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

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House of Lords

Wednesday, 28 October 2015.

3 pm

Prayers—read by the Lord Bishop of Portsmouth.

Oaths and Affirmations

3.05 pm

Baroness Campbell of Loughborough took the oath, and signed an undertaking to abide by the Code of Conduct.

Small Businesses: Late Payments

Question

3.06 pm

Asked by ***Lord Harrison***

To ask Her Majesty's Government what has been the outcome of their consultation about giving bodies representing small businesses wider powers to challenge unfair payment practices, and what progress has been made in improving small businesses' access to short-term finance to mitigate the late payment of debts owing to them.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, our consultations on proposals to give representative bodies wider powers to challenge grossly unfair payment practices closes on 27 November. It is a part of a package of measures to tackle late payment. We will also improve small businesses' access to short-term finance and will soon lay regulations to nullify bans on invoice assignment. This is a new measure to enhance small businesses' access to working capital.

Lord Harrison (Lab): My Lords, given that according to the British Chambers of Commerce the new small business commissioner will only marginally help small businesses, which are deprived of £55 billion at any one time because of late payment by big businesses and government, and given that this commissioner will anyway be absented from answering disputes in the construction industry, where this problem is at its most intense, will the Government finally respond to the Federation of Small Businesses' request for an in-depth inquiry into late payment on commercial debt or will this Government remain all talk-talk and no action?

Baroness Neville-Rolfe: My Lords, we are full of action. If the noble Lord comes to the Moses Room this afternoon, he will find that we are discussing the Small Business Commissioner and the question he mentioned about payments in the construction industry.

Lord Cotter (LD): As has already been mentioned, there are special problems when it comes to the construction industry. In particular, SMEs in the construction industry have lost £30 million through cash retention so far in 2015. Will the Minister make a strong commitment to look at this issue, which is vital for the survival and growth of small businesses?

Baroness Neville-Rolfe: My Lords, I am happy to look at this issue. We will be discussing it in Committee this afternoon. The Government acknowledge that there are issues here. We have taken steps to improve the situation, but it is not yet right.

Baroness Wall of New Barnet (Lab): My Lords, will the Minister explain why even in the NHS there are ethical views about how you pay small businesses for services carried out? If we can do that in the NHS, why can business not do that?

Baroness Neville-Rolfe: I agree with the noble Baroness that late payment has to be got rid of in the public sector and in the private sector. We have taken a great many steps in the public sector, including in the health service. We are now seeking to do more in the private sector. We are discussing that in the Enterprise Bill, which makes really important changes.

Baroness Lane-Fox of Soho (CB): My Lords, I declare my interest as chair of Go ON UK. We know that online banking not only prevents fraud but enables faster payments to small businesses, yet 25% of small businesses in this country have no basic digital skills and a further 5% have no access to broadband. Will the Minister say what the Government can do to help these business which would benefit greatly from online banking and financial services?

Baroness Neville-Rolfe: I commend the work that the noble Baroness has done as digital champion and agree with her about the importance of digital to small businesses. As she will know from our productivity plan, we are producing a digital transformation plan because we need digital skills across the economy, government and small businesses if they are to take advantage of the opportunities the digital revolution brings.

Lord Elton (Con): My Lords, when small businesses are late paying big businesses, the big businesses tend to charge interest on the outstanding amount. Why cannot this arrangement be made conventionally reciprocal?

Baroness Neville-Rolfe: My Lords, there are arrangements, particularly stemming from EU directives, about the payment of interest on late payments. The difficulty is that they are not always pushed, especially by smaller companies. We need to change the payment culture in this country, which is what the Small Business Commissioner is about and what the regulations that we will be bringing in early next year, bringing

[Baroness Neville-Rolfe]
transparency to payment terms, are about as well. The small will know what the big are doing and whether they are up to scratch.

Lord Mendelsohn (Lab): My Lords, the Enterprise Bill excludes the possibility of a complaint being resolved where a small business is in dispute with another small business as a result of a larger business's unacceptable payment practices, especially where the small business caught in the middle is not protected from reprisals. Can the Minister tell us how much this exclusion reduces from the overall figure of late payments that the small business commissioner will be responsible for?

Baroness Neville-Rolfe: My Lords, we are trying to focus the work of the Small Business Commissioner when we set him up particularly on complaints from smaller businesses about bigger businesses. The noble Lord rightly says that there can be issues between small businesses in respect of payment. We are debating and looking at that but we plan to focus on the imbalance at the large/small end initially.

Lord Campbell-Savours (Lab): My Lords, what support is the Treasury giving to the idea of placing ISA wrappers around peer-to-peer lending arrangements? They would greatly benefit small businesses.

Baroness Neville-Rolfe: My Lords, I look forward to talking to the noble Lord about that idea.

Lord Harrison: Can the Minister not understand, further to the point made by the noble Lord, Lord Elton, that small businesses, especially if they are suppliers, are in fear of losing those they supply if they insist upon being paid on time?

Baroness Neville-Rolfe: My Lords, that is indeed the problem, which is why we are establishing a Small Business Commissioner who can help them and change the culture, and bringing in payment transparency which will show the payment track record of bigger companies. Not everything is bad. Some practice is good. Some companies pay small businesses quickly because they understand their brilliant contribution to the economy and to innovation.

Lord Allen of Kensington (Lab): My Lords, can the Minister tell the House what the Government are doing with large companies which are contractors to the Government to ensure that they are paying small companies on time? If they are not doing anything can we build in sanctions or parts of the contract to ensure that we do that? We should start at home.

Baroness Neville-Rolfe: My Lords, I completely agree that we should start in our own backyard. We have done exactly that by legislating to cascade 30-day terms down the public sector supply chain, new reporting requirements in government to hold contractors to account and a mystery shopper scheme where things go wrong.

Police: Cuts

Question

3.14 pm

Asked by ***Baroness Smith of Basildon***

To ask Her Majesty's Government what assessment they have made of the potential impact on national security of the cuts in police numbers.

The Minister of State, Home Office (Lord Bates) (Con): My Lords, the Government are committed to providing the resources needed to protect our national security. In the summer Budget this year, the Chancellor announced that counterterrorism spending would be protected in real terms over the next spending review period. The size and make-up of the police workforce is a matter for chief constables to take locally in conjunction with the democratically elected police and crime commissioners.

Baroness Smith of Basildon (Lab): My Lords, crime today is very different from crime 40 or 50 years ago. We have serious threats from counterterrorism, as the noble Lord identified, and, as we have seen this week, from cybercrime. I am sure that the Minister appreciates that security and counterterrorism are not just about new legislation but also about mainstream policing. Local knowledge is vital to that work, as has been pointed out by the head of counterterrorism, Mark Rowley, Peter Clarke, the head of specialist operations, and the Met commissioner, Sir Bernard Hogan-Howe. Because of the further cuts, not in the counterterrorism area but in local policing—the eyes and ears on the ground—Sir Bernard Hogan-Howe has said:

"I genuinely worry about the safety of London".

Does the Minister share the concerns of those professionals or does he think that they are wrong?

Lord Bates: The noble Baroness is right when she talks about crime changing. It is changing and policing must change in response to it. On the specific comment made by Sir Bernard Hogan-Howe, earlier this year we had Operation Strong Tower, which tested the resilience of the capital to terrorist attacks. Following that, Sir Bernard said:

"With events like today we are committing around 1,000 people to exercise our plans and make sure that should the worst happen we are ready. And we will be".

In other words, he was saying that he felt that there was a resource available to protect the capital. Of course, we are in the midst of a very difficult spending round and set of discussions. There is a new policing formula on which we are consulting at this very moment. The outcome of that will be known in November and we will respond further then.

Lord Blair of Boughton (CB): My Lords, I rise more in sadness than in anger. I have asked the Minister on a number of occasions in this House what the national strategy for policing is. The Minister, courteous as he is, has always answered, "Reducing crime". Unfortunately, this week we know that, as we all suspected, crime has

not reduced; it has just moved to the internet. What is the strategy for policing now, and what is the current strategy for the policing that supports counterterrorism? If you are faced with a 40% cut but you still have the same amount of crime to deal with, what is the strategy? Is it amalgamating forces? Is it more private sector involvement? Is it more volunteering? What is the national strategy for policing? I ask that because there does not seem to be one.

Lord Bates: As the noble Lord will be aware, there is a National Crime Agency, an ongoing security and defence review of our capabilities, and a policing college, which is sharing best practice. In terms of what we believe, we share the view of Her Majesty's Inspectorate of Constabulary, which found that significant further savings were still to be made by reorganising the way in which services are delivered—by getting more co-operation between the blue line services and sharing back-office functions. There are ways of protecting the front line while making significant savings in administration. That is what the Inspectorate of Constabulary found and we agree with it.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords—

Lord Paddick (LD): My Lords—

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, if we are going round in order, it is the turn of the Liberal Democrat Benches, which have not yet asked a question.

Lord Paddick: My Lords, last night on BBC's "Newsnight" the head of the National Police Chiefs' Council, Sara Thornton, predicted that the cuts that the Government are about to make will mean the end of routine police patrols. The Deputy Commissioner of the Metropolitan Police said that he was anticipating losing 8,000 police officer posts in London—25% of its current establishment. Can the Minister please explain how the police can maintain relationships with communities, from which counterintelligence comes, in the face of such cuts?

Lord Bates: I watched that same interview and listened to it very carefully. It seemed to me that Sara Thornton was saying that the nature of policing is changing and that perhaps patrols in low-crime areas can no longer be guaranteed at the same level as in the past. There is a big philosophical question facing policing and I do not dodge it. It is a question of whether in low-crime areas you want the comfort of seeing a police officer walking down the street or to see crime levels falling—as they are, by 8% year on year. Crime is down by 30% to its lowest level since 1981. We believe that the target in policing is to cut crime and that is what the police are doing.

Lord Reid of Cardowan (Lab): My Lords, I just want to correct the Minister. I hope I am right, but I read last week that crime is not falling. Crime has, in fact, increased in the last statistics by around 70% because, for the first time, we have included cybercrime. Why on earth this has not been included for years, I do not know. However, I return to the question asked by the noble Lord, Lord Blair. We all want the Home Office to be, in every aspect, fit for purpose. But when he was asked what the strategy for policing is, the Minister told us that there was a review of one aspect of it, a policing college and that best practice was going to be shared. With the greatest respect to the Minister, none of those, either individually or in aggregate, constitutes a strategy. Will he have a go again at telling us what the strategy is? If it is classified, he can talk to me on a Privy Council basis.

Lord Bates: The national strategy is to cut crime. That is what we are about. The strategy is twofold. We want to cut crime, and crime is falling. According to the Crime Survey for England and Wales, crime is down 8% year on year. The big point is that we want to work nationally on tackling cybercrime and big organised crime; that is the reason for the National Crime Agency, the counterterrorism units and the College of Policing. But also, we believe that the answer lies in local people making local decisions. That is why we support police and crime commissioners working with their chief constables to allocate resources where they are best needed to tackle crime in that area. I am delighted to see that the Opposition now support that.

British Bill of Rights

Question

3.22 pm

Asked by ***Lord Bach***

To ask Her Majesty's Government when they intend to publish their proposals for a British Bill of Rights.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, the Government will fully consult on our proposals before introducing legislation for a Bill of Rights. Further details regarding this consultation will be announced in the autumn.

Lord Bach (Lab): I thank the Minister for his reply to my Question. The House will know that the *Ministerial Code* has recently been amended to remove the reference to Ministers having to comply with international law and treaty obligations. This follows the Permanent Secretary at the Foreign and Commonwealth Office saying that human rights are no longer a priority for his department. Will the Minister please give the House a categorical assurance that the amendment to the *Ministerial Code* will make absolutely no difference to Ministers' existing duty to comply with international law and treaty obligations? If, as I hope, the answer to my question is yes, why has it been necessary to amend the *Ministerial Code* at all?

Lord Faulks: My Lords, as the noble Lord will be aware, we have a dualist system rather than a monist system. Neither Parliament nor the courts are bound

[LORD FAULKS]
by international law, but a member of the Executive, including a Minister such as myself, is obliged to follow international law, whether it is reflected in the *Ministerial Code* or not. All Ministers will be aware of their obligations under the rule of law.

Baroness Goudie (Lab): Why was the decision taken by the Foreign Office and the Cabinet to downgrade human rights?

Lord Faulks: I do not believe that there was any downgrading of human rights. We have a proud history of protecting human rights, both here and abroad, and we will continue to maintain our concern for those human rights.

Lord Marks of Henley-on-Thames (LD): My Lords, independent reports—the Minister's answer appears to confirm this—state that there will be no pre-legislative scrutiny of this vital and, frankly, ill-defined proposal and that the Government will go to legislation after a consultation of about only 12 weeks. Can the Minister refute those reports and promise full pre-legislative scrutiny of a constitutional measure of this fundamental importance?

Lord Faulks: We will consult fully on our proposals, and will announce further details in due course. There have already been two consultations pursuant to the commission on a Bill of Rights, and there will be a third consultation. This is in marked distinction to what happened on the Human Rights Act, which was brought in without any consultation at all, within six months of the Labour Party gaining power.

Lord Lexden (Con): Will the Government give a clear assurance that their proposals will be fully compatible with the European Convention on Human Rights, to which prominent Tories made such a marked contribution?

Lord Faulks: There are no plans to leave the European Convention on Human Rights. My noble friend is correct to say that Conservatives had a significant role in drafting the convention. There are considerably more difficulties with the Strasbourg jurisprudence, rather than the convention itself.

Lord Hope of Craighead (CB): My Lords, can the Minister tell us whether it is proposed to consult the devolved institutions, and if so, when that consultation will take place?

Lord Faulks: We will consult the devolved assemblies, because we are conscious of the intricate treaty arrangements that exist. We will do so thoroughly, and keep them well aware of all our plans.

Lord Soley (Lab): A number of us are worried about the impact on our European colleagues, not least because of the message that what we are talking about doing sends to Vladimir Putin and a number of east European countries. I am concerned about that, and I think a lot of people in Europe are concerned about it too, particularly as it comes from a country that has taken such a leading role on the rule of law throughout history.

Lord Faulks: A number of objections have already been raised, before we have even published our proposals, and I hope that all Members of this House will approach this British Bill of Rights—something that was floated not only by the Liberals but twice by the Labour Government—with an open mind. Among the various objections to a proposed Bill, the idea that the fact that we have any doubts about the primacy of the Strasbourg court might affect Putin's foreign policy is one I find absolutely ridiculous.

Lord Beecham (Lab): Will the Minister tell us whether the Attorney-General was consulted about the change to the *Ministerial Code*? What is his view of the remarks by the former Treasury Solicitor and head of the government legal service that:

"It is disingenuous of the Cabinet Office to dismiss the changes to the ministerial code as mere tidying up",

and that Ministers,

"will regard the change as bolstering, in a most satisfying way, their contempt for the rule of international law"?

Lord Faulks: I have already made clear to the House what Ministers regard as their duties, and I do not resile for a moment from that. As the noble Lord will well know, details of internal discussions and advice are not disclosed to the House—and I do not propose to depart from that well-established convention.

Lord Hannay of Chiswick (CB): The Minister has given us a very forthright reply on President Putin—but is he quite sure that President Putin takes the same view as he does?

Lord Faulks: I cannot for a moment pretend to understand President Putin's thought processes or his secret desires. But whether or not we are satisfied with the decisions of the Strasbourg court can hardly justify some of the extraordinary tactics that he uses in Ukraine, or to treat dissidents and those who oppose his policies.

Baroness Corston (Lab): My Lords, the Minister has just told the House that the consultation will start in autumn. Which autumn does he have in mind? Does he mean that it is imminent, or that it will be some time in the future?

Lord Faulks: This autumn.

Lord West of Spithead (Lab): My Lords, will the Minister be able to address the issue of the Smith judgment, whereby officers such as myself, who fought to the best of our ability with the weapons we had at hand rather than going away and waiting until we had better weapons, would now be liable for the actions they took? Can this be addressed?

Lord Faulks: I do not want to comment on what will or will not be in the consultation, but it is surely likely that in the course of the consultation, a number of people will want to advise us on the scope of Article 2 and its effect on combat immunity and what happens on the battlefield.

Syria: Military Involvement by Canada

Question

3.29 pm

Asked by ***Baroness Falkner of Margravine***

To ask Her Majesty's Government what discussions they have had with the new Government of Canada regarding the intention of that Government to withdraw their combat mission from the bombing campaign against ISIL.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, we have not had any discussions with the new Canadian Government, who take office on 4 November, about their intention to withdraw from air strikes against ISIL in Iraq and Syria. We welcome the new Government's manifesto commitment to continue to focus on the training of local forces in the region and to provide more humanitarian support, including for refugees from Syria.

Baroness Falkner of Margravine (LD): I am extremely glad that the noble Earl welcomes the election of the new Liberal Government who are delivering on their manifesto commitment to withdraw combat forces from the campaign in Iraq and Syria. Will he accept that this is a recognition by the Canadian people that the facts on the ground have changed? Russia is in Syria now; Iran is more constructively engaged. Indeed, the Foreign Secretary is in Saudi Arabia today. Will the Government accept that it is time for a peace process to stabilise Syria and to desist from continuing on an open-ended campaign which even the Americans say will last for years and years?

Earl Howe: My Lords, I agree that the facts in Syria have changed by reason of the Russian intervention. That is undeniable. What has not changed is that ISIL represents a direct threat to this country as much as ever it did, if not more, and it is very much in our national interests to see that threat eliminated. However, I take the noble Baroness's point that ultimately the end of this conflict can be reached only by political means, and we are engaging as strenuously as we can through diplomatic and political circles to see that satisfactory conclusion.

Baroness Jolly (LD): My Lords, I note the Minister's response to my noble friend's Question. We support our troops in the advice and training role in Iraq. However, I am concerned to learn that American trainers have been involved in combat and there have been casualties. Will the Minister clarify the position with our trainers? How many are there? Has their role changed to replicate the US model, and have there been any casualties?

Earl Howe: My Lords, I am not aware of any casualties among those of our personnel who are engaged in the training of moderate Syrian forces. Both we and the United States agree that we need to continue to support the moderate opposition in Syria. We acknowledge that the training programme has faced some challenges. The noble Baroness may be aware that only the training element of the programme is currently paused. We will continue to enable the efforts of the moderate opposition in its fight against ISIL and focus on equipping. That will allow us to reinforce the progress already made in countering ISIL.

Lord King of Bridgwater (Con): Was my noble friend not struck by the fact that the appallingly difficult problem we face, raised by the noble Baroness, makes it extremely difficult to see at present how anything except a political solution can possibly resolve what is becoming a galloping crisis of refugees as the situation goes from bad to worse? As winter is now coming on, we can only pray that at last we can get some central resolution. We welcome the fact that Iran as well as Russia will now come to the discussions to be held shortly, together with the United States and other parties that are concerned.

Earl Howe: There is no doubt that any eventual political solution will require the major powers and those countries in the region to agree on that solution and, of course, if Iran can be involved in that as well as the United States, Russia and Saudi Arabia, all the better. The effect of the Russian action to date in targeting the moderate opposition groups is to take the pressure off ISIL, allow it scope to make territorial gains, which in recent days is exactly what it has done, and in so doing put back the date of that eventual settlement.

Lord Richard (Lab): My Lords, the noble Baroness who asked the Question seemed to indicate that if the Russians were involved that was a ground for our getting out. Is the noble Lord aware that many of us, certainly on this side of the House, take the view that if the Russians are involved that is an additional ground why we should be involved, not that we should extract ourselves from it?

Earl Howe: My Lords, I cannot disagree with the noble Lord, particularly on what I said earlier about the threat to this country from ISIL. We cannot let up in our efforts to defeat what is a very pervasive and destructive force in that area and potentially to our country.

Lord Wright of Richmond (CB): My Lords, I heard the noble Earl say that we are both politically and diplomatically involved in a search for a political solution. Will he explain what role we or the European Union are playing in the talks between the Americans,

[Lord Wright of Richmond]
the Russians, the Iranians, the Saudis, the Jordanians and the Turks? I get the impression from reading the press that we are not involved with that at all.

Earl Howe: My Lords, it is certainly true that the diplomatic efforts are currently being led by the United States and the other countries that the noble Lord mentioned. However, the House needs to know that there is a comprehensive, cross-government strategy that supports those diplomatic efforts. It is a full-spectrum response, led by the Foreign and Commonwealth Office, not only in counterterrorism but in diplomatic efforts on Syria, Iraq and Libya, and with cross-HMG work on strategic communications and stabilisation. The noble Lord need be in no doubt that we are at the table in that sense.

Baroness Morgan of Ely (Lab): My Lords, can I come back to the issue in the Question, on how Canada is reacting to the situation? The new Canadian Prime Minister stated that he will continue to engage in a responsible way in the fight against ISIL without being involved in the combat mission. Will the Minister say whether they will discuss how the new Canadian Government can contribute through these political and diplomatic efforts? Also, will the Government undertake to bring up the response to the refugee crisis with the new Canadian Government?

Earl Howe: Most certainly. It is important to emphasise that Canada is not disengaging from the region or abandoning the coalition. It will still keep its military trainers in northern Iraq and be engaged very substantially in the humanitarian relief effort. It is still very much part of the political and diplomatic discussions that are going on. Indeed, Canada will be represented this week in London at the coalition's strategic communications working group, which is co-chaired by the UK.

House of Lords: Government Review

Private Notice Question

3.37 pm

Asked by ***Baroness Smith of Basildon***

To ask Her Majesty's Government, further to their announcement yesterday that they are to conduct a review covering the procedures and responsibilities of the House of Lords, whether they will provide information including the terms of reference for the review, its membership and the timescale set for its report.

Baroness Smith of Basildon (Lab): My Lords, I beg leave to ask a Question of which I have given private notice.

The Lord Privy Seal (Baroness Stowell of Beeston) (Con): My Lords, my noble friend Lord Strathclyde's review will examine how to protect the ability of elected Governments to secure their business in Parliament. In particular, it will consider how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters and secondary legislation. My noble friend will be supported in that work by a small panel of experts and we expect the review to conclude swiftly. The membership of the panel will be communicated to both Houses as soon as it is agreed.

3.38 pm

Baroness Smith of Basildon: My Lords, last night the Government issued a statement—to the press, rather than to your Lordships' House—to say that they were setting up this review. They do not seem to have got very far with any work on what it actually is. As the noble Baroness said, it is to ensure that the Government can secure government business. The Government made clear that they intend to review the powers and processes of this House. The noble Baroness called it the review of the noble Lord, Lord Strathclyde. My understanding is that it is a government review undertaken by the noble Lord.

It is obvious that the impetus for this was the Government losing two votes on Monday on the amendments in the name of my noble friend Lady Hollis and of the noble Baroness, Lady Meacher. Prior to that vote, we heard the Government threaten first that this House would be suspended; then that the Government would make 150 new Conservative Peers; or that they would clip our wings. Clearly, the Government intend to clip our wings. Less than six months into a new Parliament, the Government are trying to change the rules to ensure that they will not lose a vote again.

Clearly, some in government have very short memories. If noble Lords look back at the number and content of the defeats endured by Labour Governments, it is clear how very little justification there is for this move. It is a gross overreaction. I am not against a review. We have called for a constitutional convention to address much wider issues that affect your Lordships' House, but any review must be in the public interest and not for short-term party-political gain.

I do not think that the noble Baroness really answered my question, but I will press her on membership. She said that there will be a small panel to assist the noble Lord, Lord Strathclyde. Will she confirm whether that will be a cross-party panel or merely a Conservative panel? Will she tell us when it will report and to whom?

Baroness Stowell of Beeston: My Lords, on Monday this House withheld its approval from a financial measure—that is what happened. The measure had been approved three times by the other place. That has never happened before. Monday was a significant day for this House and the events on Monday justify the review. It is a government review about how elected Governments can secure their business when an established convention has been put in doubt. The noble Baroness made reference to a constitutional convention. What the Government have done by asking my noble friend to lead this review is to simply look at the issues arising from the events on Monday. It is limited and it is focused. My noble friend will have at his disposal a panel of experts and, as he said himself today, he will talk to other political parties. Ultimately, we are trying

to ensure that elected Governments can be confident that they can secure their business, when that business has had the support of the elected other place.

Lord Forsyth of Drumlean (Con): My Lords, will my noble friend ask my noble friend Lord Strathclyde to extend the scope of his review to include the procedures of the House of Commons, so that the House of Commons is properly able to scrutinise business? A particular issue is the use of the automatic guillotine, which results in large tracts of legislation coming to this House which have not even been considered by the House of Commons. This was a manifesto commitment, in the election before last, of the Conservative Party.

Baroness Stowell of Beeston: I would much rather that my noble friend concentrated on the very serious issue arising from the unprecedented step taken on Monday by your Lordships' House. It is a significant issue and we need to look at it and concentrate on it. We must do so swiftly and get ourselves back on to an even keel.

Lord Dholakia (LD): My Lords, I welcome this Question. It is regrettable that, despite all the public pronouncements about this particular review, no statement has been issued to your Lordships' House. Indeed, it is discourteous to Members here. Will the Leader agree that an excellent review of the convention was published by the Joint Committee in October 2006? The review took in to account the Salisbury/Addison convention, secondary legislation and financial privilege. Does the Lord Privy Seal disagree with any of its conclusions, and what are we likely to learn from the new review that we do not already know?

Baroness Stowell of Beeston: The noble Lord is right to point to the Joint Committee's review that took place in 2006. The reason we need the review I have outlined today is that one of the conventions that that Joint Committee discussed and highlighted as important to the effective role of Parliament has now been put in doubt by the actions of this House on Monday. On Monday, this House withheld its approval from a financial measure. That is what happened. The measure had been approved and voted on three times by the other place. That has never happened before.

Baroness Hayman (CB): My Lords, the noble Baroness the Leader of the House keeps referring to a "financial measure". I believe that what this House did on Monday night was to delay consideration of a statutory instrument under normal welfare legislation. I understand the meaning of a finance Bill. I understand financial SIs that are considered only by the House of Commons. What I do not understand is the term "financial measure", because most of the legislation that we pass has financial consequences. Will the noble Baroness define the term?

Baroness Stowell of Beeston: The piece of secondary legislation that we debated on Monday was very clearly and exclusively about a financial matter, to the tune of £4.4 billion in terms of the savings it would deliver in the first year of its implementation. It was a decision arising from the Budget in July. What happened on Monday is something that has never happened before.

Lord Grocott (Lab): My Lords, can the Leader of the House reassure us that the work of the committee will be evidence-based and, in particular, will take note of the following piece of evidence? It is that, during the five years of the Cameron premiership, on average there have been 20 government defeats per year. In the five years from 2002 to 2007—a period with which I am very familiar—under the Blair and Brown Governments, there were on average 59 defeats a year. I remind the House that that was at a time when the Labour Government had a majority of around 170 in the Commons and Labour was not even the biggest party in this House, let alone a majority party. The Prime Ministers of the time did not work themselves up into a synthetic lather about government defeats. If the Prime Minister is anxious to find evidence about Governments being defeated on a regular basis, I am at the end of the phone to give him that information.

Baroness Stowell of Beeston: I cannot imagine that when the noble Lord was Government Chief Whip in this House, if he and his Government had experienced the events of Monday in the same way that this Government did, they would not have defined the result in the same way as we have done. The noble Lord talks about the rate of defeats. This was not about the rate of defeats under this Government compared with those under previous Governments; this was about a specific event on Monday that was unprecedented. But if he wants to talk about how often this Government are being defeated, since the general election this Government have been defeated in 75% of all the Divisions that have taken place in your Lordships' House.

European Union Referendum Bill

Committee (1st Day)

3.48 pm

Relevant documents: 5th Report from the Constitution Committee, 9th Report from the Delegated Powers Committee

Clause 1: The referendum

Amendment 1

Moved by ***Lord Hamilton of Epsom***

1: Clause 1, page 1, line 6, at end insert—

"( ) Regulations under subsection (2) must appoint a day at least 10 weeks from the day on which the regulations are made.

( ) A draft of regulations under subsection (2) must be laid before each House of Parliament at least 16 weeks before the day to be appointed thereby."

Lord Hamilton of Epsom (Con): My Lords, I regret that I was not in your Lordships' House for the Second Reading; I had business abroad at the time. But I very much support the Bill and indeed feel that,

[Lord Hamilton of Epsom]

40 years after we were last given an opportunity to vote on whether we wanted to be in or out of the European Union, it is probably time that we had another chance to vote.

The problem is that we all want—and I know that my noble friend on the Front Bench is as keen as anybody—to see a level playing field when it comes to the whole business of how this referendum is held. The problem is that there can never be an entirely level playing field for the simple reason that my right honourable friend the Prime Minister has the choice as to the date on which the referendum is held. That therefore means that—whatever happens otherwise—the playing field is always slanted slightly in the direction of those who feel we should stay. That is assuming my right honourable friend the Prime Minister actually leads the campaign to stay in the EU—I am not sure that is a complete given. He is clearly finding negotiations with the EU difficult. I am sorry that my noble friend Lord Lawson, the former Chancellor, is leaving us because he referred to the wafer-thin concessions that we were likely to get from the EU with our negotiations. If the opinion polls indicate that a serious majority in the country want to pull out then the Prime Minister may conceivably change his mind as to which side he backs, but at the moment I think it is pretty safe to assume that he will be keen to campaign that we should stay in the EU, and he has the choice over which day it will all happen.

The amendments I have tabled are all to do with the timing of the regulations that are to be brought forth. On Second Reading my noble friend the Minister made the point that this whole question was covered by Clause 6(6) of the Bill. For the sake of clarification I will read it out:

"Any regulations under subsection (2) must be made not less than four months before the date of the referendum".

Unfortunately that is not the whole story because Clause 6 deals with the whole question of Section 125 and the business of purdah, so under the Bill it would be incumbent on the Government to bring forth the regulations four months before, but it is not incumbent on the Government to ensure that the regulations asking the question happen immediately afterwards and that the whole thing is a continuum.

The Minister in the other place made it quite clear that it was the Government's intention that things should start 16 weeks before with the regulations being drawn up, then statutory instruments going through both Houses and then the whole business of the referendum would go smoothly through to referendum day at the end of the 16 weeks. However, as the Bill is written that does not have to happen. It would be quite possible for the Government, at a given date, to draw up the regulations covering purdah and then leave it until a later date before holding the referendum with 28 days' notice. The Government have given undertakings that that will not happen so in many ways they should completely approve of my amendment, which ensures that that is what is going to happen.

Fortunately the Electoral Commission had a look at these amendments before they came before your Lordships' House today, and supports this amendment, saying:

"Our experience of administering and regulating referendums in the UK since 2004 has shown that campaigners and electoral administrators need time to prepare themselves properly to follow the detailed rules which Parliament has specified".

The Electoral Commission recognises that people need time and do not want to be bounced into a referendum with 28 days' notice. Therefore my amendment is very much in support of what the Government are already undertaking to do, and has been approved by the Electoral Commission. In those circumstances I cannot see why the Government would not accept these amendments and therefore I beg to move.

Lord Flight (Con): My Lords, may I briefly speak to Amendment 1? It seems to be extremely straightforward. For a fair referendum, we want an entirely clean situation where adequate notice is given and where there is no possible scope for the public sector, the Government, the EU or any public body to spend money influencing the course of the campaign. As has just been stated, the Electoral Commission supported this amendment. It is in line with what the Government have said they are seeking to do. I find it quite irritating that there is such complexity surrounding what is really a pretty straightforward point but I very much hope that the Government will accept the amendment in the spirit in which it is offered.

Lord Liddle (Lab): My Lords, I will speak to Amendment 2, which has been somewhat incongruously grouped with Amendment 1. However, I do not mind that because I am speaking to this amendment somewhat tongue in cheek, not in the expectation that the Government will accept it but to make a point about the fairness of this referendum and the need for the outcome to be accepted for a generation to come.

My amendment would change the date from 2017 to 2019. I have put this down to make a broader political point: that there is, in my view, a fundamental contradiction in the Government's renegotiation strategy. They say that they want a fundamental change in the relationship with the European Union and, at the same time, they have chosen to impose a unilateral timetable for this renegotiation by saying that they need to have the referendum by the end of 2017. In practice it should be said—I think that the Government would sort of accept this—that the real deadline is the end of 2016. No one really thinks that you can muddle up a British referendum with the French presidential and German Bundestag elections, which will be dominating Europe in 2017. The Government have in practice set themselves a very tight deadline for their renegotiation. The truth is that they cannot achieve within that timescale some of the objectives which they have apparently set themselves.

First, there is no prospect of comprehensive treaty change by the time of the referendum. Secondly, even on matters such as benefits for Polish workers in Britain, while it may be possible to achieve some kind of political consensus among the member states about what changes are necessary, there is very little prospect that such changes in European legislation, even if agreed in principle by the Council of Ministers, could have gone through the complex legislative procedures of the European Union, given the role of the European

Parliament and the Council in co-decision, by the time of our referendum. I am sure that the former Members of the European Parliament who are in this House will agree with that. We are dealing with a situation where the Government will have to be content with agreements in principle and, possibly, devices such as the protocols which were granted to Denmark and Ireland, which were basically promissory notes of future changes in EU treaties when such treaty changes come to be made.

I would like to see honesty from the Government about this situation because if we are to win this referendum we do not want to create a situation where lots of people who campaigned against British membership immediately turn round and say, "We was robbed", which is what happened in 1975. I think there is some risk of this so the Government have to be franker than they have been so far about their renegotiation strategy and what they can achieve within the timescale they have imposed. Let us remember, this is a unilateral British timescale; the European Union is not causing the problems. It is a unilateral timescale that we have laid down.

4 pm

Lord Dykes (Non-Afl): I am most grateful to the noble Lord for giving way. I was heartened by his aspiration that this would be settled for a generation but how can he be confident about that, bearing in mind that the agitation against our membership after a massive two-thirds majority in 1975 began only 10 or 11 years afterwards with the turbulence around Maastricht and all that? The evidence is that there is a minority in this country who are very strong xenophobes and chauvinists and dislike particularly European foreigners, so how can he have that kind of confidence in such a clear result, particularly when there is a the danger of quite a close result in the end?

Lord Liddle: The noble Lord, Lord Dykes, is right, of course; after 1975 some people said within a year or two that they would not accept the result. This was true in my own party so I remember that. However, I think that the Government can act in order to mitigate the risk.

Lord Anderson of Swansea (Lab): Are there not two other good precedents? In Quebec the Parti Québécois and the Separatists kept on going back in the hope that they would one day have a majority of one, if only that, which they almost did in 1994. In Scotland, were the Brexit to take place, the Scottish referendum would be immediately revived.

Lord Liddle: My noble friend is, of course, right. My point is this: assuming that the Government reject my amendment, which I am sure they will—as I say, I moved it tongue in cheek—and we stick with the deadline in the legislation, if we are going to win this referendum there has to be honesty on the Government's part about what it can and cannot achieve.

Lord Forsyth of Drumlean (Con): I am most grateful to the noble Lord. On the subject of honesty, I know that the Labour Party's policy is a little fluid at the moment and there is a debate on these matters, but will he explain how his amendment, which says that we should delay the referendum until as late as 2019, is consistent with the Opposition's attack on the Government that by holding this referendum they are creating a period of uncertainty which is doing damage to British business?

Lord Liddle: Of course the noble Lord is right about that. However, I think that at the same time, he and some of the supporters of Britain's withdrawal from Europe who argue that they will stay only if they get fundamental treaty change, the right of the national Parliament to overturn EU laws and a fundamental alteration to free movement, are hypocrites because they are saying things that they know are not achievable. If we are to have a decent conversation with the electorate in this referendum, we have to be honest about what can and cannot be done.

Lord Forsyth of Drumlean: Is the noble Lord calling me a hypocrite?

Lord Liddle: I am saying that those who argue that they will support continued membership of the EU only if there is fundamental treaty change hold a hypocritical position because that is not possible to achieve within the timescale that the Government have set out.

The Government should follow Harold Wilson's example—

Lord Spicer (Con): Given the scenario that the noble Lord has described, why do we not smoke them out and find out a bit quicker, rather than leave it until 2019?

Lord Liddle: Because there might be fundamental treaty change—for instance, within the eurozone—by that date. There is no possibility of that within the date of the renegotiation. This means that the Government have to be honest about what they can achieve and what they cannot; they have to adopt the position that Harold Wilson wisely adopted in 1975 and say, "We did want to achieve quite a lot of things in this renegotiation. We haven't achieved them all, but we have achieved some useful reforms which in our view justify staying in". I think that that is the best that the Government can do on their own policy. That is why I have tabled the amendment.

Lord Hamilton of Epsom: I am rather in sympathy with the noble Lord's proposal. Does he not agree that, as the years progress, the whole of the eurozone in particular and the EU generally is becoming more and more accident-prone; that one drama follows another; and that by 2019 the whole thing will probably be falling apart?

Lord Liddle: No, I do not agree. Britain should not push unreasonable demands in the next 12 months on top of the very real issues the European Union has to deal with: resolving the long-term issues arising from the euro crisis—the short term has been resolved—and putting together the more Europe that we need effectively

[Lord Liddle]
to tackle the migration crisis. Those are very serious problems, and Britain is getting in the way of solving them. That is an added reason for the Government to be honest with the people about the feasibility of the fundamental reforms that some noble Lords appear to think are possible—they are not.

Lord Blencathra (Con): I support my noble friend's amendment because I do not believe that the British public should be bounced into a snap poll. There has been talk by some spin doctors—probably around the edges of the staying-in campaign—that a quick poll in 2016 would be advantageous. They seem to feel that the longer the electorate has to consider whatever deal the Prime Minister brings back from Brussels, the more likely it is that the electorate will vote against it. I suggest that some people may perceive that there is an incentive for the Government to try to rush the poll as soon the Prime Minister says that he has a deal that we can sell to the British people and we should stay in.

Everyone rightly says that this is the most important vote in 40 years—and maybe for the next 40 years. Therefore, the pros and cons must be given very careful consideration. The Government will have to set out their case. There are amendments on the Order Paper asking for a White Paper-type document which sets out not only the facts of the deal that the Prime Minister has achieved but the consequences of staying in and the consequences of leaving.

That document will not be like party-political manifestos, which set out the already well-known policies of the political parties. Manifestos may have a few nuggets of new information but no real surprises on the political direction of each party. Thus, one can get away with publishing a political manifesto two or three weeks before an election and the public are not really kept in the dark by that short timescale. The document that the Government will publish on the EU referendum will not be like a party-political manifesto. It crosses all party boundaries and there is no clear policy decision known in advance of the deal that the Prime Minister will get.

We have no idea what the deal will be. There may be big concessions or there may be small, trivial, cosmetic ones. The consequences of staying in or leaving will be immense, and both campaigns will have to issue their own views on the deal and conduct big public debates on it. That process cannot be rushed; we would be doing a huge disservice to the public. Nor does my noble friend's amendment call for an indefinite delay. Announcing a date 10 weeks hence seems to be a reasonable period of time for all the relevant documents to be published and the debates to be held. It does not hold up any poll indefinitely.

We have all been discussing the possibility of a referendum on Europe for years. When this Bill becomes an Act, we might just be a minimum of six months away from a poll, and it may possibly be on a date two years from now; so in relation to that long timescale that we have been discussing and that we might face, a period of 10 weeks to give proper consideration to the deal and its consequences is nothing in comparison. I support my noble friend's amendment.

Lord Anderson of Swansea: My Lords, Amendment 2, moved by my noble friend, has a certain merit: to give adequate time for the negotiations. He brings to our debate very much experience of the workings of the Brussels bureaucracy. It is clear that 2017 will be a year full of elections and pitfalls. There is the French election: I do not imagine that Mme Le Pen will win, but she could possibly do very well, which could have an effect on the French position. There is the German election—the Chancellor's election—and at the moment, we know that, perhaps because of her position on migration, Chancellor Merkel appears to be under some real pressure for the first time. Of course, there is the EU presidency of our own country, so there is some merit in saying, "Let's play it long".

There are a lot of suggestions in our press that, thus far, negotiations have been very slow; it has been a technical matter. Perhaps it is only now clear, when the obvious point has been brought forward that the Norwegian precedent has some attractions. I am part Norwegian myself and, dare I say, my family were bitterly divided about the referendum. That precedent, as any Norwegian will tell you, and as the Prime Minister has said, means that Norway is adhering more to the rules than most actual, current members of the union, without any say at the table in framing those rules. It is said that we are making extremely slow progress; it will need a very big bang indeed for the broad lines of an outcome to be available within a reasonable period.

It is fair to say, as, perhaps, many noble colleagues on the other side would agree, that the Prime Minister has set out a perhaps realistic but rather minimalist agenda for what he hopes to achieve. The problem is this: the agenda of our partners in the European Union is very crowded indeed at the moment. We saw that at the last Council meeting. The focus is on migration; the effect is only to show the divisions within the European Union on this most sensitive of issues. Even if for us, our own position in regard to the Union is by far the number one issue, it might well be that for all our partners, it is not, in fact, the number one issue and they will have other issues on the agenda.

There will be changes, too: we should think of the different interpretations of the effect of the Polish agenda. Will it make the Poles even stronger, for example, in relation to welfare benefits for the Poles who are already in this country contributing massively to our own country? There will be other changes as a result. The real problem, however, is this: will there be adequate time, as my noble friend asked, for treaty amendment? The writings and speeches of Mr Liam Fox in the other place are honest and true; there will not be adequate time for treaty amendment in all the other countries. We have seen the precedents of this in terms of France, the Netherlands and Ireland: all of this takes time.

It is also very true from one's own experience that, in these referenda, it is often not the main issue that is decided by the electorate, but rather the extraneous matters that come to the fore. There is a great problem: I think Mr Liam Fox mentioned a post-dated cheque, and my noble friend mentioned a promissory note. How much credence or weight can one put on a promissory note? The existing Governments may well

say that they are happy to give us the protocols that we want, but is that bankable? Each of those countries may have elections between the time they make the promise and the time of the referendum, or afterwards—which, because of the change of Government, they will not be able to deliver.

4.15 pm

For us, the overriding interest must be what is in our own national interest—an early decision or a time that gives adequate momentum for a decision. My own judgment is that it is in our national interest to have a decision as soon as possible, even if the broad parameters are not totally evident. There would be uncertainty in the mean time, until 2019, not only for our partners but most importantly for business, and there could be real problems in boardrooms to know how they will invest, not only in respect of foreign direct investment from inside and outside the community but also for those companies that are already established here. For example, the automotive industry depends very heavily on the market in the European Union, and will be afeared of the tariffs that may arise. The Japanese companies, as they have made clear, see our own country as a springboard to the European Union market; they see us as part of a wider market, and if we were by some ill action to take ourselves outside that market they would have a very different view about the stability of their investment in this country.

My noble friend has made some valuable points, but on balance I am against the suggestion of extending the period for another two years.

Baroness Smith of Newnham (LD): Like the noble Lord, Lord Anderson, I have some reservations about the amendment proposed by the noble Lord, Lord Liddle. It takes us into risky territory in two ways. First, I have taken the liberty of checking the Conservative Party's manifesto, and it is very clear that the referendum should take place by 31 December 2017. In your Lordships' House this week, we have created some precedents in terms of voting against the Government, but I am not sure that trying to go against something that is in the Conservative Party manifesto is necessarily one of the things we should attempt to do in this Bill.

In another sense, I am concerned that extending the deadline for the referendum increases uncertainty, as the noble Lord, Lord Anderson, said. The more we talk about it and think about possible renegotiations and the more we have public debates, the less helpful it is for the City of London, British business or for Britain's engagement in the European Union. If, as I and my party believe, Britain is better off in the European Union, it is better to have made the decision and to play a full role in the European Union. If the decision is that we leave, it would still be better that we and our European partners know where we stand. Extending the deadline to 2019 would extend uncertainty, and I think that the slightly tongue-in-cheek amendment should be treated with the joviality that perhaps it deserves.

Lord Forsyth of Drumlean: My Lords, I slightly worry about the speech of the noble Lord, Lord Liddle, and his use of words such as "hypocrite". Earlier in the week, we had a noble Lord from the Opposition referring to the Prime Minister as a liar. We have rules in this House about asperity of speech. If the noble Lord cares to look at the *Companion*, he will find that it is a very difficult and unpleasant process if those rules are called into being.

Lord Liddle: I was not seeking to call the noble Lord a hypocrite. I was saying that people who make the argument that they might support European Union membership if certain unrealisable goals are achieved in this very short timescale are hypocrites.

Lord Forsyth of Drumlean: I have dealt with the problem of the use of rather extreme language, so I shall deal with the problem that arises from the noble Lord's assertion. To suggest that people who take the view that we should leave the European Union but are open-minded enough to think that if certain changes were made they would change their position are somehow hypocritical or acting improperly is ridiculous. It is plain common sense. If the Prime Minister comes back and says that we can control our borders and decide our own social legislation and that Parliament not Europe can, for example, decide the amount of money that people have protected in their bank accounts, I, for one, will raise three cheers and see a completely reformed European Union. The noble Lord is quite extraordinary. He seems to be advancing a case that whatever is decided, and whatever happens to the European Union, Britain must remain a member. I can see that from the European Union's point of view, it might be in its interests, but he is supposed to be in this Parliament to look after Britain's interests.

Lord Liddle: That is Labour Party policy. Whatever comes out of this renegotiation, we will campaign to stay in the European Union because that is our judgment of the national interest. I believe that it is possible that Mr Cameron can achieve a useful set of reforms through his renegotiation. I do not believe that the kind of fundamental changes that the noble Lord, Lord Forsyth, was talking about are achievable in any sense whatever, and he knows it.

Lord Forsyth of Drumlean: The noble Lord may be right about that, but the reason I am against his amendment is because he is not prepared to let the British people decide this by March 2017. He wants to delay because he wants Britain to remain in the European Union whatever the British people think, and if he had his way, we would not be having a referendum at all. As was pointed out, the Labour Party's position is that we need to get this sorted and out of the way in order to end the period of uncertainty, so he is out of line with Labour Party policy as well.

Baroness Crawley (Lab): I agree with the noble Lord, Lord Forsyth, that in this important debate we must keep our language temperate. Does he believe that the Prime Minister will come back with the kind of deal that he has put to us this afternoon?

Lord Forsyth of Drumlean: I shall tell the Committee a story. I spent two, I think, years of my life going to European Social Affairs Council meetings in order to prevent the European Union and the Commission abusing the rules and defining the working time directive as a health and safety measure rather than an economic measure in order to get it through by qualified majority and undermine our veto. I sat through endless meetings where people read out prose. I knew that in the end we would have to go to the European Court and argue our case and that it would find against us because it is under an obligation to preserve the acquis. The result was that the working time directive was imposed upon us, even though we had joined on the basis that those matters would be decided by unanimity.

At a meeting of Ministers one night after one of those long and tedious sessions, we were having a few drinks, and I decided to take it upon myself to lecture them on the benefits of supply-side reforms. I pointed out that if they went on like this, adding to the costs of labour and to the disadvantage that European countries would have competing in the global economy, the results would be huge levels of youth unemployment and a slowing down of growth in the European Union. I think it was the Dutch Minister—maybe it was one of the others—who turned to me and said, "Ah, but you do not realise. We understand all of this but what you do not realise is that we have proportional representation and have already given people these rights. It is impossible for us to remove them. We want a level playing field, and we do not want you to have a competitive advantage over us".

The noble Baroness asked whether I think we will get these changes. I hope and pray that the European Union makes these changes for the sake of the large numbers of unemployed young people—50% in the southern European states—and for the sake of what we see in Europe, which is a country that is failing to grow and meet the aspirations of its people. What I see at present—and the Prime Minister has to contend with this—is that we are not leaving the European Union; the European Union is leaving us. Monetary union means, as the noble Lord said—he talked about the inevitable process of moving closer together, except he used different language as he sees the way forward as further integration because of the consequences of the single currency, which the same people who are advocating—

Lord Davies of Stamford (Lab): My Lords—

Lord Forsyth of Drumlean: I shall give way in a second. The same people who are telling us now that we need to remain members of the European Union regardless of the terms are the same people who told us that, if we did not join the euro, Frankfurt would become the main centre for financial services in Europe and we would fall behind and become irrelevant. Thank goodness we did not join the euro; otherwise, we would be in the same predicament as France, Spain and Italy and the others. I give way to my former colleague.

Lord Davies of Stamford: I am most grateful to the noble Lord. I am perfectly happy to say my noble friend because he is that outside the Chamber. If the Prime Minister—maybe likely, maybe not—got the concessions that the noble Lord has just set out, would he then vote for us to remain part of the European Union?

Lord Forsyth of Drumlean: I might want to add to the list. Broadly speaking, if we get our country back, are in control of our borders and are able to decide on the regulations that govern business, not only would I vote in support of our continued membership of the European Union but I would say that the European Union has been saved and that the Prime Minister was a magician.

It is not what I think that matters. This is not what we are discussing; we are discussing giving the British people an opportunity to decide for themselves. It is a great disappointment to me that the noble Lord who used to be on our Benches, and who I know is a great democrat, really does not want the British people to have that opportunity and that is a great sadness. I give way to my other Scottish friend.

Lord Foulkes of Cumnock (Lab): But never in the same party. For some time I was in the other House on the Front Bench as a spokesperson on foreign affairs and Europe. I remember the Single European Act and the Maastricht treaty being pushed through that House, in spite of some of our questions about it, by the Prime Minister, Margaret Thatcher. There was a younger Member called Michael Forsyth who went through the Lobbies in favour of all those centralising Motions. I wonder if he is any relative to the noble Lord.

Lord Forsyth of Drumlean: Yes, indeed, and it has only just dawned on me that, just before the Single European Act came before the House of Commons, I was made a Parliamentary Private Secretary to our late friend Geoffrey Howe, who was Foreign Secretary. Does the noble Lord think there might have been a coincidence perhaps? As a member of the payroll vote, I was expected to vote for it, and I did vote for it. Indeed, the late Lady Thatcher supported it, but I can tell noble Lords that if Lady Thatcher were here today she would be saying that we should leave the European Union. I have no doubt about that whatsoever.

Lord Spicer: My Lords—

Lord Forsyth of Drumlean: I would quite like to get on to the amendment, but I give way to my noble friend.

Lord Spicer: I have been reflecting on the exchange between my noble friend and the noble Lord, Lord Liddle, on the question of degrees of hypocrisy. I wonder whether it might be viewed as pretty hypocritical to push an amendment to delay the referendum for two years, hoping that it might go away in time for the general election.

4.30 pm

Lord Forsyth of Drumlean: My noble friend is absolutely right, but even the noble Lord, Lord Liddle, could not keep a straight face. He said that his tongue

was in his check. I do not know where his tongue was, but certainly the arguments coming from it were not very persuasive.

I actually got up to speak in favour of the amendment in the names of my noble friends Lord Hamilton and Lord Flight. Perhaps we have taken up a lot of time unnecessarily, because I assume that my noble friend the Minister is going to accept the amendment. Clearly, there can be no arguments against accepting it. The Government have given undertakings that they will not bounce us into a referendum campaign, and what better opportunity is there than this to put them on the face of the Bill? Ministers have already given those undertakings, so they must be government policy. The amendment is in order, so I expect that my noble friend will say that she accepts it. Therefore, I will not delay the Committee by making the arguments for it.

However, I would like to mention our experience. When I referred to the noble Lord, Lord Foulkes, as my friend, I was referring to him as a fellow unionist—as unionists campaigning in the referendum in Scotland. Then, we started off with about 28% of the vote in favour of independence and ended with 45% in favour of it. We allowed the Scottish Government to decide the length and date of the campaign, as well as the question, and that was a huge mistake. As a result, following that referendum people like me are going around saying, "Well, it wasn't actually a fair contest because the rules were set by one of the participants". I do not know what the Government's position will be after these negotiations, but it is very important that we have notice of the campaign; otherwise, we will have a sort of "neverendum" starting now, with the possibility of the Government jumping us into a short campaign, which would mean that it would not be possible to get across these arguments.

The Government have said that they will do nothing of the sort, which is why I expect they will accept this amendment. However, I want to make the point that it would also be entirely consistent with the policy of the Government—both as a coalition Government and as a Conservative Government—who gave us the Fixed-term Parliaments Act. I was against that Act, but the Government's argument was that it was completely unfair to allow a Prime Minister to have the patronage of deciding the date of the election and that people should know what the position was. Therefore, if we accepted the amendment of my noble friends Lord Hamilton and Lord Flight, we would know that we had at least a 10-week period in which to campaign, and I think that that would be seen as fair.

Yesterday we did not accept the advice of the Electoral Commission on the grounds that its role was to advise, and I thought that the argument put forward by my noble friend Lord Bridges was absolutely persuasive. However, I cannot think of a single argument that one could deploy against taking the advice of the Electoral Commission to accept the Government's undertaking. That leaves one argument. When I was a Minister and I was absolutely desperate to find an argument to support not agreeing to an amendment for which the arguments were overwhelming, I would say, "It's not necessary to put it on the face of the Bill because the Government have already given this undertaking". I have the utmost respect for my noble friend and I hope that she is not going to deploy that argument, for there is nothing to be lost by accepting my noble friends' amendment.

Lord Kerr of Kinlochard (CB): I am going to disappoint the noble Lords, Lord Hamilton and Lord Forsyth. The sad fact is that I find myself in agreement with them. I do not agree with all that the noble Lord, Lord Forsyth, said this afternoon. Indeed, I had to wait until close to the end of this, his second Second Reading speech, to find the point at which I agreed. I agreed with the noble Lord, Lord Hamilton, and I agree with his amendment. I, too, have a worry about timetables and I, too, know what the Government's assurance has been. Since that assurance has been given, why should it not be in the Bill? My particular worries about purdah are not exactly the same as those of the noble Lord, Lord Hamilton, but we will discover that when we come to later amendments. However, it seems to me that Amendment 1 has to be correct, and I hope that the Government will buy it.

The noble Lord, Lord Liddle, provoked a lively debate on Amendment 2, and we should be grateful to him. However, it seems absolutely clear to me that the Bill should not be amended as he proposes. We are operating on the basis of the Conservative Party manifesto, which the country voted for. It is clear that the referendum must happen by the end of 2017. For us to play with the idea of an extension would be extraordinarily dangerous.

As the noble Lord, Lord Liddle, took the opportunity of pointing out, it is the case that it is not possible on that timescale to secure treaty change. When the strategy was first unveiled, in the Bloomberg speech, there was time for the five stages that treaty change must go through; the final stage being national ratification, in some countries by referendum. It would have been possible then, but it is not possible now—we all know that. Therefore, the point about honesty was a little overdone, because the country is well aware that a treaty change is not securable on that timescale. However, I think that the noble Lord, Lord Liddle, was only teasing, and we should move on now from this second Second Reading and get back to the detailed scrutiny of the Bill. I support Amendment 1 and oppose Amendment 2.

Lord Greaves (LD): My Lords, there is a long tradition in this House that is always deplored: the debate on the first group of amendments to a Bill should not be another Second Reading—but we always do it.

I do not know whether it will please the Minister or not, but I want to ask a very genuine, simple, short, Committee stage question. The noble Lord, Lord Liddle, with his tongue in his cheek, suggested that the referendum might be as late as 2019. I do not agree with that, for pretty well all the reasons that have been stated around the Committee. If we are to have this thing, we need to have it as quickly as possible, otherwise it will poison the whole process of British government and politics for another two years. We really do not want that.

[Lord Greaves]

Clause 1(3) says that the referendum must not be on 5 May 2016 or 4 May 2017. These, of course, are the ordinary days of local elections in those years. As I said at Second Reading, I very much approve of that. The Bill says that the referendum cannot take place on local election day. What it does not say is that local election day could not be moved to take place on the same day as referendum day. If the negotiations are quicker and more successful than perhaps people expect, it might be that the referendum could be in May or early June next year, but if they drag on and on for much longer than people hope, it could be in the spring of 2017. There would then be a real temptation, I suspect, in at least parts of the Government, to combine the polls. I am asking for a commitment from the Minister that that cannot happen. Will she explain to me why, in the absence of this prohibition in the Bill, it cannot happen?

Lord Hamilton of Epsom: My Lords, I take the liberty of correcting the noble Lord on what he said about the referendum being held in May or June next year. The fact is that this Bill is very unlikely to get Royal Assent before Christmas, and we need 16 weeks from then, which takes us to the end of June.

Lord Greaves: I am grateful for that intervention, but local elections have been moved, certainly to the third week in June—to my knowledge, because I have taken part in them. So my question is still the same.

Lord Pearson of Rannoch (UKIP): Further to the brief exchange between the noble Lords, Lord Forsyth and Lord Liddle, about the use of the word "hypocrite", may I, at the start of our Committee proceedings, suggest to the noble Lord, Lord Dykes, that he should no longer describe those of us who wish to leave the European Union as xenophobes—or, indeed, as Little Englanders, dangerous nationalists, swivel-eyed Europhobes, and so on? I wonder whether he and his noble and Europhile friends understand that those of us who wish to leave the European Union do so out of a very genuine love of Europe. But to us, Europe is the Europe of nations; it is not the failed project of European integration. We therefore think that we are actually better Europeans than those who wish to stay in that failed experiment. I trust he will accept that. If he does, I and my Eurosceptic friends will try not to use the word "quisling" about those who wish to continue with the project.

My second point is a question to the Minister. The noble Lords, Lord Liddle, Lord Anderson and Lord Kerr—who knows a thing or two about this—all seem to think it impossible that we will have adequate treaty change in our relationship with Europe in time for the end of 2017. Is it part of the Government's thinking at the moment that they may go to the country on the promise of treaty change to come, on the grounds that all our dear colleagues in Europe have said in some Council meeting that they will eventually support treaty change? As we go forward with the Bill—and, indeed, with the negotiations in Brussels—we need to know that.

Lord Spicer: My Lords, we have heard that Amendment 2 is a tongue-in-cheek amendment. We have never had one of those before; it is, I think, without precedent. We have had wrecking amendments and probing amendments, but we have never had tongue-in-cheek amendments. Leaving that to one side, the amendment enables me to make one short but serious point.

The argument that has been made for getting on with things is clearly a strong one, because of the confidence factor and so on. We shall find out fairly quickly whether we can get the results we hope for in terms of change—certainly in terms of treaty change. For instance, on the question of repatriation of powers we shall fairly quickly come up against something called the acquis communautaire, which dominates, and is endemic to, the entire set of treaties. It requires all the movement to be one way; it does not allow any return of powers within the treaties. Given that unanimity would be required to change a treaty, we shall find out fairly quickly what the situation is. So any amendment, tongue-in-cheek or otherwise, that would cause further delays is a bad thing and should be voted against.

Lord Stoddart of Swindon (Ind Lab): My Lords, Amendment 1 is perfectly acceptable, and I hope the Minister will accept it. However, I cannot understand why on earth Amendment 2 has been grouped with it. I am surprised that the noble Lord, Lord Liddle, did not insist that it be listed separately. He will be surprised to hear that, to some degree, I agree with what he said. 2017 will be a very difficult year.

4.45 pm

As the noble Lord mentioned, there will be presidential elections in France, but also, I believe, in the second half of the year this country—the United Kingdom—will have the presidency of the European Union. It would be very difficult, would it not, if the Prime Minister did not have his programme and had not achieved his objective and he wanted to recommend that we leave the European Union at the same time as we had the presidency of the Union and were presumably promoting it? I think the noble Lord has a very good point about 2017 and I am surprised that the Prime Minister and his advisers had not looked forward to that. Basically, we will have to have the referendum either before 2017 or after. I know that will be difficult for the Prime Minister and for the Conservative Party because the date of 2017 is in the manifesto. I see some difficulties and I think that those difficulties will have to be addressed by the Government. They should tell us exactly how they will address them.

I hope that we can have a reasonable and polite discussion about these matters. For myself, I was never in favour of joining the Common Market. I made my first speech against it in 1962. I have taken part in all the debates ever since and I have opposed every treaty change. I still believe that this country would be far better off outside the EU and would prosper.

My position is absolutely clear—it always has been clear. That does not make me a Europhobe. I do not hate Europe—I love Europe. I love the countries of Europe but I believe in the countries of Europe and not a corporatist, central government of Europe. We have to make that absolutely clear.

Lord Framlingham (Con): I agree entirely with the words the noble Lord is using and I have followed much the same pattern myself. Does he agree with me that those who tell us we can never come out of Europe would have to accept that we are in fact—I am going to use a fairly strong word—enslaved?

Lord Stoddart of Swindon: I think "enslaved" is perhaps going a little far but at the same time, of course, we have lost the ability to govern ourselves in many respects. The noble Lord is right that things change. I always remember the dictum of Harold Wilson:

"A week is a long time in politics",

and a decade, of course, is an aeon.

I was about to say that I wish we would not call each other names. I respect those who think that Britain should be part of a large agglomerate but, on the other hand, many of us believe that this country has succeeded for 1,000 years by its self-government.

Lord Foulkes of Cumnock: Which country has succeeded for 1,000 years?

Lord Stoddart of Swindon: I do not want to offend the noble Lord but the country that has been successful for 1,000 years is England. It is England. With my name being of Scottish origin, I would want to join Scotland with the success that the United Kingdom has achieved, certainly since 1706.

When it was mentioned that Lady Thatcher changed her mind, I thought that there was some dissent. I can assure noble Lords that she did change her mind. The reason I know that is that in 1992, when we were discussing the Maastricht treaty, there was a committee consisting of the noble Lord, Lord Pearson of Rannoch, and many other people, and Margaret Thatcher—Lady Thatcher, if I might correct myself—led the opposition. I was chairman and she used to sit on my right hand side and make contributions that made it absolutely clear that her view then was that we should leave the EU. There was only one little problem. As the meeting went on I found that it was slipping away from me. It was slipping away from me on the right, but a little glance at her handed the meeting back to me. Margaret Thatcher became a convert to Britain leaving the EU.

Lord Garel-Jones (Con): Does the noble Lord not think that it is fairer to judge Lady Thatcher by what she did when she was Prime Minister rather than by what she might have done or thought when she was not?

Lord Stoddart of Swindon: Of course I knew her as Prime Minister, but I was not close to her when I was Prime Minister—when she was Prime Minister—

Noble Lords: Oh!

Lord Stoddart of Swindon: I assure noble Lords that I never had an ambition to be Prime Minister. The fact is that Prime Ministers sometimes make mistakes. Sometimes they are badly advised. I think that she was very badly advised to agree to the Single European Act. On behalf of the Labour Party, Donald Bruce—Lord Bruce of Donington—and I sat on that Front Bench opposing the Single European Act. Unfortunately in my view, the Labour Party has changed its view, but it might come back to reality in due course and get on the right trail with this.

I agree entirely with Amendment 1 and, as I said earlier, the noble Lord has raised an important point.

Lord Collins of Highbury (Lab): My Lords, bearing in mind the contributions that we have had so far, for one moment I thought that I could be tempted to recount my 45 years' membership of the Labour Party and my journey towards Europe. I will resist that for now, although I might come back to it.

It is important that we address some of the details of Amendment 1. It is fundamentally about a level playing field. I understand that noble Lords opposite are focusing on a level playing field over how the date will be set and the arrangements for purdah, but there is more to a level playing field than simply purdah. The Electoral Commission's remarks or comments on this amendment are important. These show that in the commission's experience since 2004, in referring to PPERA and its requirements, campaigners and electoral administrators need time to prepare themselves properly to follow the detailed rules that Parliament has specified. These rules relate to donations, campaign funds and, of course, how a campaign is properly designated.

I had hoped that noble Lords would refer to the ninth report of your Lordships' Delegated Powers and Regulatory Reform Committee, which raises this point quite properly. It says that there is a bit of a problem here with the requirements in the schedules about establishing or designating an appropriate organisation that will come within the terms of PPERA, and with the campaign period of 10 weeks. The issue for me—the Electoral Commission makes this point—is that we will have a much longer campaign than 10 weeks. It has already started: organisations either have been or will be set up in the hope and expectation that they will be the designated organisation. At some point they have to get their act together and ensure that they meet fully the requirements of PPERA.

Lord Anderson of Swansea: A level playing field is devoutly to be sought. We can do as much as we can in Parliament and in this House to ensure that the rules are fair, that the donations question is settled properly and so on. Does my noble friend agree that there will never be an even playing field in this country as long as the press—often the foreign-owned press—is overwhelmingly against Europe?

Lord Collins of Highbury: I agree with my noble friend. One of the problems of PPERA and trying to establish a level playing field in elections generally is our free press, which is very important and which we must defend. We have to consider that the concentration of ownership in our press has distorted its ability to express a range of opinions.

Lord Stoddart of Swindon: I am most obliged to the noble Lord. I am sorry to interrupt, but he may not recall that during the 1975 referendum the press, other than the *Daily Express*, was virtually all in favour of remaining in.

Lord Collins of Highbury: I very much recall it, because, as I said in my Second Reading speech, I was secretary of the Spelthorne Get Britain Out campaign, so I was fully aware of what we were up against. I will come on to this on Amendment 2.

I want to focus on specific questions relating to this. Everyone is familiar with the 10-week campaign period and everyone is talking about purdah. However, there is a period before that relating to the operation of PPERA and designated organisations. Your Lordships' Delegated Powers Committee said,

"if as suggested in the memorandum the start date for applications for designation is likely to be earlier than the start date for the referendum period, this will have the knock-on effect of reducing the minimum length for the referendum period".

In considering the issue raised in these amendments, the committee said:

"We consider that, if the Government intend there to be a minimum of 10 weeks for the referendum period, they cannot rely on the operation of the 2000 Act"—

PPERA—

"to deliver that minimum period. In our view, the 10 week minimum for the referendum period should be specified on the face of the Bill".

I would like to hear from the Minister whether the Delegated Powers Committee is correct. If it is not, how can she give the guarantees that we all accept have been made? I accept that there is a need to ensure that, when we enter the process of the referendum, there is a proper level playing field which everyone accepts and understands. To do otherwise would undermine the whole process because, as noble Lords have said, whatever we have at the end, we want a settlement. That brings me to my noble friend's Amendment 2.

5 pm

The noble Lord, Lord Forsyth, was very helpful in his contributions. He reminded the House of the Labour Party's policy and our stated opinion in this regard. Of course, there has been a general election and there was a clear manifesto commitment, which should be totally respected. There was not a clear manifesto commitment on the issues we discussed on Monday, which is why this House expressed its view, but we do have one for a referendum on Britain's membership of the European Union. It is important that that referendum is conducted as speedily as possible because, as the noble Lord, Lord Forsyth, said, uncertainty about Britain's place in Europe is not good for the British economy. We need to ensure that there is a clear decision as speedily as possible. However, I accept my noble friend's assertion that his amendment was a bit tongue in cheek. He provoked an interesting debate, which has been rather like Second Reading.

There is this issue of who is taking what position and where they are coming from. I accept that the Prime Minister is entering these negotiations in good faith. He wants to achieve change. Personally—and I think this is the view of the Labour Party—I think that we better achieve change by engaging with the institutions and ensuring that our voice is properly heard. We have achieved such change in the European Union over a considerable period of time. The noble Lord, Lord Forsyth, made points about some of the elements of the Social Chapter. The elements he described were precisely those that helped change my mind about Europe. Health and safety is not red tape. Nor are drivers' hours, which ensure safety. These are very important matters, especially because of how the world has changed; drivers must now, because of the markets they need to address, drive across boundaries.

Lord Forsyth of Drumlean: I was not implying in any way that health and safety is not important. Indeed, I was a Health and Safety Minister in the Department of Employment for at least a year. The point I was making was that employment rights, when we signed up to them, were subject to unanimity and we had a veto. They were then presented as health and safety in order to get round that and make it possible to change them by qualified majority.

Lord Collins of Highbury: I hear what the noble Lord says but I think these issues will be part of the general debate and I do not want to use these amendments for a broader discussion. The only point I will make, in relation to the debate we had on Amendment 2, is that there is a point in the process of negotiations where people put forward demands that they know full well cannot be achieved. In the Labour movement, we used to call people who made those sorts of propositions Trotskyists. I do not know whether the noble Lord, Lord Forsyth, would be offended, or would think that it was unparliamentary for me to use those terms, but sometimes, I have to confess, he does sound like a little bit of a Trot.

Lord Forsyth of Drumlean: In view of the person who now leads the Labour Party, I suppose I should take that as a compliment.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, I will speak first to the amendment in the name of my noble friend Lord Hamilton before turning to that in the name of the noble Lord, Lord Liddle. Both amendments deal with the date, which is why there was a rationale for the amendment in the name of the noble Lord, Lord Liddle, to remain in this group. He certainly added extra pizzazz to the debate—I am not sure that is a parliamentary word but never mind.

There was a very serious thread in the arguments brought forward by noble Lords; that is, that in considering the date on which the referendum should take place, the Government should take into consideration very firmly fairness and, as my noble friend Lord Blencathra said, that the Government should not seek to bounce the country into a referendum. That is certainly not what the Government are seeking to do. They seek to find fairness and a level playing field. That has certainly underwritten the way in which the Government addressed the drafting of the Bill, particularly when one looks at some of the technical schedules, to try to achieve that fairness.

As one or two noble Lords have said, it is rather our tradition in this House that on the first group of amendments, whatever they may refer to, somehow we revisit Second Reading. After nine hours of Second Reading, that would be quite a long revisit. I know that the noble Lord, Lord Pearson of Rannoch, was not able to take part in that debate so I will try to comment on one or two of his points when we reach my responses to the noble Lord, Lord Liddle. But listening to some of the interventions, I felt I was hearing the way that noble Lords were going to vote in the referendum even though we have not yet concluded the negotiations, let alone set the date.

Amendment 1 in the name of my noble friend Lord Hamilton would put in place two restrictions on how the referendum date is agreed by Parliament. First, it would require there to be at least 10 weeks between setting the date in regulations and the date of the referendum itself. Secondly, it would require at least 16 weeks between the draft regulation setting the date being laid in Parliament and the referendum. My noble friend quoted in support of his view the statement made by my honourable friend Mr Penrose, the Minister in another place, when he gave a commitment about timing. My honourable friend Mr Penrose said that it would be clear that there will be 16 weeks from regulations to the date of the referendum.

I appreciate that this is a technical Bill—it is straightforward but it is technical—and therefore it is very easy to read one set of regulations against another. In this case, on occasions noble Lords may have been referring to Clause 6(6), which refers of course to the Section 125 PPERA regulations—the so-called statutory purdah—when in fact Clause 1(2) deals with the setting of the date. I think we need to disaggregate that, and we will deal with Clause 6(6) next week when we consider amendments in the names of some of my noble friends, and others.

Some noble Lords put forward the point that it would be right immediately to accept an amendment which put on the face on the Bill a minimum referendum period of 10 weeks. Some indeed might see this amendment at first sight as writing into the Bill a minimum referendum period of 10 weeks, as recently recommended by the Delegated Powers and Regulatory Reform Committee. I note, as the noble Lord, Lord Collins, said, that the committee says, in paragraph 33:

> "We consider that, if the Government intend there to be a minimum of 10 weeks for the referendum period, they cannot rely on the operation of the 2000 Act to deliver that minimum period. In our view, the 10 week minimum for the referendum period should be specified on the face of the Bill".

Since I am currently looking almost eye to eye with the chair of that committee, I suddenly realise that I can continue to say how highly I have respected its views throughout my time here. Since we are looking at its recommendation, I would not be able to say today exactly how we would respond, but the committee has certainly presented a detailed, thorough report, which we are looking at and discussing in detail with colleagues before we come back with any firm commitment and proposal in response. That is the normal process in Committee, because all noble Lords who have taken part in discussions with Ministers or have been Ministers will know that there is a process by which these matters go forward.

Lord Tyler (LD): I would like to express appreciation, because I think that the other people who happen to be in the Chamber today are not in a position to respond on behalf of the Delegated Powers and Regulatory Reform Committee. I serve on that committee and I think the committee will appreciate that it is entirely appropriate that the Government should take some time to think about that, but we feel strongly about it so we will look forward to hearing what the noble Baroness says on Report.

Baroness Anelay of St Johns: I am grateful to the noble Lord, Lord Tyler. It is not the only point made in the committee's report, and one of the factors which may not be appreciated by those outside this House is that, when the Delegated Powers and Regulatory Reform Committee commits itself to these pieces of work, the work has to be done very swiftly but it is always done with great consideration and much detail.

Lord Forsyth of Drumlean: Surely we are not discussing the committee's report. We are discussing my noble friend's amendment, which happens to be supported by a recommendation.

Baroness Anelay of St Johns: My Lords, I know that my noble friend hoped that I might immediately accept the amendment in the name of my noble friend Lord Hamilton. Perhaps I can skip forward a bit and disappoint my noble friend Lord Forsyth but he might welcome the rational answer that I wish to give him.

The trouble is that the amendment in the name of my noble friend Lord Hamilton does not actually achieve the change that he wants to achieve, because it does not refer to the right part of the Bill. It simply builds in a delay between the process of laying and agreeing regulations on the referendum, but not the regulations to which he was referring. It does not make any provision at all for the length of the referendum period itself, which is what I think he was trying to achieve. To try to be helpful and to achieve that sort of change, we would need to amend paragraph 1 of Schedule 1, which creates the power to set the length of the referendum period. I think I have perhaps set in train some further work for my noble friend Lord Hamilton and my noble friend Lord Forsyth, and we will certainly come on to that that later next week.

Lord Forsyth of Drumlean: I apologise for interrupting my noble friend, but I had forgotten that there is another argument that is put forward when you are a Minister and you do not want to accept the amendment and your arguments are a bit thin, and that is that the drafting is not correct. Would it not be possible at a later stage in the Bill for the Minister to bring forward an amendment which was drafted correctly and met my noble friend's purpose?

Baroness Anelay of St Johns: My Lords, I was trying to be very reasonable by saying that we are looking at the proposal from the committee's report,

[Baroness Anelay of St Johns]
which appears to chime exactly with that of my noble friend Lord Hamilton. With the respect that I pay to the committee and to my noble friend, I want to be able to bring back a proposal which is appropriate and would achieve a result that the Government feel is workable and the House feels is right. That will be a matter for debate on another occasion.

In any event, the Government has always been clear that we do not intend to propose a referendum period shorter than 10 weeks. I know that some confusion has also arisen because of the issue of when the lead campaign should be designated. What we have tried to do is to provide more flexibility in this Bill by saying that that can happen before the 10-week period, and if it does it extends the whole period to which we are referring. I do not wish to confuse the matter even further. We had a good debate on those first two amendments. The Delegated Powers Committee has made a recommendation, and we are certainly looking at that very closely.

5.15 pm

I turn to Amendment 2, in the name of the noble Lord, Lord Liddle. As other noble Lords have said, he introduced it by saying that it was a little tongue in cheek. It is none the worse for all that because it certainly initiated a strong debate. Perhaps I can be a little tongue in cheek back. I noted that, when the Private Member's Bill in the name of my honourable friend Mr Wharton was staggering through Parliament in 2013—a little while ago, in other words—the noble Lord, Lord Liddle, made the point that he did not approve of setting out a date for a referendum at the end of 2017, which would have been four years on, because he felt that would have been an inappropriate delay. Since he has put down an amendment today for a four-year delay, I need say no more.

However, a serious point has been raised about when the referendum should take place. We heard quite a few remembrances from Second Reading. For example, the noble Lord, Lord Pearson, asked: will the Government go into a referendum with a promise of treaty change? The noble Lord, Lord Anderson, also made a point about whether there would be adequate time for treaty change. Others pointed out that it is possible for other procedures to go ahead. There have been reports that it is possible, as other countries have found, to lodge a protocol at the UN and achieve a promise that is legally binding. These matters are all germane to renegotiation.

The Prime Minister has clearly said that we will only come to the House to set a referendum date which the House then decides. It is a date proposed by the Prime Minister but decided by the House—because it will be in an affirmative statutory instrument. We would only do that after there had been a renegotiation and after the Prime Minister had been able to put that to the country for resolution. I can see that one or two noble Lords would like to intervene, so I will hesitate at the moment.

Lord Tomlinson (Lab): Does the Minister agree that the discussion we are having at this stage of the Bill would be vastly improved if we had the letter that the Prime Minister has committed to send to the President of the Council and make available to parliamentarians? At the moment, we have all sorts of hypotheses coming into the discussion about what might be there. Would it not be better if we knew the agenda for the discussions?

Baroness Anelay of St Johns: My Lords, it is right for this House to be apprised of the agenda for discussions further than it has already been—the agenda has, after all, been set out in several speeches by the Prime Minister—but that is separate from the process of having referendum legislation. As I said at Second Reading, this is merely the legislative vehicle for the referendum itself. The noble Lord is right that Parliament should have the opportunity properly to examine the proposals put forward by the Prime Minister and what has happened at the end of that. I am sure that we will discuss that further next week.

At this stage, I would like merely to give the straightforward answer to the noble Lord, Lord Liddle. The Bill currently provides for the referendum on the United Kingdom's membership of the EU to take place no later than 31 December 2017. His amendment would move that deadline later, to 31 December 2019. As other noble Lords, including the noble Baroness, Lady Smith of Newnham, pointed out, holding this referendum by the end of 2017 was a clear manifesto commitment. It has been repeated by the Government since the election, and as drafted, this Bill will fulfil that commitment and allow the British people to give their view by the end of 2017. That is why I can confidently say that we would not accept the amendment of the noble Lord, Lord Liddle.

However, I was asked one or two questions and perhaps I might try to address those. The noble Lord, Lord Stoddart of Swindon, made the point that there will be other events around the rest of the European Union over the forthcoming couple of years. I would say that when we are holding the presidency of the Council, we will be perfectly competent to carry forward a referendum at that time, given the experience elsewhere in Europe. There are so many examples, but I will try to pick out one or two—I have gone on long enough already so I will not test the House's patience too much. In 1993, the Danish Government held the presidency for the first six months. On 18 May during that period, they held a referendum on the Edinburgh agreement, setting out arrangements for Denmark. During the Polish presidency of July to December 2011, Poland held a parliamentary election. All seats in both Houses were up for re-election and that brought in Tusk for a second term.

Lord Anderson of Swansea: Those are not adequate precedents because, for example, the Danish referendum was on some amendment to Denmark's relationship with the European Union. What is proposed in this Bill is a possible total reversal. It would be wholly impossible, as the noble Lord, Lord Stoddart, has said, for the UK, in the middle of its presidency of the European Union, to find that it is no longer a member or will shortly not be a member. It would place the UK presidency in an impossible situation.

Baroness Anelay of St Johns: I know the noble Lord's experience of these matters so he is probably well ahead of me on this, but perhaps I can remind

him that in 2006 and 2007 Germany and Finland swapped presidency dates to avoid national elections in each, so it can be done.

I was also asked a pertinent question by the noble Lord, Lord Greaves—

Lord Hannay of Chiswick (CB): I am most grateful to the noble Baroness for giving way. I honestly think these so-called precedents which she has brought to the House to show it can be done ignore one really rather important point. She is probably in a similar position to the Prime Minister—that nothing is excluded as far as his own position in the campaign is concerned—but what is surely totally excluded is that, in the middle of our presidency, the Prime Minister of this country should campaign to leave the European Union.

Baroness Anelay of St Johns: We have not reached that point yet, since this is merely the first clause of a Bill trying to deliver the ability to hold a referendum, but these are all serious points. Noble Lords are pointing out that any decision about setting a date must take into account all the circumstances under which a referendum would be expected to operate. The Government would have to take a decision about which date to recommend to Parliament; it would then be for Parliament to consider that and to set their view.

The noble Lord, Lord Greaves, pointed out that in the past there has been at least one occurrence of local election dates being moved. Amendments were agreed in another place to rule out those May dates in 2016 and 2017 specifically to ensure that the referendum does not clash with known local government dates. There is certainly no expectation that local government dates should be moved. That is not our plan and we do not see that happening. However, without wishing ill on any Member of any party in the other place, if there had to be a completely unforeseen parliamentary by-election or local government by-election and it was decided that a by-election might be held on the same day as the referendum, I think the House might consider that to be rather a different matter, but we have no plan to move other elections to combine them with the referendum.

My noble friend Lord Hamilton has moved his amendment and the noble Lord, Lord Liddle, has spoken to his. At this stage, I say formally to the noble Lord, Lord Liddle, that I hope he may see fit not to move his amendment when it is called from the list, and I invite my noble friend Lord Hamilton to withdraw his Amendment 1.

Lord Forsyth of Drumlean: My Lords, I may have misheard, but I thought my noble friend said in the context of the date of the referendum that the Prime Minister would make a recommendation to both Houses and both Houses would be able to decide. As that is by regulation, would that not get us into some difficulty in this House?

Baroness Anelay of St Johns: My noble friend tempts me sorely. I think he has made the point better than I could.

Lord Hamilton of Epsom: My Lords, I very much agree with the noble Lord, Lord Liddle, that the grouping of the amendments is somewhat weird. I cannot quite understand why Amendment 1 was grouped with Amendment 2, other than that one followed the other. They do not seem to have an awful lot in common. I congratulate the noble Lord, because his amendment certainly created much more interest and lively debate than mine.

I am very grateful to the House, because there seems to be almost complete unanimity over my amendment. I take my noble friend's point that the wording could perhaps have been better, but I was enormously encouraged—almost shocked—to get the support of the noble Lord, Lord Kerr, to whom I am very grateful. The point raised by the noble Lord, Lord Collins, about the Delegated Powers Committee having a view on this as well was also very encouraging. We have the Electoral Commission and the whole of your Lordships' House, I think, in support. Indeed, it is in the spirit of what the Government have already said. On that basis, I take my noble friend's point that it was not very well worded, so work must be done. May I check with her where this leaves us today? Presumably, an amendment will be put forward which is better worded but applies itself to the spirit of my amendment and will be tabled at Report as a government amendment. Is that correct?

Baroness Anelay of St Johns: My Lords, as I explained, the normal procedure is that the Government, having seen the Delegated Powers and Regulatory Reform report, considers all its recommendations and consults in government and then considers next steps. That is when decisions are made, so I cannot give my noble friend any undertakings at this stage; clearly, that is not the normal procedure.

Lord Hamilton of Epsom: I am very grateful to my noble friend for that, but I am also mindful of the seemingly total support in your Lordships' House, so I hope that we can get a better amendment tabled at Report. I am not quite sure who will be voting against it. I thank my noble friend very much and I withdraw my amendment.

Amendment 1 withdrawn.

Amendment 2 not moved.

Amendment 3

Moved by ***Lord Hamilton of Epsom***

3: Clause 1, page 1, line 12, leave out "remain a member of the European Union or leave" and insert "leave the European Union or remain a member of"

Lord Hamilton of Epsom: My Lords, this is a rather more modest amendment, as you will see. Unfortunately, I cannot plead in aid the support of the Electoral Commission, which for some reason does not seem to want to support the amendment. The only point I would make about the question in the Bill is that in all previous incarnations, the Electoral Commission has

[Lord Hamilton of Epsom]
always taken things in alphabetical order. When you have a voting paper, if your name is Brown, it comes higher than somebody called Smith. That is an arbitrary rule that has been imposed for all voting papers. On that basis, it is somewhat confusing that in this case the Electoral Commission recommends that we do not go in alphabetical order. I do not quite understand what the thinking of the Electoral Commission was on this. I think, having moved once already on whole issue of the question, it feels that it has done all it can, but it is rather odd that it has not followed the precedent that it has set in the past. I beg to move.

Lord Wigley (PC): My Lords, I shall speak to Amendments 5, 6 and 7, which are grouped—again, rather strangely—with the amendments of the noble Lord, Lord Hamilton. I suppose it is to do with the wording, and that is the common thread.

Before going into detail, perhaps I may note that I did not speak at Second Reading, and I shall be very careful to take good note of the strictures of the noble Baroness, Lady Anelay, on making Second Reading speeches—I will not do that. My noble friend Lord Elis-Thomas spoke on that occasion, and I was delighted to be on the same side as him, because back in the 1975 referendum, when I was certainly a "yes" voter for Wales and the UK to remain members of the European Community, he was on the other side, as was almost the rest of my party. I am glad to say that my party has come round. I am still totally committed to the European ideal and shall most certainly campaign, wherever I can, to ensure that the UK remains part of the European Union.

5.30 pm

I have had some doubts about having a referendum, but by now, I have come round to realise that this issue cannot just continue as it has. It is causing so much uncertainty. It affects investment, particularly from parts of the world that might be looking at Europe as a bloc. I think of the United States, China and Japan. Inward investment undoubtedly is being undermined by uncertainty, and we need to put that uncertainty to bed. Therefore, everything that I shall do in the context of this Bill will be to facilitate, encourage, and maximise a vote to remain in the European Union.

Turning to my amendments, I remind noble Lords that the Welsh language is now, of course, a full and equal official language in Wales. It was "full and equal" but not "official" in the 1993 Act passed by this House, but now it is an official language as well. Therefore, there is a need for the wording on the ballot paper to be totally transparent, beyond reproach and, in particular, to be such that it does not lay itself open to any challenge in the courts. In the context of a very close result, I can just imagine some protagonists being tempted to go down that road. Let us therefore make sure that the wording in both languages is clear and beyond any dubiety. That is where Amendment 7 is relevant: there is now a legal requirement in Wales for the two languages to be treated on the basis of equality for official purposes. Failure to do so would put the Government in default of the requirement of the law in Wales.

On Amendments 5 and 6, the wording as it stands uses the Welsh word "aros". That is best translated into English as "stay", not as "remain". The term "dim aros" appears on road signs: it means "no stopping" or "no parking". I am not quite sure that the connotations of the wording that we have in this translation for the purposes of the ballot paper convey what the Government want it to. The word I propose, "Parhau", is a much better equivalent of "remain".

This is not just my opinion. I am not a Welsh scholar: I was a physics graduate, and my life was in industrial finance before coming to Parliament. I therefore spoke to a good colleague and friend who is a lawyer and an ex-chief executive of a local authority in Wales with a good degree in Welsh. He agrees with my interpretation on that, so I ask the noble Baroness, if she is responding to this debate, what consultation there has been in Wales and whether the Government are absolutely sure that the interpretation they have used is beyond question.

In the spirit of Committee, these are clearly probing amendments. I am asking the Government, if there is any possible doubt, to consult further in Wales between now and Report, and do anything necessary at that point. I will not trespass unduly on noble Lords' patience, but I also press for a government assurance that all the official documents published by the Government in Wales in the context of this referendum will be in both languages, as has by now become the norm with regard to practice in these matters in Wales.

Lord Flight: My Lords, I rise in support of Amendments 3 and 4, proposed by my noble friend Lord Hamilton. The unspoken point here is that some people believe that whatever proposition comes first on a referendum has a marginal advantage because people react to the first thing that they read. I personally rather doubt that that is the case. But there is an argument that, if you have a referendum, you do not have one to say that you want no change—you have a referendum to consider whether you want change or not. Therefore, it is not unreasonable that the change proposition should come first. But there will no doubt be an ongoing tug of war on this issue, due to the view that whichever proposition comes first has some advantage. I would like to see evidence as to whether that is the case.

Lord Anderson of Swansea: My Lords, I defer to my noble friend Lord Wigley in his knowledge of the Welsh language and look forward to learning further from the Front Bench with respect to the validity of the Welsh question. I had the misfortune to attend a traditional Welsh grammar school, where I was able to give up Welsh for Greek at a tender age, but I look forward to the further debate on this—and I look forward to appearing on the same platform with the noble Lord, Lord Wigley, as we did in 1975. Indeed, the first time we met, when we got on famously, was when as a young industrialist he came to see me; I had been in the Foreign Office, working on a European desk, and he came to—wait for it—seek my advice on the European Union. We have not looked back since.

On the amendment proposed by the noble Lord, Lord Hamilton, in the earlier part of this evening's debate we decided that the rules should be set by

the Electoral Commission. At this point, surely the presumption on a matter of this sort should be—this is the very purpose of the Electoral Commission—that we defer to it in respect of such rules and, if we do not follow those rules, we have a very good reason for so doing. With all respect to the noble Lord, Lord Hamilton, and the presumption that I made, I have not heard from him a weighty case against the change and for the reversal he now proposes.

Viscount Trenchard (Con): My Lords, I, too, support the amendment in the name of my noble friend Lord Hamilton. I was interested in the remarks of my noble friend Lord Flight. It is interesting that the Electoral Commission did not support the amendment; I thought that perhaps it was because the status quo should go first and a departure from the status quo should come second but, as my noble friend Lord Flight remarked, normally in a referendum the change that you seek comes first and the present position—the status quo—comes second. I am not clear which is right, so I think that probably my noble friend Lord Hamilton is right in saying that alphabetical order should prevail.

I am not going to enter into the debate on the intricacies of the Welsh language, as put forward by the noble Lord, Lord Wigley. I am perfectly happy to accept that what he says is correct. But I was clearly struck by the fact that he is one of those noble Lords who will campaign to remain a member of the European Union—and, I would like to say, to remain a member on the present basis, whatever the Prime Minister is able or unable to negotiate.

He also remarked in quite strong terms that leaving the European Union would be extremely detrimental to investment. It is not possible to know that without knowing the basis on which the United Kingdom might cease to be a member of the European Union—I would rather say, might cease to be a "full member" of the European Union. Ideally, I think that the Prime Minister should work for a trading relationship with the European Union, which could well be as a trading member of the European Union. So I do not really like the referendum questions—"remain" or "leave" the European Union—because "leave" sounds like a tugboat will come and attach a tow rope to our little island and tow us off into the Indian Ocean or somewhere where we might enjoy better weather. The reality is that we cannot leave the European Union in a geographical sense because we are adjacent to core eurozone members.

I would like to see the Prime Minister achieve substantial and significant reforms to our basis of membership, which may well mean that we cease to be a member on the current basis. The relationship with the other members of the European Union might be some kind of associate status or a reformed EEA or a reformed EFTA. I therefore take issue with the noble Lord's strong comment that it would be detrimental to investment if we were to leave the European Union.

Lord Hannay of Chiswick: I was startled to hear the noble Lord, Lord Hamilton, give as a reason the way in which names are produced. It is entirely true that it normal practice to use alphabetical order for names and for names of countries, but it is not so for verbs—and these are two verbs. So I do not think this has any validity. The Electoral Commission wants the wording in the Bill for the very simple reason that it put it forward. It would be a bit startling if it now found that it had put forward the wrong wording. It has not; it has put forward the right wording, and the Government, who did not start with this wording, moved to the Electoral Commission's wording in the other place—and I honestly suggest that that is the best place to stand.

Baroness Smith of Newnham: My Lords, I am rather new to the process of legislation. This is the first time that I have been involved in the passage of a Bill. Until the noble Lord, Lord Hannay, spoke, I was thinking that perhaps I had slipped back to Second Reading, even though we are on the second group of amendments. I am slightly puzzled by hearing a whole set of reasons from people who are in favour of leaving or remaining. I hope that my intervention will be wholly objective. I do not claim that my Welsh is up to knowing whether "aros" is the right word, but will the Minister confirm that the Government have checked the translation, in addition to the work done by the Electoral Commission?

In response to Amendments 3 and 4, I find it bizarre that we are discussing whether "leave" or "remain" should be in alphabetical order. This is not an election between people; it is a referendum on a question. The Electoral Commission has undertaken a lot of consultation, we have been extensively briefed and the other place was extensively briefed. The Government have taken the Electoral Commission's wording, and I suggest that these amendments are not helpful.

Baroness Morgan of Ely (Lab): My Lords, the Labour Party has consistently argued that we should follow the advice of the Electoral Commission on the question. It changed its mind on the question. It said that the previous question that came before the House was not adequate. It has tested this question, and that is why we support the current wording. It is worth noting that the Electoral Commission's briefing states that when it tested the reverse order, which is being recommended in this amendment, participants felt it was a more leading question than if the words were put the other way round. We do not believe there is a need to change the order in the question.

I turn briefly to the Welsh language question. I am sure the noble Lord, Lord Wigley, and I could turn this into a Welsh language festival. I must stress that I do not expect the Minister to have a detailed understanding of the nuances of the Welsh language, but I suggest that she takes note of the recommendation made by the noble Lord.

I am a fluent Welsh speaker, as is the noble Lord, Lord Wigley. There are about half a million Welsh speakers in Wales. Interestingly, there are no daily Welsh newspapers and the difference between oral and written Welsh is quite significant—one is very formal, one very informal. On this issue I have consulted one of the top translators at the National Assembly for Wales and I have also looked at the Welsh language dictionary and confirm what the noble Lord has suggested: "aros" is more like "to stay" and "parhau", "to remain". If noble Lords want a direct translation, I suggest the

[Baroness Morgan of Ely]
noble Lord's is more correct. I note from the briefing given by the Electoral Commission that alternative questions were tested as well—

5.45 pm

Lord Kerr of Kinlochard: I thank the noble Baroness for giving way. I greatly admire her linguistic skills but I want to be quite sure where her loyalties lie. Will she please confirm that the translation she is recommending, proposed by the noble Lord, Lord Wigley, does not change the question to be one about the independence of the Principality of Wales?

Baroness Morgan of Ely: I assure the noble Lord that if that were the question the noble Lord, Lord Wigley, was suggesting, I would not be supporting him.

I think the Minister should look at this, go back to the Electoral Commission and make sure that it really has tested the wording with Welsh speakers in Wales.

Baroness Anelay of St Johns: My Lords, I will first address the amendments in the name of my noble friend Lord Hamilton. As other noble Lords have commented and as my noble friend explained clearly, with his Amendments 3 and 4 he seeks to swap round part of the referendum question from:

"Should the United Kingdom remain a member of the European Union or leave the European Union?",

to, "Should the United Kingdom leave the European Union or remain a member of the European Union?". The Government accepted the advice of the Electoral Commission about the text of the question after it carried out a consultation following the publication of the Government's Bill. The Bill was amended in another place in accord with the Electoral Commission's recommendations at that point. I understand my noble friend's point. He wants to see whether there is a level playing field. Is it fairer to have the phrases in the Bill in the order he prefers? I note in passing that he has not tabled corresponding amendments to the Welsh version of the question, but we will come to Welsh in a moment.

The Electoral Commission carried out extensive analysis of the referendum question before recommending the formulation that currently appears in the Bill. Its briefing makes the point that it is concerned about my noble friend's amendments and reminds the House that its research found that starting questions with "leave" was less intuitive and more leading than starting with "remain". In other words, it argues that if we were to accept my noble friend's amendments and change the order, we would be unsettling a level playing field and drawing more attention to saying that people should vote to leave. In that circumstance, I am not minded to accept my noble friend's amendment but I appreciate the way in which he has brought it forward to give us the opportunity to consider the question itself.

Amendments 5 and 6 in the name of the noble Lord, Lord Wigley, also refer to the question but look at the way in which it has been provided in Welsh. I am grateful to the noble Lord for making the point that Amendments 5 and 6 are probing amendments. They would change the wording of the Welsh language that would appear on the ballot papers in Wales. As with the English language question, the wording was recommended by the Electoral Commission following a period of research over the summer. I will say one or two words about that research and our response to it because the matters were also raised by the noble Baroness, Lady Morgan.

The research included consulting the Welsh Language Commissioner, as well as members of the public and other bodies, including local government bodies. As the Electoral Commission noted, its research explicitly considered the words that appear in the noble Lord's amendment. The participants whom it contacted and researched deeply preferred the formulation in the Bill to that proposed by the noble Lord. I certainly do not have knowledge of Welsh, so I have to look at the research.

I have to say that I miss hearing Welsh spoken in the corridors here, as I did commonly when Lord Roberts of Conwy was in conversation with, I think, a former Leader of this House, Lord Cledwyn. It is a melodic and fascinating language. All I did was to teach for five years at a Welsh girls' school but, regrettably, I did not learn Welsh during that time.

The Electoral Commission, in carrying out its research, tested Welsh versions of the questions during its fieldwork. It found that, overall, participants did not like the word "para", which is not the word used in the noble Lord's amendment but is close to it. It was felt that "para" sounded like other words, such as parachute or the mutated version "bara", which is the Welsh word for bread. People said in particular that they did not like the alternatives that are specifically in the noble Lord's amendment—that is, "barhau" or "parhau".

Lord Wigley: Obviously I shall not chase this matter for any length of time, but has the noble Baroness considered the methodology that may have been used by the Electoral Commission? She is putting all her eggs in that basket and, if there were any question as to the methodology, the conclusions might also be suspect. I ask her only to look at this matter again between now and Report so as to be absolutely sure.

Baroness Anelay of St Johns: My Lords, I will certainly be happy to look at the methodology adopted by the Electoral Commission. In my early life I was a sociologist—although I hardly dare say that in front of my noble friend Lord Forsyth—and I can say that, looking through the report, the Electoral Commission has carried out research through citizens advice bureaux. The methodology it has used shows that it has taken advice not only from organisations but from individuals, and from individuals not only in one particular area but in sample areas around the country. Therefore, I respect its research, although I will of course consider the matter.

The noble Lord referred in particular to the word "aros". I understand that most participants noted that either "aros" or—I apologise for the fact that I shall have to spell this—"ddal i fod" could be used in the referendum question. Both options were considered to work well, but in fact "aros" was felt to be more straightforward and clearer.

We would say that the Electoral Commission carried out proper research but, in the light of the noble Lord's request, of course I will consider what he said. If I may, I will come back to him outside the Chamber so that we may talk about this before Report. I hope that that will be helpful.

The noble Lord's Amendment 7 seeks to ensure that the English and Welsh language questions and answers are given equal prominence on the ballot paper in Wales. That has indeed been the practice on ballot papers in Wales. I have copies of a range of them, which show that the options have been arranged very carefully side by side. The noble Lord's amendment gives me the opportunity to explain that, but the amendment itself does not perhaps give great clarity as to how a ballot paper would achieve that balance. I am very happy to share that textual information with the noble Lord if he so wishes.

Finally, I invite my noble friend Lord Hamilton to withdraw his amendment, if he is so minded. I hope that he will be, and I hope that when it comes to be called, the noble Lord, Lord Wigley, will choose not to move his amendment.

Lord Hamilton of Epsom: My Lords, I congratulate the noble Lord, Lord Wigley—at least he has some commitment from my noble friend the Minister to come back to him. I did not get the impression that there was the overwhelming support from the Committee for Amendments 3 and 4 that there was for Amendment 1. Therefore, I am not looking to come back with an improved form of the amendment on Report and I am more than happy to beg leave to withdraw the amendment.

Amendment 3 withdrawn.

Amendments 4 to 7 not moved.

Clause 1 agreed.

Clause 2: Entitlement to vote in the referendum

Amendment 8

Moved by ***Lord Tyler***

8: Clause 2, page 2, line 4, at end insert—

"( ) This section is to be read as if references to the age of 18 in sections 1(1)(d) and 2(1)(d) of the Representation of the People Act 1983 were references to the age of 16."

Lord Tyler: My Lords, in moving Amendment 8 on behalf of my noble friend Lord Wallace and myself, I make it clear that the other amendments in this group are all heading in the same direction; we have just taken slightly different routes to the same end, and I am sure that other noble Lords will speak to their amendments shortly. In that context, I know that your Lordships will be terribly disappointed that I am not going to repeat my Second Reading speech. Instead, I want to refer to some of the other contributions made in that debate.

I think that there is now a general view in your Lordships' House that we should move to the inclusion of 16 and 17 year-olds in the question of the future of our country in the European Union. I think we can take it as read that my colleagues on the Liberal Democrat Benches have supported this view consistently for many years in other contexts, and indeed in relation to the referendum, so I shall not repeat in detail the contributions to the Second Reading debate of my noble friends Lady Smith of Newnham and Lord Teverson, nor indeed that of my noble friend Lord Shipley. I am sure that the noble Baroness, Lady Morgan of Ely, will forgive me if I do not repeat exactly what she said. Again, she was strongly in favour, but I think it is well known that the Labour Party has now also come round to the view that this would be an appropriate extension of the franchise.

However, I do want to refer to some very notable contributions during the Second Reading debate. The first was from the noble Lord, Lord Jay of Ewelme, who I think was in his place a few minutes ago but is not now. He said:

"Like others, I think that there is a strong case for extending the franchise, as in the Scottish referendum, to 16 and 17 year-olds. The purity of the general election franchise has already been breached to allow Peers and citizens of Gibraltar to vote. It would surely be right to allow the generation who will be so greatly affected by the outcome of the referendum to take part in it".—[*Official Report*, 13/10/15; col. 102.]

Wise words, my Lords. However, I was even more struck by the contribution of the noble Lord, Lord Tugendhat, whom I am delighted to see in his place. He said:

"The other point that I want to make refers to the 16 and 17 year-olds. We have a very interesting example before us in Scotland. My impression is that it worked well. I do not agree with those who say that if there is to be a change in the voting age, it should be introduced for general elections rather than for referendums. General elections are about the next five years. This referendum is certainly for the next generation and perhaps for very much longer. It does, therefore, touch the 16 and 17 year-olds very precisely. I will listen to the arguments but I incline very much at the moment to support those who would extend the franchise to 16 and 17 year-olds".—[*Official Report*, 13/10/15; col. 113.]

That point was very eloquently argued just now—although perhaps he did not mean it to be—by the noble Lord, Lord Blencathra, who said that the most important decision for the next 40 years is the decision on our future in Europe. If it is for the next 40 years, I dare to suggest to your Lordships that one or two of us will not be here. Therefore, one or two of us may not have quite the same interest in that long-term view as 16 and 17 year-olds.

However, the most persuasive arguments that I have heard are from the other end of the building. They come from a number of Conservative Members of Parliament who have been very eloquent in saying that they think that on this particular decision 16 and 17 year-olds should be included in the franchise. This is what Mr Neil Carmichael said. He may not be well known to everybody but he is very well known to me because he is my local Member of Parliament. He is a Conservative but he also happens to be the chairman of the Education Select Committee, so he is very much in touch with the extent to which young people these days are well informed and well and truly mature enough to take this decision. He said:

"The closer we get to the referendum, the more we are hearing about the issue of extending votes to 16 and 17-year-olds. The strongest argument for doing so is that it is this generation which will have to live with the decision, probably for the majority of

[LORD TYLER]
their lifetimes—and it is their opportunities that would most be affected by the vote. I believe it is absolutely right that they must have a say".

That is what he said in the *Stroud News and Journal*. He has obviously been taking account of the views of his constituents, such as me. He extended that view, rather more eloquently, in *City AM*.

This is a one-off event and it is particularly important—

6 pm

Lord Anderson of Swansea: My Lords, before the noble Lord concludes his summary of the contributions on the subject made in the other place, does he recall that the honourable Member for Totnes, also a Conservative, said something to the effect that one-quarter of those born today will live to be 100. They will be here, even if some of us will not be.

Lord Tyler: I am sure that the noble Lord will be here. He has already displayed the sort of longevity that we expect in this House. Indeed, it may not be known to Members on all sides of your Lordships' House that we currently have 14 years' greater longevity than the average citizen in the United Kingdom, which says something about the way in which we are looked after in this place—it may also say something about the intellectual stimulus that we occasionally have in this place. However, I agree with the noble Lord; I referred to that particular Member of the other House, who spoke very eloquently on this point.

Lord Lawson of Blaby (Con): The noble Lord seems to be advancing two propositions, both of which I find puzzling. The first is that those of us in this Chamber have no concern for the future of our country after we are dead. I do not believe that that is the case at all. The second proposition is that 17 year-olds are somehow of a different generation from 18 year-olds. I do not understand that either.

Lord Tyler: My Lords, I have not actually come to my own views on this subject. I have simply been reporting the views of the noble Lord's colleagues in both this and the other House. If, for example, he has an objection to the views of my local Member of Parliament—a Conservative: Mr Neil Carmichael—I suggest that he take it up with him. All I am trying to suggest is that it is now the common experience and approach that young people are mature, well-informed and ready to take this particular step on this particular issue. This is widely accepted in all parts of your Lordships' House—and, I suggest, in the other House.

Lord Forsyth of Drumlean: When we discussed this in the context of giving the Scottish Parliament the power to decide this, I warned that the Scottish Parliament would give the vote to 16 year-olds and that this would then be used as an argument for doing the same here, which is what the noble Lord has been doing. Does this not relate to the issue of the age of majority? In Scotland, 16 year-olds are not allowed to buy a pint of beer or a packet of cigarettes. Should we not look at this in the context of the appropriate age of majority and not in the context of a Bill of this kind?

Lord Tyler: I apologise that I only half agree with the noble Lord. Years ago, I said that we should address this issue in the wider sense. Indeed, it is one of the arguments for the constitutional convention that many on this side of the House now support.

Lord Kerr of Kinlochard: I want to pick up on the point made by the noble Lord, Lord Forsyth. Those who are 16 are not allowed to buy cigarettes or buy a drink, but they are not being told that they will never be allowed to buy cigarettes or buy a drink. After the referendum, if we decide to leave the European Union, that is it—we would leave. They would then never have the opportunity to decide whether or not they wish to be in the European Union. It seems to me that the analogy does not work; I agree with the noble Lord, Lord Tyler.

Lord Tyler: I am grateful to have that additional support from the Cross Benches.

I was about to go back very briefly to the other, very comparable, situation that the noble Lord, Lord Forsyth, referred to. We have to take into account the practical example of the Scottish independence referendum.

I have to confess that, until now, many of us on this side of the House—certainly those of us on the Liberal Democrat benches—have theoretically had to argue this case. We do not have to do that any longer. We know now, from the Scottish independence referendum campaign, that young people in Scotland took this issue very seriously. They were very well-informed and registered in much greater numbers than opponents ever thought that they would: 109,593 young people in this age group registered and 75% of them voted. That is more than the next cohort up, where people tend to go away from home—off to new jobs or university—and lose touch with the electoral process. Only 54% of 18 to 24 year-olds voted, and 72% of 25 to 34 year-olds voted. Young people debated the issues with great intelligence and personal integrity, ignoring vested interests. Indeed, they were rather more balanced in the outcome, as far as we can detect, than middle-aged men, who were actually taken in by some of the myths of the separatists.

Here, then, is the practical example. What is so important about this is that it demonstrates that, when young people are asked what they think about a longer-term issue of such huge importance to the country and to them, they take it very seriously. Some Members of your Lordships' House who go on behalf of the Lord Speaker to sixth forms very often find that that age group is rather better informed, and perhaps more mature in their views, than some 60 and 70 year-olds.

Lord Tebbit (Con): Has it ever occurred to the noble Lord that old people never get younger but young people, granted reasonable luck, get older? The older they get, the more they become like old people. It is a very curious thing. He is saying that their views as young people should be counted but that those of us who are in our advanced years are silly old fools who really should not be trusted with the future of the country at all.

Lord Tyler: I have not yet proposed an age limit for voting. Indeed, the noble Lord, Lord Tebbit, will have a vote in this referendum. He does not get one in a general election any more than I do, but he will be allowed a vote in this, which is one reason that some Members of your Lordships' House feel that there is a clear case for extending the franchise. I hope that the noble Lord, Lord Tebbit, will vote the right way, although I have more confidence in the judgment of some 16 and 17 year-olds than I do in his.

Lord Forsyth of Drumlean: Was that a confession that the noble Lord is in favour of this because he thinks that these 16 year-olds will vote "the right way"?

Lord Tyler: It was not, my Lords. This issue is one on which the noble Lord, Lord Tebbit, and his colleagues—who may have doubtful views on these matters—are just as likely to persuade young people to vote their way as I am. I just think that the judgment should be in the hands of the people who are going to be affected.

Baroness Crawley: Is it not the case that the 16 and 17 year-olds who voted in the Scottish referendum broke fairly evenly between the yes and no camps?

Lord Tyler: There is no concrete evidence of that—the ballot is secret. I think that there was a slight margin among 16 and 17 year-olds to vote no to independence. In the next group up, there was a slight increase.

I dare anybody in your Lordships' House to say to the 16 and 17 year-olds in England, Wales and Northern Ireland that they are not mature or well-enough informed, do not know what they are talking about and would be influenced by the wrong people—yet that the Scots are up to it. I just do not understand how we could do that. It is critical that this bedrock, this foundation stone of our representative democracy—the franchise—should in this respect be exactly the same throughout the country. I beg to move.

Lord Foulkes of Cumnock: My Lords, I want to say a few words about my experience in the Scottish referendum, which the noble Lord, Lord Tyler, mentioned. I feel so strongly about this issue that I am here tonight despite the fact that in another place—I do not mean down the corridor, but in Tynecastle Park in Edinburgh—Heart of Midlothian are playing Celtic in the quarter-finals of the Scottish league cup. If any of my colleagues here know about my passion and enthusiasm for Heart of Midlothian football club, which I had the privilege of chairing for a couple of years, they will know that it is a great sacrifice for me to be here tonight. That indicates my strength of feeling on this issue.

If I was not convinced before the Scottish referendum that 16 and 17 year-olds should have a vote, the referendum campaign convinced me. I know that my noble friend Lady Adams, who was there as well, agrees with this. I was canvassing for people to vote against independence, and the enthusiasm for participating was absolutely fantastic. To give one example, I was going round Portobello, and some sixth-form pupils from Portobello High School came out and spoke to us on the corner of the street. They were arguing the case: they knew all the arguments on both sides. Some of them supported yes and some of them supported no; they were arguing with me and they were arguing with each other. We were doing that for about half an hour, and then one of them looked at me and said, "Hey, you're that Foulkes fellow, aren't you?", and I said, "Oh, well done". They really know what is going on.

Lord Hamilton of Epsom: Might the noble Lord's view of 16 year-olds voting in the Scottish referendum have been different if an overwhelming number of them had voted to pull out of the union?

Lord Foulkes of Cumnock: No, it would not. As I think the noble Lord, Lord Tyler, said, in so far as we know how they voted, the votes of the 16 and 17 year-olds were very similar to the 55:45 result among the older age groups, especially those immediately above them. Clearly, the information they received and the passion that they had did not make them all independence supporters—quite the reverse.

Let us look at general elections as well. The turnout of 18 to 24 year-olds has risen sharply in the past decade, from 38% in 2005 to 58% in 2015. Those people are participating more, and that is something that we should encourage—as well as encouraging the younger people as well.

I do not want to go on at length about this—although, as I said, I feel passionately about it. But I must add that young people understand the situation in Europe and the advantages they gain from our membership of the European Union. The ones that I have met and spoken with have a passion to ensure that we never go to war again. They have read the history books and they know—particularly this year and last year, with the centenary—about the Great War. They also know about the Second World War. They know that those wars started in Europe, and they want to make sure that peace and prosperity are secure—and they know that the European Union helps to ensure that.

6.15 pm

Young people also move around the European Union and meet people. They meet French, German and Polish young people in a way that never happened in our time. They go interrailing, they work and they holiday throughout the European Union—and the interrelations that take place are fantastic. That helps understanding; the fact that they know what life is like in other parts of Europe helps to make sure that we shall not have conflicts in the future. More and more young people also study. People from other countries in Europe study here in Britain, and people from the United Kingdom study in Europe. One of the great European Union programmes is Erasmus, which has provided £112 million for young Britons to study abroad, broaden their horizons and improve their skill sets in a fantastic way.

Finally, I think it was the noble Lord, Lord Forsyth, who raised the idea that 16 and 17 year-olds cannot buy a pint of beer in the pub, and mentioned some

[Lord Foulkes of Cumnock]
other things for which people have to wait until they are 18. But at the age of 16 people can work, they can pay taxes, they can join the Armed Forces, and they can marry. Those are far more responsible things than just drinking a pint of beer. There is every reason why we should make this change—and I hope we shall do it enthusiastically on all sides of the House.

Earl Attlee (Con): My Lords, the noble Lord, in his interesting speech, talked about youngsters being able to join the Armed Forces. Does he recall that they cannot go to war until they are 18? Will he advocate lowering that age limit?

Lord Foulkes of Cumnock: No, I do not want to change that. People can join as boy soldiers, and they can prepare to defend their country. If they are ready to prepare to defend their country, they should be able to vote in the referendum.

Lord Wigley: My Lords, I shall speak to Amendments 9 and 20, in my name, which are linked to the amendment moved by the noble Lord, Lord Tyler, and are aimed at achieving the same objective. We have all seen a number of different proposals for doing that, but there seems to be a broad-based feeling that, for this purpose, the vote should be extended to 16 and 17 year-olds throughout the United Kingdom.

Many of the arguments have been ably put by the noble Lord, Lord Foulkes, on the basis of his experience of the Scottish referendum. I too campaigned in the Scottish referendum—although I am sorry to say that we were not on the same side, and that I probably campaigned less successfully than he did. One thing that we could all see, whichever side we supported, was the enthusiasm that was there and the willingness to engage. I am sure that a lot of young people will take what they got from that referendum campaign with them through the rest of their lives. I very much hope that the lessons from Scotland will be borne in mind, and that even if we do not come to a conclusion on this matter tonight at Committee stage, they will be borne in mind on Report.

Another factor that has not been mentioned is the way in which the interest and enthusiasm of 16 and 17 year-olds, and other young people, can affect older people. Older people find that they have to engage with arguments that perhaps they have not previously thought through themselves. Some may be led to follow the line taken by 16 and 17 year-olds and some may not. Certainly in Scotland many families were divided—and not necessarily on an age basis. I accept that we cannot say which way young people's votes went, but my goodness, they made a difference to the process of holding a referendum, and the longer-term benefits were that people would be more active citizens as a result of their experience, whatever the outcome of the referendum might be.

I remind noble Lords that for a possible referendum in Wales on tax-varying powers—I believe that my noble friend Lord Elis-Thomas could confirm this—powers have already been passed over to the National Assembly by Westminster, so that any such referendum that may take place could be open for 16 and 17 year-olds to participate in. So the principle is being extended for the purpose of referenda. If it is valid in the context of a referendum on tax-varying powers, how much more so is it when such far-reaching decisions are being taken in the context of the relationship with Europe?

There has been talk in Scotland among some people—I do not necessarily agree with them—that there should not be referenda too frequently. I certainly feel in the context of Europe that we should not be having referenda too frequently, and a decision taken now is likely to stay with those 16 and 17 year-olds for the rest of their lives. It is very far reaching, and whichever way it goes, it will be with them.

The other consideration is whether they are equipped to make a decision. I feel that 16 and 17 year-olds—indeed young people generally—are more likely to be equipped to take a decision on this than many older people, if we are trying to come to a conclusion on capacity to take a decision. We have heard of three factors and I want to underline and stress one of them. We have heard about tax-paying and the ability to enrol, if not directly to fight, in the Armed Forces. That is the question and it was the basic rationale behind the creation of the European Union two generations ago. There were people with a vision that never again would our continent tear itself to bits with two bloody civil wars. These young people's future can be determined by that. More than any other argument that we will pursue from now until the referendum, there is the question of holding this continent of ours together and not fighting each other in future. That must be basic. For that purpose, if for no other, those young people should have the vote.

Lord Balfe (Con): My Lords, earlier this year I tabled a Private Member's Bill that came so low down the list that it is never likely to be debated. It sought to extend to European citizens the right to vote in British elections, on the basis of no taxation without representation. If people pay taxes to the British Exchequer, the fact that they hold a different passport should not preclude them from exercising a say in how their money is spent. Having tabled that Bill, I went into the electoral system that we have in great depth. I did not realise exactly how complex it is. That certainly led me to conclude that a debate on the European Union Referendum Bill is not the place to start extending the franchise.

All my life I have heard guff about young people. When I was 16 years old and I became an official in the local branch of my trade union, everybody was saying, "Isn't it marvellous. We really need young people here". There is a sort of idolisation of the young. Of course, we need young people but we also need mature people. I spoke in our group meeting not so long ago against the idea of throwing all noble Lords out of this House when they get to 80. I am some way short of 80 but I do not propose to support something that disfranchises people because they have reached a certain age. I know some people of 60 who are nowhere near as bright as our good and noble friend Lord Plumb. He is not here at the moment, but at the age of 90 he gave one of the best speeches I have heard in the European Parliament recently when he spoke at the Former Members' Association.

To get back to the point, when this was proposed initially, I thought it was tabled because the "yes" side thought that more young people would vote yes than no. I am not sure that that is the case now, having looked at the evidence. I now ask, why are we extending or changing the franchise on the back of a Bill about the European Union? Why are we making these changes when we consider the difficulties that we could have in registering the said people? I ask the noble Baroness, Lady Anelay, to respond to that. This is not like Scotland where there was a long lead-in to the referendum between the Act and the voting date. This referendum could take place within a very short time. For the moment, I am not convinced that the age and wisdom of a small group of people spanning just two years is worth making a fundamental change to the electoral system.

Baroness Royall of Blaisdon (Lab): When the noble Lord is canvassing, I wonder whether he has had the experience, as I have, of knocking on a door and having a conversation with somebody who really does not know what you are talking about. They then sort of talk back at you, and when you say, "Where did you get that information?", they say, "I read it in the *Sun*". I am afraid to say that a lot of 16 and 17 year-olds who have citizenship lessons at school and who live in a world where there is information coming at them from every which way, are more able to take decisions than many people who currently have the vote.

Lord Balfe: I note the noble Baroness's point. I would say that it is a matter of opinion, not a matter of fact. Of course, I have had many conversations on doorsteps.

Baroness Crawley: It is not a matter of opinion when we are talking about the maturity and capacity of young people, as my noble friend said. If we look back over the span of 40 years since the last European referendum, we will see some astonishing changes. I have figures from the House of Commons Library showing that the number of young people going into further and higher education in the year I was born was just over 3% of the population. Today, all that time later beyond 1950, it is now coming up to 50%—it is 45% or around that figure. Young people today are more fit for purpose than they have ever been. They are fit for purpose on higher education, travel, literacy, computer literacy and cultural awareness, and are the best and most fit-for-purpose generation of young 16 and 17 year-olds that we have ever had.

Lord Balfe: I also thank the noble Baroness for her intervention but this is a Bill not about extending the franchise but about a European referendum. I intend to vote yes in this referendum unless some dreadful tragedy happens in the renegotiation. I am not persuaded that extending the vote is part of the purpose of this Bill. It is as simple as that. It will lead to a lot of problems. It may be within the noble Lord's prerogative, as he appears to be responding to this amendment, so I ask him to raise with his colleagues the need for a fundamental look at the electoral system in this country.

I was recently monitoring an election in a place called Kyrgyzstan, on the border with China. It has introduced biometric testing for being on the electoral register. I learnt when I was there that Mr Ban Ki-moon, the Secretary-General of the UN, believes that this is a way of having votes without fraud. There are all sorts of ideas out there and I believe that these amendments, which I might be prepared to support in a Bill extending the franchise, are none the less not right for this particular Bill. I ask the noble Lord to communicate to his colleagues the desirability of a look at the way in which the franchise works. It seems to me odd, and has done for a long time, that people can pay tax and not have a vote, and people can pay no tax at all, can be living in, for instance, Brussels with highly paid jobs for many years, and according to some noble Lords be completely out of touch with reality and the world, yet they can vote in a UK election.

I suggest that we need a fundamental look at the franchise. I have steered three children successfully through the gap from 16 to 18—they are now well beyond it—and they vote for a variety of parties. I look round and see that all three of the major parties represented in this House have had votes from our family in the recent past, so they are certainly capable of making up their minds. I end where I began: I do not think this Bill is the place to extend the franchise.

Lord Hannay of Chiswick: My Lords, my name is on an amendment similar to the one introduced by the noble Lord, Lord Tyler. I agree with him in saying that the amendments seek to achieve the same objective by the same method.

6.30 pm

The noble Lord made it clear, and I would make it clear, that we are not moving a general change to the franchise. We are arguing the case for 16 and 17 year-olds to have the vote in this referendum and this referendum only. The more general case will no doubt come up at a later stage, because that seems to be the way in which public opinion is gradually moving, but that is not why these amendments have been tabled. They have been tabled for reasons that others mentioned: the outcome of this referendum will be of crucial importance to people of 16 and 17 next year and the year after.

Before I go any further, perhaps I should declare an interest. I have two grandchildren who will benefit if this were to take place, but I have not asked them how they would vote and I would not dream of doing so. The case, however, is a strong one. It has been argued here that the evidence of the Scottish example is enlightening. When the Scottish Parliament made its decision, it did so because, as the noble Lord, Lord Forsyth, said with deep regret, the Government, who are moving this Bill, held the door open for it, just as they have done in the Welsh case. We are asking the Government to hold the door open on the European referendum, and that alone, for the 16 and 17 year-olds. It would be odd if the Government, having facilitated these moves for 16 and 17 year-olds in other referendums, were to deny them the same in this one, which is likely to have more profound effects on their lives than anything that has been voted on in recent years.

I hope that we can move forward during this debate to establishing these amendments in my name, and in the names of the noble Lord, Lord Tyler, and of a

[Lord Hannay of Chiswick]
number of other noble Lords. This would be the right thing to do and we would not regret it. This has nothing to do with how this particular cohort would vote. The history of the 19th century is littered with governments who were interested in changing the franchise in the belief that it would help them win the next election and who were proved totally wrong. That is a mug's game and is not what we should be talking about tonight. We should be talking about the equity of giving 16 and 17 year-olds the vote in something that will affect their lives over, in many cases, 70 or 80 years.

Baroness Suttie (LD): My Lords, I agree with the comments of the noble Lord, Lord Foulkes, on the Scottish experience in September last year. At a time when there are genuine concerns about voter apathy and lower voter turnout, the Scottish experience showed that you can engage and enthuse young people to believe that their vote really will make a difference. All the 16 and 17 year-olds to whom I have spoken were extremely positive about being able to vote in that referendum.

With this high turnout and higher levels of voter engagement achieved, it would be a backward step politically, not least in the Scottish context, not to include the same 16 and 17 year-olds in the referendum on the EU. If the referendum is held in the summer of next year, we could potentially face a situation in which a young Scot, who had just turned 16 in August 2014, for example, and so was able to vote in the Scottish referendum, would find themselves unable to vote on the future membership of the EU next summer. Can the Minister confirm whether the Government have given due consideration to the potential political impact, as well as the factual one, of this group of young Scots? Have they assessed the numbers involved in Scotland in this situation?

Lord Davies of Stamford: My Lords, there is no way, either empirically or by reference to theory, in which one can reach what might be an agreed doctrine on the right age at which people should begin to enter into a parliamentary franchise. We could debate the matter all night as to whether it should be 16, 17, 18 or some other age, or why it should be one particular and not another. We would never come to a definitive conclusion.

If we debated what have to be the essential qualities of a law, and especially the essential qualities of a constitutional law or rule, we would come to a definitive conclusion. By definition a constitutional law or rule must have a very wide degree of support. It must have legitimacy. That is the essence of an effective constitution. You cannot have legitimacy if you have a law that is contradictory and incoherent. At present we have a law or set of rules that are utterly incoherent.

It is not possible to find a respectable argument to say to a young Scot, in exactly the sort of case cited in the noble Baroness's intervention a moment ago, that they had the right to vote in the Scottish referendum on independence and the break-up of the United Kingdom but no right to vote in the referendum on the future of our membership of the European Union. I have yet to hear a respectable argument that could be delivered to such a young person. If somebody on either side of the House has one I would be delighted to give way immediately so that we could hear what that respectable argument is. I simply do not think that it exists.

It is also not a respectable argument to say to a young English person, "The Scots were able to vote in an important referendum but you are not capable of exercising the same degree of choice as a Scottish person of the same age". That would be a hideous thing to say to anybody. Of course this applies equally in Wales. The noble Lord, Lord Wigley, gave us a good example. Young people in Wales are now being told that they have a right to vote on whether the Welsh Government should have tax-raising powers, but not on whether Wales and the United Kingdom should remain part of the European Union. On what possible basis can one make that distinction? What possible respectable argument could one use in saying that to such a young person, who would quite rightly be challenging that kind of judgment?

At the moment we have complete incoherence, which we should not have because it is deeply damaging to the legitimacy of our constitution. The logic of what I am saying means that we should also change the voting age for Westminster general elections. One thing that we absolutely should not do is keep the present franchise for the referendum on the European Union, cutting out 16 to 18 year-olds throughout the United Kingdom, including Scotland, and then a year or two later change the voting age for Westminster elections. In other words, we should not deliberately close the door on a referendum that, as had rightly been said, affects people for the next 40 or 50 years—this will not affect us in the House in this time, but it will affect those young people—and then say that these people can vote now in Westminster elections after all: we have waited a couple of years but have cut you out of the referendum, which is even more strategically important for the country. That would be an indefensible thing to do.

Lord Forsyth of Drumlean: I will have a go at a respectable argument. Is the answer to the noble Lord's point about the mess that we are in that we should not proceed with constitutional or franchise reform on a piecemeal basis?

On the point about the difference between a 16 year-old north of the border and south of it, I am sure that the noble Lord has been to a place called Gretna Green. That exists because 16 year-olds south of the border are not allowed to marry without parental consent, whereas in Scotland that consent is not needed. There is a precedent. It is not a particularly good one, but it illustrates what happens when you do not look at the age of majority in a coherent, cross-border manner.

Lord Davies of Stamford: Not for the first time in these European debates, the noble Lord and I, although associated with very different camps, agree on something. We agree on the word "coherence"—a word that the noble Lord used and which I used myself. I totally agree with what he said. One should not legislate in a piecemeal fashion, particularly for constitutional legislation. One should look at the whole. That is

precisely why my party proposes a constitutional convention to ensure that we do not go in for piecemeal legislation on the constitution. That is another debate for another day.

Baroness Royall of Blaisdon: I point out to the noble Lord, Lord Forsyth, that it was his Government who let the genie out of the bottle precisely by enabling Scotland to give 16 and 17 year-olds the vote. I am delighted, but once the genie is out of the bottle I am afraid that you cannot put it back in.

Lord Davies of Stamford: I fear that that is the case. The noble Lord and I agree on coherence. The only way to restore coherence now is by the way I have just suggested. The pragmatics—the actual experience of this—are that 16 and 17 year-olds make very mature choices. That has been the lesson of the Scottish referendum. Giving them the vote has encouraged and increased participation rates, and increased intellectual interest in politics and in public life in general among young people. All those things are very desirable. The pragmatics support the theory.

Lord Forsyth of Drumlean: I am most grateful to the noble Lord. It was not our Government who let the genie out of the bottle, but the Scottish nationalists in Scotland. It was this House and the other House that gave the Scottish nationalist Government the power to make piecemeal changes to the franchise. I warned against it at the time. I warned that we would end up with people making piecemeal changes to the franchise, which should be looked at in the context of the overall age of majority.

I am not sure that I do agree with the noble Lord. We agree that it is a mess but the way to sort it out is to look at it across the board on the basis of the age of majority, not to add to the mess by making yet one more piecemeal change regarding voting in this particular referendum. I was responding to his point on what you say to a 16 year-old about how the law is different on different sides of the border. Gretna Green is a long-standing example.

Lord Davies of Stamford: I had not quite finished my remarks. I will do the noble Lord the courtesy of replying to his intervention. We both agree on the need for coherence. I totally agree that we do not want to make another piecemeal change, which is why I suggest that we make a universal change. In my view the Government should take the opportunity to say that they will legislate as soon as possible and bring forward legislation that will enable us to reduce the age of the franchise for Westminster elections—indeed, for all elections in this country.

Lord Blencathra: My Lords, I oppose these amendments. I appreciate the Government's position that they had to select an electoral register that would be appropriate for this referendum. No one register is perfect. Clearly the one used for the EU elections is not appropriate, nor is the one for local government elections. Therefore, I accept that the one used for the last general election is probably as good as any because it is based on the age of majority.

I believe that, whatever amendments we make, we should stick with the age of 18. We have to pick an age somewhere and there is nothing magical about reducing it to 16. One of the arguments advanced is that this referendum will affect that generation for 40 years. If it affects 16 and 17 year-olds for the next 40 or 50 years, then it affects 15 year-olds, 14 year-olds and 13 year-olds, many of whom are equally switched on and with it and know what is going on. Yet there is no suggestion that it should go down to that age. If the argument is based on the referendum affecting millions of young people, there is no logical reason to stick at the age of 16.

The other argument used is Scotland. The argument that we have heard tonight is that there are so many enthusiastic young Scots. Scotland is recommended because it made young people enthusiastic for voting and for change and that we should therefore follow the Scottish example. I profoundly disagree. Just because Scotland did it does not make it wise or right. When I was aged 16 in Scotland in 1969 I was heavily involved in politics. I was enthusiastic, keen and reasonably well informed. I had absolute certainty, not just on how this country should be run. I even had suggestions on how Chairman Mao should amend some of his little red book. I knew what Mr Brezhnev should do to make the Soviet Union better. I had a wide range of enthusiastic views, but thank goodness I was not in a position then for the Government to be inflicted with my vote or for my childish enthusiasms to be put into law or enacted.

There are very few areas where we treat 16 as the age of majority. That is quite telling. Indeed, we treat 16 and 17 year-olds as children with no real say of their own in a large number of areas. What are those areas? Sixteen year-olds can get married, but only with their parents' consent, although Scotland is different. While 16 year-olds can marry, they cannot buy a kitchen knife until they are aged 18. I know that for a fact because I was the Minister who put that law through, for some reason or another. Sixteen year-olds can join the Army, but only with their parents' consent. They cannot go into combat until they are aged 18.

So what can they not do until they aged 18? They cannot buy tobacco or alcohol. They cannot gamble. They are too young to be sentenced to a young offender institution because the law regards them as children. They cannot legally watch a film with an 18 classification. That is a telling point. If our law considers them too young to watch a violent or pornographic film, how can we say that they are capable of making a decision on major political issues? They cannot serve on a jury. If they are regarded as incapable of exercising judgment there, why are they able to exercise judgment on national political matters?

6.45 pm

Lord Foulkes of Cumnock: Did the noble Lord make exactly the same speech when the voting age was lowered from 21 to 18?

Lord Blencathra: I did not make that speech. I was in no position to make it. I cannot recall what my views were. I was not a Member of Parliament then

[Lord Blencathra]
and I certainly was not in this place. My point of view now is based on what the law currently is for the age of majority and why Governments and both Houses of Parliament have accepted 18 and granted all these rights to people only when they reach the age of 18.

Let me briefly conclude on this point. Until you are aged 18 you cannot open a bank account in your own name. You cannot even get a tattoo, buy fireworks or make a will. You cannot even carry an organ donor card or use a sunbed for tanning. You cannot stand as a Member of Parliament until you are aged 18. If we lower the voting age to 16 are we then going to allow people to stand as a Member of Parliament when they are 16? There are a range of other examples but I will not bore the House with them.

Baroness Young of Old Scone (Lab): I was born in Scotland and I was brought up in a Scottish Conservative household. When I was 16 I thought that the election result, when a Labour Government was returned after 13 years of what is now known as Tory misrule, was the end of the world. I had been taught to believe that. Two years later I was canvassing for Labour in the election.

What changed me was that at the age of 16 I could get pregnant. At that time I could not get birth control in this country at that age. During that period, when I was aged 16 or 17, the first Brook Advisory Centre opened in Edinburgh. I could then go on the pill. Quite frankly, it was probably the best thing that ever happened to me. The knowledge that I could not get proper support for being sexually active—I had had a good Scottish diet and was very precocious for my age—was what politicised me. I have no qualms about announcing that here tonight. It is a real insult to people aged 16 and 17 to believe that, when they are in a position where they make crucial decisions about their own future, they cannot make a crucial decision about the future of this country in Europe.

Lord Blencathra: There is a lot of detail there and it is a route that I dare not step down. Whatever language or terminology I try carefully to choose, I will inevitably offend someone somewhere. That is not a risk I wish to take. I simply say that the fact that one can get the pill at the age of 16—rightly so—is no justification for saying one should therefore have the right to vote.

I concluded with a list of all the things that Parliament has decided that people can do only when they are aged 18. Some sound so trivial, but if that is what Parliament decides, it is perfectly legitimate to say that the age of majority is fixed at 18 and that we should not lower it for the purposes of this referendum.

Just because young Scottish people aged 16 and 17 were enthusiastic, it is irrelevant to deciding on this matter. Politically, we know why the SNP Government lowered the age. It is because their private polling suggested that 16 and 17 year-olds would be twice as likely to vote for independence as for staying in the union. You can bet your bottom dollar—or your pound Scots—that if their private polling had been the other way around, the Scottish Government would not have lowered the voting age to 16. They would have kept it.

If these amendments are passed, accepted by the other place and become law, we will have 16 and 17 year-old Commonwealth and Irish citizens also being granted the right to vote, because they are included on the register. If some noble Lords' amendments to include European citizens were passed as well, we would have 16 and 17 year-old children from European countries also being allowed to vote. If we get a close result with that scenario, I think a lot of British people would be outraged that a majority of 200,000 to 300,000, either way, had swung the vote, because of the inclusion of 16 and 17 year-old European, Commonwealth and Irish citizens. That is a rather dangerous route to go down. However, we may be able to talk about that later.

I oppose these amendments because the age of majority is 18. It should stick at that but if we want to change it we should do it in a general Bill relating to the franchise. We should then take a close look at all the other things that these 16 and 17 year-old children cannot do, because, if we lower the age of majority to 16, we should change the law on a whole range of things from buying knives to buying a pint.

The Earl of Listowel (CB): My Lords, I feel passionately about this issue. I have been wondering why that is the case, especially as so many people that I respect hold exactly the opposite position to myself. Principally, it is because I have often seen, over many years, young people in care being allowed to make decisions that are not age-appropriate. A local authority will, quite commonly, offer a 16 year-old in care a flat of their own and a sum of money or the choice to stay with their foster carer. Many choose to take the flat and the pot of money. We are told that in many cases, drug dealers befriend and move in with them, or they cannot manage to meet the rent and they lose the flat. I spoke to a foster carer who said that her foster daughter was doing so well in school before a local authority offered her a flat of her own; now she is doing very badly in school and the carer does not know how she is doing in her flat. One of the reasons I feel so strongly about this amendment is that I am concerned about whether this is an age-appropriate decision—although clearly children are not going to harm themselves, in the way that children in care apparently can often be harmed by being giving decisions too early, in this particular case.

I listened with great interest to my noble friend. I have sympathy for his concern that this is a very long-term decision that we are coming to as a nation, which will affect the young people in question particularly. But I am afraid I disagree with him; I heard the speech of the noble Lord, Lord Tyler, differently. I respect the great depth of knowledge and the effort that the noble Lord, Lord Tyler, has put into this issue; I have heard him speak about it on many occasions. My sense, is that for him, at least, this is part of a project—not just an issue for this particular referendum Bill but more generally—to lower the franchise. I feel really concerned about that, although there are many people I respect who think it is the right thing to do. Some child development experts would agree with them, while others would be concerned.

There is concern about the impressibility of 16 and 17 year-olds. Some of your Lordships may remember the film "All Quiet on the Western Front". It begins in a schoolroom, with a teacher talking to young people and enthusing them with notions of the greatness of their country and the importance of fighting for it. It then follows their careers in the Army. Your Lordships may remember that in the Chinese Great Leap Forward young people were targeted and used as the force for taking that forward. Your Lordships may also remember how effective, in the 1930s, some nations were at manipulating their youth to do things none of us would agree with.

There has been concern about growing nationalism across Europe and there are increasing pressures. Thankfully—and tribute should be paid to the Government and the coalition Government before them—we have avoided the serious unemployment which is a large contributory factor to this. But at some future date we may not be so fortunate. It concerns me that we are painting a target on the back of our young people by giving them the vote at the ages of 16 and 17. There are people who are very good at using the internet to manipulate people, and 16 and 17 year-olds, as we know, have been vulnerable to this in various ways.

I am also concerned about the wider ramifications for children around the country. Noble Lords have spoken from experience, which I cannot yet do, about their own children. Of course, many children will not have had the support that I hope your Lordships will have had—I hope I am not speaking out of turn. I am thinking particularly about the work the noble Lord, Lord Faulks, took forward recently during the passage of the Criminal Justice and Courts Bill. The noble Lord listened to the concerns of parents of 17 year-olds who had been held in custody in police cells. They were sometimes held over the weekend for two nights and, regrettably, a number of those young people had taken their own lives after that experience. The noble Lord listened to those concerns and acted promptly to change the law. I was pleased to learn, recently, that it had changed and that 17 year-olds in custody will be treated as children.

The last time that we debated this matter, Barnardo's produced a briefing in which it sought to change the Children and Young Persons Act 1933. In that Act, the age of majority is 16 and Barnardo's wanted to see it raised to 17. In aid of his approach, the noble Lord, Lord Tyler, put forward the argument that if you are old enough to marry and join the Army at 16, you should be able to vote. Others may say that if you are old enough to vote at the age of 16, you do not need to be treated as a child and can be put in a police cell at the age of 17. If you are old enough to vote at 16, maybe it is not so outrageous to have an age of criminal responsibility of 10—the lowest in Europe: I think the average age is 14. I am concerned from that angle.

I conclude with my concern about child development issues. These children are in the middle of adolescence, which is a very interesting period. I do not want to be too technical and maybe this will be quite obvious to most of your Lordships. Young children are very attached to their parents and to their siblings. In adolescence, they make a move from that attachment to an attachment to their peers and eventually to a romantic partner of their own. That is a huge change, which will play out in many different ways. Partly, they will react against their parents. Quite often they will take polar opposite views and values to their parents—for some time, at least. I can think of that in my own family history. My father grew up in a landowning family; he was an aristocrat. When he went to private school, he became the school's only socialist, reacting very strongly against the ideals of his parents. He moderated over time.

We are not talking about young people voting Labour or not, but I worry that if we set this precedent it will be used on other occasions. Young people may be more likely to vote for Labour or the Liberal Democrats—parents tend to be more conservative, so their children may be reacting.

Baroness Royall of Blaisdon: Forgive me, my Lords, I did not understand the last point that the noble Earl made about Conservatives, Liberal Democrats and Labour. The noble Earl makes a very powerful speech, with which I disagree. Will he accept that there are many older vulnerable people who are just as open to persuasion from external forces as young people? The noble Earl will, like many of us, go into schools—with whatever scheme—and find young people who are absolutely able to withstand pressure and who are not vulnerable in that way. I would be grateful if he would explain the point about Conservatives and Labour because this has absolutely nothing to do with party politics. This is about empowering young people however they wish to vote. It is not about being in or out but giving them the ability to vote and determine their future.

7 pm

The Earl of Listowel: I thank the noble Baroness for her intervention. I will make two responses, if I may. Yes, there are vulnerable elderly and middle-aged people—all kinds of vulnerability across different ages—but we recognise that childhood is a particularly vulnerable period and we have various protections for childhood to allow children to mature. Unfortunately, some do not mature. Some come from families with alcoholic or drug-taking backgrounds and it is difficult for them to move on and mature properly. But our starting point is that we should be protective of children.

To answer the noble Baroness's question in another way, I was advised that prior to the last general election a caricature was sent out on the internet of the then leader of the Opposition. It was very powerful and it affected a lot of young people because it ridiculed the leader of the Opposition. I was told this by a mother. I can see how well that would work. That might have been sent to a load of 25 year-olds, but I suspect that a number of 25 year-olds might not be so impressed by a caricature of the leader of the Opposition as a 16 year-old might be.

I have probably spoken long enough. I see that there are very strong arguments on the other side. I have a lot of sympathy with hearing the voice of young people and involving them as much as possible, but I have concerns—

Lord Hannay of Chiswick: The noble Earl has made some very moving points about various aspects of the vulnerability of young people, but does he not accept that the matter we are debating now, which is whether or not they should have a vote in one referendum between now and the end of 2017, does not really link up with all those issues of contagion that he has referred to in other contexts? I understand perfectly well why it might be wrong to put 16 year-olds into flats of their own and give them a lot of money. Fortunately, it is a criminal offence to give somebody money to vote, so that will not happen. Perhaps he might consider whether the parallels apply across the whole board that he has sketched in with such passion.

The Earl of Listowel: I thank my noble friend for his intervention. I regret that I was not able to speak at Second Reading—what I have said is probably more of a Second Reading speech—but I have been involved in a lot of other business in the House.

My understanding is that the noble Lord is very clear in his mind that his intention with this amendment is to change the franchise specifically for this particular occasion. But I regret to say, and I have followed this debate about lowering the franchise several times, that my sense is that there is a large body of Members of your Lordships' House who wish to expand the franchise much more widely and see this occasion as an important opportunity to proceed with that. One has heard many references this afternoon to the Scottish referendum as a justification for acting in this way. I think I have spoken long enough. I look forward to the Minister's response.

Lord Dobbs (Con): My Lords, a considerable amount of thunder has been generated by a debate which is actually quite subtle. There are no blacks and whites in this but a kaleidoscope of colours, and that is entirely appropriate when we are talking about young people who are just starting their adult lives.

My first political experience was as a 12 year-old when I was knocking up on election day and I had a bucket of water thrown over me. That was certainly an immersion in the political process, but I am not sure it gave me a right to vote at the age of 12. I have listened very carefully to this impassioned debate. I always listen very carefully to the words of the noble Lord, Lord Forsyth. I usually agree with him. The noble Lord, Lord Blencathra, made a passionate speech about why we should not give 16 year-olds the vote. My noble friend—I am not sure if he is here—Lord Borwick, of Hawkshead, made a passionate speech at Second Reading against giving votes to 16 year-olds. I have just listened to a very powerful speech by the noble Earl, Lord Listowel, about the matter, but I assure him that I do not believe that this is a matter of party politics. It is a matter of judgment which crosses all parties.

Like so many others, when I was campaigning up in Scotland, I was very impressed with the response and the seriousness of young Scottish voters. We older voters might actually learn a great deal from their example and their engagement. I am bothered by the fact that, although the coalition Government and the Prime Minister did not specifically approve votes for 16 year-olds, they did acquiesce in votes for 16 year-olds. So the question I am struggling with is: how can it be right to allow 16 and 17 year-olds to vote in a referendum on Scotland but not in a referendum on Europe? There has to be some sort of consistency. Perish the thought, but I actually find myself agreeing with much of what the noble Lord, Lord Davies, was saying earlier—I hope he will forgive me for that.

It is a matter of balance. When I think about it and when I see those who have been supporting votes for 16 and 17 year-olds, I may not lose only my balance but shall probably lose my sense of sanity as well—climbing into bed with the noble Lord, Lord Foulkes; it will have to be a very stout bed-frame to take both of us. I have no idea which way 16 and 17 year-olds might vote. Will they look up to that European ideal that impressed so many of us when we were younger, or will they simply do what so many other young voters in Europe have done and stick two fingers up at the establishment? I suspect that the establishment will be piling in to say, "You must vote to remain". I do not know, but it does not matter. It comes down to a question of balance and judgment.

Lord Forsyth of Drumlean: Is it not an argument about maturity, not about how people will vote? When I was 16, I thought I was a socialist but I grew out of it. Just because the Scottish Government, for political reasons, decided to give 16 year-olds the vote, that does not mean that the argument about maturity is being addressed. Is that not the central argument?

Lord Dobbs: It is certainly a central argument. I have a 20 year-old who is a devout Corbynista. I would love to take the vote from him, but I do not have the right to do so, even though I think that his judgment on politics—as well as choice of football club—may be rather flawed. If one takes a totally logical approach, as the noble Baroness was saying earlier, there are many elderly people who are perhaps not as capable and as competent as they might be in exercising their judgment. We have to look for a balance. I cannot see how we can face 16 and 17 year-old voters and say yes in Scotland and no as far as Europe is concerned. Although I shall end up with some very strange bedfellows on this one, I urge my noble friend to take a very close look at this issue again and see whether the Government cannot make progress on it.

Lord Taverne (LD): My Lords, when the whole question about the voting age came up and the suggestion was made that it should be reduced to 16, I had considerable doubts about it, for the sorts of reasons that have been advanced by a number of people, in quite reasonable speeches, who are opposed to the change.

However, the fact is that there have been a number of inquiries into this and most also turned out to be very doubtful. First, there was the 2004 commission which qualified its recommendation that the voting age should remain at 18 by saying:

"We propose further research on the social and political awareness of those around age 18 with a view to undertaking a further review of the minimum age for electoral participation in the future".

Then there was the Power report in 2006 which recommended that the voting age should be lowered to 16, explaining:

"Our own experience and evidence suggests that just as with the wider population, when young people are faced with a genuine opportunity to involve themselves in a meaningful process that offers them a real chance of influence, they do so with enthusiasm and with responsibility".

It came to the opposite conclusion to what I had felt earlier, that someone of 16 might not be sufficiently informed or use their vote sufficiently responsibly at 16.

Then came the Youth Citizenship Commission of 2007 which did not recommend a reduction of the voting age. It found that there was in fact a majority in favour of lowering the age but it thought the sample was too small, saying:

"This is a relatively small and not necessarily representative sample of the population".

So there was a diffidence about the commission's recommendations because of a shortage of evidence. The commission went on to say:

"We have found that there is a real evidence gap".

However, there is no longer an evidence gap. We have had experience from a very wide sample and everyone has found that people in the lower age group deserve praise for the way they approached their task. They found them very responsible and very keen to get the right information. The general feeling was that this lowering of the voting age had been an enormous success. I think that the Scottish referendum has completely altered the situation because this gap in the evidence which the previous commission spoke about has been filled.

There is one other consideration which we should take into account. One of the serious consequences of a vote for Brexit in the referendum is that it will almost automatically lead to the break-up of the United Kingdom. If Scotland votes for staying and England votes for leaving, I cannot see that there will not be another referendum. One has to consider Scottish reactions very carefully. If I was a young person in Scotland—that would have been some time ago—I would be furious if I was allowed to vote in the Scottish referendum but not in the referendum which is of even greater importance if it involves the whole of one's future. The same position may obtain in Wales because Wales may well decide as well to lower the voting age. If one really wants to keep the United Kingdom together I do not think one wants to confront young Scottish voters and others in Scotland who will be equally adverse to it. That only increases the chance of the break-up of the United Kingdom. The evidence is now plain that young people act responsibly and that they care about the information; the evidence should suggest that there must be a change in the law.

Lord Higgins (Con): My Lords, I am not in favour of these amendments and I think it would be very naïve to suppose that if we accept them we will avoid a slippery slope as far as the age of consent is concerned, along with the many other issues that have been raised. If that kind of change is to be made, rather than being pushed into it by the precedent of what happened in Scotland it is very important we should have an overall view of the whole issue in a Bill which is publicised and which allows the public to express their view on all these issues. The Government are right to say they will use—with very minor exceptions—the same franchise as was used in the very recent local election.

Many noble Lords have been over this course before. I remember very well when I was in the House of the Commons that the issue of lowering the voting age came up. I said to my secretary that if I got a single letter—at that time I had an enormous mailbag—from someone in the lower age group saying they would like the vote, then I would vote for it, but if I did not get such a letter I would vote against it. I did not get such a letter. In this day and age we are not inundated to the same extent with mailbags. Instead we are inundated with emails. I wonder how many Members have had an email from someone in the age group which the proposal would enfranchise saying that they would really like the vote. I have not had one. I have had enormous numbers of emails but not one like that. That is because this issue has not been publicised. This has become an internal view of the House of Lords and we are not taking other arguments sufficiently into account.

7.15 pm

One can run all the traditional arguments about slippery slopes, the thin end of the wedge and that the line must be drawn somewhere. I am not quite clear why these amendments draw the line where they do because it is not a change of one year but of two. No one has suggested why that should be so. On the argument about how long people will live after they vote in the referendum, you could make a very good argument for 11 year-olds. I happen to have an 11 year-old grandson who is highly sophisticated and has had his own website since the age of seven where he advertises the products of the farm on which he lives. It is a rather unusual website as it says at the end, "This website has been created with no harm to animals".

In addition to that, because he takes an interest in political affairs, he has sent me long emails asking why the Government do not have an app which could be accessed by refugees—because many of them have phones and are on the web—offering immediate communication between the refugees and the Government. He is in favour of such a change. This is at the age of 11 so I am not sure why we are justifying it at 16. My own feeling is that however bright particular people may be, there are big differences between them. They are undergoing their education and in many cases they will not have completed it by the age of 16.

Overall, I do not think we should go along with the precedent created in Scotland. As far as I am aware, there was nothing in any manifesto which said we must change the age of consent generally—noble Lords will correct me if I am wrong—so if we are going to go along that route we must take into account all the points made from the Front Bench. We really ought not to go along with making a change of this kind in legislation which does not cover all the broader arguments.

Viscount Trenchard: My Lords, I echo the views of my noble friend Lord Higgins. I argue against these amendments on the grounds that this is not the proper

[Viscount Trenchard]
place or time to extend the franchise to 16 and 17 year-olds. Just because, in my view, a mistake was made in Scotland, that does not justify making a second mistake. Two wrongs do not make a right.

You could also argue that, if you think that 16 and 17 year-olds do not have the political maturity to make decisions for the next five years, how much less should we trust them to have a voice in decisions that are going to have an effect for a very much longer period than that? I do not think you should make a distinction on the grounds that someone is going to live much longer and this is going to affect them for much longer. If you have political maturity sufficient to elect your Member of Parliament, you probably have the same political maturity to vote in a referendum.

Another point that has not yet been made is this. I wonder what the result would be if you asked a cross-section of 18 to 25 year-olds whether they thought that 16 and 17 year-olds should be given the vote.

Baroness Young of Old Scone: I wonder whether the noble Viscount is aware of or takes part in the admirable Peers in Schools scheme that the Lord Speaker has instituted, where Peers go out and talk to young people about the nature of your Lordships' House. Those of us who are active in that scheme meet a wide cross-section of young people—and please let us call them young people, not children; it is very demeaning to call 16 and 17 year-olds children, even though legally they may be so. When you go into classrooms of 16 and 17 year-olds, the degree of maturity, thoughtfulness and balance evinced by those young people is fascinating. They frighten the living daylights out of me with their level of maturity. If the noble Viscount has not had that experience of meeting those very mature young people, I wonder whether he might sign up to the Lord Speaker's scheme instantly.

Viscount Trenchard: I accept the noble Baroness's point of view. I understand, and agree with her, that young people today show a much greater level of maturity than they did a decade or two ago. This is a gradual process, which I welcome, and it is right that from time to time we should consider what the age of majority should be. But we should consider it in the round, as it affects the age at which young people should be regarded as full citizens. I also agree with the noble Baroness that it is demeaning to refer to 16 and 17 year-olds as children, so I am with her on very much, but this is not the right time to make a piecemeal change.

Lord Kerr of Kinlochard: I would add a footnote to the important point made by the noble Baroness, Lady Suttie. I am afraid that I disagree with the noble Viscount who has just spoken. Perhaps the Scots are getting more than their fair crack of the whip in this debate, so I will be brief. The noble Lord, Lord Forsyth, was right to say that it was the SNP which gave the Scottish 16 and 17 year-olds the vote in the independence referendum. The noble Baroness, Lady Royall, was also right, as was the noble Lord, Lord Hannay, that the door was opened for them by the previous Government. But the noble Lord, Lord Forsyth, is correct: the 16 and 17 year-olds in Scotland all know that it was Edinburgh which gave them the vote. If the next thing they hear is that London will not give them the vote in the next referendum, it is an amazingly strong court-card to hand to the SNP.

Lord Wallace of Saltaire (LD): My Lords, I had not intended to intervene at this stage, but I hear people saying that we should not make piecemeal changes. The Committee should read Clause 2, to which we are debating an amendment, because it makes piecemeal changes. There are several lines which refer to allowing Peers to vote in this referendum—800 of us. A number of further lines then spend a lot of time on Gibraltar—all 22,000 of them—and then the Irish and Commonwealth citizens in Gibraltar. I have been unable to discover how many there are of those, but I think there are probably around 100. These are piecemeal changes.

The problem was raised by a number of people at Second Reading that this referendum will be an exceptional vote. There is therefore a case for looking exceptionally at who should vote, whether it is in this set of amendments or in the following three groups, which we will be discussing later on tonight. The question is really: for this very important vote, which will affect the future of this country for the next 40 years, what are the appropriate changes that we wish to make in the electoral system? Clause 2 as it stands offers a number of changes. The question is what other changes we might wish to make for this vote.

Earl Attlee: My Lords, I hate to say this, but noble Lords opposite have challenged my thinking on the Bill, as a general issue, but I agree that piecemeal reform in this area is not desirable. I share the noble Earl's anxieties. Noble Lords, particularly the Liberal Democrats, consistently argue that someone under 18 is a child, but when it comes to an issue of this magnitude, they suddenly then become an adult.

Lord Hamilton of Epsom: My Lords, I do not intend to delay the Committee for very long, but on many of the amendments that came before we have been led by the Electoral Commission. I remind my noble friend the Minister that the Electoral Commission has serious reservations about these amendments for logistical reasons. Perhaps I may read out its final paragraph:

> "While the date of the referendum remains unknown, it will be difficult for EROs, the Electoral Commission and campaigners to plan activities required to target and encourage any newly enfranchised electors to register to vote".

It has made quite a serious comment and I would very much welcome my noble friend's views on it.

The Earl of Listowel: My Lords, I would like briefly to correct something I said earlier to the Committee. I think I implied that a party might see some political gain in these changes. That was quite incorrect and I am glad that the Committee pulled me up on it. I am sorry.

Lord Forsyth of Drumlean: My Lords, perhaps I might respond to the point made about the position in Scotland. I am really very surprised to hear the noble Lord, Lord Kerr, advancing a naked party-political reason for operating in this way on a matter such as the franchise. He basically said that it would be in the interests of unionists to alter the franchise in a way which may or may not be desirable, and which has not been considered in the round, because otherwise the SNP would be able to make political capital. That is not a reason for doing so.

Whether this is about 18 year-olds or 16 year-olds voting, I do not think that they would vote on whether or not we should remain in the European Union because their younger brothers or sisters were not given the vote. They are probably mature enough to reach a different view. I would also point out that the SNP did not win 95% of the seats and 50% of the vote in Scotland because of the concern amongst youngsters that they did not get the vote in the general election but had it in the referendum. The noble Lord, Lord Kerr, is normally absolutely as sharp as a tack, but perhaps getting involved in this rough trade of politics is tainting him in a way which I would never have thought possible.

Lord Kerr of Kinlochard: I am disappointed to hear that the noble Lord, Lord Forsyth, is shocked and disappointed. I merely made the point, which I will repeat in case it was not fully understood, that if this amendment is not accepted the perception in Scotland will be that, while Edinburgh gives the 16 and 17 year-olds the vote, London does not. It seems to me that that perception would be correct and could be damaging. When I say damaging, I confess that I am a unionist. I do not think that I am making a party-political point but I am a unionist, as is the noble Lord, and I hope that we can agree on something.

Baroness Morgan of Ely: My Lords, this has been a long debate and a fascinating discussion. It has been interesting to see that people on all sides of the Chamber have taken such an interest in this subject.

Last week, I went to see the film "Suffragette", which was a stark reminder of how those women had to take on some of the kind of arguments that we have heard tonight. It is worth noting that, along with the fact that many of us have been very disappointed that young people's participation in the general election, which has been low in the past, is declining. There are two questions we need to ask: is it a good idea and is it a good idea to do it in this Bill?

7.30 pm

The first issue is clear now. We have evidence not just from Scotland but also, according to the Electoral Reform Society, from Austria and Norway that indicates that 16 to 17 year-olds are more likely to vote than 18 to 24 year-olds and if you get them into the habit early they are more likely to continue to vote. Of course, there is not just one reason why young people decide to vote or decide not to vote but what we have here is the first generation of young people who have had citizenship classes, so we have been teaching them about this and suddenly we say, "No, not yet". It is true that there are some in those citizenship classes who may be vulnerable and may not have been paying attention, but those are likely to be the minority. We need to look at the majority of the people who are going to be affected. About 1.5 million people could, if this went through, be eligible to vote and I am sure that they are watching very closely because they are the future voters in this country.

Researchers at LSE suggested that 16 and 17 year-olds are more likely to live with their family or be at school, which are major influences on the discovery of a person's citizenship. That is one of the reasons why they think it is a good idea to start earlier. Once young people leave home, they are less likely to be registered in the place where they have found their new home. But the main reason the researchers give is that most people say that they stay away from electoral participation because they feel that political parties do not speak up for them. David Willetts drew attention at the weekend to the widening gap between relatively well-off pensioners and the young and the potentially devastating consequences that could have on the social contract that exists between the generations. Let us speak plainly; it makes more sense at the moment for political parties to address elderly voters rather than young voters as elderly voters are more likely to vote and make up a much larger share of the actual electorate. Those researchers at LSE are suggesting that we need to allow 16 and 17 year-olds to vote in order to expand that pool and to address the issues of young people.

Sixteen year-olds today live in a technical and digital world and understand the impact of globalisation on their lives. They know that they are going to be competing for jobs with people from across the planet. They understand that the company they will work for is as likely to be headquartered on the other side of the world as in their own community, and they understand the immense benefits which come with globalisation. They are exposed to different cultures from around the world. They know they can buy goods at the click of a mouse from any other country in the world. They are also aware of climate change and the need for global rules for markets. Whether they think on balance that the UK's relationship with the EU is a good thing or a bad thing is a valid point and it is important that they have an opinion on this and an opportunity to express it. As has been said countless times, they are the people who are going to have to deal longest with the consequences of this decision.

There is the question of whether this is the right place for us to be considering this. There is a huge degree of inconsistency, as we have heard, and a piecemeal approach to the franchise system. It was the Government who opened this door. They knew very well when they gave that power to the Scottish nationalists in that referendum how they were going to use it. They opened the door also for the Welsh Assembly to do the same in Wales. We are brilliant at this piecemeal approach in the UK on all kinds of levels. This is just another example but it is an exceptional situation. As we have heard countless times, this is a situation which comes round once in a generation and 16 and 17 year-olds are part of that generation. In terms of consistency, when should they be allowed to vote? Are they allowed

[Baroness Morgan of Ely]
to have a cigarette? Are they allowed to have sex? Are they allowed to watch a porn movie? The whole thing is a dog's breakfast. We know that and we cannot address all those issues in this Bill. Of course we need to be looking at that in a much broader context. But this is an exception; we know that this is their one opportunity in a generation.

Lord Forsyth of Drumlean: I apologise for interrupting but something is niggling me. The noble Baroness says that the door was opened by the Government. From this Dispatch Box there were several assurances by the Government that in allowing the Scottish Government to decide they were in no way setting a precedent, and they made that absolutely clear. The door for all of this was opened by the Labour Party when it set up the Scottish Parliament and created devolution.

Baroness Morgan of Ely: It was right to give the Scottish people the autonomy to decide that 16 year-olds could vote, but the Government opened the door. They knew when they allowed the SNP to determine a lot of the rules of that referendum that that would be the consequence.

I want to turn now to the practicalities of implementation. There would undoubtedly be some issues with the practicalities of implementing this amendment. Obviously, the further away the referendum is, the easier it will be to enact. Of course, electoral registration officers would need to actively encourage and inform those newly eligible electors to vote and if a separate registration initiative for young people is required, then so be it. Let us make it happen. The current system already allows for 17 year-olds and many 16 year-olds to go on the register so we would not be starting from scratch. We could use social media to encourage this age group to inform themselves. They are experts at this and it is important that we understand that that would be an easy way to communicate with them.

It could be argued that it would be easier to implement this policy in England than it was in Scotland because, according to the Government's own website, after 16 in England you have to stay in full-time education at college or school, start an apprenticeship or traineeship, work or be a volunteer. So we know where these people are. It is not quite as clear-cut in Scotland but in England, according to the Government's website, we know where they are. So ultimately, whether this is able to occur or not is a question of political will. If the Government want this to happen they can overcome those technicalities in the way that Scotland did. The Government should also remember that when the Electoral Commission last consulted the public on whether 16 and 17 year-olds should be allowed to vote, 72% agreed that they should be given a voice. I urge the Minister to rethink on this issue and to be aware that the voters of the future are watching pretty closely.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): My Lords, this has been an excellent debate, with strong feelings expressed on all sides. I hope noble Lords will forgive me if I do not recite all the different amendments and what they purport to do because in effect they come down to one issue: whether or not we should allow 16 and 17 year-olds to vote in this referendum. The voting age for UK parliamentary elections is set at 18. This is the voting age which was used in the 1975 referendum on EEC membership and the 2011 alternative vote referendum and it is the voting age that is used in most democracies, including most member states in the EU. Only Austria in the EU allows voting at 16.

Let me deal with some of the issues that have been raised in the debate. Noble Lords have said that young people are or will be engaged and politically active. That may certainly be true of some 16 year-olds but equally it is true of some 14 year-olds and not true of some 50 year-olds, and political engagement or a lack of it cannot be enough justification for giving or denying the vote.

I am sure that the noble Lord, Lord Tyler, was an early enthusiast for politics and elections and would have been capable of making a decision even before the age of 16. In his Second Reading speech, my noble friend Lord Ridley was far more modest about his capacity to make a decision at 17 or 18, as was my noble friend Lord Blencathra. Enthusiasm has been observed, particularly in the Scottish referendum, but I adhere to the point that it would be odd if enthusiasm of itself created the right to vote. The appetite for this change is in question, as it seems that young people are split on the issue. Recent YouGov polling indicates that although 56% of 16 year-olds want to be able to vote, only 42% of 17 year-olds and 36% of 18 year-olds want the voting age to be lowered.

Another point that has been raised is that people will live with the outcome longer and therefore it is important that younger voters are involved. Of course, 15 year-olds will have to live with the outcome even longer, even if the change proposed in the amendment were made. So will 14 year-olds and those even younger than that, but no one is proposing that we extend the vote to these age groups. I agree with my noble friend Lord Lawson that those who are older are concerned for their children and grandchildren and have an important desire to serve their interests.

The development of the adolescent brain is a complex area. It might be thought that to deny 16 year-olds is to be in some way a killjoy. I have noted the enthusiasm that several noble Lords have shown for the appetite of 16 year-olds to be engaged politically—many of those who have been involved in the Lord Speaker's visits in particular; the noble Baroness, Lady Crawley, spoke well about that, if I may say so. There is no one clear point at which we categorically say that a person becomes an adult. Research into brain development has yet to provide us with an obvious point at which we can distinguish between adolescents and adults. The noble Earl, Lord Listowel, talked about difficulties in decision-making. Although Professor Laurence Steinberg argues that 16 year-olds are as capable as adults of making measured decisions, Dr Jay Giedd argues that the human brain does not reach full maturity until at least the mid-20s. Clearly, this is an issue that requires careful consideration, and deserves to be considered as part of a stand-alone debate.

Noble Lords have pointed to a number of things that a person can do when they turn 16 and suggested that this means that they ought to be able to vote.

These claims do not bear much scrutiny. It is true that a person can marry at 16, but this important and life-changing decision cannot be made in England without parental consent. Of course, it is inappropriate for parental consent to be required to cast a vote. Similarly, although 16 and 17 year-olds can join the Army, parental consent is required, and it is not until a person turns 18 that they can be deployed in a conflict zone. My noble friend Lord Blencathra listed a number of things that 16 year-olds cannot do and, in those circumstances, I do not propose to list them.

There is no clear point at which a young person becomes an adult, but the restrictions that I have listed and were referred to by several other noble Lords acknowledge the simple fact that it is generally at 18, not 16, that society draws the line. It is at this point that we deem a person to be fully capable of making important decisions. We must draw a line somewhere. Of course there is always an element of arbitrariness: what about the person who is 17 years, 11 months—or, as some noble Lords would have it, 15 years, 11 months?

Lord Foulkes of Cumnock: The Minister speaks of being capable of making decisions. Will he think carefully about that, and think about adults in the first stages of dementia?

Lord Faulks: I will indeed think carefully about that. As I conceded, a number of people, often through no fault of their own, may find it difficult to make decisions, but we are talking about those who, in old-fashioned parlance, used to be considered not to be capable of making a decision by reason of infancy. I entirely accept that to describe 16 year-olds as children may be inappropriate, but we should not assume simply because of the speed at which the world works, access to the internet or the capacity for travel, that this necessarily brings the wisdom to take decisions before the age of 18.

7.45 pm

Baroness Crawley: Does the noble Lord agree that given the proportion of young people who access further and higher education now—nearly 50%—those young people have over a number of years gained a great deal of maturity and capacity that might not have been the case for a similar cohort of young people in, say, the 1950s, when only 3.4% of them accessed higher and further education?

Lord Faulks: Of course, it was not until 1969, in the Representation of the People Act, that the age was reduced from 21 to 18. It is not the case that young people have changed that radically—notwithstanding the speed of communication, about which we have heard so much.

Lord Kerr of Kinlochard: On that point, what conclusion would he draw? It was reduced from 21 to 18. What is the magic about 18? It used to be 21. What about driving licences? What about the age of consent? Surely there is a wide range of ages; there is no one particular age at which it can be said that everything has now moved from childhood to adulthood across the board. The question is: in this referendum, which is likely to be generational, why should we cut these young people out?

Lord Faulks: It is not a question of cutting people out, it is a question of deciding, on all the evidence, with careful consideration of what we know about what most young people of a certain age can or cannot do, and coming to a consistent view. The view has been taken that the age should be 18. Why should we change it simply to deal with this particular opportunity to vote?

Lord Hannay of Chiswick: Perhaps the noble Lord could help a little on this. He is advancing, as always, a highly sophisticated presentation of a totally negative point of view on giving the vote to 16 and 17 year-olds, but he is a member of a Government who held the door open to give Scots 16 and 17 year-olds the vote. Where were all those arguments then? Lying on the floor, I suppose.

Lord Faulks: Although it is tempting to go down that route and describe the cause or causes of the door being open—I was not in any position to argue that matter then—I think that we should return to the basic fact that, after careful consideration, 18 was considered the right age. Of course the noble Lord, Lord Kerr, is quite right: there is an element of arbitrariness about whatever age you choose. The question is: is it an age which has, by and large, received approval and consent? Yes it is. Of course that does not mean that this is the last word on the subject; people will differ about these things. There will be people who think that 21 was the right age and it should never have been lowered to 18.

Noble Lords will know that the power to determine the voting age for Scottish Parliament and local elections in Scotland was devolved to the Scottish Parliament, and the Scottish Parliament decided to lower the voting age to 16 for those elections. The Government have responded to requests to increase the powers of the devolved Administrations and will soon devolve similar powers to the Welsh Assembly.

Devolution, by its very nature, gives rise to the possibility of different laws applying in different parts of the United Kingdom. It does not mean that we must harmonise our differences. The fact that people may do certain things in Scotland aged 16—get married without parental consent, formally change their name, access their birth records if adopted—does not mean that the same rules must or should apply across the United Kingdom. One of the advantages of devolution is the capacity of different parts of the United Kingdom to make these choices.

More specifically, what about the precedent set by the Scottish independence referendum? The decision was made by the Scottish Parliament that whoever opened the door would decide on the franchise. It is right that decisions about the franchise for elections and referendums that affect the whole of Great Britain and Northern Ireland are made by this Parliament. As I said, decisions of the Scottish Parliament do not and should not prevent Parliament from taking a different decision.

[Lord Faulks]

The Government do not think that this is the right vehicle, as my noble friend Lord Higgins pointed out so cogently. Any change to the entitlement to vote must to be considered properly and fully in specific legislation. I gave some examples where the law places restrictions on 16 and 17 year-olds. Any proposal to lower the voting age must be carefully examined in that overall context.

Baroness Royall of Blaisdon: My Lords, I hear what the Minister says; indeed, in another place, the Foreign Secretary himself said that this was an argument for another day. Could the Minister assist me by saying whether, over the course of this Parliament—in the next four or five years—the Government might consider a change to the franchise?

Lord Faulks: I am not privy to all the Government's thinking, but, no, I do not understand that that is on the horizon. Any proposal must be examined carefully: we cannot change the voting age and simply assume that it will have no implications for other areas where our law and our society treat 16 and 17 year-olds differently from their 18 year-old counterparts.

Noble Lords will wish to reflect on how this change would look to the public. I have no idea how 16 and 17 year-olds—were they to be given the vote—would vote. A number of people might guess and they might well be wrong. The noble Lord, Lord Tyler, said, in an exchange with my noble friend Lord Tebbit, that he thought that 16 and 17 year-olds were more likely to use their vote better than my noble friend Lord Tebbit. I am not quite sure what that said. Nor do I know how 18 and 19 year-olds are likely to vote. It is possible that a change in the franchise of such a radical nature—this is a radical change—will be perceived, rightly or wrongly, as some sort of attempt to affect the result of the referendum. We are anxious as a Government that, whatever the result of the referendum, the legitimacy of the process cannot be questioned. The safest way of doing that is to stick to the Westminster franchise and leave the vote at 18.

The noble Lord, Lord Wallace of Saltaire, who is not currently in his place, made a valiant attempt to say that we have opened the door by allowing Peers to vote or by the minor adjustment in Gibraltar. We are talking about millions; we are talking about a radical change. It is a change that not only would be radical, but would have the potential to affect timing. I am grateful to my noble friend Lord Hamilton for referring to the report of the Electoral Commission. Quite rightly, the commission did not offer a view on 16 and 17 year-olds, but it did, in addition to the paragraph to which he referred, say:

"The Commission's view is that any changes to the franchise for the referendum on the UK's membership of the European Union should be clear in sufficient time to enable all those who are eligible, to register and participate in the referendum".

The noble Baroness, Lady Morgan, said, "Well, we could accelerate the process having regard to the fact that so many young people are aware of social media and could be brought up to speed with the issues". However, as I understood the debate yesterday about registration, it was so important that we did not rush the procedure because people might be left off. It was far too important a matter to in any way accelerate. Therefore, if it affects the timing, which I understand to be very important in a number of contexts, that is a relevant factor. However, the crucial argument is that this is not an appropriate moment to make that change. In all those circumstances, I ask noble Lords not to press their amendments.

Lord Stoddart of Swindon: Could I ask a hypothetical question? I preface it by saying that I understand that the "leave" campaign wants to support this amendment. That might surprise some people: it surprised me. How firm are the Government in opposing this amendment? Let us suppose, for example, that the amendment is carried on Report and is sent back to the House of Commons, which already rejected this proposal. If it comes back to the House of Lords, and we insist on the amendment—after all, Monday indicated that this House is not only roaring; it is using its teeth as well—the Parliament Act would apply. What then would happen to this Bill? How long would it be delayed and what effect would that have on the timetable?

Lord Faulks: It is very tempting to hypothesise in the face of that invitation, but I am afraid it is an invitation that I am going to decline.

Lord Kerr of Kinlochard: I congratulate the Minister on an absolutely brilliant speech, of the kind that I used to try to write—a mandarin speech. All the phrases were there: "a dangerous precedent"; "not the right time", and "unforeseen consequences". When all failed at the Treasury, I used to resort to, "beyond the ambit of the vote", which nobody understood, not even me. It was brilliant, but one thing that I thought was missing was the answer to the point made by my noble friend Lord Hannay, that we were not trying to alter the arrangements for elections. We were talking only of a one-off referendum. That seems to be quite a strong point. Will the Minister touch on that?

Lord Faulks: Of course, the noble Lord will recall that we had a referendum relatively recently, in 2011, about a change in the voting system—to introduce the alternative vote—which was on the Westminster model. The argument was very much, "Well, this is inevitable" or "This is a slippery slope", to use the expression of the noble Lord, Lord Higgins, and that, by accepting the validity of the argument on the European referendum, it must follow, as night follows day, that we would then proceed to change the Westminster franchise. By accepting that argument, we would be reversing into an inevitable change in the Westminster franchise. There might or might not be an argument for doing that, but that is an argument that ought to take place in the fullness of time, with all available evidence, once all the matters that we have gone into and wanted to consider were available.

Lord Tyler: My Lords, this has been a very good debate. I do not intend to detain the House for long because, frankly, there will be a further opportunity to debate these issues. I just want to deal with one or two factual points. The noble Lord, Lord Balfe, said that the franchise is not being extended in this Bill. It is

being extended, as my noble friend Lord Wallace of Saltaire said, and, indeed, there will be further debates about extending the franchise. I understand that it is Conservative policy to extend the franchise to UK citizens resident in the EU beyond the 15-year limit, so it will be very interesting to hear what is said about that.

The other issue, which is an important one, is about practicalities, of which the noble Baroness, Lady Morgan, spoke. I talked to the Electoral Commission and it is clear that it wants to have the longest possible lead time, so the sooner the Government decide to accept this amendment the better from the point of view of the commission. I am sure that they will do it eventually. MPs keep telling me that they will, so it is just a question of not leaving it too long. It is also true that we have the hard evidence of what happened in Scotland. The extension of the franchise to 16 and 17 year-olds proceeded remarkably easily, so there is no technical difficulty there.

I am intrigued to hear constant references to the difficulties of piecemeal changes to our constitution. The Government are about to change the relationship between the two Houses, if they can get away with it. That is what they are doing today. If that is not a constitutional change, what is? Then, what about EVEL—English Votes for English Laws? That is piecemeal. I thought that the Conservatives were actually in favour of incremental changes to our constitution. My study of history was that that was what Disraeli was all about—and very clever he was at it. So it is not an appropriate argument in this case to say that we cannot do this because it is not the ripe time—the doctrine of ripe time. That is what our ancestors in this very House argued right through the 19th century. I shall come back to that in a moment.

8 pm

I thought that the most important issue was the one referred to by the noble Earl, Lord Listowel. There is an issue—I accept it—about impressionable young people. But frankly, as many other noble Lords said, what about impressionable old people? Of course, we do not know whether everybody will want to be registered in this age group, or everybody want a vote, or that they will all be mature and sensible, but that is true of every cohort. But we know that the 16 to 17 year-old cohort has become more mature and better informed—and it has been tested, as my noble friend Lord Taverne pointed out. Yes, it was theoretical; even the excellent report of the British Council Youth Select Committee, which took hard evidence on this issue to which the noble Earl referred, and found no real reason to see a major risk in this case, was based on theoretical evidence. But the hard evidence in Scotland was that people in this age group did not in any way feel that they were being persuaded in a particular direction. They were given some responsibility and were more responsible. That is the experience of those of us who deal with people in this age group.

In the end, it comes back to the essential point that the noble Lord, Lord Dobbs, put to the House this evening. It is a matter of balance and judgment. The Minister says that it is all a question of how developed the human brain is, but I shall not follow him in that direction. With many older age groups, I have found the extent to which their human brain manages to deal with issues of great political complexity, and I do not think that we can start having a sort of highway code test for whether people can or cannot be mature, sensible or well-balanced enough to be able to take a decision.

Lord Forsyth of Drumlean: I may be having a problem with my brain, because I do not understand where the noble Lord is coming from. He has spent the last year arguing that constitutional change should not be made in a piecemeal way and that we need to have a constitutional convention to look at these things in the round. We have spent this evening listening to people opening doors—saying that we opened the door to the Scottish changes in the franchise, when the Government said that it would not open the door. Surely, the noble Lord needs to work out whether he believes that these things should be looked at in the round. He has also argued that this is a one-off and will not have further implications. I am completely confused as to how he can maintain two opposing positions at the same time. One is tempted, is one not, when he made his slip, to conclude that the real reason he wants these changes is that it will help him to get the result that he wants?

Lord Tyler: My Lords, the Bill sets out a timetable, and we had some discussion on that earlier this evening. That is the timetable with which we are faced in your Lordships' House; we have a Bill, and we are going to have a referendum. I agree with the noble Lord that it would have been preferable some years ago if we had had the opportunity to look at some of these issues in the round, but we did not, and we have not done so, and the present Government are still setting their face firmly against a constitutional convention. Unless he is prepared to delay a referendum for another three, four or five years, I am afraid that we must address what is on the Marshalled List today, which gives us an opportunity to decide what is to be the franchise for one very specific question. That is what it is all about.

I go back to the point made by the noble Lord, Lord Dobbs. It may well be that there are Members of your Lordships' House who think that this is not the right moment to move, but I think that we have an excellent precedent on this sort of issue, when the decision that will be taken has such ramifications and implications for so long. In that context, we should make progress in that direction. However, I accept that this may not be technically the most robust amendment to achieve that change, and I certainly want to make sure that we get cross-House support from Cross-Benchers, Conservatives, Labour and Liberal Democrats for the amendment, to demonstrate how wide the support now is. More support has been demonstrated today, and I hope that we can do that. In that context, it is obviously right that for this Bill and on this occasion we make sure that the amendment is absolutely technically perfect. So in that circumstance, to make sure that we can demonstrate that breadth of support, for the time being I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

8.06 pm

Sitting suspended until not before 8.36 pm.

8.36 pm

Amendment 10

Moved by ***Lord Hannay of Chiswick***

10: Clause 2, page 2, line 7, after "at" insert—

"(i) "

Lord Hannay of Chiswick: My Lords, the purpose of this amendment, which is relatively incomprehensible if you look at it, and others in the same group is to provide that the electorate for the referendum should include EU citizens resident in the United Kingdom, the sort of electorate who vote in local elections in this country and in European parliamentary elections. It has an innovation on that, which is designed to meet the concerns of those who feel that it would be wrong for European Union citizens living in this country for a very short time to have the vote, as they would under the arrangements for local and European parliamentary elections. Therefore, it requires five years' residence here before EU citizens could vote in the referendum.

This is not an attempt to change the franchise for a parliamentary election in this country. I am sure that the Minister will tell us about how this is unprecedented in any other member state and so on. One of the points about precedents which the noble Lord missed when he was telling us about how few countries have the vote for 16 and 17 year-olds is that no other member state of the European Union has ever held a referendum to leave the European Union. When they have held referendums or their parliamentary elections, they were about things infinitely less consequential for the future of the country than this vote will be for us, so I do not think that any of those analogies are particularly helpful but, in any case, I insist that there is not the slightest attempt here to create a precedent for our parliamentary elections. This is purely and simply for this referendum.

What is the basis for it? It is quite simple: if you are a European Union citizen and you have lived here for five years, you are almost certainly employed and you are paying taxes, so you are fulfilling all the "no taxation without representation" basic criteria. You are also someone whose status in this country will be radically affected by the outcome of the referendum because all sorts of rights that you enjoy now under the European treaties will be removed if we vote to leave and negotiate under Article 50 of the treaty to withdraw. These people would be critically affected by this decision and, to my mind, to not give them the vote on it would be a considerable inequity because it could affect them and their children, and if they have been here for five years many of them are probably going to be here for even longer. The case for giving them a vote is compelling and that is why I and other noble Lords have put down these amendments. Since the night is wearing on I will not weary anyone with a longer speech than that explanation and I hope very much that there will be—as there has been in the signatories to this amendment—cross-party and no-party support for an approach of this sort. I beg to move.

Lord Green of Deddington (CB): My Lords, I suggest that there are two rather key points that the noble Lord has not addressed. One is that no other country in the European Union grants a vote in a referendum to foreign citizens, even EU citizens. The fact that most other referenda are on rather smaller issues strengthens the case against giving a vote to EU citizens in Britain on an issue of major importance. Secondly, on a point of fact, the number of EU citizens of voting age in this country is of the order of 2.7 million. The noble Lord has taken out those who have been here less than five years, so you are talking about 1.9 million people. These estimates are based on the Labour Force Survey, so they are not precise but you are talking about the order of 2 million voters. The likelihood surely is—particularly on the arguments the noble Lord has made—that these people will vote for the UK to stay in the European Union. What is going to be the impact on the public of knowing that this change has been made for this purpose? It will be seen as an attempt to swing the vote in favour of staying in the Union with the use of foreign votes.

Lord Hannay of Chiswick: We are in a rather peculiar situation. The noble Lord intervened in my speech and is now making a speech all of his own.

Lord Green of Deddington: No, I have finished.

Lord Hannay of Chiswick: Okay, I think the noble Lord was intervening in my speech and, if he had listened carefully to what I said, he would have heard that I most particularly noted that the parallels with other members are not very apt because nobody has ever voted to leave the European Union—nobody has ever voted in a referendum whose outcome, if it went in favour of leaving, would deprive a large number of people in the country of their rights under EU law. I covered that. I know that earlier in this debate we forswore use of words such as xenophobia but I have to say that some of the arguments he advanced in his brief intervention were, let us say, rather close to the line.

Baroness Royall of Blaisdon: My Lords, I fully support the noble Lord, Lord Hannay, and, indeed, I put my name to one of the amendments. I will just add two points. I believe that it is right to enable these citizens of other member states to have a vote in this referendum precisely because their very being in this country is linked to membership of the European Union. If it were not for the freedom of movement within the European Union they would not be working here, contributing to our economy and helping build our society. Therefore, it is right that they have a vote. I also ask the Minister: in his view, what would happen to these citizens if we were to leave the European Union? Would they have to leave? One does not know. We have to have answers to these questions at some stage before we progress much further along the referendum line. If they did have to leave, this country would miss out a great deal by losing their contribution to our society and, most especially, their contribution to our economy. We are all familiar with the phrase "no taxation without representation"; they are paying taxes and therefore they should be enabled to vote.

8.45 pm

Lord Willoughby de Broke (UKIP): My Lords, I do not think that this amendment has any merit whatever. As the noble Lord on the Cross Benches said, in no other country do foreign nationals have a right to vote at all—ever.

Lord Foulkes of Cumnock: The noble Lord does not want us to be associated with any other country, so if we were different would that not please him?

Lord Willoughby de Broke: I do not see the point of that intervention at all. I was going to say that, because there is no reciprocity, there is no reason for us to give European citizens the vote in what is a purely national matter, in spite of what the noble Baroness said. She said herself that we do not know what is going to happen with European citizens if and when we vote to leave. People live here because they like living here, not because we are a member of the EU, so that will not change at all.

Lord Liddle: One reason why so many EU citizens who have not become British nationals as a result of marrying British people live here is that we are a member of the EU and they feel that they are treated on the same basis as British citizens. You are dividing people who see themselves as British residents and have committed their lives to this country, and you are wrong.

Lord Willoughby de Broke: I am so sorry if I am wrong.

Earl Attlee: My Lords—

Lord Willoughby de Broke: Perhaps I may just finish my speech. The noble Lord, Lord Liddle, said that foreign citizens come here because we are in the EU. That is not the case at all. A lot of them, including the French, come here precisely because it is a different country. They do not come here because we are in the EU. Actually, in one sense they are leaving the EU. They are leaving their high-tax, lower-employment and failing economy. That is why they come here and that is not going to change. However, that does not alter the fact that it is completely wrong to enfranchise foreign nationals to vote in a British election. It has never happened before. I was in France for the 2005 constitutional election, which the noble Lord, Lord Kerr, will remember. I would have loved to have voted with the French to vote down the constitution but I had to cheer from the side-lines when they did. I was not allowed to vote. I see no reason whatever for agreeing to this amendment. People can live here and, if they want to vote, they can take British nationality.

Earl Attlee: My Lords, I remind the Committee that the *Companion* advises against the use of the word "you".

Lord Liddle: I am sure that the noble Earl, Lord Attlee, is correct on these points and therefore I shall follow his advice as best I can.

With regard to all these amendments, if we were talking about the situation in the 1970s when we were joining the European Union, I would have said unequivocally, "That is a decision for British citizens". But we made the decision to join a Community—and it is a Community—in which many British citizens have gone to live in other countries and many European citizens have come to live here. People have moved because they have felt that they will be treated on a very fair and equal basis as members of the European Union.

Now, the structural change that our membership of the EU has brought about means that this is not like any other election. It is not a national election or a national referendum on a matter specific to our country; it is about our future in the European Union and it affects everyone—British citizens living in the European Union and European citizens living here.

I accept that the noble Lord, Lord Hannay, has a point about a residency requirement. However, I know many people who have married people from EU member states who are not British citizens and the idea that their future is going to be decided without them having a say over it is a monstrous injustice.

Viscount Ridley (Con): I invite the noble Lord to step behind a Rawlsian veil of ignorance and imagine that there are 1.8 million people in this country who we are pretty sure are going to vote overwhelmingly to leave the European Union. Would he still express the same passionate enthusiasm for enfranchising them?

Lord Liddle: One of the miracles of the European Union is that people have been free to move. Surely they have some right to vote. It should not be the case that the British citizens who have stayed here are the only people who can vote in a referendum.

Lord Green of Deddington: My Lords, in that case, how is it that no other European country allows foreign citizens to vote in their referenda?

Lord Liddle: Because this is a referendum about leaving the European Union. I am not suggesting that this become the electorate in a British general election or on any other matter. However, this referendum is about the rationale for why these people are here.

Lord Hamilton of Epsom: My Lords, we have been discussing virtually all day how we are going to try to make this referendum fair. We want to keep the playing field as level as we possibly can. Enfranchising 1.9 million people of European nationality is a blatant opportunity to try to swing the vote in favour of staying in the EU. Of course, so much is going wrong for all these people who want us to stay in the EU. Let us face it: the EU is imploding as we watch and one crisis follows another. It is going to be quite tricky for anybody who wants us to stay in the EU to win this referendum. Therefore, I agree that those people who do want to stay in have got to try every trick in the book to try to swing it in their direction. However, let us see this for what it is: this is a referendum for the British people to decide

[Lord Hamilton of Epsom]
whether or not they want to stay in the EU. This is not a decision for foreigners who happen to be living in this country.

Lord Hannay of Chiswick: The noble Lord, Lord Hamilton, and the noble Viscount, Lord Ridley, before him, used the argument of whether we would all be supporting this if these people were all going to vote no. I am afraid that his question reveals his own motive—to stop these people getting the vote just because they might vote yes.

Lord Hamilton of Epsom: I cannot believe that the noble Lord, Lord Hannay, is actually putting this amendment forward because he has no intention to increase the franchise of people who will vote for his position, which is to stay in the EU. Come on—let us see this for what it is: this is trying to slant things rapidly in the direction of those who want us to stay in the EU. It is absolutely blatantly obvious that that is what it is all about. For anybody to pretend anything different is absolutely ridiculous.

Baroness Smith of Newnham: My Lords, like the noble Baroness, Lady Royall, I have also put my name to the amendment from the noble Lord, Lord Hannay. I fundamentally believe it is right that EU nationals who are living and working in the UK and who have been here for a significant time, paying their taxes, ought to be enfranchised, irrespective of how they might vote. If I were speaking from behind a Rawlsian veil of ignorance, I would still say that they should have a right to vote. They have come here thanks to EU free movement rights, just as millions of British taxpayers have moved to other parts of the European Union—they may have retired there or be working there thanks to the free movement of people and 40 years of membership of the European Union. They will all vote in different ways. This is not a free-for-all to say that any EU national who just happens to have pitched up here should be entitled to vote. However, people who have committed to being here but have not sought British citizenship, precisely because, as the noble Lord, Lord Liddle, said, they have understood that they have rights as EU citizens, should be enfranchised.

It should not be a free-for-all. I do not quite believe that the amendment from the noble Lord, Lord Liddle, is the right thing to do. However, enfranchising people who have a great stake in the future of Britain in Europe is important, whether they are British nationals or not. Commonwealth citizens resident in the UK will be enfranchised, so it seems invidious that EU nationals are not. This is not about skewing the franchise but about giving people with a genuine interest the opportunity to have a say.

Lord Davies of Stamford: My Lords, I think that it is completely improper for anyone, anywhere, at any time, to make an assumption about how a fellow citizen or group of fellow citizens will cast their votes. It is particularly improper for us to do it here, where we are legislating on the franchise for a very important vote, and discussing the general principles on which the franchise should be based for referenda and elections in this country. So I shall not go down that road at all.

I take my position on the basis of first principles. This involves the same first principle from which I argued on the last group of amendments—the central principle of coherence. At present the regime is utterly incoherent. We face the prospect of a referendum which, if we make no changes in the course of these debates in Parliament, will result in citizens of three members of the European Union present in this country having the vote, and not the rest. That is a thoroughly anomalous position. One is the Republic of Ireland, which is said to be a special case because of our historical relationship. The other two are Malta and Cyprus. They are said to be a special case because they are members of the Commonwealth.

What is so special about the Commonwealth? The Commonwealth is a group of countries with which we have had a happy historical relationship and a good relationship at present; it is something of a club. But surely we have at least that degree of close intimate relations and common interest—and probably far more in the way of common interest and connections—with the other members of the European Union. It seems utterly anomalous not to extend the vote to citizens of other EU countries who happen to be resident in this country.

Perhaps I could forestall the noble Lord, Lord Green, intervening to say that other EU countries do not give our citizens resident there the vote in their referenda, by saying that—apart from the issue of the different types of referendum we have already touched on—members of the Commonwealth do not do that either. I cannot go and vote in India or Australia if I become a resident of one of those two countries—unless, of course, I take nationality of one of them, and that is a different matter altogether. There is a real anomaly here.

I gather that Fiji has just rejoined the Commonwealth. Are we seriously saying that we have closer connections with Fiji than we have with, say, France, or that we should make more favourable arrangements for Fiji's citizens to take part in British elections than we should for people from France? What an extraordinary notion.

Lord Green of Deddington: The noble Lord will be aware that I have an amendment in the next group that would deal with his problem.

Lord Davies of Stamford: If it deals with my problem in a satisfactory way I may support it. I look forward to the noble Lord introducing it in due course.

Mozambique is also a member of the Commonwealth. Let me take that as an example. Do we have especially close relationships with the people and the state of Mozambique? Can it be said that we share the fate of Mozambique to a greater extent than that of most other countries? Do we have common interests that need to be debated and considered together? Hardly so. Is Mozambique more important to this country than, say, the Netherlands, Spain, Denmark or other friendly countries very close to our shores? It is an extraordinary insult to those countries to suggest that that might be so.

The Spanish ambassador told me the other day that there are 15 million visits by British citizens to Spain every year. Some people go more than once, of course,

but that is still an extraordinary number. It shows the degree of human interchange—and of course, behind that there is a great deal of economic interchange—that we have with our fellow members of the EU. We all face similar problems and we will all be impacted by a British withdrawal from the EU, if that takes place. So there is an immense logic in extending the franchise on this occasion to EU citizens resident here. There is no logic whatever in extending that franchise to Commonwealth citizens but not to EU citizens. I repeat that in terms of reciprocity, the position is exactly the same, so that argument cannot be used. Again, we need some clear coherence here—some way of justifying the choices we make objectively. Otherwise we will lose legitimacy, and I totally agree with the noble Lord, Lord Hamilton, that we need that.

9 pm

Lord Blencathra: It may be that 15 million people go to Spain every year but none of them gets the right to vote in its elections.

I am probably more naive than my noble friend Lord Hamilton, but maybe not quite simple. I am not suggesting this is a deliberate ploy to stack the electoral register to help the stay-in, BSE campaign. That may not be the intention but there is enormous cynicism out there in the country about politics, politicians and a fear that we will somehow, as politicians, stack things so that we stay in. That is why there is concern about whether Europe will spend money on the campaign and whether Ministers and others will use their position to campaign for an in vote?

They may not, and there are purdah rules to stop it, but the view in the country is a rather cynical one that politicians cannot be trusted to have a proper, fair electoral referendum. If there is a majority of 10 million either way it will not matter, but if the majority to stay in or to leave is 1 million or 1.5 million, and 1.5 million EU citizens have voted, it will not take much to see that the British public will say it was rigged, they "woz robbed", and the whole election result was unfair.

I repeat, as many others have said, that no other EU country permits non-nationals to vote. The noble Lord, Lord Hannay, who is expert in these matters, tried to draw a distinction between this referendum, which could result in Britain leaving, and other national referenda on less important issues. I beg to differ on a couple of occasions. When the Danes voted against Maastricht it was a nuclear bomb under the EU at that point. The Danes were told to think again and keep voting until they came up with the result that the EU wanted. That is me being cynical on this occasion. If Denmark had not voted again—

Lord Davies of Stamford: Will the noble Lord address the point that I made in my intervention a moment ago? Although it is true, as he says, that no other EU country grants the right to British citizens who are resident there to vote, it is also true of Commonwealth countries. No Commonwealth country grants British citizens who are resident in their country the right to vote, so why does he justify the anomaly that we are extending under the regime that he is defending—the right to vote in this referendum to Commonwealth citizens but not to citizens of fellow EU member states?

Lord Blencathra: The noble Lord is little premature. If he is still here in half an hour, he may hear my speech supporting the noble Lord, Lord Green of Deddington, as he seeks to remove Commonwealth and Irish citizens from the register. I hope that the noble Lord will be here to support that amendment.

I was concluding by saying that the vote on Maastricht would have been a devastating change to the EU. I had no idea what the consequences would be. Denmark would not have been thrown out, of course, although I heard one EU commissioner at the time saying that it would be if it did not comply. That noble Lord is no longer with us.

When the Irish voted against Lisbon, again that was mega bomb under the EU and the Irish again had to vote until it came up with the right conclusions. I speculate, if Ireland had not voted again on the Lisbon treaty, would the treaty have gone ahead or would Ireland have been put into a second-class category? I do not know but it was a mega decision that Ireland and Denmark took, so I do not think that we can say that this referendum that we are having in Britain is more important than some other European referenda.

Lord Hannay of Chiswick: This situation is completely different. In the case of the Danish and Irish referendums, had those negative results been upheld, the only consequence would be that a treaty called Maastricht or Lisbon would not have come into force. Nobody would have had any rights, privileges or advantages removed from them. The whole of the European Union would merely have stayed where it was.

The noble Lord is quite right in saying that Denmark and Ireland would not have been chucked out. At that time there was no machinery to do that. There was not even a withdraw clause, but it would not have happened. The point is very simple. The result would have simply been—as was the case in the vote on the constitutional treaty in France and the Netherlands—to negate something that might have come into effect had it been ratified. This is completely different. Here, you are taking away various important rights and privileges that European citizens here have as a result of our membership of the European Union. You are depriving them of those things. It is honestly not like for like.

Lord Blencathra: I do not accept that if there is a decision to leave we will be taking away some fundamental rights from European citizens who are living in this country and that they should therefore have a right to vote in the referendum to protect those rights. On Report we may have a list of what those rights may be. I can understand the noble Lord's point that there is a difference in quality or perhaps in quantity in these referenda, but I do not accept that the referenda in Denmark and Ireland were of a vastly different magnitude to this one. We could not vote in the Danish referendum and rightly so. I did not want the right to vote in the Danish and Irish referenda, and I do not see how this referendum is so different that other non-British nationals should have the right to vote in it.

Baroness Smith of Newnham: There are two fundamental differences. One is in terms of ratification of a treaty. Each member state gets to ratify the treaty

[Baroness Smith of Newnham]
according to its own rules, be that by referendum or through Parliament. In this case we are talking about the rights of people who are resident here. There are different immigration rights for EU nationals versus third-country nationals. People who live and work here as EU nationals on the basis of free movement are surely in a different situation from other residents of the UK. What will employers be required to do if Britain leaves the European Union? Are EU nationals going to be allowed to work here?

Lord Blencathra: If Britain votes to leave, a whole range of things would need to be decided and negotiated. No one is suggesting that on the day or within a couple of years of Britain voting to leave, all EU nationals working here would be slung out and not allowed to work. A British Government would make a determination by looking at each case of employment and refugee status—at a range of issues that could be decided on individually. It is not right to say that we are back at square one and that if we vote to leave, all the rules related to other people working in this country go back to 1973.

Lord Liddle: If decisions are taken individually, that implies that some EU nationals will be thrown out. Is it the Government's position that if we vote to leave the EU, some EU nationals may be thrown out?

Lord Blencathra: I do not want to get totally bogged down in this argument. I was asked a hypothetical question: what would happen to those people if we voted to leave? I was given a hypothetical answer: it would be up the Government of the day to decide the rules on employment in this country for people from any other country. I was not suggesting that the Government would throw people out. They may decide unilaterally that all 1.8 million should stay and maybe we should add a couple of million more. It is a totally hypothetical issue but it does not detract from the argument that no other country allows non-nationals to vote in important national referenda. We should follow that example.

Lord Liddle: It is not a totally hypothetical issue. If you listened to Mrs May's speech at the Conservative Party speech, you might have thought that there was a certain desire to throw out people who were not British citizens. There is a real question: what is the future for EU nationals in this country if we vote to leave? If the Government are not prepared to give an honest answer, of course people are going to demand a right to vote in this referendum.

Viscount Ridley: My Lords, I apologise to the noble Lord, Lord Shipley, who I know is trying to get in, but I want to add a quick postscript to my noble friend Lord Blencathra's point about fairness. As I said at Second Reading, we must get this referendum so fair that after it is over the argument is over—we forget it, we shut up about it. The further we divert in all these directions from the Westminster franchise, the more likely we are to end up in the situation that he and the noble Lord, Lord Green, described, in which the balance of judgment in the referendum comes down to one small group of EU nationals, for example, and the argument does not go away.

Lord Liddle: Does the noble Viscount accept that the argument will be over for EU nationals if we vote to leave?

Viscount Ridley: If we vote to leave that argument will continue, but as my noble friend Lord Blencathra said, that is when we will deal with it.

Lord Blencathra: My Lords, I agree entirely with my noble friend. I could not say it better myself so I shall shut up and conclude my remarks.

Lord Shipley (LD): My Lords, I said at Second Reading that there was a very important principle at stake in this issue: that those who will be directly and personally affected by the outcome should be entitled to a say in the decision. I stick by that principle because it is exceedingly important.

I am grateful to the noble Lords who tabled Amendment 13, which defines the five-year rule, because I had wondered whether it was justified for shorter-term or seasonal workers to have the right to vote. In the Scottish referendum people who had lived in Scotland for less than five years had the right to vote because the local government franchise and electoral roll were used. I am unaware of any trouble or problems caused by the fact that EU residents living in Scotland had the right to vote.

The compromise proposed in Amendment 13 is entirely reasonable. It gives the franchise to those who can demonstrate a longer-term residency commitment to the UK. I assume that it means five continuous calendar years, as opposed to any five calendar years, but on that basis—and the fact that people will have to prove residency for five years, which in itself might be a complicated task for some—it seems entirely reasonable.

I noticed that in the contribution from the noble Lord, Lord Green of Deddington, we had the accusation that no other country does this and that we therefore should not. Of course, nothing ever changes if you always have to abide by what other people do. As we heard, Austria permits votes at the age of 16. Somebody took the lead there. It seems to me that there is nothing wrong with the United Kingdom deciding to make its own decision about how it wishes to conduct a referendum.

Lord Green of Deddington: I apologise for interrupting the noble Lord, but does he accept that mine was a point of fact, not an accusation?

Lord Shipley: I accept that it is a point of fact, although I am very uncertain about the number of voters that the noble Lord came up with. I am not sure that that base can be proven accurate.

Lord Green of Deddington: I made it clear to noble Lords that that calculation was based on the Labour Force Survey, which as they will know is a survey and

is therefore subject to some variation. However, when the noble Lord talks about 1.9 million he is talking about a lot of people who have been resident here for five years.

Lord Shipley: The figures would clearly have to be checked, but people will have to register. They will have to demonstrate that they have a legal right to register. Then, of course, they will have to vote. We may have to do some further work on this prior to Report, but we need to examine those numbers very carefully indeed.

I think the noble Lord, Lord Hamilton of Epsom, said that this will be a referendum for British people. I agree that it has to be a referendum for British people, notwithstanding this set of amendments, but I wonder whether he includes those who have lived abroad for more than 15 years. They are British people and British passport holders and a very large number will be denied a vote. We will come on to that in a further group of amendments.

In conclusion, this is an opportunity for those who have demonstrated that they have a commitment to contributing to the life and economy of the United Kingdom to be trusted with a vote about the future of the United Kingdom in the European Union. I believe that it is right to have a policy for those who have lived here for five calendar years. It is appropriate because it demonstrates our confidence in those who are not British nationals.

9.15 pm

Lord Foulkes of Cumnock: My Lords, I signed the amendment of the noble Baroness, Lady Miller. I am eager that we all pay attention to the words of the noble Lord, Lord Willoughby de Broke. After all, his title goes back to 1491. If my memory serves me right, it was on 7 November that year, that Maximilian I, the Holy Roman Emperor, and King Vladislaus II of Bohemia and Hungary, signed the Peace of Pressburg, ending the Austro-Hungarian war. Later that year, on 6 December, Charles VIII of France married Anne of Brittany and Brittany was incorporated into France. Even in 1491, the European Union was beginning to form. No doubt the very first Baron Willoughby de Broke did not like it very much either. Nothing changes in the barony of Willoughby de Broke but the rest of us have to live in the modern world—not in 1491 but in 2015.

I do not want to repeat the arguments that have been put forward but to underline that I agree with them. I am very fond of the Commonwealth and am on the executive committee of the Commonwealth Parliamentary Association, and I ask, as president of the Caribbean Council, what the logic is in extending the vote to citizens of Mozambique but not to citizens of France. It seems crazy. I agree with what has been said.

Secondly, there is the issue of no taxation without representation. We have many European Union citizens in the United Kingdom, who contribute so much to our economy—it is estimated at £20 billion between 2001 and 2011. London is, I think, the fourth largest French city. We have many French people living here, contributing to our economy, and making London such a powerful and successful place, yet we are saying to them that they are not going to get a say in a referendum which will affect their future. It just seems crazy.

The last argument I want to put forward is the crunch argument. European Union citizens already vote in local elections. As was said earlier, they voted in the Scottish referendum. Most important of all, they vote to choose their Member of the European Parliament. If they are allowed to choose the person who represents them there, it is manifestly obvious they should also be given a vote in the referendum which decides whether we continue to be members of the European Union and continue to send Members to the European Parliament. That is the right thing to do.

Lord Forsyth of Drumlean: Will the noble Lord deal with the point that was made by my noble friend Lord Ridley? He is right that people from eastern European countries living in Scotland were able to vote in the referendum. Certainly, looking at the broadcasts at the time, many of them voted for independence—partly as a result of their own experience; they saw it as about liberation and freedom. If the referendum result had been very close and gone the other way and people were able to demonstrate that it had been turned by the votes of people who had come from Europe, does the noble Lord not think we might have had a problem?

Lord Foulkes of Cumnock: No, I do not. No one made that point in the run-up to the referendum. No one said that they would not accept the result, even if it was close, because European citizens living in Scotland were voting in it. That was not an issue. I went round a lot of Scotland during the referendum and no one ever raised that as an issue with me.

As a postscript, I find the suggestion just referred to that, because no other countries have done this, we should not, quite depressing. We have pioneered so many things in the United Kingdom. We have invented and started so much. Why can we not also be pioneers in this? I hope the Government will give it serious consideration.

Baroness Miller of Chilthorne Domer: My Lords, I have a probing amendment in this group. Should the House decide at a later stage to enfranchise the group we have just been talking about, or the UK citizens we will be discussing in Amendment 14, the purpose of my amendment is to find out what work would need to be done by the Government and what preparations they would need to make in order to make that happen.

Lord Wigley: My Lords, I had not intended to speak in this debate but there is one dimension that perhaps I can bring to the debate that few others could.

In Wales, perhaps in Scotland as well, apart from constitutional nationalism there is always a fringe of more extreme nationalism and there are fringes that impinge on racism. It is something that throughout my political career I have tried to stand against. I have

[LORD WIGLEY]
made the point time after time, ad nauseam, that all people living in Wales, whatever their language, colour or creed, are full and equal citizens of Wales. It is a concept of civic involvement in the community in which they live. These amendments touch upon this. If we are going to go down the road of starting to differentiate on the basis of some concept of nationality as opposed to citizenship, we could be in very serious trouble indeed.

Lord Wallace of Saltaire: My Lords, perhaps I might briefly raise the question of what sort of numbers we are talking about. The noble Lord, Lord Green of Deddington, suggested that we had 2.7 million. I have to say that sounds high.

I spent some time in the EU balance of competences review trying to discover the best estimates of the numbers of citizens from other EU countries in Britain and of British citizens in other EU states. I am well aware that it is very difficult to get the numbers but the best estimates we came up with, with the help of the Home Office, the FCO and the DWP, were 2.2 million British citizens living in other EU member states and 2.4 million EU citizens from other states living here. If we then ask how many of them have been living here for five years and how many are entitled to vote, we probably come down to something in the order of 1.5 million to 1.75 million on the five-year limit. I suspect a very substantial number of those will be of western European origin, including the many people who are in mixed marriages—British-French, British-German, British-Dutch, whatever it may be. Those are the sorts of figures.

It would help, if we are going to return to this on Report, if the Minister could manage to discover between now and then how many citizens of other EU member states are currently on the British electoral register. That figure must be obtainable. I accept that the estimate of how many there are in total in this country is very difficult to pin down but that other figure at least we must be able to have.

Lord Green of Deddington: My Lords, there is not much between us. The noble Lord said 1.75 million; I said 1.9 million.

Lord Collins of Highbury: My Lords, I am tempted to stray on to the next group, which the noble Lord, Lord Green, has mentioned, because there are obviously a lot of issues here about what is citizenship and what is entitlement to vote. Of course, for historical reasons, entitlement to vote in this country is very complex and has developed over a long time. The link between the right to abode in this country and a British passport has been broken. We are changing that situation gradually, but it is very complex.

I have some sympathy with the comments of my noble friends Lord Liddle and Lord Foulkes because I must declare an interest: I am married to a Spanish citizen who came here to work and has been here for 20 years, and who does participate in civic life in this country. He regularly votes for his local councillor and considers himself an EU citizen. He considers himself part of a European Union and I think the problem we have in terms of this referendum is that it will undoubtedly cause him concern if Britain votes to leave the EU. No longer will he have that common bond; he will be told that he is simply a visitor here.

The noble Lord may raise a question here about residents having the opportunity to apply for citizenship and I will return to that, but I want noble Lords to address a number of questions which I would like the Minister to answer. Whatever conclusion we make, there are nearly 2 million people who have been living in this country and participated in civic society who deserve some clear answers.

When we came to a question about the future of the United Kingdom and a referendum was held in part of the United Kingdom, in Scotland, the decision was taken that the appropriate electorate for that decision was the franchise for the Scottish parliamentary elections—the local government franchise. No one disputed that at the time, as my noble friend Lord Foulkes said. Now I think citizens of the European Union—because that is what they are—who work here and have lived here for some time will ask if they vote for British representation—

Lord Forsyth of Drumlean: On the point that no one disputed the franchise, I certainly received many, many letters from people who were Scots living in England complaining that they did not have a vote in the Scottish referendum and that people who had come here from other European countries on a short-term basis—shorter than the noble Lord's partner—perhaps to work for only one or two years did have a vote. It was by no means uncontroversial.

Lord Collins of Highbury: I know it was not uncontroversial because the previous Government conceded a referendum on the future of the United Kingdom where all parts of that United Kingdom would have said that they wanted a say in the future of this United Kingdom. That did not happen. I think that is a legitimate point to make. My husband is not my partner any longer—we have now been able to change that—but he and the 2 million people who came to this country and are here on a certain understanding are going to be faced with the prospect of radical changes in their circumstances without having any say.

I raised the point of Scotland, as did my noble friend Lord Foulkes, but when we come to British representation in the European Parliament, European citizens are entitled to vote for British representation in the European Parliament, not French or Spanish or whatever. My husband does not cast his vote in the European elections in Spain; he casts them here for British representation. They deserve an answer to that question and they deserve to know why you are choosing the Westminster franchise when maybe—as in Scotland or in Wales—the appropriate franchise would be the people who are most affected.

Of course as we come into the other debate on the next group, there is an issue about people who have resided here who can obtain the right to vote and get the Westminster franchise if they become British citizens. In the media last week, there were clear signs that

people are concerned about their status changing and are therefore willing to fork out nearly £1,000 to obtain British citizenship. Maybe my husband will make that same decision—partly because he does not have to break his ties with Spain but can obtain dual nationality. That is not the case for everyone.

9.30 pm

Lord Green of Deddington: I think it is true to say that, for all EU nationalities, dual citizenship is permitted.

Lord Collins of Highbury: Well then, good, but I still think that people need an answer to that question. People are moving to obtain British citizenship and we have to be clear on the consequences of this.

This debate has been really interesting in highlighting how people see what being a British citizen is about. We will come on to this in the next group, so I do not want to do so now, but if we are to use the Westminster franchise—and there are good reasons for doing so, not least that if people have resided here for longer than five years, they have the opportunity to apply for British citizenship and therefore obtain the vote—we may see a big rush in those circumstances. The Minister has the responsibility for giving a clear reason why those people who have worked and lived in this country for a substantial time will not be able to vote on something which will clearly affect their futures in this country.

Lord Faulks: My Lords, Amendment 10, in the names of the noble Lord, Lord Hannay, and the noble Baroness, Lady Smith of Newnham, and Amendment 13, in their names and those of the noble Baroness, Lady Royall of Blaisdon, and the noble Lord, Lord Dykes, would extend the franchise to EU citizens who had resided in the United Kingdom for five years or more. Amendment 15, in the names of the noble Lords, Lord Liddle and Lord Davies of Stamford, would also extend the franchise to EU citizens but would not impose a minimum time period for residency in the United Kingdom.

As has been pointed out, many EU citizens have made the United Kingdom their home and made significant contributions to life in this country. No one would wish to deny that but this is of course a vote about the future of the United Kingdom in Europe, so we say that it is right to use the parliamentary franchise as the basis. As my noble friend Lady Anelay explained at Second Reading, we are following the standard practice across Europe. As far as we are aware, no other European member state extends the franchise for referendums to citizens of other states—and there have been many such votes over the last four decades.

The noble Lord, Lord Hannay, spoke about the exceptional circumstances of this poll. This is an exceptional poll in some respects but it is not the only one with significant constitutional ramifications. Referendums in Europe have dealt with the ratification of EU treaties or the currency that a nation should use. These are not trivial issues, albeit that the noble Lord described them as less consequential. Even so, it is said that this is different as it deals with membership. But there have in effect been other in/out referendums: 17 EU member states held referendums about whether to accede to the European Union. Most recently, the Croatian people were asked in 2012. Others have voted not to, including Norway, while in 2013 the people of San Marino voted not even to apply. So far as we can tell, not a single one of those extended the decision to citizens of other states.

Noble Lords in effect suggested that the franchise should extend to include those EU citizens because they are affected by the results of the vote. This argument has its attractions but I respectfully suggest that it does not withstand careful scrutiny. First, why should this test apply only to EU citizens? Yes, the large French community in Kensington or the Portuguese in Stockwell will be impacted to some extent by the decision, but why should it stop at the United Kingdom borders? Surely Spanish citizens in Madrid would feel the effects of Britain leaving, as would the Maltese in Valetta or the Poles in Warsaw. The United Kingdom is a major global power and the EU is the world's largest market with a population of over 500 million. If the United Kingdom left, a great many people around Europe would be affected to a greater or lesser extent. That hardly means they should all get a vote. Let me respectfully suggest that it is not enough simply to look at who is affected by a vote in order to decide who should take part. Furthermore, the United Kingdom would feel quite deeply the impact of further enlargement of the European Union. That does not mean that in future United Kingdom citizens should be able to vote in an accession referendum in Turkey or Albania or anywhere else that might join the European Union. We need to start elsewhere. That is why the Government brought forward proposals building on the general election franchise and that is the appropriate starting point for a decision of this kind.

As for the five-year residency threshold, the noble Lord, Lord Hannay, and the noble Baroness, Lady Smith, propose in Amendment 13 that it should be given to those who have resided in the United Kingdom for five years or more. This is a much more nuanced amendment than the other one. I wholly understand the noble Lord's intention for this five-year threshold. No doubt many EU citizens who have settled here for many years feel a connection to the United Kingdom and the noble Lord is saying that we should give them a vote in the poll. Of course the longest resident requirement for EU citizens in order to qualify to apply for British citizenship is five years of lawful residence. After being free of immigration time restrictions for 12 months, an EU national can then apply for naturalisation to become a British citizen. So many EU nationals who meet the noble Lord's threshold will be able, and have chosen, as the noble Lord, Lord Collins, pointed out, to take up British citizenship. I am sure many choose not to but that does not undermine the point that the option is open to them. Secondly, I draw attention to the practicality of identifying those who fall within the threshold. The franchise for local elections does not include any time limits on residency. Implementing such a limit would therefore be much more complex and time-consuming than simply using the local election franchise.

The noble Lord, Lord Davies, suggested it is unfair to exclude EU citizens when those from Malta, Cyprus or Ireland are included. I respectfully do not believe

[Lord Faulks]
there is any actual inconsistency here. The inclusion of these three member states is not related to their position in the European Union. It is because Malta and Cyprus are part of the Commonwealth and there is a history of reciprocal voting rights, as between the United Kingdom and Ireland. The inclusion of Commonwealth and Irish citizens in the Westminster franchise is a long-standing part of the country's constitution and it reflects the historical ties shared between the United Kingdom and the Commonwealth. This is a legacy of the Representation of the People Act 1918—the same legislation that extended the vote to women. We could hardly include some Commonwealth citizens and not others in the franchise. Of course there is a requirement of residency; I need hardly say. It would not be right to start unpicking the constitutional relationship between the United Kingdom and the Commonwealth.

Finally, noble Lords will want to reflect very carefully on how this change would look to the public. I entirely accept the point the noble Lord, Lord Hannay, made that this is not intended to affect the Westminster franchise but I return to the point that I made in relation to the first group of amendments, a point also made by my noble friend Lord Ridley. It is of fundamental importance that this vote is not just fair but seen to be fair. To appear, however innocently and whatever the reality behind the reasons, to be altering the franchise to change the result in some way risks undermining the effectiveness of the referendum. No doubt partly for these reasons, the proposals to include EU citizens in the franchise were rejected by large majorities in the House of Commons.

The noble Lord, Lord Wallace, asked whether I could help the House with how many EU citizens were actually on the electoral register. The statistic I have is that there are approximately 2.7 million EU-born citizens resident in the United Kingdom. The source for that is the World Bank's estimate of migrant stocks in 2010, as updated by the UN Department of Social and Economic Affairs in 2013. I will endeavour to answer that question between now and Report; how successful I will be, I am not sure, but I will certainly endeavour to do so.

I was also asked what would be the consequences for EU nationals were the referendum to result in the United Kingdom leaving the European Union. As the House will know, the Government are confident that they will successfully negotiate a change in the relationship with the European Union and that the Prime Minister will then ask the country to confirm that we should remain a member of the European Union—albeit on somewhat changed terms. So what might happen to these EU citizens is entirely a hypothetical question, but noble Lords may well conclude that it is most unlikely that they would simply be cast loose, as it were, as is suggested.

Lord Higgins: I have been listening very carefully to the debate. Perhaps I may leave a thought with my noble friend. If the unfortunate circumstances arose where it turned out that the result was determined by this particular group or an accumulation of groups which have been controversial, that would obviously raise the question of whether the vote was valid in some people's minds. Is it not therefore important that we should have a very clear definition of what majority is needed to deal with this situation?

Lord Faulks: I think my noble friend is referring to the possibility of some form of threshold. That is not part of the Government's intention by the Bill. The point he alludes to is important, which is the risk, at least, that if EU nationals are given the right to vote—however cogent the reasons may be because of their participation in our national life—and the vote results by a narrow majority in our staying in Europe, the result of the vote may not command the same confidence that I am sure that all in your Lordships' House want the referendum to command. In those circumstances, I ask the noble Lord to withdraw his amendment.

Baroness Miller of Chilthorne Domer: I deeply apologise if while the Chief Whip was talking to me I missed the Minister's response, but I specifically tabled Amendment 18 on what work would be necessary and briefly spoke to it. Perhaps the Minister might be kind enough to address that; otherwise I will need to regroup my amendment with Amendment 14 next Monday.

Lord Faulks: I fear that in order to get a really adequate answer, the noble Baroness may have to regroup her amendment. I endeavoured to say that what might happen to EU nationals was a matter of hypothesis which I fear that the Government are not prepared to go into at this stage.

Lord Hannay of Chiswick: I am most grateful to the Minister for having responded in such a thoughtful way to this amendment, although I have to say that in earlier parts of his statement, I thought he was tempted back again to the reductio ad absurdum he employed on the previous group of amendments. However, we moved on to better ground and he addressed some of the arguments very well. He was very careful, though some others in this debate have been less careful, not to predict that we would know who voted in which way in the referendum, and be able to say, "It was the foreigners that did it". Other Members of this House seem not to know that we have a secret ballot, but we do.

9.45 pm

On the question of numbers, I have a feeling that a really large misunderstanding lurks beneath the water. That is, the 2.7 million—I think he said—at the latest count, presumably includes all the Irish who actually have the vote in this country. In that case, the figures of my noble friend Lord Green will not make much sense, because they already do. As far as I am concerned—and there is nothing on the Marshalled List that suggests the contrary—I will have nothing whatever to do with the proposition that Commonwealth citizens and Irish citizens who have the vote should be deprived of it. That would be absolutely appalling. The anomaly is created by having the Commonwealth citizens in and the EU citizens out. I would like to

remove the anomaly, but not remove the Commonwealth citizens, and least of all the Irish, because removing the Irish would strike at the foundation of our relationship with Ireland and the relationship between the two parts of the island in an absolutely disastrous way.

In moving this amendment—I shall shortly withdraw it of course—I never intended to do that, and I do not intend to do that. I am merely suggesting that the anomaly should be rectified. I think that some of the parallels being drawn with other member states honestly do not stack up. On the question about us having the vote in other people's accession referendums, it is just not like for like. After all, these are countries that are outside the European Union deciding whether to join it. That is completely different from a major country—one of the four biggest countries in the European Union—deciding to leave after more than 40 years. I use the word "consequential" perhaps a little bit too often, but it is a decision with consequences that far outweigh any of these other points. With that, I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11 not moved.

Amendment 12

Moved by ***Lord Green of Deddington***

12: Clause 2, page 2, line 7, at end insert "by virtue of being, under the British Nationality Acts 1981 and 1983 or the British Overseas Territories Act 2002, a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen or a British subject"

Lord Green of Deddington: My Lords, 20 minutes ago, we thought that we would try to get this done tonight. Do your Lordships want to proceed or would you rather do it on Monday?

Noble Lords: Proceed!

Lord Green of Deddington: Okay. The hour is late, and I shall be extremely brief; I think that I can do this in five minutes or so. Let me set out very briefly the reasoning behind my amendments to Clause 2. Your Lordships will be well aware that the franchise in the referendum Bill is based on that which applies to general elections and is the same as for those. As such, it includes Commonwealth and Irish citizens, whether or not they have become British citizens. That is the point. It is nothing to do with racism and nothing to do with xenophobia: it is a question of who is a British citizen. My amendments are intended to base the franchise on that very concept, because a referendum is not comparable to an ordinary general election, which can be reversed five years later.

I believe that only those who have become British citizens should be permitted to vote. It is interesting that this point about the franchise appears to have been waved through in the other place. There was no discussion of it, and certainly no vote on it. We have, as I mentioned, a total of 3 million Commonwealth citizens in this country, of whom 1.8 million are British and will get the vote and 1.2 million are not British, and, I suggest, should not get the vote. I would add to that the 340,000 Irish citizens for the same reason. Of course they can become British citizens—there is no reason why they should not—but, until they do, I do not believe that they should have the vote.

The reason for the present franchise is largely historical, but the opposition Benches might like to recall that in 2007 the noble and learned Lord, Lord Goldsmith, made a report at the request of the then Labour Government on the UK citizenship law. He was a former Attorney-General, and he concluded in respect of the Westminster franchise:

> "Ultimately, it is right in principle not to give the right to vote to citizens of other countries living in the UK until they become UK citizens".

That was a Labour Attorney-General, and no action was taken by the Labour Government. I have been in touch with the noble and learned Lord because I was quoting from his report, and he replied that he could not be here tonight but authorised me to say that he supports the amendments I have tabled. There are three essential reasons for this—

Lord Hannay of Chiswick: I think the noble Lord is doing a little selective quotation from the views of the noble and learned Lord, Lord Goldsmith, who in his report said that the franchise should not be removed from anyone who has it. Would the noble Lord like perhaps to enlighten the House to that bit of the report?

Lord Green of Deddington: The quote was precise. The proposal was that it should be phased out, if that is what you mean—

Lord Hannay of Chiswick: What I am asking is what you mean.

Lord Green of Deddington: Well, what the noble and learned Lord said is that it should be phased out. His view was clearly, as in the bit that I quoted, that those who are not British citizens should not continue to have the vote.

Of the three reasons, the first is the importance of the decision for Britain's long-term future—that is obvious. Secondly, there is the issue of reciprocity, since no EU Government permits British citizens to vote in their general elections, let alone in a referendum, and no Commonwealth country, except New Zealand, permits foreign citizens to vote in referenda. Thirdly, and lastly, there is the need for clarity. This proposal would remove the anomaly that citizens in Malta and Cyprus, as has been mentioned, can vote not as EU citizens but as Commonwealth citizens. With this amendment, they would not vote as either.

There is a further anomaly in that Commonwealth citizens are able to vote very shortly after they arrive in Britain. For example, a Commonwealth student could be on the electoral register in a matter of weeks. There are no formal checks on his or her nationality, or even on his or her right to be in Britain. An electoral registration officer has the right to ask further questions if he believes that that is justified and he needs it

[Lord Green of Deddington]
before making a determination. However, in practice, it very seldom happens because of the risk of appearing to discriminate. So that of itself amounts to a significant loophole, which is surely unacceptable in a matter of such importance. I should mention in passing that Gibraltarians are not affected because they are British citizens under the British Nationality Act and therefore will get the vote in any case.

There has been some discussion as to whether the various groups proposed for the vote are likely to affect the outcome. As far as I know, there has not been any effective polling to tell us how these people might vote, or how many of them would do so. I suggest that that is a further reason to have the franchise on a clear and defensible criterion.

I close by pointing to the need that is bound to arise for reconciliation. As noble Lords will have noticed this evening, there are certain differences between Members of this House, and of course there are very strong differences in the public. Sadly, one side in this argument will have to face a future for this country which is deeply unwelcome to it. That makes it even more important that arrangements for this historic referendum should be above reproach, as the Minister said, in respect of the question, which I think is now settled, of the franchise, which we are debating today and involves millions of voters, and in the use of government resources, which we will discuss later in this Bill.

As the Minister said, any suspicion that the franchise has been manipulated to achieve a particular result would be deeply harmful for many years to come, as the noble Lord, Lord Blencathra, also said. That is why we need a crystal-clear principle for this franchise, and I suggest it should be the following: only British citizens, of whatever origin—it is not a question of xenophobia or racism—should decide Britain's future. I beg to move.

Lord Davies of Stamford: My Lords, I concede very happily that the noble Lord has introduced an amendment, the effect of which—

Lord Kerr of Kinlochard: My Lords—

Lord Davies of Stamford: It is normally the case that we switch sides in debates here. We use alternative sides, I think.

There is no doubt that the noble Lord's amendment restores symmetry and what I called earlier on, in a different context, coherence. He invited me in advance, in the course of the previous debate, to agree to it and to support it. I could not possibly support it. I have no idea whether the noble Lord realises this—I hope he does not realise it because he did not mention it—but his amendment would have the most perniciously destructive effect on our relations with the Republic of Ireland. It would be a breach of the arrangements we have had in place with the Republic of Ireland since 1921, since the time of the treaty, and it would be an explicit breach of the Belfast agreement, which lays down that all citizens of Northern Ireland, who are British citizens, of course, and British subjects, can enjoy full civil rights whether they declare themselves to be Irish or British. This would have a devastating effect. If the noble Lord wants to restore symmetry and coherence, he needs to do what was suggested by the noble Lord, Lord Hannay, and turn the thing around, enfranchise EU citizens who are resident in this country and put them on the same footing as citizens of Commonwealth countries.

Lord Green of Deddington: In that case, will the noble Lord explain why British citizens are not able to vote in a referendum in Ireland?

Lord Wallace of Saltaire: My Lords, this amendment demonstrates more than any other that our franchise consists of a series of historical anomalies and needs thorough reconsideration. We are clearly not going to get that for this referendum, but it is one of many problems with the current structure of our constitution.

I agree strongly with the noble Lord, Lord Davies, that the Irish dimension is extremely important. We all know that the Irish Government are actively concerned about the implications for Anglo-Irish relations of Britain voting to leave the European Union. It would very much be Anglo-Irish relations. I think Scottish-Irish relations might then become rather different, but we will see.

I question how conservative the noble Lord's proposals are. As he notes in the amendment, there is a series of gradations of British citizenship, and full British citizens have a different status from British overseas citizens. I am not entirely clear why someone from the Cayman Islands, for example, or the British Virgin Islands should have the right to vote on our future in the EU, or actually someone from the Channel Islands or the Isle of Man, which are not part of the EU and which pay virtually no tax within Britain, should also be regarded as entitled to vote in a referendum on Britain's future.

Lord Green of Deddington: The noble Lord asks a very good question. People from the islands he mentions—I think they are all islands—would have the vote if they were resident in Britain. The numbers involved would be trivial. This is a de minimis situation. As the noble Lord said, this is a very complex question of nationality, so there is no answer that will be entirely perfect, but I reckon my suggestion is as close as one can reasonably get.

Lord Wallace of Saltaire: If I may tempt the noble Lord a little further, I recall Migration Watch suggesting at one stage that children of immigrant mothers should be counted in our immigrant population. I do not know whether those people are less than fully British.

Lord Green of Deddington: That is wrong.

Lord Wallace of Saltaire: I think I read it in a Migration Watch suggestion. There was a question of whether people born outside Britain really are fully British citizens. I do not press that because I am aware that both Douglas Carswell and Daniel Hannan were

born outside the United Kingdom—one I think in Ecuador and the other in Tanzania—and would lose their rights to vote under this. Wherever we stop we run into difficulties in defining who is fully British and entitled to vote, and who is not. I merely remark that since the concept of British citizenship is itself one of the many muddles we must contend with perhaps we need to be very careful how far down this road we go.

10 pm

Lord Blencathra: My Lords, I want to give tentative support at this stage to the noble Lord, Lord Green, and his amendments. Some of us argued in the previous group that there is no justification for non-British citizens, such as EU citizens, to vote in a British national referendum. Indeed, I think that is the Government's position. All logic, therefore, would suggest that other people who do not have British nationality should not be permitted to vote either. I understand that there are about 3.4 million Commonwealth, Irish and British Overseas Territories citizens in the UK with a right to vote. However, about 1.8 million of these are British citizens and have British nationality. I have no problem with that whatever; indeed, I warmly welcome it. If more people who came to live in this country took British nationality it would possibility reduce some of our other integration problems. To me it is quite simple—maybe noble Lords would say simplistic: if you live here and do not have British nationality then you should have no right to vote in British national elections on a national referendum.

We know how this has come about with the Commonwealth. Many of the Commonwealth voting rights were granted a bit shambolically and haphazardly as Britain decolonised and withdrew from Empire. We understand that. It is a legacy of imperial times and should have no place in our democracy today. We cannot justify a Commonwealth citizen with no connection to the UK, arriving in the UK, registering straightaway and getting a right to vote a few weeks later. No other country in the world does that except ours.

I am now going to make a slightly contrary argument and this is why I say my support is tentative. I think the Government have probably got the right policy in sticking with the electoral roll they suggested. However, and it is slightly hypothetical, if by the end of this process, after ping-pong with the other place we end up with 16 year-olds and EU citizens allowed to vote, it would be outrageous then to allow Commonwealth citizens who are not British nationals to vote. That would be perceived by the British public as really stacking the election. If the 16 year-old vote goes through and is accepted it would then mean that young Commonwealth citizens aged 16 arriving in the UK could quickly register and vote.

I go back to the point that has been made a few times in this House tonight by me—I apologise for making it again—and my noble friends. We want this referendum to be seen as valid, fair and with no jiggery-pokery. If the result is close at a few hundred thousand or a million, then people in this country will look for scapegoats and will blame the various foreigners or young people who have been allowed to vote. I am sorry that the noble Lord, Lord Wigley, is not in his place. He was right to raise the spectre of racism. In the last year because of immigration, asylum and the huge movement of people around Europe we have seen more antagonism in this country towards foreigners than ever before—people perceived as coming here from Europe without any right to do so or the fear of a "swarm". If the message goes out after this referendum that young people from Europe or Commonwealth countries who are not British citizens had the right to vote and that vote is close I am afraid we will have more trouble than we bargained for. It is not a risk worth taking. If we stick with a voting age of 18 and the current electoral register I think that is a workable solution. That is why my support for removing the Commonwealth citizens who are not British nationals is only tentative at this stage.

Lord Kerr of Kinlochard: I can remember the days when the Conservative Party was a very strong believer in the Commonwealth and I rather wish that the noble Lord, Lord Howell of Guildford, was here to join us and give us his views. I am in favour of maintaining Commonwealth ties. My father-in-law, a New Zealand Rhodes scholar, came here as a young man, spent 70 years here, wore the King's uniform in the war, paid his taxes and never failed to vote. He voted in the 1975 referendum. I would think it a pity if people of that kind were denied a vote in this referendum.

I believe that the noble Lord, Lord Green of Deddington, whom I have known for 50 years and regard as a close friend, is completely wrong on this issue. It is uncomfortable to be caught between the noble Lords, Lord Hannay of Chiswick and Lord Green of Deddington, but we are a rough lot in the Foreign Office and I have learned to put up with it. In my view, there is a very serious immigration issue in this country but the issue is how best to integrate immigrant communities, and that is not best pursued by curtailing their rights.

The strongest argument against the amendment is the Irish one. We all know the long, sad history and the importance—and futility—of the settlement. I think that it would be most unwise to think of reopening that issue now, and I hope that the noble Lord, Lord Green, will withdraw his amendment.

Lord Forsyth of Drumlean: My Lords, I support the noble Lord, Lord Green, who made a compelling case. I thought that what we were discussing was not the future of the Commonwealth, our relations with the Commonwealth or our relations with Ireland but how we would give the British people an opportunity to decide whether their future was in the European Union. It seems to me that the noble Lord, Lord Green, is rightly arguing that British citizens and no one else should be the people to make that decision.

I must congratulate the noble Lord. It is the first time that I can remember in 30 years when the noble Lord, Lord Davies, has been reduced to total silence. He was stopped in mid-sentence when it was pointed out to him that in Irish referendums British citizens do not have a vote. If I had been living in Dublin, I certainly would not have expected to have a say—

Lord Davies of Stamford: My Lords—

Lord Forsyth of Drumlean: I will give way in a second but perhaps I may finish what I was saying. I would not have expected to have a say in whether the Irish should remain in the European Union. Indeed, if people like me had had a say and the vote had been narrow, I think that people would have been perfectly justified in arguing that this was a matter for the Irish people and not for citizens of other countries who happened to be resident in Ireland.

I very much look forward to the Minister's reply because I thought that the noble Lord made a number of powerful points, not least—I could see the expressions on the faces of those on the Opposition Front Bench—in bringing to his support the very distinguished former law officer in the previous Labour Administration. We are not here to sort out the problems of the Commonwealth. I very much share my noble friend's enthusiasm for the Commonwealth but that does not mean that members of the Commonwealth who are resident in this country should have a vote on matters that concern our internal affairs and our future as the United Kingdom.

It is very amusing to see this division of opinion between the former mandarins in the Foreign Office. I have to say to the noble Lord, Lord Kerr, that his arguments are, unusually, a little weak, whereas I felt that the noble Lord, Lord Green, made a powerful and persuasive case. I suspect that if most ordinary people in this country knew the position, they would find it deeply distressing and worrying. I give way to the noble Lord.

Lord Davies of Stamford: I think that the Committee will have enjoyed the spectacle of the three great Foreign Office mandarins disagreeing among themselves.

I have to say to the noble Lord that I was not stopped in mid-sentence. I had completed my last sentence and sat down, and, in consideration to the Committee at a late hour of the evening, I decided not to get up again. However, since the noble Lord insists, I repeat that the amendment of the noble Lord, Lord Green, would lead this country into a blatant breach of the Belfast agreement. That agreement laid down that all citizens of Northern Ireland had the same civil rights whether they called themselves Irish or British, or whether they were the subjects of one country or the other. The Belfast agreement did not make any provision for British subjects living in the 26 counties of the Republic of Ireland. Maybe it should have done but it did not. The fact is that proceeding with the noble Lord's amendment would lead us to a breach of a major international agreement, with all the consequences that would flow from that.

Lord Forsyth of Drumlean: The noble Lord has not dealt with the fundamental point, which is that we do not have a vote in Irish referendums. I have an Irish son-in-law, and I will ask him, but I would be very surprised if people on either side of the border in Ireland lie awake at night worrying about whether or not they might have a vote on the decision that Britain has to take as to whether or not it wishes to remain part of the European Union. That is a pretty poor argument, given that we are concerned here with enabling the British people—British citizens—to decide the future of their country in a referendum in a way that is seen to be fair and equitable.

Lord Hannay of Chiswick: I honestly think that the noble Lord is treating in a very light-hearted fashion an extremely serious matter. I have had quite a lot of dealings with the Irish dimension in the context of the Government's repatriation of some justice and home affairs legislation. If the noble Lord does not think that people are losing sleep on both sides of the border about the possibility that Britain might not be in the European Union, I am sorry, but he has not been reading very much. They are losing a great deal of sleep about that. If that were to result in the reinstallation of border controls, for both people and goods, the results could be pretty disastrous. A lot of sleep is being lost. If we were to move in the direction that this amendment proposes, it would merely increase the agitation.

Lord Forsyth of Drumlean: It is interesting that the noble Lord is anticipating that we are going to leave the European Union. I did not say that they were not losing sleep over whether or not we would leave the European Union; I said that I doubt they are losing sleep over not having a vote in the British referendum, which is an entirely different point. I am by no means making light of our relationship with Ireland; I think it is very important. However, what people in Ireland are losing sleep over is the amount of money and the destruction that their membership of the euro has cost them. But that is a debate for another day.

The hour is late. I support the noble Lord, Lord Green, and think that the oblique nature of the attacks on his arguments, rather than dealing with the substance of the amendments, indicates that this is a matter that we should return to at a later stage in the Bill.

Lord Lexden (Con): I would like to make a small point of clarification, if I may, as far as the Irish Republic is concerned. At some point under Mrs Thatcher's Government—I cannot remember the exact year—the Government of the Irish Republic extended to British citizens living there those voting rights that Republic of Ireland citizens have here. If British citizens are excluded from a referendum in the Irish Republic, it is because there is a separate electoral roll for that. As far as parliamentary elections are concerned, we are on all fours with the Irish Republic and have been for some years.

Lord Wallace of Saltaire: May I ask a factual question of the Minister, which, again, he may not be able to answer immediately? Are we sure that we can identify on the British electoral register who are British citizens, who are Irish citizens and who are Commonwealth citizens? I am not aware, from my time looking at electoral registers, that these are listed separately. If they are not listed separately, would it be possible to identify them between now and a referendum that might be in six or 12 months' time? That seems highly relevant to the ability to apply this amendment, if passed.

Lord Collins of Highbury: My Lords, if noble Lords are concerned that including Commonwealth and Irish citizens will bring the result of the referendum into question, they might then look back to last May and wonder what happened in the general election. Are we questioning the result of the general election because of their involvement in that franchise?

10.15 pm

There is a serious point here. My noble and learned friend Lord Goldsmith produced a really excellent report about British citizenship, how we build up rights and responsibility and what it means to be British. Actually, his view was that entitlement to vote was an important element of that. I accept that; it is a good point. My noble and learned friend was starting a debate. He laid out some very clear analysis and offered up some alternatives. But, as the noble Lord, Lord Hannay, said, he did not simply say, "This is what we must do". Let me quote him:

> "In making this clear link between citizenship and the right to vote which, in principle, would make sense, there would need to be transitional provisions retaining the right to vote for those who have it now—whilst removing the right of new entrants to have it".

That is a clear statement that there is not a cut-off point and change straightaway. When we debate this issue, there is a clear distinction between extending the franchise and removing somebody's existing entitlement.

Lord Green of Deddington: Did the noble Lord hear me say earlier that I have a letter from the noble and learned Lord, Lord Goldsmith, which supports my amendment?

Lord Collins of Highbury: I did. I spoke to my noble and learned friend over the weekend and made it clear that we would not support these amendments, for the reasons that I am now stating. I do not want to delay the Committee any longer. Noble Lords have made their points, and the Minister talked about the arrangements since 1918. We have also made the point about the Good Friday agreement and the impact on that. I would be very keen to hear the Minister's view about the impact on that agreement, and what the amendments might do to it.

I come back to the basic point that we need a debate. I hope that the report by my noble and learned friend will be reopened and reconsidered so that we have a debate. However, my noble and learned friend was not saying that we should take away people's current entitlement. That is why the amendments cannot be supported.

Lord Faulks: My Lords, the purpose of these two amendments is to restrict the franchise for the EU referendum so as to prevent Commonwealth citizens who are the citizens of a country mentioned in Schedule 3 to the British Nationality Act 1981, and Irish citizens who are resident in the UK, from voting. As the Committee will be aware, this referendum will use the franchise for parliamentary elections, which includes this category of Commonwealth citizens—for example, citizens of Australia, New Zealand, India and Kenya—and Irish citizens who are resident in the UK.

This is fair and consistent with the precedents Parliament has previously agreed. For example, this franchise was used for the UK alternative vote referendum in 2011. It is also the franchise set out in the European Union Act 2011, which some noble Lords may remember, which provided for a referendum in the event of transfer of powers and competencies in certain circumstances. It was initially opposed by the Labour Party, but then, I think, there was a change of heart and Labour decided to support the legislation after it had been passed.

The Representation of the People Act 1983 refers to those entitled to vote at United Kingdom parliamentary elections. They include resident Commonwealth citizens and citizens of the Republic of Ireland. "Commonwealth citizens" is a wide term. The categories of persons who fall within the definition of "Commonwealth citizens" are set out at Section 37 of the British Nationality Act 1981. Commonwealth citizens include British citizens as well as those with other types of British nationality, including, for example, British Overseas Territories citizens and British subjects, as well as citizens of those countries listed in Schedule 3 to the Act.

The Act also sets out that, in order to be entitled to register to vote, a Commonwealth citizen must either have leave to enter the United Kingdom or to remain under the Immigration Act 1971, or not require such leave. Citizenship of the country of residence is the normal prerequisite for the right to vote in the elections of that country in most democracies. However, the rights of Irish citizens, and this particular category of Commonwealth citizens, in the United Kingdom are slightly different.

The reason for granting Commonwealth citizens and Irish citizens the entitlement to vote and stand in United Kingdom parliamentary elections lies, as a number of noble Lords have said, in the historical ties we share—as the noble Lord, Lord Wallace, pointed out. In the past, citizens of Commonwealth countries and Ireland were British subjects. As countries have attained independence, the rules on franchise have been maintained and updated. In the case of Ireland, there is a long-standing agreement of reciprocity of voting rights between the UK and Ireland.

When the British Nationality Act 1981 came into force the then Government gave an undertaking to preserve certain rights of Commonwealth citizens resident here, and this included the right to vote. I should remind the House that at a conference held in 1947, the United Kingdom and the Dominions agreed that each should recognise the others' freedom to devise their own nationality laws, but that all persons identified by such laws as citizens should continue to hold the common status of British subject. Ireland also took part in that conference and a special status was laid down for the benefit of its citizens.

It was agreed that citizens of one country of the Commonwealth who were resident in another country should, within the limits of the new citizenship system and as far as local conditions allow, be given all the rights possessed by citizens of the country in which they are resident. As I have already pointed out, Malta and Cyprus are EU member states but are also members of the Commonwealth and, if they meet the requirements that apply to Commonwealth citizens, they can vote.

[Lord Faulks]

On the occasions when it has considered the issue of Commonwealth and Irish citizens' voting rights—I understand that the noble Lord, Lord Green, said that it was not considered when the matter went through the other place—Parliament has taken the view that this should not be changed. We say that the referendum is not the place to disturb this franchise. There has been reference to what the noble and learned Lord, Lord Goldsmith, said in 2008 in his citizenship review. I had understood that the passage quoted by the noble Lord, Lord Green, suggested that it was right in principle not to give the right to citizens of other countries until they became UK citizens. That ought to be seen in the context of a wider debate about what it means to be a United Kingdom citizen. I am not suggesting that any vote should be taken away from those who already have a vote for those long-historical reasons. However, it is a view that he has extended by saying that he supports the amendment, and perhaps we will hear his views on Report on that matter. He is entitled to have them. There are strong, historic reasons which we say mean that we should maintain a historic connection and a historic franchise.

Suggestions have been made, both inside and outside Parliament, that one franchise or another would influence the vote in this referendum. I entirely agree—at the risk of repetition—with all those who have said, whether fanciful or not, that any suggestion of changing the franchise might be to the effect of altering the result and needs to be avoided. The referendum should command support. I remain of the view that we should maintain our parliamentary franchise for the EU referendum and continue to include Commonwealth citizens of the countries listed in Schedule 3 to the British Nationality Act 1981 and Irish citizens as part of this.

Lord Forsyth of Drumlean: Can my noble friend confirm, so that we are clear, the position with respect to referenda held in Ireland? Would British citizens living in Ireland be entitled to vote in Irish referenda or not?

Lord Faulks: I do not believe they would, but in case that is not an accurate answer I will correct it.

Lord Forsyth of Drumlean: If that is the case, what does reciprocity mean in this context?

Lord Faulks: Yes. There is reciprocity. If a British citizen lives in Ireland they have the right to vote there, but not in a referendum. The position is, therefore, that there are long-historical links. The noble Lord, Lord Wallace, asked a question which I cannot answer now. However, I shall endeavour to provide the answer in due course. The amendments have once again provoked an interesting debate, but in the final analysis I suggest that we should stick to the parliamentary franchise, and I ask the noble Lord to withdraw the amendment.

Lord Green of Deddington: I thank noble Lords. It is late enough. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendment 13 not moved.

House resumed.

Welfare Reform and Work Bill

First Reading

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

Joint Committee on Human Rights

Message from the Commons

A message was brought from the Commons that they have appointed a Committee of six members to join with the Committee appointed by the Lords as the Joint Committee on Human Rights.

House adjourned at 10.26 pm.

Grand Committee

Wednesday, 28 October 2015.

Arrangement of Business

Announcement

3.45 pm

The Deputy Chairman of Committees (Lord Brougham and Vaux) (Con): My Lords, I do not think there will be a Division, but if there is we will adjourn for 10 minutes.

Enterprise Bill [HL]

Committee (2nd Day)

3.45 pm

Relevant document: 9th Report from the Delegated Powers Committee

Clause 4: The SBC complaints scheme

Amendment 16

Moved by ***Lord Mendelsohn***

16: Clause 4, page 4, line 27, at end insert—

"( ) A complaint under subsection (3) may be made anonymously."

Lord Mendelsohn (Lab): In moving this amendment, I will also speak to Amendment 33. I will also express support for Amendment 19, from the noble Lord, Lord Stoneham. These amendments relate to confidentiality and how the Small Business Commissioner should act in relation to such matters. Amendment 16 ensures that complaints to the commissioner are made anonymously and Amendment 33 governs the conduct of the commissioner in relation to the confidentiality of discussions, documents and other matters relating to complaints. Of course, this assumes a degree of discretion—which is difficult to see, given the tight drafting of the current legislation—and indeed judgment from whoever is the Small Business Commissioner. On this side of Room, we are still reeling from the news that even people in exalted office have considered this role for themselves, so we believe the job will be taken by someone who has a degree of judgment.

These provisions deal with two important situations. The first is where a complaint is made in circumstances where a particular company is unable to pursue it for a variety of reasons, where its particular experience could be interpreted in a variety of ways and where there may be something of a pattern. A Small Business Commissioner can be empowered because small businesses are able to provide details that the commissioner can draw broader lessons from. The second situation is much more pernicious—where there is a real and genuine fear of retribution.

We have a strong evidential base for the proposition that the fear of retribution is causing problems in bringing forward complaints to regulatory authorities and adjudicators, especially about payment terms. The example of the Groceries Code Adjudicator, of course, springs to mind. It has been established for five years and operating for two, and it has a chief executive. It has had an unfortunate mishap with confidential information in recent times.

Following the release of some details, we have been able to identify that such concerns are widespread. In a survey produced for the Groceries Code Adjudicator, the issues that suppliers had could be identified. They were not just about delays in payment, which was a significant problem, but about such things as variations of supply agreement, the terms of supply, unjustified charges for consumer complaints, the obligation to contribute towards marketing costs, and lack of compensation for forecasting errors. The issue of payments as a condition of being a supplier was also remarkably similar to that of late payments. The range of issues that were dealt with covered a multitude of sins, most of which are not covered by the Small Business Commissioner. Even taking account of all those circumstances, the Groceries Code Adjudicator's public response made it absolutely clear that the fear of reprisal is still the single biggest inhibitor to raising a case; indeed, one-fifth of those surveyed would not raise a case at all for fear of retribution. There are even larger problems when we take into account concerns about the adjudicator's ability to address asymmetries of power.

This is not just about the fear of retribution, but confidence that the Groceries Code Adjudicator can maintain confidentiality or even do anything, given the strength of the businesses with which she is dealing. This issue came to the public's attention when the adjudicator admitted recently that fear of retribution was probably her single biggest challenge, the biggest reason why suppliers did not raise issues with her, and that these matters had to be dealt with. Christine Tacon said at a conference in London that building trust with suppliers to encourage them to raise these issues is a major challenge for her. The measures we are discussing would give the Small Business Commissioner much greater ability to address these issues, and the means—or part of the means—to do so. We strongly believe that it is very important that the commissioner be able to gain the confidence of suppliers, maintain confidentiality, use discretion, address these issues and find better ways to resolve them. I beg to move.

Lord Stoneham of Droxford (LD): I do not think there is much more to say than was said by the noble Lord, Lord Mendelsohn, in introducing these amendments. Amendment 19 stands in my name and I support all three amendments in the group. They are all about confidentiality and discretion. I am sure the Minister will support them as well because the principal problem is how you get people to complain, or at least raise problems, if they fear that doing so will affect their business and associated relationships in the future. If we want the office of the Small Business Commissioner to work and to enable them to do their job properly,

[Lord Stoneham of Droxford]
we need to address this important issue. Confidence and discretion must be maintained unless the complainant agrees otherwise.

Viscount Eccles (Con): My Lords, if there are very few complaints, I suppose that everything is operating well in markets. Anonymity and fear might make a very good PhD subject for someone but I do not want to concentrate on the psychology of this issue. We have the example of two and a half years' operation of an anonymity provision in a similar Act of Parliament: the Groceries Code Adjudicator Act 2013, in which anonymity features quite significantly. I would be most grateful if the Minister brought us up to date on how this concept of anonymity is working, because during the passage of that Act there was a good deal of debate about it and we thought it might prove quite difficult to enforce. How is she getting on with the concept of anonymity?

Lord O'Neill of Clackmannan (Lab): Will the Minister also take account of the fact that one of the big problem areas in relation to payment is the construction industry, which has a dreadful record of blacklisting the people who work in it? We are talking about something not dissimilar here—people simply being erased from future contract applications if they have a record of causing difficulty and asking questions.

I realise that it is not the same issue, but I am talking about an industry—the construction industry—in which there are a lot of problems relating to payment. That people could be discriminated against on the basis of having made complaints is not that different from the case of shop stewards who have energetically defended their members' health and safety rights on building sites in the recent past.

Thankfully, we are moving away from the blacklisting of workers in the construction industry. However, the people who did the blacklisting are the same people who could well take advantage of those whose anonymity was not quite as dark and complete as we would like it to be. When these complaints come up, you do not need two eyes to work out who has been making them. It is an issue of some sensitivity, and the Government need to be sure that people will not suffer as a result of trying to get a legitimate settlement for a grievance. In some industries there is a record of discriminatory handling of people with justified complaints, which puts their businesses in jeopardy. I therefore hope that the Minister will take account of that in her response.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills and Department for Culture, Media and Sport (Baroness Neville-Rolfe) (Con): My Lords, I thank noble Lords for their amendments and welcome my noble friend Lord Eccles to our debate. I also thank the noble Lord, Lord O'Neill, for the points he has made about the construction industry. I think we will come on to talk about the construction industry more fully, because at the moment it is not really covered.

Some small businesses which raise complaints may indeed fear that this could affect their commercial negotiations negatively. That is the underlying point. Noble Lords therefore rightly raised points about anonymity, confidentiality and fear of reprisal and shared with the Committee the experience of the Groceries Code Adjudicator. Indeed, I remember when I was regulated—by a regulator that no longer exists, so I can probably mention it—getting the confidential figures for another supermarket by mistake, and the pleasure with which I rang them back and said, "By the way, these aren't ours—you've obviously got the schedules muddled up". I am sure that these things do not happen nowadays, but that underlines the difficulties.

Small and larger businesses must have faith in the commissioner and their processes. For the commissioner to make sound recommendations, both parties also have to have meaningful input into the inquiry, which, in a sense, is the rub. We agree with Christine Tacon that it is crucial that the commissioner builds trust. I would like to develop our thinking on the Groceries Code Adjudicator a little more fully and perhaps will write to my noble friend Lord Eccles.

Amendment 16 provides for totally anonymous complaints. However, to consider a complaint properly the commissioner may need further information from the complainant. Without knowing who the complainant is and being able to contact them, the commissioner may be unable to address the complaint—that is the difficulty we are in. As regards the advice and information function, we expect, for example, to be able to afford some anonymity where an inquirer has a general query; that is relatively straightforward. We will ensure that our user-testing of the web portal, which I promised on Monday, informs the extent of anonymity that is possible within that context.

On Amendments 19 and 33, I agree with noble Lords that there must be safeguards against the commissioner identifying a complainant to third parties. That is why Clause 8, on confidentiality, restricts the commissioner's scope to disclose information. However, for the reasons I have already explained, we believe it will generally be appropriate to identify the complainant to the respondent. It is right that a respondent should know who has complained so that they can respond fully. Amendment 33 would go further and require consent for the sharing of all information pertaining to a complaint, including to the respondent. This would be disproportionate.

I should add that in comparing notes with the Australian small business commissioner, we found that he had taken an approach to anonymity similar to the one we are proposing. I hope that I have been able to reassure the noble Lord, and that he is willing to withdraw his amendment.

4 pm

Lord Mendelsohn: I thank the Minister for those comments and will just make a few points in reply. It is a limited pool, but we illustrated some of the lessons that can be drawn from the Groceries Code Adjudicator for various reasons. The situation is slightly different but, when it comes to what the consequences and fears are, the numbers are so stark that it gives us some sort of base. The important point to note is that if the Small Business Commissioner had the same uphill struggle to get anywhere near the velocity we need to

make this work, the situation would be extremely difficult. The difference between the Groceries Code Adjudicator and what we are trying to do here is that, as the adjudicator said at the London conference to try to convince suppliers, she has a legal duty to protect them. That is a very important principle, which we think should be considered. If someone with a legal duty to protect suppliers is not able to engender that sort of confidence after this long, the Government should consider that point in due course.

The Minister finished a little too quickly—I was about to whip out Mark Brennan's article on mediation. In mediation it is absolutely essential that you do not have conditions of anonymity, largely because the process of mediation is about coming to a commercially realistic solution, in keeping with our suggestion that a degree of compromise is required. However, the small business commissioner in Australia does take anonymous complaints, in order to be able to identify potential patterns, and does have greater powers to look at such issues and learn broader lessons. That helps to inform the rest of their activities.

However, I see that we have a chink of light. I was not particularly happy, given that we have been trying all along to get the Small Business Commissioner a little more discretion and the ability to consider matters in the round, that one of the measures was described as "disproportionate". That is not our intention—we are encouraging discretion. I hope that in due course the Government may be able to consider these matters in a fresh light. Given the Minister's comments, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendments 17 and 18 not moved.

Clause 5: Enquiry into, consideration and determination of complaints

Amendment 19 not moved.

Amendment 20

Moved by ***Lord Mendelsohn***

20: Clause 5, page 5, line 35, at end insert—

"( ) Where the respondent fails to provide information voluntarily, the Commissioner has the authority to investigate and enforce compliance with information requests on contract terms."

Lord Mendelsohn: My Lords, in moving Amendment 20, I will speak to Amendments 21 and 22 and address some of the issues relating to Amendments 23 and 31, in the name of the ever-present and astute noble Lord, Lord Stoneham. This cuts to the very heart of what we are trying to get the commissioner to do: how the commissioner can operate most effectively and what some of the powers are that make the whole system work. This is very important to consider in the light of the narrow focus of the objectives in the short term and the hope that the office will establish objectives that will make a big difference to small business over time.

Amendment 20 would provide greater power for the commissioner to investigate and call for information. Amendment 21 would reinforce this by specifying the breadth of areas where they can call information from: government departments, local authorities, public sector bodies and companies. This is largely because there are very few powers available in the Bill, and the ability for another organisation to frustrate the commissioner is clear. So in our view, Amendment 22 is extremely important because it provides what is in a sense a lever which encourages people to go through a process of mediation.

The objective of the office of small business commissioner—in a sense, the classic design—is to enhance competition and a fair operating environment for small businesses. The investigation of small business complaints, business behaviour and facilitating the resolution of disputes form the core, whether or not that involves greater accessing of information and education, influencing government and their agencies to be much more focused on small business, or even acting as an advocate for government. But at its very core, the function of helping disputes gain some traction and thus resolve matters for small businesses is extremely important. These underpinning powers give it the force to make sure it can get to the heart of any matter, and that it has sufficient leverage to encourage some form of mediation. The Small Business Commissioner needs a power to encourage as well as to discourage.

The cost of a dispute for a small business is not just the financial costs but lost business and the cost of pursuing any resolution, such as legal costs. There is also a considerable opportunity cost, and a great deal of stress. The opportunity costs include what would otherwise have been achieved for the business in terms of time and effort. So, if a small business which is resolving a dispute takes someone out of the business, added to those costs is the disruption caused for the operators themselves.

Small business disputes face a particular difficulty, which is that they do not generally arise in the ordinary course of operating such businesses. They are periodic and emerge in unusual circumstances, and accordingly small business operators may not identify an emerging dispute until quite late on in the process, and might not have developed the skills to resolve the dispute. Through the early identification of emerging disputes, financial costs can be dealt with easily, incurring much less of a burden for both parties; and it also means that relationships that are critical to running small businesses can be maintained.

As we have seen with previous legislation, a small business commissioner and effective alternative dispute resolution operate speedily and at low cost. We would hope that the Government would consider mediation to be an additional tool that could be used over time. It is an informal and collaborative process and is generally of far greater benefit to small businesses, principally because it facilitates parties continuing their commercial relationships. Also, the potential costs of legal proceedings outweigh what small businesses would gain from the dispute. Long, drawn-out legal proceedings with the possibility of appeal may also hinder the parties so that they do not deal with each

[LORD MENDELSOHN]
other commercially while the action proceeds, and the breaking of the business relationship is likely to persist. Accordingly, in alternative dispute resolution a strong emphasis is put on things which can be signposted by the Small Business Commissioner, such as those which they can supervise or take some sort of role in. This encourages the parties to be commercially realistic rather than intransigent, and to seek an outcome that is not 100% in favour of one side.

In order to create such a role, it is clear that some kind of lever is required. Amendment 22—my particular favourite—states that if one party is uncooperative or is unwilling to go through sensible mediation, the Small Business Commissioner can provide a commentary that will be taken into consideration when the question of costs is considered if that matter goes to litigation. Australia is a good and successful example of the use of this power, which helps to ensure that the parties come to a resolution. A small business can rack up massive costs when the Small Business Commissioner has reached a firm conclusion, and we have seen how resolutions can be reached over time much more collaboratively, in keeping with the intention of maintaining good business relations. That is not axiomatic; there are of course provisions for the court to take different views and provide protections, so that people do not game the system. But the notion that a small business commissioner, using their discretion, can ensure that someone comes to the table in a co-operative and collaborative spirit, and that all parties take a sensible view, underpinned by the idea that someone else will be accountable for costs, is a considerable and beneficial power.

All in all, we are hoping to the narrow focus of the Small Business Commissioner. The Bill already narrows who it covers, who it deals with and what it can do in general. The Small Business Commissioner, by the very definition of a small business—by the exclusion of large entities being able to contact it; by its roles and functions, its capacities and flexibilities; in providing no scope to deal with local authorities; by its staffing, its capabilities and the unusual power that the Secretary of State has to abolish it; and by its levers for enforcement and information—relates only to a small proportion of the type of disputes that can be dealt with. On late payments, it is already narrowed by the legal definition of the contract terms it can cover. It deals only with disputes with large businesses, even if large businesses are a consequent part of the step. It excludes the public sector and most contract term variations, along with anything that can go through an alternative complaint procedure.

As we near the end of these clauses, I am hoping that, while we have not been able to address such issues, the Minister might be sympathetic to giving the provision greater teeth and flexibility, so that progress can be made. I beg to move.

Lord Hodgson of Astley Abbotts (Con): My Lords, I have some sympathy with this amendment. It offers the possibility of speeding up the process of resolving complaints. For the respondent—that is, the person about whom the complaint has been made—time is his friend. He has the money so the longer that he can spin it out, delay and obfuscate, the better. The complainant may lose heart and give up, but in any case in the mean time he hangs on for money. There may be occasions when the Small Business Commissioner says, "Actually, if we could get that particular piece of information, we could resolve this. We could cut to the chase and reach a resolution". Up to that point, the respondent could have been trying to flatter to deceive, appearing quite helpful and giving lots of answers, but not actually giving the answers to the questions that were relevant to the point at issue.

I think that the noble Lord, Lord Mendelsohn, has made a good point. I would like to see us find ways in the Bill to facilitate the speeding up of this process by the Small Business Commissioner being able to cut through the Gordian knot—if he believes that such a situation exists—by requiring that information which has not been offered voluntarily can be compelled to be disclosed with a view to making his job and the whole process work more efficiently.

Lord Stoneham of Droxford: I, too, lend my support to this series of amendments. I have a particular interest in Amendments 23 and 31. I will not bother to repeat all the arguments made by the noble Lords, Lord Mendelsohn and Lord Hodgson, because I support them entirely. On Amendment 23, throughout our debates I have expressed concern that there just was not sufficient power or clout at the end of the process for us to encourage a resolution, and indeed to encourage people to complain. If someone is dealing with an intransigent company or organisation and they think there are no sanctions at the end of the line, they may well think there is not much point in raising the issue, because the company or organisation will continue to be intransigent.

Amendment 31 deals with the end of a process where it is clear to the commissioner that they are getting repeated complaints about a particular organisation, and it is failing to apply any of the recommendations they have made. At that final stage, the commissioner should have some power. I accept that this may not be completely refined yet, but I hope that the Minister can respond on that point.

The commissioner should have some final power to recommend to the Minister, the Secretary of State or whoever is appropriate that there might be some final sanction that can ensure compliance. This would give the complainant the motivation at the start of the process to get involved with the Small Business Commissioner, and the company that is the source of the complaint some incentive to resolve the matter. Otherwise, there is a danger that the credibility of the organisation and the work of the commissioner will be undermined.

4.15 pm

Viscount Eccles: My Lords, briefly, Amendment 31 seems to introduce a new dimension to the responsibilities of the commissioner, quite apart from the matter of fines, which I would not be in favour of. In the small business sector, lots of businesses are being formed, but lots, I regret to say, are going out of business. That also applies to their customers—the larger businesses.

Plenty of them get into trouble from time to time. Repeated failure to pay an invoice may be simply a signal that the invoices are never going to be paid. If one is not careful, the idea that the commissioner should become responsible for credit checks and for a whole host of commercial interventions completely changes the situation.

As I understand it, the commissioner is there to look in particular at the question of late payment as a cultural issue, and to change the culture in a business which appears to have worsened in recent years. I can understand that, but the minute that we start to get into the detailed financial circumstances of individual businesses, the commissioner is in real trouble.

Baroness Neville-Rolfe: I thank noble Lords for their comments. I emphasise that the Government consider that a punitive approach involving compulsion or financial penalties in the round is not the right one to take if the commissioner is to contribute to culture change in payment practices. We want the commissioner to develop trust and have credibility with small and large businesses alike. The commissioner therefore couples an approach of building the confidence and capability of small businesses to assert themselves with proportionate powers to disincentivise unfavourable practices. Notably, this will be through the power to publish individual reports which can name respondents and draw attention to themes and issues in the annual report.

Turning to Amendment 20, the commissioner has the power in our clauses as drafted to ask the commissioner or respondent to provide voluntary information or documents relevant to a complaint. The amendment seeks to force a respondent to comply with such a request where it concerns contract terms and gives the commissioner a power of investigation. Diligent businesses will want to engage constructively with the commissioner and will not need to be forced. They will be keen to make sure that their small suppliers are being treated in a fair and reasonable way. That makes good business sense. They are being investigated by the Small Businesses Commissioner. Secondly, they will want to protect their reputation and avoid being named and shamed. Anything more heavy-handed would introduce an adversarial and legalistic element to the process. I was interested to hear from my noble friend Viscount Eccles that he felt that that was the right way to go.

Turning to Amendment 21, the handling of a complaint is primarily a matter for the complainant, the respondent and the commissioner. However, if third parties including Government have material relevant to a complaint, there is nothing in the legislation that prevents them approaching the commissioner with such information.

Turning to Amendment 22, which the noble Lord, Lord Mendelsohn, referred to as his favourite, the commissioner has broad scope to recommend steps which he or she considers could remedy, resolve or mitigate issues in complaints. We intend that the commissioner will support small businesses' use of alternative dispute resolution. The commissioner could, for example, recommend mediation, which, as the noble Lord said, is generally much more expensive, and hopefully quicker, than a long drawn-out legal case. But it is not considered appropriate for the commissioner to require parties to engage in mediation, directly or indirectly. This includes giving the commissioner power to influence costs in litigation where mediation has been refused. Rather, the Government consider that it is the role of the court to determine costs in legal cases. Legal cases are already expected to be conducted at a proportionate cost, and there are of course mechanisms to keep costs reasonable in the courts.

My Lords, we do not believe it right to make the commissioner's recommendations legally binding—an issue addressed in Amendments 23 and 31. Requiring a party to provide an outline of costs for litigation would require the party to engage with the process and strategy of litigating—for example, looking into instructing lawyers—whereas our aim, as I have said, is to encourage alternative approaches to litigation. Of course, courts may consider a party's refusal to mediate to be unreasonable, and can address this when considering court costs.

We also agree that it is important to encourage the two sides to come together. We believe, however, as I said at the start, that a punitive approach to costs is not the right way. Stakeholders told us in our consultation that the gaps in knowledge about alternative dispute resolution was the key issue, and we have obviously respected that feedback. The primary intention is that the commissioner will make recommendations that enable the parties to resolve the dispute, rather than being an arbitrator. In certain cases, the commissioner may be considering lawful, if unfair, acts. To accept these amendments would effectively allow the commissioner to create rules on what is and is not good payment practice—quasi-legislating—and this is not the role of the office as we see it. Rather, the Government believe that it is vital that the commissioner build up a position of trust and influence with all parts of the business community.

As is obvious, I do not really agree with the move to broaden the role of the Small Business Commissioner. As I said on Monday, I believe that focus is what we should go for, but I will of course read carefully our various discussions. However, I am not persuaded that, despite the eloquence of the noble Lords who have spoken—including the noble Lord, Lord Hodgson, who made some points about incentives—we would be right to change these provisions.

Lord O'Neill of Clackmannan: Before the Minister sits down, could she perhaps explain something to me? I understand that the commissioner's approach is broadly similar to that of an ombudsman, but it goes a little further in trying to resolve the disagreement. However, we have already suggested that, if this process is successful, a lot more people than the anticipated figure of 500 may well come forward with complaints. Within that, there may well be recalcitrants who will not honour their obligations.

Does the Minister envisage a situation in which, if this softly-softly approach does not work as well as she would like, it would be appropriate for the annual report—which we might not see but she certainly will—to require legislation? Regulation and legislation are the last resort, we all accept that. But we would not

[Lord O'Neill of Clackmannan]
want to have the door closed and locked, so that it takes a considerable number of years for us to return to this issue.

It has taken a long time for us to get this far on questions of payment. I suspect that the legislative programme of successive Governments may well be such that it will take them an equally long time to return to it. Therefore, we need to have from the Minister at least some kind of veiled threat of legislation if the conciliatory approach does not work. There are some very nasty people who are not paying their bills or meeting their requirements. I am not sure if ear-stroking in itself will be the ultimate answer to this problem.

Baroness Neville-Rolfe: I am grateful to the noble Lord for his intervention and the opportunity to say that the commissioner can raise issues about his powers in the annual report, which, as I said on another occasion, will be available to Parliament, and which we have to table in Parliament unamended. He also has the power to name and shame, so he can publish the report and comment. The Australian commissioner is getting a lot of airtime, but he has found that that power has been useful in the conversations he has had in Australia on difficult cases. That will therefore help a lot and will help to change the culture, as I was saying on the Floor of the House this afternoon. There is also a review of the success of the commissioner, which I think some noble Lords questioned on Monday, two years after the coming into force of the Bill—assuming that noble Lords agree it—and then every three years. Therefore, that also gives us another opportunity.

This is a novel area, and we are moving forward in uncharted territory. We are bringing in a number of changes. I remember that when I dealt with planning in the 1980s as a civil servant, we made what seemed like quite small changes to the regime of planning, which obviously was in guidance, and that had a huge effect. My own view and hope is that these changes that we are making on transparency, payment terms—following the EU directive that I was talking about this afternoon—and of course on this vital Small Business Commissioner, will make a big change to the landscape.

Lord Mendelsohn: I was disappointed by some of the Minister's comments at the very end, because arguments were set up which we clearly have not made or would make, and nothing we have said during the entire course of these proceedings would suggest that we would make such points. We think a weakness is that we have not learned the lessons—from Victoria to Queensland to New South Wales, to the Australian commissioner. Mediating one case does not establish a rule; it will not do in Victoria, Queensland—no one has ever suggested such a thing and it was wrong to suggest that we would. Similarly, the court determines costs and the Small Business Commissioner can make a particular point. The Minister presented a whole series of arguments which are wrong.

I will focus on reputation and naming and shaming. I accept that the Government think there is some huge benefit to this, saying that we can deal with naming and shaming and reputations, and that it is some kind of Aladdin's lamp. However, frankly, people need a little more, and the noble Lord, Lord Hodgson, made exactly that point. You can string out an awful lot of the process by not being able to do it. Someone needs a lever so that they can say, "If you choose to frustrate a process and to refuse to do these things, there are other ways you can deal with this. Or, if you feel that you are being strung out, it will not work totally and wholly to your detriment". That is quite important.

The noble Viscount, Lord Eccles, made the point that we should not make a detailed examination of particular businesses. Certainly, it would be extremely concerning if, when every business qualified, a series of checks about its health were made. However, these matters are relevant to how a conclusion is reached. There may well be restrictions when there is a payment dispute, the contract term is a problem and the larger business is willing to change it, but a broader change is required. You sometimes have to get into those issues where you are resolving a case. When a company is going to be named and shamed, its willingness to address that in the circumstances is the sort of issue that will certainly weigh on the Small Business Commissioner. If it found that there was a problem, it would reflect on whether the magic lever of naming and shaming should be applied if the company showed some sort of good faith and good will.

4.30 pm

I have one simple question for the Minister, who has declined to do too much that would give a degree of discretion. These amendments would give some sort of benefit. I would like her to see whether or not a large company could contract lawyers to design a contract that would allow them to carry on with exactly what they were doing, with long payment terms and terrible practices, and that would not come under the Small Business Commissioner. I would like to know that before Report. One of the large magic circle firms has indeed drafted a contract that would exclude any large business from coming under this provision.

The only provisions in this legislation that are outside core payment terms relate to new fees, altering the price of fees agreed, and replacing the payment of a fee that is provided for by a contract but not previously relied upon. They are new areas, and I understand the area of law that they are in. If you establish a contract that has provisions that allow for arrangements freely entered into, there is a huge imbalance and you can design a contract that would exclude large businesses from coming under this ambit. That is my problem with the narrow focus. That is my problem with relying on naming and shaming. That is my problem with relying on the good will of the people involved in this process. The Government themselves have provided the focus on this. They want to deal with the most egregious problems first, and this does not address them. They should at least give the Small Business Commissioner some powers.

Baroness Neville-Rolfe: I will certainly look at the point that the noble Lord makes about avoidance contracts, as it were. I was trying to explain the

amendments that have been put down, partly in an exploratory way, and what effect they seem to have. Obviously, what we are doing is debating these issues and trying to find the right way forward. I am informed that a small business can raise a complaint if the larger company seeks to exclude the commissioner from answering. That is a sort of interim answer to the point that he has made about magic circle law firms seeking to get around what we see as a new conversation between big and small companies, initiated by the Small Business Commissioner so that we can improve the culture and, as he said, deal with the more egregious cases, so that that will change how people behave and we will not have large numbers of cases ending up with the Small Business Commissioner.

Lord Mendelsohn: The point that you can include things is the point that comes before, and the point that where you exclude it is the point where I picked up. For the purposes of brevity, I thought I would leave out the first part but I am happy for the first part to be mentioned in reverse order to where it appears, even in the Government's own documents. Before we come to some very clever amendments that I hope the Minister will be very sympathetic to, all I am trying to say is, at least give the Small Business Commissioner some latitude. Allow it to apply its discretion and encourage people of good standing and with good experience to come forward and use that discretion to good effect, to be able to help small businesses. I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendments 21 to 24 not moved.

Clause 5 agreed.

Clause 6: Reports on complaints

Amendment 25

Moved by ***Lord Stoneham of Droxford***

25: Clause 6, page 6, line 12, leave out "may" and insert "must"

Lord Stoneham of Droxford: I shall also speak to Amendment 26. Amendment 25 is another amendment on the same theme that we have already been discussing: whether the commissioner needs some extra power. The two amendments would principally ensure that a report is published if an inquiry is entered into and that the respondents should be identified.

The reason for putting this proposal forward is that we are again seeking more effective powers and oomph for the Small Business Commissioner. We are assuming that if the complaints scheme is entered into, there will be a period before the initial approach is made for some sort of opportunity for conciliation. Indeed, I would have thought that most issues should be encouraged towards resolution before going into any kind of formal complaints scheme or procedure. As I say, there should be an opportunity for conciliation. To encourage that process and to provide an incentive to settle matters quickly and informally, some pressure should be applied. Once we have entered into the formal complaints scheme or procedure, a report would then be published and the respondent would be named.

The respondent may fear that they would attract unwanted publicity if matters were published in this way, but if the respondent has no concerns that they have done anything wrong and there is nothing they need to put right, they should have no anxiety about this, and that could be another way of applying pressure to get something resolved.

There is one further element to these amendments. There may be examples where the commissioner finds that a particular respondent is using undue pressure arising from its position in the marketplace and, indeed, is benefiting from undue dominance. We think the Bill should state that the commissioner should have the power to notify the Competition and Markets Authority where he or she considers that there is an abuse of market power, so that is an additional power which we are seeking through these amendments. I beg to move.

Lord O'Neill of Clackmannan: This group of amendments is significant, in so far as it is another indication of the change of mindset in the Liberal Democrat ranks. We have seen them voting with enthusiasm against the Government in the past few days, and here we have what must be regarded as a classic example of Opposition Committee stage amendments. Where you see a "must" you make it a "may" and where you see a "shall" you make it a "will". I remember some 35 or more years ago as a young Back Bencher being told that that is what I had to do when I was debating the Committee stage of a Bill in order to scrutinise it properly, but in effect the idea was really to hold up proceedings for as long as possible. That was because in those days, time was the only weapon in the Commons that Oppositions had. I am sure that the noble Lord, Lord Cope, bears the scars of many such confrontations.

This is a basic type of amendment but it is none the less worthy because of that. It offers to put teeth into the legislation, and I think it is useful for us to get a greater degree of accountability—a bit of an edge. As I said earlier, the softly-softly approach is okay, but it should be, "Walk quietly, but carry a big stick". The stick does not have to be used, but the threat is there. The Minister recognises that here is an opportunity to have a bit of cross-Committee co-operation, and may accept what is a modest but none the less worthwhile group of amendments.

I hope that I do not sound patronising, but this has brought back to me memories of the delights of the Augean stables of Scottish secondary legislation, on which I spent many years. I will not sustain the metaphor, but noble Lords will get my point. As I say, the amendments deserve the support of the Committee, because they are well-intentioned and should enhance and give more force to the Bill.

Lord Mendelsohn: My Lords, I add our support for the first of the measures. I thank the noble Lord, Lord Stoneham, for introducing it into our discussions and the noble Lord, Lord O'Neill, for his excellent comments.

[LORD MENDELSOHN]

Amendment 30, in my name and that of my noble friend Lord Stevenson, would give the Small Business Commissioner a role in commenting on access to finance and to make a simple and straightforward case. A number of measures try to increase access to finance, whether they be the provision of overdrafts for very small businesses, forms of growth capital, older forms of asset finance, newer forms of peer-to-peer lending or other forms of finance. Many people look at these schemes and programmes; indeed, committees in this House, the Government and other bodies have looked at the performance of a number of the initiatives that are available and whether they give the right benefits and whether too much is taken out of them.

The purpose of the Small Business Commissioner is to take the perspective of a small business to try to find ways in which such schemes work to best effect on behalf of small business. In many ways, this is our thinly veiled attempt to enable the Small Business Commissioner to be the advocate of small businesses and to take a particular perspective that encourages the voice of those who require access to finance to come to the fore. Where the Small Business Commissioner is able to draw on the lessons learnt from resolving disputes—where there are broader lessons, challenges and problems—those comments can be made. Invariably, the problem is not just about cash flow. If you have a problem with cash flow, access to finance will be the crucial test of whether you are able to survive.

Lord Hodgson of Astley Abbotts: My Lords, I just want to say a word about Amendment 30, to which the noble Lord, Lord Mendelsohn, has just spoken. On Monday, at our first meeting in Committee, I said that I thought that the SBC role had been drawn in a way that is a bit too focused, but I say to the noble Lord that Amendment 30 would take that role well beyond the bounds of what the Small Business Commissioner should be doing. The comments that I made on Monday about payday loans apply equally here. This is not part of his competence. Hundreds of bodies and people make recommendations about how to improve finances for small and medium-sized companies. That is a serious issue, but it is not part of what he should be doing. He is focused on a different part of the field. I am sure that my noble friend will not accept the amendment, as plenty of bodies are looking into the provision of finance to small business and this would be a distraction from the commissioner's central task, albeit that I still think that the central task is a little too narrowly drawn.

Baroness Neville-Rolfe: My Lords, I thank all noble Lords for their comments and the noble Lord, Lord O'Neill, for his humour and for his lessons in how to amend Bills, which will be useful when I return to the Back Benches.

We believe that the commissioner will be able to achieve maximum impact by publishing reports on complaints only if he or she has the discretion when to use this power in a targeted way. Amendment 25 would require the commissioner to publish a report on every complaint that he or she considers. We believe that that is unnecessary. The commissioner may, for example, consider a series of very similar complaints and may find that there is little value in compiling a report for each separate complaint when the activity could be captured instead in the aggregate annual report. In other cases, the complaint might have arisen from very particular circumstances, meaning that the determination had no wider application and was of little public interest. We believe that the commissioner should have the freedom to decide. This is a matter of his independence.

I turn to Amendments 26 and 27. A blanket approach of publishing the names of respondents, as set out in Amendment 26, has the potential to be unfair—for example, when a complaint is not upheld. It could indeed encourage mischievous complaints. Under this proposal, anyone who was complained about would be the subject of publicity. Giving the commissioner the discretion to choose whether to name the respondent will be a real incentive for businesses to work constructively with the commissioner, to pick up on the last discussion. We will see a real change in behaviour being encouraged.

4.45 pm

Amendment 28 would remove the obligation on the commissioner to allow the parties to a complaint to make representations about the publication of a report on that complaint. The right to be heard is an important safeguard to ensure that both parties to a complaint can make their cases and, to recall my earlier example, to allow for necessary accuracy checks to be made before a report is issued.

On Amendment 29, a good point was made about the CMA because the CMA may well find these reports useful in its wider work, but the commissioner does not need a power to send the reports to the CMA. Under the existing provisions, annual reports and individual reports can go to the CMA.

As the noble Lord, Lord Mendelsohn, explained, Amendment 30 would allow the commissioner to make recommendations to the Secretary of State on access to finance for small business. It is a vital area for growth and innovation. We now have 5.4 million small businesses and lots of different sources of finance. In the interests of time I will not go through them all, but the Small Business Commissioner is being set up to address poor payment practices and focus and consider complaints in this important area.

Small businesses may seek general advice on a range of matters. Issues such as finance may be brought to the attention of the commissioner. The advice and information that we will provide online and the links from the website will be important, as will the report that the commissioner makes each year on the most significant matters raised. However, I am afraid that I agree with my noble friend Lord Hodgson that this amendment would broaden the work of the Small Business Commissioner too far, and I ask the noble Lord to withdraw his amendment.

Lord Stoneham of Droxford: I thank the noble Lords, Lord Mendelsohn and Lord O'Neill, for their support. The noble Lord, Lord O'Neill, used the phrase "talk softly but carry a big stick". I thought that he carried a big stick but did not use it, so I am

grateful for that. Obviously I listened to what the Minister said. We have to look at this in the round, once we have been through all these clauses, to see what sort of powers are sufficient for the commissioner. I am grateful for the confirmation about the Competition and Markets Authority, because that is an important point. With the proviso that we may return to this on Report, I am happy to withdraw the amendment.

Amendment 25 withdrawn.

Amendments 26 to 29 not moved.

Clause 6 agreed.

Amendments 30 and 31 not moved.

Clause 7: Scheme regulations

Amendment 32 not moved.

Clause 7 agreed.

Clause 8: Confidentiality

Amendment 33 not moved.

Clause 8 agreed.

Amendment 34 not moved.

Clause 9: Annual report

Amendments 35 to 37 not moved.

Clause 9 agreed.

Clause 10: Review of Commissioner's performance

Amendment 38 not moved.

Clause 10 agreed.

Clauses 11 and 12 agreed.

Amendment 39

Moved by ***Lord Aberdare (CB)***

39: After Clause 12, insert the following new Clause—

"Payment practices: protection of retention monies in the construction industry

(1) The Secretary of State shall arrange a review of the practice in the construction industry of withholding monies which would otherwise be due under a contract, the effect of which is to provide the paying party with security for the current and future performance by the party carrying out construction operations of any or all of the latter's obligations under the contract ("retention monies").

(2) The review shall make recommendations regarding—

(a) the maximum period of time for which retention monies can be withheld; and

(b) the most effective mechanism for protecting retention monies against the risk of the paying party becoming insolvent.

(3) The review shall be completed by the end of the period of 9 months beginning with the day on which this Act is passed.

(4) On completion of the review the Secretary of State shall lay a copy of the report of the review before each House of Parliament.

(5) Within the period of 18 months following completion of the review the Secretary of State shall by regulations implement the recommendations in the review."

Lord Aberdare (CB): My Lords, I listened with great interest to the debates in Committee on Monday and was very struck by the Minister's description of the prime focus of this part of the Bill. She made a great point of the intention that the Bill should be very tightly focused. The prime focus was described as being:

"on late payment, particularly when there is an imbalance of power between big business and small business".—[Official Report, 26/10/15; col. GC 126.]

Amendment 39 falls squarely within that description but regrettably, if not astonishingly, it is not addressed in the Bill, nor do I believe that its aims would be met by the establishment of the Small Business Commissioner as defined.

The amendment is designed to address the specific issue of cash retentions in the construction sector, possibly the most significant payment issue facing the 250,000 or so small businesses in the sector. I will summarise the issue briefly. Retentions are supposedly held back as security for defective work. On average they amount to about 5% of payments due and about half of this is retained well beyond practical completion of a project, on average for a further 12 months but sometimes for very much longer. Some £3 billion of cash is estimated to be held back in the form of retentions at any time. This year alone, small businesses have already lost £30 million as a result of their debtor companies going into liquidation before paying the sums that they owe but have retained.

Small companies generally have little or no say over whether to accept the practice of retentions. They are essentially at the mercy of the larger firms on whose business they depend. Both the noble Lord, Lord Hodgson, and the noble Baroness, Lady Hayter, gave some specific examples on Monday of situations where small firms find themselves under unfair pressure from larger firms. The result is that small firms are deprived of funds that are due to them and are therefore unable to invest in new technology or equipment, unable to recruit new staff or take on apprentices, unable to grow their business and, in the worst cases, unable even to survive. Meanwhile, adding insult to injury, the funds wrongly withheld from them are used to provide working capital and investment resources for the client companies that have failed to pay up.

This is not a new issue. Two Commons committees in 2003 and 2008, the first chaired by the noble Lord, Lord O'Neill of Clackmannan, recommended the ending of retentions, at least in the public sector. The construction sector supply chain charter, and I think I got my tongue round that one, agreed by the Government's Construction Leadership Council and issued by BIS last year, included the aim of moving to zero retentions by 2025. I have been made aware of even earlier reports from 1993 and as far back as 1963—I think

[Lord Aberdare]
even further back than the noble Lord, Lord Cope's 40-year experience of late payment issues—recommending that retention should be abolished or at least placed in trust. Quite a few leading contractors in both the public and private sectors manage perfectly well without retentions.

The Bill presents a perfect opportunity finally to address this festering issue. I am not suggesting that retention should be abolished overnight or removed altogether. I am suggesting that the Government could deliver a really good stimulus to the productivity and output of small firms in the construction sector by starting the process of lifting this unfair burden from them now, with a view to having a better system in place by the end of this Parliament rather than having to wait for 2025 or even longer.

My amendment picks up the Minister's very welcome commitment on Second Reading to commission analysis on the costs and benefits of such practices—cash retentions—to inform future action. First, the amendment sets a time limit for this analysis to be completed within nine months of the Bill passing into law. Secondly, it requires the Government to take action on the findings of the review, again with a time limit of 18 months from completion of the review. That should ensure that new rules are in place by the end of the current Parliament.

I thought of putting down a separate, more detailed amendment to set out a specific approach to ending the most unacceptable aspects of retentions by requiring them to be held in a separate bank account, in trust for the subcontractor to which they are owed. However, for the moment I would be happy to go along with the Minister's proposed review, so long as it leads to action in the timescale set out in my amendment. I and some of the numerous bodies representing the small construction sector, virtually all of which wish to see this issue addressed, would always be happy to discuss the specific form of such action with the Minister and her officials. I have no reason to doubt the Government's own desire to see an end to this pernicious practice of retentions in due course. Indeed, I was encouraged by the Minister's response to the Oral Question today when she said that the Government acknowledge the issue but, given that action on this has been called for since 1963, if not before, "due course" does not seem soon enough.

Amendment 46, in the name of the noble Lord, Lord Stevenson, sets out a process for doing away with retentions in greater detail. I look forward to hearing the noble Lord's arguments for this process, which I very much welcome as another route toward at long last making some real progress on this issue.

I have no connection with the construction sector, but I have run a number of small firms and am fully aware of the central importance of cash flow and the difficulty of keeping afloat, let alone investing in productivity and growth, if payments for work done are not received in full and in reasonable time. I was quite shocked to learn about the prevalence and impact of this practice of retentions and how long it has gone on without being fixed.

Small firms, which are without the resources of their bigger brethren, and indeed are dependent on them for their survival and success, are often bullied into accepting unfair terms. That is exactly why they need help and protection from government. Although the Small Business Commissioner would be a welcome part of such help, it really does not do what is most needed for small construction firms. The Bill presents a golden opportunity to inject some real spark into the small construction sector by tackling this issue of retentions, so long and so widely recognised as being objectionable, harmful and unjust. I beg to move.

Viscount Eccles: Is the noble Lord's definition of retention moneys any moneys that are retained after a completion certificate has been issued? Is the issue that the works are agreed to have been completed, but we need something in case we have snagging and have to deal with it? Or is it that I am just being kept from my money?

Lord Aberdare: That is indeed the most objectionable part: on practical completion of the project, a substantial amount—often 2.5%—is retained, often for a year, two years, three years or even more. I am not attempting in this amendment to tackle the fact that retentions are withheld at each stage of the project, although that in itself would be another challenge.

Viscount Eccles: There could be an interesting distinction between practical completion and the issue of a completion certificate under the terms of the contract. Both parties might agree that the work has been finished, but it is probably in the contract that 5%, or whatever it might be will be retained for a period of time, which should be defined in the contract, in order to deal with snagging. I think the noble Lord's position is that the contract is not written in sufficient detail to cover exactly what it is the parties have agreed.

Lord Aberdare: Another issue, beyond what the noble Viscount has said, is that very often there needs to be some limit on when practical completion has been achieved. There are situations where a small firm has been involved at the very beginning of a large project and the larger contractor is arguing that the project has not been completed and is refusing to release the money until a reasonable period down the track of that large project.

Lord O'Neill of Clackmannan: I support the noble Lord, Lord Aberdare. As I mentioned at Second Reading, I have an interest in this area, which is on record. The question raised here is a good one and is evidence of the need for proper consideration of the broad range of problems that retentions imply. Certainly, it is well noted that when you have major construction projects, very often the people who are in at the very beginning—for example, those doing the foundations and the steelwork—do not get their payments until the car park is completed. I am not sure whether that would be covered by a completion certificate. Let us face it, the construction industry is not really the most litigious

of industries; indeed, people in it often cannot afford to have recourse to the law. Equally, they do not always have very detailed and specific contracts and, as we go down the supply side, the degree of vagueness becomes even more apparent.

5 pm

I return to the amendment and its request for a review of retentions. As the noble Lord, Lord Aberdare, said, there have already been a number of inquiries. I was engaged in a couple of them in the first decade of this century. These inquiries recognised that retentions occur. Indeed, it has been noted that there is an all-industry agreement that they should end by 2025. However, certainly the noble Lord, Lord Aberdare, and I believe that they should end as soon as is practicably possible. To do that, we should have a proper inquiry. If retentions occur on the scale that has been suggested, the 10-year process is far too slow and leaves too many businesses exposed to what is in effect malpractice.

Many allegations of payment abuse have been made. The substance of these allegations has been considered, as I said, and the view has been expressed that while retentions may take place, it is not a major problem. It is a bit like when you say, "We only have 2% unemployment", but the people who are unemployed are 100% unemployed. The people who have not received payment are very often part of small businesses. We are talking here about almost micro-businesses, where families have mortgaged their house to set up in business and the owner's wife probably does the books. They have probably put their homes on the line, as I say. For them to be put in a difficult position is intolerable and we should seek to end this as quickly as we can.

The amendment would require evidence of retention abuse to be gathered and to be assessed within nine months, and for the regulations to be brought in 18 months later. I realise that this will be our Achilles heel on this amendment, as Governments must never be dictated to. They must never be given timescales that would embarrass them if they were not able to meet them; that is too explicit and dictatorial. However, I say to the Minister that matters of that nature can be addressed by amendments and discussion between the people in this Committee. That is why we have Committee and Report stages. If there are deficiencies in the wording, I am sure that it is not beyond the wit and intelligence of the vast army of civil servants in Victoria Street to come up with a form of words on this issue that would be mutually acceptable.

As I said earlier, the real objective of the amendment is that the evidence should be gathered and the scale of the problem should be assessed. If the concerns are justified, waiting 10 years for them to end is wholly unreasonable, particularly if the problems could be resolved rather more quickly. A timescale is hinted at. Regardless of whether we have to be specific, it would be rather good if before this Government leave office in 2020 they could say, "Well at least we did one thing right and ended retentions". The Minister may well find that that is her memorial when she leaves office: she was the Minister who ended retentions.

This is a moderate and modest amendment that could make a great deal of difference. At the heart of the retentions issue was the distrust that existed between the various tiers of contractual involvement in the construction industry. People never believed that the work was going to be done properly, so they would always screw them to make sure that the work was done. I have to say that my experience of construction is that we are now living in different times, and indeed there is evidence that a number of the major contractors do not carry on this process. However, I have to say that in the public sector—that is, the health service and local government—I am sure that a number of examples would come out in a review of this issue. We would find that it is not just the baddies in the private sector that I as a Labour man might wish to castigate; many local authorities, probably including some that are controlled by the Labour Party, are just as guilty of holding on to money for far too long before they make the payments.

The construction industry is rather rough and ready in a number of respects, and it requires specific and special treatment outwith the terms of reference of the Small Business Commissioner and his responsibility for payments. There is a degree of exceptionalism within the construction industry and this amendment will not resolve the problem, but I think that it would serve to provide the Government with the evidence that hitherto they have not been prepared to collect properly—or, if they have had sight of it, to deal with properly. We know that the Minister is concerned about the issue of payment abuse. In my view this is a classic example of payment abuse for a specific industry in which it is more widespread than it needs to be or than it should be. It should be made a far greater priority than saying that we will try to have it all done by 2025. We could in fact resolve the matter by the end of this Parliament if we just took out the rather specific timescale.

The Government have a responsibility to address this issue with a degree of speed and consideration for a large number of people who I have to say are more likely to support parties other than the Labour Party; some of them may even be supporters of UKIP who the Government are trying to pull back. The fact is, though, that these are people who have made great sacrifices to start up new businesses. They are very vulnerable so they need a degree of protection and support, and they need it quickly.

Lord Cope of Berkeley (Con): My Lords, I too am sympathetic to the idea of a review of this subject. I do not go along entirely with the precise wording of the amendment. The noble Lord has just identified the final subsection of the proposed new clause with its requirement for the Secretary of State to implement in regulations whatever is suggested in the review. I do not really think that that would work, nor would it be satisfactory from Parliament's point of view, as we discovered on Monday. Nevertheless, the idea of a review is important. Quite a lot has already been said about the problems in this area. I think of it in terms of, for example, bricklayers. Many bricklaying companies are quite small concerns doing a lot of specialist work. If one of them is involved in a large project, which

[LORD COPE OF BERKELEY]
may be part of a major commercial project or an estate of houses, its work is done at quite an early stage.

In some cases, the work is organised by not very substantial firms—the developers do not necessarily have huge reserves in comparison with the size of the projects. Also, not all housing estates that are built sell readily, which can cause great problems for the developers. However, they should not be able to take that out on the bricklayers who did their work several years before, or for that matter on the fellows who laid the drains, as that work has to be done at the start and it has to be examined at the start. It is no good complaining that the drains were not properly laid when everything else has been done; that is the wrong time to find out. The clerk of works and the building inspectors should discover that at a much earlier stage.

The suggested purpose of retention—to make sure that the work has been properly done—therefore has less force than might be supposed in a case of that kind. If the bricklayers are not being paid for maybe five years after they have done their work, that is an extremely difficult situation to be in. The subcontracting nature of the construction industry, which adds great value in flexibility for the industry—that is why the system has grown up as it has—is an important factor in considering how retention works. I am in favour of this proposal being examined to see what can be done to improve the situation. As has been said, some contractors manage without it, but the public sector on the whole does not. Perhaps this requires not law but instructions from the Government concerning the public sector's attitude towards contracts of this kind.

The Earl of Kinnoull (CB): My Lords, I too support the amendment in the name of the noble Lord, Lord Aberdare. I should declare my interests, and not only those on the register of the House—until earlier this year, I had been for 10 years or so a director of the construction bond insurance companies in the Hiscox group, as well as having been responsible for the bit of Hiscox which dealt with United Kingdom household insurances and which was therefore rebuilding the houses of our clients.

I congratulate the noble Lord on the thinking behind the amendment. This is an interestingly complex area. We have heard about the problem of bad behaviour, but the other problem is the failure of the various parties concerned to understand the credit risks involved in construction contracts. In the JCT standard construction contracts, there are provisions for payments of the retention moneys into trust accounts, which I suspect are never really honoured. That is a big area which should be looked at.

A lot of the business that the construction bond area of Hiscox dealt in was Irish. Ireland had a particularly severe construction dip following the financial crisis and there was quite a bit of evidence of what I would call the domino effect. A head contractor would get into financial difficulties and would drag down a lot of smaller contractors and, because trust accounts were not in place, the smaller contractors lost out. Given the Government's theme of trying to give every help to the small and the brave, I believe that this could be dealt with. It would not be expensive and could easily benefit small businesses quite a bit.

Lord Hodgson of Astley Abbotts: I have a lot of sympathy with the amendment but, unlike my noble friend Lord Cope or the noble Lord, Lord O'Neill, I am interested in what happens at the end of the contract, when retention moneys and liquidated damages wash one into another. The concept of liquidated damages is perfectly fair. It is designed to make the main manufacturer finish on time; if he fails to do so, a penalty is attached. Of course, the main contractor then passes the penalty on in his subcontract. This can mean that the penalty in relation to the value of the work of the subcontractor can be very small indeed, and that the retentions become commensurately large.

For example, take a company bypassing a piece of road with liquidating damages of maybe several thousand pounds a week for delays beyond the contract date, and a subcontractor whose job it is to put up the signage at the end. The chap who does the foundations is a bit late; it is a very wet, cold and rainy winter so the earth-moving is behind; and the spring is late in coming so the tarmac cannot be laid. By the time the small firm that was subcontracted to do the signage comes to do its job, it is very close up against the end of the contract date. Of course that firm is carrying in its contract the liquidating damages sum for the contract as a whole, which has been passed on to it. In these circumstances, retentions can very often be withheld against the completion of the contract as a whole, in case it is argued that the subcontractor played some role or part in the overall delay. The fact that he may have had an incredibly small amount of time to do his work because the people before him were delayed is of course something to be argued about by lawyers, and it is hard for small subcontractors to have sufficient equality of arms.

As we begin to develop this idea, I hope that the issues of liquidating damages and how they impact in contractual terms on small subcontractors can form part of the retention-moneys and withholding-of-sums-due concerns.

5.15 pm

Lord Stoneham of Droxford: I need to declare my interest as chair of Housing & Care 21. We built 1,000 homes last year. We have built far fewer this year but are very engaged in this intricate industry.

All the points have been made but I just wanted to say that this industry is very cyclical. The other feature of it is that it is dependent on a mass of subcontracts, so it is very complex. If we are going to do a review, now is a good time. We are at the beginning of the cyclical upturn and there is a concern to get work done. The whole capacity of the industry needs looking at because a lot of it was wiped out in the recession. Anything we can do to improve the capacity of the industry and make it more resilient is good. As sure as fate, whatever happens, there will be another recession and some of these problems will re-emerge. My whole experience of the industry is that it just goes suddenly dead. It is the most scary industry because people stop

buying homes and it goes right through the chain, and then of course it is the small guy who loses out because he has no capacity to get his money back—he is down and dusted—and a huge part of the capacity of the industry goes with it every time. These measures are needed to build confidence in the industry, to build capacity and to allow it at the end of the day to produce more homes at less risk.

Lord Stevenson of Balmacara (Lab): My Lords, I should declare an interest as my wife is a partner in a firm of solicitors and her expertise is in construction contracts. She does not talk to me about it so I do not know anything at all, but I still thought I should declare it.

This is the third time around the track on this particular topic. The quality of debate has not dipped; indeed, the interesting thing is that more people are now joining in. An emerging theme is now being drawn out, and I think it is a good one. For me, there are two points which have not been picked up, and I would like to reinforce them. First, as the noble Lord, Lord Stoneham, was saying, construction is an interesting sector and a very important one for the economy, so we must be very careful about it. The ONS produces figures on the progress of our recovery which always feature an element of construction. It is important at a local level and an everyday level but also in a macroeconomic way, and we should give regard to that.

The second thing is that there is a way that this could be sorted out by the sector itself, and it has not been. The contractual arrangements could be reformed, and the JCT, which has been mentioned, has indeed begun to think through some of these things. There are available options for people who want to make contracts that take advantage of them. But the interesting thing is that that has not happened. Something is going on here and that simple point has been made in some of the briefing we have received. There is "grand theft auto" of the working capital. The unfairness is that while this is a resource that should be of benefit to the contractors who are owed it at the end of whatever contractual period they have signed up for, it is withheld from them. The consequence of course is that it does not feature in their ability to raise finance for ongoing projects later on.

That is an important issue, which makes this practice very pernicious in the way it is applied. The original idea was that you held back the cash in case the constructor did not come back to do any remedial works that might be required. But as my noble friend Lord O'Neill said, this is a story from the past because contracting has got its act together now and is much better. Also, the contractual arrangements are better, so I do not think that it is as much of a danger as it was. My last project, which was a small one, was interesting. When you analysed the retentions money, it explained why senior members of the company kept popping up on our doorstep. The retention represented the directors' bonus for completing a good project. They were aware of what was going on and they were very keen that we did not retain any money, and we did not. It is a fact that it is woven into the way in which these people operate, and it will be difficult to get out of.

Our amendments suggest that we already know enough about this for the Government to act. The consensus in the Room is that we should think about a review and then act promptly, but certainly set a more ambitious timetable of 2020 rather than 2025. In proposing our amendment, we simply add to the pressure that must now be felt by the department and I hope very much that when we come to hear the Minister, she will be able to respond to that.

Baroness Neville-Rolfe: My Lords, I am extremely grateful to the noble Lord, Lord Aberdare, for his Amendment 39 and for Amendment 46. The common ground is that they both call for a review of this practice. I am grateful to the noble Lord, Lord O'Neill, for his comments both in the Chamber and in the private conversation we had one evening on our way home together.

Lord O'Neill of Clackmannan: Separately!

Baroness Neville-Rolfe: I was delighted that the noble Earl, Lord Kinnoull, could bring his own practical experience of the market to the debate, including his experience during the financial crisis. That was picked up well by the noble Lord, Lord Stoneham, who rightly emphasised the cyclical nature of this vital UK industry.

Retentions themselves are not always a bad thing. One knows that from having domestic household repairs where frankly it is essential practice to keep back a small sum in case remedial work needs to be done. However, I have been persuaded by discussion at Second Reading and this afternoon that a review of the practice of retentions would be a good idea. The existing timeframes for change are extraordinary. I did not dare say that last time we discussed this before the election, but I am glad to be able to say it today and to hear the same comment from the noble Lord, Lord Stevenson.

I would be keen to make sure that the review was likely to develop recommendations capable of providing an enduring solution to what is a pretty deep-seated and rather complex issue—we are all agreed that it is not the simplest thing in the world. There is some work to do to ensure that the review is well grounded. Of course, it needs to cover a number of issues such as cash flow, and look at the period of time before retention must be released. It also needs to look at the small business angle, which is obviously relevant to today's debate, including bricklaying.

I propose that the Government consider the best way to take the review forward. I will write to noble Lords in due course setting out precisely how we will do that; the terms of reference and a detailed timetable outside the Bill. If it helps, I am happy to commit to the review being completed within nine months of the Bill being passed, as suggested in Amendment 39 by the noble Lord, Lord Aberdare. This will give a little incentive to speed, because we have been here before and it would be nice to feel that progress could be made. I hope that the noble Lord, Lord O'Neill of Clackmannan, will not be disappointed by my helpfulness in that respect.

[Baroness Neville-Rolfe]

There is not a lot more to say. I hope that noble Lords will welcome the review and will feel able to close down the issue today. On the basis that I have described, I hope that they will happily withdraw their amendments.

Lord Aberdare: My Lords, I am extremely grateful to all noble Lords who have spoken in this debate. I have been very encouraged by the general tone of the debate. A number of noble Lords raised important practical questions which the review will address. I am particularly encouraged and pleased by the Minister's response, for which I thank her. I very much look forward to receiving details of the review and the basis on which it will be conducted. I declare myself ready to do whatever I can to ensure that she secures her place in history as the Minister who ended retentions. I am happy to withdraw my amendment.

Amendment 39 withdrawn.

Amendments 40 to 43 not moved.

Amendment 44

Moved by ***Lord Stevenson of Balmacara***

44: After Clause 12, insert the following new Clause—

"Duty to report outstanding interest payments on unpaid invoices

(1) A company with outstanding liabilities relating to overdue payments at the end of an accounting period must record these in their statutory accounts.

(2) Where any of the outstanding liabilities include interest on overdue payments, the company must disclose these amounts by way of a note to the accounts, which should also record comparable outstanding liabilities, if any, for the preceding six financial years.

(3) Where companies fail to disclose this information during the course of an audit, their auditors are required to report that failure to the Small Business Commissioner, and may comment on the issue of their audit report."

Lord Stevenson of Balmacara: My Lords, we seem to have reached the point at the end of the first part of the Bill where many of us feel a little discouraged. The powers in the Bill for the Small Business Commissioner are not going to match the aspirations that have been trotted out on a number of occasions across the first 43 amendments that we have looked at. The only concession or move in any direction is the one we have just had, for which we are very grateful. We do not want the Minister to change her mind on that. However, I feel that on Report we may want to test the water again on the question of whether some stiffening of the approach, attitude and powers of the Small Business Commissioner could be configured into the Bill.

However, the growing awareness that the Minister was not for moving and that the department had drawn a line in the sand and would not be able to cross it prompted a wider thought about what we could do in other areas. Amendment 44 seeks—probably in rather infelicitous language which needs to be tidied up—to do something which at heart is quite straightforward and simple, and perhaps not contentious. If noble Lords think about the way in which individual statutory accounts are drawn up, they will find in the profit and loss accounts of most companies a record of the liabilities which are owed and the debtors who owe money to the company. Part of those making up the accounts in the liabilities area are payments which need to be made by the company to its suppliers. It is probably the case that these will appear as a single lump sum and will not be differentiated. It might be a smart move and aid transparency if it were possible to require companies that had outstanding liabilities at balance sheet date to be required to disclose by note situations where their invoices had been accompanied by any overdue fees or costs that occurred as a result of the invoices being overdue.

We have had some work done on this. We calculate that in a year, when you look at the statutory accounts registered at Companies House—obviously they are delayed, so we are talking about a nine-month gap to look back on, which is quite a lot of time—an approximate figure is around £15 billion outstanding at balance sheet date. The noble Lord, Lord Cope, who was also an accountant as I was, is looking a bit stern about that, but as far as I understand it, that is the figure. I make no judgment on it; it is simply the way that business operates, which is that it takes time to make payments.

5.30 pm

If we make an assumption that some of these invoices were late, and the provisions that could be made in relation to that were added on to those, then we reckon that about £900 million a month would be available to be disclosed for companies that had overdue invoices and had accumulated, say, at 8% above base rate, which would be the fee if they did not pay within, in our suggestion, 30 days, although it could be 60 days. Obviously it would be a variable figure, but to make my point, we are talking about approximately £1 billion that could be regarded as being the cost to the economy—certainly a cost to smaller businesses—of invoices that have not been paid. If that were disclosed, the question is whether that would help transparency, and our argument is that it might. It would be particularly helpful, if it was necessary to do so, for auditors auditing these accounts and coming across this overdue amount within the portfolio of liabilities to have to contact the Small Business Commissioner and inform her or him about it so that a virtuous circle is created. Where there was a problem in a small business that was due money that was not there, it would have some sense of that because the information would be available to the Small Business Commissioner.

The great advantage would be that it would shine a light on larger companies that were not paying their invoices on time, and thus accumulating late payment costs which would have to be disclosed in the statutory accounts. It would not cost anything to do this because it would be done automatically anyway by any good internal accountant, and the information would be absolutely fantastic for the Small Business Commissioner. Our contribution to getting around this power blockage in the Government's mind in terms of the Small Business Commissioner is to use existing disclosure arrangements for small companies and large companies—

the published accounts—to report on and note the activity that is actually going on in this sector. I beg to move.

Lord Deben (Con): My Lords, I hope that my noble friend the Minister will take this point seriously. First, the figure which has been produced by the noble Lord is remarkable. Even if you were to halve it, it would still be remarkable, so I am very interested in that. I want to tell the Committee about my own experience of the construction industry, in which I had a company for some time, but no longer. The comment made by the noble Lord, who is now no longer in his place, that it is not a litigious industry seems to be totally contrary to the truth. It is probably the most litigious of industries. Indeed in many cases, certainly in the past, that is how decisions were made: you made contracts where you knew you were going to go to court at the end of it. That is how you made your decisions. I am afraid that it is a very unhappy history. Anyone who has read the Egan report or indeed the one before his would see just how this business has not changed to the degree that we all hoped it would.

The point I want to draw to the attention of my noble friend is that many companies in other areas manage to have very few bad debts and few bills. Every month, the board of the company of which I am the chairman gets a report on bad debts. I am happy to say that it is a very short report and they do not carry on through to the next month. That is because the company is well run and chases these things up. I do not think that there is a company of any kind in the construction industry which could possibly say that, because it is not the nature of the industry. Once people get into the habit of thinking that this is the way they can behave, that is the way they behave. It becomes a kind of chain: because you do not get your money, you do not pay the money to the other person. They do not get their money and it goes on in that way.

We have to break into that chain. I had not come across this idea until I read the amendment. It seems to me quite an original idea. However, I hope my noble friend will recognise that this is at the heart of the problem. We are talking here about an amount of money that is sufficiently large to make a huge difference if it were redistributed rather quickly. If this situation occurred in any other major industry, there would be cries of outrage, although it does not apply anywhere else that I can think of. My business interests are spread over quite a lot of different companies and I do not think I have ever known the kind of reaction that one has in the construction industry. Therefore, I hope very much that my noble friend will take this seriously. It may not be the answer but it may give her a clue how to provide another answer.

Baroness Neville-Rolfe: I thank noble Lords for this amendment and, indeed, for the whole series of amendments on the Small Business Commissioner, which have enabled us to have a very good debate. I am glad that my noble friend Lord Deben joined the debate and note his comments on construction, which we can consider in the context of the review that we have just agreed to. However, as he says, more generally, in other sectors some companies are much better payers. What we want to do is to change the culture so that this is the norm rather than the exception, if it is the exception. I do not know the exact facts but the overall numbers are a cause of concern, as we have said on a number of occasions.

The amendment before us, which is not really concerned with construction, would require companies to report outstanding liabilities relating to overdue payment, including interest payments on the unpaid invoices. It would require any failure to disclose this information to be reported to the commissioner.

During Report of the small business Bill in the Lords, I brought forward amendments, as noble Lords may recall, to specify in the Bill how the reporting power could be used in relation to payment performance and interest owed and paid in respect of late payment. Over the summer, my officials have been working with stakeholders on the regulations. We have established a working group to draft non-statutory guidance to ensure that companies are clear on their reporting obligations, and that the information reported is robust and comparable.

From next year we will require companies to report online every six months against a comprehensive set of metrics. That includes the proportion of invoices paid beyond agreed terms and the proportion of invoices paid within 30 days, between 31 and 60 days, and beyond 60 days. That is a lot of information for the top 14,000 companies. It will not be in the annual accounts as we want the information to be provided quickly. The information will, however, be rigorously monitored and will be timely and accessible—more so than putting something into the annual accounts.

The new prompt payment reporting requirement will enable us to bring increased transparency on payment practices and performance. We can legislate by regulation for the Small Business Commissioner to monitor that information, which I think is one of the things that the noble Lord emphasised in his presentation of the amendment. The commissioner may also highlight good and poor performers as part of his or her efforts to drive a fundamental change in behaviour. This will help exert the necessary pressure—a point we keep returning to—on companies to make sure that their suppliers are paid on time and fairly compensated when that is not done.

I am confident that the measures imposed on the Small Business Commissioner will lead to significant change in the UK's payment culture. I note that the noble Lord said he would want to return to issues to stiffen powers on Report. I would only say in conclusion that I would very much regret seeing an adversarial element developing in this proposal. We do not want more costs, more lawyers and more delay. I think that we have a shared objective of trying to make the Small Business Commissioner a success, but in the mean time I ask the noble Lord to withdraw the amendment.

Lord Mendelsohn: Before the Minister sits down, can I clarify that the amendment addresses none of the points that she made? It is really about identifying the liabilities you have for the interest payments where you did not make a payment. As such, that addresses

[LORD MENDELSOHN]
the ability of large businesses to be able to say that if you do not believe that someone will chase you—a small business will chase you for a payment you are due—you can write it off as a liability very quickly on the basis that you do not believe that it will be chased. It addresses that sort of liability.

Baroness Neville-Rolfe: I thank the noble Lord. Indeed, you are looking at the overall millions owing rather than the individual invoices, as I understand it—therefore, the debtor's figures.

Lord Mendelsohn: Yes, certainly. For late payments, fines can be attendant to it. They tend not to be incurred, largely because companies do not pursue them. This simply establishes that a company has to establish it as a long-term liability in its account that could be claimed. In pursuing the Minister's argument about culture, it helps to establish whether the company is fulfilling all its duties, including under the Prompt Payment Code.

Baroness Neville-Rolfe: My Lords, there might be merit in further discussion on the finer points of this. The point I wanted to make is that it is important to also look at what we are planning in terms of payment transparency; perhaps we could discuss that outside the Room before Report.

Lord Stevenson of Balmacara: I thank the noble Lord, Lord Deben, for intervening in this debate. For his information, the figures I quoted, which were large, were in fact for the whole economy, not just construction: although construction is big, it is not that big. They came from a company called Satago, which provides a service for automated chasing of customers for payment and aims to reduce outstanding invoices. Therefore those figures are reputable and based on trade practice, so not necessarily far out.

I thank the Minister for her helpful intervention. It is true that there is a lot of similarity between what we are saying in this amendment and the proposals under the Prompt Payment Code. Am I right in saying that the code will remain a voluntary obligation on companies, not a statutory one?

Baroness Neville-Rolfe: Just to clarify, the payment regulations we are bringing in are statutory requirements to share information on payments. The noble Lord is right that the Prompt Payment Code is voluntary. There are various different points, but the key thing is to look at them in the round, which we can do when we discuss them to make sure that we are capturing things that we feel are necessary.

Lord Stevenson of Balmacara: I was not trying to be antagonistic at all on this—I was simply trying to clarify this point. The Prompt Payment Code has a slightly bad smell about it. The regulations that the Government are bringing forward will presumably be consulted upon, and then in the House we will reach out to a lot of the points that I was making in my submission. I absolutely agree with that, and it is good. However, the noble Baroness can see where we are heading. In a sense it is only a proportion of the companies, albeit the big ones; and it is an additional regulation, when we were suggesting that you can do it within an existing provision. However, the Minister is also right to point out that relying on statutory audit with the delays that come with that and the registration difficulties means that is all a bit late. I accept that.

The Minister's suggestion of a chat about this is a good idea—let us see if we can work something out. We are not trying to push this particularly hard: it was an idea that came to us, which is already very close to where the Minister is, and I think we can probably leave it. With that in mind, I beg leave to withdraw the amendment.

Amendment 44 withdrawn.

Amendments 45 to 48 not moved.

Clause 13: Extension of target to provisions made by regulators

Amendment 48A

Moved by ***Lord Stevenson of Balmacara***

48A: Clause 13, page 10, line 32, at end insert—

"( ) In subsection (2), after "means" insert "—

(a) all regulatory provisions made under section 2(2) of the European Communities Act 1972,

(b) regulatory provisions which are subject to the affirmative resolution procedure in both Houses of Parliament, and

(c) "."

Lord Stevenson of Balmacara: We now move to the next stage in the Bill—regulatory measures—which is progress of sorts. We had hoped to be there on Monday night, but we are moving forward, so it will go very fast now. It is a great pity that the noble Earl, Lord Lindsay, is not able to be with us today, because I know that this is an area he speaks on, but we have expertise in the Room and I am sure that we will be able to hear from it later on. I am glad that there is a bigger club than just a few of us who are interested in regulation.

Regulations are very important. Some people call them the rules of engagement that define quite a lot of modern life. They range from things such as whether it is possible to adjust the volume of ice cream van musical jingles to the question of how you value complex financial instruments, so they are everywhere. They are pervasive and important. A lot of complete guff—if that is a parliamentary term—is talked about them. No Government will introduce a new regulation believing it is going to make life worse for their citizens, and yet the public perception of regulations is of a relentless, negative story, with faceless bureaucrats—poor chaps—imposing rules in an inflexible and often absurd manner.

5.45 pm

We need to bear in mind that, as we in your Lordships' House bear witness every day, no regulation is implemented without political oversight and a great deal of scrutiny. We think about, debate and discuss regulations, and try to make sure that they do the job they are intended to do. They help to balance risk in society and provide a framework for a stronger and more productive economy. They protect the vulnerable from harm and uphold the rights of consumers and new businesses, as well as more generally promoting a level playing field for business. Done well, the process of regulation can be a spur to competition and growth; done badly, of course, it can become a stifling burden.

The challenge facing policymakers is that the costs and benefits of regulation are not shared equally across all parts of society. Also, it is often only the direct impacts that are measured by Governments when they design new policies. Indirect impacts, particularly compliance and transaction costs, are often important but are extremely difficult to pin down. The ultimate impacts—GDP growth or, as it is more fashionable to talk about now, well-being—are rarely discussed at all. This imbalance between the costs and benefits of regulation is often felt most keenly by businesses, which in turn seek to pass on a proportion of any higher costs to consumers, leading to a sort of stealth taxation.

My purpose in giving a bit of an introduction which is not directly related to Amendment 48A—which I do wish to move at the end of what I am saying—is that I am a fan of regulation. We have to find a way of using not only this Bill but other Bills and other legislation to try and persuade people that there is good to be found in intelligent legislation. We have all tried in the past, on both sides of your Lordships' House, to think about how to make good regulations and about regulation in the round—for example through the Better Regulation Task Force. But we do not ever really start by saying that regulation is what matters and that it will be important to how things are done. The laws that we pass are statements of principle; the regulations are the rules of engagement, and we are right to spend as much time on them as we do.

I want to pay credit to the previous, coalition Government for the impact they had on the stock of regulation. Although I will criticise the one-in, one-out—or one-in, two-out—measure in later amendments, it is a good concept. Although it might be trivial to suggest that one in, three out should be the Government's next target—indeed, we have an amendment on that topic—the noble Baroness will get the point of what I am trying to say. There is no requirement that the stock should remain static. There is every argument to say that proper and intelligent interrogation of the regulatory stock might reduce the burden on people. That said, we do not want to get to a point where we believe that regulation is not necessary—it is necessary and it is good for us.

Having praised the previous Government and admired the ambition of the current Government in coming back again for yet another round of deregulatory measures—even though there is not that much of it this time—I wonder whether we are not missing a trick. I want to put on record that our approach is not meant to be antagonistic: it is meant, first, to be constructive and about engaging in dialogue about whether or not there are better ways both to create a culture of regulation and, secondly, to make us think harder about what we do when we say something is a regulatory measure and is increasing or decreasing the impact on people. The way we do it currently is not right.

Thirdly—this is a three-legged stool—we need to think harder about some of the impact work that is done. Not everybody has the current impact statement to hand, which is shocking—the Minister just had to reach for it—but for those of us who have spent happy nights skimming through it, the issue is not whether or not the work has been done but that it has become a bit of boiler plate and almost a tick-box exercise. We have all seen it, but some of the propositions that have been made, particularly in relatively small-scale regulations, are pretty trivial. One option is to do nothing and you do not get many marks for imagining that. Another is "the Minister has asked us to research this one, so we might as well do that". Occasionally, if you are lucky, a straw man is put up, but it is usually not very effective. I wonder whether we cannot do a little more on impact assessments. This may not be the Bill for it and this may not even be the time for it, but I would like to raise that.

I end this opening section by picking up on a couple of fun facts that were drawn to our attention. The Government used to publish a bi-annual statement of new regulations, typically produced in July and December. That has stopped since the general election and I wonder whether the Minister could research why that is the case because it was not a bad idea. However, the independent Regulatory Policy Committee has continued to publish its own reviews of individual departmental impact assessments. To date, there have been 13 assessments. Of those, 10 of the major changes were judged to be increases in the overall cost of regulation, and only three reduced the cost. Just under half were deemed "out of scope" under current government rules, so of the regulations produced they were not even considered by the Government in terms of their in/out scenarios. Of those in scope, the total additional cost to business was about £60 million. By the way, three of the 13 impact assessments, all produced by BIS, were judged not fit for purpose. I am sure that improvement is on the horizon.

The group of amendments including Amendment 48A is really about that old saw, "what you measure gets reported". In particular, I want to highlight for the benefit of the Committee that—and I had not realised this until I looked into it in more detail—the way that the Government count regulatory burdens is to exclude EU regulations en bloc. In other words, on the one hand we blame the EU, often unfairly, for a huge regulatory burden, but we do not count it when we bring it into scope in the UK. That is pretty clever, and I suspect that it is up to Members of your Lordships' House to feel a little stupid for not having realised that. All the stuff about how much regulation has been saved has to be considered in the context that quite a lot of that regulation, which had a significant impact on the UK economy, was not counted.

[Lord Stevenson of Balmacara]

The second point I want to make is that the Regulatory Policy Committee reported recently that,

"nearly half of the approximately 1,000 laws enacted during the previous Parliament"—

under the coalition Government—

"were outside the scope of the Government's One-in, One-out and one-in, Two- out rules. Nearly 70 per cent of these were of EU origin".

The RPC reported that mutually.

I do not honestly think that businessmen and women would care whether the regulations they have to work to come from this place or across the channel. However, they have an impact on their work and therefore we should fess up and try to get a measure into play in the way that we think about all regulation that impacts on business. That seems to be the issue.

On Amendment 48B, we have a definition of regulatory provision in the Small Business, Enterprise and Employment Act, which works well for primary legislation. But we have not been able to find—perhaps the Minister can respond on this point—a proper system for defining regulations that are secondary in nature, whether they are in or out of scope and how they are measured. That whole package needs to be looked at again. Our amendment suggests that the Government should commission from the Regulatory Policy Committee a full-scale assessment of what is and is not included.

There is room for debate around some of the claims made by the previous Government, which suggested that some £10.6 billion of savings were made during that Parliament because of reductions in red tape and regulation. A close read of the independent Regulatory Policy Committee suggests that that is a great overstatement and that more costs were incurred than were saved. If we are going to get this right, it falls back to a definition, and I ask the noble Baroness to take that thought away. It may not be something that we can do within the Bill, but there is a big job of work to be done. We must think again about how we make regulations, how the impact assessments are done to support them and how we discuss them. I beg to move.

The Earl of Kinnoull: My Lords, I rise to speak to Amendment 49CA. I declare my interests as set out in the register, especially in insurance. The amendment is about old gold plate, which I talked about at Second Reading. I will first pick up on something that the noble Lord, Lord Stevenson, said in his thought-provoking introduction, which was that businesses do not care where things come from. I am not sure that I agree with that. One thing they certainly do care about is the level playing field. If a business has a European Union regulation and it is over-implemented in its home nation and not in its competitor nations, it is at a disadvantage and cares a lot.

The old gold plate—it should be called lead plate because it is a great drain on business resource—problem can be briefly summarised by saying that there have been three eras of transposition of EU regulations. In reverse order, there is the era from coalition times—2011—until today, where there are very good transposition arrangements: a good solid anti-gold plate look at any legislation and sunset and review clauses to ensure that things are self-righting if they are not quite right.

Then there is the period from 2006 and the Davidson review—of which more in a second—when the issue had been recognised and there were good anti-gold plate arrangements, but the use of sunset and review clauses was limited. Then there is the period prior to that, which I call old gold plate, where there was no self-righting mechanism for the shedding of the gold plate and the bringing into line of the UK with the other competitor nations of our regulatory environment.

I had a quick look at Lord Davidson's review in preparation for this debate. I noticed that chapter 2 is called "Cases of Gold Plating". The first three words of chapter 2 are "insurance mediation directive". I was reminded last night by senior insurance industry colleagues that the 12 pages of that directive were turned by the FSA into more than 1,000 pages of stuff, which has been a source of great pain for my beloved home industry.

The reason behind the amendment is to try to provide a mechanism for getting the old gold plate reviewed. It is a mechanism which is compliant with the coalition, in that it is a one-shot mechanism—an individual, as a regulator, is in charge of reviewing themselves once and writing a report. That is all they have to do. It is a sort of reverse name and shame mechanism.

It was the best that I could do in terms of thinking up how one could attack the problem. It could be the case, but I hope it is not, that the Minister does not consider this a suitable Bill in which to begin attacking the problem. Sooner or later, for sound commercial reasons, we are going to have to tackle the old gold plate. I note that Lord Davidson's report was in 2006, and nothing substantial has happened on his recommendations about the insurance mediation directive.

Baroness Neville-Rolfe: I thank noble Lords for their amendments in this group. I am grateful for the noble Lord, Lord Stevenson's introduction. In the interests of time, I suggest I respond constructively over a drink to some of his more philosophical points. Yesterday, the World Bank published its *Doing Business* 2016 report and ranked the UK as sixth-best country in the world for ease of doing business—something to celebrate. This is partly due to the work on the regulation stock and the regulation flow that we are all trying to make a success. This Government want to make the UK the best place in the world to start and grow a business, and the Bill is a step towards achieving that. So there is more to do, and I believe that adding regulators to the purview of debate on regulation will help to reduce burdens on business. I commend the RPC for its independence and honesty, which is well illustrated by the comments that have been made.

6 pm

Amendment 48A would amend the Small Business, Enterprise and Employment Act so that the business impact target automatically included all EU-derived legislation that required the UK to implement regulations. It would also include all regulations agreed by the affirmative resolution procedure. To answer the point

that was made, Section 22(6)(b) of that Act includes secondary regulations within the scope of the target, so they are there.

There is a clear need for regulatory reform in Europe and the best way of achieving that is to tackle it at source, securing in Brussels controls that match those we have here at home. Our influence is beginning to pay off in this area. In May the Commission published better regulation proposals, which I do not think many people know about but include greater independence for the Commission's regulatory scrutiny board, a renewed commitment to lighter regimes for SMEs—small business, which we are caring about today—and a commitment to embed better regulation across three EU institutions in an inter-institutional agreement. We welcome this. We want the Commission to go further, which is why at my urging last December the Competitiveness Council unanimously asked the Commission to bring forward proposals for EU burden-reduction targets and an independent expert system of assessment like that of our RPC.

Meanwhile, this Government are working on the principle that it is right to be transparent about everything but target only what we can control. So we are transparent but, as the noble Lord has said, in the context of EU measures that means counting not all the EU burdens but the domestic decisions where we overimplement or gold-plate, where obviously we have full control over what we are doing.

The Small Business, Enterprise and Employment Act already requires transparency in our EU-derived legislation, but it gives the Government of the day discretion about what to target so they can decide to target some or no EU-derived legislation. The proposed amendment would remove that discretion and instead require the target to include all EU-derived legislation. I believe that that approach is too prescriptive. We decided to exclude EU-derived legislation from the target. Under the reporting requirements in Section 23, we will still be required to report transparently on the quantity of our legislation and on any instances where gold-plating occurs. So the sauce Anglaise, in the elegant words of the noble Earl, Lord Kinnoull, is being addressed.

Amendment 48A would oblige the Secretary of State to include in his target all secondary legislation made by affirmative resolution. Section 22 of the Act, as I have said, currently requires the choice around the scope to be made in a transparent way and provides clear legislative parameters within which that choice has to be made. However, it also provides flexibility to ensure that the scope can be set in a way that reflects the policy objectives of the Government of the day while avoiding unintended consequences.

I turn to the amendment from the noble Earl, Lord Kinnoull. I agree with him about the importance of enforcement and a level playing field across the EU. Enforcement is a key aspect of the new single market proposals produced today by the Commission and a focus of work there. He is right that the coalition did a lot of work on eliminating new gold-plating, but of course there is historic gold-plating to look at. The amendment would create a one-off reporting duty on regulators in scope of the growth duty to publish a report on historic gold-plating.

This Government already have a process in place to deliver that outcome. We are working with departments, and with regulators now—assuming this Bill is approved—and business on a series of "cutting red tape" reviews to identify opportunities for regulatory reform, improved enforcement and implementation practices and savings to business from all those sources. The involvement of departments as well as the regulators is important. They have a responsibility for removing gold-plating wherever it lies.

We welcome evidence from everyone on gold-plating. I have noted carefully the noble Lord's remarks about the insurance mediation directive. We will look at the scope for doing something about that under the current system.

Amendment 48B talks about tax administration. However, in the interests of time, I will move on and if there are questions on that aspect I am very happy to discuss them with noble Lords.

The final question that was asked was: why has the statement of regulation stopped? The answer is that this will be replaced by the annual report on performance under the business impact target, which will be published in due course. I am not sure of the exact timing. But that is why, as it were, the figures have not been published in the way that noble Lords would expect. Transparency is important but we have slightly changed the system.

The Secretary of State is required to report his decisions on the content of the business impact target by May, but in fact I am sure he will do it rather earlier than that. We will listen to the arguments noble Lords have made, but in the mean time we should not reduce the flexibility which the SBE Act gives to the Government of the day to meet the challenges of the day. I hope that, with that explanation, the noble Lord will feel able to withdraw the amendment. I have not sought to respond on the details of the £200 million to £300 million over the last five years, but again, I am very happy to have a discussion on that outside the Room.

Lord Stevenson of Balmacara: I thank noble Lords for their contributions. On the point raised by the noble Earl, Lord Kinnoull, I was not saying that people did not care about where the regulations came from in terms of whether they came from Europe or from Britain—I probably did say it but I did not mean it—but that what they cared about was being regulated. More regulation is usually bad for them. I absolutely accept the point that many of them are setting up on an unlevel playing field. I agree with the Minister that every effort should be made to try to stop that; it seems patently unfair and anti-competitive.

However, I do not think I got a response to the point that I was trying to make as gently as possible, which is that it seems a little odd that the Government can choose the game they are playing, can set the goalposts at the distance apart that they wish and then score as many goals as possible and claim a victory, when in fact there is another game going on elsewhere where people are being beaten up by what in their view is excessive regulation, often gold-plated, and we do not seem to get transparency. I hope that what I said will be thought about and perhaps we can come back to it.

Baroness Neville-Rolfe: There is an excellent report by the Regulatory Policy Committee with which the noble Lord may be familiar. That report gives all the information on the EU figures as well. In the last report EU financial systemic risk measures were a very large element, £1.6 billion in that particular time period. I think we were saying that the target that we have chosen to set and have put in legislation should reflect what we can control. The noble Lord is right that we should be transparent, and we have sought to be transparent through the work of the RPC, which can hold us to account.

Lord Stevenson of Balmacara: My Lords, that is the point: £1.6 billion is excluded from the Government's target because it relates to an area that they choose not to report on. It is up to the RPC to give us the full picture, and it is good that it does. I am saying as gently as possible that I think transparency might be the buzzword of the day, but it is not going to get us there if the Government do not accept that it would be better in the long run if the full burdens of regulation were calculated in a certain way. We will come on later to amendments about how we might do that. If they set out their targets in terms of that full load and then reported on them, I think we would be better off. That is for another day, though, so I beg leave to withdraw the amendment.

Amendment 48A withdrawn.

Amendment 48B not moved.

Amendment 48C

Moved by ***Lord Stevenson of Balmacara***

48C: Clause 13, page 10, line 40, after "State" insert ", but those regulations cannot specify the Equality and Human Rights Commission"

Lord Stevenson of Balmacara: My Lords, I am having a busy day. Again, this is a rewind in glorious technicolour, because we spent a lot of time on this over the last two years of the last Parliament. It is back again for reasons that I do not understand; I hope that the Minister will listen again to the arguments we have made, because I will end up by quoting from her the exact case that I wish to make—indeed, I might shorten my speech if I simply cut to that chase. I would have done, except that just before this meeting of the Committee the Minister published by Written Statement a list of all the bodies that are likely to come into scope of the provisions of the Bill. That was somewhat worrying to read, because I understood that the proposals in the Bill were to require bodies called "regulators"—there is a very large list of those—to undertake new responsibilities with regard to growth and reporting. The growth part came in earlier legislation and the reporting is largely brought in here. However, the number of regulators is being extended.

We are making the point that in a business-focused Bill it seems strange to us to receive representations from bodies affected by this which do not carry out business activity. An example here is obviously the Equality and Human Rights Commission. My noble friend Lady Hayter will raise other ones, including the Charity Commission, for which there can be no question of whether they are providing business regulation or an impact on business. Indeed, in the case of the Equality and Human Rights Commission it is quite the reverse.

Clause 13 extends the BIT requirements to all national statutory regulators so that they must assess the financial cost to business of changes to designated statutory regulatory functions and then secure validation of that assessment from an independent body and report annually on this aspect of their work. The stated purpose in the Bill is to ensure that regulators improve the understanding and transparency of the effect of their regulatory activities on business and to broaden the responsibility beyond government to achieve the target of reducing the associated regulatory burdens on businesses—which is said to be £10 billion, but we beg to differ on that point.

If you have a regulator who is not involved in advising businesses how they should operate and is not providing advice and everything else, I do not understand why it is included in the list. There is no question that we support the aim of the Bill; in fact, the impact on the main statutory regulations is good and something we can support. However, we have a problem with the unintended consequences of trying to include everybody listed in the lists that were published.

The two main concerns that have been raised with us is that as the commission does not set standards in the sense that other regulators do, feeling that that is a job for the legislature and the judiciary, it has no power to go in and inspect businesses, nor does it have to charge fees or recover costs from them, so it is to some extent by its own definition excluded from the activities they are trying to be involved with. However, the more important point is that the imposition of this requirement on the commission would jeopardise its high standing as a United Nations-accredited "A" status body, which depends under the UN Paris principles on being independent from government interference, direction or control. By passing a law of this nature the commission believes strongly—and I think that this argument was accepted by the Government last time round—that it would not be able to be regarded as independent from government interference, direction or control by definition. The last time we brought this up, the Minister, in responding during the passage of the Small Business, Enterprise and Employment Act at Third Reading, said:

> "The Government have always maintained that the EHRC is a very special case and should not be subject to the duty to appoint a champion. We considered that an exemption in secondary legislation would be sufficient, but noble Lords were concerned about this and the potential implication for the EHRC's "A" status as a national human rights institution. The Government believe that there is only a very small risk here, but we have listened to noble Lords and agreed to eliminate the risk altogether with this amendment, which I know from the debate will be welcomed across the House".—[*Official Report*, 17/3/15; col. 1007.]

I would be grateful if the Minister could explain what is different this time round. I beg to move.

6.15 pm

Baroness Hayter of Kentish Town (Lab): My Lords, having been given the lead-in, I will rise to speak at this point, and I do so very much from the point of view of the consumer. In the helpful note that was sent to me and, I am sure, to others by the Minister on 27 October, she rightly stresses that the list is not definitive and the views of business, regulators and other respondents will inform the legislation. Something that always worries me, of course, is that business and regulators have whole departments that are able to respond on this while the consumer—or, as I will come to it, the patient—never does. They do not know about these things and therefore we have a particular duty to think about that.

As my noble friend Lord Stevenson has said, the first list sets out the statutory bodies that are under consideration for being brought into scope. I find the inclusion of the Charity Commission difficult to understand. It is to protect the use of charitable money and make sure that it is spent on charitable aims and objectives. It is not to further the interests of business, to make business more efficient or to help growth. It is a protection, particularly for people who donate to charities, to ensure that their money is used correctly, so I find it slightly surprising that the commission is in there. Again, though, I worry about how the sort of people who donate to charities would ever get their views heard if there was a risk that that regulator had in some way to take more account of the interests of businesses that may have a charitable arm than those of individual donors.

There are two others on the list that I worry about for similar reasons. One is the Information Commissioner and the other is the Pensions Regulator. I used to sit on the determinations panel of the Pensions Regulator, but I no longer have that interest to declare. They are both protectors of the interests of groups of the public. The Information Commissioner is in a way quasijudicial because it is looking at whether a company has perhaps misused its mailing lists or, in the case of a bank, its bank details. It would worry me a lot if it was the bank that was giving evidence about whether the regulation of its data by the Information Commissioner was too intrusive while the views of people like us with bank accounts or any other data—our shopping experience with a big retailer or whatever it might be—will not have our views heard when this is looked at. I have concerns about a body like the Information Commissioner that is there to protect the public.

I have similar concerns about the Pensions Regulator, which is also in a sense quasijudicial. Certainly, the sort of cases that I used to hear were dealt with in a court. The regulator is there to protect pensions very often where a company may be in difficulties and there are really difficult issues to be dealt with around its pension scheme. The regulator is there to protect the pensions and to look after those interests. If that regulator is told that it must look at the business interests rather than those of the pensioners, that would worry me. Again, I do not know how would-be pensioners, who have no idea about this or that they may be in a scheme which the Pensions Regulator is looking at, will be heard.

Lastly, although they come under the second sub-heading "Regulators for further discussion", are the bodies regulated by the Professional Standards Authority for Health and Social Care, which is what I think we used to call the professions allied to medicine, and now with social work included. Again, this is about setting standards to protect patients—which is what they will usually be, although sometimes in social care they will be clients rather than patients. A big care agency may say, "Look, this regulation is a bit hard on us", but these standards are there to protect us as patients, as people being looked after in care homes or as whatever—the Committee is fairly familiar with the areas that this covers.

These provisions are very much there to protect users, consumers, patients, residents of care homes and anyone who has information held by a big retailer or company, and I hope that the Government can offer a little more justification as to why the regulator will be perhaps nudged to look towards growth and the business aspect rather than the interests of the consumer and the public.

Lord Low of Dalston (CB): My Lords, I will speak very briefly to support the exclusion of the Equality and Human Rights Commission. The noble Lord, Lord Stevenson, has gone through the argument and laid out the case for this exclusion very fully so I will not go over that again, but I want to add one point. Far from imposing extra burdens on business, the Equality and Human Rights Commission does quite a lot to relieve business of burdens by producing things such as guidance and codes of practice that explain the position and help to guide business through the legal maze of discrimination law, making it a good deal easier for business to deal with these issues when they come up. It does not seem appropriate, when that is the function of the Equality and Human Rights Commission and the way that it works, to tie the commission up in the sort of red tape that its work—its codes of practice and guidance and so on—goes quite a long way to ridding business of.

Baroness Neville-Rolfe: My Lords, I thank noble Lords for their amendments and their constructive contribution to the Bill. I am delighted that the noble Baroness, Lady Hayter, and the noble Lord, Lord Low, have joined the debate.

As has been said, the amendments would ensure that the EHRC could not be subject to, or required to report on, three key regulatory policies: the business impact target, the growth duty and the Regulators' Code. Extending the business impact target to statutory regulators is a key part of Government's aim to ensure that regulators across the board continue to achieve high standards of regulation in order to drive growth and ensure a strong economy. I think we have agreement on that broad principle.

However, although we are asking regulators to be transparent in reporting the impact of their decisions on business, the Bill will give us no powers to interfere in the decisions they take. There is a clear distinction to be drawn. The fact that a regulator may not be aimed at business does not mean that the regulator

[Baroness Neville-Rolfe]
does not affect business or the voluntary sector. To my mind, there is nothing wrong with having an incentive to look at the impact of the way you design measures to ensure that, for example, they are constructed in a sensible way for small businesses. Regulatory independence of course underpins business confidence, and is vital to all regulators—it is not only true, as has been said, for the EHRC.

We have seen the EHRC's briefing note on these issues, which says that it produces approximately 30 pieces of guidance a year and operates across the whole economy. So the range of business making use of the guidance is very substantial. For all those businesses to keep track of that guidance is a cost to business. Sometimes it can outweigh the cost to the commission of assessing the impact as and when it issues new guidance.

I know from experience that the EHRC issues very valuable guidance—for example, the religion or belief guidance for employers issued in 2013. I remember when I worked in the retail sector talking to the EHRC about what it might do to address concerns it had among big employers. So there is an interaction. It is important work, but obviously there is a need to ensure that the guidance is appropriately prepared for business and minimises the burden of any such directions. I hope that the EHRC will look carefully at its relationship with business and ensure that it reflects on the cost which it is imposing. This is what inclusion in the business impact target would achieve and why we have proposed it.

The EHRC—I am not sure people are aware of this—is already within the scope of the Regulator's Code and is also covered by its predecessor, which was introduced in 2008, by the then Labour Administration. I understand that the EHRC already complies with the code and is transparent about its activities reporting annually. That transparency is just what Clause 14 is aiming to achieve. In practical terms, it will make little difference to what the EHRC currently does, which is why I am not convinced of Amendment 48F.

Amendment 49C prevents the reporting requirements for those in scope of the growth duty from applying to the EHRC. We had the debate less than a year ago when considering the growth duty. The Government's initial view was that the duty should apply. However, in the light of debate and representations from your Lordships, we undertook that the EHRC would be excluded. I am happy to repeat that the Government will not seek to apply the growth duty to the EHRC. I want to be completely clear about that. The assurances were sufficient for your Lordships in the last Parliament and I hope they will be sufficient again.

The key reason given for excluding EHRC from these three policies, as far as I can see, is that it might prejudice their international A status as a human rights body, which is obviously incredibly important. However, there is not a risk with the growth duty, as it does not apply to the EHRC nor does the EHRC have a small business champion for the reasons that we discussed last time and on which the noble Lord quoted me. We know it is not the case with the code, because it has applied successfully to the EHRC for years, and it has been accredited internationally while it has been in place.

The business impact target is a transparency measure. It does not fetter the independence of the regulator to make its own decisions in relation to the changes it introduces. Inclusion in the target would require EHRC to measure and report its impact on business, and have the figures validated by the RPC. The RPC is not government, as we discussed, it is a body of independent experts and looks only at the evidence and analysis.

The noble Baroness, Lady Hayter, talked about the Charities Commission. The point has been made that it does not affect business. However, the business impact target covers the impact on both the private sector and the Third Sector. The Charity Commission certainly affects the third sector. We will consult in the new year on the list of regulators and welcome the views of Peers and regulators. We are trying to reduce red tape in life; reduce red tape for small business. I believe that a lot of charities—the noble Baroness may play this back at me on another occasion—have quite a lot in common with small businesses.

How does the inclusion of the Charity Commission help those who donate? In her inimitable way, the noble Baroness, Lady Hayter, talked about the consumer. Including the Charity Commission would encourage it to minimise burdens on charities ensuring, I would say, that more of donors' money benefits good causes rather than being tied up in meeting the commission's requirements.

There was also a point in Amendments 56 and 57 on retrospectivity. The focus of concern is the potential to change the legal effect of actions already taken.

Lord Hodgson of Astley Abbotts: The Minister might like to look at the statutory objectives laid down in the Charities Act on the Charity Commission and its effective operation. We may get into duplication here. Five statutory requirements have to be complied with, one of which certainly overlaps. Unfortunately, I do not have the Act with me and I cannot remember the precise wording, but it might be worthwhile looking at it, otherwise, we may get a degree of duplication. Perhaps the Committee can come back to that.

6.30 pm

Baroness Neville-Rolfe: My noble friend, as always, makes a good point. We will certainly look at what is already happening. I suppose the idea is that if you can, ex-post, gather the information together and see what progress you are making in terms of reducing burdens, that could be helpful in itself. If in fact the figure already exists, which may be the implication of what my noble friend was saying, the task is not that difficult. I am grateful for that intervention.

Briefly, the actual retrospective effect of the provisions of the Bill does not have the consequences that noble Lords are concerned about. The provisions can have no impact on the status or effect of the regulatory policy changes made by regulators prior to the Bill being passed. The limit element of retrospection is appropriate and justified because it is about measuring

delivery against the Government's targets. The targets are set for the life of a Parliament, so if there were no limited retrospection, one would not be able to count any reductions in red tape that took place between the beginning of the Parliament and the writing of the report by the regulators concerned. We were trying in the drafting to tackle that gap.

I have also arranged a meeting with the noble Baroness, Lady O'Neill, who is chair of the EHRC, in early November and I will report back to the House on the outcome of that meeting on Report. I hope that what I have said on this important issue helps to reassure noble Lords that the proposed amendments are not required. In any event, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Stevenson of Balmacara: I thank the Minister for that full and comprehensive response, but I am afraid the answer to her question is that, no, it does not reassure us. I accept the assurances that she has given that the growth duty and the small business champion role do not apply to the EHRC. They are welcome and we would want that.

I hope that the Minister bears in mind that while on the one hand we would love to see her go down in history as the Minister who abolished retentions, we do not want to see her go down as the one who scuppered the country's grade A-listed champion of human rights. I am sure she will realise that if it gets to that point, we will have to have a serious conversation. I take the points about retrospection. The intention was—if one might call it this—gold-plating on the part of the EHRC to make sure that it could not be caught at some future date, so her reassurance is helpful on that. But the fact still remains that if the EHRC feels that its international status is jeopardised by this, I do not think that the Government have much wiggle room on this matter. I hope that we return to that point on Report. However, let us continue to talk about that until then. I am sure that the contribution from the chair of the commission will be helpful. In the mean time, I beg leave to withdraw the amendment.

Amendment 48C withdrawn.

Amendment 48D

Moved by ***Lord Stevenson of Balmacara***

48D: Clause 13, page 11, line 20, at end insert—

"( ) Section 21 of the Small Business, Enterprise and Employment Act 2015 is amended as follows.

"( ) For subsection (3)(b) substitute—

"(b) the independent body, as provided for by section 25, must publish a methodology to be used for assessing the economic impact mentioned in subsection (1)(a).""

Lord Stevenson of Balmacara: My Lords, this group of amendments focuses on strengthening the work and role of the Regulatory Policy Committee. As the Minister has already said, it is good to find an independent body able to look widely across the regulatory field and make recommendations without fear or favour, and we value its work. However, it is a little hampered by the fact that it is not currently able to report except in terms of where the Government set their objectives. I have already criticised that and we should put that aside for the moment and say, well, those are the objectives. But we should also reflect, if we can, on where we might go on that.

The point has been made, better than I could possibly make it, in a quotation that I would like to read:

"if you have the privilege of being in government, you should try and think about the long term and not just today. And in the long term, I think the country would be better off if we thought about wellbeing and quality of life as well as economic growth".

That was the Prime Minister. That sentiment is picked up by work that has been done in a number of think tanks, notably the Legatum Institute. The noble Lord, Lord O'Donnell, has picked up the idea of thinking more widely about where Governments should be aiming in what they do about the impact of their legislative and regulatory programmes.

There are two minor points in this group that I also want to pick up. First, as I understand it, the Treasury has now changed its view about how impact assessments are owned and operated through Whitehall by asking for a business-critical model to be introduced for many impact statements, where there is a senior responsible owner quoted as a named individual of sufficient seniority to take responsibility for the model throughout its lifecycle and to sign it off as fit for purpose prior to use. Is that now common practice across Whitehall or is this a work in progress? If the latter, will the out-turn be something that we can look forward to in terms of improving the quality of impact statements? I think the reason for this is the west coast main line franchise fracas. I need not say much more about that, since it was quite clear that there was not sufficient seniority in the department to take responsibility for what went wrong there.

My point here is that if we are seeing changes in some of the infrastructure activity in preparing for legislation and regulation, this would be an opportunity to have that on the table so that we could make judgments about it. I beg to move.

Baroness Neville-Rolfe: My Lords, I thank noble Lords for their amendments. I am grateful to the noble Lord, Lord Stevenson, for quoting the Prime Minister—perhaps a signal of the constructive and harmonious nature of our debates in this Committee in the Moses Room. Amendment 48D would remove the responsibility for choosing and publishing the methodology for assessing economic impact under the business impact target from the Secretary of State, as I understand it, to the independent verification body.

We see the target, scope and methodology as a single package. They need to work together and be set together. It is unrealistic to expect that the Government should set a target having no idea about how the impacts will be measured against it—that sort of delegates responsibility. So there is a fundamental problem there. The purpose behind setting targets of this nature is to deliver the right incentive, change behaviour within government and improve the way we regulate to achieve the better regulation vision that has been expostulated today.

[Baroness Neville-Rolfe]

To my mind, it is right that this remains a matter for Ministers. We have to be accountable to Parliament and to the people at elections. Amending the role of the verification body would place an unusual amount of power in one unelected body and remove the flexibility for future Administrations to determine the methodology appropriate for assessing business impact in their particular circumstances. Of course we are consulting the Regulatory Policy Committee about the methodology for this Parliament, and we will continue to work with it to resolve questions of interpretation that inevitably arise.

Amendment 48EA seeks to stipulate that the target must comprise both a number of regulations and the monetary value. It is right for the Government of the day to decide methodology, and of course we have indicated our broad direction with our manifesto commitment of £10 billion of deregulatory savings. The change would limit options for future Administrations. I myself think that the number of regulations is less important than their economic value, but we could debate that. The point is that we would like to leave this broad and have discretion for the Government of the day.

Amendment 48E relates to the annual report on the Government's performance against the target and would require the Secretary of State to publish additional information in respect of regulatory provisions which do not fall within scope. Transparency about such measures is important, and I can give some reassurances. Measures which do not score for the business impact target still receive proportionate appraisal and independent scrutiny under administrative requirements which will continue in this Parliament. That means that significant measures are required to have an impact assessment, even where they are excluded, as I think we discussed in respect of the EU financial measures.

Other than for regulatory measures with very small impacts, the relevant impact assessment is subject to independent scrutiny by the RPC. Impact assessments must be published at the final stage alongside the legislation to which they relate. This transparency is incredibly important. I have already said that I think the RPC is the biggest reform of administrative procedure in Whitehall since I last worked in government, and I am very pleased to see the teeth that it has. It seems to me to be proportionate and to avoid duplication. This approach does not detract from established principles. I am glad to see the noble Lord, Lord Curry, here, because he has been very involved in making sure that this regulatory system works correctly and that it is independent.

There are some technical issues with the drafting of Amendment 48EB. The RPC does not have a separate legal existence, but I can address the intent behind the amendment. The RPC is an enduring cornerstone of the regulatory framework, and the Government focused the verification functions on those that it was absolutely necessary to set out in statute. If there are further comments on the detail of this, I will be very happy to discuss them, but I will just respond to the question asked by the noble Lord, Lord Stevenson, about the senior responsible owner of impact assessments. As he says, he has great intelligence networks. The Treasury is looking to strengthen government project management, including business cases. We are not sure that this will affect impact assessments as such, but I am certainly happy to update him on what is involved here. As he implies, it is potentially another important administrative innovation.

These amendments are to some extent probing but are also about trying to constrain the operation of the system. As I have said, some degree of operational flexibility is needed for the Government of the day. When we put proposals forward in the last Parliament, we put them forward with that in mind, and I would be reluctant to go down a different road.

Lord Stevenson of Balmacara: I thank the noble Baroness for that very full response. These were of course probing amendments, but she might like to note for future reference that we struggled hard with the clerks to expand the range of things that we wanted to talk about. It was a fight of great intensity, which we lost on two areas that I thought we would be able to include. We could not put into Amendment 48EA a third point which would require the evaluation of the impact of all regulatory measures on well-being, because they said that that was not about enterprise, for some reason, and did not fall into the long title of the Bill. We also wanted to probe the question of whether or not the RPC would be able to follow up its idea that impact assessments should not just be generated sui generis within a department but should be exposed to external review as well, which would have given another cornerstone to the way in which impacts are measured and assessed and would help the law-making process. But these are much bigger and broader issues and cover more of a constitutional than a legislative area. They are matters to be discussed when we have that drink. With that, I beg leave to withdraw the amendment.

Amendment 48D withdrawn.

Amendments 48E and 48EA not moved.

Clause 13 agreed.

Amendment 48EB not moved.

Schedule 2 agreed.

Clause 14: Duty to report on effect of regulators' code

Amendment 48F not moved.

6.45 pm

Amendment 48G

Moved by ***Lord Stevenson of Balmacara***

48G: Clause 14, page 11, line 42, at end insert—

"( ) of the measures adopted by the relevant regulator to simplify the regulatory making process in a manner which is comprehensible to small businesses, where regulations have an impact on small businesses, and

( ) of measures taken to promote awareness of regulations which affect small businesses;"

Lord Stevenson of Balmacara: My Lords, I do not think that these amendments will take up too much time. In moving Amendment 48G I shall speak also to Amendments 48H and 49A. This deals with another of our good ideas which are dreamt up late at night. We thought that a focus on productivity seems to be lacking in this Bill. Enterprise is there in spades, but productivity does not appear, although it is the cause célèbre of our time. We ought to have something about it, and I wonder whether it would be possible to have the Bill team look at the question of whether obligations can be placed on the regulators to look at this dimension when considering how they will extend their programme of work as well as report on it. We also felt that this was something that the Small Business Commissioner might want to look at, although given the response we have had so far on extending the remit of the commissioner, I do not expect to get very far with this one. But it is a good idea and I would be grateful if the noble Baroness could consider it. I beg to move.

The Earl of Kinnoull: My Lords, I rise to speak to my Amendment 49ZA. Earlier today we heard a lot of the arguments expressed eloquently by the noble Lord, Lord Mendelsohn, in the first group of amendments concerning the importance of anonymity in certain circumstances, and those arguments apply here. The danger is that people, whether warranted or not, fear that they would be punished by a regulator if they make a complaint. I will say a couple of things in addition.

First, in commercial life I have always been interested to see the complaints that have come in, mercifully not too many at Hiscox because I am delighted to know that the Minister is a customer. But they have enabled us to make our business better by understanding what was going wrong, and so as a regulator I would say that you want to see as many complaints as possible and that an anonymity mechanism is in your interests. Secondly, in my speech at Second Reading I talked about the attitude of regulators. I have dealt with a heck of a lot of regulators in many different countries during my business career. Taking a leap, the most amusing one was definitely when Hiscox ended up owning a sugar refinery in Brazil, or a controlling interest in it. I was on its board for three years, and the regulator concerned was the rabbi who had to give us the kosher certificate for our sugar before we could sell to Coca-Cola or to Sara Lee, the cake company.

The best regulators are definitely people with a collaborative and helpful approach, and the worst ones represent a great bind on business. I think that the naming and shaming mechanism, which this would drive as well, because the regulators will have to write an annual report, of having consistent comment about poor attitude would be one way in which my concerns about trying to improve the attitude of all regulators in Britain—we all know some who have a bad attitude—could be addressed and the situation improved. There may be other opportunities in the Bill for it to be improved, and I would like to talk about that outside this Room. But driving good attitude is something which is in the interests of small businesses and more generally.

Baroness Neville-Rolfe: I thank noble Lords for these amendments and agree with the noble Earl, Lord Kinnoull, about the importance of, as it were, rewarding the good as well as shaming the evil because I think that is very important in almost all aspects of life, including childcare.

It strikes me that at the heart of this amendment is a desire to ensure that regulators take the specific needs of small business seriously and are transparent about the action they have taken in this regard. This is a desire we all share. The Regulators' Code, to which regulators must have regard, is clear that regulators should design regulatory approaches that are proportionate and based on factors such as business size and capacity. The new reporting requirement set out in Clause 14 will ensure that regulators are transparent about the effect that these considerations have had on the way they exercise their regulatory functions and the impact they have had on those they regulate, including small businesses.

I am very grateful to the noble Lord for raising the issue of productivity in the UK because when I was on the Back Benches I was always researching productivity in the Library and trying to raise it. It was not the fashion but now it has been recognised as an extremely important driver for the long-term growth and success of our nation. It is one of the key economic challenges for this Parliament because, obviously, it has not grown as strongly as we would have liked in recent years. Business has a critical role in taking the agenda forward, which is why we published *Fixing the Foundations* in July—a 15-point plan that I think sets out a very ambitious vision for where we want to be in 2020.

The growth duty reporting requirement in the Bill ensures transparency over the actions a regulator has taken as a result of the growth duty, including where the duty has enabled a regulator to contribute to productivity. We intend to issue guidance on the preparation of these performance reports. I will certainly reflect on the productivity point in that guidance, which is perhaps where it could sit, as it is important because it contributes to growth.

Turning to Amendment 49ZA, I understand the concerns around the perception that business, especially small businesses, may attract greater scrutiny from a regulator if they were to make a complaint about it. I also very much agree about the value of feedback—the point made by the noble Earl, Lord Kinnoull. If you are in business, as I was for many years, complaints are jewels to be treasured because they tell you how your business is interacting with your customers, whichever sector you are in. Good practice exists in some regulators. For example, I understand that the Pensions Regulator—not the most fashionable of regulators—runs straightforward anonymous feedback surveys on its website as a routine. In developing the guidance I have mentioned on how the reporting duty will work, we will want to tap into good practice elsewhere. If noble Lords have examples of that, it would be extremely good to have them.

On Amendment 49A, the commissioner will have a focused remit and great personal authority and credibility, which will change culture and practice on payment issues. This approach received broad support during

[Baroness Neville-Rolfe]
consultation. As I have said many times, I do not believe that we should widen the scope of the Small Business Commissioner. However, where issues in relation to regulatory activity are relevant to the commissioner's scope, this can be addressed in the commissioner's annual report. I hope that my response will help noble Lords to feel a little happier about the way this part of the Bill is developing, and that the noble Lord will feel able to withdraw the amendment.

Lord Curry of Kirkharle (CB): My Lords, I just add one comment on this, prompted by the comments of the noble Earl, Lord Kinnoull. The prevailing culture with the regulator is very important. I value the Minister's comments on that. Part of my role has been to try to encourage a better relationship between the regulator and the business community—namely for it to regard the businesses as clients it needs to work with to deliver an outcome. I believe that we made some progress in that respect. As noble Lords know, in the small business Bill we had the small business champion. I hope that businesses will feel they have a recourse to approach the small business champion if they are dissatisfied with the regulator.

Lord Stevenson of Balmacara: My Lords, I think that this session has been one of conciliation and support. I do not think there is any sense of a divide between us, and that last contribution helps to say that this is a cultural issue but it is also important, and if we can do more to help as we go forward then we would like to do so. I hope that the idea we had of trying to use the new structures to create even more impact is taken on, although I reflect that the fact that so many new ideas are bouncing around suggests that there might perhaps have been some advantage in taking more time over the Bill and taking more advice from others before it came forward. Still, we are where we are. There may be time to build on some of those issues, and I look forward to reading *Hansard* carefully and to seeing what happens as we move on to Report. With that, I beg leave to withdraw the amendment.

Amendment 48G withdrawn.

Amendment 48H not moved.

Amendment 49

Moved by ***Lord Hodgson of Astley Abbotts***

49: Clause 14, page 12, line 3, at end insert—

"(c) details of the activities, including the costs, of any organisation employed to undertake work on behalf of the regulator"

Lord Hodgson of Astley Abbotts: My Lords, this is a probing amendment directed at the same clause as Amendments 48H and 48G from the noble Lord, Lord Stevenson. It is about the performance report of the regulators. The amendment seeks to add a requirement that the report should contain information relating to work undertaken on behalf of the regulator in the execution and performance of the regulatory duties.

It is obvious that the activities of a regulator come at a cost: there is the cost to the regulator itself in terms of its own budget and the cost to those that it regulates, either the direct costs or the hidden costs, such as having to set up systems to ensure compliance. Obviously all this can be a considerable economic burden, and it is therefore extremely welcome that the Government have emphasised in the Explanatory Memorandum, and indeed in the Bill, the importance of regulators having to have regard to the promotion of economic growth and to report thereupon.

One of the ways in which it happens that regulators are kept under control is that they have a budget within which they have to live. This forces a degree of focus by the regulator on the essential aspects of its duties; in effect, it concentrates them on the must-haves rather than the nice-to-haves. I am concerned that there may be ways for regulators to avoid these budgetary constraints and instead end up with a great deal of nice-to-haves that may not have a commensurate cost-benefit relationship.

I have explained this to the Bill team because it is quite a specialist point: in the Financial Services and Markets Act, which I am using as a practical example, Section 166 is called "Reports by skilled persons". Section 166(1) says:

> "The Authority may, by notice in writing given to a person … require him to provide the Authority with a report on any matter about which the Authority has required or could require the provision of information or production of documents".

That is a very widely drawn section, and Section 166 inquiries have become very prolific in the financial services area. There are organisations that have several of these running. The regulator comes along and says, "We're not satisfied about this aspect of your operation, and under Section 166 we instruct you to get a skilled person to provide an independent report on it". The skilled person will be an accounting firm or maybe a lawyer. The regulator continues: "The report is to be sent to us and the bill is to be sent to you, the firm". These reports will cost probably a couple of hundred thousand pounds by the time they have reached the end of the road.

This means that there is no financial constraint on the regulator because the regulator can pursue issues without concern as to the operational impact on their own organisation. I accept that the wording is almost certainly imperfect, but the amendment is designed to require regulators to disclose when they are subcontracting regulation so that we can have an independent idea of what they are spending outside their own budgets. I am not saying that the regulator should not be able to do that, but I am anxious to make sure that proper disclosure takes place. I am not sure whether other regulators—I have given the financial services sector as an example—are engaged in the same practice. Of course, it is challenging to get the drafting right because these additional costs are invoiced to the regulated firms, not to the regulator.

There is an issue here that needs addressing if the Government are to achieve fully their welcome objective of getting a regulatory system that is focused and effective but run with regard to the costs being incurred. I beg to move.

7 pm

Baroness Neville-Rolfe: I thank my noble friend for tabling this amendment, which seeks to include in the Bill a specific reporting requirement for regulators subject to the code to provide details of the activities, including costs, of any organisation employed to undertake work on their behalf. At the heart of the amendment lies a concern about the hidden costs to business. The example that he gave was that financial service regulators may seek to discharge their regulatory functions by using their powers to commission reviews by "skilled persons" and charging the businesses concerned for the cost of that work. As I understand it, that is at the heart of the problem that my noble friend has identified.

My noble friend is right to seek transparency and accountability about how these powers are used and I think that we have made some progress in this area. Both the FSA and the PRA now routinely publish information on their Section 166 Financial Services and Markets Act 2000 activity. This includes quarterly reporting on the number of skilled persons reports that they have commissioned and annual reporting on the aggregate costs of these reports. As my noble friend probably knows, this information is available online. It seems to me that the disclosure that he seeks is being addressed and I am not sure that there is harm elsewhere that justifies creating new regulation in this area. In the interests of brevity, I do not see a case to amend the Bill and ask him to withdraw the amendment.

Lord Hodgson of Astley Abbotts: I am grateful to my noble friend for that full response. One of the questions is, of course, that I just happen to know about the financial services area, where there are lots of regulators that we are considering as part of this section of the Bill. It would be helpful if we could try to ascertain whether other regulators are engaged in the same process because it enables them to add to the regulatory burden very considerably. I am grateful for the comments and the further research that the Bill team have done on this matter and I beg leave to withdraw the amendment.

Amendment 49 withdrawn.

Amendments 49ZA and 49A not moved.

Clause 14 agreed.

Amendment 49B

Moved by ***Lord Mendelsohn***

49B: After Clause 14, insert the following new Clause—

"Report on money laundering regulations

(1) The Small Business Commissioner shall prepare and publish a report assessing a regulator's performance and effectiveness at ensuring regulations are proportionate, user friendly, widely promoted and easily adapted by small businesses in relation to money laundering regulations.

(2) The report provided for by subsection (1) must include an assessment of the role of the Financial Conduct Authority and its activities to encourage awareness of the impact of money laundering regulations on small businesses.

(3) In this section a regulator is a person with regulatory functions to which section 108 of the Deregulation Act 2015 applies."

Lord Mendelsohn: My Lords, I should declare at the start of these amendments that I am regulated by the FCA, so this is actually terribly in my interest. This relates to being able to give small business some guidance. Very briefly, money-lending regulations apply to a whole range of small practices ranging from financial and credit services, accountants, lawyers, estate agents and a number of others.

As ever, the regulations are quite complex within this context; there are duties to assess the risk of the business, your own business activity being used by criminals, who you are conducting business with, checking the identity of beneficial owners, monitoring their business actions and reporting on management control systems, or keeping documents and making sure that you are training your employees. I am bound to say that as ever, these obligations on companies that try to comply are very hard on them indeed; small businesses in particular find that very tough. For those who have no intention of bothering to comply with them it is exceptionally easy; I cannot say this comprehensively, but in cases that I checked the fines are significantly smaller than the costs of having to comply by having a compliance adviser or other sorts of people.

We therefore hope that the Small Business Commissioner will be able to play a role here to help define what is good activity rather than the constant uncertainties that happen, especially over something such as this. Is it sensible for a small business with two or three people in one of these areas to have to phone up the company secretary at a FTSE 100 company to say, "Can I have the passports and identity checks of your company directors?" and to have to carry on referring them in those sorts of circumstances? Perhaps this may not be a formal role, but this now famous annual report may well have some provisions which will be helpful to at least simplify this for small businesses.

Secondly, on awareness of share sale fraud—I apologise that we may not have drafted this to the most exacting standards that we would otherwise have liked to have done—I will try to give noble Lords the thrust of the measure. Again, small businesses are particularly vulnerable to a number of frauds that take place where people try to sell bogus financial services and products and other sorts of things. This affects areas where online fraud is established or verified through the use of things such as addresses or other sorts of things as well as when online and offline meet. We are trying to give the regulators some ability, obligation or duty to communicate; hopefully the back end of how that might work best for government would be between the enforcement agencies and the regulators. I will give a great example, which was, of course, when City of London Trading Standards sought a conviction against Regus Management, which housed just the address of a particularly fraudulent scheme. When contacted by—on this occasion—consumers, the company said that its offices were based there, when, of course, it was just a postal address. Just by saying that it was based there gave it a credibility which led to a couple of people being defrauded.

[LORD MENDELSOHN]

It is also very useful to know that the police are now enforcing a crackdown on boiler room fraudsters in the City of London and Canary Wharf. This is good practice; we would like to encourage regulators to get the message out so that there is reasonable coverage across the rest of the country. This is just about trying to place a duty on them to try to make sure that something can be done to help support small businesses across the country. I beg to move.

Lord Hodgson of Astley Abbotts: I cannot resist, although I know that the Committee is like a horse heading for the stable, therefore I shall be very brief indeed. On the comments made by the noble Lord, Lord Mendelsohn, on money laundering, this area has a life of its own, and the impact on smaller businesses is stupendous and without any real evidence of any efficacy whatever. This area is still growing, and the tentacles of bureaucracy are widening all the time, therefore the burden will be greater. I therefore very much support the idea that we take any steps to make sure that it is effective—not that we should not do it, but that it is effective. That is the thrust of the noble Lord's Amendment 49B and trying to make sure that we try to prevent the further spread of this. I have today received a request about money laundering from my clearing bank. When I left university in 1964 I went to work in America. The bank has written to me saying, "We see you worked in America in the 1960s; tell us what you were paid as part of our money laundering investigation". What that can possibly add to its knowledge of me 50 years ago I cannot possibly imagine. If you use the term "money laundering" everyone says it must be a good idea. It will require a big effort to make sure that we are effective. The question is: are we stopping people doing these terrible things, not just spraying information around and ticking boxes? Therefore, all power to the Minister.

Baroness Neville-Rolfe: My Lords, I share the sentiment behind Amendment 49B to ensure that regulators have regard to the needs of business when dealing with money laundering requirements. As I used to say when I was on the Back Benches, the regime was excessively burdensome and some businesses feel confused by overlapping or restrictive guidance. However, these concerns cannot be addressed by simply looking at how regulators deal with small business. There may be examples of requirements that are particularly difficult for certain entities, but it is the interactions between different types of business and with the banks that is at the heart of the problem. So small companies with innovative business models or ways of complying with requirements, to know their customers, may find it difficult to maintain business relationships with large banks which do not understand how a particular model works. The bank may simply decide not to do business, rather than expose itself to the risk that the small company is being used for money laundering.

Difficulties can be caused by the guidance that is produced by the various regulators and supervisors. That is why we are looking at the regime in the round. We are now running a Cutting Red Tape review of money laundering controls. It is important that companies that are genuinely confused about what they need to do have this confusion addressed. Our call for evidence is open until 6 November—my husband is planning to send sacks of stuff—and we are keen to speak to all NGOs, businesses and trade associations with an interest, particularly SMEs.

We want to examine more seriously the potential to improve compliance and efficiency, by identifying aspects of the good supervisory regime that appears to businesses in the regulated sector to be unclear, cumbersome, conflicting or confusing. We are already speaking to a broad range of sectors and we would be very pleased to have examples from your Lordships. The Government understand that the regime can be improved. We published the first national risk assessment for money laundering and terrorist finance risks on 15 October and one of the findings was that the supervisory regime was inconsistent. We accept that this needs to be addressed.

The evidence being gathered by the BRE will help to inform work under the Government's action plan to reform the regime and to ensure that it is consistent; treats large and small businesses sensibly and proportionately; and follows a truly risk-based approach allowing resources to be targeted at the areas that are at greatest risk of money laundering and terrorist financing. These are also important policy objectives which must not be forgotten in today's discussions.

I hope that gives some reassurance. I have a good deal of excellent detail on Amendment 49D in relation to investment fraud, but given the lateness of the hour, I wonder if the Committee would like me to write about that. I think it means that we do not need to amend the Bill, but a lot of good work is being done by the FCA which I would like to share with noble Lords and give more publicity to in order to get after the scammers. I hope that the noble Lord will feel able to withdraw his amendment.

Lord Mendelsohn: I did not quote the noble Baroness on this one; I am saving that for later, and some significant quotes that she made on other amendments. The argument was not about what small business's compliance is able to do in transactions with the bank. I understand the Minister's point, but the issue is really about small businesses being able to establish that they have fulfilled their regulatory duties, which would not have that consequential action.

Baroness Neville-Rolfe: The review is obviously very open. I was trying to explain that if you do a review that engages only small business, you will not necessarily be able to get the same savings as you would otherwise. I have come across this for example with estate agents: if you buy a property, and are a perfectly respectable person, you have to go through all the detail that the noble Lord was describing. If you are a company director, you are constantly having to produce ID again and again. If you take the 5.4 million businesses and find a saving, that is a lot of burden reduction. Obviously, equally, if you impose new burdens, and multiply that by 5.4 million, there is a problem. That sort of technique needs to be applied, which is what the BRE is doing with this study. We will certainly make sure that the noble Lord's point is properly considered.

7.15 pm

Lord Mendelsohn: I do not want to labour the point, but especially in relation to estate agents, the difference is that it is disproportionate to expect an estate agent to establish the proper beneficial owners and other things. Banks, which have more resources to be able to do it, are much better placed. This was just about getting the balance right. However, I accept the point about the review. It felt like one of those sessions where so much was shared that I almost felt like unloading about being a politically exposed person and how often that becomes a bit of a problem, but I will leave that for another occasion. I beg leave to withdraw the amendment.

Amendment 49B withdrawn.

Clause 15 agreed.

Amendments 49C and 49CA not moved.

Clauses 16 and 17 agreed.

Amendment 49D not moved.

Committee adjourned at 7.17 pm.

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