going to bring over 12,000 regulations covering everything from fridges to bananas, but we are not going to deal

with some of the most fundamental and basic things that guarantee citizens certain levels of protection. That is the fundamental principle, and it is why I support both amendments 10 and 8.

Anna Soubry: Does my hon. Friend agree that it is really important, given the many concerns about the Bill, that we make it absolutely clear, as she quite rightly points out, that we have a very proud history on human rights in this Parliament and in this country? The idea that this Government are in some way taking away rights from people is simply not true, and it is very important for all of us to report this, especially to our constituents, with great accuracy.

Antoinette Sandbach: I entirely agree with my right hon. Friend. In fact, I could not have put it better myself. In that regard, I adopt everything she says.

This is important because we have been publicly vilified for tabling amendments to the Bill. Debates such as this illustrate very dramatically to our constituents why it is so important to undertake a democratic process, which sometimes involves tabling probing amendments—I know amendment 8 is such an amendment—so that we can look at, consider and debate these issues and, I hope, come to consensus across the House. I know other Members wish to speak. These are incredibly important matters, and I am waiting to hear what Ministers say about how they will approach them.

Alex Sobel (Leeds North West) (Lab/Co-op): I thank the hon. Member for Eddisbury (Antoinette Sandbach) for her speech, which showed her great experience and knowledge from her many years practising in the legal profession. I have heard many other Members from both sides of the Committee who have eminent knowledge in this area—they have spoken in this and previous sittings and will speak in others—not the least of whom is my right hon. and learned Friend the Member for Holborn and St Pancras (Keir Starmer), who is in his place. He studied in the school of law at the University of Leeds; I studied in the school of computing at the University of Leeds, and I hope to apply that knowledge later in my contribution.

Opposition Members are looking to the Bill to ensure that retained EU law within UK law keeps us aligned with EU rights and regulations. I am going to outline my concerns about the Government's decision to exclude certain elements of EU law through the EU withdrawal process. For instance, it makes no sense whatsoever to me to exclude from that process the charter of fundamental rights. Where is the analysis of the effects of removing the charter from our law? What safeguards are in place to ensure that we are not creating a legal chasm that has unknowable effects on individuals and businesses?

Article 8 of the charter covers the protection of personal data—the right to privacy and the right to data protection, which serve as the foundation of the EU's data protection law. Getting rid of article 8 could prevent businesses from building customer profiles across the EU, which will directly harm the ability of small companies to compete when selling their products on social media platforms, an area in which the UK has seen huge growth. I am very pleased that my right hon. Friend the Member for East Ham (Stephen Timms) has tabled amendment 151 on this matter.

[Alex Sobel]

The charter is fundamental to our response to the Government's failures on clean air, an issue that is engulfing many cities across the UK, not least my city of Leeds. Article 37 ensures that people have recourse to the courts when there are environmental breaches. In fact, the UK has been sent a final warning that it must comply with the EU air pollution limits for nitrogen dioxide or they will face a case at the European Court of Justice. In the Environmental Audit Committee, on which I sit, the Secretary of State for Environment, Food and Rural Affairs could not articulate what powers and mandate a new UK environment protection agency would have to replicate the loss of article 37. He said that

"we will consult on using the new freedoms we have to establish a new, world-leading body to give the environment a voice and hold the powerful to account. It will be independent of government, able to speak its mind freely.... We will consult widely on the precise functions, remit and powers of the new body"—

no definition there. He also said:

"We also need to ensure that environmental enforcement and policy-making is underpinned by a clear set of principles"—

no definition of those principles. How can we be satisfied with an EU withdrawal process that does not provide for our leaders to be accountable for their environment failures? My constituents voted overwhelmingly to remain in the EU and do not expect to lose the rights provided by the charter of fundamental rights.

Many of those rights, as has been pointed out, are well established in UK law, but many others are new rights that have been introduced since our membership of the EU and the signing of the Lisbon treaty. Will the Government argue for each of those rights in turn in the House, or are we to take it on trust that they will be retained and that we will continue to enjoy them post-exit day? Attempting to scrap the charter is cowardly and speaks to the suspicions of people up and down the country that the Government are not working for them but instead working for the hardest possible Brexit.

Robert Neill: There have been a number of powerful speeches from Members on both sides of the Committee on this important issue. I shall be as brief as I can, but I want to begin by picking up the point made by my hon. Friend the Member for Eddisbury (Antoinette Sandbach). This is what we are supposed to be doing in this House. This is about proper parliamentary scrutiny. I do not care about the views of writers of newspaper headlines. If any one of us stands up and seeks to scrutinise the Bill to improve it, we are doing our duty by our constituents. Anyone who thinks that doing so is somehow opposing either the Bill or the wishes of the electorate has precious little knowledge of—or, even worse, no respect for—our parliamentary processes.

In an endeavour to seek to improve the Bill and assist the Government, I supported a number of amendments tabled by my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve) and others, and I stand by that. I hope—I get the impression from the spirit of what has been said—that the Government recognise those issues and will find a means to take them forward constructively. That is in everyone's good interests, but I want to reinforce as swiftly as possible the significance of that. The Government's position in relation to the

protection of human rights has been grossly mischaracterised by some Opposition Members. That does the debate no good. I do not believe for a second that it is the Government's intention to diminish rights protection. Equally, it is important that we get right the way in which that is protected. I hope that my hon. and learned Friend the Solicitor General will reflect on that.

I particularly want to refer to Francovich litigation, because this is a classic case of making sure that we do not inadvertently do injustice to people as we take necessary measures in the Bill to incorporate existing European law into our own. No one has a problem with that, but it is not right to deny people the ability to seek effective remedy for a course of action that arises under retained law. The whole point of having sensible limitation Acts is to prevent people from being denied a remedy with the passage of time when they have done nothing to deserve that. We need a bit more clarity—for example, if there is a pre-existing right to a course of action that is available until the moment we leave the European Union, it ought to be possible for someone, once they have become aware of that course of action, to pursue it through our courts.

Mr Grieve: I agree entirely with my hon. Friend. While the Government have made an argument that there is a problem because of the international law aspect in such a piece of litigation going all the way to the European Court of Justice, there can be no argument that the same rules that applied when we were in the EU should apply to any such piece of litigation, even if the end-stop is our own Supreme Court. It is perfectly easy to do, and the Bill has to be altered to allow that to happen.

Robert Neill: The case that my right hon. and learned Friend makes is completely unarguable. There is no answer to that thus far from the Government, and the only answer is to change and improve the Bill. To fail to tie up that clear, apparent and recognised loose end in the Bill could have the effect, almost by negligence or a measure of inadvertence, of denying UK citizens rights they might otherwise have. That would seem to me to be almost verging on the disreputable. I do not believe that the Ministers on the Treasury Bench wish to do that for one second and I know they will want to put it right. I hope that they will make it clear that it is the Government's intention to make sure that that lacuna is resolved.

7.15 pm

Amendments 8 and 10 raise important principles, which relate to the same point. Once we have incorporated EU law into our law, there has to be consistency. In particular, there has to be an ability for the courts, when interpreting it, to refer back to the basic principles. Otherwise, how are we to make sense of it? No one is saying that it should apply to what happens after we have left the EU—I think my right hon. and learned Friend the Member for Beaconsfield made that abundantly clear. However, the courts have made it equally clear—Lord Neuberger and others—that the judges need an aid to interpretation in this field. They need to have better guidance than the Bill currently provides on the parameters within which they must properly use their constitutional function and judicial discretion.

Sir William Cash: On amendment 10, I am sure that my hon. Friend observed what was said about the absence of reference to paragraph 5 of schedule 1, which deals specifically with the question of interpretation. Does he also agree that one of the greatest dangers is the idea that the Supreme Court, of its own volition after we have left, will be able to disapply any legislation? Does he not agree that that is a fundamental principle, too?

Robert Neill: I think the most important principle is legal certainty. It may well be very sensible for us to start to remove, as soon as possible, bits of retained law that we do not want to keep, but it seems to me to be equally implausible to retain something without following through on the logic from whence it comes. I recognise my hon. Friend's point, but the issue, as my right hon. Friend the Member for West Dorset (Sir Oliver Letwin) pointed out, is one of the Bill's own making. I hope that the Government will table an amendment—before the Report stage—to remove these internal contradictions sooner rather than later. I think we all want to be in the same place, but justice requires not only independence of the courts but a proper framework in which it can operate. Above all, it requires certainty. The Bill as it stands runs the risk of creating uncertainty, and that cannot be in anybody's interest.

I have been struck by the tone of the responses we have had from the Government Front Bench so far, but it is really important to stress that this is a matter of very significant principle. We wish to give the Government the best possible fair wind. I have no doubt whatever about the intentions, credit and integrity of the Solicitor General, who will reply to the debate shortly. What he says will weigh very heavily with many of us. I am sure he will do something that is constructive and helpful, and will help to improve the Bill. This is an important point that I wish to put on the record, because if there is not something of that kind, we will have to return to the issue as the Bill progresses. I hope that that will not be necessary. I believe it will not be necessary, but it is important to stress how fundamentally significant it is. These matters may seem technical, but they are vital to the underpinning of a sound piece of proposed legislation going forward.

Tommy Sheppard (Edinburgh East) (SNP): I support those amendments that seek to ensure that the charter of fundamental rights is not exempted when we transfer powers from the EU after Brexit. Like many people I expect, I have received a lot of correspondence from constituents, and I wanted to start by reading from one—because time is short I will just read the last section of a letter from one of my constituents, Andrew Connarty:

“I feel that the EU and its legislative and judicial bodies protect me as a citizen and have a process of checks in place to protect my human rights, my legal rights and provide me with security. A lot of conversation in the media covers the rights of EU citizens in the UK who are foreign nationals, but what about the rights of EU citizens in the UK who are British nationals?”

Andrew Connarty is one of the great number of people in this country who are fearful of what is about to happen. For them, the process of leaving the EU is not some great liberation or removal of an alien superstate that oppresses them and over-regulates them. They see this as a loss of something of themselves; they see themselves as being diminished and lessened by this process.

Some on the Government Benches will say, “Well, that view does exist, but it is the view of a small liberal elite”. Indeed, a Member earlier tried to taunt a colleague by suggesting that the vote for remain in her constituency could not possibly have been motivated by concern about the charter of fundamental rights. I accept that the great mass of people are probably completely unaware of what particular rights we are talking about, but that does not mean they are unconcerned about them. Joni Mitchell probably summed it up best with the line, “you don't know what you've got ‘Till it's gone.”

The reason is that by their very nature political rights do not put obligations on the rights holder—they do not have to be defended and claimed every day; they put obligations on everyone else. We all have to respect the rights of others. In particular, private corporations and public institutions have to respect the rights of others. It is not until they are changed and that relationship alters that people understand that something has been taken away from them. That is why it is absolutely vital that we educate people about the process now happening.

There was some debate about whether the rights in the charter are substantial at all, about whether they mean very much and about whether they are covered elsewhere in legislation. In 2006, this Parliament established the Equality and Human Rights Commission to advise us on such matters. I have read its briefing—I suspect most have—in which it cites clear examples of articles in the charter that are not replicated in other forms of legislation and states that, if the charter is not transferred or incorporated into British law, these rights will be lost. They include—I will not read them all: article 22 on child labour; article 8 on the right to be forgotten on the internet; article 26 on independence for disabled people; and article 24 on the access of children to both parents. These are rights that we have now that we will not have if the charter does not come over post Brexit.

It is not necessary to lose these rights in order to achieve Brexit. I say to the Brexiteers: I am not one of you but you can have Brexit without losing these rights. It is entirely possible. We do not need to do this, so why are we discussing it at all? The Minister said earlier that it makes no sense to have the charter if we are not a member of the EU, because it refers to the EU, yet the entire canon of European law is being taken over and incorporated into British statute, and this charter goes along with it to give citizens rights in respect of it. It makes total sense, therefore, to bring the charter over in the process of repatriating these powers.

There has been talk that it would be silly to bring the charter over because it would create anomalies and inconsistencies with other parts of the Bill, but the Bill already recognises that there are a million anomalies in the process and makes provisions to deal with them. We wonder, then, what is so special about the charter that it cannot happen there, too. Leaving that to one side, however, the most telling argument, as colleagues have said throughout the last six hours, is surely that it is operational at the minute. Why is our legal system not grinding to a halt under the pressure of these contradictions if they are so great? The truth is they are not so great. It works at the minute, and there is no reason it could not continue to work beyond 2019.

In the absence of a rational argument for the retention of clause 5 and schedule 1, I am compelled to find myself reaching the same conclusion as the right hon.

[Tommy Sheppard]

and learned Member for Rushcliffe (Mr Clarke): what is happening here is pure politics. There are those on the other side who will be satisfied by being thrown this bone, and, as the right hon. and learned Gentleman put it himself, the idea of being able to get rid of a provision that includes both the word “Europe” and the word “rights” creates a double salivation, but I do not think that it just about sating those who are so Europhobic that they will get pleasure from this; I think there is something else going on as well.

The hon. Member for Eddisbury (Antoinette Sandbach), who is no longer in the Chamber, said earlier that the Government did not intend to remove or weaken our human rights, and I take that at face value. The Government have certainly not come here and said that that is their intention. In fact, no Members—or almost none—have said today that they want to remove people’s human rights, to weaken protection at work, or to lessen consumer protection laws in this country, although I rather fear that the hon. Member for Gainsborough (Sir Edward Leigh) nearly let the cat out of the bag when he referred to “the wrong people” having rights in the charter.

The hon. Gentleman talked about the repatriation of powers so that he could have “real human rights” in this country. I dread to think what he means by “real human rights”. I find him an honourable fellow and I am sure that he means no malintent, but I know that there are plenty of people in our society and in our community who will take advantage of any roll-back of civil and human rights protection to ensure that our religious and political freedoms are constrained so that they can adhere to theirs. I think we need to be eternally vigilant, and I hope very much that the Government will feel able to think again.

I say this to those in the centre ground of the Tory party: “If you are just trying to keep the good ship together and keep every faction on board, and if you think that by giving this concession on human rights you will shore up the Government’s support, remember that your former leader David Cameron thought he would be able to do that by having a Brexit referendum in the first place, and look how that has worked out.” I sincerely say to them, “Once bitten, twice shy. Please think again.”

The Solicitor General: It is a pleasure to follow the hon. Member for Edinburgh East (Tommy Sheppard). Let me take this opportunity to assure him yet again that our commitment to rights and freedoms remains absolute. I spent nearly 20 years at the criminal Bar dealing with the liberty of the individual. Indeed, I think I was a human rights lawyer before we even coined the phrase, as were many other Members on both sides of the House.

The point has already been made that our rights and freedoms long pre-date modern developments, but modern developments have no doubt helped to sustain, improve and enhance the range of those freedoms. The fundamental question that we seek to ask about the charter is whether, in the final analysis—as we are no longer to be members of the European Union—it adds anything relevant or material to the sophisticated and developing body of law that has evolved over generations. I do not think so, and I have reached that conclusion after extremely careful thought.

It is tempting, after a long debate, to try and treat this as a Second Reading wind-up, but we are far from that. Other Members are anxious to take part, and I am mindful of the time. I will therefore be true to the principles of debate in Committee, and deal with schedule 1, which I hope will be agreed to. In doing so, however, I will address the various amendments that have been tabled on pages 8 to 12 of the amendment paper—which is still the same size although we are now on day three of the Committee stage, and I am pretty confident that that will remain the case.

Mr Kenneth Clarke: Before my hon. and learned Friend moves on—very authoritatively, I am sure—to the details of the amendments, may I point out that he has just made an important statement? He said that he had thought about whether retaining the charter of fundamental rights after we had left would add anything to our legal rights in this country beyond what we already have. In the past half hour, we have heard my hon. Friend the Member for Eddisbury (Antoinette Sandbach) describe what she calls the third category of rights, which do not appear anywhere else in our law, and we have just heard the hon. Member for Edinburgh East (Tommy Sheppard) list three or four rights in the charter that are not replicated anywhere else. Which of those rights would the Solicitor General be happy to see abandoned? What is going to happen to the third category of rights? He must explain why he does not think the charter adds anything, given that the main reason people are trying to get rid of it is that it has extended the scope of European-sponsored human rights law in this country.

7.30 pm

The Solicitor General: As the Minister of State, Ministry of Justice, my hon. Friend the Member for Esher and Walton (Dominic Raab) has mentioned, the Government will, on 5 December, publish their full analysis of the sources of the rights that we have been talking about. I remind my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) that the underlying principles of EU law from which the charter has been developed will be part of the body of law that we bring down to the UK, and will be able to be relied upon.

Mr Cox: Is not the answer to my right hon. and learned Friend the Member for Rushcliffe (Mr Clarke) that the rights might not be replicated in our existing law but the protections will be? The fact that a general statement of a right is not replicated verbatim in our law does not mean that those rights are not otherwise protected adequately and fully by our laws.

The Solicitor General: I am grateful to my hon. and learned Friend, but I feel as though I am about to become a proxy in a debate between him and my right hon. and learned Friend the Member for Rushcliffe, so I will now develop my point.

Lady Hermon: Will the Minister give way?

The Solicitor General: If I may, I will move on to amendment 10, which would remove paragraphs 1 to 3 from schedule 1. My right hon. and learned Friend the Member for Beaconsfield (Mr Grieve) earlier drew the attention of the Committee to these important matters, and I am grateful to him for the constructive way in which he has sought to approach this issue.

First, we cannot agree to the removal of paragraph 1 because the effect would be to create huge uncertainty. How would our domestic courts approach the task of assessing challenges to the validity of converted law? That is a job that they have never had before. Who would defend those challenges? What remedies would be available to the courts? How could converted law that was found to be invalid be replaced? The amendment does not deal with any of those vital questions.

Similarly, we cannot accept that paragraph 2 should be removed from the schedule. There is no single definitive list of the general principles. They are discovered and developed by the Court of Justice of the European Union. Paragraph 2 in its current form maximises certainty by specifying a clear cut-off point and stating that a general principle needs to have been recognised by the Court before we exit. Without that, it would be completely unclear which general principles could be used as the basis for a challenge. It is not even clear whether post-exit CJEU jurisprudence could be taken into account, and so whether new principles could be discovered after exit. That would be completely inappropriate.

Mr Grieve: I would like gently to point out that I did not propose deleting the interpretation provision 5(2). Admittedly, it does not interpret anything because the rest is gone, but it nevertheless made it pretty clear that we were talking about retained EU law and that such law was created prior to the date of our exit.

The Solicitor General: I think that my right hon. and learned Friend has answered his own point. Without sub-paragraph (2), paragraph 5(2) becomes rather difficult to apply. I want to get to the nub of his concern, however, which is paragraph 3 of the schedule. We recognise the strength of the views that he and other Members on both sides of the Committee have expressed on this issue, many of whom have spoken this afternoon. We are listening, and we are prepared to look again at this issue to ensure that we are taking an approach that can command the support of the Committee.

Simply removing paragraph 3 in its entirety, however, is not something that we could agree to. It would result in an open-ended right of challenge based on the general principles of EU law, however they are defined, after exit. It would mean that domestic legislation, both secondary and primary, rules of law and executive action could be disappplied or quashed if found to be incompatible with those actions. Currently, the general principles apply when a member state is

“acting within the scope of EU law”,

so after exit the circumstances in which the general principles could be relied upon would not be clear.

Allowing courts to overturn Acts of Parliament, outside the context of EU law, on the basis of incompatibility with these principles would be alien to our legal system and would offend against parliamentary sovereignty.

Mr Grieve: My hon. and learned Friend raised the question of scope and when this would apply, but it seems to me that he was answering his own question, because it comes when there is a clash between the law that has been retained and has supremacy and any domestic legislation. It is precisely because the supremacy of the retained EU law is kept that it is necessary also to

have the potential for the general principles to have that supremacy as well, because they are essential to the purpose of interpretation of that law.

The Solicitor General: I wanted to deal with the issue in this way, because it seems to me that the nub of the issue that my right hon. and learned Friend is concerned about is with regard to the rights of challenge relating to pre-exit causes of action. It would be possible to retain those, and in relation to executive action even after exit in areas covered by retained EU law. We can agree that there should be appropriate mechanisms for challenging the actions of the Executive. I am happy to discuss further with him what might be needed. I am also willing to discuss whether there needs to be some further route of challenge on secondary legislation.

The rights landscape is indeed complex, and we are seeking with this Bill to maximise and not remove any substantive rights that UK citizens currently enjoy. In view of my commitment to look at this again, I invite my right hon. and learned Friend not to press amendment 10 and to agree to work with us in this shared endeavour. The Government will bring forward our own amendments on Report for the purposes of clarifying paragraph 3 of schedule 1.

Sir Oliver Letwin: I am grateful to my hon. and learned Friend, who has just said some of the words that many of us hoped to hear, which is that Government amendments to that effect will come forward on Report. Will that include an appropriate amendment to paragraph 3(1) on the private rights of action?

The Solicitor General: Let me turn to paragraph 3(1) of schedule 1 to be absolutely clear. I am interested in looking at all aspects of that provision: sub-paragraphs (1) and (2).

Mr Grieve: I am most grateful to my hon. and learned Friend, who has made a really important concession at the Dispatch Box, which I much appreciate. It clearly reflects the disquiet that has been shown across the House. I can tell him now that, in the light of that, I will not be pressing my amendment to a vote. However, it is clear from what he has said that although some of the issues that I have raised have been met, I ought to put it on record that it is also clear that the issue about whether this could be used to disapply primary legislation appears to remain an area of potential disagreement between us, which I hope we may be able to iron out. I have to say that it is a strange area of disagreement, given that elsewhere we have precisely the possibility of that happening, by virtue of keeping the supremacy of retained EU law.

The Solicitor General: As I have said, I want to ensure that the dialogue that has been opened continues. My right hon. and learned Friend knows that at all times the spirit with which he and other hon. Members have tabled amendments has been entirely understood and respected by those on the Treasury Bench. We have never sought to pillory Members for doing the job of scrutinising legislation. I have been there myself many times and can remember tabling dozens of amendments in order to probe the Government's intentions in a Bill.

Mr Kenneth Clarke: We are making some progress, but I point out that I am the second name on the amendments tabled by my right hon. and learned Friend the Member for Beaconsfield (Mr Grieve), and I shall inquire of the Chair between now and the end of the debate whether I have a right to call for a vote on those amendments, which I think I may have. I am extremely glad to hear the Solicitor General say that he will bring forward a Government amendment, because he has vigorously rejected just about every argument that my right hon. and learned Friend has used throughout the debate and has stuck rigidly to the interpretation of the Bill as it stands—with which we started. Will the Government's amendment at least seek a compromise if it does not move completely towards my right hon. and learned Friend's arguments? It is no good fobbing us off with more discussion if the amendment will not actually change the policy.

The Solicitor General: With respect to my right hon. and learned Friend, I have talked in detail about the various paragraphs of schedule 1, and I have been looking in particular at paragraph 3. In response to the clarifications sought by my right hon. Friend the Member for West Dorset (Sir Oliver Letwin), I made sure that all of paragraph 3 would be the subject of that clarification and the tabling of an amendment. Neither my right hon. and learned Friend the Member for Rushcliffe nor I are fans of having our cake and eating it when it comes to EU withdrawal and, with respect, I am offering something substantial here that will certainly satisfy him this evening.

Sir William Cash *rose*—

Lady Hermon *rose*—

The Solicitor General: I will give way to my hon. Friend.

Sir William Cash: I hope that the Solicitor General will be good enough to look at the deficiencies in amendment 10. Paragraph 5 of schedule 1 deals with interpretation and therefore also applies to paragraphs 1 to 3. As he quite rightly said before he took the intervention, the matter is being scrutinised. As Chairman of the European Scrutiny Committee, we have it on our agenda, and we are scrutinising all such matters and will continue to do so, because we want to be sure that this House is not overridden by disapplication.

The Solicitor General: I am grateful to my hon. Friend. I am always interested in looking at how one particular paragraph of a schedule applies to another, but I am particularly interested in paragraph 3.

Lady Hermon *rose*—

The Solicitor General: I will give way to the hon. Lady, who has been very tenacious. Please forgive me.

Lady Hermon: Patience is a virtue, and I am not blessed with an abundance of it, so I am grateful to the Solicitor General for taking my intervention, even if I have been bobbing up and down for ages.

The Solicitor General has made an important concession this evening, and I respect that. When he carries out his promised review of the Bill's impact on rights and the

general principles, may I invite him to look carefully at the impact on the Good Friday agreement? The Bill is being used in a divisive manner at home in Northern Ireland, where it is being exploited by those who wish to do so, so it would be enormously helpful if the Solicitor General could reassure us that the Bill will not have a negative impact on the Good Friday agreement.

The Solicitor General: I know that the hon. Lady has a deep, long-term commitment to ensuring that the Good Friday agreement and the subsequent progress are maintained, and I share that commitment 100%. While I may not have the same knowledge that she has of Northern Ireland, I am sensitive to and understand the fact that there is still no essential consensus about what human rights should mean for every corner of Northern Ireland. It is in that spirit that I will be happy to ensure that the impacts on Northern Ireland are fully considered at all stages of any review, re-examination or clarification of the Bill. I am grateful to her for making that observation.

Joanna Cherry: Will the Solicitor General give way?

The Solicitor General: I had better make some progress, but I certainly will give way to the hon. and learned Lady in a moment.

Paul Blomfield: Will the Solicitor General give way?

The Solicitor General: If the intervention relates to the point I was making, I will give way.

Paul Blomfield: I thank the Solicitor General for giving way. It is important that the House has clarity on the content of the memorandum he proposes to publish on 5 December. He has said that the memorandum will seek to identify the sources of each right contained within the charter. He has heard in today's debate that there is concern on both sides of the House that he will not be able to identify the sources of every single one of those rights, and a number of instances have been cited. Will he also undertake that, where there are gaps, his review will outline what action the Government are preparing to take to fill those gaps so that, at the point of exit, we retain all the existing rights?

7.45 pm

The Solicitor General: I make it clear that, in the words of both the Minister of State, Ministry of Justice, my hon. Friend the Member for Esher and Walton, today and, previously, the Secretary of State for Exiting the European Union, we are seeking to publish such details. If there are any further concerns, we can have a continuing dialogue to ensure that the information is in a comprehensive form that seeks to address the issues raised today and elsewhere. The publication on 5 December will therefore be a meaningful event that assists everybody in greater understanding and assists greater progress on getting this process right.

On the question of general principles, I emphasise that there are good reasons to say why it would not be appropriate to incorporate the constitutional and administrative principles of the EU as free-standing principles in our law by inserting a specific right of action, or to incorporate the remedy of striking down domestic legislation based on incompatibility with EU law principles, when we are no longer a member of that

institution. First, some of these principles will, indeed, cease to make sense when we have left, except for the purpose of interpreting retained EU law, whereas other principles are already, and will continue to be, reflected elsewhere in our domestic law anyway.

Mr Grieve: Has not the Solicitor General, again, just answered his own question? I appreciate that some of the general principles will evaporate because they cease to be relevant, but those that are relevant to the interpretation of retained EU law must still be relevant because they will be used as a tool and aid to interpretation. In those circumstances, why should an individual or a business be deprived of raising them as arguments for saying that, in fact, this law is supposed to be supreme, and therefore able to overcome our own domestic legislation, and ask why the general principles cannot be used to have that bit of offending domestic legislation set aside? I just do not understand the rationale.

The Solicitor General: The rationale is quite straightforward in the sense that, in seeking to achieve maximum certainty, there is danger in allowing the system to create a situation in which the law might rapidly degrade in a way that does not achieve such stability and certainty. I accept it is almost reverse logic, but there is logic in trying to make sure that we have an identifiable and pretty understandable body of retained EU law.

I give the example of the EU principle of good administration, which will not have any relevance to our UK law after exit because, of course, the bodies vested in EU agencies will be returned here and all the normal domestic rules about the exercise of such powers by public bodies will apply. Another example is the principle of subsidiarity, which does not make sense outside the concept of EU membership.

Secondly, the Bill will, of course, take a snapshot of the law as it stands at the moment we leave. Retaining a right of action based on general principles of EU law, which will of course change in the future, would lead to uncertainty for businesses and individuals about their rights and obligations if we end up in a situation where pre-exit legislation could be struck down, or where administrative decisions could be challenged, on the basis of those principles.

In other words, that is an echo of what I was just saying to my right hon. and learned Friend. This is particularly the case given the uncertainty about the way in which principles could develop or about the circumstances in which they would apply after exit. It would make no sense to bind ourselves to such an imprecise, open-ended and uncertain set of principles—it does not mitigate legal uncertainty, but increases it. It makes no sense, once we are no longer an EU member state, to bind ourselves to a set of principles that are the EU's judge-made constitutional principles, when we have our own constitutional and common-law principles. Such an approach risks duplication and confusion.

Perhaps more fundamentally, outside the context of EU law, the ability for courts to disapply primary legislation is just inconsistent with the way our constitution works and the balance of powers that has to exist between the legislative and judicial branches.

Vicky Ford: I thank the Solicitor General for saying that he is going to look seriously at these points during the Committee stage. The point of bringing EU law into the UK law is to give certainty. Each of those European regulations has strict articles—the letter of the law—and the recitals, which give guidance as to how it is to be interpreted and implemented. Will he assure me that he will seek to ensure that our judges will look at not only the articles, but the recitals—the principles behind it?

The Solicitor General: I can assure my hon. Friend that that will be the case. We had a debate about this in a slightly different context earlier in Committee, but I can assure her that all that material is relevant for any court that might have to interpret it.

Joanna Cherry: I am just reminding the Solicitor General that I asked him to answer a crucial point earlier relating to the statement made by the Prime Minister's spokesperson that the Government expect the ECJ's role to be unchanged during an implementation period of two years following the official Brexit date in March 2019. If that is so, it completely undermines the premise of clause 5 and schedule 1, which revolve around exit day. Is he seriously still considering allowing these clauses to stand part of the Bill, in the light of what was said this morning?

The Solicitor General: The hon. and learned Lady has a keen memory and she will not have forgotten the Government's commitment to a separate withdrawal agreement Bill, within which will be provisions relating to the implementation, the interim, the transition period—call it what you will. It is to that period that the Prime Minister was addressing her remarks. The fact that this Bill is taking a particular course on legal exit is nothing to do with the transition period, which has to be a separate matter, and the Government have rightly made it clear that they will bring legislation to this House in order for it to determine the law when it comes to the transitional period.

I really must press on now. The right hon. Member for East Ham (Stephen Timms) made the most important reference to the data protection amendment that stands in his name, but the hon. Member for Argyll and Bute (Brendan O'Hara) also spoke well about this. Let me just make these observations: the UK does not have to be subject to the charter in order to benefit from adequacy decisions on data protection once we leave the EU, because the charter applies to EU institutions and EU member states when acting within the scope of EU law. Countries that benefit from adequacy are third countries and are not required to be subject to the charter. There are many examples of countries that have adequacy by virtue of the data protection directive of 1995, including Canada, New Zealand, Switzerland, Uruguay, Argentina and the Faroe Islands.

I must also deal briefly with the further effects of amendments 101 and 336, which specifically seek to set out an ostensibly broader definition of which general principles are to be retained under the Bill to include principles as they are recognised in any EU legislation as well as case law.

Anna Soubry *rose—*

The Solicitor General: I am sorry but I must press on.

The first point to make on the amendments is that whereas some of the general principles are now set out expressly in the EU treaties, the general principles were first recognised by the European Court of Justice. They were and are judge-made law, and all the principles ultimately have a basis in case law.

We debated the inclusion of article 191 of the Lisbon treaty on the functioning of the European Union at length on day two of Committee, so I will not repeat those arguments here. That said, though, I wish to re-state that the inclusion of article 191 would risk going further than the existing principles that are set out in EU and UK law today. The requirements that the amendments set out do not exist today in either EU or domestic law. If the amendments were made, they would require the courts to interpret all legislation compatibly with the environmental principles. Given that the Bill's purpose is to bring into effect the law that we have currently, the amendments regrettably risk generating a measure of uncertainty and a degree of confusion about the legal position.

Anna Soubry: May I return to clause 5(1)? It states:

"The principle of the supremacy of EU law does not apply to any enactment or rule of law passed or made on or after exit day."

Will the Solicitor General please look at that in light of the Government's excellent determination that we will still effectively be subject to the ECJ during the beginning of the transition period, because if that is to be the case, it is not consistent with clause 5(1)?

The Solicitor General: I know that my right hon. Friend listens carefully to everything I say, and I am sure she would agree, first, that the transition period rightly has to be the subject of separate legislation—the Bill on the withdrawal agreement that will come before the House in due course—and secondly, that we have to cater in this Bill for as high a degree of certainty as possible for that legal exit date. That certainty is an important first step before we get into the question of transition—that interim period that I accept needs to be underpinned by primary legislation passed by this House, but which is a separate and distinct stage. I do not think there is any contradiction between the position that we want to take in a transition period—subject, of course, to the negotiation—and the clear position that we want to take in the Bill.

Before that intervention, I was dealing with amendments 101 and 336. Amendment 336 goes further, in that it would give a right of action based on a failure to comply with the environmental principles, and legislation would be at risk of being struck down by the courts if it was not compatible with them. I hope that Members were reassured and encouraged by the announcement by my right hon. Friend the Secretary of State for Environment, Food and Rural Affairs on 12 November of our intention to create a new comprehensive policy statement setting out the environmental principles. That statement will draw on the EU's current principles and will of course underpin future policy making.

The Bill takes the right approach by retaining the principles as they have been recognised by the European Court, thereby providing the greatest possible clarity and certainty. Amendment 336 would alter the approach to the taking of that snapshot of EU law as it applies

immediately before exit day. It effectively prejudices the outcome of the negotiations and introduces inflexibility, by seeking to bind us to decisions made by the European Court on general principles for the full duration of any implementation period. That pre-empts and prejudices the outcome of the negotiations. On that basis, I urge right hon. and hon. Members not to press their amendments.

Paragraph 4 of schedule 1 removes the right to what are commonly referred to as Francovich damages from our domestic law after exit. That form of damages is a specific EU-law remedy that arises only in certain limited circumstances when an EU member state, or an arm of that state, has committed a "sufficiently serious" breach of its EU law obligations and there is a direct causal link between the breach and the damage. This is not a wide-ranging general right to sue the Government; rather, it is inextricably linked to and constrained by EU membership. Nor, as some have suggested, is this an everyday course of action for the average citizen. The number of actual Francovich cases heard by UK courts over the past 26 years is relatively low. Estimates vary, but studies suggest that, in the 20 years following the decision in Francovich, there had only been between 22 and 25 cases.

8 pm

In many of those cases, Francovich damages have been sought by businesses, not individuals. That includes large companies seeking to pursue commercial interests.

Mr Grieve: Will my hon. and learned Friend give way?

The Solicitor General: No, I will not give way, as I need to develop my point.

For example, in 2015, in their legal challenges to the domestic legislation standardising the packaging of tobacco products, the tobacco companies reserved their right to claim Francovich damages should they succeed on the substance of their claims against the Government. I make this point because any suggestion that removing the Francovich procedure reduces access to justice for the average citizen is not reflected in the UK experience.

Mr Grieve: I am very grateful to my hon. and learned Friend. I understand everything that he is saying. He knows what I have said about Francovich damages and their disappearance being inevitable, but the point about the transition is key. I have to say to him that it is not a comfortable argument for a Law Officer of the Crown to make to suggest that just one person, or one business, being deprived of a legal right is an acceptable circumstance, because it plainly is not.

The Solicitor General: I did not say that. If that was the impression that was created, I am afraid that my right hon. and learned Friend is mistaken. What I am talking about is trying to balance out and put into context the use of this particular procedure, which needs to be done because we have not heard the other side of the argument. That is what I am seeking to do.

By contrast, all existing domestic law routes of challenge and remedies for breaches of retained EU law will remain undisturbed. For example, this provision does not affect any specific statutory rights to claim damages in respect of breaches of retained EU law—such as

under the Public Contracts Regulations 2015—or the case law which applies to the interpretation of any such provisions. Nor does it affect the right to challenge the decisions of public bodies by way of judicial review. Claimants will also still be able to seek remedies through the law of tort, by establishing negligence or by a breach of statutory duty, and they will also still be able to make a claim for restitution for unlawfully levied tax or charges.

The existing right to Francovich damages is linked to EU membership and the obligations that we have as a member state to the EU at an international level. There is clearly a difference between substantive EU law, which is being kept by the Bill to prevent legal uncertainty, and the supranational procedural rules, principles and frameworks that will no longer be appropriate once we have left the EU.

Let me turn briefly to amendments 139 and 302, which take a slightly different approach. They would maintain the right to Francovich damages in domestic law, but only in relation to pre-exit causes of action. Amendment 335 would similarly maintain the right to Francovich damages in domestic law for causes of action occurring during any transitional period. The Bill sets out elsewhere—at paragraph 27 of schedule 8—that the exclusion of the right to Francovich damages would apply only in relation to claims that are brought after exit day.

I would like to assure my right hon. Friend the Member for Chesham and Amersham (Mrs Gillan), and indeed all Members, that we will consider further whether any additional specific and more detailed transitional arrangements should be set out in regulations.

Mr Grieve: I am delighted to hear the Solicitor General say that. As he will appreciate, the point is a very simple one: it must be the case that the damages are available if the action takes place before exit day. It is a very basic principle of law and quite easy to correct.

The Solicitor General: Perhaps I can forgive my right hon. and learned Friend his eagerness to hear the remarks that I was going to make. I am sure that when this debate finishes he and I will continue the dialogue that we have had for some time about these matters.

It would not be right to maintain, in general, such an open-ended right to this form of damages after exit for any and all potential pre-exit causes of action. I am concerned that we would end up with an almost indefinite trail of cases. That is not good for certainty, and it is not good for the transition we want to make.

Richard Graham (Gloucester) (Con): Before the Solicitor General finishes his remarks, may I say, as a non-lawyer listening to what has largely been a debate between distinguished legal minds on both sides of the House, that two things strike me as important? The first is that this debate has really been about legislative quality control, rather than political Punch and Judy, and that should be very reassuring for anybody watching this debate. The second is that the tone with which my hon. and learned Friend and his colleagues have engaged with colleagues on both sides of the House to find a way through and to make the best law sends a fantastically powerful message. Will he guarantee to continue working in this spirit to take the Bill forward?

The Solicitor General: I am very grateful to my hon. Friend for making that observation. [*Interruption.*] I can assure Opposition Members that I have listened carefully to the submissions and observations by Members on both sides of the House, in the true spirit of Committee.

Mrs Cheryl Gillan (Chesham and Amersham) (Con): I am most grateful to my hon. and learned Friend for giving way, because, unfortunately, I was not able to be in the Chamber for a large part of the debate, as I was chairing a Bill Committee. I thank him for taking into consideration the points I raised on behalf of my constituent concerning Francovich. I hope that what he is saying from the Dispatch Box will go a long way towards providing the comfort and certainty my constituent requires. May I thank those on the Front Bench for listening to the points I made in the debate the other day? I hope this will move us towards a successful conclusion in the case of my constituent.

The Solicitor General: I am extremely grateful to my right hon. Friend.

For the reasons I have outlined, I would, with the greatest of respect, and in the spirit of comradeship almost, urge hon. and right hon. Members not to press their amendments.

In summation, we have listened and we will continue to reflect carefully on all the arguments that have been made today. The Government believe that the approach we are taking is the right one as we carefully separate our legal system from that of the EU and restore democratic control to this Parliament. I commend schedule 1 to the Committee.

Darren Jones: I rise to speak in support of amendments 8, 46 and 79, the excellent amendments 101 and 105 from my hon. Friend the Member for Bristol East (Kerry McCarthy), amendment 151 and, given the list rattled off by my hon. Friend the Member for Sheffield Central (Paul Blomfield), a whole lot more as well.

While I have enjoyed the opportunity today to intervene on the legal debates the hon. Member for Gloucester (Richard Graham) pointed to, it is also important, as we come towards the end of today's debate, to think about general principles—to take a step back and to think about the politics of what we are debating today, as opposed to just the legal issues, which I may touch on briefly.

The EU charter of fundamental rights is exactly what it says on the tin: it is a statement of fundamental principles—an anchor—with which European legislation must comply. It protects the grounding of what we deem to be acceptable in our democracy. Legislative details are, of course, for debate, but we must anchor them to those fundamental rights because, as we have heard today, failure to do that can lead to actions in the courts and the awarding of damages.

The Minister of State, Ministry of Justice, who is not in his place, said from the Dispatch Box earlier that the EU charter has no standing and therefore means nothing, but I respectfully disagree. When my constituents have the right to bring actions in the courts, and in certain circumstances to receive damages, that has value—that means something to citizens. Those are fundamental, enforceable rights, which we should be proud of.

[Darren Jones]

It is right to say, of course, that the UK need only respect these rights when implementing EU law, but, as we know too well, and as we will learn over the coming weeks and months, the tsunami of EU law that we seek to copy and paste into UK law comes with principles we must protect.

My earlier intervention provides one example of why the Government's policy is nonsensical. The fact that we are bringing ECJ case law into UK Supreme Court case law under the Bill means that the case law around the charter of fundamental rights will be in the case law of this country, yet we are not willing to bring the charter with it. That cannot make sense unless the Government are saying that they wish to pick the cases out of ECJ jurisprudence when they give them UK Supreme Court status.

My right hon. Friend the Member for East Ham (Stephen Timms) raised very powerfully the issue of adequacy and equivalence in relation to the Data Protection Bill. The Government may find it politically uncomfortable to recognise the obvious fact that on financial services, data protection and other issues where we seek to maintain equivalence in the European market, we must track and embed EU jurisprudence in order to do so. In the context of the general data protection regulation and the Data Protection Bill, that means respecting the fundamental right that one's data is protected under the EU charter.

In the absence of those on the Treasury Bench saying to me and to the Committee which of these rights they so vehemently disagree with, I am left to draw the conclusion, in common with the Father of the House, that the only thing the Government seem to be unhappy with about the charter of fundamental rights is that it is preceded by the letters E and U. Yet my constituents will suffer losses in rights and losses in their ability to enforce those rights. This is not a question of ideological Brexit party politics but of fundamental rights that are enforceable by my constituents and the citizens of this country. We cannot play politics with these issues. If we fail to keep the charter of fundamental rights, we fail to ensure that the laws brought in under this Bill are anchored to the fundamental principles on which they are drafted. As we have heard, that leaves judges to interpret the rights of citizens in the direction of the winds of the day without the statutory anchor that holds them true to their underlying principles.

Having touched on legal issues, I will move on to the general principles. If we lift our heads out of the bucket of sand that is Brexit and look around us, we must ask what repealing the charter of fundamental rights says about the type of country we are and wish to be. One of the outcomes of this Brexit process is that with the removal of the charter we have failed to set out a vision of an acceptable basis for a developed, modern democracy like Britain. That is why I support the amendments. I sense that we have lost our way, because removing these fundamental rights says something about who we are and how we should conduct business as a country. The pride that all of us share in what it means to be British and our influence in the world is based on the standards that we set at home and abroad. The purpose of having the EU charter of fundamental rights is to make a statement of the standards that we should be proud of as a developed, modern democracy. I, for one, want to continue to be proud of my country.

Speaking as a desperate remoaner, and a proud one, I have to say loud and clear that the direction of travel that we are seeing through this mess of a negotiation on Brexit, and the fact that we are debating something as nonsensical as removing the EU charter when it causes us no problems and we are bringing ECJ case law into the case law of the UK anyway, shows that we do not know what type of country we want to deliver for our citizens. In the context of losing thousands of jobs from agencies relocating and, for the first time ever, losing our seat on the UN International Court of Justice, I am filled with desperation about what type of country we are seeking to deliver.

I do not see from this Government a vision of what Britain looks like in future, and removing these fundamental rights goes to the heart of that. I want my constituents and the citizens of this country, and citizens around the world, to look to Britain to see that we protect and recognise these fundamental rights—rights that we should be proud of. I think that as Brexit continues to unfold and my constituents, and others, continue to see the losses they are suffering as a consequence of the referendum—the loss of access to the single market, the loss of access to the customs union, and today the loss of rights that are currently protected in law—they deserve the right to change their mind.

I say once again to Government Members on the Treasury Bench, who are no doubt listening intently to my comments—[*Laughter.*] Thank you. I say to them that this is clearly a question of politics, rather than of law, as we have heard today. I plead with them to put the ideological Brexit party politics to one side, bring sense to the Dispatch Box and protect the enforceable rights of my constituents and the citizens of this country, as proudly set out in the EU charter of fundamental rights.

8.15 pm

Alex Chalk: It is a pleasure to be able to say a few words this evening. May I say what a pleasure it has been to listen to this debate, which has been a paradigmatic example of what a Committee debate should be? It is not about the principles of whether we supported leave or remain; it is about ensuring that the legislation is in the best possible shape, because that is our job.

I want to confine my remarks to two areas. First, I will talk about amendments 139 and 302, tabled by the hon. Member for Wakefield (Mary Creagh) and my right hon. Friend the Member for Chesham and Amersham (Mrs Gillan) respectively, regarding the right to seek Francovich damages post-Brexit; and then I will turn to the charter. On the first issue, it is axiomatic that, if the acts of the state that caused loss took place at a time when a remedy was available, it would be wrong for that remedy to be ripped away unilaterally. It is a principle of British law that past acts or omissions must be considered in the context of the law as it applied at the time. I have heard gratefully the Solicitor General's suggestion that he might be looking again at the matter. I respectfully suggest that that would be warmly welcomed across the House.

I turn to the charter. I want to explain why I think—despite the fact that I supported remain and I do not resile from a single argument that I made—that the Government are right not to seek to retain the charter,

and why to do so would create inconsistency and confusion. I speak as someone who values human rights and who has argued forcefully in favour of remaining part of the European convention on human rights. Indeed, I have said that to leave that would be a catastrophic mistake, and I am delighted that doing so has been taken off the table.

So why do I speak as I do? Before I explain that, I will set out why we must accept that the charter does add rights and it would be wrong to consider it inconsequential, although that is not dispositive. The right hon. Member for Leicester East (Keith Vaz) suggested that it was of no more legal effect than *The Beano*. That is not correct. Although it is true that there is some duplication, as compared with the ECHR, there are four ways in which the charter adds rights.

First, the charter creates some substantive new rights, which some have referred to as third category rights, including the right to dignity, the right to protection of personal data, the right to conscientious objection and guarantees on bioethics and independence for disabled people. Secondly, the charter widens the scope of existing rights in English law. One example is the right to a fair trial, which exists under article 6. The charter extends that right beyond the mere determination of civil rights and obligations and criminal charges to cover, for example, immigration cases, such as the ZZ case. Thirdly, it creates a new right to invoke the charter in respect of anyone with an interest. That is, of course, far broader than the convention. Fourthly, and most importantly, whereas breaches of the ECHR can lead only to a declaration of incompatibility, action in the case of a breach of the charter is far more muscular, because it allows the charter to take precedence over UK law and, effectively, disapply it.

Having set out all that, why am I not arguing in favour of retaining the charter? The simple reason can be summed up in one word: inconsistency. There is already an inconsistency in the law. A litigant in a case involving the implementation of EU law—that is, of course, the only category of litigation to which the charter applies—is armed with a powerful legal sword, which he can use to strike down the law. But when it comes to UK-derived law, no such legal sword exists, so the scope for absurdity becomes clear. Suppose the state were to pass a law that was a clear affront to human rights. Suppose it wanted to detain suspects without charge for six months or bring back the stocks, in breach of article 4 on torture and inhuman and degrading treatment or article 3 on slavery. In those circumstances, all the litigant could do would be to try to persuade the court to make a declaration of incompatibility; the law could not be struck down. Yet if the UK sought to enforce a law regarding personal data, it could be disapplied. Would that not create a bizarre inconsistency? Such an inconsistency already exists, by the way, but I suggest that it would become more egregious and more difficult to sustain post Brexit.

Rachel Maclean (Redditch) (Con): I am following my hon. Friend's arguments very carefully, and I am very pleased to hear him setting out why the rights he is talking about will be protected after we leave the EU. Does he agree that such inconsistencies will only further the interests of lawyers, rather than our constituents, after we leave the EU?

Alex Chalk: This is about not furthering the rights of lawyers, but about how we as a House ensure that there is a corpus of law that is consistent, serves the interests of our constituents and can be considered in an intelligible and consistent way.

My view is that the remedy for this inconsistency is not for us to bring in the charter lock, stock and barrel to apply to all law. We could do that, but it would not work because it would create great confusion respecting the existing European convention on human rights, which is of course incorporated into English law and British law. Instead, the time has come—not today and not tomorrow, but at some time in the near future—to look at granting British citizens a corpus of rights to sit alongside the ECHR, as a written constitution, as it were, that extends the Human Rights Act and allows citizens to apply their rights against any law in this country. The logical next stage is to have what is in effect a written constitution.

Sir Oliver Letwin: As a matter of fact, my hon. Friend and I may be the only two Government Members who believe in having a written constitution. I thought I was the only one—

The Secretary of State for Exiting the European Union (Mr David Davis): Three.

Sir Oliver Letwin: There are three of us. I am very grateful. [HON. MEMBERS: "Four."] Let us not count. In any event, the number is small.

Does my hon. Friend agree that, in the interim, it would be a good step if the rights we identify, as a result of the Government's analysis, as coming out of the charter—the third category rights—should in due course, although not of course in this Bill, be added to the Human Rights Act in a way that at least enables such a degree of entrenchment?

Alex Chalk: That is exactly right. I, respectfully, completely agree with my right hon. Friend. What has been such a benefit of this debate is that we have identified a third category of rights that Members on both sides of the House recognise there is a real public benefit in adding to the corpus of rights enjoyed by the British people. I entirely agree that we should look at whether they can be added pro tem to the Human Rights Act.

My fundamental point is that, if we are inching our way towards a written constitution, retaining the charter, which is in effect a proto-constitution, on the basis of an amendment debated for just a few hours in this Chamber is entirely the wrong way to go about it. For that reason and that reason alone, I am supporting the Government.

Mr Simon Clarke: I rise to support the Bill, particularly in opposition to amendments 8 and 46, as well as new clause 16.

I want to establish from the outset that I am not in any way cavalier about the concept or the subject of human rights. They underpin a free and just society, and all parliamentarians should be vigilant in their defence. Today's debate underscores the significance of that. However, to quote Oxford's Professor Richard Ekins:

"There is a fundamental difference between human rights and human rights law. The Charter is one way to attempt to protect human rights, a poorly framed and...inept way at that."

[Mr Simon Clarke]

Contrary to what the hon. Member for Bristol North West (Darren Jones) said, I do not need the charter of fundamental rights to be proud of my country.

There are a number of reasons why I believe the incorporation of the charter of fundamental rights into our law would be the wrong thing to do. The first concerns the scope of the charter's application. Article 51 states:

"The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union...and to the Member States only when they are implementing Union law."

Needless to say, once we leave the Union, we will not be a member state. As has been observed, many of the charter rights are necessarily contingent on our EU membership, and still more are directed not towards member states, but the Union institutions and their policies. We have already touched on that, and I will not dwell on it further.

Let us follow the logic that we should incorporate the charter into UK law. How would this work? There seem to be two possible scenarios. First, if we were to approximate the charter's original application, we could amend it in such a way that it applied solely to retained EU law. That is the substance of the amendments. As my hon. Friend the Member for Cheltenham (Alex Chalk) has pointed out, that would lead to the bizarre situation whereby some parts of UK law would be subject to a different human rights regime. That is a recipe for confusion and disaster. Alternatively, we can amend the charter so that it increases its scope to cover all UK laws and institutions. I would hazard a guess that that is not exactly what our constituents were thinking of when they voted for Brexit.

Notwithstanding that basic point, either route would further complicate the relationship between the charter and the Human Rights Act. All transposed EU law will become subject to the Human Rights Act on transposition anyway, and having two parallel and perhaps in places contradictory constitutional Acts covering precisely the same issues in the same sphere of application would serve to undermine, rather than uphold, the rule of law. That is because charter rights, most seriously social rights, are so flexible and contested that they are vulnerable to a near infinite number of interpretations, which is precisely the problem.

When I worked for my hon. Friend the Member for Esher and Walton (Dominic Raab), he would cite a quote from Montesquieu that was absolutely on point:

"Nor is there liberty if the power of judging is not separate from legislative power...If it were joined to legislative power, the power over the life and liberty of the citizens would be arbitrary, for the judge would be the legislator."

Where we fail to legislate the judiciary fill the gaps. Rights creep has been a key objection from our constituents for many years, and rightly so. In at least two cases, British judges have gone beyond ECJ case law, relying on the charter to disapply Acts of Parliament. In *Benkharbouche*, parts of the State Immunity Act 1978 which protected embassies from immunity against employment law claims were set aside. In *Vidal-Hall*, part of the Data Protection Act 1998 was overridden, overturning a limitation on what damages could be recovered. As my hon. and learned Friend the Member for Torridge and West Devon (Mr Cox) said, this is

properly a matter for the House to determine. The ECJ itself has overruled parts of the Data Retention and Investigatory Powers Act 2014 by reference to the charter—a decision that puts the application of the Investigatory Powers Act 2016 in serious doubt. That is not a small point. The process of striking down legislation under the charter goes far beyond the scope of the Human Rights Act, which allows the courts to make a declaration of incompatibility where there is a need to do so.

There is one final reason why we should resist charter incorporation, which is that to do so would probably be superfluous. We have heard from Ministers, who have struck a notably conciliatory tone, that the Government will provide detailed analysis of how each charter right will be addressed in a memorandum that is due on 5 December. If we are to go on to address what has been referred to as the third category of rights—rights that are not listed in the European convention on human rights and which are not rendered redundant by our leaving the EU—this process should be led by the elected House of Commons. That may very well be the right thing to do, but it is clear to everyone that retaining the charter is not the right vehicle by which to do it.

Lest we forget, the British public had no idea that the charter would evolve in the way that it has. Protocol 30 of the treaty on the functioning of the European Union states that

"the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles".

We have heard about *The Beano*, and about former Attorney-General Peter Goldsmith, who said in June 2004:

"The Charter is a consolidation of existing rights...It is not a mine for new human rights in this country."

Crucially, in 2008, on Second Reading of the EU (Amendment) Bill that ratified the Lisbon treaty, David Miliband, told the House:

"The treaty records existing rights rather than creating new ones. A new legally binding protocol guarantees that nothing in the charter extends the ability of any court to strike down UK law".—[*Official Report*, 21 January 2008; Vol. 470, c. 1250.]

Our constituents were given an inaccurate prospectus of how the charter would evolve, although I accept it was made in good faith at the time. In the light of that, my position is very clear that the charter should not be incorporated into our law to go on evolving in that way according to the whims of unelected judges.

Tonight we have an opportunity to reassert one final time what this House has been told for the best part of 18 years: the rights under which we live should have their origin in this House and, ultimately, in the British people, under whose authority we serve.

8.30 pm

Suella Fernandes: I am pleased to follow my hon. Friend the Member for Middlesbrough South and East Cleveland (Mr Clarke) on his debut in Committee. I am sure we will all be treated to many more thoughtful contributions based on his experience as a lawyer before coming to this place.

I apologise at the outset, but I will be adding to the chorus of lawyers. There has been an abundance of lawyers—this debate has flushed us out, Mr Hoyle. I must say that I have sat here with nothing but admiration

and respect for the very learned interventions and contributions from right hon. and hon. Members on both sides of the House, whose attitude has been to try to improve the Bill. They have obviously been received with a welcome from the Solicitor General, marked by his comments just now.

The issue is not about whether the charter is in or out, and it is not about being pro-rights or anti-rights. For me, it is about whether the Bill, which is designed to provide legal certainty on Brexit day, will achieve that aim or instead create a feast for lawyers, born out of legal uncertainty. The purpose of the Bill is to avoid the overnight evaporation of EU law on the date of our exit by providing certainty and predictability for businesses, individuals and foreign Governments dealing with Britain after we leave the EU.

We want to resolve questions rather than create them, but I do have real concerns. I have great respect for some of the amendments that have been tabled, which have raised many areas of confusion. For example, how would the common-law rules, the Human Rights Act and the charter interact, especially when rights are replicated in the Act and the charter but are interpreted by different courts? We have identical rights interpreted in one way by the Strasbourg Court and in a slightly different way by the Luxembourg Court. That only provides for inconsistency and confusion. What is the position for rights that appear in one document but not the other? What is the position for rights that are in the charter, but will be rendered completely futile as a result of Brexit due to their extensive references to the EU and other EU institutions?

More concerning is the confusion created by the remedies provided in the charter and the role of the Supreme Court and the European Court of Justice. The Human Rights Act contains protections for people in many ways: the right to a fair trial, a right to life, a right to a private life and family life, and the right to be free from discrimination. We in Britain should be proud of that document. Under the Act, the Supreme Court can make declarations of incompatibility in the event of a breach. That power is limited, as a reflection of the role of the Supreme Court in our constitution and the particularly fine balance between the judiciary and our legislature—that hard-won principle of parliamentary sovereignty.

That is not an obscure notion to amuse academics. It is the key foundation of our country's governance that in this place, in this elected Chamber, we elected representatives have the final say on what rights people are afforded, what restrictions they are subject to, what remedies they can invoke and what responsibilities they owe. That is what our job is here in Parliament. We are elected and are subject to transparency. We are accountable and we can be kicked out if necessary. Judges, in comparison, are unelected. They are, of course, expert and robust in their integrity, but they are often unknown and are away from the glare of publicity. They are not answerable directly to the public in the way that elected representatives are. That is the importance of parliamentary sovereignty and the judicial deference enshrined in, and running through, the Human Rights Act. Only in cases of ultra vires and judicial review will UK courts make such a declaration. In the event of a declaration of incompatibility, there is no obligation on Parliament or the Government to agree to make changes, but often

they will respond by amending legislation to align with judgments from the courts—for example, under section 10 of the Human Rights Act. That fine balance is important to ensuring the ultimate accountability of us rule makers and legislators.

I believe that the principle of parliamentary sovereignty could be undermined by the remedy in the charter for disapplying statute, as we saw in the case of *Benkharbouche* in the Supreme Court last year. The effect is to disregard the relationship between the judiciary and the legislator and to render our Supreme Court more of a constitutional court than an appellate court, which interprets the law rather than declaring what the law ought to say.

Further uncertainty is caused by questions around the potential horizontal application of the charter—between individuals rather than between the state and an individual, as is the position in the Human Rights Act—and questions persist on its application to anything within the scope of EU law as opposed to the implementation of EU law. For me, those principles are not yet clarified and would only create more confusion, if the tabled amendments were to be passed. As I said, this is not about being in favour of or against rights; this is about providing a workable regime, rather than one fraught with confusion and at odds with fundamental principles.

We must not forget that the charter was not originally intended to be the source of rights for the UK. It was meant merely to codify existing rights, as an instrument of the EU, through the interpretation of the ECJ.

Sir Oliver Letwin: I think I agree with everything my hon. Friend has said. Does she agree that it would nevertheless be possible to put these rights under the umbrella of additions to the Human Rights Act and thereby enshrine them without creating a role for the Supreme Court to strike down Acts of Parliament?

Suella Fernandes: In principle, that would be possible, but I pray in aid the comments of my hon. and learned Friend the Member for Torridge and West Devon (Mr Cox), who has just entered the Chamber, and who eloquently explained that there is no substantive need to do that because those rights are protected in existing legal frameworks or the common law.

As I was saying, the charter is an instrument of the EU for allowing the activism of the ECJ. It is a mechanism intended to ensure the supremacy of EU law in national legal orders, as is made clear in the preamble and in the recent case of *Siragusa v. Regione Sicilia*, in which it was made clear that the primacy of EU law was the priority. If we are truly leaving the EU, it no longer makes sense for us to be bound by a document that is furthering EU integration.

I appreciate the constructive attitude of all colleagues in attempting to help the Government to improve the Bill, but I gently caution against the risks presented by some of the amendments. The British people voted last year to restore sovereignty to UK courts and return supremacy to our judges, because they trust our legal order. Why do they trust it? They trust it because for centuries, since 1215 and Magna Carta, this country has been the home of civil liberties and human rights and has protected the vulnerable against excesses of power. That is a tradition of which we are proud and which will be protected under this Government.

Vicky Ford: It has been a huge honour to listen to the debate, and to hear so many contributions from so many wise colleagues.

I want to talk about the fundamental right to personal data protection, an issue that I have raised before in the House. It is a very important issue, because we are in the middle of a digital revolution—in the middle of the fourth industrial revolution. The ability to process vast quantities of data is vital to our tech and digital sectors, and is driving the future of medical research. If we want to continue to play a world-leading role, we must continue to be able to exchange data easily with other parts of the world.

In the history of our country privacy has largely been protected, but that has not always been the case in many European countries. Data protection—the right to have one’s personal data protected—is a treasured right. Let me point out to the Solicitor General that data equivalence will be not just a legal but a political issue, and we must therefore leave no one in any doubt that Britain intends to respect personal data.

It is excellent that the Government have agreed to implement the general data protection regulation. It is a highly complex directive, but it was not just agreed in some far-off place in Brussels. The process was led for the Liberals by a British Liberal who sits in the House of Lords and for the Conservatives by a British Conservative who also sits in the House of Lords, and was chaired by a British Labour MEP who is still chairing the relevant committee. So Britain was very much involved in the establishment of the GDPR.

There is a technical difference between the GDPR and the Data Protection Bill. The GDPR makes it clear that its first principle is to protect the right to personal data, and it is important that we too are seen to give that direct protection. It is in the interests of both sides to provide data adequacy. After all, Britain is responsible for more than 10% of world data flows, more than three quarters of which take place between Britain and the rest of Europe. Other European countries need to maintain that data flow, but the field is continually evolving: for instance, the European Commission is looking into ePrivacy law.

The hon. Member for Argyll and Bute (Brendan O’Hara) seemed to suggest that the Government were somehow not treating data adequacy negotiation seriously—we are—and told us that the Government had said they might want something “akin to” a data adequacy agreement. That is because the current agreement, the EU-US data privacy shield, is not as stable as data adequacy might be as part of a free trade agreement. There are many different ways in which that could be agreed, so let us ensure that we keep all the options open.

I hope I have given an example of an area in which rights are continually evolving—and, in a rapidly changing world, the rights that each of us has will need to evolve continually. Having listened to the debate, I think that we should not cut and paste the charter into British law now, but that we should take the matter seriously. We have been promised today that within the next two weeks—by 5 December—the Government will go through every single one of those rights, will list the parts of British law in which they already exist, and, if there are parts where they do not yet exist, will show us the process whereby they will be introduced. I think that,

on that basis, we will create a more stable agreement to protect not just the rights of today but the rights of tomorrow, which is why I will vote against the amendments.

Mr Leslie: The debate on new clause 16 and the myriad other amendments has been held in a collegiate atmosphere. We have focused on the specific rights and wrongs of a number of quite technical legal points, but the one thing that stood out for me was the debate on the charter of fundamental rights. I have to tell the Minister that I am not convinced by the Government’s case. We were sold the idea that this would be “copy and paste” legislation, but that turns out not to be so. We were told that there was no need for the charter of fundamental rights, but if that is the case, what is the harm in retaining it? Those rights are incredibly important. They include the rights to privacy, personal data, freedom of expression, education, data privacy and healthcare, as well as the rights of children and elderly people. There are many rights in that charter, and it is important that we keep it within our legislative framework.

8.45 pm

We have had a long day, and there could be a large number of Divisions. I am glad that the Government have committed to publishing an analysis of each of the rights in the charter by 5 December. I have to tell the Minister that we will be watching that publication extremely carefully, as well as the publication to the Brexit Committee of the 58 impact assessments, sector by sector, which has to happen before the end of this calendar month, according to the order agreed in the House. We will be watching those publications, but given that we have had that commitment from Ministers, and given that we will be having a substantive vote on amendment 46, on the principle of the charter of fundamental rights, I will seek leave to withdraw my new clause 16, because we have quite enough Divisions going on this evening.

Clause, by leave, withdrawn.

New Clause 79

PROVISIONS RELATING TO THE EU OR THE EEA IN RESPECT OF EU-DERIVED DOMESTIC LEGISLATION

“(1) Notwithstanding the provisions of section 5(1), HM Government shall make arrangements to report to both Houses of Parliament whenever circumstances arising in section 2(2)(d) would otherwise have amended provisions or definitions in UK law had the UK remained a member of the EU or EEA beyond exit day.

(2) Notwithstanding the provisions of section 5(1) and having reported to both Houses of Parliament, HM Government is bound to consider whether it should incorporate amended provisions or definitions into UK law, in order to ensure that the rights of workers and employees in the UK are no less favourable than they would have been had the UK remained a member of the EU or EEA beyond exit day.

(3) Such circumstances arising in section 2(2)(d) include but are not limited to—

- (a) any future EU Directives relating to family-friendly employment rights; including but not limited to rights for pregnant workers and employees, and those returning from maternity leave,
- (b) any future EU Directives relating to gender equality,
- (c) the proposed Directive of the European Parliament and of the Council on work-life balance for parents and carers.

(4) Reports presented under subsection (1) must include—

- (i) an assessment of how such amendments to UK law would have impacted sex equality in the UK had the UK remained a member of the EU or EEA beyond exit day and
- (ii) an assessment of how a failure to implement amended provisions or definitions in UK law will impact the ability of families to combine work and care in the UK and gender equality in the UK.”—(Ellie Reeves.)

This new clause would ensure that Parliament is informed of changes in EU and EEA provisions that might have amended UK laws around family-friendly employment rights and gender equality and their potential impact, as well as committing the Government to considering their implementation. This is to ensure that rights of workers and employees with caring responsibilities, and women's rights, are no less favourable than they would have been had the UK remained a member of the EU or EEA beyond exit day.

Brought up, and read the First time.

Question put, That the clause be read a Second time.

The Committee divided: Ayes 295, Noes 314.

Division No. 44]

[8.47 pm

AYES

Abbott, rh Ms Diane
Abrahams, Debbie
Alexander, Heidi
Ali, Rushanara
Allin-Khan, Dr Rosena
Amesbury, Mike
Antoniazzi, Tonia
Ashworth, Jonathan
Austin, Ian
Bailey, Mr Adrian
Bardell, Hannah
Barron, rh Sir Kevin
Beckett, rh Margaret
Benn, rh Hilary
Betts, Mr Clive
Black, Mhairi
Blackford, rh Ian
Blackman, Kirsty
Blackman-Woods, Dr Roberta
Blomfield, Paul
Brabin, Tracy
Bradshaw, rh Mr Ben
Brake, rh Tom
Brennan, Kevin
Brock, Deidre
Brown, Alan
Brown, Lyn
Brown, rh Mr Nicholas
Bryant, Chris
Buck, Ms Karen
Burden, Richard
Burgon, Richard
Butler, Dawn
Byrne, rh Liam
Cable, rh Sir Vince
Cadbury, Ruth
Cameron, Dr Lisa
Campbell, rh Mr Alan
Campbell, Mr Ronnie
Carden, Dan
Carmichael, rh Mr Alistair
Champion, Sarah
Chapman, Douglas
Chapman, Jenny
Charalambous, Bambos
Cherry, Joanna

Clwyd, rh Ann
Coaker, Vernon
Coffey, Ann
Cooper, Julie
Cooper, Rosie
Cooper, rh Yvette
Corbyn, rh Jeremy
Cowan, Ronnie
Coyle, Neil
Crawley, Angela
Creagh, Mary
Creasy, Stella
Cruddas, Jon
Cryer, John
Cummins, Judith
Cunningham, Alex
Cunningham, Mr Jim
Dakin, Nic
Davey, rh Sir Edward
David, Wayne
Davies, Geraint
Day, Martyn
De Cordova, Marsha
De Piero, Gloria
Debbonaire, Thangam
Dent Coad, Emma
Dhesi, Mr Tanmanjeet Singh
Docherty-Hughes, Martin
Dodds, Anneliese
Doughty, Stephen
Dowd, Peter
Dromey, Jack
Duffield, Rosie
Eagle, Ms Angela
Eagle, Maria
Edwards, Jonathan
Efford, Clive
Elliott, Julie
Ellman, Mrs Louise
Elmore, Chris
Esterson, Bill
Evans, Chris
Farrelly, Paul
Farron, Tim
Fellows, Marion
Fitzpatrick, Jim

Fletcher, Colleen
Flint, rh Caroline
Flynn, Paul
Fovargue, Yvonne
Foxcroft, Vicky
Frith, James
Furniss, Gill
Gaffney, Hugh
Gapes, Mike
Gardiner, Barry
George, Ruth
Gethins, Stephen
Gibson, Patricia
Gill, Preet Kaur
Glindon, Mary
Godsiff, Mr Roger
Goodman, Helen
Grady, Patrick
Grant, Peter
Gray, Neil
Green, Kate
Greenwood, Lilian
Greenwood, Margaret
Griffith, Nia
Grogan, John
Gwynne, Andrew
Haigh, Louise
Hamilton, Fabian
Hardy, Emma
Harman, rh Ms Harriet
Harris, Carolyn
Hayes, Helen
Hayman, Sue
Healey, rh John
Hendrick, Mr Mark
Hendry, Drew
Hepburn, Mr Stephen
Hermon, Lady
Hill, Mike
Hillier, Meg
Hobhouse, Wera
Hodge, rh Dame Margaret
Hodgson, Mrs Sharon
Hollern, Kate
Hosie, Stewart
Howarth, rh Mr George
Huq, Dr Rupa
Hussain, Imran
Jardine, Christine
Jarvis, Dan
Johnson, Diana
Jones, Darren
Jones, Gerald
Jones, Graham P.
Jones, Helen
Jones, Mr Kevan
Jones, Sarah
Jones, Susan Elan
Kane, Mike
Kendall, Liz
Khan, Afzal
Killen, Gerard
Kinnock, Stephen
Kyle, Peter
Laird, Lesley
Lake, Ben
Lamb, rh Norman
Lammy, rh Mr David
Lavery, Ian
Law, Chris
Lee, Ms Karen
Leslie, Mr Chris

Lewell-Buck, Mrs Emma
Lewis, Clive
Linden, David
Lloyd, Stephen
Lloyd, Tony
Long Bailey, Rebecca
Lucas, Caroline
Lucas, Ian C.
Lynch, Holly
MacNeil, Angus Brendan
Madders, Justin
Mahmood, Mr Khalid
Mahmood, Shabana
Malhotra, Seema
Mann, John
Marsden, Gordon
Martin, Sandy
Maskell, Rachael
Matheson, Christian
Mc Nally, John
McCabe, Steve
McCarthy, Kerry
McDonagh, Siobhain
McDonald, Andy
McDonald, Stewart Malcolm
McDonald, Stuart C.
McDonnell, rh John
McFadden, rh Mr Pat
McGovern, Alison
McInnes, Liz
McKinnell, Catherine
McMahon, Jim
McMorrin, Anna
Mearns, Ian
Miliband, rh Edward
Monaghan, Carol
Moon, Mrs Madeleine
Moran, Layla
Morden, Jessica
Morgan, Stephen
Morris, Grahame
Murray, Ian
Nandy, Lisa
Newlands, Gavin
Norris, Alex
O'Hara, Brendan
Onasanya, Fiona
Onn, Melanie
Onwurah, Chi
Osamor, Kate
Owen, Albert
Peacock, Stephanie
Pearce, Teresa
Pennycook, Matthew
Perkins, Toby
Phillips, Jess
Phillipson, Bridget
Pidcock, Laura
Platt, Jo
Pollard, Luke
Pound, Stephen
Powell, Lucy
Qureshi, Yasmin
Rashid, Faisal
Reed, Mr Steve
Rees, Christina
Reeves, Ellie
Reeves, Rachel
Reynolds, Jonathan
Rimmer, Ms Marie
Robinson, Mr Geoffrey
Rodda, Matt

Rowley, Danielle
 Ruane, Chris
 Russell-Moyle, Lloyd
 Ryan, rh Joan
 Saville Roberts, Liz
 Shah, Naz
 Sharma, Mr Virendra
 Sheerman, Mr Barry
 Sheppard, Tommy
 Sherriff, Paula
 Shuker, Mr Gavin
 Skinner, Mr Dennis
 Slaughter, Andy
 Smeeth, Ruth
 Smith, Angela
 Smith, Cat
 Smith, Eleanor
 Smith, Jeff
 Smith, Laura
 Smith, Nick
 Smith, Owen
 Smyth, Karin
 Snell, Gareth
 Sobel, Alex
 Spellar, rh John
 Starmer, rh Keir
 Stephens, Chris
 Stevens, Jo
 Stone, Jamie
 Streeting, Wes
 Sweeney, Mr Paul

Tami, Mark
 Thewliss, Alison
 Thomas, Gareth
 Thomas-Symonds, Nick
 Thornberry, rh Emily
 Timms, rh Stephen
 Trickett, Jon
 Turner, Karl
 Twigg, Derek
 Twigg, Stephen
 Twist, Liz
 Umunna, Chuka
 Vaz, Valerie
 Walker, Thelma
 Watson, Tom
 West, Catherine
 Western, Matt
 Whitehead, Dr Alan
 Whitfield, Martin
 Whitford, Dr Philippa
 Williams, Hywel
 Williams, Dr Paul
 Williamson, Chris
 Wishart, Pete
 Woodcock, John
 Yasin, Mohammad
 Zeichner, Daniel

Tellers for the Ayes:
Phil Wilson and
Conor McGinn

NOES

Adams, Nigel
 Afolami, Bim
 Afriyie, Adam
 Aldous, Peter
 Allan, Lucy
 Allen, Heidi
 Argar, Edward
 Atkins, Victoria
 Bacon, Mr Richard
 Badenoch, Mrs Kemi
 Baker, Mr Steve
 Baldwin, Harriett
 Barclay, Stephen
 Baron, Mr John
 Bebb, Guto
 Bellingham, Sir Henry
 Benyon, rh Richard
 Beresford, Sir Paul
 Berry, Jake
 Blackman, Bob
 Blunt, Crispin
 Boles, Nick
 Bone, Mr Peter
 Bottomley, Sir Peter
 Bowie, Andrew
 Bradley, Ben
 Bradley, rh Karen
 Brady, Mr Graham
 Brereton, Jack
 Bridgen, Andrew
 Brine, Steve
 Brokenshire, rh James
 Bruce, Fiona
 Buckland, Robert
 Burghart, Alex
 Burns, Conor
 Burt, rh Alistair
 Cairns, rh Alun

Campbell, Mr Gregory
 Cartlidge, James
 Cash, Sir William
 Caulfield, Maria
 Chalk, Alex
 Chishti, Rehman
 Chope, Mr Christopher
 Churchill, Jo
 Clark, Colin
 Clark, rh Greg
 Clarke, rh Mr Kenneth
 Clarke, Mr Simon
 Cleverly, James
 Clifton-Brown, Geoffrey
 Coffey, Dr Thérèse
 Collins, Damian
 Costa, Alberto
 Courts, Robert
 Cox, Mr Geoffrey
 Crabb, rh Stephen
 Crouch, Tracey
 Davies, Chris
 Davies, David T. C.
 Davies, Glyn
 Davies, Mims
 Davies, Philip
 Davis, rh Mr David
 Dinenage, Caroline
 Djanogly, Mr Jonathan
 Docherty, Leo
 Dodds, rh Nigel
 Donaldson, rh Sir Jeffrey M.
 Donelan, Michelle
 Dorries, Ms Nadine
 Double, Steve
 Dowden, Oliver
 Doyle-Price, Jackie
 Drax, Richard

Duddridge, James
 Duguid, David
 Duncan, rh Sir Alan
 Duncan Smith, rh Mr Iain
 Dunne, Mr Philip
 Ellis, Michael
 Ellwood, rh Mr Tobias
 Elphicke, Charlie
 Eustice, George
 Evans, Mr Nigel
 Evennett, rh David
 Fabricant, Michael
 Fernandes, Suella
 Ford, Vicky
 Foster, Kevin
 Fox, rh Dr Liam
 Francois, rh Mr Mark
 Frazer, Lucy
 Freer, Mike
 Fysh, Mr Marcus
 Gale, Sir Roger
 Garnier, Mark
 Gauke, rh Mr David
 Ghani, Ms Nusrat
 Gibb, rh Nick
 Gillan, rh Mrs Cheryl
 Girvan, Paul
 Glen, John
 Goldsmith, Zac
 Goodwill, Mr Robert
 Gove, rh Michael
 Graham, Luke
 Graham, Richard
 Grant, Bill
 Grant, Mrs Helen
 Gray, James
 Grayling, rh Chris
 Green, Chris
 Green, rh Damian
 Greening, rh Justine
 Grieve, rh Mr Dominic
 Griffiths, Andrew
 Gyimah, Mr Sam
 Hair, Kirstene
 Halfon, rh Robert
 Hall, Luke
 Hammond, Stephen
 Hancock, rh Matt
 Hands, rh Greg
 Harper, rh Mr Mark
 Harrington, Richard
 Harris, Rebecca
 Harrison, Trudy
 Hart, Simon
 Hayes, rh Mr John
 Heald, rh Sir Oliver
 Heappey, James
 Heaton-Harris, Chris
 Heaton-Jones, Peter
 Henderson, Gordon
 Herbert, rh Nick
 Hinds, Damian
 Hoare, Simon
 Hollingbery, George
 Hollinrake, Kevin
 Hollobone, Mr Philip
 Holloway, Adam
 Howell, John
 Huddleston, Nigel
 Hughes, Eddie
 Hunt, rh Mr Jeremy
 Hurd, Mr Nick

Jack, Mr Alister
 James, Margot
 Javid, rh Sajid
 Jayawardena, Mr Ranil
 Jenkin, Mr Bernard
 Jenrick, Robert
 Johnson, rh Boris
 Johnson, Dr Caroline
 Johnson, Gareth
 Johnson, Joseph
 Jones, Andrew
 Jones, rh Mr David
 Jones, Mr Marcus
 Kawczynski, Daniel
 Keegan, Gillian
 Kennedy, Seema
 Kerr, Stephen
 Knight, rh Sir Greg
 Knight, Julian
 Kwarteng, Kwasi
 Lamont, John
 Lancaster, Mark
 Latham, Mrs Pauline
 Leadsom, rh Andrea
 Lee, Dr Phillip
 Lefroy, Jeremy
 Leigh, Sir Edward
 Letwin, rh Sir Oliver
 Lewer, Andrew
 Lewis, rh Brandon
 Lewis, rh Dr Julian
 Liddell-Grainger, Mr Ian
 Lidington, rh Mr David
 Little Pengelly, Emma
 Lopez, Julia
 Lopresti, Jack
 Lord, Mr Jonathan
 Loughton, Tim
 Mackinlay, Craig
 Maclean, Rachel
 Main, Mrs Anne
 Mak, Alan
 Malthouse, Kit
 Mann, Scott
 Masterton, Paul
 May, rh Mrs Theresa
 Maynard, Paul
 McLoughlin, rh Sir Patrick
 McPartland, Stephen
 McVey, rh Ms Esther
 Menzies, Mark
 Mercer, Johnny
 Merriman, Huw
 Metcalfe, Stephen
 Miller, rh Mrs Maria
 Milling, Amanda
 Mills, Nigel
 Milton, rh Anne
 Mitchell, rh Mr Andrew
 Moore, Damien
 Mordaunt, Penny
 Morgan, rh Nicky
 Morris, Anne Marie
 Morris, David
 Morris, James
 Morton, Wendy
 Mundell, rh David
 Murray, Mrs Sheryll
 Murrison, Dr Andrew
 Neill, Robert
 Newton, Sarah
 Nokes, Caroline

Norman, Jesse
 O'Brien, Neil
 Offord, Dr Matthew
 Opperman, Guy
 Paisley, Ian
 Parish, Neil
 Patel, rh Priti
 Paterson, rh Mr Owen
 Pawsey, Mark
 Penning, rh Sir Mike
 Penrose, John
 Percy, Andrew
 Perry, Claire
 Philp, Chris
 Pincher, Christopher
 Pow, Rebecca
 Prentis, Victoria
 Prisk, Mr Mark
 Pritchard, Mark
 Pursglove, Tom
 Quin, Jeremy
 Quince, Will
 Raab, Dominic
 Redwood, rh John
 Rees-Mogg, Mr Jacob
 Robertson, Mr Laurence
 Robinson, Gavin
 Robinson, Mary
 Rosindell, Andrew
 Ross, Douglas
 Rowley, Lee
 Rudd, rh Amber
 Rutley, David
 Sandbach, Antoinette
 Scully, Paul
 Seely, Mr Bob
 Selous, Andrew
 Shannon, Jim
 Shapps, rh Grant
 Sharma, Alok
 Shelbrooke, Alec
 Simpson, David
 Simpson, rh Mr Keith
 Skidmore, Chris
 Smith, Chloe
 Smith, Henry
 Smith, rh Julian
 Smith, Royston
 Soames, rh Sir Nicholas

Soubry, rh Anna
 Spelman, rh Dame Caroline
 Spencer, Mark
 Stevenson, John
 Stewart, Bob
 Stewart, Iain
 Stewart, Rory
 Stride, rh Mel
 Stuart, Graham
 Sturdy, Julian
 Sunak, Rishi
 Swayne, rh Sir Desmond
 Swire, rh Sir Hugo
 Syms, Sir Robert
 Thomas, Derek
 Thomson, Ross
 Throup, Maggie
 Tolhurst, Kelly
 Tomlinson, Justin
 Tomlinson, Michael
 Tracey, Craig
 Tredinnick, David
 Trevelyan, Mrs Anne-Marie
 Truss, rh Elizabeth
 Tugendhat, Tom
 Vara, Mr Shailesh
 Vickers, Martin
 Villiers, rh Theresa
 Walker, Mr Charles
 Walker, Mr Robin
 Wallace, rh Mr Ben
 Warburton, David
 Warman, Matt
 Watling, Giles
 Whately, Helen
 Wheeler, Mrs Heather
 Whittaker, Craig
 Whittingdale, rh Mr John
 Williamson, rh Gavin
 Wilson, Sammy
 Wollaston, Dr Sarah
 Wood, Mike
 Wragg, Mr William
 Wright, rh Jeremy
 Zahawi, Nadhim

Tellers for the Noes:
Andrew Stephenson and
Stuart Andrew

Question accordingly negated.

9 pm

More than eight hours having elapsed since the commencement of proceedings, the proceedings were interrupted (Programme Order, 11 September).

The Chair put forthwith the Questions necessary for the disposal of the business to be concluded at that time (Standing Order No. 83D).

Clause 5

EXCEPTIONS TO SAVINGS AND INCORPORATION

Amendment proposed: 46, page 3, line 20, leave out subsection (4).—(Paul Blomfield.)

This amendment would remove the exclusion of the Charter of Fundamental Rights from retained EU law.

Question put, That the amendment be made.

The Committee divided: Ayes 301, Noes 311.

Division No. 45]

[9 pm

AYES

Abbott, rh Ms Diane
 Abrahams, Debbie
 Alexander, Heidi
 Ali, Rushanara
 Allin-Khan, Dr Rosena
 Amesbury, Mike
 Antoniazzi, Tonia
 Ashworth, Jonathan
 Austin, Ian
 Bailey, Mr Adrian
 Bardell, Hannah
 Barron, rh Sir Kevin
 Beckett, rh Margaret
 Benn, rh Hilary
 Betts, Mr Clive
 Black, Mhairi
 Blackford, rh Ian
 Blackman, Kirsty
 Blackman-Woods, Dr Roberta
 Blomfield, Paul
 Brabin, Tracy
 Bradshaw, rh Mr Ben
 Brake, rh Tom
 Brennan, Kevin
 Brock, Deidre
 Brown, Alan
 Brown, Lyn
 Brown, rh Mr Nicholas
 Bryant, Chris
 Buck, Ms Karen
 Burden, Richard
 Burgon, Richard
 Butler, Dawn
 Byrne, rh Liam
 Cable, rh Sir Vince
 Cadbury, Ruth
 Cameron, Dr Lisa
 Campbell, rh Mr Alan
 Campbell, Mr Ronnie
 Carden, Dan
 Carmichael, rh Mr Alistair
 Champion, Sarah
 Chapman, Douglas
 Chapman, Jenny
 Charalambous, Bambos
 Cherry, Joanna
 Clarke, rh Mr Kenneth
 Clwyd, rh Ann
 Coaker, Vernon
 Coffey, Ann
 Cooper, Julie
 Cooper, Rosie
 Cooper, rh Yvette
 Corbyn, rh Jeremy
 Cowan, Ronnie
 Coyle, Neil
 Crawley, Angela
 Creagh, Mary
 Creasy, Stella
 Cruddas, Jon
 Cryer, John
 Cummins, Judith
 Cunningham, Alex
 Cunningham, Mr Jim
 Dakin, Nic
 Davey, rh Sir Edward
 David, Wayne
 Davies, Geraint
 Day, Martyn
 De Cordova, Marsha
 De Piero, Gloria
 Dent Coad, Emma
 Dhesi, Mr Tanmanjeet Singh
 Docherty-Hughes, Martin
 Dodds, Anneliese
 Doughty, Stephen
 Dowd, Peter
 Dromey, Jack
 Duffield, Rosie
 Eagle, Ms Angela
 Eagle, Maria
 Edwards, Jonathan
 Efford, Clive
 Elliott, Julie
 Ellman, Mrs Louise
 Elmore, Chris
 Esterson, Bill
 Evans, Chris
 Farrelly, Paul
 Farron, Tim
 Fellows, Marion
 Field, rh Frank
 Fitzpatrick, Jim
 Fletcher, Colleen
 Flint, rh Caroline
 Flynn, Paul
 Fovargue, Yvonne
 Frith, James
 Furniss, Gill
 Gaffney, Hugh
 Gapes, Mike
 Gardiner, Barry
 George, Ruth
 Gethins, Stephen
 Gibson, Patricia
 Gill, Preet Kaur
 Glindon, Mary
 Godsiff, Mr Roger
 Goodman, Helen
 Grady, Patrick
 Grant, Peter
 Gray, Neil
 Green, Kate
 Greenwood, Lillian
 Greenwood, Margaret
 Griffith, Nia
 Grogan, John
 Gwynne, Andrew
 Haigh, Louise
 Hamilton, Fabian
 Hardy, Emma
 Harman, rh Ms Harriet
 Harris, Carolyn
 Hayes, Helen
 Hayman, Sue
 Healey, rh John
 Hendrick, Mr Mark
 Hendry, Drew
 Hepburn, Mr Stephen
 Hermon, Lady
 Hill, Mike
 Hillier, Meg
 Hobhouse, Wera
 Hodge, rh Dame Margaret

Hodgson, Mrs Sharon
 Hoey, Kate
 Hollern, Kate
 Hopkins, Kelvin
 Hosie, Stewart
 Howarth, rh Mr George
 Huq, Dr Rupa
 Hussain, Imran
 Jardine, Christine
 Jarvis, Dan
 Johnson, Diana
 Jones, Darren
 Jones, Gerald
 Jones, Graham P.
 Jones, Helen
 Jones, Mr Kevan
 Jones, Sarah
 Jones, Susan Elan
 Kane, Mike
 Kendall, Liz
 Khan, Afzal
 Killen, Gerard
 Kinnock, Stephen
 Kyle, Peter
 Laird, Lesley
 Lake, Ben
 Lamb, rh Norman
 Lammy, rh Mr David
 Lavery, Ian
 Law, Chris
 Lee, Ms Karen
 Leslie, Mr Chris
 Lewell-Buck, Mrs Emma
 Lewis, Clive
 Linden, David
 Lloyd, Stephen
 Lloyd, Tony
 Long Bailey, Rebecca
 Lucas, Caroline
 Lucas, Ian C.
 Lynch, Holly
 MacNeil, Angus Brendan
 Madders, Justin
 Mahmood, Mr Khalid
 Mahmood, Shabana
 Malhotra, Seema
 Mann, John
 Marsden, Gordon
 Martin, Sandy
 Maskell, Rachael
 Matheson, Christian
 Mc Nally, John
 McCabe, Steve
 McCarthy, Kerry
 McDonagh, Siobhain
 McDonald, Andy
 McDonald, Stewart Malcolm
 McDonald, Stuart C.
 McDonnell, rh John
 McFadden, rh Mr Pat
 McGinn, Conor
 McGovern, Alison
 McInnes, Liz
 McKinnell, Catherine
 McMahon, Jim
 McMorris, Anna
 Mearns, Ian
 Miliband, rh Edward
 Monaghan, Carol
 Moon, Mrs Madeleine
 Moran, Layla
 Morden, Jessica

Morgan, Stephen
 Morris, Grahame
 Murray, Ian
 Nandy, Lisa
 Newlands, Gavin
 Norris, Alex
 O'Hara, Brendan
 Onasanya, Fiona
 Onn, Melanie
 Onwurah, Chi
 Osamor, Kate
 Owen, Albert
 Peacock, Stephanie
 Pearce, Teresa
 Pennycook, Matthew
 Perkins, Toby
 Phillips, Jess
 Phillipson, Bridget
 Pidcock, Laura
 Platt, Jo
 Pollard, Luke
 Pound, Stephen
 Powell, Lucy
 Qureshi, Yasmin
 Rashid, Faisal
 Reed, Mr Steve
 Rees, Christina
 Reeves, Ellie
 Reeves, Rachel
 Reynolds, Jonathan
 Rimmer, Ms Marie
 Robinson, Mr Geoffrey
 Rodda, Matt
 Rowley, Danielle
 Ruane, Chris
 Russell-Moyle, Lloyd
 Ryan, rh Joan
 Saville Roberts, Liz
 Shah, Naz
 Sharma, Mr Virendra
 Sheerman, Mr Barry
 Sheppard, Tommy
 Sherriff, Paula
 Shuker, Mr Gavin
 Skinner, Mr Dennis
 Slaughter, Andy
 Smeeth, Ruth
 Smith, Angela
 Smith, Cat
 Smith, Eleanor
 Smith, Jeff
 Smith, Laura
 Smith, Nick
 Smith, Owen
 Smyth, Karin
 Snell, Gareth
 Sobel, Alex
 Spellar, rh John
 Starmer, rh Keir
 Stephens, Chris
 Stevens, Jo
 Stone, Jamie
 Streeting, Wes
 Stringer, Graham
 Sweeney, Mr Paul
 Swinson, Jo
 Tami, Mark
 Thewliss, Alison
 Thomas, Gareth
 Thomas-Symonds, Nick
 Thornberry, rh Emily
 Timms, rh Stephen

Trickett, Jon
 Turner, Karl
 Twigg, Derek
 Twigg, Stephen
 Twist, Liz
 Umunna, Chuka
 Vaz, Valerie
 Walker, Thelma
 Watson, Tom
 West, Catherine
 Western, Matt
 Whitehead, Dr Alan
 Whitfield, Martin

Adams, Nigel
 Afolami, Bim
 Afriyie, Adam
 Aldous, Peter
 Allan, Lucy
 Allen, Heidi
 Argar, Edward
 Atkins, Victoria
 Bacon, Mr Richard
 Badenoch, Mrs Kemi
 Baker, Mr Steve
 Baldwin, Harriett
 Barclay, Stephen
 Baron, Mr John
 Bebb, Guto
 Bellingham, Sir Henry
 Benyon, rh Richard
 Beresford, Sir Paul
 Berry, Jake
 Blackman, Bob
 Blunt, Crispin
 Boles, Nick
 Bone, Mr Peter
 Bottomley, Sir Peter
 Bowie, Andrew
 Bradley, Ben
 Bradley, rh Karen
 Brady, Mr Graham
 Brereton, Jack
 Bridgen, Andrew
 Brine, Steve
 Brokenshire, rh James
 Bruce, Fiona
 Buckland, Robert
 Burghart, Alex
 Burns, Conor
 Burt, rh Alistair
 Cairns, rh Alun
 Campbell, Mr Gregory
 Cartledge, James
 Cash, Sir William
 Caulfield, Maria
 Chalk, Alex
 Chishti, Rehman
 Chope, Mr Christopher
 Churchill, Jo
 Clark, Colin
 Clark, rh Greg
 Clarke, Mr Simon
 Cleverly, James
 Clifton-Brown, Geoffrey
 Coffey, Dr Thérèse
 Collins, Damian
 Costa, Alberto
 Courts, Robert
 Cox, Mr Geoffrey

Whitford, Dr Philippa
 Williams, Hywel
 Williams, Dr Paul
 Williamson, Chris
 Wilson, Phil
 Wishart, Pete
 Woodcock, John
 Yasin, Mohammad
 Zeichner, Daniel

Tellers for the Ayes:
Vicky Foxcroft and
Thangam Debbonaire

NOES

Crabb, rh Stephen
 Crouch, Tracey
 Davies, Chris
 Davies, David T. C.
 Davies, Glyn
 Davies, Mims
 Davies, Philip
 Davis, rh Mr David
 Dinenage, Caroline
 Djanogly, Mr Jonathan
 Docherty, Leo
 Dodds, rh Nigel
 Donaldson, rh Sir Jeffrey M.
 Donelan, Michelle
 Dorries, Ms Nadine
 Double, Steve
 Dowden, Oliver
 Doyle-Price, Jackie
 Drax, Richard
 Duddridge, James
 Duguid, David
 Duncan, rh Sir Alan
 Duncan Smith, rh Mr Iain
 Dunne, Mr Philip
 Ellis, Michael
 Ellwood, rh Mr Tobias
 Elphicke, Charlie
 Eustice, George
 Evans, Mr Nigel
 Evannett, rh David
 Fabricant, Michael
 Fernandes, Suella
 Ford, Vicky
 Foster, Kevin
 Fox, rh Dr Liam
 Francois, rh Mr Mark
 Frazer, Lucy
 Freer, Mike
 Fysh, Mr Marcus
 Gale, Sir Roger
 Garnier, Mark
 Gauke, rh Mr David
 Ghani, Ms Nusrat
 Gibb, rh Nick
 Gillan, rh Mrs Cheryl
 Girvan, Paul
 Glen, John
 Goldsmith, Zac
 Goodwill, Mr Robert
 Gove, rh Michael
 Graham, Luke
 Graham, Richard
 Grant, Bill
 Grant, Mrs Helen
 Gray, James
 Grayling, rh Chris

Green, Chris
 Green, rh Damian
 Greening, rh Justine
 Grieve, rh Mr Dominic
 Griffiths, Andrew
 Gyimah, Mr Sam
 Hair, Kirstene
 Halfon, rh Robert
 Hall, Luke
 Hammond, Stephen
 Hancock, rh Matt
 Hands, rh Greg
 Harper, rh Mr Mark
 Harrington, Richard
 Harris, Rebecca
 Harrison, Trudy
 Hart, Simon
 Hayes, rh Mr John
 Heald, rh Sir Oliver
 Heappey, James
 Heaton-Harris, Chris
 Heaton-Jones, Peter
 Henderson, Gordon
 Herbert, rh Nick
 Hinds, Damian
 Hoare, Simon
 Hollingbery, George
 Hollinrake, Kevin
 Hollobone, Mr Philip
 Holloway, Adam
 Howell, John
 Huddleston, Nigel
 Hughes, Eddie
 Hunt, rh Mr Jeremy
 Hurd, Mr Nick
 Jack, Mr Alister
 James, Margot
 Javid, rh Sajid
 Jayawardena, Mr Ranil
 Jenkin, Mr Bernard
 Jenrick, Robert
 Johnson, rh Boris
 Johnson, Dr Caroline
 Johnson, Gareth
 Johnson, Joseph
 Jones, Andrew
 Jones, rh Mr David
 Jones, Mr Marcus
 Kawczynski, Daniel
 Keegan, Gillian
 Kennedy, Seema
 Kerr, Stephen
 Knight, rh Sir Greg
 Knight, Julian
 Kwarteng, Kwasi
 Lamont, John
 Lancaster, Mark
 Latham, Mrs Pauline
 Leadsom, rh Andrea
 Lee, Dr Phillip
 Lefroy, Jeremy
 Leigh, Sir Edward
 Letwin, rh Sir Oliver
 Lewer, Andrew
 Lewis, rh Brandon
 Lewis, rh Dr Julian
 Liddell-Grainger, Mr Ian
 Lidington, rh Mr David
 Little Pengelly, Emma
 Lopez, Julia

Lopresti, Jack
 Lord, Mr Jonathan
 Loughton, Tim
 Mackinlay, Craig
 Maclean, Rachel
 Main, Mrs Anne
 Mak, Alan
 Malthouse, Kit
 Mann, Scott
 Masterton, Paul
 Maynard, Paul
 McLoughlin, rh Sir Patrick
 McPartland, Stephen
 McVey, rh Ms Esther
 Menzies, Mark
 Mercer, Johnny
 Merriman, Huw
 Metcalfe, Stephen
 Miller, rh Mrs Maria
 Milling, Amanda
 Mills, Nigel
 Milton, rh Anne
 Mitchell, rh Mr Andrew
 Moore, Damien
 Mordaunt, Penny
 Morgan, rh Nicky
 Morris, Anne Marie
 Morris, David
 Morris, James
 Morton, Wendy
 Mundell, rh David
 Murray, Mrs Sheryll
 Morrison, Dr Andrew
 Neill, Robert
 Newton, Sarah
 Nokes, Caroline
 Norman, Jesse
 O'Brien, Neil
 Offord, Dr Matthew
 Opperman, Guy
 Paisley, Ian
 Parish, Neil
 Patel, rh Priti
 Paterson, rh Mr Owen
 Pawsey, Mark
 Penning, rh Sir Mike
 Penrose, John
 Percy, Andrew
 Perry, Claire
 Philp, Chris
 Pincher, Christopher
 Pow, Rebecca
 Prentis, Victoria
 Prisk, Mr Mark
 Pritchard, Mark
 Pursglove, Tom
 Quin, Jeremy
 Quince, Will
 Raab, Dominic
 Redwood, rh John
 Rees-Mogg, Mr Jacob
 Robertson, Mr Laurence
 Robinson, Gavin
 Robinson, Mary
 Rosindell, Andrew
 Ross, Douglas
 Rowley, Lee
 Rutley, David
 Sandbach, Antoinette
 Scully, Paul

Seely, Mr Bob
 Selous, Andrew
 Shannon, Jim
 Shapps, rh Grant
 Sharma, Alok
 Shelbrooke, Alec
 Simpson, David
 Simpson, rh Mr Keith
 Skidmore, Chris
 Smith, Chloe
 Smith, Henry
 Smith, rh Julian
 Smith, Royston
 Soames, rh Sir Nicholas
 Soubry, rh Anna
 Spelman, rh Dame Caroline
 Spencer, Mark
 Stevenson, John
 Stewart, Bob
 Stewart, Iain
 Stewart, Rory
 Stride, rh Mel
 Stuart, Graham
 Sturdy, Julian
 Sunak, Rishi
 Swayne, rh Sir Desmond
 Swire, rh Sir Hugo
 Syms, Sir Robert
 Thomas, Derek
 Thomson, Ross
 Throup, Maggie

Tolhurst, Kelly
 Tomlinson, Justin
 Tomlinson, Michael
 Tracey, Craig
 Tredinnick, David
 Trevelyan, Mrs Anne-Marie
 Truss, rh Elizabeth
 Tugendhat, Tom
 Vara, Mr Shailesh
 Vickers, Martin
 Villiers, rh Theresa
 Walker, Mr Charles
 Walker, Mr Robin
 Wallace, rh Mr Ben
 Warburton, David
 Warman, Matt
 Watling, Giles
 Whately, Helen
 Wheeler, Mrs Heather
 Whittaker, Craig
 Whittingdale, rh Mr John
 Williamson, rh Gavin
 Wilson, Sammy
 Wollaston, Dr Sarah
 Wood, Mike
 Wragg, Mr William
 Wright, rh Jeremy
 Zahawi, Nadhim

Tellers for the Noes:
 Andrew Stephenson and
 Stuart Andrew

Question accordingly negated.

Clause 5 ordered to stand part of the Bill.

Schedule 1

FURTHER PROVISION ABOUT EXCEPTIONS TO SAVINGS AND INCORPORATION

Amendment proposed: 336, page 15, line 17, leave out paragraphs 2 and 3 and insert—

“2A (1) Any general principle of EU law will remain part of domestic law on or after exit day if—

- (a) it was recognised as a general principle of EU law by the European Court in a case decided before exit day (whether or not as an essential part of the decision in the case);
- (b) it was recognised as a general principle of EU law in the EU Treaties immediately before exit day;
- (c) it was recognised as a general principle of EU law by any direct EU legislation (as defined in section 3(2) of this Act) operative immediately before exit day; or
- (d) it was recognised as a general principle of EU law by an EU directive that was in force immediately before exit day.

2B Without prejudice to the generality of paragraph 2A, the principles set out in Article 191 of the Treaty on the Functioning of the European Union shall be considered to be general principles for the purposes of that paragraph.

2C For the purposes of paragraphs 1A and 1B the exit day appointed must be the same day as is appointed for section 5(1) of this Act and must not be before the end of any transitional period agreed under Article 50 of the Treaty on the Functioning of the European Union.”—(*Paul Blomfield.*)

This amendment would retain the existing principles of EU law within domestic law whether they originate in the case law of the European Court, the EU treaties, direct EU legislation or EU directives. The freeze date would be at the end of any transitional arrangements.

Question put, That the amendment be made.

The Committee divided: Ayes 296, Noes 315.

Division No. 46]

[9.14 pm

AYES

Abbott, rh Ms Diane
Abrahams, Debbie
Alexander, Heidi
Ali, Rushanara
Allin-Khan, Dr Rosena
Amesbury, Mike
Antoniazzi, Tonia
Ashworth, Jonathan
Austin, Ian
Bailey, Mr Adrian
Bardell, Hannah
Barron, rh Sir Kevin
Beckett, rh Margaret
Benn, rh Hilary
Betts, Mr Clive
Black, Mhairi
Blackford, rh Ian
Blackman, Kirsty
Blackman-Woods, Dr Roberta
Blomfield, Paul
Brabin, Tracy
Bradshaw, rh Mr Ben
Brake, rh Tom
Brennan, Kevin
Brock, Deidre
Brown, Alan
Brown, Lyn
Brown, rh Mr Nicholas
Bryant, Chris
Buck, Ms Karen
Burden, Richard
Burgon, Richard
Butler, Dawn
Byrne, rh Liam
Cable, rh Sir Vince
Cadbury, Ruth
Cameron, Dr Lisa
Campbell, rh Mr Alan
Campbell, Mr Ronnie
Carden, Dan
Carmichael, rh Mr Alistair
Champion, Sarah
Chapman, Douglas
Chapman, Jenny
Charalambous, Bambos
Cherry, Joanna
Clarke, rh Mr Kenneth
Clwyd, rh Ann
Coaker, Vernon
Coffey, Ann
Cooper, Julie
Cooper, Rosie
Cooper, rh Yvette
Corbyn, rh Jeremy
Cowan, Ronnie
Coyle, Neil
Crawley, Angela
Creagh, Mary
Creasy, Stella
Cruddas, Jon
Cryer, John
Cummins, Judith
Cunningham, Alex
Cunningham, Mr Jim
Dakin, Nic
Davey, rh Sir Edward

David, Wayne
Davies, Geraint
Day, Martyn
De Cordova, Marsha
De Piero, Gloria
Dent Coad, Emma
Dhesi, Mr Tanmanjeet Singh
Docherty-Hughes, Martin
Dodds, Anneliese
Doughty, Stephen
Dowd, Peter
Dromey, Jack
Duffield, Rosie
Eagle, Ms Angela
Eagle, Maria
Edwards, Jonathan
Efford, Clive
Elliott, Julie
Ellman, Mrs Louise
Elmore, Chris
Esterson, Bill
Evans, Chris
Farrelly, Paul
Farron, Tim
Fellows, Marion
Fitzpatrick, Jim
Fletcher, Colleen
Flint, rh Caroline
Flynn, Paul
Fovargue, Yvonne
Frith, James
Furniss, Gill
Gaffney, Hugh
Gapes, Mike
Gardiner, Barry
George, Ruth
Gethins, Stephen
Gibson, Patricia
Gill, Preet Kaur
Glindon, Mary
Godsiff, Mr Roger
Goodman, Helen
Grady, Patrick
Grant, Peter
Gray, Neil
Green, Kate
Greenwood, Lilian
Greenwood, Margaret
Griffith, Nia
Grogan, John
Gwynne, Andrew
Haigh, Louise
Hamilton, Fabian
Hardy, Emma
Harman, rh Ms Harriet
Harris, Carolyn
Hayes, Helen
Hayman, Sue
Healey, rh John
Hendrick, Mr Mark
Hendry, Drew
Hepburn, Mr Stephen
Hermon, Lady
Hill, Mike
Hillier, Meg
Hobhouse, Wera
Hodge, rh Dame Margaret
Hodgson, Mrs Sharon
Hollern, Kate
Hosie, Stewart
Howarth, rh Mr George
Huq, Dr Rupa
Hussain, Imran
Jardine, Christine
Jarvis, Dan
Johnson, Diana
Jones, Darren
Jones, Gerald
Jones, Graham P.
Jones, Helen
Jones, Mr Kevan
Jones, Sarah
Jones, Susan Elan
Kane, Mike
Kendall, Liz
Khan, Afzal
Killen, Gerard
Kinnock, Stephen
Kyle, Peter
Laird, Lesley
Lake, Ben
Lamb, rh Norman
Lammy, rh Mr David
Lavery, Ian
Law, Chris
Lee, Ms Karen
Leslie, Mr Chris
Lewell-Buck, Mrs Emma
Lewis, Clive
Linden, David
Lloyd, Stephen
Lloyd, Tony
Long Bailey, Rebecca
Lucas, Caroline
Lucas, Ian C.
Lynch, Holly
MacNeil, Angus Brendan
Madders, Justin
Mahmood, Mr Khalid
Mahmood, Shabana
Malhotra, Seema
Mann, John
Marsden, Gordon
Martin, Sandy
Maskell, Rachael
Matheson, Christian
Mc Nally, John
McCabe, Steve
McCarthy, Kerry
McDonagh, Siobhain
McDonald, Andy
McDonald, Stewart Malcolm
McDonald, Stuart C.
McDonnell, rh John
McFadden, rh Mr Pat
McGinn, Conor
McGovern, Alison
McInnes, Liz
McKinnell, Catherine
McMahon, Jim
McMorrin, Anna
Mearns, Ian
Miliband, rh Edward
Monaghan, Carol
Moon, Mrs Madeleine
Moran, Layla
Morden, Jessica
Morgan, Stephen

Morris, Grahame
Murray, Ian
Nandy, Lisa
Newlands, Gavin
Norris, Alex
O'Hara, Brendan
Onasanya, Fiona
Onn, Melanie
Onwurah, Chi
Osamor, Kate
Owen, Albert
Peacock, Stephanie
Pearce, Teresa
Pennycook, Matthew
Perkins, Toby
Phillips, Jess
Phillipson, Bridget
Pidcock, Laura
Platt, Jo
Pollard, Luke
Pound, Stephen
Powell, Lucy
Qureshi, Yasmin
Rashid, Faisal
Reed, Mr Steve
Rees, Christina
Reeves, Ellie
Reeves, Rachel
Reynolds, Jonathan
Rimmer, Ms Marie
Robinson, Mr Geoffrey
Rodda, Matt
Rowley, Danielle
Ruane, Chris
Russell-Moyle, Lloyd
Ryan, rh Joan
Saville Roberts, Liz
Shah, Naz
Sharma, Mr Virendra
Sheerman, Mr Barry
Sheppard, Tommy
Sherriff, Paula
Shuker, Mr Gavin
Skinner, Mr Dennis
Slaughter, Andy
Smeeth, Ruth
Smith, Angela
Smith, Cat
Smith, Eleanor
Smith, Jeff
Smith, Laura
Smith, Nick
Smith, Owen
Smyth, Karin
Snell, Gareth
Sobel, Alex
Spellar, rh John
Starmer, rh Keir
Stephens, Chris
Stevens, Jo
Stone, Jamie
Streeting, Wes
Sweeney, Mr Paul
Swinson, Jo
Tami, Mark
Thewliss, Alison
Thomas, Gareth
Thomas-Symonds, Nick
Thornberry, rh Emily
Timms, rh Stephen
Trickett, Jon
Turner, Karl

Twigg, Derek
Twigg, Stephen
Umunna, Chuka
Vaz, Valerie
Walker, Thelma
Watson, Tom
West, Catherine
Western, Matt
Whitehead, Dr Alan
Whitfield, Martin
Whitford, Dr Philippa

Williams, Hywel
Williams, Dr Paul
Williamson, Chris
Wilson, Phil
Wishart, Pete
Woodcock, John
Yasin, Mohammad
Zeichner, Daniel
Tellers for the Ayes:
Thangam Debbonaire and
Vicky Foxcroft

NOES

Adams, Nigel
Afolami, Bim
Afriyie, Adam
Aldous, Peter
Allan, Lucy
Allen, Heidi
Argar, Edward
Atkins, Victoria
Bacon, Mr Richard
Badenoch, Mrs Kemi
Baker, Mr Steve
Baldwin, Harriett
Barclay, Stephen
Baron, Mr John
Bebb, Guto
Bellingham, Sir Henry
Benyon, rh Richard
Beresford, Sir Paul
Berry, Jake
Blackman, Bob
Blunt, Crispin
Boles, Nick
Bone, Mr Peter
Bottomley, Sir Peter
Bowie, Andrew
Bradley, Ben
Bradley, rh Karen
Brady, Mr Graham
Brereton, Jack
Bridgen, Andrew
Brine, Steve
Brokenshire, rh James
Bruce, Fiona
Buckland, Robert
Burghart, Alex
Burns, Conor
Burt, rh Alistair
Cairns, rh Alun
Campbell, Mr Gregory
Cartlidge, James
Cash, Sir William
Caulfield, Maria
Chalk, Alex
Chishti, Rehman
Chope, Mr Christopher
Churchill, Jo
Clark, Colin
Clark, rh Greg
Clarke, Mr Simon
Cleverly, James
Clifton-Brown, Geoffrey
Coffey, Dr Thérèse
Collins, Damian
Costa, Alberto
Courts, Robert
Cox, Mr Geoffrey
Crabb, rh Stephen
Crouch, Tracey

Davies, Chris
Davies, David T. C.
Davies, Glyn
Davies, Mims
Davies, Philip
Davis, rh Mr David
Dinenage, Caroline
Djanogly, Mr Jonathan
Docherty, Leo
Dodds, rh Nigel
Donaldson, rh Sir Jeffrey M.
Donelan, Michelle
Dorries, Ms Nadine
Double, Steve
Dowden, Oliver
Doyle-Price, Jackie
Drax, Richard
Duddridge, James
Duguid, David
Duncan, rh Sir Alan
Duncan Smith, rh Mr Iain
Dunne, Mr Philip
Ellis, Michael
Ellwood, rh Mr Tobias
Elphicke, Charlie
Eustice, George
Evans, Mr Nigel
Evennett, rh David
Fabricant, Michael
Fernandes, Suella
Ford, Vicky
Foster, Kevin
Fox, rh Dr Liam
Francois, rh Mr Mark
Frazer, Lucy
Freer, Mike
Fysh, Mr Marcus
Gale, Sir Roger
Garnier, Mark
Gauke, rh Mr David
Ghani, Ms Nusrat
Gibb, rh Nick
Gillan, rh Mrs Cheryl
Girvan, Paul
Glen, John
Goldsmith, Zac
Goodwill, Mr Robert
Gove, rh Michael
Graham, Luke
Graham, Richard
Grant, Bill
Grant, Mrs Helen
Gray, James
Grayling, rh Chris
Green, Chris
Green, rh Damian
Greening, rh Justine
Grieve, rh Mr Dominic

Griffiths, Andrew
Gyimah, Mr Sam
Hair, Kirstene
Halfon, rh Robert
Hall, Luke
Hammond, Stephen
Hancock, rh Matt
Hands, rh Greg
Harper, rh Mr Mark
Harrington, Richard
Harris, Rebecca
Harrison, Trudy
Hart, Simon
Hayes, rh Mr John
Heald, rh Sir Oliver
Heappey, James
Heaton-Harris, Chris
Heaton-Jones, Peter
Henderson, Gordon
Herbert, rh Nick
Hinds, Damian
Hoare, Simon
Hoey, Kate
Hollingbery, George
Hollinrake, Kevin
Hollobone, Mr Philip
Holloway, Adam
Hopkins, Kelvin
Howell, John
Huddleston, Nigel
Hughes, Eddie
Hunt, rh Mr Jeremy
Hurd, Mr Nick
Jack, Mr Alister
James, Margot
Javid, rh Sajid
Jayawardena, Mr Ranil
Jenkin, Mr Bernard
Jenrick, Robert
Johnson, rh Boris
Johnson, Dr Caroline
Johnson, Gareth
Johnson, Joseph
Jones, Andrew
Jones, rh Mr David
Jones, Mr Marcus
Kawczynski, Daniel
Keegan, Gillian
Kennedy, Seema
Kerr, Stephen
Knight, rh Sir Greg
Knight, Julian
Kwarteng, Kwasi
Lamont, John
Lancaster, Mark
Latham, Mrs Pauline
Leadsom, rh Andrea
Lee, Dr Phillip
Lefroy, Jeremy
Leigh, Sir Edward
Letwin, rh Sir Oliver
Lewer, Andrew
Lewis, rh Brandon
Lewis, rh Dr Julian
Liddell-Grainger, Mr Ian
Lidington, rh Mr David
Little Pengelly, Emma
Lopez, Julia
Lopresti, Jack
Lord, Mr Jonathan
Loughton, Tim
Mackinlay, Craig

Maclean, Rachel
Main, Mrs Anne
Mak, Alan
Malthouse, Kit
Mann, Scott
Masterton, Paul
Maynard, Paul
McLoughlin, rh Sir Patrick
McPartland, Stephen
McVey, rh Ms Esther
Menzies, Mark
Mercer, Johnny
Merriman, Huw
Metcalfe, Stephen
Miller, rh Mrs Maria
Milling, Amanda
Mills, Nigel
Milton, rh Anne
Mitchell, rh Mr Andrew
Moore, Damien
Mordaunt, Penny
Morgan, rh Nicky
Morris, Anne Marie
Morris, David
Morris, James
Morton, Wendy
Mundell, rh David
Murray, Mrs Sheryll
Murrison, Dr Andrew
Neill, Robert
Newton, Sarah
Nokes, Caroline
Norman, Jesse
O'Brien, Neil
Offord, Dr Matthew
Opperman, Guy
Paisley, Ian
Parish, Neil
Patel, rh Priti
Paterson, rh Mr Owen
Pawsey, Mark
Penning, rh Sir Mike
Penrose, John
Percy, Andrew
Perry, Claire
Philp, Chris
Pincher, Christopher
Pow, Rebecca
Prentis, Victoria
Prisk, Mr Mark
Pritchard, Mark
Pursglove, Tom
Quin, Jeremy
Quince, Will
Raab, Dominic
Redwood, rh John
Rees-Mogg, Mr Jacob
Robertson, Mr Laurence
Robinson, Gavin
Robinson, Mary
Rosindell, Andrew
Ross, Douglas
Rowley, Lee
Rudd, rh Amber
Rutley, David
Sandbach, Antoinette
Scully, Paul
Seely, Mr Bob
Selous, Andrew
Shannon, Jim
Shapps, rh Grant
Sharma, Alok

Shelbrooke, Alec
 Simpson, David
 Simpson, rh Mr Keith
 Skidmore, Chris
 Smith, Chloe
 Smith, Henry
 Smith, rh Julian
 Smith, Royston
 Soames, rh Sir Nicholas
 Soubry, rh Anna
 Spelman, rh Dame Caroline
 Spencer, Mark
 Stevenson, John
 Stewart, Bob
 Stewart, Iain
 Stewart, Rory
 Stride, rh Mel
 Stringer, Graham
 Stuart, Graham
 Sturdy, Julian
 Sunak, Rishi
 Swayne, rh Sir Desmond
 Swire, rh Sir Hugo
 Syms, Sir Robert
 Thomas, Derek
 Thomson, Ross
 Throup, Maggie
 Tolhurst, Kelly
 Tomlinson, Justin

Tomlinson, Michael
 Tracey, Craig
 Tredinnick, David
 Trevelyan, Mrs Anne-Marie
 Truss, rh Elizabeth
 Tugendhat, Tom
 Vara, Mr Shailesh
 Vickers, Martin
 Villiers, rh Theresa
 Walker, Mr Charles
 Walker, Mr Robin
 Wallace, rh Mr Ben
 Warburton, David
 Warman, Matt
 Watling, Giles
 Whately, Helen
 Wheeler, Mrs Heather
 Whittaker, Craig
 Whittingdale, rh Mr John
 Williamson, rh Gavin
 Wilson, Sammy
 Wollaston, Dr Sarah
 Wood, Mike
 Wragg, Mr William
 Wright, rh Jeremy
 Zahawi, Nadhim

Tellers for the Noes:
Andrew Stephenson and
Stuart Andrew

Cooper, Rosie
 Cooper, rh Yvette
 Corbyn, rh Jeremy
 Cowan, Ronnie
 Coyle, Neil
 Crawley, Angela
 Creagh, Mary
 Creasy, Stella
 Cruddas, Jon
 Cryer, John
 Cummins, Judith
 Cunningham, Alex
 Cunningham, Mr Jim
 Dakin, Nic
 Davey, rh Sir Edward
 David, Wayne
 Davies, Geraint
 Day, Martyn
 De Cordova, Marsha
 De Piero, Gloria
 Debbonaire, Thangam
 Dent Coad, Emma
 Dhesi, Mr Tanmanjeet Singh
 Docherty-Hughes, Martin
 Dodds, Anneliese
 Doughty, Stephen
 Dowd, Peter
 Dromey, Jack
 Duffield, Rosie
 Eagle, Ms Angela
 Eagle, Maria
 Edwards, Jonathan
 Efford, Clive
 Elliott, Julie
 Elnman, Mrs Louise
 Elmore, Chris
 Esterson, Bill
 Evans, Chris
 Farrelly, Paul
 Farron, Tim
 Fellows, Marion
 Fitzpatrick, Jim
 Fletcher, Colleen
 Flint, rh Caroline
 Flynn, Paul
 Fovargue, Yvonne
 Foxcroft, Vicky
 Frith, James
 Furniss, Gill
 Gaffney, Hugh
 Gapes, Mike
 Gardiner, Barry
 George, Ruth
 Gethins, Stephen
 Gibson, Patricia
 Gill, Preet Kaur
 Glendon, Mary
 Godsiff, Mr Roger
 Goodman, Helen
 Grady, Patrick
 Grant, Peter
 Gray, Neil
 Green, Kate
 Greenwood, Lilian
 Greenwood, Margaret
 Griffith, Nia
 Grogan, John
 Gwynne, Andrew
 Haigh, Louise
 Hamilton, Fabian
 Hardy, Emma
 Harman, rh Ms Harriet

Harris, Carolyn
 Hayes, Helen
 Hayman, Sue
 Healey, rh John
 Hendrick, Mr Mark
 Hendry, Drew
 Hepburn, Mr Stephen
 Hermon, Lady
 Hill, Mike
 Hillier, Meg
 Hobhouse, Wera
 Hodgson, Mrs Sharon
 Hollern, Kate
 Hosie, Stewart
 Howarth, rh Mr George
 Huq, Dr Rupa
 Hussain, Imran
 Jardine, Christine
 Jarvis, Dan
 Johnson, Diana
 Jones, Darren
 Jones, Gerald
 Jones, Graham P.
 Jones, Helen
 Jones, Mr Kevan
 Jones, Sarah
 Jones, Susan Elan
 Kane, Mike
 Kendall, Liz
 Khan, Afzal
 Killen, Gerard
 Kinnock, Stephen
 Kyle, Peter
 Laird, Lesley
 Lake, Ben
 Lamb, rh Norman
 Lammy, rh Mr David
 Lavery, Ian
 Law, Chris
 Lee, Ms Karen
 Leslie, Mr Chris
 Lewell-Buck, Mrs Emma
 Lewis, Clive
 Linden, David
 Lloyd, Stephen
 Lloyd, Tony
 Long Bailey, Rebecca
 Lucas, Caroline
 Lucas, Ian C.
 Lynch, Holly
 MacNeil, Angus Brendan
 Madders, Justin
 Mahmood, Mr Khalid
 Mahmood, Shabana
 Malhotra, Seema
 Mann, John
 Marsden, Gordon
 Martin, Sandy
 Maskell, Rachael
 Matheson, Christian
 Mc Nally, John
 McCabe, Steve
 McDonagh, Siobhain
 McDonald, Andy
 McDonald, Stewart Malcolm
 McDonald, Stuart C.
 McDonnell, rh John
 McFadden, rh Mr Pat
 McGinn, Conor
 McGovern, Alison
 McInnes, Liz
 McKinnell, Catherine

Question accordingly negatived.

Amendment proposed: 139, page 15, line 29, at end insert

“except in relation to anything occurring before that day”.—
 (*Mary Creagh.*)

This amendment, together with Amendments 140 and 141, would restore the right to obtain damages after exit day in respect of governmental failures before exit day to comply with European Union obligations.

Question put, That the amendment be made.

The Committee divided: Ayes 295, Noes 315.

Division No. 47]

[9.28 pm

AYES

Abbott, rh Ms Diane
 Abrahams, Debbie
 Ali, Rushanara
 Allin-Khan, Dr Rosena
 Amesbury, Mike
 Antoniazzi, Tonia
 Ashworth, Jonathan
 Austin, Ian
 Bailey, Mr Adrian
 Bardell, Hannah
 Barron, rh Sir Kevin
 Beckett, rh Margaret
 Benn, rh Hilary
 Betts, Mr Clive
 Black, Mhairi
 Blackford, rh Ian
 Blackman, Kirsty
 Blackman-Woods, Dr Roberta
 Blomfield, Paul
 Brabin, Tracy
 Bradshaw, rh Mr Ben
 Brake, rh Tom
 Brennan, Kevin
 Brock, Deidre
 Brown, Alan

Brown, Lyn
 Brown, rh Mr Nicholas
 Bryant, Chris
 Buck, Ms Karen
 Burden, Richard
 Burgon, Richard
 Butler, Dawn
 Byrne, rh Liam
 Cable, rh Sir Vince
 Cadbury, Ruth
 Cameron, Dr Lisa
 Campbell, rh Mr Alan
 Campbell, Mr Ronnie
 Carden, Dan
 Carmichael, rh Mr Alistair
 Champion, Sarah
 Chapman, Douglas
 Chapman, Jenny
 Charalambous, Bambos
 Cherry, Joanna
 Clarke, rh Mr Kenneth
 Clwyd, rh Ann
 Coaker, Vernon
 Coffey, Ann
 Cooper, Julie

McMahon, Jim
 McMorris, Anna
 Mearns, Ian
 Miliband, rh Edward
 Monaghan, Carol
 Moon, Mrs Madeleine
 Moran, Layla
 Morden, Jessica
 Morgan, Stephen
 Morris, Grahame
 Murray, Ian
 Nandy, Lisa
 Newlands, Gavin
 Norris, Alex
 O'Hara, Brendan
 Onasanya, Fiona
 Onn, Melanie
 Onwurah, Chi
 Osamor, Kate
 Owen, Albert
 Peacock, Stephanie
 Pearce, Teresa
 Pennycook, Matthew
 Perkins, Toby
 Phillips, Jess
 Phillipson, Bridget
 Pidcock, Laura
 Platt, Jo
 Pollard, Luke
 Pound, Stephen
 Powell, Lucy
 Qureshi, Yasmin
 Rashid, Faisal
 Reed, Mr Steve
 Rees, Christina
 Reeves, Ellie
 Reeves, Rachel
 Reynolds, Jonathan
 Rimmer, Ms Marie
 Robinson, Mr Geoffrey
 Rodda, Matt
 Rowley, Danielle
 Ruane, Chris
 Russell-Moyle, Lloyd
 Ryan, rh Joan
 Saville Roberts, Liz
 Shah, Naz
 Sharma, Mr Virendra
 Sheerman, Mr Barry
 Sheppard, Tommy
 Sherriff, Paula
 Shuker, Mr Gavin
 Skinner, Mr Dennis

Slaughter, Andy
 Smeeth, Ruth
 Smith, Angela
 Smith, Cat
 Smith, Eleanor
 Smith, Jeff
 Smith, Laura
 Smith, Nick
 Smith, Owen
 Smyth, Karin
 Snell, Gareth
 Sobel, Alex
 Spellar, rh John
 Starmer, rh Keir
 Stephens, Chris
 Stevens, Jo
 Stone, Jamie
 Streeting, Wes
 Sweeney, Mr Paul
 Swinson, Jo
 Tami, Mark
 Thewliss, Alison
 Thomas, Gareth
 Thomas-Symonds, Nick
 Thornberry, rh Emily
 Timms, rh Stephen
 Trickett, Jon
 Turner, Karl
 Twigg, Derek
 Twigg, Stephen
 Twist, Liz
 Umunna, Chuka
 Vaz, Valerie
 Walker, Thelma
 Watson, Tom
 West, Catherine
 Western, Matt
 Whitehead, Dr Alan
 Whitfield, Martin
 Whitford, Dr Philippa
 Williams, Hywel
 Williams, Dr Paul
 Williamson, Chris
 Wilson, Phil
 Wishart, Pete
 Woodcock, John
 Yasin, Mohammad
 Zeichner, Daniel

Tellers for the Ayes:

**Kerry McCarthy and
 Heidi Alexander**

NOES

Adams, Nigel
 Afolami, Bim
 Afriyie, Adam
 Aldous, Peter
 Allan, Lucy
 Allen, Heidi
 Argar, Edward
 Atkins, Victoria
 Bacon, Mr Richard
 Badenoch, Mrs Kemi
 Baker, Mr Steve
 Baldwin, Harriett
 Barclay, Stephen
 Baron, Mr John
 Bebb, Guto
 Bellingham, Sir Henry

Benyon, rh Richard
 Beresford, Sir Paul
 Berry, Jake
 Blackman, Bob
 Blunt, Crispin
 Boles, Nick
 Bone, Mr Peter
 Bottomley, Sir Peter
 Bowie, Andrew
 Bradley, Ben
 Bradley, rh Karen
 Brady, Mr Graham
 Brereton, Jack
 Bridgen, Andrew
 Brine, Steve
 Brokenshire, rh James

Bruce, Fiona
 Buckland, Robert
 Burghart, Alex
 Burns, Conor
 Burt, rh Alistair
 Cairns, rh Alun
 Campbell, Mr Gregory
 Cartledge, James
 Cash, Sir William
 Caulfield, Maria
 Chalk, Alex
 Chishti, Rehman
 Chope, Mr Christopher
 Churchill, Jo
 Clark, Colin
 Clark, rh Greg
 Clarke, Mr Simon
 Cleverly, James
 Clifton-Brown, Geoffrey
 Coffey, Dr Thérèse
 Collins, Damian
 Costa, Alberto
 Courts, Robert
 Cox, Mr Geoffrey
 Crabb, rh Stephen
 Crouch, Tracey
 Davies, Chris
 Davies, David T. C.
 Davies, Glyn
 Davies, Mims
 Davies, Philip
 Davis, rh Mr David
 Dinanage, Caroline
 Djanogly, Mr Jonathan
 Docherty, Leo
 Dodds, rh Nigel
 Donaldson, rh Sir Jeffrey M.
 Donelan, Michelle
 Dorries, Ms Nadine
 Double, Steve
 Dowden, Oliver
 Doyle-Price, Jackie
 Drax, Richard
 Duddridge, James
 Duguid, David
 Duncan, rh Sir Alan
 Duncan Smith, rh Mr Iain
 Dunne, Mr Philip
 Ellis, Michael
 Ellwood, rh Mr Tobias
 Elphicke, Charlie
 Eustice, George
 Evans, Mr Nigel
 Evennett, rh David
 Fabricant, Michael
 Fernandes, Suella
 Field, rh Frank
 Ford, Vicky
 Foster, Kevin
 Fox, rh Dr Liam
 Francois, rh Mr Mark
 Frazer, Lucy
 Freer, Mike
 Fysh, Mr Marcus
 Gale, Sir Roger
 Garnier, Mark
 Gauke, rh Mr David
 Ghani, Ms Nusrat
 Gibb, rh Nick
 Gillan, rh Mrs Cheryl
 Girvan, Paul
 Glen, John

Goldsmith, Zac
 Goodwill, Mr Robert
 Gove, rh Michael
 Graham, Luke
 Graham, Richard
 Grant, Bill
 Grant, Mrs Helen
 Gray, James
 Grayling, rh Chris
 Green, Chris
 Green, rh Damian
 Greening, rh Justine
 Grieve, rh Mr Dominic
 Griffiths, Andrew
 Gyimah, Mr Sam
 Hair, Kirstene
 Halfon, rh Robert
 Hall, Luke
 Hammond, Stephen
 Hancock, rh Matt
 Hands, rh Greg
 Harper, rh Mr Mark
 Harrington, Richard
 Harris, Rebecca
 Harrison, Trudy
 Hart, Simon
 Hayes, rh Mr John
 Heald, rh Sir Oliver
 Heapey, James
 Heaton-Harris, Chris
 Heaton-Jones, Peter
 Henderson, Gordon
 Herbert, rh Nick
 Hinds, Damian
 Hoare, Simon
 Hoey, Kate
 Hollingbery, George
 Hollinrake, Kevin
 Hollobone, Mr Philip
 Holloway, Adam
 Hopkins, Kelvin
 Howell, John
 Huddleston, Nigel
 Hughes, Eddie
 Hunt, rh Mr Jeremy
 Hurd, Mr Nick
 Jack, Mr Alister
 James, Margot
 Javid, rh Sajid
 Jayawardena, Mr Ranil
 Jenkin, Mr Bernard
 Jenrick, Robert
 Johnson, rh Boris
 Johnson, Dr Caroline
 Johnson, Gareth
 Johnson, Joseph
 Jones, Andrew
 Jones, rh Mr David
 Jones, Mr Marcus
 Kawczynski, Daniel
 Keegan, Gillian
 Kennedy, Seema
 Kerr, Stephen
 Knight, rh Sir Greg
 Knight, Julian
 Kwarteng, Kwasi
 Lamont, John
 Lancaster, Mark
 Latham, Mrs Pauline
 Leadsom, rh Andrea
 Lee, Dr Phillip
 Lefroy, Jeremy

Leigh, Sir Edward
 Letwin, rh Sir Oliver
 Lewer, Andrew
 Lewis, rh Brandon
 Lewis, rh Dr Julian
 Liddell-Grainger, Mr Ian
 Lidington, rh Mr David
 Little Pengelly, Emma
 Lopez, Julia
 Lopresti, Jack
 Lord, Mr Jonathan
 Loughton, Tim
 Mackinlay, Craig
 Maclean, Rachel
 Main, Mrs Anne
 Mak, Alan
 Malthouse, Kit
 Mann, Scott
 Masterton, Paul
 Maynard, Paul
 McLoughlin, rh Sir Patrick
 McPartland, Stephen
 McVey, rh Ms Esther
 Menzies, Mark
 Mercer, Johnny
 Merriman, Huw
 Metcalfe, Stephen
 Miller, rh Mrs Maria
 Milling, Amanda
 Mills, Nigel
 Milton, rh Anne
 Mitchell, rh Mr Andrew
 Moore, Damien
 Mordaunt, Penny
 Morgan, rh Nicky
 Morris, Anne Marie
 Morris, David
 Morris, James
 Morton, Wendy
 Mundell, rh David
 Murray, Mrs Sheryll
 Murrison, Dr Andrew
 Neill, Robert
 Newton, Sarah
 Nokes, Caroline
 Norman, Jesse
 O'Brien, Neil
 Offord, Dr Matthew
 Opperman, Guy
 Paisley, Ian
 Parish, Neil
 Patel, rh Priti
 Paterson, rh Mr Owen
 Pawsey, Mark
 Penning, rh Sir Mike
 Penrose, John
 Percy, Andrew
 Perry, Claire
 Philp, Chris
 Pincher, Christopher
 Pow, Rebecca
 Prentis, Victoria
 Prisk, Mr Mark
 Pritchard, Mark
 Pursglove, Tom
 Quin, Jeremy
 Quince, Will
 Raab, Dominic
 Redwood, rh John
 Rees-Mogg, Mr Jacob
 Robertson, Mr Laurence
 Robinson, Gavin

Robinson, Mary
 Rosindell, Andrew
 Ross, Douglas
 Rowley, Lee
 Rudd, rh Amber
 Rutley, David
 Sandbach, Antoinette
 Scully, Paul
 Seely, Mr Bob
 Selous, Andrew
 Shannon, Jim
 Shapps, rh Grant
 Sharma, Alok
 Shelbrooke, Alec
 Simpson, David
 Simpson, rh Mr Keith
 Skidmore, Chris
 Smith, Chloe
 Smith, Henry
 Smith, rh Julian
 Smith, Royston
 Soames, rh Sir Nicholas
 Spelman, rh Dame Caroline
 Spencer, Mark
 Stevenson, John
 Stewart, Bob
 Stewart, Iain
 Stewart, Rory
 Stride, rh Mel
 Stringer, Graham
 Stuart, Graham
 Sturdy, Julian
 Sunak, Rishi
 Swayne, rh Sir Desmond
 Swire, rh Sir Hugo
 Syms, Sir Robert
 Thomas, Derek
 Thomson, Ross
 Throup, Maggie
 Tolhurst, Kelly
 Tomlinson, Justin
 Tomlinson, Michael
 Tracey, Craig
 Tredinnick, David
 Trevelyan, Mrs Anne-Marie
 Truss, rh Elizabeth
 Tugendhat, Tom
 Vara, Mr Shailesh
 Vickers, Martin
 Villiers, rh Theresa
 Walker, Mr Charles
 Walker, Mr Robin
 Wallace, rh Mr Ben
 Warburton, David
 Warman, Matt
 Watling, Giles
 Whately, Helen
 Wheeler, Mrs Heather
 Whittaker, Craig
 Whittingdale, rh Mr John
 Williamson, rh Gavin
 Wilson, Sammy
 Wollaston, Dr Sarah
 Wood, Mike
 Wragg, Mr William
 Wright, rh Jeremy
 Zahawi, Nadhim

Tellers for the Noes:
 Andrew Stephenson and
 Stuart Andrew

Question accordingly negated.

Question put, That the schedule be the First schedule to the Bill.

The Committee divided: Ayes 313, Noes 295.

Division No. 48]

[9.41 pm

AYES

Adams, Nigel
 Afolami, Bim
 Afriyie, Adam
 Aldous, Peter
 Allan, Lucy
 Allen, Heidi
 Argar, Edward
 Atkins, Victoria
 Bacon, Mr Richard
 Badenoch, Mrs Kemi
 Baker, Mr Steve
 Baldwin, Harriett
 Barclay, Stephen
 Baron, Mr John
 Bebb, Guto
 Bellingham, Sir Henry
 Benyon, rh Richard
 Beresford, Sir Paul
 Berry, Jake
 Blackman, Bob
 Blunt, Crispin
 Boles, Nick
 Bone, Mr Peter
 Bottomley, Sir Peter
 Bowie, Andrew
 Bradley, Ben
 Bradley, rh Karen
 Brady, Mr Graham
 Brereton, Jack
 Bridgen, Andrew
 Brine, Steve
 Brokenshire, rh James
 Bruce, Fiona
 Buckland, Robert
 Burghart, Alex
 Burns, Conor
 Burt, rh Alistair
 Cairns, rh Alun
 Campbell, Mr Gregory
 Cartledge, James
 Cash, Sir William
 Caulfield, Maria
 Chalk, Alex
 Chishti, Rehman
 Chope, Mr Christopher
 Churchill, Jo
 Clark, Colin
 Clark, rh Greg
 Clarke, rh Mr Kenneth
 Clarke, Mr Simon
 Cleverly, James
 Clifton-Brown, Geoffrey
 Coffey, Dr Thérèse
 Collins, Damian
 Costa, Alberto
 Courts, Robert
 Cox, Mr Geoffrey
 Crabb, rh Stephen
 Crouch, Tracey
 Davies, Chris
 Davies, David T. C.
 Davies, Glyn
 Davies, Mims

Davies, Philip
 Davis, rh Mr David
 Dinenage, Caroline
 Djanogly, Mr Jonathan
 Docherty, Leo
 Dodds, rh Nigel
 Donaldson, rh Sir Jeffrey M.
 Donelan, Michelle
 Dorries, Ms Nadine
 Double, Steve
 Dowden, Oliver
 Doyle-Price, Jackie
 Drax, Richard
 Duddridge, James
 Duguid, David
 Duncan, rh Sir Alan
 Duncan Smith, rh Mr Iain
 Dunne, Mr Philip
 Ellis, Michael
 Ellwood, rh Mr Tobias
 Elphicke, Charlie
 Eustice, George
 Evans, Mr Nigel
 Evennett, rh David
 Fabricant, Michael
 Fernandes, Suella
 Ford, Vicky
 Foster, Kevin
 Fox, rh Dr Liam
 Francois, rh Mr Mark
 Frazer, Lucy
 Freer, Mike
 Fysh, Mr Marcus
 Gale, Sir Roger
 Garnier, Mark
 Gauke, rh Mr David
 Ghani, Ms Nusrat
 Gibb, rh Nick
 Gillan, rh Mrs Cheryl
 Girvan, Paul
 Glen, John
 Goldsmith, Zac
 Goodwill, Mr Robert
 Gove, rh Michael
 Graham, Luke
 Graham, Richard
 Grant, Bill
 Grant, Mrs Helen
 Gray, James
 Grayling, rh Chris
 Green, Chris
 Green, rh Damian
 Greening, rh Justine
 Grieve, rh Mr Dominic
 Griffiths, Andrew
 Gyimah, Mr Sam
 Hair, Kirstene
 Halfon, rh Robert
 Hall, Luke
 Hammond, Stephen
 Hancock, rh Matt
 Hands, rh Greg
 Harper, rh Mr Mark

Harrington, Richard
 Harris, Rebecca
 Harrison, Trudy
 Hart, Simon
 Hayes, rh Mr John
 Heald, rh Sir Oliver
 Heappey, James
 Heaton-Harris, Chris
 Heaton-Jones, Peter
 Henderson, Gordon
 Herbert, rh Nick
 Hinds, Damian
 Hoare, Simon
 Hollingbery, George
 Hollinrake, Kevin
 Hollobone, Mr Philip
 Holloway, Adam
 Howell, John
 Huddleston, Nigel
 Hughes, Eddie
 Hunt, rh Mr Jeremy
 Hurd, Mr Nick
 Jack, Mr Alister
 James, Margot
 Javid, rh Sajid
 Jayawardena, Mr Ranil
 Jenkin, Mr Bernard
 Jenrick, Robert
 Johnson, rh Boris
 Johnson, Dr Caroline
 Johnson, Gareth
 Johnson, Joseph
 Jones, Andrew
 Jones, rh Mr David
 Jones, Mr Marcus
 Kawczynski, Daniel
 Keegan, Gillian
 Kennedy, Seema
 Kerr, Stephen
 Knight, rh Sir Greg
 Knight, Julian
 Kwarteng, Kwasi
 Lamont, John
 Lancaster, Mark
 Latham, Mrs Pauline
 Leadsom, rh Andrea
 Lee, Dr Phillip
 Lefroy, Jeremy
 Leigh, Sir Edward
 Letwin, rh Sir Oliver
 Lewer, Andrew
 Lewis, rh Brandon
 Lewis, rh Dr Julian
 Liddell-Grainger, Mr Ian
 Lidington, rh Mr David
 Little Pengelly, Emma
 Lopez, Julia
 Lopresti, Jack
 Lord, Mr Jonathan
 Loughton, Tim
 Mackinlay, Craig
 Maclean, Rachel
 Main, Mrs Anne
 Mak, Alan
 Malthouse, Kit
 Mann, Scott
 Masterton, Paul
 Maynard, Paul
 McLoughlin, rh Sir Patrick
 McPartland, Stephen
 McVey, rh Ms Esther
 Menzies, Mark

Mercer, Johnny
 Merriman, Huw
 Metcalfe, Stephen
 Miller, rh Mrs Maria
 Milling, Amanda
 Mills, Nigel
 Milton, rh Anne
 Mitchell, rh Mr Andrew
 Moore, Damien
 Mordaunt, Penny
 Morgan, rh Nicky
 Morris, Anne Marie
 Morris, David
 Morris, James
 Morton, Wendy
 Mundell, rh David
 Murray, Mrs Sheryll
 Murrison, Dr Andrew
 Neill, Robert
 Newton, Sarah
 Nokes, Caroline
 Norman, Jesse
 O'Brien, Neil
 Offord, Dr Matthew
 Opperman, Guy
 Paisley, Ian
 Parish, Neil
 Patel, rh Priti
 Paterson, rh Mr Owen
 Pawsey, Mark
 Penning, rh Sir Mike
 Penrose, John
 Percy, Andrew
 Perry, Claire
 Philp, Chris
 Pincher, Christopher
 Pow, Rebecca
 Prentis, Victoria
 Prisk, Mr Mark
 Pritchard, Mark
 Pursglove, Tom
 Quin, Jeremy
 Quince, Will
 Raab, Dominic
 Redwood, rh John
 Rees-Mogg, Mr Jacob
 Robertson, Mr Laurence
 Robinson, Gavin
 Robinson, Mary
 Rosindell, Andrew
 Ross, Douglas
 Rowley, Lee
 Rudd, rh Amber
 Rutley, David
 Sandbach, Antoinette
 Scully, Paul
 Seely, Mr Bob
 Selous, Andrew
 Shannon, Jim
 Shapps, rh Grant
 Sharma, Alok
 Shelbrooke, Alec
 Simpson, David
 Simpson, rh Mr Keith
 Skidmore, Chris
 Smith, Chloe
 Smith, Henry
 Smith, rh Julian
 Smith, Royston
 Soames, rh Sir Nicholas
 Soubry, rh Anna
 Spelman, rh Dame Caroline

Spencer, Mark
 Stevenson, John
 Stewart, Bob
 Stewart, Iain
 Stewart, Rory
 Stride, rh Mel
 Stuart, Graham
 Sturdy, Julian
 Sunak, Rishi
 Swayne, rh Sir Desmond
 Swire, rh Sir Hugo
 Syms, Sir Robert
 Thomas, Derek
 Thomson, Ross
 Throup, Maggie
 Tolhurst, Kelly
 Tomlinson, Justin
 Tomlinson, Michael
 Tracey, Craig
 Tredinnick, David
 Trevelyan, Mrs Anne-Marie
 Truss, rh Elizabeth
 Tugendhat, Tom

Vara, Mr Shailesh
 Vickers, Martin
 Villiers, rh Theresa
 Walker, Mr Charles
 Walker, Mr Robin
 Wallace, rh Mr Ben
 Warburton, David
 Warman, Matt
 Watling, Giles
 Whately, Helen
 Wheeler, Mrs Heather
 Whittaker, Craig
 Whittingdale, rh Mr John
 Williamson, rh Gavin
 Wilson, Sammy
 Wollaston, Dr Sarah
 Wood, Mike
 Wragg, Mr William
 Wright, rh Jeremy
 Zahawi, Nadhim

Tellers for the Ayes:
Stuart Andrew and
Andrew Stephenson

NOES

Abbott, rh Ms Diane
 Abrahams, Debbie
 Alexander, Heidi
 Ali, Rushanara
 Allin-Khan, Dr Rosena
 Amesbury, Mike
 Antoniazzi, Tonia
 Ashworth, Jonathan
 Austin, Ian
 Bailey, Mr Adrian
 Bardell, Hannah
 Barron, rh Sir Kevin
 Beckett, rh Margaret
 Benn, rh Hilary
 Betts, Mr Clive
 Black, Mhairi
 Blackford, rh Ian
 Blackman, Kirsty
 Blackman-Woods, Dr Roberta
 Blomfield, Paul
 Brabin, Tracy
 Bradshaw, rh Mr Ben
 Brake, rh Tom
 Brennan, Kevin
 Brock, Deidre
 Brown, Alan
 Brown, Lyn
 Brown, rh Mr Nicholas
 Bryant, Chris
 Buck, Ms Karen
 Burden, Richard
 Burgon, Richard
 Butler, Dawn
 Byrne, rh Liam
 Cable, rh Sir Vince
 Cadbury, Ruth
 Cameron, Dr Lisa
 Campbell, rh Mr Alan
 Campbell, Mr Ronnie
 Carden, Dan
 Carmichael, rh Mr Alistair
 Champion, Sarah
 Chapman, Douglas
 Chapman, Jenny
 Charalambous, Bambos
 Cherry, Joanna
 Clwyd, rh Ann
 Coaker, Vernon
 Coffey, Ann
 Cooper, Julie
 Cooper, Rosie
 Cooper, rh Yvette
 Corbyn, rh Jeremy
 Cowan, Ronnie
 Coyle, Neil
 Crawley, Angela
 Creagh, Mary
 Creasy, Stella
 Cruddas, Jon
 Cryer, John
 Cummins, Judith
 Cunningham, Alex
 Cunningham, Mr Jim
 Dakin, Nic
 Davey, rh Sir Edward
 David, Wayne
 Davies, Geraint
 Day, Martyn
 De Cordova, Marsha
 De Piero, Gloria
 Dent Coad, Emma
 Dhesi, Mr Tanmanjeet Singh
 Docherty-Hughes, Martin
 Dodds, Anneliese
 Doughty, Stephen
 Dowd, Peter
 Dromey, Jack
 Duffield, Rosie
 Eagle, Ms Angela
 Eagle, Maria
 Edwards, Jonathan
 Efford, Clive
 Elliott, Julie
 Ellman, Mrs Louise
 Elmore, Chris
 Esterson, Bill
 Evans, Chris
 Farrelly, Paul
 Farron, Tim
 Fellows, Marion
 Fitzpatrick, Jim
 Fletcher, Colleen

Flint, rh Caroline
 Flynn, Paul
 Fovargue, Yvonne
 Frith, James
 Furniss, Gill
 Gaffney, Hugh
 Gapes, Mike
 Gardiner, Barry
 George, Ruth
 Gethins, Stephen
 Gibson, Patricia
 Gill, Preet Kaur
 Glindon, Mary
 Godsiff, Mr Roger
 Goodman, Helen
 Grady, Patrick
 Grant, Peter
 Gray, Neil
 Green, Kate
 Greenwood, Lilian
 Greenwood, Margaret
 Griffith, Nia
 Grogan, John
 Gwynne, Andrew
 Haigh, Louise
 Hamilton, Fabian
 Hardy, Emma
 Harman, rh Ms Harriet
 Harris, Carolyn
 Hayes, Helen
 Hayman, Sue
 Healey, rh John
 Hendrick, Mr Mark
 Hendry, Drew
 Hepburn, Mr Stephen
 Hermon, Lady
 Hill, Mike
 Hillier, Meg
 Hobhouse, Wera
 Hodge, rh Dame Margaret
 Hodgson, Mrs Sharon
 Hollern, Kate
 Hosie, Stewart
 Howarth, rh Mr George
 Huq, Dr Rupa
 Hussain, Imran
 Jardine, Christine
 Jarvis, Dan
 Johnson, Diana
 Jones, Darren
 Jones, Gerald
 Jones, Graham P.
 Jones, Helen
 Jones, Mr Kevan
 Jones, Sarah
 Jones, Susan Elan
 Kane, Mike
 Kendall, Liz
 Khan, Afzal
 Killen, Gerard
 Kinnock, Stephen
 Kyle, Peter
 Laird, Lesley
 Lake, Ben
 Lamb, rh Norman
 Lammy, rh Mr David
 Lavery, Ian
 Law, Chris
 Lee, Ms Karen
 Leslie, Mr Chris
 Lewell-Buck, Mrs Emma
 Lewis, Clive

Linden, David
 Lloyd, Stephen
 Lloyd, Tony
 Long Bailey, Rebecca
 Lucas, Caroline
 Lucas, Ian C.
 Lynch, Holly
 MacNeil, Angus Brendan
 Madders, Justin
 Mahmood, Mr Khalid
 Mahmood, Shabana
 Malhotra, Seema
 Mann, John
 Marsden, Gordon
 Martin, Sandy
 Maskell, Rachael
 Matheson, Christian
 Mc Nally, John
 McCabe, Steve
 McCarthy, Kerry
 McDonagh, Siobhain
 McDonald, Andy
 McDonald, Stewart Malcolm
 McDonald, Stuart C.
 McDonnell, rh John
 McFadden, rh Mr Pat
 McGinn, Conor
 McGovern, Alison
 McInnes, Liz
 McKinnell, Catherine
 McMahon, Jim
 McMorris, Anna
 Mearns, Ian
 Miliband, rh Edward
 Monaghan, Carol
 Moon, Mrs Madeleine
 Moran, Layla
 Morden, Jessica
 Morgan, Stephen
 Morris, Grahame
 Murray, Ian
 Nandy, Lisa
 Newlands, Gavin
 Norris, Alex
 O'Hara, Brendan
 Onasanya, Fiona
 Onn, Melanie
 Onwurah, Chi
 Osamor, Kate
 Owen, Albert
 Peacock, Stephanie
 Pearce, Teresa
 Pennycook, Matthew
 Perkins, Toby
 Phillips, Jess
 Phillipson, Bridget
 Pidcock, Laura
 Platt, Jo
 Pollard, Luke
 Pound, Stephen
 Powell, Lucy
 Qureshi, Yasmin
 Rashid, Faisal
 Reed, Mr Steve
 Rees, Christina
 Reeves, Ellie
 Reeves, Rachel
 Reynolds, Jonathan
 Rimmer, Ms Marie
 Robinson, Mr Geoffrey
 Rodda, Matt
 Rowley, Danielle

Ruane, Chris
 Russell-Moyle, Lloyd
 Ryan, rh Joan
 Saville Roberts, Liz
 Shah, Naz
 Sharma, Mr Virendra
 Sheerman, Mr Barry
 Sheppard, Tommy
 Sherriff, Paula
 Shuker, Mr Gavin
 Skinner, Mr Dennis
 Slaughter, Andy
 Smeeth, Ruth
 Smith, Angela
 Smith, Cat
 Smith, Eleanor
 Smith, Jeff
 Smith, Laura
 Smith, Nick
 Smith, Owen
 Smyth, Karin
 Snell, Gareth
 Sobel, Alex
 Spellar, rh John
 Starmer, rh Keir
 Stephens, Chris
 Stevens, Jo
 Stone, Jamie
 Streeting, Wes
 Sweeney, Mr Paul
 Swinson, Jo

Tami, Mark
 Thewliss, Alison
 Thomas, Gareth
 Thomas-Symonds, Nick
 Thornberry, rh Emily
 Timms, rh Stephen
 Trickett, Jon
 Turner, Karl
 Twigg, Derek
 Twigg, Stephen
 Twist, Liz
 Umunna, Chuka
 Vaz, Valerie
 Walker, Thelma
 Watson, Tom
 West, Catherine
 Western, Matt
 Whitehead, Dr Alan
 Whitfield, Martin
 Whitford, Dr Philippa
 Williams, Hywel
 Williams, Dr Paul
 Williamson, Chris
 Wilson, Phil
 Wishart, Pete
 Woodcock, John
 Yasin, Mohammad
 Zeichner, Daniel

Tellers for the Noes:
Vicky Foxcroft and
Thangam Debbonaire

Question accordingly agreed to.

Schedule 1 agreed to.

The occupant of the Chair left the Chair to report progress and ask leave to sit again (Programme Order, 11 September).

The Deputy Speaker resumed the Chair.

Progress reported; Committee to sit again tomorrow.

Leo Docherty (Aldershot) (Con): On a point of order, Mr Deputy Speaker. I should like to inform the House that on 11 and 17 October I tabled written questions in which I mistakenly omitted to include a reference to my entry in the Register of Members' Financial Interests, which includes a visit, in September this year, to the Kingdom of Saudi Arabia, sponsored by the Foreign Ministry of that country. I am pleased to be able to put that on record, Mr Deputy Speaker, and I am grateful for your patience.

Mr Deputy Speaker (Mr Lindsay Hoyle): That has been corrected.

PETITION

BAE Systems jobs in Brough

9.55 pm

Diana Johnson (Kingston upon Hull North) (Lab): I rise to present a petition—[*Interruption.*] I will wait.

Mr Deputy Speaker (Mr Lindsay Hoyle): Order. Will Members leave quietly, please? I want to hear the petition.

Diana Johnson: Thank you, Mr Deputy Speaker.

I rise to present a petition bearing more than 1,500 names, collected in and around Kingston upon Hull North with the help of Neil Daw, Rob Trainor and their colleagues in the Unite branch at BAE Systems in Brough. The petitioners are asking Ministers, particularly the Chancellor of the Exchequer, to support UK defence manufacturing, to maintain Britain's sovereign defence capability, to ensure that the Red Arrows remain British-built, and to put British jobs first.

The petition states:

The petition of residents of Kingston upon Hull and the East Riding of Yorkshire,

Declares that residents believe that skilled defence manufacturing jobs at BAE Systems in Brough are of vital strategic importance for the defence and security of the United Kingdom.

The petitioners therefore request that the House of Commons urges the Government to take action to save 400 jobs that are under threat at Brough, including ordering new Hawk aircrafts for the Red Arrows to replace the current fleet that was made in the 1970s.

And the petitioners remain, etc.

[P002081]

Fly-tipping in Rural Areas

Motion made, and Question proposed, That this House do now adjourn.—(*Chris Heaton-Harris.*)

9.57 pm

Anne Marie Morris (Newton Abbot) (Ind): Fly-tipping is a very serious issue in my rural Devon constituency. I am pleased to see that so many Members, some of whom may wish to intervene during my speech, are still in the Chamber. That clearly shows that this is not just a topic for Devon, but applies to all the beautiful parts of the countryside where there is the blight of tipping.

What is fly-tipping? It is the illegal disposal of household, industrial, commercial or controlled waste. The challenge is that it is difficult to find any specific legislation that deals with the problem. If we look at the continuum of waste disposal in our beautiful countryside, we see at one end what I would describe as the litter louts who cannot be bothered to put their Coke tins in a bin, and at the other end formal waste disposal, with properly regulated sites and a compliance formula. Fly-tipping comes somewhere in the middle. Individuals are involved, but in this instance it is not the odd Coke bottle but a large item such as a fridge. Those people do not want to pay the tip charge, so what do they do? They stick the item in the back of the car or in a van, and dump it in a country lane.

Then there is the activity that is closer to the formal waste disposal end. Gangs, or criminals, think, "We can make some money out of this. Households do not want to go to the trouble of getting rid of their own waste, so we, for a fee—and we will not tell them that we will not be paying the tip fee—will take that rubbish and dump it in a lane."

I was pleased to read the Government's recently published litter strategy, but I must add that fly-tipping takes up only one page of it. We need to pay a lot more attention to the grey area between the litter issue and the properly legislated waste disposal issue, because this is a blight on our environment. It is a source of pollution, a danger to public health and a hazard to wildlife, and the bad news is that it is increasing. In English local authorities, 1 million cases were reported last year, which represents a 7% increase on the year before—and remember, those are just the cases that are reported. Many more go unreported, so I suspect that the number is in fact much more significant. The cost of the clear-up has also risen steeply. In the past year, it was £58 million; in the previous year, it was £15 million.

Michael Tomlinson (Mid Dorset and North Poole) (Con): My hon. Friend is right to say that this does not just affect her constituents in Devon; it also affects mine in Dorset and doubtless those of many other Members. The cost falls not only on local authorities but often on landowners and farmers. Does she agree that, although the Government have taken some positive steps, we need to look closely to see how the burden can be fairly distributed, because this is not the fault of those landowners and farmers?

Anne Marie Morris: My hon. Friend is absolutely right. Central Government and local authorities are effectively contributing to the cost—there is a contribution from the taxpayer through central Government—but

[Anne Marie Morris]

there is a burden on individual landowners and a requirement for them to clear up the land, and they get absolutely no contribution towards doing that. This is absolutely something that we need to look at because, as he says, it is not fair. What we want is, in the Government's words, for the polluter to pay. It seems to me that the victims are paying, not the polluters. Fly-tipping is definitely on the increase. Most of it involves household waste, and to be fair, most of it is tipped on the highway, but an increasing amount is tipped on farmland and in woodland.

Jim Shannon (Strangford) (DUP): I thank the hon. Lady for giving way; I have sought her permission to intervene on her. The role of local councils is an important one, and it is positive when they encourage people to recycle. Does she agree that they must always ensure that there is an avenue for people to dispose of their waste in recycling centres, because if there is not, they may be tempted to do something illegal, if only because it is handy to do so?

Anne Marie Morris: The hon. Gentleman is absolutely right. There is a real challenge to incentivise people in this regard, and we need to use carrots rather than sticks to ensure that they dispose of their waste carefully and responsibly.

Clearly, we should recognise the environmental damage that waste causes. It is absolutely right that we as a country have taken on board the European waste framework directive, which led to our Environmental Protection Act 1990. The legislation rightly dictated that we should reduce landfill and increase recycling, but there is a cost to that. The challenge is to determine who should bear that cost.

Chris Davies (Brecon and Radnorshire) (Con): I thank my hon. Friend for bringing forward this important Adjournment debate. Sadly, my beautiful constituency was blighted when the local authority decided, for cost-cutting reasons, to close the local tip for four days each week. That resulted in a much greater cost to the local authority, through having to clean up the area afterwards. We are hoping that the national Government will take this issue further, but the local authorities also have a great role to play.

Anne Marie Morris: My hon. Friend makes a sound point. I am sad to hear that this is happening not just in my constituency, but I am not surprised. He is right to say that shutting the tip has placed a much greater burden of cost on the local authority than simply keeping it open.

The overall responsibility for these matters lies with the Environment Agency. The question of who has to take action to clear up the mess and sort out the licensing is split between the Environment Agency, the local authority and, in regard to removing rubbish, private landowners.

Jo Churchill (Bury St Edmunds) (Con): My beautiful constituency in Suffolk illustrates the fact that this problem exists across the country. We have had 658 incidents in my constituency in the past year, and the nub of the

problem is that we need to catch those who dump. I have been talking to a constituent, Richard Vass of Burland Boxes, about how we can use innovation to target fly-tippers and capture their number plates in order to allow prosecutions to be brought. That would create an income stream, without which somebody else has to pay.

Anne Marie Morris: My hon. Friend is absolutely right. The challenge is not just to collect the data. A constituent of mine with a large estate regularly finds that people have been fly-tipping on it. Once, while sorting through the rubbish, he found a receipt from a fast food drive-through that included a date and time stamp. He and the local police managed to find the vehicle registration number, but when they went to the Driver and Vehicle Licensing Agency they were told that it could not release the name because of data protection. There has to be a way of using the evidence that we can get, because we cannot rely solely on catching the villains in the act, which is extraordinarily difficult, particularly in rural areas. Installing cameras everywhere would be prohibitively expensive, impractical and completely unrealistic. There has to be a better way of dealing with the evidence trail. My hon. Friend makes a sound point.

Neil Parish (Tiverton and Honiton) (Con): It is really good that we are having this debate. It is not only about catching the perpetrators, either through the local authority or the Environment Agency; it is also about making sure that they are prosecuted and that the fines are very heavy. Otherwise, it is worth their while tipping the waste and saving the money, rather than taking it to a waste disposal site; if they are caught and fined, the figure is so small that they can carry on doing it. We really need to catch them and make the penalty a deterrent, because at the moment it is not.

Anne Marie Morris: My hon. Friend is absolutely right. I believe that 0.1% of fly-tippers are prosecuted, and the average penalty is a £400 fine. There is absolutely no disincentive, so why would they stop fly-tipping? That has to change.

What can we do to make the system work better? If tips just charge more, or indeed shut for four days a week, clearly that just makes the problem worse. If we do not extend opening hours, all we are doing is discouraging good citizens and good builders from disposing of their rubbish responsibly at the end of the working day.

I think that increasingly councils are trying to do this for less and less money. The consequence is that they have no incentive to extend their opening hours or reduce the cost. My local authority has recently started charging for the disposal of green waste, and the consequence has been a huge increase in fly-tipping of green waste. Indeed, in Teignbridge fly-tipping has gone up by 60% in five years, and the increase correlates with the introduction of additional charges, when there is a spike in the number of fly-tipping incidents.

Another thing that local authorities have done to try to constrain their costs is to say, "We will deal only with waste that is produced by people living in our borough or ward." The consequence is that people are now turned away from their nearest tip. Realistically, if the

Government want to encourage people to recycle and to be responsible for their waste, they need to make that easier. In the neighbouring constituency of Torbay there is a sign at the tip stating, "You have to provide evidence that you actually live in this part of Devon before you can dispose of your waste here." We are never going to solve the problem that way.

It seems to me that we have effectively incentivised the individual householder to fly-tip, or to employ a third party to fly-tip for them, and we have incentivised the man with a van who might do furniture removals and so on to offer tip services, but then he does not get a licence and instead dumps on highways, woodland and farmland. It just does not work.

As my hon. Friend the Member for Tiverton and Honiton (Neil Parish) mentioned, the penalties, even if they are imposed, are woefully low. In the magistrates court someone can get 12 months and a £50,000 fine, but I am not aware that anyone has had either of those penalties. In the Crown court they can get up to five years and an unlimited fine, but again I am not aware—perhaps the Minister is—that anyone has received those sorts of punishments. It really is a problem, and the evidence problem is probably one of the biggest challenges.

Ultimately, the Government have said that the polluter must pay, but based on everything that I have seen and everything that my colleagues have said, the polluter currently does not pay, so let us look at things in a little more detail. Who is the polluter? At one extreme, one could say that it is the owner of the rubbish. Under section 34 of the Environmental Protection Act 1990, the owner has a duty of care to check that the individual to whom the rubbish is given for disposal is properly registered. I do not suppose that most people know that, that they check or that they would even know where to check. They probably also do not know when people have to be licensed, which is far from clear.

I went on the Environment Agency website, and most of the legislation and registration information was about disposal sites. There was little about the movement of waste, unless it is stored or controlled, so that might be an area to look into, or maybe I just do not have enough experience of the regulations and the Minister will be able to set me right. However, it seems as though it is quite difficult for householders to comply with that duty of care—they do not know about it and they do not know where to go to find the information. Section 33 of the 1990 Act contains a similar duty for controlled waste, and I suspect that most households are more conscious of how to dispose of fridges, batteries and electrical equipment, but there are no specific penalties or punishments. Perhaps the Minister can set me right, but I am unaware of any owner who has been on the wrong side of the law for having given a third party rubbish that has subsequently been dumped.

As for the middlemen—the man or woman with a van—for them it is a question of whether they need a licence. Most of them probably do, because they probably do store the waste somewhere along the line, but few in the business can be bothered and that leads to criminal activity. They know that the chances of getting caught or going to prison are small, so they do not bother, and they get paid when the rubbish is handed over, not when it is delivered to the tip, so where is the incentive? To fix what is wrong with the system, we need to increase the carrot and increase the stick, and we need to be clear

about what fly-tipping is and not just lump it with litter or managed waste disposal, because it lies somewhere in between and is something that my constituents and many others are getting exercised about. It damages our countryside and our tourism, and it is a blight on our society.

The Government are right that one of the obvious first steps is to ensure that education is in place so that our children grow up knowing what they should and should not do. That is fine, but there are many people beyond the age of 18 who do not know that, so how are we going to get to them? That is another question for the Government. We then need to look at how to incentivise legal tipping. We must review whether we should completely remove tip charges. When they are set against the clear-up costs and the amount received in fees, we can start to see whether there is a balance. Perhaps the Minister has some ideas about that. It must also be right to extend tip opening times, because people work. We need to recognise that both mum and dad are usually working, so that means we have to allow tipping when they are not working. If people are prepared to come and dispose of waste legally, we need to enable sites to take waste from wherever it comes, which is not always the case.

We also need to consider the individuals who are the potential polluters. We need to extend the rubbish owner's accountability. They ought to be required to ask for and see someone's licence, and they should not pay for the rubbish to be taken away until they get some stamped receipt from the tip to say that it has actually been disposed of. The idea of trying to track waste is a good one, and we could track white goods with today's technology; there must be barcoding, chipping systems or some means by which to do that. When we do find evidence that makes clear from which home the fly-tipped rubbish came, there should be a mechanism to trace it back to ask the householder whether they have disposed of any rubbish and who they used to do so.

Then there is the carrier, licensed or not—the man or woman with a van. How will we extend their accountability? Because of the challenges in securing a successful prosecution, the number of prosecutions has actually gone down 25% in the past year. What might we do? Maybe we could require some record keeping. At one level, a registered and licensed carrier has to keep records, but we could extend that by requiring tachographs and GPS systems. We should review again the penalties and fines, whether there are custodial sentences and at what level, and whether we should seize assets.

There is provision in some cases to seize the vehicle, which is obviously a good thing because it stops the practice continuing. If the vehicle is crushed, it clearly stops the fly-tipping completely. But there are other assets that we might consider seizing to increase the disincentive. If no fine is paid, there is also the threat of credit reference agency records. If non-payments were logged on those records, it would clearly be a black mark, and most people do not want their credit reference in any way negatively affected. We might also consider lifetime bans for anyone who is found to be undertaking such activity without a licence.

There are a number of issues. We need to consider better interagency working. It would certainly help if the Driver and Vehicle Licensing Agency were prepared to work with local authorities to identify the cars, drivers and owners—having an evidence trail is very important.

[Anne Marie Morris]

I turn now to the victims. Landowners are stuck. Two thirds of farmers have reported fly-tipping of one sort or another and, under section 59 of the Environmental Protection Act 1990, they can be required by the local authority or the Environment Agency to clear up 100% of the mess, but they are not the polluters.

It is impossible to prevent fly-tipping cost-effectively. My local community has tried by digging ditches around carparks and by putting up fences and cameras, but the cameras get smashed by the fly-tippers. It is very difficult. Only 13% of farmers and landowners tend to insure, so very few of them are covered.

Insurance is expensive and fly-tipping is hard to prevent, so we need to consider how we can support landowners, as my hon. Friend the Member for Mid Dorset and North Poole (Michael Tomlinson) said, because they do us a great service by keeping our land beautiful and fit for tourism. How can we share the costs with the local authority? How could we subsidise the landowners' insurance? How could we allow the disposal, free of charge, of anything that has been dumped on-site?

Will the Minister consider making sure that the polluter pays, that waste can be tracked, that it is easier to dispose legally and that householders think before they dump so that we can preserve our wonderful countryside? I thank her for her attention to this real issue.

10.17 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey): I congratulate my hon. Friend the Member for Newton Abbot (Anne Marie Morris) on securing this debate. She has covered a wide range of issues. She has left me less than 10 minutes in which to reply, but I assure her that my Department takes the issue seriously

Fly-tipping is a serious, antisocial crime, whether it happens in rural or urban areas. It blights our countryside, poses serious risks to our natural environment and to the human health of local communities, and affects the livelihoods of rural businesses. Perhaps in contrast to the casual litter louts I deplore, fly-tipping is premeditated and unacceptable, so tackling fly-tipping and all elements of waste crime is a priority for this Government.

The number of fly-tipping incidents dealt with by local authorities has increased to more than 1 million a year, with a 7% increase on last year, and it costs local authorities in England more than £57 million to clear. Indeed, Teignbridge District Council, part of which covers my hon. Friend's constituency, has seen a 5% increase. The number of incidents of large scale fly-tipping dealt with last year by the Environment Agency also increased to more than 200.

That does not necessarily mean fly-tipping has increased by that margin, because the introduction of new technology and extended staff training has led to higher levels of reporting. Again, I am clear that any fly-tipping in this country is completely unacceptable, and it is important that we stamp it out.

The Government take all crime seriously, and crime in rural areas is no exception. The National Police Chiefs Council rural crime lead, the chief constable of North Yorkshire, is drawing up a strategy with stakeholders

to ensure that police forces engage fully with their operational priorities. My officials are engaged with the chief constable's team on fly-tipping, and indeed one of that team was at the national fly-tipping prevention group meeting up in Wigan today, talking with stakeholders and officials about how fly-tipping in rural areas can be tackled.

The connection between charging at household waste recycling centres—HWRCs—and charging for bulky waste collection, with the increase in household waste being fly-tipped, is one that I, and other Members, hear frequently. I am also aware that my hon. Friend is concerned about changes to opening times at HWRCs causing the increase in fly-tipping. Although I recognise the anecdotal reports suggesting the connection and fully understand them, the evidence that has been gathered thus far is inconclusive. I am keen that this is explored further and my officials are working with WRAP—the Waste and Resources Action Programme—to better understand the connection between changes at household waste recycling centres and fly-tipping of waste.

As my hon. Friend will recognise, it is for local authorities to determine what is practical and affordable in their areas, but it is also important that where changes are proposed, they are proportionate, transparent and made in consultation with local residents, taking into account local circumstances and the needs of local people. I can assure her that WRAP is reviewing its existing guidance on HWRCs by the end of this year to ensure it reflects changes made in the law and to give further guidance on what can be charged for by way of non-household wastes.

Chris Davies: Will the Minister give way?

Dr Coffey: I am sorry but I have many points to get through and my hon. Friend will recognise that we are dealing with a devolved responsibility. If I have time at the end of the debate, I will take his intervention.

We are clear that everybody, whether they are a householder or a business, is responsible for disposing of the waste they produce correctly and not passing it on to somebody irresponsible. As more than two thirds of all fly-tipped incidents involve fly-tipped waste, all householders have a role to play. That is why we are actively considering what measures could help with these matters. We did strengthen the Sentencing Council's guideline for environmental offences in 2014. Since then, the level of fines for organisations found guilty of fly-tipping has risen, but fines for individuals have not seen the same increase. I want to ensure that the level of sentence matches the seriousness of the incident and is an appropriate deterrent to stop fly-tipping, as my hon. Friends the Members for Newton Abbot and for Tiverton and Honiton (Neil Parish) said. As I mentioned in the House recently, I am raising this matter with colleagues at the Ministry of Justice and we intend to work with the judiciary so that sentencing levels act as an appropriate deterrent.

I am pleased to say that the Environment Agency has worked in partnership with several local authorities in south Devon to prosecute individuals fly-tipping indiscriminately across the area. Earlier in the year, the Environment Agency and local authorities successfully prosecuted a serial fly-tipper. The perpetrator received 20 months in prison, and was fined £7,000 for this

illegal activity. The vehicle used for fly-tipping was also seized and crushed. By the end of spring 2018, the Environment Agency and local authorities expect to prosecute a further nine large-scale fly-tippers across south Devon, and there have been a number of smaller prosecutions by local councils.

Local authorities are responsible for enforcing against most fly-tipping, although larger-scale and more serious fly-tipping incidents are investigated by the Environment Agency. It is the role of my Department to make sure local authorities have a full range of powers and tools to enable them to tackle fly-tipping, but it is the responsibility of local councils to use all the powers and tools available to them. Last year we gave councils in England the power to issue fixed penalty notices for small-scale fly-tipping. More than 56,000 such notices were issued against fly-tippers last year, and more than half of all local authorities have implemented the new fixed penalty notices since they were introduced in May 2016.¹ I would again encourage all local authorities to implement them, in order to have a more proportionate and efficient alternative to prosecutions. We also recently enhanced the powers for local authorities and the Environment Agency to search and seize the vehicles of suspected fly-tippers. The number of such vehicles that authorities have seized has increased by 38% since the powers were introduced.

My Department chairs the national fly-tipping prevention group, which met today at Keep Britain Tidy's headquarters in Wigan, and one of the items on the agenda was fly-tipping on rural land. The group brings together a range of organisations across central and local government, the police, the waste industry and major landowners, such as the Country Land and Business Association and the National Farmers Union, to tackle fly-tipping across England. In this forum they share experiences and best practice. It publishes case studies and guidance on its website, which have been pulled together by group members and shared with a wide audience across the country. It is our intention to continue to use best practice to crack down on this.

We want to enhance local-level partnership working and strong collaboration between local authorities and other agencies, such as the Environment Agency and the police, and involve local landowners and communities. This is essential to the tackling of fly-tipping. The value of those organisations working together is far greater than the sum of their parts. I will take away and follow up with the Department for Transport the point about evidence and the issue of the DVLA sharing data. It is absolutely key that we do that. We have seen some really good examples of partnership working. In Hertfordshire,

the police and crime commissioner has enabled the county council to set up an effective group that is starting to see results. We continue to work through the national group to share best practice.

I am particularly aware of the difficulty that fly-tipping poses to the farming community. As I have said, any type of fly-tipping is unacceptable, and it is absolutely key to prosecute fly-tippers and recover the clearance costs where possible. We also need to make sure that councils provide advice and guidance on measures that can be taken to prevent further fly-tipping. We are working with the NFU and the CLA to increase the reporting of fly-tipping on farmland. That will help local councils to better target their enforcement efforts.

I welcome the CLA's five-point action plan to tackle fly-tipping. My Department is already taking forward most of the CLA's points. As I have already mentioned, we are reviewing sentencing, promoting partnership-working and considering a potential penalty notice for householders whose waste is fly-tipped. The NFU's recent rural crime report, which covered the prevention of fly-tipping, was a welcome addition to the work in this policy area.

The increase in fly-tipping incidents shows that we cannot be complacent about fly-tipping and that we still need to do more to tackle it. The drivers of fly-tipping are varied, and we need tackle it on a number of fronts. As part of the resources and waste strategy, we will develop a strategic approach to further tackle fly-tipping and all elements of waste crime. As part of that, we will review the waste carriers, brokers and dealers regime to do more to try to ensure that those who are part of that trade fully understand their duties and responsibilities and do not fly-tip waste while acting under the veil of legitimacy. We will explore how extended producer responsibility might help to decrease fly-tipping, and we are absolutely clear that we want to enforce appropriately the regulations on waste electrical and electronic equipment.

As I said, we are working with various organisations to tackle fly-tipping. I attended the waste crime industry roundtable earlier this year, and we will continue that engagement. This has been an important debate and I am happy to meet hon. Friends to discuss this matter. I assure them that the increase in incidents to more than 1 million a year is a clear indication that we need to do more, and we will, so that our beautiful countryside can be enjoyed by future generations.

Question put and agreed to.

10.27 pm

House adjourned.

1. [Official Report, 7 December 2017, Vol. 632, c. 6MC.]

Westminster Hall

Tuesday 21 November 2017

[JAMES GRAY *in the Chair*]

UK Amphibious Capability

[Relevant Documents: Oral evidence taken before the Defence Committee on 25 October on Work of the Department 2017, HC 439, and oral evidence taken before the Committee on 14 November on National Security Capability Review, HC 556.]

9.30 am

Ruth Smeeth (Stoke-on-Trent North) (Lab): I beg to move,

That this House has considered UK amphibious capability.

It is genuinely a pleasure to serve under your chairmanship, Mr Gray. Let us be clear why we are here today. In recent months, there has been simply too much speculation on the future of our amphibious capabilities, from reports of staggering cuts to the numerical strength of our Royal Marines to the apparent proposed sale of HMS Bulwark and HMS Albion to the Chileans or the Brazilians. All of that is seemingly without any consideration of why we have those capabilities or what our current commitments are.

It is clear, not only from the number of Members here on a Tuesday morning but from the growing concerns that emerged in the media over the weekend, just how important this issue is to people right across the House, across our forces and across the country, and why cuts to our amphibious capabilities are not only strategically bizarre but politically unwise.

I had planned to start the debate with an unusual comment for an Opposition MP. I wanted to welcome the statement of the Secretary of State for Defence, as reported in *The Sun*, that he was seeking an additional £2 billion for our armed forces from the Treasury rather than see our defences undermined. However, after yesterday's reports in the *Mail*, I find myself a little confused as to whether the Secretary of State thinks we need more resource or not, and whether the Government recognise that our security may cost more money and that if we are going to operate on a global stage, we may need a proper military. Perhaps the Minister would clarify the current thinking of her new boss for us.

As we prepare to leave the European Union, we find ourselves looking towards an uncertain future in an increasingly turbulent world. The global order is facing a period of rapid and unprecedented change, and it seems that the post-cold-war consensus is disintegrating in front of us. In the last week alone, we have seen coalition talks fail in Germany and witnessed the long-awaited, if slow-motion, collapse of the Mugabe regime in Zimbabwe. In the middle east, the proxy war between Saudi Arabia and Iran has reached terrifying new depths in Yemen, with knock-on consequences in Iraq, Lebanon and Syria. That is only in the last seven days.

There are other threats we need to ensure we can militate against, from our counter-Daesh efforts to, most importantly of all and most directly applicable to today's debate, a resurgent Russian Federation, which—as

you know better than anyone, Mr Gray—poses a renewed threat to our friends and allies in the High North as well as across eastern Europe. Old certainties are disappearing and new threats are coming to the fore. The world is changing, and so is our place in it.

That is why the timing of this mini defence capability review—which increasingly seems an excuse to cut our military, if the media reports are anything to go by—is so perverse. At this moment we should be looking to broaden our capability, not to narrow it; to invest in our armed forces, not to run them down; and to expand our horizons and our influence, not to retreat from our commitments.

Dr Julian Lewis (New Forest East) (Con): In support of what the hon. Lady just said, may I remind her that when the former Secretary of State for Defence came before the Defence Committee, he said that the reason for the review was an intensification of the threats? We would therefore expect to have more resources put into defence, rather than fewer.

Ruth Smeeth: I could not agree more. At this point, we need to agree what capabilities we need, and then what the budget should be—not the other way around. That is what the former Secretary of State said to us, and that is what we need to do.

Mr Kevan Jones (North Durham) (Lab): Does my hon. Friend agree that the black hole is of the Government's own making? In 2013, they increased the whole great shopping list of new equipment, with no extra cash to pay for it. It was predicated basically on efficiency savings and land sales, which have not yet been achieved and will not be achieved.

Ruth Smeeth: We need to be very clear about how big the hole is in the equipment budget. That has not happened yet in terms of invest to save, what efficiencies will be made and how we are going to pay for things. However, that is not an excuse to cut the numbers in our military or to get rid of current capabilities and platforms.

It would be a matter of grave concern and a genuine national security risk if tomorrow's Budget included cuts to our military or made necessary additional savings that put our operational capabilities at risk. It is not just me saying so. Over recent days we have seen MPs, former Defence Ministers and retired senior service personnel lining up to warn that our armed forces are being hollowed out and to condemn the proposed cuts to our amphibious capability, including the reported loss of up to 1,000 Royal Marines—one of our most elite infantry units.

That is why today we must send a united message to the Chancellor of the Exchequer that his decisions on these matters will have consequences, that we cannot do national security on the cheap, that we must ensure our armed forces have the resources they need to deal with the threats we face, and that any reduction in our amphibious capability or in our Royal Marine numbers would be the wrong cuts at the wrong time. His Back Benchers are telling him, his own party's grandees are telling him and those in this room today will tell him, I am sure, that as we prepare to exit the European Union and chart a new course for Britain's role in the world, we cannot play fast and loose with the defence of the

[*Ruth Smeeth*]

realm. The stakes are just too high. Let us be clear: that is exactly what the loss of our amphibious capability and the suggested cuts to our Royal Marines would do.

Amphibious capability at its most basic means the ability to land troops from the sea. As an island nation, that is a core capability for the senior service and a central plank to our NATO contribution. In fact, we are the lead for NATO's immediate follow-on group in 2019 and the main delivery partner for the Netherlands in 2020. Can the Minister tell us how we will meet those commitments with 1,000 fewer Royal Marines and no amphibious platforms? In fact, given the current threats from the Russian Federation, can she illuminate us on how she intends to defend our allies in the High North and protect our northern flank without our amphibious and cold weather specialists?

Our two landing platform dock ships, HMS Albion and HMS Bulwark, can carry 405 troops with amphibious vehicles and combat supplies. They are amazing platforms, as I can attest, having visited HMS Bulwark last year. They give us the capability to land our Royal Marines quickly and quietly in order to have maximum impact and to take land in hostile environments in the most effective way possible. Both those vessels are currently expected to remain in service until 2033 and 2034 respectively, which we have guaranteed by spending £120 million in the last seven years to refurbish both ships. In fact, HMS Albion only returned to service in April this year.

Mr Kevan Jones: Does my hon. Friend agree that it is not only the cuts to equipment such as Albion and Bulwark that are worrying? The cuts that have been made to winter training for the Royal Marines, for example, take away a unique capability we have at the moment.

Ruth Smeeth: I could not agree more. Having visited our Royal Marines in the Arctic to observe their training, I know how important that is for not only our own capabilities but the partnerships we build with other marines from our allies.

It has been suggested that the role of HMS Bulwark and Albion could be replaced by our two aircraft carriers or a cheaper Royal Fleet Auxiliary Service offering, but that is not what either is designed to do.

Mr Paul Sweeney (Glasgow North East) (Lab/Co-op): This comes after the loss of a landing ship dock auxiliary from the Royal Fleet Auxiliary Largs Bay to Australia in recent years and the pending decommissioning of HMS Ocean without any formal like-for-like replacement. The aircraft carriers are unsuitable for subsuming that role as a landing helicopter dock ship. Does my hon. Friend agree that that in itself—never mind the loss of the Albion and Bulwark LPDs—should be a matter of criticism and scrutiny in the House?

Ruth Smeeth: My hon. Friend has pre-empted the next paragraph of my speech. Why on earth, having spent £7 billion on new aircraft carriers, would we use them in this way? It is a waste of capability and an appalling use of the cutting-edge platform we have just built. As importantly, they do not have the capacity to

carry or launch amphibious landing craft, and their holds are not designed to meet the specific requirements of the Royal Marines with regard to kit and platforms. They also cannot be used independently of the fleet and, as I think we are all aware, they cannot be deployed very quietly.

Rebecca Pow (Taunton Deane) (Con): The hon. Lady is making an extremely powerful point, which makes me ask why we would cut the services of one of the finest forces in the world. I particularly want to mention 40 Commando in my constituency. These personnel are so important in humanitarian efforts. They recently went to the Caribbean to help with the disaster that occurred after the hurricanes. What was crucial was their fleetness of foot, being able to get in where there are no ports and being able to land helicopters where no one else could, with the amphibious equipment. No one else could go, so does the hon. Lady agree that we must think very long and hard before we cut a force as incredibly important as this?

Ruth Smeeth: I could not agree more. Our Royal Marines work day in, day out—40 Commando and all the others—to ensure that we are where we need to be, helping our allies as well as protecting the nation.

To return to my speech, when using the carriers, our troops would have to be deployed by air. Although it may make sense to deliver the first wave of troops quickly by air, that has its limitations. First and foremost, it is impossible to infiltrate enemy territory by stealth by means of military helicopter. Troops may also need heavy weapons, vehicles, fuel, food and ammunition, which cannot be delivered in sufficient quantity by our current complement of helicopters. In more intense conflict, armoured vehicles, artillery and even a few main battle tanks may be required. Unless there is a convenient port close by, the armour and logistical support must be delivered over the beachhead even if in a second wave after the helicopter-borne troops have secured the area. In the words of Admiral Sir George Zambellas:

“Nobody in the world of complex warfare, especially for an island nation that delivers force from the sea, thinks that a reduction in the sophisticated end of amphibiosity is a good idea.”

Another option, which has been floated for some time, concerns proposed cuts of 1,000 Royal Marines. I feel immensely privileged to have had the opportunity to visit our Royal Marines around the world and even to have sort of taken part in their Arctic training in Norway, or at least what they allowed me to pretend to do. [*Laughter.*] The hon. Member for Berwick-upon-Tweed (Mrs Trevelyan) can stop laughing at me now.

I have seen at first hand the Royal Marines' extraordinary courage, ability, focus and fortitude. They are truly an elite fighting force. However, what really stood out for me and, I am sure, for anyone who has spent any time with them is the mindset that they bring to their role. “First to understand, first to adapt and respond, and first to overcome”—that is the mindset of the Royal Marines and it is reflected in their extraordinary ability and versatility.

It is no wonder that the Royal Marines are disproportionately represented in the ranks of our special forces. In fact, the Royal Marines constitute only

4.5% of defence infantry but produce 46% of our special forces recruits. It is clear that making any cut to this life force of the UK special forces would make no military or economic sense. It has been suggested that as the threats we face as a country have changed, the need for these sorts of capability has diminished. I do not dispute that we must be ready to adapt to new threats and challenges. It is absolutely true that cyber-attacks and asymmetrical warfare open up whole new theatres of war, for which we must be prepared.

Mr Kevan Jones: Does my hon. Friend agree that the fleet protection role that 43 Commando plays in securing our nuclear deterrent is a vital role and that, if lost, it would be very difficult to replace?

Ruth Smeeth: I could not agree more. I have visited 43 Commando and seen up close the work that it does protecting the deterrent. Without it, I would be concerned about how we would move forward.

Where I disagree in relation to changes to warfare is with the idea that our amphibious capability is no longer a strategic necessity and is not a core aspect of the military mix that we will need going forward. It provides the option for small-scale raids, interventions and humanitarian missions. We must surely recognise that the ability to land troops from the sea, potentially in stealth conditions, has such a wide range of applications and is so vital a capability for an island nation that to diminish it would be an act of gross irresponsibility.

The 1981 review, "The United Kingdom Defence Programme: The Way Forward" advocated a reduction in the quantity of Royal Navy ships and a refocusing of the remaining resources towards Europe. Just a few years later, the Falklands war highlighted the continuing need for both our naval strength and a global outlook.

We saw a further U-turn in our approach from 1998 to the strategic defence and security review in 2015, when we looked away from Europe and towards the middle east. We had to review everything after Russia's invasion of Ukraine. I do not doubt that threats change and that our military must change to meet them, but the role of Government is to ensure that we have a well resourced, mixed defence capability that is strong enough to defend us at home and abroad to keep us safe. When we look at the lessons of history, we see that we can never truly predict what capabilities we may need tomorrow, never mind next year. The truth is that there has been no change in the strategic environment to justify the current proposals. It is cost-cutting pure and simple. To make cuts that risk undermining our amphibious capability now, not knowing what the future holds, would be deeply irresponsible and could have serious ramifications for our future readiness.

Many people in Westminster Hall today know my fondness for the Royal Marines, and I am proud to be your deputy, Mr Gray, on the all-party parliamentary group for the armed forces, but today is not about that or even about our wonderful commandos. It is about whether we have what we need to keep us safe. Tomorrow is decision time for the Chancellor. Will he listen to the concerns from my party and his, and from servicemen and defence experts, and hit the pause button on these reckless cuts to our amphibious capability and, for that matter, to our defence budget? Will Britannia still rule the waves, or will she yield to them in the name of austerity?

Mr Gregory Campbell (East Londonderry) (DUP): Will the hon. Lady give way?

Ruth Smeeth: I am so sorry; I have just finished.

Several hon. Members *rose*—

James Gray (in the Chair): Order. A glance around the room indicates that a large number of hon. Members are trying to catch my eye, and a swift bit of arithmetic suggests that something like four minutes each would be sensible. I do not believe in formal time limits, because that seems to me to sacrifice quality in favour of quantity, but if Members could show courtesy to one another and limit themselves to about four or possibly five minutes, that would be extremely helpful. I call Mr Mark Francois.

9.46 am

Mr Mark Francois (Rayleigh and Wickford) (Con): Mr Gray, I am grateful to be called in this important debate, which relates to one of the most important capabilities in our military armoury: amphibiousity. I congratulate the hon. Member for Stoke-on-Trent North (Ruth Smeeth) on introducing the debate so well.

We are really here today because of the strong rumours that the Ministry of Defence is considering deleting the landing platform docks, HMS Albion and HMS Bulwark, from the naval inventory. The reason behind that, which seems in effect to be an open secret, is that the Navy top level budget, or TLB, is over-programmed and the First Sea Lord has been asked to come up with savings within his TLB.

I shall return to the budgetary challenge at the end, but the first thing to say is that the Queen Elizabeth carriers, highly capable ships though they are, cannot act as a replacement for the LPDs and do not have their highly specialised capability. Although the carriers could launch marines over the beach by helicopter, either Chinook or Merlin or both, the carriers do not have docks and therefore cannot host landing craft, which would be needed to bring the heavy equipment of a marine commando on to a perhaps hostile beachhead. If we abandon the LPDs, we are in effect relying on a friendly port to be available if we are to land a marine commando or, indeed, 3 Commando Brigade on the shore. It may be a convenient planning assumption to believe that a friendly port will always be available, but that may not necessarily always be the case.

In fact, history teaches us an important lesson about the need to maintain this capability. In 1981, the Nott defence review advocated deleting the Invincible-class aircraft carriers and the assault ships, HMS Fearless and HMS Intrepid, from the naval inventory. At this stage, I have a small confession to make. Following the announcement of the Nott review, as a precocious 16-year-old, I wrote a letter to the then Prime Minister, Margaret Thatcher, in 1981 in which I argued that we should not sell our aircraft carriers to Australia because—I still remember the words—as history shows us, we never know when we might need them.

As we all know, in 1982, when the Falklands crisis blew up from almost nowhere, it was only because we still had our carriers and their Sea Harrier aircraft and the amphibious assault ships, Fearless and Intrepid, that we were able to mount an opposed amphibious assault and successfully recapture the Falkland Islands.

[Mr Mark Francois]

No doubt very many intelligent people wrote very articulate staff papers that contributed to the 1981 review and a great deal of intellectual energy was put into the argument that we could do without these ships—but they were all wrong. Maintaining that amphibious capability should be an important part of our national armoury, and NATO's as well, so what is to be done?

I believe that the alternative option of trying to cull 1,000 Royal Marines would be a grave mistake. The Royal Marines are some of the most elite infantry in the world and are, in effect, tier 2 special forces. We also derive around 40% of our tier 1 special forces, the Special Air Service and the Special Boat Service, from the Royal Marines. Not only do the Royal Marines have an incredibly proud history, having recently celebrated their 350th anniversary; they also have tremendous utility, and I can see no defence advantage at all in getting rid of 1,000 of the best maritime infantry in the world.

Rebecca Pow: The Royal Marines are also extremely good value for money. That has to be included. They comprise 4.5% of armed forces personnel—whereas the Army is 57%—and from that we generate 46% of the special forces badge manpower.

Mr Francois: I believe they are extremely good value for money and extremely capable, but this still brings us back to the problem of the naval TLB. As the previous Secretary of State was keen to stress, we have a rising defence budget, which is due to go up 0.5% each year in excess of inflation. That being the case, some of that uplift in the budget should be earmarked to the naval TLB, in order to ease the pressure and avert cuts to either the amphibious capability or the Royal Marines.

My final point is one I made to the former Secretary of State when he appeared before the Defence Committee last month, namely that given the furore that would likely result from trying to delete the LPD and our amphibious capability, and the relatively moderate savings this measure would generate, politically the game is not worth the candle. I humbly offer the same advice to his successor and to the Minister.

9.51 am

Luke Pollard (Plymouth, Sutton and Devonport) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Gray. I thank my hon. Friend the Member for Stoke-on-Trent North (Ruth Smeeth) for securing this debate.

Amphibious ships are vital not only for our national defence, but for jobs, particularly in Plymouth and Devonport, which I am proud to represent. The case for preserving HMS Albion, HMS Bulwark and the Royal Marines and their exceptional capability was expertly and persuasively argued on 19 October in this Chamber, when the hon. Member for Yeovil (Mr Fysh) led a debate on defence capability. None of the arguments used on the Labour side or the Conservative side about how valuable these ships and the Royal Marines are have changed since that debate. If anything, those arguments have become more persuasive to hon. Members, because the Chamber is much fuller than it was in that debate.

I am sure the Minister will not want to hide behind the line that has been used, and been so pilloried, that cuts to our amphibious capabilities are just speculation.

That is a weak line, which no one in this Chamber really believes. We are all here because we know that the possibility of these cuts is real. I realise the Minister will not be able to rule them out, because these cuts are being considered. That is of deep concern to people in Plymouth, those who serve on the ships, those who support the ships, those who work in the supply chain and those who have served in the Royal Marines and the Royal Navy.

Plymouth City Council estimates that getting rid of Albion and Bulwark would cost nearly 1,000 service jobs in the city and would result in a net loss of 1,320 full-time equivalent jobs, and that is before the cuts to the Royal Marines are taken into account. Plans to get rid of both Albion and Bulwark would undermine the purpose of Royal Marines Tamar, which was completed in 2013 at a cost of £30 million.

When the biggest defence review in 2010 reconfigured our defence capabilities, Plymouth was promised that it would be the centre of amphibiousness for the Royal Navy. That promise was given to us as submarines were moved and as changes were made in staffing and resourcing, and it is a promise that must be kept by this Government. Plymouth and Devonport in particular must remain a centre of amphibiousness, in name and strength. That means not only having it set forth in strategy, but having the ships and the Royal Marines that make that capability what it is today: a world-leading capability that is a deterrent to our adversaries and a support to our allies.

Let me be clear: the amphibious capability of the Bay-class Royal Fleet Auxiliary ships is not a substitute for the first-wave, considerable and specialist capabilities provided by these two Devonport-based war ships. To pretend that they can be delivered is simply false. The Bay-class ships are good, but they have neither the carrying capacity of Bulwark and Albion nor the specialist command and control facilities that these ships offer. We need first and second-wave capabilities. We cannot put troops and equipment ashore on soundbites, but we can with Albion and Bulwark.

We live in really uncertain times, and it is important in those uncertain times that we are clear about what our role as a country is. Post-Brexit Britain cannot turn its back on our allies who need help and support in deterring Russia in particular or our friends and allies for whom amphibious capabilities provide such an important humanitarian and disaster relief role. We have already seen the role that HMS Ocean—soon to be scrapped—performed in the Caribbean, which has been mentioned: first-class support from the capability and the Royal Marines. We cannot risk future hurricane and disaster relief efforts being hampered because the Government have taken a decision based on an accountant's spreadsheet rather than the capabilities we need as a country. I implore the Minister to work not only in the Ministry of Defence, but with the Chancellor, to end speculation about cuts and to reaffirm our country's commitment to HMS Albion, HMS Bulwark and the Royal Marines. Quite simply, our national defence cannot be done on the cheap.

9.55 am

Kevin Foster (Torbay) (Con): It is a pleasure to serve under your chairmanship, Mr Gray. I congratulate the hon. Member for Stoke-on-Trent North (Ruth Smeeth) on securing this debate. I know we share a passion for

arguing about things to do with the Royal Navy and the Royal Marines, but I did not realise we shared being readers of *The Sun*, which was quite a surprise.

Ruth Smeeth: We don't!

Kevin Foster: It is a pleasure to follow the hon. Member for Plymouth, Sutton and Devonport (Luke Pollard). He will know that that was my birthplace and my father spent 37 and a half years in Devonport dockyard in his constituency, with his last job being on HMS Albion before he retired in 2010.

It is particularly apt that we are having this debate on the 99th anniversary of the German high seas fleet entering Scapa for the internment, following the armistice of that year. Edward Grey famously commented at the start of the first world war on the lamps going out, but he made another famous comment:

"The British Army should be a projectile to be fired by the British Navy."

That reflects how important amphibious capability was. Yet today is not about history. Wars are not won by emotion and we do not deliver aid by reminiscing about the times of the fleet defending the empire.

Mrs Madeleine Moon (Bridgend) (Lab): I disagree with the hon. Gentleman. I think today is about history. If we do not learn our lessons from history, we will keep repeating our mistakes, and our mistake has always been to cut at exactly the wrong time, when the risks are high, and we are about to do it again.

Kevin Foster: I partly agree with the hon. Lady. If we went back to history, we would still have cavalry, because it was decisive at Waterloo, but this is about why amphibious capability makes sense today, in the 21st century. It is not just about reminiscing, although it is still worth while looking at the history of why this capability was developed and, of course, looking back to the Gallipoli landings, where we did not have a proper amphibious capability and the results were disastrous for those first world war soldiers.

Today's amphibious capability is about giving the choice to deploy troops in either a war-fighting or humanitarian role anywhere in the world, going on the global commons. It is vital that it can operate as a stand-alone force. That means having the ability of the docks that are provided just offshore by HMS Albion and HMS Bulwark when deployed. Some argue that the Queen Elizabeth-class aircraft carrier can provide this type of support. The reality is that a large aircraft carrier is a vital asset that is defended in depth and would never be taken close to the shore, or to any place where it could be at threat, to provide landing support. While it may go close to the shore in a completely non-threat environment to provide humanitarian aid, it would never do that for an amphibious landing because it is a very high-value asset.

While special forces can be deployed via submarine, that is clearly not a practical option for larger scale amphibious forces and also ties up a vital asset that can be used for so much more than providing what Albion and Bulwark can currently provide to forces. If we were without this capability, we would be an island nation unable to deploy our forces independently and stealthily on to another island. Looking at the growth of population

by the coast across the world, which the MOD's own analysis points to, it is clear we need to keep this capability. Therefore it is vital that we retain a corps dedicated to delivering this capability, not one we could rebuild from reserve.

When the new Defence Secretary was appointed, some people asked me what my views were. I said that the key battle for the MOD at the moment is with the Treasury. I hope the new commander at the MOD will be just the person to win that battle. It is vital that the Prime Minister and the Chancellor listen to his advice.

Today marks 99 years since one battle for the fleet ended, and hopefully tomorrow another battle will be won by our fleet—this time to maintain a capability that is as relevant in the 21st century as it was when Edward Grey made that comment so long ago.

10 am

Phil Wilson (Sedgefield) (Lab): It is a pleasure to serve under your chairmanship, Mr Gray. I congratulate my hon. Friend the Member for Stoke-on-Trent North (Ruth Smeeth) on securing this very timely debate. I want to make a few points and quote what other people have said about this issue to get it on the record again.

The point of amphibious capability is to land where the enemy is not. The idea that the Government think that we, as an island nation, should be cutting that capability seems absurd. Combined with the scrapping of HMS Ocean, it would severely impact our amphibious capability to enter a war zone by sea. Not just that; it would affect not only our warfighting but our humanitarian work. The first task of HMS Ocean back in the 1990s was a humanitarian task in the Caribbean when there was a hurricane in Honduras, and as we know it was deployed just a couple of months ago in the Caribbean once again. The amphibious capability has been used at least 10 times since the second world war. It was used in Korea, in Suez and then in the Falklands. As has been mentioned, in 1981 our amphibious capability was again under threat. Just think: if we did not have that capability in 1982 when the Argentinians invaded the Falklands on 2 April, where would we be now?

The decommissioning of HMS Ocean came after a £65 million refit in 2014. The Minister at the time, the hon. Member for Ludlow (Mr Dunne), said:

"I am delighted that this contract will not only ensure that HMS Ocean remains a significant, highly-flexible and capable warship for years to come".

Well, that did not last very long. With the bilateral partnership and accords that we have with other groups, such as the US, the cutting of perhaps 1,000 Royal Marines has led one US Marine Corps colonel to warn that it could impact on UK-US military ties. Bulwark and Albion, loaded with landing craft, provide command and control in a maritime environment. The colonel said, "That is what the UK will bring as a unique selling point to the party, alongside their world-class Royal Marines."

Last week we had an evidence session with some retired generals and other force leaders. On the need for amphibiousity, General Sir Richard Barrons said:

"Are we really saying that we do not want the capability to put a force ashore over a beach—that we want to confine ourselves to ports? Are we really saying that we never want to be able to take British people out of a trouble spot except through a port? Are we

[Phil Wilson]

really saying that we want to remove that capacity for humanitarian assistance? If we are saying that, we are ignoring how the world really operates. The second line of madness is the idea that if the Navy needs to adjust manpower and find more sailors, the obvious thing to do is to cull some of the finest infantry in the world—the Royal Marines. If the Navy needs more manpower, surely in defence there is a better way of finding it than culling your elite infantry, which in any case supplies people to our outstanding special forces. It is just folly.”

Finally, just two years after the SDSR, when we are having another review, it seems to me that the threats are developing quickly and unexpectedly. That is why, after two years, we are having another review. The Government will boast that the defence budget is increasing, but at the same time they still see the need to cut our capabilities. The more flexible we can be, the more versatile the defence postures we can take in a crisis. Are we ensuring that we will not be able to do that in the future? I believe that Britain is a force for good in the world. The Government need to be honest with themselves as well as with us. If they agree with me, the Government need to invest in our armed forces, because if they do not, and they continue to praise our world-class military, no one will believe that they mean it.

James Gray (in the Chair): I call Johnny Mercer.

10.4 am

Johnny Mercer (Plymouth, Moor View) (Con): Thank you very much, Mr Speaker.

James Gray (in the Chair): Mr Gray will do. Mr Speaker might object to you calling me that.

Johnny Mercer: I am so sorry; I am half asleep. It is only a matter of time.

I want to make three really clear points to the House, to the Minister and to the Government. I have made my views on this clear. I am grateful for all the support that we have had from across the House because this is an issue of singular importance. However, it is very important that we do not dictate tactically what we ask our professionals to do in this country. What I mean by that is that our job here is to hold the Government's feet to the fire, and to ensure that what they do is consistent with what they say. I do not think it is our responsibility to say, “You can never change this or that capability.” My attempts with the letter that has been signed by so many are simply a first stage in drawing a line in that battle.

What I am saying, though, is that I hope the Government, the Department and, critically, the Treasury and the Prime Minister now understand that there is a resilient cohort of Government MPs who will hold the Government to account on defence spending. Whatever our party or priorities, above all we are patriots, and it is not right to allow the Government to say something about defence on the one hand and yet under-resource it on the other. They cannot always say that defence is the primary duty of Government and yet hold their hands behind their back.

Mr Kevan Jones: So why are you a Tory then?

Johnny Mercer: That is an interesting intervention—in fact, I am just going to ignore it because it was pretty childish.

We must get our priorities right when it comes to defence. Over the weekend the Government announced that £2.3 billion would be put into artificial intelligence and driverless cars. Fantastic—great stuff—but when it comes to social policies such as those we cut our cloth according to what we can afford. When it comes to defence, we listen to the professionals who we ask to go and do the job for us and to wear the uniform. We ask them what we need and we provide them with what they need to keep us safe. As has been alluded to by my right hon. Friend the Member for New Forest East (Dr Lewis) time and again, the idea that we can come to this place and say, or sell it to the general public, that threats have intensified, diversified and increased so much that another security review needs to be conducted, and yet reduce the budget or capability for our armed forces to do that, is simply not credible. It will not be worn by the British public and it will not be worn by Back-Bench Conservative MPs.

Finally, all that I am asking for, and all that the MPs who have signed my letter, and MPs across the Conservative party, are asking for—we are the party of defence—is that we meet our manifesto commitment of a 2% of GDP spend and a 0.5% above inflation increase in the defence budget. That is the platform on which I stood at the general election, and I fully expect that commitment to be realised. We must get to a stage where we are being realistic about defence, and if the threats have increased, that must be met by a commensurate increase in money, commitment and willpower from both No. 11 and No. 10.

John Spellar (Warley) (Lab): I thank the hon. Gentleman and fellow member of the Defence Committee for giving way, but may I slightly correct him? He said that the Tories are the party of defence. They are the party that talks about defence. I fully accept the bona fides and the genuine intentions of the hon. Gentleman and many of his fellow Back Benchers, but in fact under “Options for Change” after the end of the cold war, it was the Tory party that slashed the—

James Gray (in the Chair): Order. In the context of UK amphibious capability, Johnny Mercer.

Johnny Mercer: I take the point. All I will say to that is that while I am here, I am determined that we will see that manifesto commitment through. The Government have a very small majority and we will hold them to account on this issue. I am afraid that feelings are running high on this issue. We have to go back to our constituents every weekend and justify what we do in this place, and I am determined that we will see that commitment through and provide the country with the defences that we need.

10.9 am

Mrs Madeleine Moon (Bridgend) (Lab): Like everyone else, I want to start by thanking my colleague and friend, my hon. Friend the Member for Stoke-on-Trent North (Ruth Smeeth), for securing this debate. It is important that there is absolutely cross-party consensus in this Chamber that we are about to do something extremely dangerous. The debate today is entitled “UK Amphibious Capability”, but it really should be, “Who are we? What role do we want to play in the world? Has

the decline of the Royal Navy damaged our reputation and our capability as a naval power and an ally? And will the cutting of our amphibious capability and our Royal Marines finally sink our reputation as a naval power?"

We have been a naval power for centuries. A major part of that has been our ability to project force anywhere in the world, coupled with the ability to land personnel and equipment, using our amphibious forces quickly and effectively. Equally important around the world has been our ability to send humanitarian aid quickly and effectively everywhere. We have provided food and equipment and evacuated in humanitarian crises in a way that we should be deeply proud of, but we are about to lose that capability. As an island nation, our ability to conduct a conventional war in an effective manner hinges on our ability to deploy troops from our island to the theatre of conflict. That requires us to retain an amphibious capability.

We need to ensure that we can hold our head up high among our allies. Britain has a reputation as a serious maritime player. After the United States, the UK was NATO's pre-eminent naval power. That reputation was not come by lightly and gave the UK a distinct and advantaged position, not just in NATO, but on the global stage—as a trading entity as well as a military force. Our amphibious capability played a vital part in forming and maintaining that reputation, but our allies are reassessing it.

Let me quote from an article by an ally. It was by Jonathan Foreman and was published in the April-June edition of the Australian Navy news. It stated:

"The paper proposes in essence that the Royal Navy cannot be saved in its current form, that the problems...frequently noted in recent years by other, often non-British, publications...are likely to be terminal. Given that the RN is already little better than a token force...manifestly unable to carry out many of the missions expected of it in home waters as well as distant seas...and that UK decision makers are unwilling to face up to the decisions and obligations required of a major maritime power, the best that Great Britain can hope for may be to field a moderately capable North Sea flotilla as part of a combined UK Defence Force."

That was from our allies. That is how we are beginning to be seen. Let us wake up and recognise that.

Recently, *The Times* carried an article in which James Mattis was highly critical of our decision to cut two of our four minehunters from the Gulf. We are beginning to hollow ourselves out, as has been said repeatedly, including at last week's sitting of the Defence Committee by the former First Sea Lord, Admiral Zambellas, who described us as a third-world nation militarily. We have to wake up.

We in this Chamber totally support the Royal Navy and its personnel, and I think I speak for us all in saying that. [HON. MEMBERS: "Hear, hear!"] We are all proud of its successes, its traditions, its long history of bravery and its capability to face down overwhelming force. We will not, and cannot, sit by and be silent while the Navy is hollowed out and while the Ministry of Defence spins stories of our retaining greatness, when even our allies are mocking our inability to project effective and enduring force in defensive and humanitarian actions.

The Navy must retain its amphibious capability and its Royal Marines. The spin and misrepresentation of the weakness of our Navy must be recognised. If we are to hold our role in the maritime world, which we once

proudly ruled, it is time to tackle the weakness that we have all allowed to happen to the Royal Navy. Britain's ability to deploy a full range of naval capability, including an amphibious option, plays a vital and central role in our security, capability and reputation. Without that, Britain's Navy lacks the critical ability to project power and authority beyond the sea and, as such, limits the effectiveness of what a naval task force is capable of, as well as what this country is capable of doing in defending itself.

James Gray (in the Chair): We have 15 minutes left for five speakers. I call Leo Docherty.

10.15 am

Leo Docherty (Aldershot) (Con): It is a pleasure to serve under your chairmanship, Mr Gray, and I am grateful to the hon. Member for Stoke-on-Trent North (Ruth Smeeth) for securing this important debate.

We have indeed been here before. In 1981, the then Secretary of State for Defence, John Nott, scheduled in his review, "The Way Forward", the decommissioning of our then amphibious capability, HMS Fearless and HMS Intrepid. Those vessels were only saved because they were critical in Operation Corporate and the liberation of the Falkland Islands the following year.

That lesson from 1982 still stands today. The simple lesson from the Falklands conflict was that when projecting power from a carrier force, we cannot rely on helicopters alone. That was cogently encapsulated in a book, "No Picnic", which was written by the commander of 3 Commando Brigade, Major General Julian Thompson. In fact, he also highlighted it more recently in a letter to *The Daily Telegraph* on 28 October. He wrote the letter with Captain Michael Clapp, who was the commander of the amphibious task group in the Falklands, and I will quote from it because it is entirely pertinent. They reject the notion that today, we would be able to project power from a carrier by a helicopter force alone. They considered it back then, but

"rejected it on the grounds that we did not have air superiority, or enough helicopters to land enough troops and their supporting artillery in sufficient strength, in the time required, to fight off counter-attacks by the Argentine army. The only way to achieve a quick enough build-up was by landing craft. The landings were opposed on the ground by very few enemy troops. The main opposition came from the Argentine air force. Had we attempted major helicopter moves in daylight, the Argentine fighters would have had a turkey shoot among our helicopters."

That lesson still stands today.

I will conclude with a word on the review as a whole. As has been said, the global threat level has increased and, given that, it is illogical to have a capability review that does anything other than increase the resourcing to ensure that we have the required capability to meet the threats. Surely we must maintain the capacity to project force over a beach. Surely we would not want to rely on having a port or an airfield. Surely we must not rely solely on helicopter power, and surely we must maintain some of our finest fighting soldiers in the Royal Marines, who make a disproportionate contribution to our special forces.

Given the global circumstances today, strong defence is not a luxury but an absolute necessity. We await further details from the National Security Adviser, who is running the review, and reassurance from the Minister.

[*Leo Docherty*]

As a member of the Defence Committee, I hope that the National Security Adviser will come to that and offer reassurance. However, if the review undermines our capability in any way, it could be dangerous to our armed forces, to our national interest and to our standing on the global stage, and we must guard against that.

10.19 am

Jim Shannon (Strangford) (DUP): I thank the hon. Member for Stoke-on-Trent North (Ruth Smeeth) for bringing this issue to the House. I declare an interest as a former Ulster Defence Regiment soldier and Territorial Army soldier for 14 and a half years. Our armed forces are unquestionably the best in the world; we are second to none. As much as I respect our allies the Americans and Australians, among other nations, it is clear that our brave boys and girls top the table in ability and training. Our abilities and capability act as a deterrent to those who might consider undermining our authority. The Falklands war lasted 74 days and 255 British armed forces personnel died. We were attacked on 2 April and responded by 5 April. We had the capacity to re-route ships and personnel to an area that had no plan in place for an unexpected invasion of a Crown colony.

Mr Gregory Campbell (East Londonderry) (DUP): Does my hon. Friend agree that it is vital that the Department, the Minister and the Treasury understand the cross-party consensus and the unanimity that exists, not just in this Parliament but in this country, about the adaptability required by our forces in times such as this?

Jim Shannon: Yes, that is exactly right. We in this debate are all saying the same thing.

Our Royal Marines have close international ties with allied marine forces, particularly the United States and Netherlands marine corps. Those ties are imperative to keeping us on the global stage. Although the reduction in the Royal Marines has not been confirmed, it has not been denied either. Any reduction must not even be considered.

Recently, during Hurricane Irma, the Royal Marines were where they were needed most, with the auxiliary boat Mounts Bay followed by HMS Ocean. Help and aid such as that given in the recent crisis are an essential part of our responsibilities to our colonies and Crown holdings, as is our ability to carry out those duties and responsibilities.

I agree wholeheartedly with the former Commander of Joint Forces Command when he told the Select Committee on Defence that it was

“madness”

to

“cull some of the finest infantry in the world”.

We should take note of those words. The Royal Navy needs its three amphibious assault ships HMS Ocean, HMS Albion and HMS Bulwark. I understand that HMS Bulwark is in port in a state of low readiness and is not expected to return to service until 2021; some media reports say that it might not return at all.

Never in history have we had our fingers in so many pies fulfilling international responsibilities. To be able to do so, we must have the force in place. If the reports on what might be proposed are right, it must be opposed.

10.21 am

Andrew Bowie (West Aberdeenshire and Kincardine) (Con): It is a genuine pleasure to serve under your chairmanship, Mr Gray. I congratulate the hon. Member for Stoke-on-Trent North (Ruth Smeeth) on securing this debate. It is nice to speak in a debate where there is such consensus in the room.

The year 2017 was supposed to be the year of the Navy. As the former Secretary of State said, it was

“the start of a new era of maritime power, projecting Britain’s influence globally and delivering security at home.”

This year has seen unprecedented levels of building and investment in the Royal Navy, creating a backdrop for the first ever mounting of a guard by the senior service at Buckingham Palace and Windsor Castle. Undeniably, this has been a year of historic significance for the Royal Navy and British sea power.

A key part of our sea power and a key strategic part of our non-nuclear deterrence is our amphibious capability. As former First Sea Lord Admiral Zambellas told the Select Committee on Defence:

“Nobody in the world of complex warfare...thinks that a reduction in the sophisticated end of amphibiousness is a good idea.”

Unfortunately, in a year that has otherwise been positive for the senior service, that is in fact what we are discussing.

Only four other countries in the world can boast such a strong amphibious capability: the United States, China, Russia and France, which happen to be the other four permanent members of the United Nations Security Council. That capability is integrated into NATO, serving a key role there. Its primary role for much of the cold war was reinforcing our northern flank; it was strategically crucial in controlling access to the North sea and the Atlantic. Who can tell whether such a role might not be required again in the near future?

We know how any downgrading of our amphibious capability will be received in foreign capitals: with great delight, I am sure, in Moscow, and with great disappointment in Washington. Only last week, General Ben Hodges of the US army said of potential cuts to our amphibious capability:

“I’d hate to lose that particular capability...Whenever you take something off the table unilaterally, then you’ve just made the job a little simpler for a potential adversary.”

What we are debating is the potential loss of 1,000 marines and our landing platform dock vessels HMS Bulwark and HMS Albion. I urge the Government to discard any suggestion of decommissioning either of those specialised world-leading ships. If we got rid of our LPDs, would we ever recover that lost capability?

Although in this debate we are making the case for protecting the Royal Marines and the fleet, we must also be clear that any progress on the issue must not come at the expense of other areas of military spending. Last week, in an answer to my written question, the Ministry of Defence confirmed that quick reaction alert Typhoon aircraft launched from RAF Lossiemouth and RAF Coningsby intercepted aircraft on 12 occasions in 2016. That shows beyond any doubt the importance of our Typhoon squadrons and why we must not eschew the need for our new F-35s, which are planned to become a core part of our defence capabilities in that area.

It must also be recognised that the Government will struggle to make any significant savings from the Army without jeopardising our capability on that front. In an answer to another written question—

James Gray (in the Chair): Order. This is a little wide of the topic.

Andrew Bowie: I found out two weeks ago that of the Army's current strength of 70,000, almost 18,000 soldiers fall into the medical deployability standard categories "medically limited deployable" or "medically not deployable". We need to spend more on our armed forces. In an incredibly uncertain and unstable world, for our allies and dependencies, we must fund our armed forces properly so that they can do the jobs we need and ask them to do.

10.25 am

Mrs Sheryll Murray (South East Cornwall) (Con): I thank the hon. Member for Stoke-on-Trent North (Ruth Smeeth) for bringing this debate to the House. I declare an interest; I am the incredibly proud mum of a commander in our Royal Navy.

Winston Churchill said that we shall defend our island, but it is not just one island that we need to defend, or local islands. Parts of the British family all around the world look to us for their defence. Many of them are islands, but all of them are connected to the sea. I am talking, of course, of our overseas territories—places such as Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat, the Pitcairn Islands and Gibraltar.

It is essential that we continue to have an amphibious transport dock facility within our Royal Navy if we are to show that we have the ongoing capability to defend our islands and lands. We need only look back, as my colleagues have said, to the two Fearless-class landing platform docks during Operation Corporate. The Falklands war showed how important those ships are, as well as showing any potential aggressor that we have the capability to strike back, making our current Albion class an essential part of our conventional deterrents. The landing platform docks Fearless and Intrepid both played an important role in the landings at San Carlos during the Falklands conflict. Indeed, it was on Intrepid's deck that the surrender ending the conflict was signed. It was also one of the warships used to imprison Argentine prisoners of war.

Those ships also have an important role to play as command facilities. The 1982 HMS Fearless was fitted with modern satellite communication equipment, and during the Falklands conflict, it hosted the staff of amphibious force commander Commodore Michael Clapp and the commanding officer of 3 Commando Brigade, Brigadier Julian Thompson, and his staff. The ships have uses beyond conflict. They are well suited, as has been mentioned, to providing humanitarian aid and relief work. The capacity of our landing platform docks can save lives too.

Both our current landing platform docks, HMS Albion and HMS Bulwark, are based at Plymouth. Her Majesty's Royal Naval dockyard at Devonport is the largest naval base in western Europe and the sole nuclear repair and refuelling facility for the Royal Navy. It is an incredibly important source of employment for my constituency.

As the managing director of the naval base has acknowledged, more people from south-east Cornwall work in the dockyard than work from Plymouth, Sutton and Devonport. I am against any scaling back of the capabilities of this important base.

We are a seafaring nation, and we need the naval capacity to back that up. It is essential that we maintain a strong amphibious transport dock facility within our Royal Navy.

10.28 am

Robert Courts (Witney) (Con): It is a great pleasure to serve under your chairmanship, Mr Gray. I shall be brief; there are just one or two points that I want to make. I thank the hon. Member for Stoke-on-Trent North (Ruth Smeeth), for the second time in two debates, for securing this debate.

I look at this debate through the prism of what kind of country we want to be. If we want to be a country that can project force and influence around the world, we need certain military capabilities. One of them is heavy airlift capability, such as at RAF Brize Norton—I had to get it in somewhere, Mr Gray. The second is maritime patrol capability, and the third is the amphibious capability that we are debating. If we lose that, we lose a great deal of flexibility.

We are all aware of the use of this power. This debate has concentrated largely on opposed landing and the military force, but the ability to take off British nationals other than at a port—that is, from beaches—is also extremely important, as is the humanitarian relief that such capabilities allow us to take part in. We ought not to fool ourselves that the carriers will be any kind of substitute for the ability that Albion and Bulwark bring. Although they are outstanding and necessary capability, they do not have the command and control capability or the heavy-lift amphibious capability of Albion and Bulwark. We cannot rely simply on helicopters, for the reasons that my hon. Friend the Member for Aldershot (Leo Docherty) has given.

Even if we had the V-22 Ospreys that the Americans have, we would still need the heavy-lift capability that can only be given by taking heavy equipment across by water. Apart from anything else, in a contested environment, we would keep our carriers as far offshore as we could, as in the Falklands war. If we were to lose that capability, there would be unintended consequences. Our relationship with the US marine corps is extremely close, as hon. Members who have served actively will confirm, and it serves side by side with the Royal Marines. At a time when the United States, Spain, Italy and Australia are all investing in amphibious capability, losing it would make it very difficult for us to remain a global player and a NATO partner and to stand alongside our allies.

We have been here before with the 1981 review and what happened in the Falklands. We do not need to learn those lessons all over again; history provides them for us. The unique capability provided by those ships and the marines will not be replaced by a combination of carriers and Chinooks. Our status as a NATO partner, an ally and a country that projects its influence around the world is crucial. If Britain withdraws from its ability to project force on an amphibious basis around the world, we will wake up in a different country. That decision would have epoch-making consequences and we ought to step away from it.

James Gray (in the Chair): I congratulate hon. Members on their self-restraint. We have heard 11 Back Benchers between the opening speech and the first Front-Bench spokesman.

10.31 am

Martin Docherty-Hughes (West Dunbartonshire) (SNP): It is very good to see you in the Chair, Mr Gray. I thank my colleague on the Defence Committee, the hon. Member for Stoke-on-Trent North (Ruth Smeeth), for securing this important debate. We have both seen from our work on the Committee how important it is, and the turnout for the debate—although I would have hoped for more—shows the depth of feeling that exists in the House for the Royal Marines.

It is quite astonishing that we are here—that an island state is seriously contemplating, and has been debating at the highest levels, the possibility of letting go of its ability to make opposed amphibious landings. I am glad that hon. Members have spoken well on behalf of the Royal Marines, in particular the hon. Member for Stoke-on-Trent North. I also commend the hon. Member for Bridgend (Mrs Moon), who made salient points with gravitas on this issue and should be listened to, the hon. Member for Strangford (Jim Shannon), who perhaps has the Government's ear more than I ever will, and the other hon. Members who have participated.

I will mention some of the areas that deserve a little more attention. In the strategic context, the Royal Marines have been a fulcrum of so much positive work in the broader sweep of the armed forces, whether through the number of marines who serve in our special forces or the great example of joint working that they set with our European and NATO allies. Albion and Bulwark are strategic assets that other nations rely on. Getting rid of that vital command and control capability would be nothing short of an abdication of that responsibility and would undermine UK leadership after Brexit, when it will be under the most scrutiny.

Stewart Malcolm McDonald (Glasgow South) (SNP): Does my hon. Friend agree that, given that the Government designated 2017 as the “Year of the Navy”, it would be a somewhat perverse act to rid ourselves of Albion and Bulwark?

Martin Docherty-Hughes: Of course I totally agree with my hon. Friend.

Let us turn to our allies. The Kingdom of the Netherlands sees the UK-Netherlands amphibious force as a symbol of what it considers to be one of its most important bilateral agreements. It has allowed the Royal Netherlands navy to take important procurement decisions, such as to build the Rotterdam and Johan de Witt amphibious vessels, in the expectation of reciprocal agreements continuing. What consideration has there been of undermining such a relationship by reducing our own capabilities?

Our extensive history of co-operation with the US marine corps, which has been mentioned, was particularly prominent in the cold war, when the Royal Marines were a key component in the plan to reinforce NATO's northern flank in Norway. It is the Norwegian dimension that first brought the current crisis facing the Royal Marines to my attention, when winter warfare training

was scrapped to cut costs. It goes without saying that the reassurance that those joint exercises have given our allies and the skills that they have given the marines exceed any impact on that spreadsheet in the MOD Main Building.

Winter warfare training brings me to my second topic. Traditionally, marines have prepared for their Norwegian exercises in the Grampian mountains, which they have accessed from their base at RM Condor, the home of 45 Commando. There are worries in Angus. I had expected the hon. Member for Angus (Kirstene Hair) to be here to speak for that beautiful part of the world, but as ever it is left to the SNP to fight Scotland's corner in this place. The possible closure of RM Condor is a story almost as old as the Grampian hills. It was mooted in 2004, again in 2009, and almost went through in 2013, before a Government U-turn. Finally, in last year's defence estate review, it was announced that the runway at RM Condor would be sold off. I echo the words of my friend and colleague in the Scottish Parliament, Graeme Dey, who said in a debate about the plan:

“By any measure, the UK Government's approach to Condor is haphazard and unsettling”.—[*Scottish Parliament Official Report*, 20 April 2017; c. 79.]

I would go further: it is a perfect case study of the dangers of salami-slicing our armed forces.

People in Arbroath will not be reassured if closing the airfield is the last we hear on the issue. Quite simply, a community that is already reeling from the effects of Brexit on its soft fruit industry does not want to read headlines about the jobs of 1,000 Royal Marines being cut. As an aside, I would ask whether the Minister has given much consideration to the Scottish Government's suggestion that the runway at RM Condor be used to build veteran's housing. That is vital in an area with a strong tradition of recruitment into the armed forces, particularly the Black Watch.

Following this debate, the hon. Member for Stoke-on-Trent North and others will rush to a Defence Committee evidence session to hear from the MOD's permanent secretary on the subject of the MOD's accounts. I expect that we will hear an awful lot about the MOD's budgetary black hole, which has precipitated this debate. While many will talk convincingly—

James Gray (in the Chair): Order. The hon. Gentleman's speech must be on the context of the UK amphibious capability.

Martin Docherty-Hughes: It is an important point, Mr Gray, about the accounts—

James Gray (in the Chair): Order. That does not matter. The hon. Gentleman's speech must be on the context of the UK amphibious capability.

Martin Docherty-Hughes: While many will talk convincingly about the need for tough decisions to be made on amphibious capability—you do well to remind me, Mr Gray—I can only conclude from all that I have read in preparing for this debate that the UK's amphibious forces are being squeezed for one obvious reason, which few, other than SNP Members, are willing to raise. The simple and inconvenient truth is that amphibious capability is being sacrificed to maintain the nuclear

enterprise. Let us look at the top lines of the 2015 strategic defence and security review:

“The Royal Navy delivers our nuclear deterrent, projects our maritime power”—

James Gray (in the Chair): Order. The hon. Gentleman must contain himself to the UK amphibious capability. He may not talk about nuclear capability or anything else. UK amphibious capability is all he may discuss.

Martin Docherty-Hughes: I think I was, and I will continue to do so.

Three distinct and unique capabilities underpin the strategic context. As General Sir Richard Barrons elucidated, the failure of the 2015 SDSR was that

“at no time in that review has the amount of resources provided to defence matched the programme”

of which defence capability through amphibious programmes is a part. The talk that I hear from people who know a lot more about it than anyone here is that the First Sea Lord has been presented with a scenario whereby one of these capabilities must be sacrificed. Admiral Sir George Zambellas’s comments in the Committee last week have been quoted, but I will quote what he said in full:

“I imagine the First Sea Lord has a choice between having his left arm cut off or his right arm cut off. Nobody in the world of complex warfare, especially for an island nation that delivers force from the sea, thinks that a reduction in the sophisticated end of amphibiousness is a good idea.”

On the practicalities of the SDSR, no one would expect projecting maritime power, such as the plan to commission HMS Queen Elizabeth next month, to be considered expendable. I also place it on record that the carriers are in no way adequate as replacements for Ocean, Albion or Bulwark, as has been mentioned. That leaves two arms to be cut off. I am not sure that we would have had as many hon. Members along to talk about the Royal Marines had the subject for debate been, “Why the UK’s amphibious capability should be prioritised over the continuous at-sea deterrent”. My SNP colleagues and I have been quite consistent on the ring-fenced MOD budget as it stands: every penny spent on Trident is a penny less spent on conventional forces. Hon. Members need not take just my word for it; at the end of October, an article in *The Times* by defence editor Deborah Haynes stated that the armed forces would have to find £300 million of savings this year because of cost overruns in the Successor programme. One source quoted said:

“All that is now left to cut is capability”—
amphibiousness. That is why we are here today.

Andrew Bowie: Will the hon. Gentleman give way?

Martin Docherty-Hughes: Certainly. I am looking forward to this.

Andrew Bowie: Hon. Members have already mentioned the reaction of our allies, especially the Americans, to potential cuts in our amphibious capability. I do not think that they will be that happy about our cutting our nuclear deterrent either.

Martin Docherty-Hughes: I will just let that one hang there—

Stewart Malcolm McDonald: It is where you are headed. You choose!

Martin Docherty-Hughes: Yes, the United States recognises that you will not have one, because you cannot afford it.

James Gray (in the Chair): Order. Please finish briefly, Mr Docherty-Hughes.

Martin Docherty-Hughes: I know that many hon. Members—including the Chairman of the Defence Committee, the right hon. Member for New Forest East (Dr Lewis), who is present in the Chamber—would like the defence budget to be increased, but unless the Chancellor pulls the rabbit to end all rabbits out of the hat on Wednesday, that ain’t going to happen. I applaud the willingness of my other colleagues on the Defence Committee, the hon. Member for Plymouth, Moor View (Johnny Mercer) and the right hon. Member for Rayleigh and Wickford (Mr Francois), to stand up to their party on this matter. The Royal Marines and the unique capabilities they provide must be protected; no one on the SNP Benches disagrees with that.

I conclude—to your delight, Mr Gray, I am sure—by asking the Minister three questions. First, will she reassure our allies, particularly those in northern Europe, that the forthcoming defence review will not damage existing relationships? Secondly, will she give assurances to those who work at RM Condor that 45 Commando is safe? Finally, will she tell us why an island state is prioritising the maintenance of a weapons system that it will never use over its ability to adequately deploy amphibious forces?

10.41 am

Wayne David (Caerphilly) (Lab): It is a pleasure to serve under your chairmanship, Mr Gray. I congratulate my hon. Friend the Member for Stoke-on-Trent North (Ruth Smeeth) on securing this important debate and on her first-rate speech.

This is one of the few Westminster Hall debates I can recall in which there has been unanimity—well, virtual unanimity—among contributing Members, a point made well by my hon. Friend the Member for Bridgend (Mrs Moon). Every Member who has spoken in this debate holds the firm view that the defence of this country requires an amphibious capability; if HMS Albion and HMS Bulwark are scrapped and 1,000 Royal Marines are lost, that capability will effectively come to an end. We have heard from right hon. and hon. Members with great knowledge and expertise, whose views largely echo those of leading figures in the armed forces, including the former First Sea Lord, Admiral Sir George Zambellas. His evidence to the Defence Committee last week has already been quoted, but I shall quote it again:

“Nobody in the world of complex warfare, especially for an island nation that delivers force from the sea, thinks that a reduction in the sophisticated end of amphibiousness is a good idea.”

General Sir Richard Barrons, former commander of the Joint Forces Command, said that we run

“the risk of a ridiculous zero-sum discussion...the nonsense of culling marines to buy more sailors”.

He also described

“the idea that if the Navy needs to...find more sailors, the...thing to do is to cull some of the finest infantry in the world—the Royal Marines”

[Wayne David]

as a “line of madness”. A number of hon. Members, including my hon. Friend the Member for Sedgefield (Phil Wilson), have quoted those words, which I am sure we all agree were powerful and well considered.

Since the end of the second world war, our amphibious capability has been used more than 10 times in military action, from Korea and Suez to the Falklands and Sierra Leone. As my hon. Friend the Member for Plymouth, Sutton and Devonport (Luke Pollard) noted, it has also been used to great effect in humanitarian efforts, including recently in Operation Ruman in the Caribbean. The Royal Marines have been in almost continuous operation in 30 different campaigns. There were pressures to remove our amphibious capability after our withdrawal from east of Suez in the 1970s and early 1980s, but common sense has always prevailed.

Let us not forget that our amphibious shipping and the Royal Marine command brigade were crucial in liberating the Falkland Islands—a point made well by the right hon. Member for Rayleigh and Wickford (Mr Francois) and in the powerful speech of the hon. Member for Aldershot (Leo Docherty). After the Falklands war, it was agreed that the UK needed to maintain a minimum amphibious force, but since the 2010 SDSR we have seen gradual reductions in capacity.

Mr Sweeney: Labour’s 1998 strategic defence review defined the optimum capability for amphibiousity in the UK as not just two Queen Elizabeth-class aircraft carriers, but six Point-class sea-lift ships, one landing helicopter dock on HMS Ocean, two Albion-class landing platform docks and four Bay-class landing ship docks. That assumption should not have changed; why has it? Why has the capability been cut since then? We have had no explanation from the Minister.

Wayne David: My hon. Friend makes his point well; I agree absolutely. Let us also bear in mind that the marines have recently lost 400 personnel, and it is rumoured that the newly refitted HMS Ocean will be sold to Brazil for a very modest £80 million.

That brings us to where we are today. We learned from the press last week that the new Secretary of State for Defence did not believe that the cuts to Albion, Bulwark and the marines could be justified, and was asking the Treasury for an extra £2 billion to help to fill the gap in the MOD’s finances and ward off cuts to the Navy. However, we read this weekend that the Treasury had given him the cold shoulder, saying emphatically that no more money would be available. Some reports have even suggested that he did not even make such a request to the Treasury.

Will the Minister clarify exactly what is going on? Is it the MOD’s view that—as all hon. Members in this debate have argued and so many defence experts have stated—there is no rationale for effectively ending the Navy’s amphibious capability? If she is prepared to say that, she will have the support of all her party and the Opposition. Surely we all need to recognise that this issue is above crude party politics; it is about our country’s ability to defend itself effectively, which it cannot do without an amphibious capability.

10.47 am

The Parliamentary Under-Secretary of State for Defence (Harriett Baldwin): I congratulate the hon. Member for Stoke-on-Trent North (Ruth Smeeth) on securing this debate—the second debate of hers that I have replied to in a week, which truly demonstrates her passion for and dedication to our armed forces. She is not only a member of the Defence Committee, but chair of the all-party group on the armed forces covenant and deputy chair for the Royal Navy of the all-party group for the armed forces, which you chair, Mr Gray.

The 11 Back Benchers who spoke in the debate unanimously supported the UK’s amphibious capability in the 21st century. As so many right hon. and hon. Members said, our amphibious capability is a vital component of our nation’s power projection capabilities. The Royal Navy’s LPD-class ships HMS Albion and HMS Bulwark provide afloat command and control facilities and capabilities needed to deploy and sustain the lead commando group ashore by air and sea. They can embark one large helicopter or up to three medium helicopters on the flight deck and carry the equipment required to support aircraft operations. In addition, Lyme Bay, Mounts Bay and Cardigan Bay, the Bay-class ships of the Royal Fleet Auxiliary Service, provide the capacity and capability to deploy our expeditionary strike forces. I am sure all hon. Members present thank the crew of RFA Mounts Bay for their incredible work over the summer and autumn, having been pre-positioned for hurricane season in the Caribbean. [HON. MEMBERS: “Hear, hear!”]

The UK’s amphibious capability will be further enhanced by our new Queen Elizabeth-class aircraft carriers. As we stated in the 2015 strategic defence and security review, we will enhance a Queen Elizabeth-class aircraft carrier to support our amphibious capability.

Colleagues have asked about HMS Ocean. Just to clarify matters again for the record, SDSR 15 allocated £60 million to optimise the QEC carriers, to meet the demands of the landing platform helicopter role, including the communication systems for amphibious operations, improving services on carriers for the Royal Marines, providing ammunition storage and expanding helicopter operating capacity. The initial operating capability for the helos is in summer 2018. This commitment demonstrates the importance that the Government place on the future of our amphibious forces and the vital role that they will play in the defence of our nation.

An essential part of that future is, as we have heard, our elite amphibious commando force, the Royal Marines, and Members have rightly paid tribute to them. The Royal Marines are held at very high readiness, trained for worldwide rapid response and often operate in difficult or dangerous circumstances. So far, they have given us 353 years of unbroken service, in support of the UK’s national interests and often in the defence of others.

Members should note that, as of 1 October 2017, the Royal Marines’ full-time trained strength is approximately 6,520, which is 99.3% of its 6,570 liability. We will continue to have the appropriate number of frontline Royal Marines to achieve all taskings, and we will ensure that the Royal Marines are properly trained and equipped to perform a wide range of crucial tasks that we ask them to undertake.

This debate has no doubt been prompted by speculation in the media on the future of the amphibious ships. As Members will be aware, the Government have initiated work on a national security capability review, which is being conducted to ensure the UK's investment in national security capabilities is as joined-up, effective and efficient as possible for the threats that we face in the 21st century. This work is being led by the National Security Adviser, with individual strands being taken forward by cross-departmental teams, and the Ministry of Defence is contributing to this review and considering how we can best spend what is a rising defence budget, in order to support it.

We are indeed committed to increasing the £36 billion defence budget by at least 0.5% above inflation every year for the rest of this Parliament. Indeed, we are one of only six NATO allies who are currently meeting the guideline to spend at least 2% of GDP on defence, and we are also one of only 13—

Wayne David: Will the Minister give way?

Harriett Baldwin: I am very conscious of time here, but I will give way very briefly.

Wayne David: I thank the Minister for giving way. She has talked about speculation, but will she confirm or deny the press reports that the new Secretary of State for Defence has asked the Treasury for more money?

Harriett Baldwin: I can confirm that there have been press reports. *[Laughter.]* I can also confirm that we are one of only 13 NATO countries that meet the guideline to spend 20% of our defence budget on major equipment and research and development. I can also confirm that the Ministry of Defence will spend £178 billion on equipment and associated support between 2016 and 2026.

Dr Julian Lewis: Will the Minister give way?

Harriett Baldwin: Members are eating into my time, but I will give way to the Chair of the Defence Committee.

Dr Lewis: I am grateful to the Minister for giving way, but she does seem to have moved into discussing general expenditure issues and away from the specific topic. Does she remember writing to me on 25 January this year to say:

“There are no current plans to decommission the ships”—
that is, HMS Albion and HMS Bulwark—
“early, and I can reassure you that their out of service dates are 2033 and 2034 respectively...HMS Bulwark continues to prove a vital asset to the Royal Navy...HMS Albion...is programmed to replace HMS Bulwark as the high-readiness ship this year”?
Does that remain the position?

Harriett Baldwin: I can indeed confirm that I not only wrote those words but recall writing them.

Dr Lewis: Does that remain the position?

Harriett Baldwin: I have already made it very clear on the record what today's position is. *[Interruption.]*

We can all see that the global security context is challenging. So, Members would expect us to ensure that, as we spend our growing budget, we focus expenditure

on those capabilities that are most effective at keeping us and our allies safe, and at deterring or defeating our adversaries or potential adversaries.

Carol Monaghan (Glasgow North West) (SNP): Will the Minister give way briefly?

Harriett Baldwin: Members are very much eating into my time, Mr Gray, but I give way.

Carol Monaghan: I thank the Minister very much for giving way. Of course, the resources that keep us safe are unable to do so just now, because there simply are not enough of them. We now regularly see Russian submarines and warships in our waters, and we have nothing that we can throw at them to keep them out.

Harriett Baldwin: Well, Mr Gray, I really do not know where to start with that intervention, because the hon. Member and I disagree so profoundly on what we need to spend money on to ensure the security of this nation. Frankly, she might want to ask the former leader of her party why he wants to take a gig on Russia Today. *[Interruption.]* That is my response, because that is how we send out a strong message in terms of the strength of this country.

Mr Gray, I really do not know where to start in terms of the Scottish National party's priorities, but I will say a few words about ours. *[Interruption.]*

James Gray (in the Chair): Order. If I may, I will nudge the Minister gently back towards UK amphibious capability.

Harriett Baldwin: Indeed. In our national security capability review, we seek to understand how to spend that growing budget in the most intelligent way, by further modernising our armed forces against the traditional and non-traditional threats that we now face. In that context, it is only right that all areas of business across defence—

Mr Kevan Jones: On a point of order, Mr Gray. We have had a very good debate this morning. A lot of questions have been asked by Members across the Chamber. Now, call me old-fashioned, but I thought it was the role of the Minister when replying to a debate actually to reply to it and not just read out a prepared statement.

James Gray (in the Chair): I am grateful to the hon. Gentleman for that point. Of course it is not a point of order; the Minister may indeed say what she likes when replying to the debate. However, if she replies inadequately, that is of course a matter for the record.

Harriett Baldwin: Mr Gray, in considering how I respond to this debate, I am very conscious of the lack of time available to me, but I will respond to a few of the points that were raised in the debate.

My hon. Friend the Member for South East Cornwall (Mrs Murray) and the hon. Member for Plymouth, Sutton and Devonport (Luke Pollard) both spoke about the important role of HM Naval Base Devonport and the particular importance of the south-west of England, which continue to be so vital for the Royal Navy. Also, I

[Harriett Baldwin]

was very pleased to learn that the father of my hon. Friend the Member for Torbay (Kevin Foster) had served on HMS Albion.

I want to leave a couple of minutes for the hon. Member for Stoke-on-Trent North to speak at the end of the debate, so I will conclude by saying that the national security capability review is ongoing work. I can say that no decisions have been put to Ministers and, at this stage, any discussion of the options is pure speculation. I emphasise that, while the review continues, the naval service continues to meet all of its operational commitments. I further affirm to hon. Members that, in order to protect the UK's interests at home and abroad, the Government remain committed to the future funding, support and capability of our armed forces.

10.58 am

Ruth Smeeth: First, I thank all right hon. Members and hon. Members for contributing to this broadly consensual but vital debate. It has been incredibly disappointing not to have confirmation from the Minister that there will not be cuts to our amphibious capability. It is the day before the Budget and it would have been incredibly helpful for all of us if we could have gone forward to tomorrow knowing that that capability will not be cut.

To clarify a couple of points for the record, I am a *Mirror* reader and not a *Sun* reader. [Laughter.] It has also been incredibly important that everyone here today has recognised that the views of our allies are key in terms of our capabilities in the future, as are our NATO responsibilities, which we have already committed to; unfortunately, they were not touched on by the Minister. We have commitments in the next two and a half years that we will not be able to fulfil if we do not have HMS Albion and HMS Bulwark.

I urge the Government not to dig in; instead, they should recognise the advice of the right hon. Member for Rayleigh and Wickford (Mr Francois)—this simply is not a political battle that is worth fighting.

Question put and agreed to.

Resolved,

That this House has considered UK amphibious capability.

Shepton Mallet Community Hospital

11 am

James Heappey (Wells) (Con): I beg to move,

That this House has considered the temporary closure of in-patient beds at Shepton Mallet community hospital.

It is a pleasure to serve under your chairmanship, Mr Gray. I thank the Minister and her team not only for coming to respond today but because they, like me, have been speaking to local health authorities in Somerset in preparation for the debate.

There are two parts to today's discussion: the temporary closure of the in-patient beds at Shepton Mallet and the longer-term future of the site—the redevelopment of existing facilities to create a community health campus.

The decision on temporary closure was announced very late indeed. Only about three weeks' notice was given to patients and the community and, worst of all, to the staff. The reason given for temporary closure was that insufficient nurse cover was available. Understandably, that was very vigorously challenged by the staff at the hospital, who knew that the overall rota statistics for both day and night shifts were 100%. Shepton Mallet Community Hospital was fully manned, was running well and had some of the lowest agency costs in the entire county. Under scrutiny at an excellent public meeting held in Shepton Mallet two weeks ago, Somerset Partnership NHS Foundation Trust was forced to accept that actually, what it was seeking to do was to break up a team that was working well and was fully staffed, in a hospital that was fully operational and able to deliver all that it should in the beds that it had, in order to fix rotas elsewhere.

I do not know about you, Mr Gray, but I have always believed that “if it ain't broke, don't fix it” is a pretty good motto to live by, and that would appear to make the trust's decision to close temporarily a hospital ward that was functioning well to try to fix the system elsewhere somewhat nonsensical, not least because when the temporary closure comes to an end—I am sure the Minister will agree that the local health authorities are adamant that the closure is temporary—the trust will have to reconvene those staff and get everything up and running again. What everyone is agreed on—it is important to emphasise this—is that this is not a financial measure. No one—we are told—is seeking to make a saving from it. Indeed, the chief executive of the Somerset clinical commissioning group told me on the telephone yesterday that if there was an option to just put more money into this he would have done so.

The reality is that there is a challenge with nursing availability elsewhere in the county; I understand that about 34 vacancies within the county need to be filled. That clearly cannot be sorted overnight. It does not excuse the temporary closure of Shepton just because it had a full rota, but I accept that there is a wider county issue and, if my disagreement with the decision over Shepton is lodged, there is clearly a challenge for the local health authorities, for NHS England and, indeed, for the Government in filling those nursing vacancies in the county as quickly as possible.

One area where there has been some disagreement, and where I think Shepton Mallet Community Hospital has been left unnecessarily vulnerable, is that for the past few years, urgent repairs to the fabric of the hospital building, including the boiler, have been postponed by

NHS Property Services, under cover of an enthusiastic discussion about redevelopment on the site and the creation of a health campus. That would have meant the addition of a new build extension to the Shepton Mallet treatment centre, into which the in-patient ward, the out-patient clinics, a GP practice and some public health facilities would have gone. However, we are now in a really frustrating position where the outgoing chief executive of the trust said at the public meeting the other week that when the staff of the trust were looking at options for managing the shortage of nurses, they looked around and, as Shepton Mallet and Chard were small hospitals and the fabric of their buildings was causing them concern, they made the decision to close them, regardless of their success in filling their rotas.

My constituents' anger is understandable. They know that NHS Property Services, which is responsible for the maintenance of the existing community hospital, knows that there is a big maintenance burden and has chosen not to maintain those buildings, on the basis that we were going to get a new hospital. In the process, however, that decision has meant that Shepton has been a soft target for temporary closure.

That leads me to my first ask. The Minister will hopefully agree that, from this moment on, no matter what the prospects for redevelopment into a community health campus, NHS Property Services should be required to get in there and urgently fix the buildings, as they are—the local health authorities have been clear that this is just a temporary closure and, therefore, an in-patient bed facility at Shepton Mallet Community Hospital is expected to resume in the near future. The conversation about redevelopment can go on concurrently, but repairs can no longer be postponed on the basis that something new might be built.

My second ask is that the nonsensical decision is challenged once more. I hope that the Minister might just go back and ask, as I have on a number of occasions, "Really?" There is an opportunity here to put back in place a team that was succeeding. The Minister will be keen to know, I am sure, about the excellent crowdfunding campaign in the town. It has raised thousands of pounds for a legal challenge, because there is a suggestion that the temporary closure may be illegal, in that it has not been properly consulted on. I encourage the Minister to go back and ask again whether the hospital can really be closed when it was succeeding so well.

Thirdly, I hope that the Minister will direct NHS England and her colleagues in UK Visas and Immigration to make it as easy as possible for the immediate needs of the staffing rotas for nurses in Somerset as a whole to be met by migrant nurse labour as urgently and quickly as possible. Of course, we would like to say that it would be great to bring British nurses who have left the career back into service, but the reality, in trusts all over the country I believe, is that the most immediate way to supply nurses at short notice is to go overseas. I understand that the Government have previously been able to expedite the visa process and I hope that the Minister will be able to assist in that.

Fourthly, if the temporary closure decision must stand, will the Minister agree to work with me to ensure that, first, the local health authorities are required to give us, in writing, a clear timeline for the reopening of the beds in Shepton Mallet? Secondly, will she agree to meet me in early January and again in early February,

after speaking to the Somerset Partnership NHS Foundation Trust, so that she and I may take stock of the progress the trust is making in filling the vacancies, and so that we may satisfy ourselves that the temporary closure will end on the date to which the trust has committed? Will she ask the Secretary of State to agree to a meeting in March, shortly after the date on which I believe the trust says the temporary closure will come to an end? I would hope that such a meeting would not be needed, but at least it would focus minds, and should the ward not reopen on the agreed date, all those responsible for the failure could come up and explain to the Secretary of State why the deadline had not been met.

As I said in starting this speech, with the temporary closure of the ward—as frustrating as it is and as much work as there is to do to ensure that it is genuinely temporary and as short term as possible, so that the ward is reopened as early as possible—there is a wider discussion about the future of the Shepton Mallet Community Hospital. The vision for a Shepton Mallet health campus is exciting. While I was campaigning for election in 2013, the Secretary of State visited Shepton Mallet Community Hospital and met with the league of friends. He was excited about the plans they and local health authorities had for a health campus on the site. There have been years of meetings to discuss that vision.

The idea was that there would be a GP surgery, out-patient clinics, public health and a pharmacy on site in addition to the hugely successful Shepton Mallet treatment centre, which is run by Care UK and does elective procedures as commissioned by the health authorities. The idea also included two ambulatory care beds, two assessment beds and eight in-patient ward beds. That was the vision. All of that made it into Somerset's sustainability and transformation plan, and we were hugely pleased to have that vision there. Since then, the GP practice has fallen by the wayside because there are issues over releasing the GP practice from its mortgage on its current site. That is a private business issue for the GP practice and NHS England, and it has been frustrating that that has not been unlocked. I hope that the clouds may part and the sun will shine and it will somehow still happen, but that is a separate issue, which I do not want to labour today.

Other than the GP practice, everything else was still in the plans. As recently as January, I sat down with the hospital director for Shepton Mallet treatment centre and the then chief executive of the Somerset clinical commissioning group, and I was shown the plans for this amazing health campus. It looked fantastic. It felt so close that you could smell the freshly painted corridors, Mr Gray. The problem is that since then things have gone horribly wrong for Somerset clinical commissioning group. From nowhere, it is now forecasting a significant deficit, which has brought with it the requirement for a change in leadership. Worse still, it turns out that after years of work, the STP needs to be revised because NHS England has reservations about the strategy underpinning it. I understand that when Simon Stevens visited a couple of weeks ago, there was not much coffee being served at the meeting.

The situation is a very bitter pill to swallow for me and for those in the community who have been working so hard to secure the vision of a health campus. I now

[James Heapey]

understand that everything is back under review. I look forward to resuming the debate with local health authorities about what that health campus should look like. Nothing has changed, in that the vision is obviously for community hubs to deliver healthcare. I accept that there is some discussion about the validity of in-patient beds, but with a population as sparse and a demographic as challenging as Somerset's—along with the acute pockets of deprivation within the county—the demand for beds in Somerset has perhaps been higher than elsewhere, and those occupancy levels might indicate why Somerset has maintained a higher level of in-patient beds than some other places.

After so many years of discussion, the situation is disappointing. So many hours have been spent in committee developing first the STP and then the plans for a community health campus in Shepton Mallet. First, because of the nursing shortage, which must have been known about months and months ago by the Somerset Partnership NHS Foundation Trust, a successful and winning team at Shepton will be broken up to try to plug gaps elsewhere in the county. Secondly, the plans we had for a health campus in Shepton were hugely exciting. It is surely the model we should be transitioning to for a community-based healthcare system that keeps people out of acute hospital facilities and facilitates their discharge from acute hospitals as quickly as possible. That is not to mention the fact that the geography of my constituency lends itself to such community facilities, because I have no significant hospital in or very near my constituency. My constituents divide in equal measure between Weston-super-Mare and Bristol to the north-west, the Royal United Hospital in Bath to the north-east, Yeovil to the south-east and Taunton to the south-west. Having those community facilities when hospitals are all 20 miles or so distant in each direction is an important part of maintaining the right health network for my community and ensuring that we get people out of acute hospitals or stop them going there in the first place.

The argument for good, well-developed community healthcare facilities is easily made, and I am disappointed that after years of trying to develop such facilities at Shepton Mallet, the Somerset clinical commissioning group appears to have failed. I am disappointed that the STP is now up for revision, especially when we had won the argument over having eight plus two plus two beds in a redeveloped Shepton Mallet health campus. I hope very much that the Minister will join me in applying as much pressure as she can to the Somerset clinical commissioning group to ensure that the STP is revised as quickly as possible, and that Shepton Mallet does not lose out in that process.

11.15 am

The Parliamentary Under-Secretary of State for Health (Jackie Doyle-Price): It is a pleasure to serve under your chairmanship, Mr Gray. It is also a pleasure to respond to my hon. Friend the Member for Wells (James Heapey), who has brought the required amount of passion to this argument. He is doing exactly what he should do to stand up for his constituents after the local health establishment made a very rapid decision regarding his hospital. It certainly came out of the blue for many

people, but I would like to give some explanation as to why the decision was made and perhaps a message about where we may go in the future.

In the short term, we have the closure, but what happens beyond that is very much up for review. I commend my hon. Friend on the constructive way in which he has engaged with local health practitioners while still giving them a challenge. That is always the way to go with these debates. As we all know, the challenged situation we are facing is not only in terms of money. As he acknowledged, in this case the issue is not money; it is workforce across the trust. The challenged situation means that we will have to make some difficult decisions, and we should make them on the basis of constructive dialogue, not who shouts loudest. I certainly agree to his request to have more discussions on this matter in January. Although the decision-making process is independent, we as Ministers will want to satisfy ourselves that processes are being properly followed and representations are being properly heard.

The reality is that any decision of this kind has to be taken with full transparency and full accountability. Robust argument will withstand challenge. I look forward to taking the dialogue with my hon. Friend further. I also welcome the forward-looking points he made about the future campus and looking at future needs. All too often in such debates we look at the immediate short-term challenges without addressing the long-term ones. If we looked more at the long term, we might come to better decisions, rather than short-term ones.

I understand my hon. Friend's concern about the impact that changes at Shepton Mallet Community Hospital will have on his constituents. I reassure him that changes will always be in the best interests of patients and the local community. Decisions must be driven by what is best clinically, what is best for the health service in the area and what is of most benefit to the greatest number of people in the area. He asked me to direct the trust to reverse the closure. We are very much of the opinion that it is right that such matters are addressed at the level where the local healthcare needs are best understood, rather than in Whitehall. I give him the assurance that I will join him in holding local decision makers to account to ensure that their decision making has been properly accountable and robust.

It is worth reiterating that all proposed service changes should meet the four tests for service change: they should have support from GP commissioners, be based on clinical evidence, demonstrate public and patient engagement, and consider patient choice. In addition, NHS England introduced a new test applicable from 1 April 2017 for the future use of beds. It requires commissioners to assure NHS England that the proposed reduction is sustainable over the longer term and that key risks, such as staff levels, have been addressed.

I will first outline what led Somerset Partnership NHS Foundation Trust to announce on 11 October the temporary closure of in-patient wards at two of its 13 community hospitals across the county. As my hon. Friend has pointed out, the decision was not financial; it was based on patient safety. Overall, Somerset Partnership provides 222 community hospital beds, spread out over 13 community hospitals. Plans drawn up for an expected increase in patients over this winter made it clear that although sufficient funding was in place to maintain services, the trust was facing vacancies in a quarter of

its registered nursing posts, meaning that the trust nursing workforce was spread far too thinly at the time. Following a review, it was found not to be sustainable to continue to safely deliver in-patient services across all 13 sites.

To address safety concerns, the trust made the decision to move 10 beds at Shepton Mallet hospital and 14 beds at Chard hospital, along with their staff, to other community hospitals in Somerset. I fully appreciate the case that my hon. Friend has made about the services at Shepton Mallet being robust. I understand why the move feels particularly unfair, but we will have to address that in consultation as we take the matter forward.

The trust has said that the two in-patient wards are likely to be temporarily closed until at least the end of March 2018, but that the current total of 222 community beds and all current services across Somerset will be maintained. Somerset CCG has endorsed the move and is in the process of considering community hospital services and provision as part of a wider clinical services review across the county next year.

We talked earlier about criteria and how trusts should come to decisions: in full openness and consultation with staff and the public. I understand that the trust communicated with a wide range of staff and stakeholders on its plans to temporarily close the wards, including with the local county council, which supported the action taken by the trust on the grounds of patient safety. I am also pleased to say that the trust held all day face-to-face drop-in sessions with members of the public, as well as a public meeting organised by the League of Friends of Shepton Mallet Community Hospital, which was attended by 120 people, including my hon. Friend and local councillors.

The trust has also organised a workshop event in the town for key local stakeholders on 30 November to seek the views of patients and carers while the ward is temporarily closed, and has developed a wider consultation document to inform its next board meeting on 6 February. I urge my hon. Friend and his constituents to engage in that process and make their voices heard. I want to reassure him that Somerset CCG has not put the trust under any financial pressure to temporarily close the wards at Shepton Mallet Hospital.

As my hon. Friend has pointed out, the issue is not about money. It is solely down to the issues around nurse recruitment, and the trust is working hard to improve on that. It has recruited two specialists who have extensive experience of specialised nursing recruitment. It is also offering more intensive support for potential recruits to increase the rate at which they take up posts. It is also working with Yeovil District Hospital to recruit nurses from the Philippines. I am pleased to learn that already there is a large number of interested nursing staff, which the trust hopes will be recruited and in post from April 2018. Furthermore, the trust is revisiting its current golden hello bonus of £1,000 to see how it can be better tailored to individual needs and it is looking at how else it can attract nurses to the trust.

Owing to staffing issues, the CCG supports the closure on the basis that, as my hon. Friend has pointed out, it is temporary and has been made on patient safety grounds, not on financial ones. It has been made clear that there can be no permanent closure of the wards at the community hospitals without prior patient and

public engagement and formal public consultation. The CCG fully expects the beds to be reopened after the winter.

By taking planned measures now, the CCG is reassured that that represents the safest way of avoiding the potential risk of disruption to patient care should we see severe winter weather or the predicted higher than average levels of sickness from flu.

James Heappey: There is some concern locally about what the consultations look like. The Minister, briefed by local health authorities, has relayed that a “consultation” was conducted in the last few weeks of November ahead of the temporary closure. The reality is that that, including the agreement of Somerset County Council, was done after the solution was presented as a fait accompli. Can the Minister reassure me that the health authorities will be explicit with the community and all other stakeholders when having such a consultation about permanent closure and that the discussions going on right now about the temporary closure will not in due course be dressed up as the consultation leading to permanent closure?

Jackie Doyle-Price: My hon. Friend has the nub of the issue completely. To inspire confidence among his constituents, we as decision makers need to be very clear about the basis on which the decision was made and how future decisions will be made. The short-term consultation was about a decision made purely to get us through winter for patient safety reasons. For any long-term closure there would have to be a full consultation, fully transparent and fully accountable. I know he will hold me as well as his local trust to that. I do not think I can be firmer. We inspire confidence in the public and in patients who use the services only if we are fully transparent in making decisions. It is unfortunate that the speed with which this particular decision had to be made in order to get us through the winter will have undermined confidence. Of that there is no doubt, but rest assured I will continue to engage with him to make sure we can restore public confidence among his constituents in future.

As I have mentioned, the decision taken has allowed the trust to consolidate beds and staff into fewer hospitals, but larger wards. Closing the wards has reduced the number of unfilled shifts by 60 shifts a week: the equivalent of 13 nurses. Regrettably, since the closure, three Shepton Mallet patients have been admitted to surrounding community hospitals—one patient is in West Mendip and two are in Wincanton. I am advised that, as a result of the temporary closures, the trust has provided support budgets to enable carers and relatives who need financial assistance to visit patients. I should also add that all of Somerset CCG community hospitals have free car parks, so if people are visiting their loved ones, they will not have to pay. I should point out that that is not a privilege enjoyed by many other areas.

My hon. Friend talked about the long-term plans for a health campus. Both Chard and Shepton Mallet have been assessed as requiring significant redevelopment. Chard Community Hospital infrastructure was assessed as not fit for purpose by a 2015 Care Quality Commission inspection. As he pointed out, Somerset CCG is developing a clinical services review that will take into consideration

[*Jackie Doyle-Price*]

the views of patients before developing a series of service proposals, which will ensure that family doctors, community hospital and district hospital services are joined up with social care services and provide financially sustainable and high quality care. It expects to engage with the public on those proposals in the new year. I know he will engage in that process.

The decision to temporarily close wards at the hospital is an important issue and the decision was not taken lightly. However, the decisions made by the trust have not been made because of financial concerns, but because of nurse recruitment issues. I know that the decision will cause concern to the residents of Chard and Shepton Mallet and the surrounding villages, but I urge my hon. Friend to encourage his constituents to attend the trust's local public meetings and listen to what is said about addressing the issues that have caused the temporary ward closures, as well as making sure their voice is heard. We will all understand each other better with that dialogue. The people affected by the changes need to be involved in expressing their views and making key decisions.

Our starting point for discussing service change is that no permanent changes to the services that people currently receive will be made without formal public consultation. I reiterate that strongly to my hon. Friend. I conclude by encouraging him to continue to engage with Somerset Partnership Trust, Somerset CCG and me in the new year as the proposals are brought forward.

Question put and agreed to.

11.29 am

Sitting suspended.

Medicines Regulation

[*GERAINT DAVIES in the Chair*]

2.30 pm

Helen Goodman (Bishop Auckland) (Lab): I beg to move,

That this House has considered the future of medicines regulation.

What a pleasure it is to see you in the Chair, Mr Davies. I am very pleased that you have been elevated to the Panel of Chairs. Yesterday, the European Parliament agreed to move the European Medicines Agency from London to Amsterdam. Today, we are asking the Minister to tell the British Parliament what will happen to medicines regulation in this country after we have left the European Union. My concern arises from the fact that I have a GlaxoSmithKline plant in Barnard Castle in my constituency that employs 1,200 people. Winston Churchill decided that production should take place in the middle of the Durham countryside, so it would not be hit by Hitler's bombs; I certainly hope that it will also survive the Government's Brexit.

Nick Thomas-Symonds (Torfaen) (Lab): I congratulate my hon. Friend on securing this timely and important debate, and declare an interest as the chair of the all-party parliamentary group on off-patent drugs. Does she agree that, irrespective of what happens with the Brexit negotiations, the Government should guarantee that any patient who needs access to drugs will not wait any longer as a result of Brexit?

Helen Goodman: In one sentence, my hon. Friend gets to the nub of the issue; I will probably take 20 minutes to reach it. He is absolutely right. The problem is that the Government did not make a plan, and as yet have not resolved how they will regulate medicines from 1 April 2019. I have been asking about that for a year. We have had no clear explanation, no policy statement, and no impact assessment. The Government refused to debate the matter in the course of the legislation for triggering article 50. We have not been able to debate it properly as part of the scrutiny of the European Union (Withdrawal) Bill, which is in Committee today, in parallel with our debate.

We are therefore extremely interested to hear what the Minister will say, especially as two months ago there were leaks from the Department of Health that the Secretary of State was flirting with the idea that we should leave the EMA and join the American Food and Drug Administration. I was particularly surprised that that was being floated, because the Association of the British Pharmaceutical Industry has said consistently that it thinks that we should be aligned with EMA standards. Alignment with Europe on regulation of medicine does not simply mean having the same rules on exit day; it means having a mutual recognition agreement with the EMA, and continued alignment of future regulations as they change, which they inevitably will.

Jim Shannon (Strangford) (DUP): I congratulate the hon. Lady on what she is saying. Obviously, as a Brexiteer, I probably have a very different opinion about what will happen on 31 March, but that is by the bye. Does she

agree that it is imperative that the phenomenal work done by the Medicines and Healthcare Products Regulatory Agency and the EMA, which she referred to, can continue? Ensuring that we are able to supply safe and effective medication not simply to the UK but to all nations worldwide must be high on the priority list of the Brexit team. That is something that she and I very much agree on.

Helen Goodman: The hon. Gentleman truly is a gentleman, and I agree with him entirely. We want to see continued UK participation in EU regulatory and medicine safety processes as well. The ABPI has also said, reasonably enough, that it wants to maintain trading terms equivalent to being a full member of the customs union, and to have a common system for VAT.

In May, the EMA and the European Commission issued a statement saying that if the United Kingdom does not stay in the single market, stick with the EMA, or join the EEA—the European economic area—but goes for a clean break, drugs made in the United Kingdom will no longer be authorised for use in the European Union, and drugs made in the European Union will no longer be authorised for use in the UK. Tackling that would involve costly and time-consuming checks. It could even mean that the availability of drugs would diminish dramatically.

What response have the Government made to that statement? What practical steps have Ministers taken? All we have seen is a letter from the Secretary of State for Health and the Secretary of State for Business, Energy and Industrial Strategy to a newspaper, which said that they want a “close working relationship” with the EU, and that patient safety matters, as does certainty, long-term stability, and innovation. The letter said that Ministers will set up a regulatory system with competitive fee pricing. This afternoon, we would like the Minister to explain that.

Currently, the UK Medicines and Healthcare Products Regulatory Agency—MHRA—contributes to the EMA's work, and the UK pays approximately a fifth of the overall costs. It is universally acknowledged that the MHRA could not take on the task of licensing all drugs without astronomical costs for the industry and the taxpayer.

Dr Philippa Whitford (Central Ayrshire) (SNP): Is part of the problem not that there appears not to have been a specific assessment of all the health-related impacts of leaving the EU?

Helen Goodman: I agree entirely. We tabled amendments when the article 50 legislation went through requesting impact assessments on many things, including the effect of possibly leaving the EMA, and we have not heard about them. That is extremely alarming, because it gives the impression that Ministers are basing decisions not on fact and analysis, but on prejudice and assertion—not a very good basis when it comes to health or economics.

This issue matters because life sciences and pharmaceuticals is one of the UK's most successful industries. The combination of first-class scientific research in our universities and high-quality manufacturing means that we have been exceptionally successful. The life sciences employ 220,000 people—of which pharmaceuticals accounts for 90,000—in good quality, well-paying jobs. They are careers, not gigs. The industry is innovative

and internationally competitive. In fact, it has the highest manufacturing gross value added, which means that every employee contributes £330,000 to the British economy every year. The value of our exports is £30 billion. Obviously, the industry wants to continue in those collaborations and develop new medicines.

One of the major costs in pharmaceuticals is research and development; another is complying with regulations. Inspections take several days, and internationally there are two dominant regulators: the EMA, which looks at about a quarter of all drugs globally, and the American FDA, which looks at about a third. Clearly, we do not want regulatory complexity, because that would simply add to costs. As Andrew Witty, the former head of Glaxo said, when the regulatory systems of 27 European countries were unified into one, that was a big deal.

Ministers need to keep in mind that the pharmaceutical industry is international and highly mobile. There is world-class production in France, Switzerland and America, and generics are made across the globe, in China and India. Senior executives answer to their shareholders; if it is cheaper to move, they will, so we need to do everything we can to keep costs down in this country. Quite honestly, I cannot understand why Ministers do not just commit to staying in the EMA—it is so obviously the cheapest and simplest solution—but their crazy ideological obsession with escaping the European Court of Justice means, to quote the Secretary of State for Brexit, “putting politics above prosperity”.

What is even worse is that Ministers are cutting across their own stated principles and are creating a highly uncertain environment. Business needs certainty to invest. For example, in my constituency, a new production facility was started a year ago. It will cost £120 million and will take four years to come into production. We are now only 16 months away from 1 April 2019, but yesterday, AstraZeneca wrote to Members of Parliament to say that it needs a transition period of two to three years.

The Prime Minister made things worse—I do not think she intended to, but she undoubtedly did—when, in her Florence speech, she said there would be a transition period. Everybody imagined that there would be time to look at what the post-Brexit regime would be, to have clear negotiations and to make a plan—to go through everything in a systematic way. Her insistence on putting the March date into legislation shrank that time overnight, from 40 months to 16 months.

Industry is taking decisions now. One plant has already closed in Southampton. GSK is implementing its contingency plans nationally, which include relocating some members of staff to other European Union countries. In Barnard Castle and Ulverston, it is reviewing the production of cephalosporins, which my hon. Friend the Member for Barrow and Furness (John Woodcock) will talk more about later in the debate.

But this is not just about jobs; it is also about health. Every month, the United Kingdom sends 45 million medicine packets to Europe and we receive 37 million medicine packets from Europe. Some 80 million people need those medicines. Border delays in the medical supply chain will affect not just the final product but intermediate production, especially where we are talking about time and temperature-sensitive drugs, such as for cell and gene therapy. More than 2,600 final products have some stage of manufacture in the UK. Delays as

[Helen Goodman]

they cross the border during production could mean the loss of lives. That is why the Association of the British Pharmaceutical Industry and its European counterparts wrote a joint letter to Monsieur Barnier, the European negotiator, and the Brexit Secretary of State, to sort this out promptly. Ministers should put patients and public health first, and should start co-operating with the European Union on solving this problem. Given the long lead times, they need to speed up the work and sort out the transition phase.

I have seven questions for the Minister. Will he rule out introducing a freestanding, new, regulatory structure? Will he rule out incorporating the MHRA into the American FDA? Will he confirm the Government's stated aim of keeping British regulation aligned with the EMA's European regulation? Will he tell us what moving the EMA and setting up a new regime will cost? Will he set out the legal basis for our continued co-operation and participation in the EMA system from 1 April 2019? Will he say how he intends to legislate? And will he commit to more than another 90-minute debate on an affirmative statutory instrument? If he cannot even do that, half of the debating time that Parliament will have on this important subject will be this afternoon.

2.45 pm

Heidi Alexander (Lewisham East) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. I congratulate my hon. Friend the Member for Bishop Auckland (Helen Goodman) on securing the debate and on introducing the topic in such a comprehensive manner.

This debate is both timely and hugely important. It is timely due to the announcement yesterday that Amsterdam is to become the new home of the European Medicines Agency when it leaves London—a relocation that is necessitated by our departure from the EU, and which also symbolises the changing regulatory environment—and it is hugely important because, although the word “medicine” conjures up images of bottles of cough medicine being bought over the counter, it encompasses the whole range of drugs and pharmaceutical products used to treat the many different illnesses, diseases and chronic conditions that could affect each and every one of us over our life course.

If we think the EMA leaving London is bad, the potential implications of the UK leaving the EMA are far worse, and we should be clear—leaving the EMA is precisely what the Government envisage happening. As the Health Secretary said when he appeared before the Select Committee on Health in January this year, he does not expect us to stay in it. The Prime Minister's ideological red line on European Court of Justice jurisdiction makes it impossible. The loss of 900 jobs and all the associated economic activity brought to our country as a result of the EMA being headquartered in London pales into insignificance when we contemplate the possible consequences of withdrawing ourselves from the EMA's pan-European drug-licensing processes and its supervisory and compliance mechanisms, which have a key role in ensuring that medicines on the market here are safe and effective.

The Government have given little information about how their desired future close co-operation with the EU might work on medicines regulation. Indeed, as recently

as July, the chief executive of the Medicines and Healthcare Products Regulatory Agency, the national regulatory body that works alongside the EMA in the UK, suggested that two options were being considered by the Government. One is a partnership approach, where presumably the UK would seek to mirror future EU authorisations in order to maintain regulatory equivalence going forward; the second is a stand-alone system, whereby the UK could diverge from EU regulations, perhaps aligning itself more closely with American, Australian or Canadian systems.

Mr Gregory Campbell (East Londonderry) (DUP): Would the hon. Lady agree that, whatever route the Government decide to take, one of the things that we must protect—this was alluded to earlier in the debate—is the excellence of the research and development facilities that we have across the United Kingdom? That must be paramount in the considerations by the Government, as we go beyond March 2019.

Heidi Alexander: I agree with the hon. Gentleman, but when I speak to scientists at institutions across the UK, they are already seeing the effect of last year's referendum result in terms of EU-wide partnerships being withdrawn and being harder to secure.

It would be helpful if the Minister could update us on which of the two approaches the chief executive of the MHRA talked about in July the Government now favour. It would also be helpful if he could tell us what discussions he has had with Ministers in the Department for Exiting the European Union or with the EU negotiating team about future co-operation on medicines regulation. Has the Minister or anyone from the Department of Health had contact with Australia and New Zealand about potential alignment with their regulatory systems?

I have a lot of questions for the Minister today. Can he be clear about the Government's plans for the so-called transition period that the Prime Minister thinks will follow the conclusion of the article 50 negotiations? After all, it is a mere 16 months away. If pharmaceutical businesses will have to deal with only one set of changes, as the Prime Minister promised, presumably the licensing arrangements for new drugs will stay the same for that period.

I see two main problems in setting up some sort of stand-alone replica system to fill the gap vacated by the EMA if we leave the EU. First, will UK patients get the same quick access to new innovative drugs that come on to the market? Secondly, will UK patients benefit from the same high levels of safety and compliance checks that the EMA currently performs for already-authorised medicines in its role in enforcing standards in the pharmaceutical manufacturing process and at clinical trial sites?

I fear that we could see delays in new drugs being launched in the UK. If a small pharmaceutical company has to choose between paying to get a licence in the EU, which accounts for 25% of the global pharmaceutical market, and paying for one in the UK, which accounts for 3% of the global market, which will it choose? The UK is currently a priority location for launching new innovative treatments, but how long before we become a second-tier country?

What guarantees can the Minister give about the next phase of immunotherapies, which are three to four years away from coming to market? They are potentially

twice as effective as current immunotherapies and could give cancer sufferers an extra three to four years of life. Will UK patients in a post-Brexit regulatory environment get them as quickly as they would if we were still part of the EMA? Can the Minister guarantee that adverse effects among uncommonly used drugs will be picked up as quickly if the expanded patient pool that would be available for checks across the EU is limited to the UK? Will the UK still have access as quickly to orphan drugs to treat the rarest of diseases, for which pharmaceutical companies have less of an incentive to develop products? What about the participation of UK patients in pan-European clinical trials, which are critically important, full stop, but all the more so for rare diseases and illnesses in children, for which the patient pool is smaller? At the moment, a quarter of cancer research clinical trials involve one or several European countries. Will we comply in the future with the new EU clinical trials regulations, which have been postponed and may not be implemented until March 2019?

The Minister needs to answer many questions if the Government intend to diverge from European processes, but there will be basic problems no matter what new system is put in place. How much will all of this work to reinvent the wheel and beef up our regulatory bodies cost? Will we have to ask UK taxpayers to pay a greater amount for this process, given that we currently share the cost with 27 other member states? What preparatory work has the MHRA done to ascertain what the impact of leaving the EMA will be on both its income and its future staffing requirements? What training of staff will need to be done so they can take on responsibility for tasks they have not previously performed? What impact will the relocation of the EMA have on medicines regulation across the whole of Europe?

I read the EMA's Brexit preparedness business continuity plan yesterday, and I admit to having a feeling of utter shame about the disruption that our decision to leave the EU has forced on that agency. The huge upheaval will undoubtedly have an impact not just on this country but on others, too. As anyone who has ever moved office knows, projects get put on hold and the basics become harder to deliver.

There are so many questions to ask, and I am sure I have not touched on even half of them. I would like to finish with some more general observations. In 10 years' time, when we have delayed access to new cancer treatments, compared with, say, France or Germany, will the fact that we have blue passports make up for it? Children with rare diseases will not be able to get new drugs as quickly or easily as they can now, but is that a price worth paying for coming out of the jurisdiction of the ECJ? This is all utter madness. Ministers can bang on about creativity in the negotiations all they like, but we need certainty and clarity. Pharmaceutical companies and patients need certainty and clarity, and the mums and dads of seriously ill children need that, too.

2.55 pm

John Woodcock (Barrow and Furness) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Davies. It is unfortunate that I am following two superb contributions. I congratulate my hon. Friend the Member for Bishop Auckland (Helen Goodman) on securing this important and timely debate. She and my hon. Friend the Member for Lewisham East (Heidi Alexander) spoke powerfully and persuasively about

the risks that the UK pharmaceutical industry in its entirety faces. I am not going to attempt to add to what they said and the questions they asked. Rather, I am going to focus on the cephalosporins business, which is carried out on three sites, two of which are in the UK—in the constituency of my hon. Friend the Member for Bishop Auckland and in Ulverston in my constituency, where there is a genuinely world-class sterile facility where the drugs are created. They are then placed in a powder form in Barnard Castle and in vials in Verona.

As the Minister is surely aware, there was great celebration in Ulverston, and it was heralded by the then Prime Minister and Chancellor, David Cameron and George Osborne, when David Cameron visited the day after the 2012 Budget and made a Budget roll-out announcement that GSK was going to be investing at least £350 million in a new biopharm pharmaceutical facility, largely as a result of the patent-box tax legislation, which the Conservative Government continued from Labour's innovative tax policy, introduced by Prime Minister Gordon Brown. In July, GSK announced—out of the blue, for all intents and purposes—that it is going to pull that investment and scrap the entire project, leaving our community devastated. Not only that, but it is launching a strategic review of the existing cephalosporins business, which has been running for decades across both sites and is growing in profitability and potential.

Although cephalosporins are not a new product, they are well established. British manufacturing of such products in Ulverston and Barnard Castle, and across into the EU in Verona, has enabled them to penetrate new markets and benefit many more critically ill patients in hospitals. They are the very strongest antibiotics, and are typically used in hospitals for people with very serious vulnerabilities and infections. That business had and has a great future, but GSK has clearly signalled at a corporate level that it wishes to divest. Officially, that is a review of the business, but the company at the highest level is clear that it wants to find a new buyer.

When the company dropped its bombshell in July, it was clear and categoric that the decision was not as a result of Brexit. The company took care to say that, and we have to take it at its word. We can detect the thinking of the new chief executive officer, Emma Walmsley—a Barrovian, by the way, which has made the decision all the more stinging—that GSK wants to focus on fewer products, completely cutting some and potentially divesting itself of others. Although Brexit may not have triggered that deeply worrying blow to pharmaceutical manufacturing in the north of England, however, it is certainly a significant factor in whether we will be successful in finding a new buyer for the plant who is prepared to invest and to take the business to new heights, sustaining the employment of people in my constituency and in Barnard Castle, as well as creating more jobs in the decades ahead.

Every business, in no matter what sector, operates on the basis of wanting certainty and stability and of not liking uncertainty or the potential risk in what is at the moment the complete lack of clarity that the Government can give on the future of the regulatory environment for medicines in this country. I therefore really hope that the Minister is listening to what we are saying.

In another sector that is enormously important to our regional economy, civil nuclear, we do get a sense that, at the ministerial level at least, the Government are

[John Woodcock]

working hard to overcome this—I absolutely agree with my hon. Friends—absolutely nonsensical decision to rule out anything based on ECJ jurisdiction, thereby creating all the problems. We need to hear from the Minister that he is prepared to do whatever it takes to ensure that the transition is seamless. He should not only produce something a year down the line but give a level of certainty now, ready for GSK in Ulverston to attract new buyers to the site.

The Minister might be aware that I have formed the GSK Ulverston taskforce—which brings together community stakeholders and the site directors, with input from the Department for Business, Energy and Industrial Strategy and the local authorities—to ensure that we all maximise the chances of attracting a new investor. The decision will principally be a commercial decision, of course, but the Government can help in many ways. I would say that they have a duty and a responsibility to help, given the level to which they heralded the new jobs that have now been cancelled.

Other important areas include infrastructure, but I do not expect the Minister to go into those today. He can, however, acknowledge the difficulty that uncertainty causes to attracting new investors. I hope he will give more certainty today, and he should certainly undertake to go away and come back in short order to inform Parliament of what the relationship will be, so that the Government and we as a taskforce can better communicate that to the stakeholders.

My final request is that the Minister or his counterpart in the other place, Lord Howe—

The Parliamentary Under-Secretary of State for Health (Steve Brine): Lord O'Shaughnessy.

John Woodcock: Lord O'Shaughnessy—apologies, the previous Minister in the Lords has moved on. I thank the Minister here for the correction. I hope that he or Lord O'Shaughnessy will meet with me, my hon. Friend the Member for Bishop Auckland and other members of the taskforce. Lord Prior was really helpful when he spoke to me on the day of the announcement but there has been significant progress since then and many more challenges need to be met. If the Minister undertakes to make that happen, it will be very helpful.

3.5 pm

Dr Philippa Whitford (Central Ayrshire) (SNP): I too congratulate the hon. Member for Bishop Auckland (Helen Goodman) on securing such an important debate. Unfortunately, it is competing with the main arena, so this Chamber is not full.

I do not think that people yet recognise what the impact of Brexit on medicines regulation will be. The EMA represents all the countries within the European economic area, their drug-licensing bodies having come together in 1995, and it has been based here in London. That has been of huge benefit to London, not only as a result of the 900 jobs mentioned but as a result of world pharmaceutical industries—especially Japanese and other Asian ones—basing their European hubs here.

There is no question that the biggest challenge will be the impact on patients. The EMA assesses and licenses new drugs, and safety-monitors all drugs. It provides

the service of pharmacovigilance. Recently we have had debates on the Primodos and valproate syndrome situations, where things have not been spotted early enough. For us to end up outside the European pharmacovigilance system will be a real danger.

The hon. Member for Lewisham East (Heidi Alexander) alluded to the possible delay. As I raised in Prime Minister's questions way back in January, countries such as Canada and Australia get access to new drugs approximately six months to a year after the UK. The reason why we get early access is that we are part of a market of 500 million, on a similar scale to America. Without that, we slide way down the pecking order.

I am hearing from pharmaceutical firms that it is not just the size of the UK population but the fact that accessing the NHS in the UK takes several years. Given the budget impact assessment that has been added for new and expensive drugs, some firms are beginning to say, "Well, it won't just be six months to a year; it might be several years, because what's the point of paying to go through the process early but getting knocked back?" We might have to wait until our price has dropped, in which case Canada, Australia, Japan and so on will all be ahead of us.

Patients get access to new drugs that are expensive through the cancer drugs fund or the New Medicines Fund for rare diseases in Scotland. They also have opportunities through individual patient treatment requests. If the drug is simply not licensed in the UK, however, accessing it would be really problematic.

The EMA has obviously been a driver and organiser of research. As was also mentioned by the hon. Member for Lewisham East, in particular with rare diseases, we would be trying to recruit for research from a population of 50 million instead of 500 million—there is no comparison from the point of view of getting answers. Purely because of such research, breakthrough drugs for rare diseases, in particular children's congenital and rare diseases, have come on stream over the past 10 years.

The EU is the biggest research network in the world because of Horizon 2020 and all its forerunners. Until last year, the UK was its biggest beneficiary, but we have already slipped down the pecking order to behind Germany. People who lead international research teams are already being asked to step aside; they may take part and co-operate, but they may no longer be the principal investigator. The whole drive of academic, medical and clinical research in the United Kingdom is sliding down. The impact of that is significant.

There are a whole lot of different reasons. We have been talking about certainty, but universities and EU nationals need certainty. We have seen disruption to the EMA, which estimates it will lose 20% of its staff. Many have already left because they have been in limbo, like my husband, a German GP, for the past 16 months. They have therefore jumped before they might be pushed. Others might not choose to move to Amsterdam, even though it is quite an attractive place. As a member of the Scottish National party, I wish the people of Scotland had voted yes in 2014, because Edinburgh and Dundee would certainly be bidding to be a site for the new EMA, as we are also major pharmaceutical researchers.

The loss of the EMA from a business point of view is significant, but the main thing is the impact on patients and people. We will become a third country, and the

idea that we can somehow leave the EU and yet keep all the bonuses that we have had is frankly naive. In my constituency I have Merck, a pharmaceutical company that develops drugs, although its main role is providing materials to other pharmaceutical industries—cell growth medium. It is therefore involved in all sorts of complex supply chains. This is just like aerospace. Components and ingredients move backwards and forwards as the drugs are constructed.

The other parts of Merck's business are quality control and lot release. When drugs arrive in huge quantities they have to go through strict quality control testing, again under the EMA. Up until now such work has been carried out only inside the EU. Merck has three big BioReliance centres in Scotland, which carry out work for other firms. Other firms in my constituency such as GSK—again, I have a big plant—do that in-house. If they have to start moving some of that work to Europe—many pharmaceutical industries are already looking at having bases in Europe for their lot release work—other jobs tend to trickle after them, because gradually the refrain becomes, "We would do better to put everything in one place."

I am sorry for the hon. Member for Barrow and Furness (John Woodcock), who is losing such a great production centre in his constituency. I wish him well in finding a solution, but in the current uncertainty it is really hard to see what kind of pharmaceutical business will open a new plant in this country. For the big global multinationals weighing up where to put future centres, they might put a small centre in the UK, but sadly they are likely to put their main centres on mainland Europe. We need to deal with these things going forward.

The issue of quality control means we could have drug shortages as well as job losses. Anyone on medication—I put my hand up; I am on multiple medication—will often be handed something in the pharmacy that could be in any one of the EU languages with a little sticker in English on the top. That is because drugs move around all the time. The most important thing is to ensure that we do not get into a no-deal Brexit. Ultra-Brexiteers keep standing up and saying that World Trade Organisation rules are not so bad and would be quite good and advantageous—but that is not the case from the point of view of drugs supply.

The 0% tariff drug list has not been updated since 2010, so on any new drugs developed in the past seven years there would be automatic tariffs. The potential of trying to hang on to things such as BioReliance jobs would simply be impossible because there would be no chance of negotiating mutual recognition agreements or parallel agreements. Going forward we need an assessment of the impact of Brexit on health: everything from EU nationals, the potential threats to health, reciprocity, right through to research networks and how we get our drugs.

What will the MHRA do? It provides about 25% of the assessments for the EMA and it therefore has expertise, but it would need funding if it was to replace the EMA for drugs within the UK. How would we attract big global firms to go through the process when they might not sell any real quantity to the NHS for several years? Would it be suggested that we simply would not charge them? If that were the case, how would we fund it? I assume that in the position of getting a sensible deal

around Brexit, the MHRA would try to mirror everything from the EMA, but that simply would not solve all the problems.

We are still in a separate situation. The strength has been in co-operation. There was no discussion before the referendum and no recognition of the benefits we have had from the EU in the past 40 years. Those were never discussed and are being thrown away. The EMA did not increase bureaucracy, but decreased it. Imagine a small firm trying to go through 27 regulatory agencies in multiple languages. That will not happen. The EMA created one thing. The trials regulation system, due in the next year or so, does exactly the same for research: one trials portal.

We also have to tackle the issue of data protection and data sharing. If the UK sees Brexit as the potential to go off the reservation and cuts standards or is sloppy around data and sells the data or does not protect it, we will become a pariah, which will not do our patients any good. The issue is ideologically driven. Nobody with any sense of what brings the biggest benefit for patients within the United Kingdom would think of leaving the EMA. It is driven, as was said in the Health Committee in January, by the need to leave the European Court of Justice, the decision to leave the single market and the decision to leave the customs union. I have a simple plea: why don't we just not do that? Why not just stay in the single market and accept that we need an arbiter, and that the ECJ is as good an arbiter as any other? We should hang on to the fantastic benefits that we have had from Europe for 40 years.

3.17 pm

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies. I congratulate my hon. Friend the Member for Bishop Auckland (Helen Goodman) on securing this extremely important debate. It is sad there are not more Members here, but—as always—there are competing interests. She has been assiduous in asserting the rights of Parliament to scrutinise the terms of our exit from the European Union, and today's debate is no exception to that.

In common with the vast majority of Members—whatever our views on the European Union—my hon. Friend spoke with a genuine desire to ensure that our departure happens on the best possible terms. I am sure we can all see that one priority is to ensure that our economy is able to thrive and that patients are able to access all the medical treatments that they need, as every hon. Member has said. Most of them also mentioned the decision to relocate the European Medicines Agency from London to Amsterdam. I do not know whether the debate was timed with that in mind, but it is certainly apposite.

When my hon. Friend began her speech, she said there had been no explanation, no policy statement, no impact assessment and no opportunity to debate the many issues we have discussed today. Of course, she has a considerable constituency interest in this subject area, but, as we have heard from most Members, the issue affects every single person in this country. The importance of it cannot be downplayed.

My hon. Friend said that regulation is one of the major costs to the industry. I share her frustration that we do not have a clear steer from the Government on what the future of that vital component of the industry

[Justin Madders]

will be. As she said, investment decisions are being made now and we are already beginning to lose out. I totally agree with her that the Minister should make it clear that we are putting patients and public safety first.

My hon. Friend the Member for Lewisham East (Heidi Alexander) gave a passionate and well-informed speech on the merits of the EMA. She summed it up very well when she said that the EMA's leaving us is bad, but our leaving the EMA will be far worse. She was right to highlight the risk of delays for patients accessing new medicines. She said that business and patients need clarity, which is something that has come through clearly from all the Members who spoke today.

My hon. Friend the Member for Barrow and Furness (John Woodcock) spoke with great sincerity about the important business in his constituency. He is a fervent advocate of other businesses and sectors there, so we know that he will not let the matter lie. The announcement in the summer must have come as a real blow, given that Ulverston, and his constituency, are quite isolated from other populations, and in the light of the potential for damage to the local economy when so many high-skilled jobs are at risk. My hon. Friend will obviously want to ask the Minister to be clear about the assistance necessary to get the best from a pretty bad situation. The conversations that he will want to have with Ministers will be similar to those that every Member will have about industries in their constituencies affected by the Brexit decision.

The hon. Member for Central Ayrshire (Dr Whitford) spoke, as always, with great authority on health matters. She highlighted the fact that we are already slipping down the pecking order, and spoke from personal knowledge. In addition to the certainty that patients and businesses need, she highlighted the fact that universities, as well as EU nationals, need certainty. We should not forget, either, the 61 people working for the EMA who may be transferring to Amsterdam. They, too, need certainty about their future. The hon. Lady noted the risk of tariffs being introduced on drugs that have come into the market in the past seven years, if we crash out of the EU on WTO terms. It would be useful to hear from the Minister whether any assessment has been made of the potential cost of the tariffs, and whether he envisages that that cost would be dealt with by the Department of Health, or that individual patients would be expected to pay more for the inevitable additional cost of the drugs.

I doubt whether, when our constituents cast their votes in the referendum, the many issues that we have discussed today would have been at the forefront of their minds. Regulation of medicine is an integral part of our relationship with the EU, but it was not mentioned on any buses. The closest that we got to any debate on the impact of Brexit on the health sector was the £350 million a week that would be spent in addition to existing expenditure. It is sad to see that no advocates of leave are here today to explain how the situation fits into the big picture that they were so keen to propound at the time. Of course it has become apparent since June 2016 and from today's debate that there is a threat to jobs and investment in the science and research sector. As my hon. Friend the Member for Torfaen (Nick Thomas-Symonds) succinctly pointed out at the start of the debate there is also a threat to access to new medicines;

that is a serious unintended consequence. I certainly have not heard any Brexiteers suggesting that our current system is not advantageous to us as well as the other 27 EU member states. It is therefore difficult to overstate how critical the future of medicines regulation is to the economy and, more importantly, to the millions of patients in the UK who will need the medicines whether we leave the EU or not.

It might seem a long time ago now, but in July last year, just after she was appointed to her present role, the Prime Minister said:

"It is hard to think of an industry of greater strategic importance to Britain than its pharmaceutical industry".

That of course remains very much the case. As my hon. Friend the Member for Bishop Auckland said, we have been exceptionally successful in that sector. The industry has a turnover of more than £60 billion per year, generates exports worth £30 billion and gives us a trade surplus of £3 billion. It employs 220,000 people in this country, and 25% of the world's top prescription medicines were discovered and developed in the United Kingdom. It is of huge economic importance, and it says something about the sorry state of affairs we are in that Members feel the only way to get any clarity on the future of that vital industry is to have Ministers come to Westminster Hall to debate the issues.

Together with the direct economic impact is the effect on millions of patients, who rely on our co-operation with the rest of the EU to get access to safe, effective and affordable medicines. As we have heard, 45 million patient packs of medicine a year move out of the UK to the EU and 37 million move in the opposite direction. That is an awful lot of movement on which we need the Government to provide clarity. Those benefits, and others that hon. Members have spoken about today, are under threat not only from the relocation of the EMA, but from our exit from the EU if that is not handled more carefully.

Losing the EMA from London is of course a huge blow, not just to the economy of London but to our pharmaceutical sector more widely, for the reasons we have heard. The benefit that it brings to any national economy is evident from the fact that 19 other cities across Europe were in the running to become its new host. In addition to the loss that we will experience from the agency's physical removal, it also poses a number of challenges and threats to medicines regulation across the EU. Indeed, *The Pharmaceutical Journal* recently warned that

"a worst-case scenario could permanently damage the medicines regulatory system, leading to a public health crisis".

Although the EU27 decided not to relocate the EMA in eastern Europe, after a survey of staff found that an alarming 70% to 94% of them would not be willing to relocate there, the move to Amsterdam could still present a risk, in the sense that the survey found that up to 40% of those currently employed at the agency would not be prepared to move.

As my hon. Friend the Member for Lewisham East said, it is not an easy process to move an office wholesale. Some things will stop, and there will be a loss of some highly skilled specialist staff, who will be difficult to replace. An EMA spokesperson said that

“while some job losses can be absorbed within the business continuity plan...beyond a critical threshold, the Agency will no longer be able to fulfil its mandate to protect the health of European citizens.”

I am sure that no one voted for that on 23 June 2016. Good staff will inevitably leave the EMA rather than relocate their homes, their children’s schools and the careers of their partners. That will be an important factor. As the journalist Dr Ben Goldacre put it,

“these highly specialist staff are like trees: they take a long time to grow, and they put down roots.”

In the short term we may benefit from some of those specialist staff staying in the UK, possibly at the expense of the EMA and the future success of European regulation; but let us be in no doubt that in the long term it will be to our detriment, because we will struggle to attract the best.

Before the Brexit talks even move on to the future of medicines regulation, the Government have a duty to act now to protect our vibrant life sciences sector. One of the key reasons why so many countries were competing to host the EMA is that its presence makes pharmaceutical companies far more likely to locate in the host city. Many of those companies will have a UK base, and, as has been mentioned, will be beginning to think about future plans; so what steps are the Government taking today to persuade those companies to stay in this country, and not just to retain their staff but to make investment decisions that will benefit the economy? As my hon. Friend the Member for Bishop Auckland said, the industry is international and highly mobile, and we cannot afford to lose investment through the big hole of current Government policy. When we leave the EU, we will potentially face a divergence from the current medicines regulation system across Europe. The challenge for the Government is to keep that divergence to a minimum or eliminate it altogether.

One of the first issues, which we have already discussed, is the likelihood that the Medicines and Healthcare Products Regulatory Agency will lose up to a third of its income, as that comes from its work as a rapporteur body for the EMA. Can the Minister confirm that that funding gap will not have to be bridged from the existing, already insufficient Department of Health budget? What estimate has been made of additional resources that may be required in the worst-case scenario?

We have already heard that in July a letter from the Health and Business Secretaries in the *Financial Times* confirmed that the Government will prioritise achieving regulatory co-operation in the article 50 negotiations, and that was welcome, although, as the *Financial Times* is not a party to the negotiations, it could be argued, from a cynical point of view, that it was merely window dressing. We take it at face value, however, and as a clear commitment to try to achieve as much co-operation as possible. Perhaps when the Minister responds he will say what progress has been made since that time. Will he also say whether Ministers or officials from the Department of Health form part of UK representations in negotiations with the EU? I appreciate that he will not be able to go into some of the details, but given the shared desire across the House to make progress and achieve as much harmony as possible in that area, can he put some flesh on the bones and say what exactly the Government will seek to achieve as we move forward? The Minister will understand that the big pharma companies are looking for a clear indication of the likely shape of the future

relationship as soon as possible, and as we have heard, decisions are being made now. I hope that he can shed some light and provide clarity on that when he responds.

Will the Minister address Members on the jurisdiction of the European Court of Justice? If it cannot be used to adjudicate on licensing appeals, as appears to be the Government’s position at the moment, how will the two systems closely interact? Is there any possibility of a joint adjudication process? Operating alone in our own separate market would be not only extremely costly, but inevitably disastrous for patients. If pharmaceutical companies are forced to go through a separate regulatory system, as well as the NICE process, just to access what will be, in the big scheme of things, a fairly small market, we could find ourselves at the bottom of the list when new medicines are released. Pharmaceutical companies might view the UK as a lower priority than getting drugs into the bigger markets of the US, the EU or Japan. That might be a particular concern where the potential market for medicines is naturally small, such as with those for rare diseases. As already stated, we are already becoming a less attractive market for the life sciences sector, both for companies in the UK and for future investment decisions.

That is a very serious and bleak picture, and I hope that when the Minister responds he can reassure the House that ideology will not trump the best interests of our economy and our health service. My hon. Friend the Member for Bishop Auckland had seven questions—I lost count of the number asked by my hon. Friend the Member for Lewisham East, but there were many. I have a few of my own, and hopefully they will be a little more straightforward to answer—yes or no will probably do for most of them. In particular, I would like the Minister to guarantee today that after 1 April 2019 patients will have the same access to medicines as they do now, and that they will not face longer waits to access new treatments. Can he also guarantee that another part of the Department of Health’s budget will not be used to make up any shortfall in MHRA’s finance?

The Minister may not be aware that we held a debate on this subject just over a year ago, and many of the concerns raised then have been raised again today. All Members today have spoken with one voice about the need for clarity and certainty, and I hope that the Minister can provide us with that now.

Geraint Davies (in the Chair): A lot of questions have been asked, and fortunately we have the time for a lot of answers.

3.33 pm

The Parliamentary Under-Secretary of State for Health (Steve Brine): I will do my best, Mr Davies.

I congratulate the hon. Member for Bishop Auckland (Helen Goodman) on securing this debate. Medicine regulation is a critical issue that I know she has raised many times in the House. This is probably the quietest Westminster Hall debate that I have responded to, but that does not mean that it is not one of the most important—there are competing issues in the main Chamber today. The fun that we are missing!

Modern medicine is transforming. We are moving from an era in which drugs and devices were mass produced and marketed to millions of patients globally,

[*Steve Brine*]

to one in which new medicines and therapies will increasingly be designed and personalised for individual patients. The chief medical officer's annual report earlier this year on genomics was a landmark piece of work, and it set out how that will revolutionise our ability to diagnose and treat illness in the future. It is within that context that we discuss medicines regulation. Put simply, if the future regulation of medicines does not keep up with the pace of development for those medicines, patients in the UK, and internationally, will not have access as quickly as they should to transformational new treatments. That would be a bad thing.

While answering as many questions as I can, let me outline the world-leading work of our domestic medicines regulation, the Medicines and Healthcare Products Regulatory Agency, as well as our plans for the future in the context of Brexit. The MHRA has been our national regulator for more than 30 years, and it has acted as the lead regulator for more than 3,500 medicines now on the EU market. It is recognised globally as an authority in licensing, inspections and batch release and through its pharmacovigilance—a great word—and medical devices regimes. It plays a leading role in protecting and improving public health through the regulation of medicines, medical devices and blood components for transfusion services. In addition, the agency hosts two organisations that, although little known, play an important role in supporting the development and use of medicines. The agency's clinical practice research datalink uses anonymised NHS clinical data to keep patients safe and aid the development of new drugs, and the National Institute for Biological Standards and Controls develops global standards for the use and control of more than 90% of biological medicines used globally.

Helen Goodman: When preparing for this debate, it occurred to me that some of these issues apply also to animal health. Is there any responsibility for animal health in these institutions, or do we need to ask DEFRA Ministers about that separately, on another occasion?

Steve Brine: I think it is the latter, but I will check and come back to the hon. Lady on that point.

Dr Whitford: The veterinary medicines division is part of the EMA, so it comes under that—I am not sure whether that is what the hon. Member for Bishop Auckland (Helen Goodman) was asking.

Steve Brine: I thank the hon. Lady; she is always there when we need her.

As I was saying, those skills and expertise have allowed the MHRA heavily to influence global practice and regulations, which is why I say it is a world leader. A majority of medicines available in the UK—around 90%—already receive a national UK licence issued directly by the MHRA. It also leads the assessment of more than 20% of new medicines licensed by the EMA, with particular expertise and specialism in more complex new drugs that come to market. Similarly, on medical devices, five of the EU's 55 notified bodies are in the UK, and they undertake a disproportionate amount of

work. We estimate that they assess between 50% and 60% of the highest-risk devices on the EU market—a big player.

The strengths of our world-leading regulator are similarly reflected in the UK's life sciences sector. The UK has one of the strongest and most productive life sciences industries in the world, with more than 5,000 companies, more than 233,000 employees, and an eye-watering turnover of more than £63.5 billion each year. It also provides products that the NHS and patients rely on every day—I know that the constituency of the hon. Member for Bishop Auckland has seen the benefits of that productive industry.

GlaxoSmithKline announced this year an investment at its Barnard Castle facility in Teesdale, as part of a wider £140 million investment in the expansion of manufacturing HIV and respiratory medicines. However, we cannot be, and are not, complacent, and we must continue to work hard to support the industry, and we have done just that. The industrial strategy Green Paper was launched in January this year, and it set an “open door” challenge to industry to come up with proposals to transform their sectors through various sector deals.

Heidi Alexander: I am grateful to the Minister for his exposition of the current state of life sciences in the UK, all of which we could probably find out if we typed a few words into Google. May I bring him to one of the first questions, which is of pressing importance? What will the regulatory environment be for pharmaceutical companies that wish to get a pan-European licence in April 2019, during the so-called transition period envisaged by the Prime Minister, following the conclusion of negotiations on article 50?

Steve Brine: I will come to that.

Heidi Alexander: Please, come on. Just get straight to it.

Steve Brine: We should always try to be courteous to one another in this House, if we can manage that. To refer to the previous point, DEFRA is responsible for animal medicines policy; EMA covers both human and animal medicines. The Department of Health and DEFRA work incredibly closely together; therefore, DEFRA Ministers answer on applications for animals. I can assist with that at any time.

We are working with Sir John Bell and others in the life sciences sector to consider the industrial strategy in more detail, and specifically what action can be taken by Government and industry in partnership through an ambitious sector deal. At the launch of “Life Sciences: Industrial Strategy”, the Secretary of State for Business, Energy and Industrial Strategy, who has been much spoken of already in this debate, reiterated the Government's commitment to the sector by announcing the first phase of their investment—£146 million for leading-edge healthcare, which is expected to leverage more than £250 million of private funding from the industry.

Leaving the EU, with all its challenges, allows us to make fresh choices about how we shape our economy and presents an opportunity to deliver a bold industrial strategy that prepares us for the years ahead. Our approach to the EU exit negotiations for medicines regulation is focused on building on the strengths of the MHRA and the UK life sciences sector that I have just set out. As the UK leaves the EU, both parties will have

the shared aim to protect the health of patients across Europe and to ensure the safe and timely access to medicines and medical devices that I know concerns hon. Members as it concerns me. It is in the interests of patients and the life sciences industry for us to find a way to continue UK-EU co-operation and to ensure continued sharing of data, even if our precise relationship with the EU will, by necessity, change.

Earlier this year, the Secretary of State for Health and the Secretary of State for Business, Energy and Industrial Strategy published an open letter in the *Financial Times* setting out Government's aim to retain a close working partnership in respect of medicines regulation after the UK leaves the EU. Our approach is underpinned by three key principles, which are worth stating. First, patients should not be disadvantaged; secondly, innovators should be able to get their products into the UK market as quickly and simply as possible; and thirdly, the UK should continue to play a leading role in promoting public health.

Yesterday, obviously, the new location of the EMA was announced; in 2019 it will move to Amsterdam. Both the UK and the EU have a collective responsibility to make sure that the process is as seamless as possible, in order to minimise disruption to existing regulatory procedures and public health protection. There are no benefits to UK or EU patients in tearing up the sort of close working relationships that get crucial drugs on the market as fast as possible, share early alerts about problems with medicines or allow patients to benefit from new scientific discoveries earlier. As the Prime Minister has said, there is also no need to impose tariffs where we have none now, which is the case for medicines and medical technologies.

Continued collaboration is in the interests of public health and safety across the continent of Europe, and in the UK for our constituents, because we all know that health is different. Medicines and med tech are different from other consumer products. Patients who need an innovative treatment cannot simply pay more or consume less but otherwise carry on as they were, marginally worse off. We recognise that it could be the difference, as has been said, between life and death. We look forward to discussing these issues as early as possible with our EU counterparts as part of the negotiations.

John Woodcock: Presumably the Minister recognises the need for cross-border manufacture with European nations to remain absolutely seamless. The issue of cephalosporins in GSK affects not only in Barnard Castle and Ulverston but Verona, which obviously is in Italy.

Steve Brine: Yes, of course. I want to come on to the many different questions asked. The hon. Member for Central Ayrshire (Dr Whitford) said that Scotland would have bid for the EMA if it had voted yes a couple of years ago. I do not think that it would have done, because it would not have been a European Union member state.

Heidi Alexander: I am grateful to the Minister for giving way. Mr Davies, I hope that it is not out of order to say that the Minister does not quite seem himself. If he is poorly, and my earlier remarks were somewhat curt, I apologise for them.

It would help everyone here to understand the Government's overriding objective for medicines regulations in a post-Brexit environment. Do we intend to automatically follow EU authorisations in future, or does the Minister foresee divergence from EU regulations?

Steve Brine *rose*—

John Woodcock: On a point of order, Mr Davies. If the Minister is struggling and feeling unwell, is there a way in which we could bring the debate to an earlier close and he could write to us in response to our questions? I am concerned by how he seems.

Geraint Davies (in the Chair): The Minister is the last speaker. He can stop the debate at any time, at which point I will ask Helen Goodman to make her closing remarks for two minutes. Feel free to end whenever you feel is appropriate, Minister.

Steve Brine: Thank you; I am not feeling unwell at all.

In the event that it is not possible to reach a deal that secures ongoing, close collaboration between the UK and Europe, we will set up a regulatory system in the UK that protects the best interests of patients and supports industries so that they can grow and flourish, as set out in the letter in the *Financial Times*. We will ensure that our system is robust and does not impose any additional bureaucratic burdens. Our successful past should give us confidence in achieving a prosperous future, whatever form that takes. I want to be clear that that is not a threat to the EU27. I must be honest and transparent in saying that if it is not possible to secure close collaboration, we will of course look to put in place an effective system and work with international partners in a way that best protects patients and supports industry and innovation.

I will attempt to answer some of the many questions that the hon. Member for Bishop Auckland put to me. I can rule out a free-standing structure incorporated into the FDA. She asked how much the EU expects us to pay towards the cost of relocating the EMA. The arrangements for withdrawing from the EU, including any financial settlement, is a matter for the withdrawal agreement, as she knows, as part of the ongoing article 50 process. The Government are absolutely committed to working with the EU to determine a fair settlement for Britain's exit and the best deal for UK taxpayers. As part of the exit negotiations, the Government will discuss with the EU and other member states how best to continue co-operation in the field of medicines regulation, in the best interests of business, citizens and patients in the UK and the EU. I do not think that it would be appropriate, nor is it possible, for me to prejudge the outcome of those negotiations. There are many who would love that crystal ball, but I do not have it.

Helen Goodman: One can envisage a situation in which medicines are assessed in the European Union and in the UK and there is an agreement for mutual recognition between those institutions. That, one can picture. But what I cannot understand, if we are not all in one system, is how—down the track when medicines are used—if something goes wrong, the Europeans can have a claim on us or we could have a claim on them if we do not share the ECJ institutional machinery.

Steve Brine: I share the hon. Lady's concern. As I said, so much about this is still subject to negotiation. I cannot give her the exact assurance that she wants at this time.

The hon. Lady also asked about the EU exit transition. The Government are clear that we want to continue collaborating with the EU in the interest of protecting patient safety. The detail of any future relationship is, of course, subject to that negotiation. That is nothing new. We recognise completely that new arrangements can take time to implement, and we will work closely with the industry and key health system partners to ensure smooth implementation. The European Union (Withdrawal) Bill, which is going through the House at the moment, will ensure that a known legal framework is in place immediately after we leave the EU.

The hon. Lady talked about the Secretary of State "flirting" with leaving the EMA for the FDA. Earlier this year, the Secretaries of State for Health and for BEIS published a letter in the *Financial Times* setting out our aim to retain a close relationship in respect of medicines regulation. The FDA has been clear that it would not let another country "join" FDA processes even if we wanted to, but if we are outside EU processes, we will certainly look at how we can co-operate more closely with other global regulators.

The hon. Member for Lewisham East (Heidi Alexander) asked whether we had had contact with Australia and New Zealand. The chief executive of the MHRA chairs the International Coalition of Medicines Regulatory Authorities, and we of course have had discussions through that group on a contingency basis with Canada, Australia and others about the potential for greater collaboration once we have left the EU.

The hon. Lady asked whether I can guarantee that the adverse effects of drugs will be detected quickly. She also asked about orphan drugs and clinical trials. Increasingly, information about the adverse effects of drugs is shared at a global level. The EMA collaborates with many third countries. There is no need for a broad deal to agree to share safety information. We want to continue collaboration with the EU on orphan drugs for rare diseases, which she rightly pointed out are a subset of the wider issue. If we are outside EU processes, we will need to consider incentives for orphan drug development, and we are doing that. Clinical trials all receive national approval today, and they will receive approval under the EU clinical trials regulation, which is due to come into force in late 2019. The UK will remain a leading centre for clinical trials. There is no reason why multi-country trials cannot include the UK after Brexit.

Several Members, including the shadow Minister, the hon. Member for Ellesmere Port and Neston (Justin Madders), asked about MHRA resources. Some 90% of medicines on the UK market already have a national licence from the MHRA; fewer than 10% come via work that we do for the EMA. We have world-renowned scientific assessors at the MHRA. Some work and workloads may change post-Brexit, but I do not think that claims of fundamental change are correct. MHRA has full contingency planning in place.

Justin Madders: On that point, can the Minister confirm that Department of Health budgets will not be used to fund any additional MHRA costs?

Steve Brine: I know that the hon. Gentleman asked that question. I cannot confirm that today—I am sorry—but when I can, I will.

A couple of Members, including the hon. Member for Central Ayrshire, talked about the absence of impact assessments of the health implications of leaving the EU. I fully concur with Members' concern that complex discussions about the future of medicines regulation were not at the forefront of the referendum campaign. That is obvious. That is the problem with referendum campaigns. That is about as far as a diplomatic Minister can go. Sadly, the subject did not feature on the side of any buses. However, as part of our work on preparing to make a success of our departure from the EU, we are carrying out a full suite of economic analyses, as any Government would be expected to do. That means looking at 58 sectors, including life sciences, and at cross-cutting regulatory, economic and social issues. It will of course take time to collate that information and ensure that it is informative and accessible. We will provide it to Parliament as soon as possible.

Dr Whitford: Is the Minister aware of whether an impact assessment is being done with regard to health, not as part of the economy but as a benefit to people in the UK?

Steve Brine: There is a huge body of work going on in the Department about the impact of Brexit on every single area of every single Minister's responsibility.

Heidi Alexander: What assessment has the Minister made of how staying in the European economic area might impact medicines regulation, were we to go down that route instead of the one the Government are currently pursuing?

Steve Brine: The hon. Lady asks me to visualise all the different scenarios for the current negotiations. We have been clear that we want a comprehensive deal. A number of Members mentioned that no deal is some sort of ideological obsession for some Government Members. That may be true, but they do not speak for Government policy. We are not looking for no deal; we are looking for a comprehensive deal.

The hon. Member for Barrow and Furness (John Woodcock) asked about meeting my colleague Lord O'Shaughnessy. I cannot speak for my colleague's diary, but I will speak to him. If he cannot meet the hon. Gentleman and his taskforce, I will. The hon. Gentleman always speaks passionately for his constituency, and I am more than happy to try to sort that out for him.

The hon. Member for Central Ayrshire raised a concern about safety data. That absolutely should always be shared at a global level. The MHRA leads about a third of the EU's pharmacovigilance work. The EMA already shares data with third countries. It is in all our interests for that to continue. If we are outside EU regulatory procedures, we will ensure that the UK remains an attractive market and that regulation does not delay patient access. A number of Members expressed concern about that, and it is a concern of mine, which is why it is a priority for us.

Dr Whitford: Does the Minister recognise the data protection issue? Some people have suggested that the UK will be in a position to follow its own line on utilising data. Ending up on the outside as an untrusted

country—or as an untrusted set of countries within the UK—would obviously kill our ability to take part in clinical trials and research.

Steve Brine: It would. That is why, as the hon. Lady knows, we are working extremely hard not to be in that position. As ever, she makes her point well.

Whatever our future relationship with the European Union on the regulation of new drugs, the MHRA, our world-leading regulator—I have mentioned some of the reasons why it is world leading—will be empowered to protect patient safety both in the UK and internationally. We will also ensure, as everyone said, that patients are at the forefront of our thinking and do not get new drugs any slower than they do now.

3.57 pm

Helen Goodman: I am grateful to all hon. Members who took part in the debate. The Minister clearly understands why medicines regulation matters and shares our interest in making it work, but I and other hon. Members asked many questions and, to be honest, the only conclusive answer that he gave was that we will not join the American FDA. I would therefore be grateful if officials provided us with written responses to those questions. I know that the Minister does not deal with this area on a day-to-day basis, but I am concerned that the Department seems to have made little progress since 4 July, which was four months ago. That will not do. Hon. Members present would like a private meeting with Lord O'Shaughnessy, the Minister's colleague in the Lords with day-to-day responsibility for this area, who obviously was not able to participate in this debate, so that we can press him on some of the details.

Question put and agreed to.

Resolved,

That this House has considered the future of medicines regulation.

City of Culture 2021: Sunderland Bid

[MR PHILIP HOLLOBONE *in the Chair*]

4 pm

Julie Elliott (Sunderland Central) (Lab): I beg to move,

That this House has considered Sunderland's bid to be City of Culture in 2021.

It is, as ever, a pleasure to serve under your chairmanship, Mr Hollobone. It is an honour for me to be here to talk about my home city of Sunderland and its bid to be city of culture 2021. It came as no surprise to those of us who have had the privilege of calling Sunderland home that we were shortlisted for the coveted title alongside Coventry, Stoke, Swansea and Paisley. I understand that the Minister has listened to a number of these debates, but I am going to tell him all about Sunderland and why we should win.

My city has a long and proud history. It is a city built on industry and hard work, but which has struggled over the past 30 years to recover from the body blows of losing our shipbuilding and mining industries. When I was growing up, virtually every household had somebody working in one of those industries. Fuelled by a determination to renew itself, and after a decade of thinking and planning, the reawakening of my home city has begun.

As a city and a community we feel at a crossroads, and that the pathway leading to renewal and a brighter future is within our reach. Becoming city of culture would put us on the right path, enabling us to prosper and grow while showing the nation how culture can transform a city. If we win, it would be the culmination of 10 years' preparation.

For those who do not know our city very well, we are often called a big village, because everybody knows each other. We are almost 300,000 in number, but we all have relatives living on the next street, and most of us live within a mile or two of where we were born, right across the social spectrum. So we are quite a special city.

Over the years, a revival has begun: a renaissance shaped and powered by culture. We have embedded arts and culture at the core of our economic master-plan and invested heavily in both infrastructure and people's creativity and talent. We have done that with the generous help of others, particularly through valued partnerships with Arts Council England and the Heritage Lottery Fund, who have bought into our vision and supported us.

Those who visit Sunderland will see physical regeneration happening on a scale I cannot remember. We have the New Wear Crossing nearing completion. Keel Square gives us a public space that we can gather on and hold events in, which was brought about by the realignment of Livingstone Road. The realignment of a road may not sound significant, but it is something I have been working on trying to get for more than 30 years, and it has opened up a number of possibilities.

The first building on the Vaux site is nearing completion, and there has been the recent reopening of the Victorian fire station, regenerated for modern use—it is not fighting fires any more—incorporating a bar and restaurant, and dance and theatre studios as well as a heritage

[Julie Elliott]

centre to the fire service. All of those developments are at the centre of what is called the music and arts quarter redevelopment. Building works on the new theatre, next to the existing Empire theatre, will start soon.

Sunderland needs 2021 to make sure that our resurgence continues, so that the next generation can see every reason to stay in our city and no reason to leave. Our bid has galvanised and united the city. Businesses, our university, our college, our local housing group, our football club and organisations throughout the city have stood as one with the people of Sunderland in supporting the bid.

Bridget Phillipson (Houghton and Sunderland South) (Lab): I congratulate my hon. Friend on securing this important debate. While she is right to talk about much of what is happening in the city centre, does she agree that the bid takes in so much more than that? It will bring together all our distinct communities and showcase all the talents in our area and our rich and vibrant cultural heritage. Hopefully, all of our constituents will continue to benefit from this regeneration and growth.

Julie Elliott: Absolutely. My hon. Friend in the neighbouring constituency represents an area that has the beautiful Herrington country park, developed on the site of a former pit heap. There are many wonderful things in her constituency, as indeed there are in the constituency of the other Sunderland MP, my hon. Friend the Member for Washington and Sunderland—

Bridget Phillipson: West.

Julie Elliott: The names have changed a lot over the years. My hon. Friend the Member for Washington and Sunderland West (Mrs Hodgson) has the F Pit Museum and Washington Old Hall, the ancestral home of George Washington. Things of a cultural nature are happening right across the city.

There is not lukewarm support but passionate backing for a project that the people want and the city needs. Our bid has also garnered the support of people from across the north-east region. Even the old rivalries between Sunderland and Newcastle have been put to one side on this one—anyone who understands rivalries in football will really know how passionate those rivalries are at times. Newcastle City Council passed a motion in support of our bid.

Neither the city of culture nor the European capital of culture has ever been awarded to a city in the north-east of England, despite strong bids by our neighbours Newcastle and Gateshead for European capital of culture 2008 and Durham for city of culture 2013. We are hoping it will be third time lucky.

Sunderland gets what a difference it would make: we understand that change would be fundamental and long-lasting. It is not just about the huge investment that would follow. Hull—some people say Hull is a north-east city, but it takes more than three hours to get there from Sunderland—forecasts that more than £3 billion will have flowed into its city thanks to being this year's city of culture. Attracting an extra 1.6 million visitors, being the UK city of culture would change the way Sunderland is perceived regionally, nationally and

internationally. The city that to some has become the symbol of Brexit would once again be seen as the warm, welcoming, modest, hard-working, tolerant, creative and innovative city we know it is.

Winning city of culture would be the catalyst for growth in our creative industries. We believe it would enable the growth of 150 new creative businesses, bringing in 750 sustainable jobs that our city needs. We understand how a successful bid would improve our health and wellbeing and help us become a more cohesive city. It is widely known that engagement and participation in the arts can have a positive, long-term effect on improving someone's health and wellbeing—and particularly someone's mental health, which is very much in the spotlight at the moment. An extended and improved cultural sector delivering more opportunities for people to engage in the arts would therefore have a meaningful impact on the city's wellbeing.

Sunderland struggles with some of the most acute health challenges in the country, partly because of lifestyle choices but also significantly from our heritage of industrial working. The injection of cultural opportunity would do more for communities in Sunderland than anywhere else.

Communities become stronger and more understanding when working together on artistic projects. The participatory and collaborative nature of the arts and their informality promotes friendships and greater tolerance across cultural divides, even bridging language barriers.

Our city-wide conversations have inspired three creative themes: light, inventiveness and friendship. Those themes connect our past and future. They resonate with our local communities and would provide the stimulus for world-class cultural activity throughout 2021. They would strengthen the three strands of any successful city: its society, economy and culture.

Our opening season would be themed around friendship, bringing together communities across Wearside and welcoming visitors from around the world to a programme of art and culture inspired by questions about how we live together, both locally and globally. Our middle season would take inspiration from innovators, inventors and trailblazers past, present and future, to create a programme that will tackle the questions of how we make and shape the future of the world around us through our creativity and ingenuity.

Sunderland was home to Joseph Swan, the inventor of the electric light bulb, although he lost out on the patent to Edison; and before him to the glass makers, who brought stained glass window making to this country more than 1,300 years ago. Nowadays, we "Mackems" continue to innovate and invent, particularly in the IT and digital sector, as well as having the most productive car plant in Europe, which is often talked about in this place. Our final season would be inspired by the theme of light, and would be a celebration of the power of art and culture to enchant, inspire and illuminate new possibilities. Sunderland has long been an inspiration for artists and writers such as L.S. Lowry and Lewis Carroll, and painters talk of the special light that casts a glowing warmth over our fantastic beaches and coastline.

I want everyone to know just how special Sunderland is and, more than that, what city of culture status would do for our city. My city is a truly wonderful place for creativity. It is ambitious, brave and collaborative, like

our bid. Winning UK city of culture 2021 would bring so much to our city and would help to reaffirm that Sunderland's best days are not behind us, but most definitely still to come.

4.11 pm

The Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport (John Glen): I will start by saying what a pleasure it is to serve under your chairmanship, Mr Hollobone. I warmly congratulate the hon. Member for Sunderland Central (Julie Elliott) on securing this important debate on Sunderland's bid to become UK city of culture 2021. I also thank the other hon. Members who have contributed. It is surprising not to see hon. Members from Swansea, Stoke, Paisley or Coventry here, intervening aggressively, but that says something about the spirit of this competition. As the hon. Lady said, it is an exciting time for Sunderland and for the other four towns and cities shortlisted to be the next holders of that transformative and quite prestigious title.

Before I go further into my speech, I would like to say a few words about Councillor Paul Watson, who was the leader of Sunderland City Council until he died earlier this month. From the many tributes I have been made aware of, it is clear that Councillor Watson was a passionate and influential campaigner for Sunderland and the wider region, and always fought hard to get a good deal for the people of the north-east. As the Minister, I would like to express my sincere condolences to his family and colleagues. I understand that Councillor Watson was an enthusiastic supporter of the UK city of culture programme and of Sunderland's bid, recognising not only the importance of the title and its ability to help regenerate and bring economic benefits, but its importance as a vehicle for expressing a city's pride in its heritage and helping to build a new future.

As the Minister for arts, heritage and tourism, I see the UK city of culture programme as one of our nation's crown jewels. The winning area must build a high-quality arts and cultural programme of national significance that reaches a wide variety of audiences and participants. As the hon. Lady said, and as we have seen with Hull, winning the city of culture also acts as a catalyst that can help to regenerate and transform an area for the people who live and work there.

It might be helpful if I update the House on where we have got to. This year, 11 places made an application to become UK city of culture 2021. Following a recommendation from the independent panel chaired by the excellent Phil Redmond, I agreed a shortlist of five in July. I have been deeply impressed to see how all the places bidding have engaged so fully in the city of culture process. Even more gratifying is to see how making a bid can in itself be transformational in raising a city's profile and helping it to develop a clear set of cultural aspirations for the future. The hon. Lady has outlined some of the themes that are clear in Sunderland's bid. Feedback from the places that did not make the shortlist—Hereford, Perth, Portsmouth, St David's, Warrington and Wells—confirms that to be the case. I met representatives from some of those areas in September and heard how their participation in the UK capital of culture process is the start of a journey, not its end. Paisley, Stoke-on-Trent, Coventry and Swansea, the

other shortlisted places, are nearing the end of the process along with Sunderland, and I will announce the winner next month.

There is clearly much to be gained for the winning city of culture. We know that taking part in the arts can improve self-esteem and confidence. Arts and culture, through their ability to engage, inspire and challenge us, are instrumental in helping to break down barriers to participation and engagement across race, disability, age, gender, sexual orientation and socioeconomic disadvantage. The economic and social importance of culture to place-making, as underlined by the Government's White Paper on culture last year, is evident in emerging data and evidence coming from Hull, the current incumbent UK city of culture.

Before I address Sunderland, I thought it might be helpful to set out some of the benefits the title brings. I will set them against what we know has happened in Hull. Hull City Council estimates that the local economy has benefited by £3.3 billion in total investment since being awarded the title, four years ago in 2013. Seven out of 10 Hull residents say that the UK city of culture status is having a positive effect on their lives, largely because of the opportunities made available through its volunteering programme and participation at events across the city. Hull's 2017 volunteers have already undertaken more than 300,000 volunteer hours, the equivalent of 34 years. City of culture status has restored local pride. Who can forget Hull City fans singing, "You're only here for the culture," at a premier league match earlier this year?

Finally, and very importantly, Hull has seen brilliant engagement with the arts. Nine out of 10 residents attended or experienced at least one cultural event in the first three months of the year—more than double the number engaging in such activities before the city's bid. Those are amazing achievements, of which Hull City Council and the Hull city of culture company can be hugely proud.

I now address the substance of this debate, Sunderland's bid to become the UK's city of culture 2021. One of the great sincere pleasures of my job is learning about the history and culture of towns and cities across the UK. For example, in preparing for this debate I found out that England's first ever stained glass window was created in Sunderland, almost 1,400 years ago. I also learned that Sunderland was one of the first places outside London to have a municipally funded museum. It has always been a place that showed cultural leadership. Like many other people, however, I am more familiar with Sunderland's recent history as one of the world's great shipbuilding cities. As the hon. Member for Sunderland Central said, the decline of shipbuilding and the coal industry has had a huge impact on the people of Sunderland. In common with Hull and other city of culture candidates, the city has needed to reinvent itself, and in this context it is using arts and culture to forge a new identity.

Sunderland now has a strong network of existing museums and galleries in the area, particularly the National Glass Centre, the Northern Gallery for Contemporary Art and Sunderland Museum and Winter Gardens. There is also good partnership working and engagement with other major regional museums, including Tyne and Wear Archives and Museums, and I know that Sunderland is keen to use the city of culture bid to

[John Glen]

develop its existing partnerships with other national and international museums. Last week we had an independent review of museums, and that was one of the themes we will be taking up in the Department. Whoever wins will have the opportunity to derive some benefits from that work. The National Glass Centre and the Northern Gallery for Contemporary Art receive funding from Arts Council England of nearly £350,000 per year, as well as funding from the city and the University of Sunderland.

The organisation leading the bid is Sunderland Culture, which has been formed by the University of Sunderland, Sunderland City Council and the Sunderland Music, Arts and Culture Trust. Sunderland Culture will become a national portfolio organisation that receives annual funding from the Arts Council from April 2018. Sunderland has also received £3 million from the Creative People and Places programme and £1.25 million from the Great Places Scheme.

Looking forward, it is absolutely clear that there is a clear cultural vision for Sunderland, including for a new music, arts and culture quarter and the restoration of significant heritage sites, such as Hylton castle and Roker pier. Sunderland is home to Europe's largest free international air show and will next year host the Tall Ships race, which I hope will bring people to the city in huge numbers and be a fantastic boost to the visitor economy. I hope many of those visitors will also experience the Great Exhibition of the North, which will take place at the same time in nearby Newcastle and Gateshead.

It is clear from what we have heard this afternoon that, in common with the other shortlisted areas, Sunderland has the heritage, vision, infrastructure and cultural leadership to be the next city of culture. I conclude by wishing the city of Sunderland the best of luck in its bid. It has been so well supported by all its MPs here today. The good news for them is that they have only a few weeks to wait.

Question put and agreed to.

4.21 pm

Sitting suspended.

State Pension Age

4.30 pm

Hugh Gaffney (Coatbridge, Chryston and Bellshill) (Lab): I beg to move,

That this House has considered the state pension age.

It is a pleasure to serve under your chairmanship, Mr Hollobone. I am not minded to take many interventions, because I have a lengthy set of remarks, and I want as many colleagues to be able to speak as possible.

It is a pleasure for me to lead my first Westminster Hall debate since being elected to serve the people of Coatbridge, Chryston and Bellshill in June. I am grateful to colleagues for joining me this afternoon. It demonstrates our collective commitment to older citizens in the four nations that make up our United Kingdom. I want to talk about the sort of policies we need to see to honour that commitment to our older people.

I have initiated this debate for many reasons, which I will set out in my remarks. The main motive is to highlight the fact that all sections of our community are feeling the effects of the decisions made by this Tory Government. For example, we had a debate two weeks ago on lowering the voting age and empowering our young people. I was there to support the Bill proposed by my hon. Friend the Member for Oldham West and Royton (Jim McMahon) and was disappointed to see the Tories talk it out.

Today, I hope our debate will highlight the rough deal that those reaching pension age in our country have been dealt. We have a social security system at breaking point, with local authorities being asked to lead the provision of social care but at the same time having their hands tied behind their backs by this Government. We are seeing older people staying in their own homes, often without the support to downsize to a small property if needed or even find the basic help and assistance needed to stay in their own home.

I remember the Tory slogans and arguments from the general election. They were heard loud and clear in the United Kingdom. This Conservative Government, and particularly the Prime Minister, say they want to build a country that works for everyone. It is very clear to me and many Opposition Members and, through us, the people we represent, that the truth is that the Prime Minister and her Government are building a country where working people are pushed to breaking point. The only thing working is the clock ticking on their time in Downing Street.

Let us be clear: the Tories, backed by the Democratic Unionist party, are asking the British people to work longer—I say this very clearly—to pay for failed Tory austerity measures and their internal obsession with a hard Brexit. Parliament has a responsibility to call the Government out on this, and that is why we are here today.

When I was elected to this House, I made a pledge that not only was I on a five-year career break from my job at Royal Mail but, importantly, I was going to stand up loud and proud for working people. I promised to do all I could to ensure that the arguments for better pay, better working conditions, decent support rules and

regulations and a secure retirement are heard loud in Parliament and across Whitehall. I stand by that commitment today.

I am delighted that my party has committed to maintaining the state pension age at 66 years of age, while a review takes place to look at the most recent evidence on life expectancy, healthy life expectancy and the impact of a higher retirement age on those working in jobs with long hours. These are hard-working people with low pay who are often on the frontline, providing much needed public services. The longer people live, the better and more organised Government need to be when it comes to providing for all our people. It is a matter of political will. We can provide for all our people—young and old—if we choose to and if we want to. This Tory Government have the ability to act, but we have to ask, do they want to? If we close tax loopholes, scrap unnecessary vanity projects and work hard for a deal on Brexit that sees Britain retain the benefits of the customs union and the single market, we can fund a decent retirement for all our workers.

From the 1940s until 2010, the state pension age was 60 for women and 65 for men. Colleagues will know that three different pieces of legislation saw the state pension age increased in 1995, 2007 and 2011. That was done without any meaningful engagement. I have been in the House for six months, so I was not here to have my say on that, but I am having it now.

One recent report on public health I read described how the average pensioner will now have to deal with a “toxic cocktail” of ill health throughout their whole retirement and for some considerable years before they retire. That is not how things should be in one of the largest economies in the world. I support calls from my hon. Friend the Member for Oldham East and Saddleworth (Debbie Abrahams), the Shadow Secretary of State for Work and Pensions, for a new review of the pension age and a rejection of the Tory proposals to increase the state pension age above and beyond 66, as it will be by 2020. I do not want to see thousands of older people with serious health conditions pushed into old-age poverty, living on state benefits before they are entitled to officially retire. I hope other Members will join those calls.

Rachael Maskell (York Central) (Lab/Co-op): My hon. Friend is making an excellent speech. The John Cridland report recommended that the pension age should extend to 70. Does he agree that we need an evidence base on the impact that will have? In nations where people work longer, they have proper flexibility in their work and career breaks built in. They prepare for their pensions from day one of work, as opposed to reaching the retirement age and then finding it falsely extended. Will my hon. Friend comment on that?

Hugh Gaffney: I support those points.

I have spent my career to date working for Royal Mail. Those 30 years saw early mornings—in Scotland, cold mornings—and lots of stairs and walking. I am lucky; I am now a Member of this House and spend more time being able to rest my knees, but many of the men and women I worked with are getting older. We all are, and age has an impact on our ability to do our job.

Mr Jim Cunningham (Coventry South) (Lab): I congratulate my hon. Friend on securing the debate. There is a particular issue regarding women, which I

hope he will come to. We have had six or seven debates on the Women Against State Pension Inequality Campaign and the position of those women. Does he agree that women in this country are bearing the burden of the recession, let alone some of the other problems they have? Many of those women were not able to plan for their retirement because the Government created this situation. Many of them have elderly parents and need to look after them, which is causing severe hardship. Does he agree?

Hugh Gaffney: I will come to the WASPI situation later on.

I now have a platform to speak up for the people I worked with, who are still working until the age of 66, 68 and beyond, and their rights and futures and the future of all working people. That is why I am here. The same goes for the nurses that keep us, our families and constituents alive, the firefighters who do what they can to keep us safe from horrific events like Grenfell and the policemen and women who keep our communities safe.

We need to be realistic. At 68, we will not be as fast running down the road chasing criminals or as alert and awake on a night shift in our hospitals. This is real talk, and it needs to be heard. That is my view and the view of the people I talk to in the streets.

Mr Paul Sweeney (Glasgow North East) (Lab/Co-op): My hon. Friend is making a powerful point about the nature and legacy of work, particularly in working-class areas, and how those people rely on the state pension to a disproportionate degree. We have neighbouring constituencies. There is a 15% higher premature mortality rate in Glasgow. Indeed, one in four Glaswegian men will not reach their 65th birthday. That is the reality people face in Glasgow. If the state pension age goes up, those people will be disproportionately affected, and that would be shameful.

Hugh Gaffney: I agree and thank my hon. Friend for making that point. In Scotland, life does seem a wee bit harder and people experience more wear and tear.

What a disgraceful situation we are in. The Government not only want our public sector workers, those on the frontline, to work longer, but refuse to lift fully the public sector pay cap. Since 2010, NHS professionals such as paramedics have seen their pay fall by £3,800 a year, firefighters are down nearly £2,900 and nuclear engineers and teachers are down approximately £2,500 a year.

The Government recently announced that the public sector pay cap would be lifted for police and prison officers. It is a disgrace to play off worker against worker. I strongly condemn a sector-by-sector pay rise. I did not come to this House to sit back and stay silent when such games are played. Shame on the Government! Tomorrow, the Chancellor of the Exchequer will give his Budget. I call on him, even at this late stage, to do the right thing and lift the public sector pay cap not just for certain public sector workers, but for all public sector workers.

The WASPI women have been mentioned. Those inspirational women are fighting for fairness; they are the Women Against State Pension Inequality. I wholeheartedly support their calls for fairness, for action and for a basic level of decency and respect.

Gerard Killen (Rutherglen and Hamilton West) (Lab/Co-op): I thank my hon. Friend for being generous in taking interventions. I speak to many of my constituents about that unfairness in the state pension age increases. Does my hon. Friend agree that what compounds the unfairness is that many of those women, when they were in work, did highly physically demanding, low-paid work and they had to fight just to be paid equally for that work?

Hugh Gaffney: Yes, I do. For your sake, Mr Hollobone, I point out that I will not take any more interventions and will finish my speech, but I thank my hon. Friend for making that point.

My hon. Friend the Member for Easington (Grahame Morris) has applied to the Backbench Business Committee for a debate on the WASPI women. I am a sponsor of that request, along with my hon. Friend the Member for North West Durham (Laura Pidcock) and hon. Members on other parties. I very much hope for a full debate on the issues and a vote on the Floor of the House. I believe that comments on the WASPI issue are best made in a debate such as that, but I will say a couple of words here.

First, the lack of communication from the Government to the women affected was crazy. The Cridland review recommended that the Government wrote directly and in time to the women affected by changes to the state pension age. Secondly, things do not have to be this way; we should not have citizens of our country paying a price because of their date of birth.

Alex Sobel (Leeds North West) (Lab/Co-op): I thank my hon. Friend for his generosity in giving way. He came before me and the other members of the Backbench Business Committee last Tuesday to ask for the debate, as he said. Today we met and we have allocated a debate, with his divisible motion, for 14 December, if the Committee is allocated time on that day, which has not yet been confirmed. I hope that that is the news that my hon. Friend was looking for.

Hugh Gaffney: I am very glad that I took that intervention; I thank my hon. Friend for that news. I am sure that the hon. Member for Paisley and Renfrewshire South (Mhairi Black) will feel the same.

Hon. Members on both sides of the House rightly feel strongly about the impact of changes to the state pension age on women who are affected purely because of their date of birth. That is obviously not fair or appropriate. We need to see action, and I hope that we will see action now that my good friend has mentioned the date for the debate.

I want to mention the social care crisis in our country. The longer people work, the more likely they are to be pushed to breaking point, and therefore the demands on our fragile and under-resourced social care system become even more pressing. However, the issue is not just those in work, but those out of work. If older people are out of work because of long-term conditions or ill health caused by their occupation and are currently able to claim their state pension, that is good. It maintains dignity and respect. But what happens to those who now see their ability to claim their pension pushed further away? What safety network is in place for those older people not able to work?

I am also concerned by the roll-out of universal credit and older people being pushed on to universal credit. It has already failed and has the potential to cause real and lasting damage.

I am very grateful to Age UK for its briefing on the issues facing older people in our country. Like Age UK, I recognise that we need to look at the pension age, but we need to do so properly, fairly and effectively. I am pleased that 13 years of good Labour government saw pensioner poverty fall, but I fear that that trend is in reverse. Some 1.9 million pensioners live in poverty across our United Kingdom, and figures show that 25% of the over-65s find it hard to make ends meet. It is important to remember that 37% of women, and about 20% of men, between the ages of 55 and 64 do not have a private pension.

Let me make it clear: the state pension remains the most important source of income for the majority of pensioners, and any increase in the state pension age will present many challenges for people who already have difficulty working longer. Hon. Members on both sides of the House, representing seats in all four nations that make up the UK, will know the pressures that local government funding cuts have placed on councils' ability to deliver decent, funded and effective social care provision.

I echo the comments made by Baroness Thornton in the other place. She made an important set of remarks in a debate on the human rights of older people that was introduced by Lord Foulkes of Cumnock. She noted:

"Human rights do not lessen with age."—[*Official Report, House of Lords*, 16 November 2017; Vol. 785, c. 2206.]

It is a human right to have a decent retirement, and in my view it is a human right to have a decent state pension too. I also echo Baroness Thornton's comments regarding the injustice done to all women born in the 1950s who are affected by the changes to the state pension laws in the Pensions Acts of both 1995 and 2011. I hope that the Minister will give some indication in his response of what the Government plan to do about that. Will there be any transitional arrangements for the women affected? I might say, as a new parliamentarian, how delighted I am that the WASPI women are seeking a parliamentary solution; they are right to do so.

I called this debate because I want this House to discuss the pension age, but also the issues related to any increase. It will not happen in isolation, and we need to consider the impact of any decisions taken on every part of public life. I am committed to fighting for a better deal for our young people, not just in Coatbridge, Chryston and Bellshill but across the country. I am equally determined to fight for a better deal for our older people, and I hope that this afternoon's debate will be the start of that.

Mr Philip Hollobone (in the Chair): The debate lasts until 5.30 pm. I will start to call the Front Benchers at seven minutes past 5, with the guideline limits being five minutes for the Scottish National party spokesman, five minutes for the Opposition spokesman and 10 minutes for the Minister. Mr Gaffney gets two minutes at the end to sum up the debate, and six hon. Members wish to speak, so I will have to impose a time limit of three minutes, which will ensure that everyone gets a chance to contribute.

4.48 pm

Patricia Gibson (North Ayrshire and Arran) (SNP): Another day, another WASPI debate, albeit by another name. Still the Government remain intransigent, still we who know this is wrong remain hopeful and still the WASPI women fight on. Today, I ask the Minister not to talk about apprenticeship programmes for WASPI women. I ask him not to talk in a circuitous way about how we are all living longer, which is often trotted out—the great, “You know we’re all living longer, blah, blah, blah.” That bears no relation to what is being debated and what the WASPI women want to be debated, which is that women born in the 1950s were given little or no notice that their pensions would be delayed by several years.

That means retirement plans thrown into chaos, caring responsibilities presumably to be ignored and, for women who have worked their whole lives, financial hardship on a scale that is simply unacceptable. No cognisance seems to have been taken of the fact that this also hits the generation of women which suffered from pay inequality relative to their male counterparts, so this is a cruel double whammy—one that has hit 4,800 of my constituents in North Ayrshire and Arran very hard.

I am tired of the endless debates on this issue. Any fair-minded person would agree that this is a huge injustice. Let us get on and sort it out. The WASPI women, as I am sure the Minister knows, are not going to stop their campaign, because they are in the right and they know it. It is the Government who must change their position. I keep saying this: WASPI women are not going to go away, because there is nowhere for them to go. It is their money; they paid into their pensions in good faith and it is morally correct for the Government to pay out.

I know that the Minister knows, but I remind him that this is not pin money; these are pensions that those women have paid for and they need it for rent, food and basic necessities. The fact that the Government have so far turned a deaf ear to these women and all these cries of injustice shows that the Government have a brass neck. If this injustice is not addressed, the Government really should hang their heads in shame. We need to have a grown-up debate about pensions—of course we do—but until this is sorted out, we are whistling in the wind. I urge the Minister to put this outrage right.

4.51 pm

Jim Shannon (Strangford) (DUP): I congratulate the hon. Member for Coatbridge, Chryston and Bellshill (Hugh Gaffney) on setting the scene. We are all here for a purpose: to speak out on behalf of those who are disadvantaged through the pension scheme. I am very pleased to be here as a member of the Democratic Unionist party and express the view that many others will express in this Chamber.

I want to speak out specifically for those women born in the 1950s who are having to work longer and longer. Just last week my colleagues in our DUP group met with the WASPI women and had a good chat and discussion with them; we had a very constructive and positive meeting. We are here to underline the fact that we agreed that this massive jump from expecting a pension at the age of 60 to having to wait until 66 is a terrible gap to bridge.

I read a Northern Ireland Assembly report focusing on women’s economic transition to retirement, which was released in September and clearly outlined the changes in Northern Ireland. Life expectancy in Northern Ireland has increased by nine years for men and seven years for women. Just to give a bit of perspective, that places women at the forefront of demographic ageing and makes them particularly vulnerable to the adverse impacts of demographically driven policy change. They have on average poorer career progression, higher rates of casual, part-time and low-status work, and receive lower pay. We cannot ignore that.

Mr Gregory Campbell (East Londonderry) (DUP): I thank my hon. Friend for giving way. On the issue of life expectancy, does he agree that while we need to resolve the issue of the WASPI women now, this Government and future Governments need to think long term, rather than reacting to immediate pressures in the short term?

Jim Shannon: I thank my hon. Friend for his intervention and I agree with him.

All those things for ladies are exacerbated by poor availability of affordable childcare, especially in Northern Ireland. Women also make up the majority of those receiving later life care and the majority of those providing it. This makes them doubly vulnerable, as receivers of low pay or no pay, both on the frontline of late-life care and as the clientele of a social service and care system under increasing pressure.

I understand that the finances are stretched, but I also see the human side of women in their mid-60s who scrub floors for a living or do heavy lifting in care in the community, who have no plan in place and are now expected to work to an age at which it is almost impossible to do their job. Will the Minister say where these women can source a job which it is possible for them to do and whether his Department will take responsibility for transferring those women who have done manual labour all their life and are no longer fit to do so, but who are expected to work? These women need help, and we are looking to the Government to step in and provide the necessary interim support for a generation of women who feel cheated and lost in the mayhem of a system that is all new to them. We have put them on this journey—I say “we”, but it is the Government—and we must help them through it, and currently that is not being done.

4.54 pm

Martin Whitfield (East Lothian) (Lab): It is an honour to serve under your chairmanship, Mr Hollobone. I congratulate my hon. Friend the Member for Coatbridge, Chryston and Bellshill (Hugh Gaffney) on securing this profoundly important debate.

The state pension age has been discussed for over 70 years. I appreciate that we only have an hour to add meaningful contributions, which is why I wish to speak about the handling of the state pension age. As hon. Members are aware, both the Pensions Act 1995 and the Pensions Act 2007 looked to stagger the equalisation of the state pension age over a series of years. Regrettably, there has been an unfair acceleration of this process, trapping half a million women, who must wait at least an extra year to receive their

[*Martin Whitfield*]

state pension. It is estimated that over 6,000 women in my constituency of East Lothian alone have been affected.

Let me make it clear: this is not about the principle of equalising the state pension age; it is about the practical roll-out of the policy. In 2005, the Pensions Commission argued that any planned increase to the state pension age should carry at least 15 years notice, the same timeframe that was contained in the 1995 Act. The 2014 Pensions Act established, however, that 10 years notice of state pension age increase was appropriate, and the Pensions Act 2011 gave just five years to plan for these changes. Age UK have been very clear on this, saying that it gives

“insufficient time to prepare for retirement.”

There is also the question of how the information was brought to the attention of those affected.

Alison Thewliss (Glasgow Central) (SNP): I very much agree with the hon. Gentleman's point about the notification period that people have been given. Does he agree that it is a scandal that women such as my constituent Winifred Setzekorn only found out about the increase in their state pension age four years before turning 60?

Martin Whitfield: Absolutely, and the point is very well made.

Across the UK, the profound unfairness of the changes has influenced and empowered local action groups working under the WASPI campaign. This debate was sought not only because of the inherent unfairness of the accelerated change, but because it offers an opportunity to pay credit to the diligence of some of the WASPI women in the work they do—women such as Pat Milligan, a local WASPI co-ordinator in East Lothian, who puts it far better and more eloquently than I. She tells those women she meets who have been trapped by these changes that they need to be active, write to the Minister and take their complaint to the Government. In her words:

“This is your pension; this is your fight.”

I am therefore tentatively pleased that the Minister has promised to create a dedicated team to handle these complaints, but it will be interesting to see what response complainants get.

On a wider note, the way that we parliamentarians handle this issue is also critical. Among the 6,000 women affected in East Lothian, those aged between 60 and 62 will see their incomes fall disastrously.

4.57 pm

Douglas Chapman (Dunfermline and West Fife) (SNP): It is a pleasure to serve under your chairmanship, Mr Hollobone. In pension terms, what we have witnessed over recent years is an attempt to take away dignity in old age. The plans formulated to take the pensionable age beyond 65, 66 and, now, 67 simply outline this Government's direction of travel. For any national pension scheme, dignity should be at the heart of retirement. Speaking for the Scottish National Party: that is where our values lie.

My hon. Friend the Member for Paisley and Renfrewshire South (Mhairi Black), for example, has been at the sharp end of the debate on behalf of the

WASPI women, as we all have. Despite the calls for fairness and dignity for the WASPI women, despite the majority of MPs saying that they would support the WASPI women in a vote, we are still in the situation that women born in the 1950s are expected to work beyond their original pensionable age and are having to work into their retirement years—those who still can.

For a Pensions Minister to come to this Chamber, as he did last July, to suggest that women get themselves an apprenticeship at the age of 63 or 64 is laughable and shows how much this Government appreciate the difficulties that people have adjusting to retirement.

Angela Crawley (Lanark and Hamilton East) (SNP): Does my hon. Friend agree that my constituents, such as Lorraine McColl and Nancy Rea, who have campaigned relentlessly for the past two and a half years since I became an MP, have yet to hear any satisfactory response from this Government? I thank the hon. Member for Coatbridge, Chryston and Bellshill (Hugh Gaffney) for securing this debate, but how long must we continue endlessly to have this debate?

Douglas Chapman: It certainly feels like, “How long is a piece of string?”, because this debate has gone on and on. Frankly, some of the conditions and situations described by other Members are totally unacceptable.

As my hon. Friend points out, it is absolutely ridiculous that women born in the '50s have to wait for another six years before they can collect their deferred wages through the state pension. The situation is not getting any better; in fact, it is getting worse. The Cridland review recommended that the expected rise in the state pension age to 68 be brought forward to 2037. For many hard-working Scots, whose life expectancy is not high because of historical and deeply ingrained health challenges, this means fewer years for them to enjoy their retirement. The picture is no different in parts of England, Wales and Northern Ireland, where industrial injuries and a high level of poverty impact on life expectancy. At no point were the Scottish Government, which raised the issues with the Cridland commission, given the opportunity to put their point forward in a proper consultation on this proposal. Again, that is totally unacceptable from the point of view of Scottish pensioners.

5 pm

Christine Jardine (Edinburgh West) (LD): It is an honour to speak under your chairmanship, Mr Hollobone.

I am sure that many of the Members present have had the same experience as I have in representing their constituents: that woman after woman born in the 1950s has come and told them stories about having planned for their pension since they were young and having put money aside. In one case, someone took redundancy from a well-paid white-collar job because she would get her pension in two years, only to discover that that was not the case. In the intervening years, the savings that she had built up for her pension and the redundancy money that would have seen her through those two years had been spent. That constituent is now out working two jobs in order to make ends meet.

Regardless of what the Government might think, there is no class divide, no voter divide and no geographical divide in this. The mismanagement of the introduction

of the new pension ages has trapped women all over Scotland and the United Kingdom in a poverty trap. They are being pushed into hardship by mismanagement. As my colleagues have said, we come here time after time, we make the same case, which is completely justifiable, and we hear nothing back from the Government.

An all-party parliamentary group Bill will come before the House in April next year. I hope that on that occasion, Members on both sides of the House will remember that this is not a political issue: it is about justice. It is about justice for women who were unfortunate enough to be born in the 1950s, who suffered the mismanagement of the introduction of a change in the pension age, and are now in circumstances over which they had no control. We do have control; we can change it, and I hope that every Member in the House will remember that when it comes time to vote.

5.2 pm

Mike Hill (Hartlepool) (Lab): It is a pleasure to speak under your chairmanship, Mr Hollobone.

I sincerely hope to see movement from the Government on the default retirement age for civil nuclear police, which is an issue that has remained unresolved for far too long, as has the unresolved matter of overseas pensions freezes, but for the purposes of this speech, I will focus on another epic struggle: WASPI. In Hartlepool, an estimated 5,500 women have lost out thanks to changes to the state pension age. Women in the town who were born between December 1953 and October 1954 and expected to retire at 60 now have to wait 18 months or two years longer to draw their state pension. For my constituents, many of whom have contributed to this scheme for 44 years and expected to retire at 60, this is simply not acceptable, and in some cases is causing genuine hardship—including, for one of my constituents, the forced sale of her home. The women were either given no notice of the changes by the Government or given inadequate notice, and the changes are causing a lot of worry and anger. It will be the poorest women who suffer the most as a result of the Government's implementation of the changes to the state pension scheme, and I for one stand shoulder to shoulder with the Women Against State Pension Inequality activists, who are rightly challenging this injustice.

In 2013, my predecessor Iain Wright said that, “many of the women affected by these...changes might have worked part time to raise families and might have not had the opportunity to pay into an occupational scheme. Women in Hartlepool...who are often the foundation of a household's budget, are certainly not in a position to prepare properly for a sudden two year rise in their pension age”.

Sadly, it is now 2017 and the fight goes on. I fully support the WASPI women, as does my local authority, passing a resolution as recently as October this year demanding Government intervention to help.

Danielle Rowley (Midlothian) (Lab): I have many constituents who have come to me for help, and many of them are WASPI women. They are nearing pension age but many of them have had to leave work early because of physically, mentally and emotionally demanding jobs, and they are really struggling. Many of them are also facing the difficulty of the fully digital universal credit system. Does my hon. Friend agree that the Government are victimising, and making life harder for, our mature citizens?

Mike Hill: I absolutely agree with my hon. Friend, and it is a point well made.

Hartlepool women who have been left worst off will not be able to afford to bridge the pension gap. The WASPI campaign recognises that the equalisation of the state pension age is necessary, but the manner in which it has been introduced has been unfair, unjust and has had devastating consequences for the retirement plans of thousands of women in Hartlepool and millions across the country. I strongly support the demand for this matter to be debated in the Chamber and voted on so that this intolerable situation can be resolved once and for all if the Government continue to refuse to take action. I am not so well, Mr Hollobone, so I do apologise for my manner.

Mr Philip Hollobone (in the Chair): Thank you. We now come to the first of the Front-Bench speeches. The guideline limits are five minutes for the SNP, five minutes for the Opposition and 10 minutes for the Minister.

5.5 pm

Mhairi Black (Paisley and Renfrewshire South) (SNP): Because of the constraints on time, I will rattle through this fairly quickly. We have basically got three main concerns that are relevant to this debate.

First, we want to make it clear that we oppose plans to increase the pensionable age beyond 66. That is a reckless move just now, and is not reflective of how long people are really living. The other element—which was touched on by the hon. Member for Coatbridge, Chryston and Bellshill (Hugh Gaffney), who I am very grateful to for securing this debate—is that Scotland has a very different demographic to many other parts of the UK. Even within the UK, we have different demographics in different areas. As was mentioned, some people in Glasgow barely see their 65th birthday, never mind live long enough to receive the pension that they have paid into.

Lucy Frazer (South East Cambridgeshire) (Con): This is a very important debate, and women play a considerable role in society, but will the hon. Lady accept that statistics from the National Records of Scotland put the life expectancy for women higher than that for men? In fact, it is 77 years for baby boys and 81 years for girls.

Mhairi Black: No, and I will tell the hon. Lady why. Yes, I recognise that physically human beings are living longer, but the inequalities that exist within our society are not moving with that. We have a situation where some folk in Glasgow or Paisley barely see their 50th birthday. They are doing well if they get to 65. That is the reality for many of our constituents and it has to be reflected when we make new policy.

When I first laid eyes on the issue of pensions, when I was elected, I just thought, “This is such a mess.” What strikes me most about the issue is that I do not think the Government have sat and cruelly decided who the most vulnerable people are and how they can attack them; I do not think that has happened. What I think has happened is that we have realised that pensions have become a bit of a mess, and we are so worried about—I do not know—what Channel 4 is going to report the next day or whatever, that we have to grab the headlines and have to be seen to be doing something good. All that is doing is trying to stuff this big problem back into

[*Mhairi Black*]

the closet, rather than taking it out and going, “Let’s have a serious look at this.” That is what I had hoped the Cridland review would do. My right hon. Friend the Member for Ross, Skye and Lochaber (Ian Blackford), the Scottish Government and I made many appeals to the Cridland review, raising our concerns about how the rise in the pensionable age could affect different areas. It is really disheartening to see it so swiftly dismissed, considering how big an aspect it is of the lives of my constituents.

Secondly—surprise!—I want to touch on the issue of the WASPI women. I have honestly lost count of the number of debates we have had on this issue, so I will not do the usual stuff of saying how terrible that is, because I have accepted that that is just how this place works, but I will say that this is a real chance to get something right with pensions. It is not a political thing. I know that many Conservative Members will say, “The WASPI women are just a stick that the Opposition are using to beat us with,” but it is not. As the hon. Member for Edinburgh West (Christine Jardine) said earlier, this issue is affecting women in every constituency from all different backgrounds. Their only crime is that they were born in the ’50s. That is unjust, and it cannot be allowed to happen. The Government should do something right and inspire us a wee bit. They should do something good for pensions. When we add to that a further rise in the pension age, when they have not even dealt with the WASPI women, it is downright insulting and shows that the Government are putting the final nail in their coffin in terms of pensioners. If this issue is not dealt with, people will remember.

The third thing I want to touch on is frozen pensions. I met the International Consortium of British Pensioners and, to be honest, my knowledge at first was very much on the surface. The group explained that this is not just a bunch of pensioners who went away to Spain, to the Costa del Sol. These are people who, when they were of working age, were encouraged to go to Commonwealth countries. They were offered work and deals and told, “Go, and the bonus is that you will retire in sunshine. Brilliant—go!”, but because of some ancient bilateral agreements, we now have people in Canada and Australia whose pensions are still at the same rate as they were when they left in the ’70s. It is so mad that their pensions get uprated when they physically land here. A guy was in the UK for two weeks and his pension was uprated because he was physically here. It is ludicrous.

I am conscious of the time, so let me just say this: pensions are a mess. Please work with us to get it right.

5.11 pm

Alex Cunningham (Stockton North) (Lab): Mr Hollobone, it is a pleasure to serve under your chairmanship, which has seen more than a dozen people take part in this short debate. I congratulate my hon. Friend the Member for Coatbridge, Chryston and Bellshill (Hugh Gaffney) on securing his first of many Westminster Hall debates. I very much believe that he is loud and proud. I love that voice, which reminds me so much of home, although I left the area when he was just three years old. He made an excellent speech; it was a trip right through the social security system and how it is failing so many of our people.

We could talk about many things today, from the plight of the ’50s-born women whom the Government are continuing to ignore, to the ill-advised increase in the state pension age that was brought in by the Tory Government and which hits the poorest and most vulnerable people hardest. Several Members have addressed the WASPI issue and the Minister will probably be pleased to hear that I will not dwell on the ’50s-born women. However, as I said in the House last week, this issue will not go away and the Government need to act, starting with an extension to pension credit, giving women the option to claim their state pension two years earlier at a slightly reduced rate. That is not a complete solution, but it would provide something for that very wronged group.

Then we have the issue of increasing the state pension age. Age UK said that it is reasonable to look at the state pension age as longevity increases, but it needs to be accompanied by support to enable people to work longer and protection for those who cannot. I share Age UK’s view, but I must stress that longevity is not enough. We need to consider quality of life and health. That said, University College London’s Sir Michael Marmot says that increases in life expectancy have slowed down or halted, but even if we might be living a little longer but not living healthily for any longer, increasing the state pension age is bad news, particularly for the poorest in our country and those with ill health.

The inequalities are not illustrated better anywhere than in my constituency, where a man in the poorest ward can expect to live 16.4 years less on average than a man in the most affluent ward. The man in the poor ward may have started work at 16 and paid national insurance contributions throughout his adult life, and is more likely to have been in a physically demanding job and to have experienced ill health at a younger age. He may even be lucky to get the state pension for a handful of years before dying. Contrast that with a more affluent, professional person, who may not have started work until his 20s, who retired at 60 because he could afford to, and who then picked up his state pension when he was still fit and healthy enough to enjoy it. The manual worker will have worked more years and may have paid contributions for 50 years—perhaps 10 more than the professional. How is that just? How is that fair? We have heard that people die younger, and the illustration from Glasgow of somebody dying aged 63 and never reaching state pension age is very relevant.

The Cridland review, which will effectively cost 7 million people £10,000 each, failed to come up with an answer to this question, but even John Cridland spoke of the need for greater support for people in hard physical jobs that offer them limited chance, if any, of a few years of healthy retirement.

James Cartledge (South Suffolk) (Con): We have not yet heard anything from the hon. Gentleman about costs. Does he accept that unless we raise the retirement age, the system of paying for the state pension will be financially unsustainable?

Alex Cunningham: Cost will always be an issue, but some have made the point that we need to base decisions on fact and new data. The data are changing. People will not necessarily live longer, so the cost might not be higher in the longer run.

We believe that we should have a variable state pension age whereby a person's work background, health and income are considered, with their retirement age being based on their life expectancy, not just the national average. The proposal to raise the state pension age even further all but wipes out the chances of many of our people enjoying a few years of retirement in good health. The state pension should be flexible and recognise the contribution that people have made to our country, and the system should be designed to work for everyone.

I really worry about the pressure facing older people in our country. The cost of living is going up and their pension is getting further away. At the same time, many are unwell and unable to work, or they may be caring for even more elderly parents or young children, making a very different but relevant contribution.

I wonder whether the Minister is even aware that 1.9 million pensioners now live below the poverty line. That means more struggling older people on social security and extra strain on the NHS when vulnerable people are living in poverty, all within a system that has seen that value of income shrink since 2010. I referred to older people with caring responsibilities. Many will fall short of the 35 years of contributions that are needed to secure a full pension. We need to do things for all those people, for all the different groups in our community, because that would be the fair and right thing to do.

Mr Philip Hollobone (in the Chair): If the Minister can finish his remarks no later than 5.27 pm, Mr Gaffney will have time to sum up.

5.16 pm

The Parliamentary Under-Secretary of State for Work and Pensions (Guy Opperman): It is a pleasure to serve under your chairmanship, Mr Hollobone. I congratulate the hon. Member for Coatbridge, Chryston and Bellshill (Hugh Gaffney) on securing today's debate on the state pension age and welcome him to what I think is his first debate here.

Since world war 2, we have seen dramatic changes in life expectancy. We are living longer and staying healthier for longer, and we are leading far more active lifestyles, regardless of our age. Although increasing longevity is to be celebrated, we must also be realistic about the demographic and fiscal challenges that that creates for us as a society. Faced with significant increases in life expectancy and compelling evidence of demographic pressures, it is right that successive Governments took action to secure the affordability and sustainability of the state pension system for current and future generations.

To answer the point raised by the hon. Member for East Londonderry (Mr Campbell), who wanted us to think long term, in July the Government published their first review of the state pension age, setting out a coherent strategy targeted at strengthening and sustaining the UK's state pension system for many decades to come. It accepts the key recommendations of John Cridland's independent review, which consulted a wide range of people and organisations, proposing that the state pension age be increased from 67 to 68 in the years 2037 to 2039.

The Cridland review was independent and is very clear. It stated:

"In 1917 the first telegrams to those celebrating their 100th birthday"

were sent. There were 24 that year. The review continued:

"In 2016 around 6,000 people will have received a card from Her Majesty the Queen. In 2050, we expect over 56,000 people to reach this milestone. Three factors are at play here: a growing population; an ageing population as the Baby Boomers retire; and an unprecedented increase in life expectancy. A baby girl born in 2017 can expect to live to be 94 years and a boy to be 91. By 2047 it could well be 98 and 95 respectively."

The reality, therefore, is that the

"world of the Third Age is now a very different one"

and that those who receive the state pension

"will on average spend...a third of their adult life in retirement, a proportion never before reached."

David Linden (Glasgow East) (SNP): Given that the Minister has spent so long talking about life expectancy, will he do me the honour of telling the House what the life expectancy in Glasgow East is?

Guy Opperman: The reality is that life expectancy has increased repeatedly across the country—[*Interruption.*] It most definitely has increased across the country in all socioeconomic groups over the past 30 years, and for all constituent countries of the UK. Mr Cridland, who was independent, did extensive work on that point, concluding that a universal state pension age remained the best system, and the Government agree with that point.

James Cartlidge: The Opposition spokesman said that Labour supports a variable state pension age. Does my hon. Friend think that that would survive legal challenge?

Guy Opperman: I will make two points about that. The first is that anybody who proposes a situation involving framing new legislation that lacks equality between men and women will have to deal with the Equality Act 2010, because any new transitional provision runs the risk of creating a new inequality between men and women and being subject to challenge.

Further to the proposal made by the hon. Member for Coatbridge, Chryston and Bellshill, the Labour party's position in its manifesto, as agreed with by the hon. Member for Paisley and Renfrewshire South (Mhairi Black) and presumably the Scottish National party, is to reject any increase in the state pension age above 66. That would involve scrapping the Pensions Act 2007, the work of the Labour Government in the Blair-Brown years. Costs have been mentioned; let me be clear that the costs of capping the rise in state pension age at 66 in 2020 would be £250 billion higher than proceeding according to the timetable set out by John Cridland.

Alex Cunningham: The Minister referred to Labour policy, but he edited it to a few words. We actually said that we wanted to freeze the pension age at 66 and set up our own commission to consider longevity and pensions issues and how we could help the more vulnerable in our society.

Guy Opperman: I will quote the hon. Gentleman's party manifesto to him, just so we are utterly clear.

Mhairi Black: Will the Minister give way?

Guy Opperman: No, I will not. The manifesto says:

"The pension age is due to rise to 66 by the end of 2020. Labour rejects the Conservatives' proposal to increase the state pension age even further."

[Guy Opperman]

The hon. Gentleman will be aware that the shadow Secretary of State made it clear in July, as the hon. Member for Coatbridge, Chryston and Bellshill said, that 66 was the proposed upper limit for an increase.

Several hon. Members *rose*—

Guy Opperman: I want to make a little bit of progress.

I turn to the legislation passed over the last 22 years, during which time Labour, the coalition and the Conservatives have all been in government. Back in 1995, after two years of debate and consultation, the Government legislated to equalise the state pension age to eliminate gender inequalities in state pensions. That was a result of welcome increases in life expectancy, combined with the anticipated increase in the number of pensioners in the years to come.

Patricia Gibson: The Minister has talked about the number of people who are living longer, getting telegrams from the Queen on their 100th birthday and so on. That is fantastic, and I am sure that we are all happy about it, but can he not see that it does not help the women who have been told, with very little notice, that they will not get the pension they thought they would get at age 60? Telling them that they will live longer does not ease their hardship now.

Guy Opperman: Over the past 22 years, the Government have gone to significant lengths to both communicate and mitigate the nature of the state pension age changes, and that included a campaign in 2004 to educate people about their state pensions and extensive debates in the House of Commons on a multitude of occasions under a number of different Governments.

Mhairi Black: Will the Minister give way?

Guy Opperman: No; I am answering the question. Beyond that, over the last 17 years, the Department has provided more than 19 million personalised state pension estimates. In addition, the Department wrote to women born between 6 April 1950 and 5 April 1953, informing them of changes to their state pension age.

Mhairi Black: Will the Minister give way?

Guy Opperman: I am still finishing this point. Following the Pensions Act 2011, the Department wrote 5.77 million letters to the people directly affected, to inform them of changes to their state pension age. The reality of the situation is that during the passage of the 2011 Act, the two-year acceleration originally proposed was revised to 18 months. It was a concession worth more than £1 billion, which reduced the delay that anyone would experience in claiming their state pension to no more than 18 months, compared with the previous timetable from 1995.

Mhairi Black: The Minister seems to have a distorted view of history. The reality is that most women did not receive a letter, most letters that were received had incorrect information and many were sent to completely the wrong address. It is important to put that on record in the first instance.

Secondly, I have been listening to the Minister intently. He talked about birthdays and people living longer, and that is fine. He brought up Labour Governments, and I understand why he did so: it is important to remember that both Conservative and Labour Governments let this group of women down. That is why we must rise above the politics of the issue and come up with a reason. Please do not give platitudes about letters.

Guy Opperman: I feel that I have already answered the point about notice.

The proposal made by many is to revoke the Pensions Act 1995 and all subsequent Acts, which would cost the public purse more than £70 billion, to be paid for by younger people, as today's pensions are paid for by today's worker. It would represent a cost of more than £38 billion to the public purse in the next year alone.

Angela Crawley: On that point, will the Minister give way?

Guy Opperman: No; I have a minute and a half in which to finish. If we consider that in combination with the ever-increasing demographic pressure—the number of people over state pension age is set to rise by almost one third in the next 25 years—it quickly becomes clear that we cannot afford to back away from the responsible choices that successive Governments have made. Although the state pension has risen significantly since 2010 under the coalition and this Conservative Government, and although auto-enrolment has succeeded in increasing eligible female employees' participation in a workplace pension to 80% in 2016, the reality is that the Government face a key choice when seeking to control state pension spend: increase state pension age or pay lower pensions, with an inevitable impact on pensioner poverty.

The only alternative is to ask the working generation to pay an ever-larger share of their income to support pensioners. Although increasing longevity is to be celebrated, we must also be realistic about the demographic and fiscal challenges that it creates for us as a society. Given the increasing fiscal pressures described, we cannot and do not intend to change a policy implemented over the last 22 years and supported by all three major political parties.

5.27 pm

Hugh Gaffney: I thank everybody who took part in this debate. I was disappointed by the lack of Tory Back Benchers taking the opportunity to speak and maybe defend themselves, but I counted 21 people involved in this hour-long debate. Thank you, Mr Hollobone, for allowing that to happen. It shows the seriousness of this debate.

This debate has not finished. It has not stopped. We will continue. I see a large number of the WASPI women here with us, and I thank them for coming to hear this debate. I hope that we can do them justice and do them proud. They will have heard most Members mention the WASPI debate. We will deal with the WASPI issue and continue the fight for the WASPI women.

We will also speak for every single pensioner out there, and for workers, who are now being worked harder and harder. Jobs are going and not being replaced.

Redundancies are happening everywhere. Local authorities everywhere are cutting jobs, and more and more pressure is being put on people to work harder and harder. I know that as a postman. I am only 54, but I am starting to suffer from that job when I climb the stairs, and I have many good friends and workmates still doing that job today.

I thank the fire brigade, whom I mentioned earlier, and the hospital workers and all those people. We all age. We all get older and older, but we are now going to make people suffer as they get on in life, because the pension money will not see them through their lives. People are worried. The next generation are not even bothered about pensions; they are looking for mum and dad's house to sell. That is how they will get by in this country.

This debate will continue. We will continue to fight for the WASPI women. To finish, the Government found £1 billion for the DUP; find the money for the pensioners.

David Linden: On a point of order, Mr Hollobone. As a new Member of this House, I am perhaps not acquainted

with the procedure, so I wanted to ask whether you could clarify. During the course of the debate there were a couple of rather pathetic, in my view, interventions from Government Back Benchers. Can you clarify whether any information was given to you beforehand about Conservative MPs coming here to take part in the substance of the debate?

Mr Philip Hollobone (in the Chair): It is open to any Member of the House to attend any Westminster Hall debate. Members can choose to apply to speak, or they can ask to intervene on the Member speaking. It is entirely in the hands of individual Members whether they attend a debate or not.

Angela Crawley: On a point of order, Mr Hollobone. Can I clarify something for the avoidance of doubt? A number of generalisations were made about young and old people, and who cares more or less about pensions—

5.30 pm

Sitting adjourned without Question put (Standing Order No. 10(13)).

Written Statements

Tuesday 21 November 2017

BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

General Affairs Council

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Margot James): A meeting of the General Affairs Council (Cohesion) was held in Brussels on 15 November 2017. The UK was represented by Rory O'Donnell (Counsellor for Regions, Agriculture and Fisheries) from the UK permanent representation to the European Union.

The General Affairs Council focused on an exchange of views based on the 7th report on economic, social and territorial cohesion; and on updates on the modification of the common provisions regulation.

Modification of the common provisions regulation

The Estonian presidency provided an update on proposed changes to the common provisions regulation (the overarching EU regulation which governs the European structural and investment funds). These are expected to be in place before our withdrawal from the EU and were proposed by the Commission as part of the mid-term review of the multiannual financial framework (MFF) in order to simplify and harmonise existing regulations.

7th report on economic, social and territorial cohesion

The Council discussed conclusions from the cohesion report, which assesses the EU's cohesion policy in recent years and recognises the need for greater visibility in its implementation. This report called for further simplification and flexibility in the period beyond 2020. A discussion between member states on the themes raised in the report was held. Member states particularly focused on efforts for simplification and harmonisation, on the principle of national co-financing and on the rule of law.

[HCWS262]

EXITING THE EUROPEAN UNION

European Medicines Agency and the European Banking Authority: Relocation

The Parliamentary Under-Secretary of State for Exiting the European Union (Mr Robin Walker): On 20 November 2017, the EU27 decided the new host cities of two London based EU agencies, the European Medicines Agency (EMA) and the European Banking Authority (EBA).

Following a vote in the margins of the General Affairs Council (Art. 50) meeting, it has been announced that the EMA will relocate to Amsterdam; and that the EBA will move to Paris.

The Government value the contribution made by all staff working in the EMA and EBA in supporting the work of the EU. We appreciate that this announcement will affect individual staff, and we encourage the Commission and other EU institutions to recognise the contribution made by all staff, including UK nationals, and honour their commitments to their staff.

We recognise that the location of the European Union's agencies is a matter for the European Union. In seeking a new future economic partnership with the EU, we will discuss how best to continue co-operation in the fields of medicines regulation and banking regulation, in the best interests of patients, citizens and business, both in the UK and the EU. Until we have left the EU, the UK remains a member of the EU with all the rights and obligations that membership entails, including full participation in the activities of the agencies.

[HCWS263]

HOME DEPARTMENT

Toxicology

The Minister for Policing and the Fire Service (Mr Nick Hurd): In January 2017 Randox Testing Services (RTS) informed Greater Manchester Police (GMP) that there may have been manipulation of test results at their laboratories. Ongoing police investigations have since uncovered that the same manipulation may also have occurred at Trimega Laboratories Ltd (Trimega). The police are making an announcement about their criminal investigation today. When GMP has concluded its investigation, the Government will consider what lessons can be learned to ensure public confidence in forensic science used in court proceedings. I am providing an update on the police investigation and the cross-government work to manage the impact of this investigation. The Minister of State, Ministry of Justice, my hon. Friend the Member for Esher and Walton (Dominic Raab) will be overseeing the process for reviewing any impact on individual cases in the courts and will work closely with other Government Ministers from Departments impacted by the outcome of this investigation.

The purpose of this statement is to inform people potentially affected by these issues about next steps, including what action they can take.

The toxicology tests involved are used to detect the presence of drugs and in some cases alcohol in an individual's hair, blood or urine. The alleged manipulation raises doubts about the reliability of some test results, which may have been subsequently relied on in court proceedings (criminal, coroners and family). At this time the Ministry of Justice does not believe that any civil cases are affected by this issue, but continues to keep this under review as more information emerges from the investigation. The results may also have been used by local authorities when making child protection decisions outside the court process, or by private employers for the purpose of drug and alcohol testing of their employees.

The Government recognise the seriousness of this issue and the potential impact on public confidence in the use of forensic science within the justice system.

The senior judiciary are aware and Government officials are working with the police to monitor the scale of the issue, as information emerges.

Trimega

Results from all tests carried out by Trimega between 2010 and 2014 are currently being treated as potentially unreliable although it is not clear how many tests from Trimega during that period may have been manipulated. The number of Trimega's customers affected (such as local authorities, individuals, legal representatives and employers) is unknown. It may never be possible to identify them all, due to poor record-keeping practices. Samples from Trimega cannot be retested, because of the extremely limited chain of custody records and the natural degradation over time of any remaining original samples.

The Department for Education (DFE) has asked all local authorities in England to review their records to establish whether they commissioned tests from Trimega and to consider whether any action is necessary to fulfil their safeguarding responsibilities. It is unlikely that decisions about the welfare of children will have been taken solely on the basis of toxicology test results. However, DFE has asked local authorities to assure themselves that the rationale for decisions made about children's safety and wellbeing is not now called into question.

Social care is devolved to Wales and the Welsh Government. Welsh local authorities have duties and responsibility for the care, protection and wellbeing of Welsh children and young adults. Welsh Ministers have subsequently been informed and will also be asking Welsh local authorities to review their case files to identify potential cases where test results by Trimega were relied on.

The Government fully understand that people who had a case heard in the family court may have concerns. Form C650—"Application notice to vary or set aside an order in relation to children"—has been created and is available online at: <https://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>. This form enables individuals to apply to the court to vary or discharge the final court order. No fee is payable where form C650 is used. Individuals are encouraged to seek legal advice from a solicitor or an organisation like Citizens Advice before making any application to the court. The existing legislative provisions for assessing suitability for legal aid will apply. Further information about the court process is available at: <https://www.gov.uk/guidance/forensic-toxicology-tests>.

Where a private employer has commissioned a test, individuals are encouraged to seek legal advice on the options available to them. They may also wish to consult their professional body or union, which may be able to provide assistance.

Randox Testing Services

Most drug tests from RTS between 2013 and 2017 are being treated as potentially unreliable. RTS was mainly commissioned by individual police forces when investigating criminal offences. This includes cases subsequently referred to the coroner following an investigation into a suspicious death. They have also been commissioned to undertake hair-strand tests for drugs and alcohol in the civil and family jurisdictions. RTS is co-operating fully with the police to manage the impact of this issue, and has contacted all its customers to make them aware. The NPCC is co-ordinating a national plan in response to the impact on criminal and coroners' cases. In the majority of these cases, the original samples remain available for independent retesting, which is being managed through a prioritisation process. The police, CPS and coroners will contact affected individuals once the outcome of the retests is known.

[HCWS265]

INTERNATIONAL TRADE

Foreign Affairs Council (Trade)

The Minister for Trade Policy (Greg Hands): The EU Foreign Affairs Council (Trade) took place in Brussels on 10 November 2017. I represented the UK at the meeting. A summary of the discussions follows:

On the state of play of preparations for the 11th World Trade Organisation ministerial conference, there was broad agreement that an outcome on fisheries subsidies was still possible. However, it would be important to continue to press for further progress on issues such as digital trade. I stressed the need for realism but not resignation and called for continued ambition.

On the state of play of EU trade negotiations with Mexico and Mercosur, attendees were reminded of their importance. The Commission assured the meeting that revised market access offers would be shared as soon as possible. All present agreed that the end of 2017 presented a unique opportunity to conclude these deals.

Commissioner Malmstrom presented the Commission report on implementation of EU free trade agreements, accompanied by info sheets on the implementation of a number of trade agreements. Her main messages were that trade had increased across the board, the EU utilisation of trade preferences could be better, and that trade had to work for everyone.

[HCWS264]

Petition

Tuesday 21 November 2017

OBSERVATIONS

WORK AND PENSIONS

PIP Assessment Criteria and Process

The petition of the residents of Linlithgow and Falkirk East,

Declares that the petitioners believe that Personal Independent Payment (PIP) forms are extremely complex; further that assessors do not fully understand the impacts of all disabilities; and further that the current rules are leading to many recipients unfairly losing their benefits and thus having to go through a very stressful appeal process which worsens their condition.

The petitioners therefore request that the House of Commons urges the Government to undertake a full review of the PIP claims process and in particular to ensure that the assessment criteria are fit for purpose; further that PIP claim forms are simplified; further that staff training and guidance are improved to ensure better decisions; and further that lifetime PIP awards be made to people with the most severe conditions and deteriorating condition.

And the petitioners remain, etc.—[Presented by Martyn Day, *Official Report*, 24 October 2017; Vol. 630, c. 270.]

[P002066]

Observations from the Secretary of State for Work and Pensions (Mr David Gauke):

We are absolutely committed to supporting disabled people and are determined that support should be focused on the people who need it most. We want to enable disabled people to have the same opportunities and choices as non-disabled people. We have, therefore, designed the Personal Independence Payment (PIP) to reflect a modern understanding of disability, treating all conditions fairly.

PIP maintains the key principles of Disability Living Allowance (DLA) as a non-means-tested cash benefit available to people in and out of work but which is delivered in a fairer and more consistent manner. It is only right that support is targeted at those disabled people who require the most assistance to lead independent lives and PIP is achieving that. A total of 29% of the 1.5 million claimants now receiving PIP are getting it at the highest level (£141.10 a week), compared to 15% for working age DLA prior to the introduction of PIP.

Key to the benefit is a more objective assessment, which allows us to accurately, consistently and fairly assess individuals' needs across all health conditions and impairments. The PIP assessment was developed in collaboration with a wide range of experts and through comprehensive, iterative and transparent public consultation. Under the new assessment criteria, 40% of those previously in receipt of DLA are now receiving a higher rate of benefit in PIP.

We are committed to a continuous programme of improvement to the PIP assessment process, for example introducing changes so that existing claimants with the

most severe, lifetime disabilities, whose functional ability has remained the same, are more likely to have their evidence reviewed by a DWP Decision Maker without the need for a face-to-face assessment with a health professional. Since its introduction in 2013, the PIP assessment and processes have also been the subject of two independent reviews with a range of improvements introduced following the first review. The Department is currently considering the second review, published on 30 March, and plans to respond by the end of this year.

The claiming process for PIP was co-produced with the assistance of disabled people, carers and organisations supporting them. In particular, the PIP2 questionnaire was designed to allow claimants to tell us, in their own words, how their health condition or disability impacts them on a day-to-day basis. To aid completion, the questionnaire has a mixture of tick boxes and free text boxes allowing claimants to add as much detail as they wish and we provide guidance notes to help them complete it. Following earlier concerns about time limits for submitting the questionnaire, we introduced rules and procedures that allow claimants additional time to complete it where that is reasonably required. Recent research carried out by Ipsos MORI indicates that 85% of claimants were able to complete all sections of the form and only 4% were unable to do so. The research also shows that 63% of claimants found completing the form easy or easier than expected.

The health professionals carrying out the assessments have training in multiple and complex conditions. The assessments are, therefore, carried out by professionals from a range of different backgrounds. This includes doctors and nurses, also professionals such as physiotherapists and occupational therapists, who we believe have a better skills set for this type of assessment. In addition to their qualified profession, we recognise the importance of ensuring individuals have sufficient experience, skills and training and so any health professional undertaking assessments must have at least two years' experience following registration as well as awareness training in specific conditions.

DWP case managers also receive comprehensive training and are supported by a range of regularly updated guides to help them in their role, such as the Advice for Decision Maker's guide and the PIP Assessment Guide, which is regularly updated. Case managers also receive disability-specific training, have the support of quality assurance managers and there are regular internal events to ensure they are up to date with the latest guidance, including changes made by case law.

Decisions on eligibility for PIP are made after careful consideration of all the evidence, including the assessment report from the assessment providers and information provided by the claimant and other healthcare professionals they engage with. Once someone has been awarded PIP, which can be paid at one of eight rates, that award will be reviewed. Reviews of PIP are a key part of the benefit and ensure that not only do awards remain correct where needs may change but that we also maintain contact with the claimant, both features missing from its predecessor DLA. Importantly, the length of an award is based on an individual's circumstances and can vary from nine months to an ongoing award, with a light touch review at the ten-year point. PIP already recognises that for the most severely disabled claimants, the award review process could seem unnecessarily intrusive. That is why we introduced changes so that existing

claimants with the most severe, lifetime disabilities, whose functional ability has remained the same, are more likely to have their evidence reviewed by a DWP case manager and will not need to have a face-to-face assessment with a healthcare professional.

We are committed to ensuring that the claiming and assessment process works effectively across the spectrum of disabilities and health conditions, including mental health conditions, cognitive impairments and physical

disabilities. If a claimant disagrees with a decision they can request a mandatory reconsideration of the decision. If a claimant disagrees with the outcome of the mandatory reconsideration they can appeal to the independent Social Security and Child Support Tribunal. Of the 2.64 million decisions made to June 2017, only 8% of all decisions have been appealed and only 4% of all decisions have been successfully appealed, often as a result of new evidence presented to the Tribunal.

Ministerial Corrections

Tuesday 21 November 2017

HEALTH

Leaving the EU: Health and Social Care

The following are extracts from Questions to the Secretary of State for Health on 14 November 2017.

7. **Chris Stephens** (Glasgow South West) (SNP): What recent assessment his Department has made of the effect of the UK leaving the EU on the health and social care sector. [901813]

20. **Martyn Day** (Linlithgow and East Falkirk) (SNP): What recent assessment his Department has made of the effect of the UK leaving the EU on the health and social care sector. [901826]

The Minister of State, Department of Health (Mr Philip Dunne): We are fully engaged with the highest level of Government work on Brexit. My right hon. Friend the Secretary of State is a member of the Cabinet Committee on Brexit, and he is engaged on all areas where Brexit may impact the health and social care sector.

[Official Report, 14 November 2017, Vol. 631, c. 139.]

Letter of correction from Mr Dunne.

An error has been identified in the answer I gave to the hon. Members for Glasgow South West (Chris Stephens) and for Linlithgow and East Falkirk (Martyn Day).

The correct answer should have been:

The Minister of State, Department of Health (Mr Philip Dunne): We are fully engaged with the highest level of Government work on Brexit. My right hon. Friend the Secretary of State is **invited to attend** the Cabinet Committee on Brexit, and he is engaged on all areas where Brexit may impact the health and social care sector.

Chris Stephens: Is the Minister aware of the latest figures released this month by the Nursing & Midwifery Council? The figures confirm a clear trend: an 11% increase in the number of UK-trained nurses and midwives leaving the register, alongside an 89% drop in those coming to work in the UK from Europe. Does the Minister agree with the chief executive of the Royal College of Nursing that

“These dramatic figures should set alarm bells ringing in Whitehall and every UK health department”?

Mr Dunne: It is the case that we have been reliant for much of the increase in clinicians in this country on doctors and nurses coming from the EU, so a reduction in that increase is something we are watching carefully. I gently say to the hon. Gentleman that the last figures we have show that, as of the end of June, there were 3,193 more clinicians working in the NHS in England than there were in June 2016.

[Official Report, 14 November 2017, Vol. 631, c. 139.]

Letter of correction from Mr Dunne.

An error has been identified in the answer I gave to the supplementary question asked by the hon. Member for Glasgow South West (Chris Stephens).

The correct answer should have been:

Mr Dunne: ...I gently say to the hon. Gentleman that the last figures we have show that, as of the end of June, there were 3,193 more clinicians **from the EU** working in the NHS in England than there were in June 2016.

ORAL ANSWERS

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