PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

EUROPEAN UNION (WITHDRAWAL) ACT 2018 (EXIT DAY) (AMENDMENT) (NO. 2) REGULATIONS 2019

Monday 20 May 2019

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not later than

Friday 24 May 2019

The Committee consisted of the following Members:

Chair: Sir Lindsay Hoyle

Abrahams, Debbie *(Oldham East and Saddleworth)* (Lab)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Cash, Sir William *(Stone)* (Con)
† Charalambous, Bambos *(Enfield, Southgate)* (Lab)
† Cleverly, James *(Parliamentary Under-Secretary of State for Exiting the European Union)*
† Ford, Vicky *(Chelmsford)* (Con)
† Garnier, Mark *(Wyre Forest)* (Con)
† Hoare, Simon *(North Dorset)* (Con)
† Kendall, Liz *(Leicester West)* (Lab)
† Lopresti, Jack *(Filton and Bradley Stoke)* (Con)
† Newlands, Gavin *(Paisley and Renfrewshire North)* (SNP)
† Pennycook, Matthew *(Greenwich and Woolwich)* (Lab)
† Spelman, Dame Caroline *(Second Church Estates Commissioner)*
† Spencer, Mark *(Comptroller of Her Majesty's Household)*
† Vaizey, Mr Edward *(Wantage)* (Con)
† Whitfield, Martin *(East Lothian)* (Lab)
† Wilson, Phil *(Sedgefield)* (Lab)

Dominic Stockbridge, *Committee Clerk*

† attended the Committee

The following also attended, pursuant to Standing Order No. 118(2):

Adams, Nigel *(Selby and Ainsty)* (Con)
Baker, Mr Steve *(Wycombe)* (Con)
Benyon, Richard *(Newbury)* (Con)
Bone, Mr Peter *(Wellingborough)* (Con)
Bridgen, Andrew *(North West Leicestershire)* (Con)
Caulfield, Maria *(Lewes)* (Con)
Clarke, Mr Simon *(Middlesbrough South and East Cleveland)* (Con)
Double, Steve *(St Austell and Newquay)* (Con)
Duddridge, James *(Rochford and Southend East)* (Con)
Elphicke, Charlie *(Dover)* (Con)
Evans, Mr Nigel *(Ribble Valley)* (Con)
Fabricant, Michael *(Lichfield)* (Con)
Francois, Mr Mark *(Rayleigh and Wickford)* (Con)
Gray, James *(North Wiltshire)* (Con)
Halfon, Robert *(Harlow)* (Con)
Heaton-Harris, Chris *(Daventry)* (Con)
Hoey, Kate *(Vauxhall)* (Lab)
Hollobone, Mr Philip *(Kettering)* (Con)
Holloway, Adam *(Gravesham)* (Con)
Hughes, Eddie *(Walsall North)* (Con)
Jack, Mr Alister *(Dumfries and Galloway)* (Con)
Milling, Amanda *(Cannock Chase)* (Con)
Pursglove, Tom *(Corby)* (Con)
Redwood, John *(Wokingham)* (Con)
Rees-Mogg, Mr Jacob *(North East Somerset)* (Con)
Rowley, Lee *(North East Derbyshire)* (Con)
Stewart, Iain *(Milton Keynes South)* (Con)
Swayne, Sir Desmond *(New Forest West)* (Con)
Tugendhat, Tom *(Tonbridge and Malling)* (Con)
Vickers, Martin *(Cleethorpes)* (Con)
Wragg, Mr William *(Hazel Grove)* (Con)

First Delegated Legislation Committee

Monday 20 May 2019

[Sir Lindsay Hoyle *in the Chair*]

European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019

4.30 pm

The Chair: I call Sir William Cash to move the motion. [Hon. Members: "Hear, hear!"] May I remind hon. Members that we have only one and a half hours? Those who want to spend time cheering may do so by all means, but we all want to hear Sir William.

Sir William Cash (Stone) (Con): I beg to move,

That the Committee has considered the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 (S.I., 2019, No. 859).

I am delighted to see you in the Chair, Sir Lindsay, for what—by any standards—is an important debate, which is about whether the United Kingdom left the European Union on 12 April. As you know, I would have preferred to have the debate on the Floor of the House.

I shall be voting against the regulations. Whichever way the Committee votes at the end of this debate, Sir Lindsay, you will report the regulations to the House and no other proceedings will follow automatically. However, I shall later press for a substantive vote on the Floor of the House.

I remind the Committee that, with his insulting arrogance, Donald Tusk described this unjustified extension of time—which the European Council imposed on the Prime Minister, although it was dressed up as an agreement and as a treaty, which it is not—with the words:

"Please do not waste this time."

We certainly will not.

I and 82 other hon. Members have called this debate to annul the regulations, which purport to authorise the extension to 31 October of the exit day defined under section 1 of the European Union (Withdrawal) Act 2018. When the withdrawal Bill was going through Parliament, "exit day" was defined as

"such day as a Minister of the Crown may by regulations appoint".

No parliamentary procedure was applied. The Bill was amended so that the Act specifically defined "exit day" as

"29 March 2019 at 11.00 p.m."

Section 20(4) enabled a Minister of the Crown to

"amend the definition of 'exit day'…to ensure that the day and time specified in the definition are the day and time that the Treaties are to cease to apply to the United Kingdom",

if the day and time at which the treaties were to cease to apply to the United Kingdom under article 50(3) were different from 29 March at 11 pm. Schedule 7 of the Act laid down that a statutory instrument under section 20(4) could be made only by affirmative resolution approved by each House of Parliament.

The draft exit day regulations were approved following debates in both Houses on Wednesday 27 March 2019. The very next day, on 28 March, the exit day regulations came into force at once, moving exit day to 11 pm on Friday 12 April. The Government exploited the Cooper-Letwin Bill, which they said that they opposed, and used it to overturn the approval procedure and turn it into the annulment procedure that, disgracefully, we now face. Astonishingly, the Under-Secretary of State for Exiting the European Union, my hon. Friend the Member for Worcester (Mr Walker), said that the Government were making that change because

"the Government have no choice but to improve the Bill and limit its most damaging effects."

He said that the reason why the Government were seeking that change was

"simply to provide the speed that I think this House would want in the context of a deal having being agreed."—[*Official Report*, 3 April 2019; Vol. 657, c. 1189-1190.]

Mr Peter Bone (Wellingborough) (Con): Is it not correct that the amendment was probably not available to Members when it was debated because the Clerks were having to produce the amendments on the same day? Therefore, no proper consideration was made of that amendment to primary legislation.

Sir William Cash: My hon. Friend is completely right. That is part of the disgraceful way in which all of this has been done. The speed was certainly breathtaking. The suggestion that the deal had been agreed is itself a breathtaking statement; really, it was imposed on us by abject surrender.

The regulations that moved exit day to 31 October were rammed through at 3.15 pm on Thursday 11 April by the Minister and laid before the House at 4.15 pm on the same day. Let us remember that section 1 of the European Union (Withdrawal) Act 2018 is inextricably bound with exit day, with the repeal of the European Communities Act 1972 in lockstep. The section, says, quite clearly and expressly:

"The European Communities Act 1972 is repealed on exit day."

Repeal of the 1972 Act is axiomatic to carrying through the democratic referendum vote that took place on 23 June 2016, because that Act is the constitutional and domestic legislative means by which the voters of the United Kingdom were shackled to all treaties and laws imposed on them, without exception—including rulings of the Court of Justice. Those laws are invariably passed behind closed doors by qualified majority vote of the Council of Ministers of the other 27 member states of the European Union

It is about who governs this country and how they do so—general election manifestos and freely exercised democratic votes of the British electorate are the basis of our parliamentary Government, established over centuries—and whether the wishes of the British electorate prevail.

John Redwood (Wokingham) (Con): Does my hon. Friend agree that, given the huge constitutional significance, the way in which the proposal stops us governing ourselves for longer, and the huge sums we will have to pay to the EU under the regulations, it is a disgrace that we did not have a proper debate on the Floor of the House?

Sir William Cash: I could not agree more. In fact, as I will mention later, as a result of the extension to 31 October, that amount of money comes to more than £7 billion. The original date was 29 March and it will cost about £1 billion a month. That is why my right hon. Friend is so right.

Mr Nigel Evans (Ribble Valley) (Con): As my hon. Friend is on the topic of wasting huge sums of money, is not the moveable feast of dates the reason why the Government are wasting £150 million and inflicting elections on the British public on Thursday, in the hope that some sort of deal can be done so that the people we are electing on Thursday do not have to take their seats? Is this not "Alice in Wonderland" politics?

Sir William Cash: It is actually horror-in-wonderland politics. In our consideration—the House of Commons was given only one hour to consider Lords amendments—I tabled an amendment that would have prohibited our taking part in the European elections. To my astonishment, despite the fact that that was Government policy, I was informed that No. 10 had given instructions to oppose my amendment. It is unimaginable, but that is exactly what happened.

Mr Mark Francois (Rayleigh and Wickford) (Con): It appears that, owing to some incredible administrative oversight within the Whips Office, I was not put on this Committee. Has my hon. Friend seen—*[Interruption.]* Thank you, Sir Lindsay; at least somebody has put me on the Committee. Has my hon. Friend seen the "Behind Closed Doors" documentary, which showed in graphic detail the utter contempt with which this House and this nation are regarded by our European partners? Does he wish that everybody in the United Kingdom could see this SI, so that they could see how it is as much a rant as that documentary?

Sir William Cash: I have indeed seen it, and I recall that a number of extremely abusive and obscene remarks were made with reference to the United Kingdom during that documentary. I also remember some of the chocolate soldiers, if I can put it like that, in the European Commission, who were delighted when they thought that the withdrawal agreement might go through, saying, "At last, we've created the circumstances in which the United Kingdom will become a colony." That, of course, is completely true. I do not want to be diverted into all those arguments, but this is about who governs the United Kingdom, and these 27 other member states are not doing anything to help us or the Government, and certainly not the Prime Minister or our national interest.

I would add that the Cooper-Letwin Bill, which was authorised to proceed under a business motion agreed to by a majority of merely one, overturns the parliamentary governmental system to which I referred earlier, which is protected by Standing Order 14. That was done by an unwarranted constitutional revolution. As I said to the Leader of the House on the morning after the Prime Minister's abject surrender to the other 27 member states and the EU Commission, the whole thing stinks. Incidentally, in fairness to the Leader of the House, she, together with eight other members of the Cabinet and, I understand, seven out of 10 in the Whip's office, originally opposed the extension of time, in the national interest.

That day, I asked the Attorney General whether, under the ministerial code, his advice had been sought on that issue, but received the stock-in-trade answer that neither his advice as a matter of fact nor its contents are disclosed. That afternoon, I challenged the Prime Minister on the Floor of the House. I pointed out that she had broken her promises—made more than 100 times—not to extend exit day and that she was undermining our democracy, Northern Ireland, our right to govern ourselves, our control over our own laws and our national interest. I then called on her to resign. All this encapsulates the importance of annulling the regulations, for reasons that I will now give, and which I have set out in my submissions to the Joint Committee on Statutory Instruments, which, in fairness, had not had the opportunity to see them on 11 April.

On 11 April, the Government introduced the statutory instrument with a full explanatory memorandum—which I am sure the Minister read very carefully—setting out their legal assertions as to why the instrument purported to be lawful. As Chair of the European Scrutiny Committee—I speak in a personal capacity and on behalf the 82 Members of Parliament who signed my motion to annul the instrument—I presented my submission on 24 April, after the recess, to the Joint Committee on Statutory Instruments, in which I objected to the basis on which the Government sought to justify the legality of the statutory instrument in the explanatory memorandum.

Paragraph 1.2 of the explanatory memorandum states:

> "This memorandum contains information for the Joint Committee on Statutory Instruments."

On 1 May 2019, with the statutory instrument and the Government's explanatory memorandum before it, the Joint Committee declined to draw special attention to the statutory instrument, which sought to delay exit day until 31 October, stating simply that:

> "At its meeting on 24 April 2019 the Committee considered the Instruments set out in the Annex to this Report, none of which were required to be reported to both Houses."

There were 20 such unreported instruments, including the one before this Committee. The role of the Joint Committee, whose membership includes Members both of the House of Lords and the House of Commons, is to assess the technical qualities of each instrument in its remit and to decide whether to draw to the special attention of each House any instrument on one or a number of important grounds. Those include that the instrument imposes a charge on public revenue—I already have referred to the fact that it is costing the British taxpayer £7 billion to move the date from 29 March to 31 October.

Other grounds include doubt about whether there is the power to make the instrument at all, that it appears to represent an unusual or unexpected use of the power to make it, that its form or meaning needs to be explained and that its drafting appears to be defective. In my view, it would have been appropriate for the Joint Committee to draw to the special attention of each House this profoundly important historic document, but it chose not to do so. The Joint Committee decided that it would not make a special report on this vital question, nor did it publicly respond to my submissions, which were based upon a detailed legal analysis of the highest order. According to the 59th report of the 2017-19 Session, the Committee drew special attention to only

[Sir William Cash]

one of the instruments reported. My arguments in disagreeing with the Government's explanatory memorandum are based on a number of important issues, as a matter of both law and procedure.

Paragraph 2.3 of the explanatory memorandum states:

"This European Council decision and the United Kingdom's agreement to it constitute a binding agreement to extend in EU and international law."

That statement is open to an interpretation that places responsibility for the extension of the UK's membership on the European Council, but the Council cannot extend the UK's membership. Without an agreement, which is reached under international law between the UK and the Council, there is no extension. Paragraph 2.3 confuses the matter all the more when read in conjunction with a letter from Sir Timothy Barrow following the Council meeting of 10 April, in which he refers to a

"Council decision taken in agreement with the United Kingdom".

As the Committee will know, the United Kingdom is expressly excluded from Council decisions and decisions in relation to extensions. Therefore, no Council decision was or could be taken with the United Kingdom's participation. Only with a separate act of the United Kingdom outside the Council could an international agreement of the kind necessary to extend the UK's membership of the EU have come about at all. To the extent that the United Kingdom's representative in Brussels purported to agree to an extension, that act was performed under circumstances that did not allow the United Kingdom to give due consideration to the terms that the Council had proposed—demanded, I would say—or the terms of the United Kingdom's response.

The hastiness of the letter was followed by the Government's failure to observe the procedures required for the United Kingdom to enter into such international agreements. The memorandum asserts that, as a result of events following the European Council decision,

"the UK remains a Member State until 31 October 2019 regardless of the passage of these Regulations at the domestic level."

As a matter of law, I believe this statement is untenable. The explanatory memorandum further states that the Government "will also now"—at that time—

"delay commencement of the repeal of the European Communities Act 1972"

under the arrangements for commencement orders. That ignores that fact that, under the Government's own guidelines on commencement orders, they are required to be made within a reasonable time, otherwise questions of ultra vires are raised. The commencement order has been sitting there since 26 June 2018—far too long.

Moreover, there is no provision in the statutory instrument for exit day to take place on any of the possible alternative dates provided for in article 2 of the decision of the European Council of 11 April 2019, which stipulates a number of conditions for that further extension. The decision prescribed an extension lasting no longer than 31 October 2019, but with the proviso in recital 8 that, if the withdrawal agreement was ratified meanwhile, the United Kingdom would leave the European Union on the first day of the month following the completion of the ratification procedures.

Article 2 of the decision further requires that, if the United Kingdom did not ratify the withdrawal agreement by 22 May 2019 and had not held European parliamentary elections in accordance with European law, the decision would cease to apply and the extension would therefore expire on 31 May 2019. The effect of the decision was therefore to provide for three possible dates on which the United Kingdom might cease to be a member state of the European Union. On 11 April 2019, the Government wrote to the European Council accepting the demands of the decision. The statutory instrument now provides that exit day is 31 October 2019. However, there is no provision in the statutory instrument for exit day to take place on any of the possible alternative dates set out in the decision—I repeat: on any of the possible alternative dates set out in the decision. Therefore, the statutory instrument does not

"ensure the day and time specified in the definition are the day and time that the EU Treaties are to cease to apply to the United Kingdom."

Thus, the statutory instrument was not made for the statutory purpose for which it was designed, and it is ultra vires and void, with the effect that our exit was at 11 pm on 12 April 2019.

Under section 1 of the European Union (Withdrawal) Act 2018, the repeal of the European Communities Act 1972 is tied to exit day. Thus, European law would no longer have precedence over domestic law from exit day. Furthermore, under section 5(1) of the same Act, the principle of the supremacy of EU law would not apply to any enactment or rule of law passed or made on or after exit day. Similarly, other provisions of the withdrawal agreement, such as section 6(1), would apply, so that decisions made by the European Union after exit day would no longer be binding on the courts of the United Kingdom. Furthermore, it is to be observed in paragraph 6(3) of the explanatory memorandum that the European Union (Withdrawal) Act 2019, for which Royal Assent was given on 8 April 2019, amends paragraph 14 of schedule 7 to the 2018 Act to convert the regulations in question from the affirmative to the negative resolution procedure.

Mr Edward Vaizey (Wantage) (Con): I wonder whether my hon. Friend could help me on two points. First, if he succeeds in defeating the regulation in the Committee today, as he might well through the force of his arguments, what will be the practical outcome of his victory? Secondly, on his arguing that the regulation is ultra vires, is this not a matter for the courts, including the Supreme Court, rather than Parliament?

Sir William Cash: It is indeed a matter for the courts as well, but it is also prudent and constitutional for Government to make laws in such a manner as to be within the law. We operate under a system of the rule of law, and it is therefore unacceptable for Governments to make legislation. That is why the Joint Committee on Statutory Instruments and other Committees that scrutinise legislation, including the European Scrutiny Committee, which I happen to have the honour of chairing, have a job to do in bringing Governments to account. This Committee and the prescribed annulment procedures that we are going through are part and parcel of that democratic, accountable procedure.

Although it is ultimately for the courts to make decisions on the basis that my right hon. Friend suggests—namely that decisions can be evaluated, as in the Gina Miller case—in this instance we are not at that point

yet, and in the meantime we have a Government passing legislation that I and many other distinguished Queen's counsel and former judges believe to be unlawful, void and ultra vires on the one hand. On the other hand, given the devious means by which the Cooper-Letwin Bill was brought through, it is not appropriate for any proper system of parliamentary government, because it is inconsistent with the normal behaviour of Parliament in relation to the passing of legislation.

Mr Francois: Will my hon. Friend confirm that, in effect, the rancid Cooper-Boles-Letwin Act is now spent and has no further legal effect of any kind that would impede us from leaving the European Union on Halloween?

Sir William Cash: Short of a Lazarus touch I would say the answer is yes, but I take nothing for granted in this place any more. I referred to a constitutional revolution and I fear that there are those who by one means or another will take almost any steps to overturn our established, centuries-old traditions of parliamentary government. As I have said many times in the House in the past year, we have a system of parliamentary government, and not government by Parliament.

Charlie Elphicke (Dover) (Con): Just so I understand the import, if my hon. Friend succeeds in his annulment, would the United Kingdom leave the European Union immediately or would we, as a matter of international law, still be bound in to the European Union until Halloween, when this nightmare can end, so that on All Saints day we would then be free?

Sir William Cash: That is a wonderful thought. We have to take one step at a time. One step is to use the procedures of this House to seek an annulment, which we are entitled to seek, and to press for it. Then there is the question whether the courts would adjudicate on a case brought before them. That is yet to be decided or pursued. At the same time there is the question whether we have a vote on the Floor of the House. Although we will have a vote in this Committee, as I explained earlier, I have been advised that I am entitled to call for a vote on the Floor of the House. There may not be a debate but there can be a vote.

It will also be noticed that the end of paragraph 6.6 of the explanatory memorandum, which my hon. Friend the Under-Secretary signed off—or rammed through—at 4.15 pm on the fateful day, states that

"this legislation would come into force and take effect by reference to the current definition of 'exit day'"—

wait for it, Sir Lindsay—namely

"11.00 p.m. on 12 April 2019."

According to the Government's explanatory memorandum, provisions come into effect on 12 April 2019—they are not on the fundamental issues that we are discussing today. I find that extraordinary. I should have thought that that in itself that was worthy of special attention.

The combined effect of these provisions, in my view, comes within the Standing Orders of the Joint Committee on Statutory Instruments, particularly in relation to assessing the technical qualities of the statutory instrument, and matters to which the special attention of each House would need to be drawn. Those are, first, that the statutory instrument imposes or sets the amount of a charge on the public revenue of as much as £7 billion, by reason of the extension from 29 March and/or 12 April, which would not otherwise have been borne by the United Kingdom taxpayer. There is serious and grave doubt as to whether there is power to make the statutory instrument in the form in which it has been made. Undoubtedly an unusual or unexpected use is being made of the power to make that statutory instrument. We have never seen its like before.

In all the circumstances, and bearing in mind that my early-day motion 2294 is a prayer in the form of an humble address praying that the statutory instrument be annulled, and has been signed by 83 Members of Parliament, I appeal to members of the Committee. Looking round, I see a range of people, some of whom are not members of the Committee, but who are all good, stalwart Members of Parliament. There are others who for a variety of reasons have already voted for the exit day prescribed, on 29 March, for the European Union (Notification of Withdrawal) Act 2017, for the referendum and, during a general election, on a manifesto that made it clear we were going to leave the European Union. I believe that there is every reason for this Committee to vote for this statutory instrument to be annulled.

Running parallel to this, several legal actions are pending on the question of vires and the question of whether the statutory instrument is lawful or unlawful. The courts may rule that these regulations are unlawful, or Parliament may decide that it does not want to carry on with them because it would be completely inconceivable that they go through in the circumstances I have described, given it has converted the parliamentary procedure from affirmative to annulment procedure, exploiting the Cooper-Letwin Bill—actually, that was not the case. It was done in Committee, in circumstances that I would describe as discreet to say the least—people did not catch on to the fact that it was happening. It was a very unfortunate and, I believe, retrograde step to convert this statutory instrument procedure from affirmative to annulment procedure.

My argument, in a nutshell, is simply this. My personal belief, and I believe that of the other 82 Members who signed my motion, is that this statutory instrument should be annulled. On that basis, we would have left the European Union on 12 April 2019, and a great cheer would go up in the country.

Several hon. Members *rose—*

The Chair: Who is on the Committee? I call Mr Edward Vaizey.

Mr Vaizey: I do not want to get in their way. I will let them go first. *[Interruption.]*

The Chair: Order. As I explained at the beginning, I will take Committee members first, and if there is any time left, I will extend it to other Members of Parliament who are not on the Committee.

5.2 pm

Mr Vaizey: I might as well get up and say my two pennies' worth. I congratulate my hon. Friend the Member for Stone on setting out his case against the regulations so concisely, succinctly and clearly. It seems, from a number of the interventions that were made during his

[Mr Vaizey]

exposition, that this may well become a wider debate about the nature of the delay in our leaving the European Union.

I want to put on the record, first, my concern that I have seen, over the past three years, a sort of pick-and-mix attitude to parliamentary procedure. I have heard hon. Members disparage certain elements of parliamentary procedure when it does not suit their case and praise certain elements of it when it does. My first point is that I think we should all be consistent. We are sometimes in danger in these debates of demeaning the role of Parliament. For example, I heard the Cooper-Letwin Bill described in an intervention as devious or deceitful.

Mr Francois: No, it was rancid.

Mr Vaizey: Rancid—I stand corrected.

Mr Simon Clarke (Middlesbrough South and East Cleveland) (Con): Does my hon. Friend agree that the greatest diminution of the standing of Parliament comes when we break the promises upon which we were elected?

Mr Vaizey: My hon. Friend has given a perfect example of the kind of spurious and, frankly, silly points that are made during these debates. That was the first silly point of no doubt many that will be made as I continue to make my case. *[Interruption.]* Well, a Bill that I voted for—the Cooper-Letwin Bill—was described as rancid. That is exactly the point I am trying to make. It is perfectly all right for one Member of this House to describe a Bill that I supported, which was perfectly within the constitutional procedures of Parliament, as rancid, but apparently it is not all right for me to describe an hon. Member's intervention as silly as part of the robust tradition of debate in this Parliament.

Mr Francois: If my hon. Friend wants a robust debate, will he give way?

The Chair: Order.

Mr Francois: He wanted a robust debate.

The Chair: Order. This is not a private conversation or debate or argument between you. We have this legislation in front of us. The floor is yours, Mr Vaizey, and you may give way if you wish. Mr Francois would like to catch your eye, but it is up to you whether to give way. I am not going to have chirping from the sidelines all the way through.

Mr Vaizey: I was about to praise my hon. Friend the Member for North East Somerset. He has published a fantastic book on 12 Victorian heroes, which has received a great deal of publicity.

Mr Jacob Rees-Mogg (North East Somerset) (Con): Will my right hon. Friend give way?

Mr Vaizey: I hope that when my hon. Friend makes his intervention, which is imminent, he might support me in saying that this House has a fine tradition of robust but courteous debate when we disagree.

Mr Rees-Mogg: I am grateful to my right hon. Friend for giving way; he is enormously kind. It is only fair to add that most of the reviews have not been entirely sympathetic.

Mr Vaizey: I have to confess that I have read one or two, but that leads me to my next point.

Mr Francois: Before my right hon. Friend moves on, for the avoidance of doubt, I never said the Cooper-Boles-Letwin Bill was unconstitutional. The way it was rammed through the House in just over three hours, by one vote, was a constitutional outrage, but I did not say it was unconstitutional. I did say it was rancid. They are two slightly different things.

Mr Vaizey: I agree. I did not describe my right hon. Friend's earlier intervention as unconstitutional; I described it as silly. They are two different things. He was perfectly entitled under the constitution to make his intervention. I just thought it was a silly, pointless intervention that did not help to progress the debate.

The book written by my hon. Friend the Member for North East Somerset, and its reviews, leads me nicely to my second point. One should always consult the original source—in that case, his excellent book—rather than reviews, which might be driven by ulterior motives. My point is that, when it comes to the parliamentary constitution, hon. Members should look at the fundamentals of how Parliament operates rather than being driven by the particular viewpoint they take on our exit from the European Union.

We saw that in the debate on article 50. We found ourselves in a peculiar situation where quite a few hon. Members argued that Parliament should have no say in the most important decision we are likely to take in our political lifetimes, and probably the most important decision Parliament has taken since the second world war. We relied on a ruling by the Supreme Court to allow Parliament to take back control and make that decision. I certainly would not describe the article 50 Bill as a rancid Bill; it was debated comprehensively, and Parliament was then able to take a vote.

I can tell by certain hand gestures from the Chair that you are keen, Sir Lindsay, for me to bring my remarks—

The Chair: No, I was just trying to help. You were drifting, and I wanted you to come back to points relevant to the regulations.

Mr Vaizey: I now understand what you were indicating, Sir Lindsay.

The Chair: I can see I will have to spell it out all the way through.

Mr Vaizey: Exactly. You were indicating two things, Sir Lindsay: first, that I need to get back to the point; and secondly, that I am an incredibly poor reader of hand signals from the Chair. I can tell that a few other hon. Members, who may not be members of the Committee, are also keen to project hand signals in my direction as part of this courteous but robust debate—the kind of debate that has characterised our approach to our exit from the European Union.

Turning to the regulations in front of us, my fundamental problem with the argument of my hon. Friend the Member for Stone is as follows. First, fundamentally, he believes that the regulations are ultra vires—that Parliament does not really have the power to pass them. He did not suggest that. He is an honourable man, and he would never dream of suggesting it. There can be no suggestion that the Government are trying to pull a fast one—that they are consciously passing legislation that they know to be ultra vires. I think it is the case, as we saw with article 50, that the Government take advice from their lawyers and follow procedures that they think are within the law and the constitution.

Sir William Cash *rose—*

Mr Vaizey: That is the case here, and my hon. Friend is about to help me make my fundamental point.

Sir William Cash: It is terribly simple. I believe that the Government knew perfectly well that this procedure was inappropriate. Furthermore, they rammed it through the House of Commons that afternoon of 11 April after the abject surrender by the Prime Minister, and then purported to say that it was an agreement when quite obviously it was imposed on the Prime Minister by the European Union's 27 member states.

Mr Vaizey: I am slightly taken aback by that statement. My hon. Friend is someone whom I have long admired and looked up to—he has been in the House for more than 30 years and is well known for his constitutional expertise—but he makes a pretty serious allegation that the Government are putting through legislation that they are constitutionally not entitled to put through. I hope that, at some point, the Minister will address that, or that my hon. Friend will have the chance to expand on his point, but it surprises me. I compare the Government's approach to that on article 50, as I said—because a treaty was involved, they believed that they had the power to extend article 50 without recourse to Parliament, and it took a court case to illustrate that invoking article 50 fundamentally changed legislation and so Parliament's approval was required.

Given my hon. Friend's intervention and that he has talked about Government through Parliament, not Parliament through Government, the other point that I find surprising is that he now appears to be saying that the Government are acting in bad faith. With his overview of the evolution of our unwritten and flexible constitution, is he coming to the conclusion, perhaps, that it is better to have parliamentary government, rather than Government through Parliament? On that basis, from his own arguments, surely he has now changed his mind on the Cooper-Letwin Bill, which came about partly because of the legislature's mistrust of the motives of the Executive. The legislature was concerned that the Executive was not putting in place the procedures needed to stop no deal, which all of us in the room can at least agree would be absolutely catastrophic for the United Kingdom—*[Interruption.]* I am amazed that my banal remark has provoked an intervention, but I will give way.

Mr Bone: We cannot have an hon. Member misrepresenting the views of other Members. No deal is the best thing for this country—my hon. Friend knows it and we all know it. Take that back, sir!

Mr Vaizey: On a point of order, Sir Lindsay. I do not know whether I am allowed to make a point of order in the middle of my remarks, but is it in order for my hon. Friend, for whom I obviously have the utmost admiration—we came into the House at the same time, and have grown up and learned together—to accuse me of misrepresenting hon. Members?

The Chair: We are in danger of going down a route that we are not going to go down. The point is, Mr Vaizey, you gave way even though you knew exactly that Mr Bone had a slight disagreement with you. In fairness, as you entered the House together, good friends should never fall out. I also know that you want to let other Members speak, so I am sure you want to move on and to stick with what is before us.

Mr Vaizey: I have been speaking for about 14 minutes. I think that counts as what is known technically as "half a Cash"—a new parliamentary convention. If I get to half an hour, I will have made a "full Cash". If I manage to make it to six o'clock, I will have done a "double Cash". Those are the kinds of benchmarks emerging from our flexible constitution, but I will draw my remarks to a close, because I sense the mood of the Committee.

I am pleased that my hon. Friend the Member for Stone has come around to the view that Parliament should take back control. He has put it on the record that he mistrusts the Executive and their motives. He believes the Government are capable of playing fast and loose with both parliamentary procedure and even the law. Therefore, future Back-Bench Bills that emerge, be they Cooper-Letwin or the one I particularly want to introduce: a Royston-Vaizey Bill with the backing of my hon. Friend the Member for Southampton, Itchen (Royston Smith)—*[Interruption.]* Is my hon. Friend the hon. Member for Corby just going to make points from a sedentary position or will he make an intervention? Will he be man enough? I therefore hope the Royston-Vaizey Bill would get the support of my hon. Friend the Member for Stone.

5.15 pm

Matthew Pennycook (Greenwich and Woolwich) (Lab): It is always a pleasure to see you in the Chair, Sir Lindsay. I intend to be brief. As I look at the impressive array of right hon. and hon. Members on the Government side, I think the Parliamentary Under-Secretary will have enough problems from Members of his party without me adding to them, and I will not do so.

Just as I argued when the House debated the predecessor to these regulations on 27 March, the regulations are a necessity and should be entirely uncontroversial. The agreement between the European Council and the UK further extended the article 50 process. The extension is, as a result, a matter of European law and legally binding in international law. All that the regulations do is, just as their predecessors did, to ensure that our domestic legislation aligns with what has already been agreed and, as such, to avoid creating the unnecessary and considerable legal confusion that would result from having two parallel sets of regulations: those deriving specifically and directly from EU law, which are currently in place; and those made under the 2018 Act, which would diverge from EU law.

John Redwood: Given that Labour campaigned on helping us to leave the European Union in 2017, why does the party now take every opportunity to delay and prevent us from leaving?

Matthew Pennycook: There is a simple answer to that. Yes, the manifesto we stood on rightly said that we accepted the referendum result. It also said, clearly, that we rejected a no-deal exit and the proposition on which the Tory party is trying to take us out of the EU. We will not vote for the deal as it stands, so a further extension is inevitable until other options come forward.

Michael Fabricant (Lichfield) (Con): I reassure the Committee that I have not crossed the Floor of the House, but as there were no seats available on the Government side of the Committee room, I am speaking from the other side. The hon. Gentleman talks about his party rejecting a no-deal Brexit, and my right hon. Friend the Member for Wantage also mentioned no-deal Brexit, but is it not the case that that no longer exists? Michel Barnier and the Secretary of State for Exiting the European Union have said that there is now sufficient regulation on both sides of the channel that if we were to leave without this withdrawal agreement deal, we would not be leaving without a deal. We would have "no deal", surrounded by all the legislation that has been passed on both sides of the channel in the last eight months.

Matthew Pennycook: The hon. Gentleman can call it "no deal", but he is essentially propagating something that Conservative Members have argued for many times: a managed no deal. Certain bilateral agreements have been put in place on the EU's terms, and they would be revoked on the EU's terms. He makes a good point, however: if we exited without a deal, we would be forced back to the negotiating table to conclude an arrangement of sorts. There is no pure, clean break for him and his friends on the Conservative side.

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

Matthew Pennycook: I am going to make some progress.

As I said, these are relatively uncontroversial regulations that should be supported. That is why the Opposition take no issue with them. I do, however, have one question for the Minister. As he will know, and as the hon. Member for Stone said, the regulations differ from their predecessor in providing only for an extension until 31 October. The predecessor regulations sought to anticipate two different exit day scenarios: 22 May if the withdrawal agreement was approved before 29 March; or 12 April if it was not. By providing only for an extension until 31 October, the regulations signal a tacit acceptance of what we all suspected to be the case at the time: we would have to participate in the European elections.

More than that, however, in providing only for that single date, the regulations do not cater for the possibility that the withdrawal agreement might still be ratified before 31 October—something that, were it to occur, would mean, through the agreement between the UK and the European Council, that exit day would have to be changed to 1 June, 1 July, 1 August, 1 September or 1 October. Therefore, could the Minister tell the Committee—I do think the Committee should have an answer to this—what the Government will do or plan to do in the admittedly unlikely scenario that the withdrawal agreement is approved before 31 October? Would a further statutory instrument be introduced to change exit day yet again, or would the Government seek to use the withdrawal agreement Bill to modify more comprehensively the provisions connected with exit day? I look forward to the Minister's answer—

Mr Francois: Will the hon. Gentleman give way before he finishes?

Matthew Pennycook: I will not give way; I have just come to a conclusion.

5.20 pm

Simon Hoare (North Dorset) (Con): Sometimes it is quite hard to refer to people on our own side as honourable or right honourable Friends. For me, that is the case today. I am not going to name him, but I do curse the colleague who sent me an email to say, "Is there any chance you could sub on the statutory instrument this afternoon?" I actually had quite a quiet afternoon planned, and yet here I am—he will owe me a very large drink afterwards.

Mr Francois: Name him!

Simon Hoare: I am not going to name him, although I have to say, given the choice of topics on offer, I rather wish I were on the Floor of the House instead of here.

May I say this in answer to one point that my right hon. Friend the Member for Wantage has made? He has suggested one Bill that could come forward. Might I suggest that a Bill co-sponsored by my hon. Friend the Member for Stone and me would, given our surnames, not actually be incredibly helpful?

I think we should take some heart—in fact, quite a lot of heart—from the fact that my hon. Friend, and indeed friend, the Member for Braintree is the Minister who has put his name to this legislation. My hon. Friend campaigned on a different side from me in the referendum, but we are both democrats and, I believe, firmly rooted in a pragmatic tradition of politics, which is what is required. I agree with the Opposition Front-Bench spokesman, the hon. Member for Greenwich and Woolwich, that this is something that really should not be raising the temperature. It is a necessity; it is not a desirable necessity, but it is one that we had to face up to.

Like all of us in the House—well, increasingly I am beginning to doubt whether use of the word "all" is pertinent. I think that most of us in the House are, in essence, democrats who believe in living by the decision of the British people. We asked the British people for their decision back in June 2016. They arrived at a decision that I did not support but am pledged to deliver. I have taken the view—colleagues will take a different view—that the best way of delivering that is through the orderly mechanism of a deal, the content of which we can, of course, debate. That is just my view. I could be wrong and—I am picking at random—my right hon. Friend the Member for Wokingham could be right that, in fact, it is immaterial and leaving without a deal will—

Kate Hoey (Vauxhall) (Lab): The hon. Gentleman seems very confident about WTO terms not being the right thing. Does he think that the majority of the public, who now very clearly say that they would be happy with WTO terms, do not actually understand and that they should be asked to consider their position?

Simon Hoare: I am not entirely sure how, based on what I just said, the hon. Lady could have arrived at the statement that she made in that intervention. I did not speak with any degree of certainty; I merely said that, having looked at everything, I had come to a view. If she had listened to what I said—I say this to her respectfully—she would have heard me say that my right hon. Friend the Member for Wokingham could be right. At the moment, nobody is entirely sure. We could both be wrong. The truth could be somewhere in between. Unlike some in this debate, I am not claiming any golden insight—some sort of crystal ball that I can gaze at and that allows me to predict with absolute certainty. I think that all of us, frankly, are trying to find our way in a chapter in our nation's history for which there is no precedent and no other example to which we can turn. We are all trying to find our way. WTO might be the best thing since sliced bread, if sliced bread is your thing, but it might not be; I do not know. I do not think it is, which is why I have concluded on behalf of my constituents that we should leave with a deal. I do not claim the certainty that the hon. Lady suggests.

Mr Francois: My hon. Friend makes the very reasonable point that, in his opinion, no deal is not the best way forward, and we respect him for his honesty. However, does he accept that, in a ComRes poll at the weekend, 63% of the public said that they do think it is the best way forward—they want to leave as soon as possible, even with no deal? It might not be his view, but it is now the view of almost two thirds of the British public.

The Chair: I do not want to drift too far. The point has been made, but I do not want us to get into opinion polls on where we may or may not be.

Mr Francois: But it is such a good poll.

The Chair: You have got that on the record; do not over-milk it.

Simon Hoare: Of course the best opinion poll was the referendum itself. I take view that opinion polls come and go, and that the quality of the sausage that comes out of the machine is only as good as the material that is put in. However, the opinion poll we should all adhere to is that people want to leave the European Union. My hon. Friend and I can argue the bona fides of polls and pollsters up hill and down dale.

The Chair: That is not the order of the day.

Simon Hoare: That is not the order of the day. I remember seeing polls immediately before the 2017 general election predicting entirely—

The Chair: That is also not.

Mr Vaizey: We are debating the constitutional propriety of the regulation. Does my hon. Friend share my concern that too many hon. Members are playing fast and loose with our constitution? Is it now a constitutional proposal that this House abides by opinion polls? If it is, the Australian Labor party would now be in government, based on the last opinion poll. If it is not, surely we need a confirmatory referendum on no deal.

The Chair: Totally irrelevant. Let us get back to where we were.

Simon Hoare: On my right hon. Friend's final point, I am entirely opposed to a people's vote, a second referendum or a confirmatory vote. We said to the British people that this decision was final—it was not to be a neverendum—and we have to adhere to it.

I will make a sort of priggish point, for which I will doubtless be castigated by some. We know that the result of the Committee is effectively a foregone conclusion, but the vast majority of our constituents up and down the country do not. Whether people are filled with hope or despair about Brexit, and whether there are still some people who are ambivalent or uncertain about it, I think that a lot of our constituents are worried about the impact it might have on their ability to pay their rent, their mortgage and their gas bill, to put clothes on the backs of their children and to put food on the table to sustain their lives.

There will be many in this place and outwith who are comfortably insulated from any chill winds or economic downturns one way or the other; they will be fine come what may, and I wish them good luck and good fortune. However, not all our constituents are in that place. In north Dorset, the average annual take-home salary is £18,500, which is considerably sub-optimal and certainly below the national average. That is not unique for a rural south-west constituency; it is actually not unique for a rural constituency, come what may. If colleagues take offence at this or think I am being pompous or humbuggish or whatever, I apologise in advance. Everybody here—*[Interruption.]* I am not quite sure why my hon. Friend the Member for Stone laughs, but he does; he might just listen to the point before the sotto voce sedentary stuff starts.

The point I make is that our constituents want us to take this seriously, and I think we owe it to our constituents to take it seriously. This is not a debating society game. This is not a schoolboy or schoolgirl prank. We are talking about serious, grown-up political issues. I hope I am not the only one, certainly on this side of the Committee, who worries that anybody tuning in to watch the debate would not be entirely convinced that we are dealing with this most serious of national issues in a serious way.

Dame Caroline Spelman (Meriden) (Con): On a serious note, 7,500 jobs have been lost in the largest employer in my constituency. My constituents watching these proceedings will want to know from all the hon. Gentlemen and the few hon. Ladies present that we take seriously the human cost of what we are discussing.

Simon Hoare: I am grateful to my right hon. Friend. I am not suggesting that we wander around in sackcloth and ashes, nor am I suggesting that we become Cromwell's puritans. Of course there must be moments of light and shade in any of these debates.

Mr Evans: I take on board what my hon. Friend is saying. When I have chats with people in my constituency, whether they voted remain or leave, they say, "For goodness' sake, get on with it." It must be incredibly difficult for the public, 80% of whom voted for two parties—Labour and Conservative—that said they would deliver Brexit for the people but, even when they talked to one another, could not come to an agreement on how to deliver. Does he agree that it further alienates the people from their politicians? Normally it is the people who say they do not like the politicians and they want to change them; in this case it seems as though the politicians want to change the people.

Simon Hoare: My hon. Friend is a friend of long standing, and I could not agree with him more on that point. I do not suggest that my constituency is in any way unique or exceptional in sharing that view of, "Just get on with it." One hears that from people who were devout leavers and devout remainers. I am not entirely sure whether opinion polls or anything else are teasing this out, but I think it is proving that the political class—we should not talk about the establishment, because we are all MPs, so we are part of the establishment whether we like it or not—seems at the moment to lack courage and gumption.

I think we are also proving something that has come as a shock to quite a lot of the electorate: there is nothing particularly special about being a Member of Parliament. There is no particular qualification that we have to have, apart from having more votes than the person who came second. We do not possess the inward-looking knowledge; we do not have some totemic thing that we can turn to and find answers to all the questions. We are all trying to find our way. Let us do it with a spirit of cordiality and, of course, with a sense of friendship, but in the interests of this place, our constituents and our country, we need to show that we are dealing with this in a serious, grown-up way.

Sir William Cash: I am slightly puzzled by my hon. Friend's line of argument. Is he genuinely suggesting that my motion to annul these regulations is, in some way or another, not serious? I am sure he will understand that the arguments that he has not addressed, but that I addressed in my submissions—that this is an agreement that was imposed on the Prime Minister, that it was accepted, that there are questions of ultra vires and the rest of it—are not to be lightly dismissed. Under the rule of law, it is extremely important that we hold the Government to account. I am sure he was not implying that that is not a serious question.

Simon Hoare: Let me assure my hon. Friend that flippant is not an adjective I would ever apply to him. Let me make it clear, in case he has misconstrued my remarks, or I have allowed them to be misconstrued: the process we are going through today is entirely proper. Whether I agree with him or not, I take my hat off to him for his tenacity on these issues. At times when his line of argument was too easily dismissed by the political majority, he stuck to it through thick and thin. I do not seek in any way to undermine the robustness of the process. I was urging colleagues to deal, in perhaps a slightly less flippant way, with how we respond, conduct ourselves and debate the matter. The casual observer, whether they are popping in for a moment or two or switching on in between picking up the kids and getting the tea on, might think that this was an audition for "Carry on Up the Brexit", and that would not be a good idea.

5.35 pm

Gavin Newlands (Paisley and Renfrewshire North) (SNP): It is a pleasure to see you in the Chair, Sir Lindsay, at this plenary session of the European Research Group. I will endeavour to make my contribution even shorter than that of the shadow Minister. I am pleased to follow the hon. Member for North Dorset, who, although I disagreed with almost all his conclusions, made a measured contribution none the less. The fact that we are debating on 20 May the amendment of the Brexit exit date, which, in domestic legislation, is currently 12 April, sums up not only the workings of this place but the shambolic Brexit process itself.

As Members on the Committee will no doubt have heard me and others in my party say once or twice, Scotland voted remain by a not insignificant margin. We in the SNP are doing all we can to honour that result by trying to stop Brexit. Scotland is being dragged out of the EU against its will, and it is having not only its vote but its Government and Parliament ignored. Our compromise positions, proposed as far back as 2016, have been utterly ignored.

Two and a half years later, the Prime Minister has failed to deliver Brexit as promised, which gives us the chance to stop this madness by revoking article 50 or holding a second EU referendum with remain on the ballot paper. Either way—I am not entirely fussed which—it has to happen. The extension is far too short and kicks the can down the road to another cliff edge in October with no deal in sight. I will be hugely surprised if it is fourth time lucky for the Prime Minister in a couple of weeks' time. Will the Minister riddle me this? If MPs are being asked to vote on this deal for a fourth time, hoping that Members will change their mind and pass it, why are the general public not allowed a second vote on the issue? I find that entirely contradictory.

The Tory vote is plummeting in Scotland under the flip-flopping Ruth Davidson, and it is cratering across the UK—even Lord Heseltine is voting Lib Dem—so I think the Prime Minister's electoral pain will continue. Unlike the hon. Members for Ribble Valley and for Stone, I am rather looking forward to the elections on Thursday. As an aside, I have been knocking on doors a lot in the past few week weeks and have spoken to a huge number of voters. Surprisingly, even in Scotland, I met only one solitary Conservative voter, although sadly they had decided not to vote for the Conservative party on Thursday. Therefore, not one of the 250 voters I canvassed was going to vote Conservative.

I am sorry I lost track, Sir Lindsay, but I appreciate the latitude. The extension is far too short—the SNP would prefer a permanent extension—but it is the choice before us today. If the ERG Members on the Conservative Benches force a division, we will vote for the extension.

5.38 pm

The Parliamentary Under-Secretary of State for Exiting the European Union (James Cleverly): It is a pleasure to serve under your chairmanship, Sir Lindsay, and to see

so many good friends—right. hon. and hon. Friends—making our Benches groan under the weight of their attendance. Someone in this room is box office. It could be the hon. Member for Greenwich and Woolwich or it could be me, but I strongly suspect it is you, Sir Lindsay.

I am conscious that we are short of time, so I will try to rattle through my speech, which addresses almost all the points that have been raised. It is important to be clear from the outset that the statutory instrument does not change the time and date that the UK will leave the EU. That happened at the European Council on 11 April as a matter of international law.

Mr Rees-Mogg: Has not the Minister, in those few words, revealed the scandal of what has happened? Some 17.4 million people voted to leave; 500 Members of this House voted to exercise article 50; and one person, the Prime Minister, who had said 100 times that we would leave on 29 March, stopped it. That killed democracy.

James Cleverly: I will address that point, if my hon. Friend will be patient for a minute or two.

The decision to seek a further extension followed votes and the passage of primary legislation in Parliament that supported the extension of article 50. The statutory instrument is about ensuring that our domestic legislation reflects international law and about avoiding confusion in our domestic statute book, which would help no one.

John Redwood: Does the Minister understand the feeling of constitutional outrage in this country, which many of us have come to express? Because of the Government's timetabling, and the packed Committee, we have not been able to make speeches. That is why this Parliament is losing it with the public, and that is why the mood out there is so hostile to the Government and the Opposition—because they delayed Brexit and are stealing democracy from the British people.

James Cleverly: I completely understand. I have been knocking on doors, as I am sure my right hon. Friend has, and I am well aware of the anger—I will not be euphemistic and use the word "frustration"—out there about the fact that Brexit has not yet been delivered. Again, I will come on to that specific point.

I will have to be ungenerous with regard to further interventions, because I am conscious—

Mr Francois: Will the Minister give way?

Vicky Ford (Chelmsford) (Con): Will the Minister give way?

James Cleverly: I will, but to my hon. Friend the Member for Chelmsford.

Vicky Ford: I thank the Minister, my neighbour, for giving way. I certainly do not want to prolong the discussion—a lot has been said—and, most importantly, I do not want to prolong the uncertainty in the country. Can he confirm that if an agreement is achieved before the end of October, we can leave before then, and that there is nothing in the statutory instrument to prevent us leaving earlier, if an agreement is achieved earlier?

James Cleverly: My hon. Friend makes a good point, which I will address. I will try to rattle through, because several specific points have been raised by hon. Members on both sides of the Committee, but predominantly on this side, which I wish to address and for which I have notes.

Parliament has been clear. It voted to extend article 50 beyond 29 March. Both Houses approved the statutory instrument that redefined the exit date in line with the initial extension to 12 April. Despite the Government's opposition, Parliament supported and passed the Cooper-Letwin Act, formally known as the European Union (Withdrawal) Act 2019, which required the Government to seek a further extension to article 50. Parliament voted in favour of the Government's motion to seek that further extension and, during the passage of the Cooper-Letwin Act, voted to ensure that any further statutory instrument required to fix the domestic statute book would be subject to the negative procedure. It cannot be said that the statutory instrument goes against the will of Parliament.

Nor can it be said that the Government are going beyond their remit. Seeking a further extension was not just the will of Parliament, but a legal requirement set out by the Cooper-Letwin Act. The Act required the Government to lay a motion to set out their intention to seek a further extension. The Government's motion was laid on 9 April and approved by a majority of 420 to 110.

Mr Steve Baker (Wycombe) (Con): I will take this opportunity to congratulate the Minister on his appointment—it is a delight to see him in his place. Could he refresh my memory about whether the Cooper-Letwin Bill was introduced after the Prime Minister had chosen to proceed in that way?

James Cleverly: I would have to refer to *Hansard* to make a decisive comment on that. I can only assume from the certainty with which my hon. Friend delivered that intervention that he knows the chronology. The main point is that the Prime Minister was required to act by an Act of Parliament, and as my hon. Friend the Member for Stone highlights, we all—and that includes the Government—have to act within the law.

The agreement reached with the European Council was for an extension until 31 October 2019, but with the important caveat—this was the point made by my hon. Friend the Member for Chelmsford—that it could be ended earlier if the withdrawal agreement is ratified prior to that date. That was agreed by the UK and the EU and the new date of 31 October 2019 was fixed in international law in the early hours of 11 April.

Mr Francois: Will the Minister confirm two things? The first is that we cannot extend article 50 again unless the UK Government consent—in other words, that the EU cannot extend it again against our will. Secondly, will he confirm that no indicative vote in this House would stop us leaving on 31 October and that if we do not ask to extend, the only thing that would legally stop us leaving on that date is an Act of Parliament? Is that correct?

James Cleverly: The Government have made it clear that the default position if no other proactive measure is taken by the House is that we leave on 31 October,

[James Cleverly]

without an agreement if that is the case. That is the default position and that is why the Government maintain preparations for what we call a no-deal Brexit on 31 October 2019.

Mr Francois: So only an Act of Parliament will stop it.

James Cleverly: The default position is that that is how we leave. The House would have to do something proactively to prevent that.

The purpose of this statutory instrument is to align UK domestic legislation and international legislation. Hon. Members will recall that for the first extension of article 50, the equivalent SI was subject to the affirmative procedure and debated in both Houses before it came into force.

Sir William Cash: I hope that my hon. Friend will not mind my saying that what he is doing, quite understandably given the complexity of these questions, is reading out the brief that has been given to him by the Government lawyers and others. What he is not doing, if I might say so—and neither are some other members of the Committee—is addressing the questions that I put in my opening argument. That is rather a different question, and that is what the debate ought to be about.

James Cleverly: With the greatest respect to Members, as I said at the start of my speech, my belief, having read through what is my speech rather than someone else's notes, is that the points my hon. Friend brought up are addressed. If in the short time available I can reach the end of my speech, I am confident that those issues will be covered. If I am cut short, he might be left disappointed.

The Cooper-Letwin Act changed the procedure from affirmative to negative. That was in response to the tight timescales faced and Parliament's desire that, following an extension, domestic legislation would be updated to avoid unnecessary and widespread confusion. My hon. Friend the Member for Stone highlights the pace of this process. Indeed, the timescales were tight. The extension of article 50 was agreed in the early hours of 11 April. At that point, exit day in our domestic law was still defined as 11 pm on 12 April. Although the agreement with the EU meant that we would remain a member state, if this SI had not come into effect before 11 pm on 12 April there would have been legal confusion.

Mr Baker: Will the Minister allow me to intervene on that point?

James Cleverly: I am very conscious of the fact that many of the points raised by Members are included in my speech, and if I keep taking interventions I will not be able to get to them. I know that my hon. Friend will be frustrated with this, but I will plough on.

Major changes to the domestic statute book reflecting our exit from the EU are due to take effect on exit day, which at that point was defined as 11 pm on 12 April. Those changes apply across a huge number of policy areas and are designed so that our statute book works when we leave the EU. Once the further extension of article 50 was agreed, we needed to amend the dates to reflect the new point at which EU treaties would cease to apply to the UK, and ensure the correct functioning of our domestic statute book.

The consequences of not changing the definition of exit day would be serious, and would be of benefit to no one. We estimate that tens of thousands of amendments to our domestic legislation will be made in the light of EU exit. Those include changes that relate to the sharing of information, reporting requirements placed on businesses and public institutions, and the role of the European Commission in issuing licences and certificates—those examples are from across the statute book. It is clear that unless exit day is correctly defined, there will be significant confusion and uncertainty for businesses and individuals, including the risk that firms stop trading to avoid legal breaches and given their uncertainty about new customs, excise and VAT regimes that may kick in.

I have slightly lost track of which interventions were shot at me from the Government Benches, but I believe that my hon. Friend the Member for Wycombe asked whether we can confirm that the UK must agree an extension. *[Interruption.]* In fact, no; it was my right hon. Friend the Member for Rayleigh and Wickford. Any extension needs to be agreed in the UK. The agreement of this House was taken to the EU and expressed by the Prime Minister the last time around, on 11 April. Something similar would have to be done for any future extension.

The SI defines exit day as 31 October 2019, in line with the European Council's decision, and therefore in line with international law. Hon. Members will be aware that the extension can be terminated before that point if the withdrawal agreement is ratified at an earlier date. Although this SI simply reflects the decision on article 50 in domestic law, it is the Government's main priority to leave the European Union as soon as possible. The Prime Minister has made it clear that the UK should leave the EU in an orderly way and without undue delay.

Andrew Bridgen (North West Leicestershire) (Con): Will the Minister concede to the Committee that, as part of the Prime Minister's negotiations to get this extension to article 50, she gave further concessions to the European Union, some of which—but not exclusively—are that the withdrawal agreement cannot be re-opened before 31 October and that there will be no discussions about our future relationship before that date?

James Cleverly: The extension to article 50 did not come with conditions from the European Union.

Once we know the clear date and time when the withdrawal agreement is ratified, we will ensure that it is reflected in the statute book. In response to the point made by the hon. Member for Greenwich and Woolwich, should exit day change from 31 October 2019 in international law for any reason—for example, because the withdrawal agreement has been ratified—the Government will bring forward another SI to ensure that that change is reflected in our domestic statute book.

An extension to article 50 was not the Government's desired outcome. There was an opportunity to leave on time and in an orderly fashion by voting for the Prime Minister's withdrawal agreement. The House did not take that opportunity, and instead mandated that the

Prime Minister should seek an extension, which she duly did. As soon as that extension was agreed by the European Council, it became binding in international law. However, the issue today is not the extension of article 50 itself, but whether our domestic statute book reflects the extension.

Without this SI, the status of our domestic statute book would be confusing and unclear, with the provisions of UK and EU laws clashing. The Government will soon bring the withdrawal agreement Bill to the House, so that the UK can leave the EU in good order and as soon as possible. I therefore hope that the Committee agrees that this extension, and this SI, were essential.

The Chair: I call the hon. Member for Chelmsford. *[Interruption.]* Okay—you indicated before that you wished to speak, but are now happy not to, which is great.

Sir John, before I bring you in, will you make sure to leave two minutes for Sir William? I call Sir John Redwood.

5.55 pm

John Redwood: This is a travesty of proceedings. This is a major debate about the future of our country. This is a massive bill, committing us to making huge payments to the European Union, which we voted not to make anymore. It of course warrants a debate on the Floor of the House and a full vote of this House. I am grateful to my hon. Friend the Member for Stone for the enormous work that he has put in. His case stands completely unanswered today by the hapless Minister asked to represent the Government on this occasion. My hon. Friend made it clear why he thinks the statutory instrument is defective, and why the proceedings pursued by the Government did not live up to the constitutional standards that we expect. There may well be a serious legal challenge in the courts following these proceedings.

I urge the Minister to go back to the Prime Minister and to think again. We did not vote in the referendum to delay our exit beyond two and a bit years, which was forced upon us by the rules and regulations of the treaty we were leaving. We did not vote to leave one treaty in order to sign up to two new and even worse treaties, the first of which has singularly failed to get through this House on three separate occasions and is universally condemned by most voters, remain and leave.

We need a Government that understand the mood of the British people. We need a Government that believe in democracy. We need a Government that understand that the British people voted with good purpose to leave. Almost three years on, they are appalled that we, their elected and collective representatives in this place, have collectively done everything in our power to delay, prevent and impede a proper leaving of the European Union.

The Committee should vote the statutory instrument down. It should unite in condemning the procedures being pursued. It should recognise that it has been packed to do the Government's work, which the public do not want it to do. I hope that the Committee does the decent thing and surprises us all. I fear it will not, but I trust that people outside this House will note that some of us came to make the case they wish us to make. Some of us stand up for democracy, and we are appalled by the proceedings.

5.57 pm

Sir William Cash: The Government's response, in a way, is that it is all our fault because we did not allow the withdrawal agreement to go through. There are extremely good reasons for that, not least of which is that the withdrawal agreement is a repudiation of the constitutional status of Northern Ireland. I invite anyone who disagrees to speak to the Democratic Unionist party about that. It is a provision that has not brought into effect the commencement order, so that for practical purposes the repeal of the European Communities Act 1972, on which the entire question of our relationship to the European Union depends, has not been brought into effect.

The essence of the debate is that it is the fault of those who decided that they would stand up for the democratic will of the British people and insist that it was done in accordance with the referendum result, that there was a proper and full repeal of the 1972 Act, and that we protected the position of Northern Ireland. The vast expression of opinion—the outrage and anger—throughout the entire country, and the rise of a new party, demonstrates that those of us who fought the withdrawal agreement were right. The extension to 31 October, on the basis of what I have already described, was, in my judgment, ultra vires and void. Therefore, we did leave on 12 April according to the law.

Furthermore, the effect of allowing the Government to get away with this withdrawal agreement will be magnified by introducing a Bill the content of which we have not even yet seen. For practical purposes, I would simply say that we have not yet—

6 pm

The Committee having sat for one and a half hours after the commencement of proceedings on the motion, the Chair put the Question (Standing Order No. 118(5)).

Question agreed to.

Resolved,

That the Committee has considered the European Union (Withdrawal) Act 2018 (Exit Day) (Amendment) (No. 2) Regulations 2019 (S.I., 2019, No. 859).

6 pm

Committee rose.