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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS
OFFICIAL REPORT

ORDER OF BUSINESS

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

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

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

House of Lords

Monday 27 February 2017

2.30 pm

Prayers—read by the Lord Bishop of Newcastle.

Death of a Former Member: Lord Waddington

Tributes

2.37 pm

The Lord Privy Seal (Baroness Evans of Bowes Park) (Con): My Lords, it is my sad duty to report to the House the death of my noble friend Lord Waddington. Lord Waddington was one of the leading political figures of his generation. He arrived in this House as its Leader in 1990. By then, he had already had a long and distinguished record of service both as an MP and, at the highest levels of government, as Chief Whip in the House of Commons and then as Mrs Thatcher's last Home Secretary. After his time as Leader of this House, he continued to serve his country as Governor of Bermuda.

On this day last week, many noble Lords may have had occasion to think of Lord Waddington. His maiden speech as Leader of this House was the last occasion on which the Prime Minister—then Sir John Major—sat on the steps of the Throne. That fact only hints at the legacy left by a great parliamentarian—a man who never abandoned his Lancastrian roots, retaining always a directness of approach, clarity of thought and plainness of speech which enabled him to cut through political complexity with enviable success; many of us wish we had that skill. His service to this House following his period as leader continued to show him at his best: a man of principle and grit; a tenacious and committed servant to the British public who effected real change, leading the charge from the Back Benches on major legislation such as the Criminal Justice and Immigration Bill, to which he carried an amendment in 2008; a man who always thought of others before himself. It was typical of Lord Waddington that in 2015, he was one of the first Members to retire under the House of Lords Reform Act 2014.

At this sad time, we send the good wishes of the House and these Benches to his wife Gilly, to whom he was a devoted husband, and their children and grandchildren. We can only share in their sense of loss, but we can also take this moment to reflect on a career and a life of outstanding public service. Lord Waddington set a standard of dedication and integrity to which we can all aspire, and he will be missed by us all.

Baroness Smith of Basildon (Lab): My Lords as we have heard, Lord Waddington had a long and distinguished career as a lawyer, a politician, Governor of Bermuda and indeed Leader of this House and Lord Privy Seal. Many in your Lordships' House today will know him well from his service in the other place as an elected MP and a government Minister, and will know that he was a man of strong conviction. I think he would have relished the description I read of him yesterday as being a no-nonsense politician.

Despite his very strong loyalty to Margaret Thatcher and his long and distinguished service as a Minister, he was surprised to find himself appointed Home Secretary, having himself recommended our Lord Speaker, the noble Lord, Lord Fowler, for the position. I was surprised to find that we had something quite unusual in common: as the noble Baroness said, in his case it was during his maiden speech in this House that the then Prime Minister, John Major, listened from the Throne steps.

Like many noble Lords, Lord Waddington's dedication to and affection for his constituency, Ribble Valley, continued long after his elevation to your Lordships' House. There is no doubt that he missed being its MP, given his deep commitment. In some ways he wrote his own obituary when, in an interview in *The House* magazine some years ago, he said with disarming self-deprecation—I think he was having a joke:

> "I would like to be remembered as a decent local buffer who wasn't all that clever, but in his own way tried to do his best".

What more can any of us ask than that we try to do our best? On behalf of these Benches I offer sincere condolences to his wife Gilly, his family, his colleagues and his friends.

Lord Newby (LD): My Lords, unlike many Members of your Lordships' House I did not know David Waddington personally, although I recall a number of notable speeches that he made from the Benches opposite during my time in the House. It is fair to say he was not one of life's natural Liberal Democrats, but my colleagues cheered when, as Home Secretary, he referred the case of the Birmingham Six to the Court of Appeal, where of course their convictions were eventually quashed.

The only thing I can really claim to have in common with Lord Waddington is that, like me, he was a proud northerner. He could not help being a Lancastrian but he certainly made the most of it and, as others have said, was plain-speaking and had the characteristics of straightforward behaviour that northerners like to think they share. It is typical of Lord Waddington that he is having his memorial service in Clitheroe rather than across the road; that says a lot about where his priorities lay, and those of his family. Like other noble Lords who have spoken, I wish to pass on our good wishes and condolences to Lord Waddington's wife and family.

Lord Hope of Craighead (CB): My Lords, in wishing to associate myself with all the remarks that have been made, I am conscious that, like them, I was not in the House when Lord Waddington was serving here as Leader, although I was here when he returned from Bermuda in 1997.

Time marches on. Only 20 of the current membership of the Cross Benches were actually in the House when he was Leader, reflecting the fact that there is quite a bit of distance between us and that time. My predecessor in the office of Convenor at the time was Baroness Hylton-Foster. The office that I hold now was very much in its infancy, so I do not think she had quite the same warm working relationship that I have with today's Leader.

[Lord Hope of Craighead]

I have one advantage, however. I remember sitting below the Bar during a debate at which Lord Waddington was certainly present. It was a debate on the future of the legal profession—a matter in which I am sure that he, as a former lawyer, took a close interest. The Government's policy was, it is fair to say, not universally welcomed by the profession. It is worth recalling that the Lord Chancellor, who was sitting on the Woolsack at that time, was the noble and learned Lord, Lord Mackay of Clashfern. That reminds us of two things: that the Lord Chancellor sat in this House, and that the Leader was not the only Member of this House to sit at the Cabinet table. Those are two things we have lost, and which I am sure Lord Waddington would have valued very much.

When I passed through Gray's Inn this morning on my way to the House, the flag was flying at half mast, in a very fitting tribute to Lord Waddington, as he was a bencher of that inn. One of his sons, who followed his father to the Bar, is also a member of that inn. To him and to all the other members of the family I would like, on behalf of all those on these Benches, to extend our condolences on their sad loss.

The Lord Bishop of Newcastle: My Lords, I would like to be associated with the comments already made about the late Lord Waddington, and to add a few words of tribute on behalf of these Benches. Although I came to the House shortly after Lord Waddington retired, I know that his Christian faith was a source of great comfort and inspiration to him. The "Waddington amendment" that bears his name was prompted by his concern that those who sincerely hold traditional Bible-based views on relationships should be able to speak freely under the law. *Hansard* records that in 1998 Lord Waddington asked Ministers,

"that those responsible for the Church's forms of worship should not lightly tinker with the language of prayers which millions have learnt in childhood and from which they still find comfort at times of distress and grief".—[*Official Report*,12/3/98; col.302.]

I like to think that this morning's choice of Psalm 46 for Prayers would therefore have been appreciated, not least as a line from this psalm,

"God is our refuge and courage",

features in the late Lord Waddington's own coat of arms. Future worshippers at St John the Evangelist, Read-in-Whalley, will benefit from a new stained glass window kindly donated by Lord Waddington, which will be a long-standing and fitting memorial to his care and concern for that community, and to his devotion to public service. I offer my condolences to his wife, children, family and friends. May he rest in peace.

Industrial Strategy: Engagement

Question

2.47 pm

Asked by ***Baroness Prosser***

To ask Her Majesty's Government what is their strategy to ensure that managers and employees are fully engaged and able to deliver the Industrial Strategy.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Prior of Brampton) (Con): My Lords, we have published a Green Paper that invites people and organisations across the country to contribute to our industrial strategy. The Government are also committed to strengthening the worker voice in the boardroom. The Green Paper on corporate governance reform explores a range of options, and the Government will publish their response in due course after analysing responses they have received.

Baroness Prosser (Lab): I thank the Minister for that response. The 10 pillars of the industrial strategy cover the processes required to establish the structure against which the strategy's progress will be measured. There is, however, no mention of the human interaction needed to successfully implement those processes. There is a well-established link between employee engagement and productivity, which in this country lags behind that of France, Germany and the United States. What is the Government's plan to ensure that companies have in place appropriate training for all levels of management, so that inclusion and employee voice are present, and the effective delivery of the industrial strategy can be measured? I note that the noble Lord mentioned workers on boards—a policy that we support, but which does not deal with employee voice at all levels of a company.

Lord Prior of Brampton: My Lords, the noble Baroness is absolutely right. The link between employee engagement and performance, however you measure it, whether in productivity or quality, is proven, so engagement is extremely important. However, I do not believe that just having someone on the board of a company is necessarily the right way of getting that engagement, as the noble Baroness mentioned. Engagement is much deeper than that. It is predominantly the responsibility of individual companies to tackle this. You can see the resulting performance when they get it right.

Lord Broers (CB): My Lords, I have just come from a meeting of the Institution of Engineering and Technology at which it launched its report *Skills and Demand in Industry*. The one thing it pointed out to everybody was that only 9% of technology and engineering staff are women, yet 15% of them graduate from our engineering schools and in my own university of Cambridge the figure is over 20%. What are the Government doing to ensure that more women become engineers in industry and participate in it, especially through the apprentice route?

Lord Prior of Brampton: It is interesting that only 15% of women graduate in this subject. In the case of medicine, for example, the figure is now well over 50% and is nearly 60%. It is a very good question. Interestingly, I went to Rolls-Royce last week and met a number of apprentices there, some of whom are doing degree-level apprenticeships. That may be one way of increasing the number of women going into this area. It has been a problem for many years and we are only in the foothills of cracking it.

Lord Foster of Bath (LD): My Lords, does the Minister agree that share ownership can provide the motivation to help employees and managers deliver

for their companies and, of course, deliver the industrial strategy? If he does, what more can the Government do to promote such share ownership?

Lord Prior of Brampton: Share ownership can be a part of this but engagement of people in their workplace goes much deeper and is much more of a day-to-day issue than share ownership or board directors and the like. John Lewis and the mutuals have demonstrated the value of mutuality and ownership, so this does have a part to play. However, it is only part of a much bigger picture.

Lord Forsyth of Drumlean (Con): My Lords, I declare my interest as chairman of a public company. Will my noble friend look at the widespread practice among fund managers and large shareholders of contracting out their responsibilities for corporate governance to outside organisations, and encourage them to engage directly with companies involved in the matters which concern the Government, such as executive pay and other matters?

Lord Prior of Brampton: The noble Lord may have seen the letter that BlackRock sent round to all FTSE 100 companies in which it talked very strongly about the need for long-term sustainable improvements when considering remuneration. I was pretty staggered to see that between 1998 and 2015 the average take-home pay of a FTSE 100 chief executive has gone up from £1 million to over £4 million. In 1998, that represented 47 times the average salary of an employee, now it is over 128 times. Remuneration is a very serious issue and if we want to live in a fair society, we need to address it.

Lord Brooke of Alverthorpe (Lab): My Lords, will the Minister have a look at a Private Member's Bill that was introduced here twice previously by the now deceased Lord Gavron, who was very prescient in seeing the difficulties arising from the growth in the salary gap between CEOs and their employees? That Bill was supported by noble Lords all around the House. It would be well worth the Minister's while to look at it. He mentioned that he does not want the Government to interfere in the deals between employers and employees in the private sector. However, the Government have responsibility in a very substantial part of the country's employment—namely, in the public service. What are the strategy and targets for improving productivity in the public service?

Lord Prior of Brampton: The noble Lord makes a very good point. Industrial relations, employee engagement—call it what you will—is much better by and large in the private sector than in the public sector. We are not good employers, if we are honest. Like me, a number of noble Lords in this House were staggered that the junior doctors, for example, were forced into taking strike action. These people are vocationally committed, yet somehow we created an environment in the public sector which is far from satisfactory.

Lord Foulkes of Cumnock (Lab): My Lords, will the Minister, on behalf of the Government, have a word with the Speaker, the Senior Deputy Speaker and the Clerk of the Parliaments and ask them to consider how the employees of this place might be involved more in decisions regarding its running?

Lord Prior of Brampton: My Lords, a number of our leading companies have very innovative ways of engaging people in their business—for example, Google and other companies like it have installed table tennis tables. I wonder whether the noble Lord, Lord Fowler, might consider making way for a table tennis table in this place.

Lord Howell of Guildford (Con): My Lords, does my noble friend concede that turning earners into owners and expanding employee share ownership in various forms can, in certain circumstances, be immensely beneficial and a great promotion for industrial competitiveness and effectiveness? Will he bear in mind particularly the case of the National Freight Corporation where a major share ownership by all employees had an enormous effect in improving productivity? It was a project carried forward with great vigour by no less a person than the noble Lord, Lord Fowler—now the Lord Speaker of this House—and me, as successive Secretaries of State for Transport in the 1980s.

Lord Prior of Brampton: I agree with my noble friend that employee ownership can be very beneficial—the mutual is another model that can be beneficial—but it does not guarantee success. There are many other aspects of corporate life that are very important. The Co-operative Bank is an example of an organisation that has not been a conspicuous success in recent years. It can be very important but it is not the whole answer.

Secondary Schools: Funding

Question

2.56 pm

Asked by ***The Earl of Clancarty***

To ask Her Majesty's Government what assessment they have made of the effect of proposed levels of funding allocated to secondary schools on the quality of education including the teaching of non-English-Baccalaureate subjects.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, through our careful management of the economy we have protected the core schools budget in real terms. This means that in 2017-18 schools will have more funding than ever before for children's education, totalling more than £40 billion. We are also committed to ensuring that all pupils receive a broad and balanced curriculum that includes both an academic core and additional subjects that reflect their individual interests, strengths and characteristics, including arts subjects.

The Earl of Clancarty (CB): My Lords, is not the Minister alarmed by the recent comments of the head teacher of a school in Cheshire, who said that if further cuts—and they are cuts according to the National Audit Office—go ahead then all non-EBacc subjects

[The Earl of Clancarty]
could be removed from the curriculum, meaning no art, music, drama or design and technology? Arts departments across the country are already bearing the brunt of the current cuts, such as to specialist teachers, provision of materials and ICT. Will the Minister accept that there is simply not enough of a funding cake to go round?

Lord Nash: I am alarmed by the comments because it is quite clear that those schools that perform well in arts subjects also perform particularly well in the EBacc. As the NAO has said, by comparing efficient schools with others, there is plenty of money in the system and we have a number of tools in the department to enable schools to run themselves more efficiently, and those that do have sufficient resources, particularly for the classroom and for their curriculum.

Baroness Nye (Lab): My Lords, it must be the case that these cuts will fall disproportionately on non-EBacc subjects as schools encourage pupils to take more EBacc subjects to boost their results. To avoid a ticking time bomb for the creative industries pipeline, will the Government consider including design and technology as well as computer science as part of the EBacc, as proposed by his colleagues in the other place?

Lord Nash: There is no evidence that the take-up in GCSE art subjects has declined as a result of the EBacc. In fact, the New Schools Network found that the number of art GCSEs taken by pupils has gone up since the introduction of the EBacc. We have to remember always that when we started in 2010, sadly, only one in five pupils in state schools were studying a core suite of academic subjects. That is why we focused on the EBacc and have doubled the number of pupils who have these academic subjects, which are particularly important for pupils from disadvantaged backgrounds.

Lord Storey (LD): My Lords, the Minister says that his Government have protected the main core school budget, but would he not accept that on-costs which schools have to pay, such as national insurance, have ensured that schools have not got the money? In fact, the IFS yesterday reported that, for the first time, there is a real cut in school budgets. Would this account for the fact that there has been a 10.6% decrease in the number of hours given over to creative art teaching?

Lord Nash: The IFS pointed out that over the 20 years from 2000 to 2020, schools will have a 50% per pupil increase in real terms. As I said, we believe that there is considerable scope for savings in schools' efficiency. We are already on course to save £250 million in academies by next year alone with our RPA scheme substituting insurance costs. We believe that our buying strategy can save £1 billion out of £10 billion a year of non-staff spending.

Lord Watson of Invergowrie (Lab): My Lords, the noble Earl, Lord Clancarty, quoted a head teacher and I would like to do the same. Last week, the head teacher of the Forest School in Winnersh, Berkshire, resigned her post because of the increasing amount of cuts facing her school. In a letter to parents, pupils and staff, she said:

"The situation with regard to schools funding, both nationally and locally, is bleak: in common with other headteachers, I did not enter the teaching profession to make cuts that narrow the curriculum, or to reduce the number of teachers and increase class sizes, yet my hand has been forced and I see no immediate easing of the situation. Consequently"—

this impacts directly upon the question—

"I feel unable to deliver the quality of education the boys at The Forest so clearly deserve".

The National Association of Head Teachers says that that is increasingly becoming the situation across England. That is not surprising, as the National Audit Office has reported that there will have to be an 8% real cut in the schools budget up to 2020—this, it should be said, by a party that in its 2015 election manifesto pledged to protect the schools budget. The Government say that the new funding formula—

Noble Lords: Oh!

Lord Watson of Invergowrie: I am not surprised that Members opposite are unhappy about this, because it is unpalatable. The Government say that the new funding formula is about fairness. How can the funding be fair when it is not sufficient?

Lord Nash: I do not think that time will permit me to respond to that speech. I can only repeat what I said: that schools that run themselves efficiently have ample resources for a broad curriculum. I invite the noble Lord to go on to the department's website and watch a clip by Sir Mike Wilkins about the curriculum-led financial planning at Outwood Grange. Academically, this is one of the most successful and, financially, one of our most efficient multi-academy trusts.

Lord Lexden (Con): Will not the production of a national funding formula assist the progress of our education system in a substantial manner?

Lord Nash: I agree entirely with my noble friend. This is long overdue. Previous Governments have not done this, but it will enable a much fairer system from which 54% of schools will benefit. Schools can lose only 3% of their costs.

Baroness Kidron (CB): Does the noble Lord agree with what Professor Brian Cox said when I asked him about the fetishisation of science in the school curriculum? He said that physics has taught us that the world had a beginning and will most probably have an end, but the arts will teach us how to live in the vast expanse of time in between.

Lord Nash: I agree entirely with the noble Baroness about the importance of arts. We all know that the STEM subjects are very important, and it is encouraging to see that the STEM intake at A-level has gone up substantially in recent years. However, as I said, there is plenty of room in the curriculum. The EBacc takes only five subjects and on average students now take nine qualifications, with many taking 10 or 11. Therefore, there is plenty of room in the curriculum for arts subjects.

Defence: Industrial Strategy

Question

3.03 pm

Asked by ***Lord West of Spithead***

To ask Her Majesty's Government, in the light of their plans for a national shipbuilding strategy and significant investment in the United Kingdom defence nuclear enterprise, whether they intend to develop an overall defence industrial strategy.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, the Ministry of Defence is actively involved in the cross-government work on an industrial strategy. Many of the themes in this apply to defence, and we do not plan a separate defence industrial strategy. A substantial amount of work is already under way to encourage the growth and competitiveness of UK industry, including as part of the commitment in the strategic defence and security review to refresh defence industrial policy.

Lord West of Spithead (Lab): My Lords, although I like the cut of the noble Earl's jib, which is not surprising considering his naval pedigree, I am disappointed by the Answer. There is a complete absence of analysis of the defence industrial base and no proper study of its real costs. These were identified in the King's College study instigated by the noble Lord, Lord Sterling, but nothing seems to have been done to focus on them. We know very well the value for this nation of things such as the agile supply cycle, but we also know their value in terms of jobs, through not having to pay welfare payments or unemployment benefit. There are all these benefits, yet we do a simple calculation of costs, which does not make sense. Does the Minister not agree that we have to look very closely at the real cost of equipment and weapons before we decide to buy from abroad, with a loss of jobs, a loss of agility and a loss of ability to keep running our systems here, and that we really must get the balance right rather than taking the simplistic approach of saying, "This costs £4 there and £5 here"?

Earl Howe: I agree with the central thrust of the noble Lord's proposition. As I said, many of the industrial strategy themes, particularly around removing barriers for UK companies to do business with government are well aligned with our refreshment of defence industrial policy. It is all about updating our terms of trade with industry to continue to deliver the best equipment for the Armed Forces at the best value for money, but in a way that supports UK industry to grow and compete successfully. That is the balance we are trying to strike.

Lord Levene of Portsoken (CB): My Lords, I declare my interest as chairman of General Dynamics UK. Many years ago now, I was given the task of unscrambling the defence industrial policy, which was centred on so-called national champions. This policy resulted in significant cost overruns and delay in delivery of equipment badly needed by our Armed Forces. Will the Minister please confirm that the Government have no intention of reverting to that policy and remain committed to the policy of competitive procurement which has served the nation well?

Earl Howe: My Lords, I can reassure the noble Lord in that regard. The Government remain committed to the principles we set out in our 2012 White Paper, *National Security Through Technology*, including promoting open competition. We will be refreshing our defence industrial policy very much within that framework.

Lord Sterling of Plaistow (Con): My Lords, I totally agree with the comments of the noble Lord, Lord West. There is a big difference between cost, which this country has got so used to using as a measure, and value for money. What has been lacking for many years—I know the noble Lord, Lord Levene, feels very strongly about this as well—is a long-term relationship with industry. You cannot expect people to employ engineers, and get thousands of subcontractors and universities involved without long-term relationships. Does the Minister agree that that is a way forward? After all, the United States of America, Russia and China all have huge sovereign industry and it certainly seems to serves them well.

Earl Howe: My Lords, I agree with my noble friend that part of the work we have to do, and are doing, is looking at how we can optimise the strategic interaction between the Ministry of Defence and industry, including how we make defence a more attractive customer for people who do not traditionally supply to the MoD, such as small and medium-sized enterprises. It is about creating simpler processes and a more competitive UK supply chain. Of course, we would like to source from companies and organisations in this country, but we have to make it as easy as possible for them to deal with us.

Lord Touhig (Lab): My Lords, last Tuesday, Labour's shadow defence team, together with my noble friend Lord West of Spithead, held a workshop with representatives of some 20 defence companies. The clear message from that event was that a defence strategy was the best way to streamline procurement and give a clear vision for the future to the defence sector. Have the Government had similar discussions with industry experts on the need for such a strategy? If not, may I suggest that they do? They may learn something.

Earl Howe: My Lords, I do not think we need to get too hung up on the word "strategy" as opposed to "policy". The key questions, it seems to me, are how we can make UK industry more competitive, how we can drive innovation, how we can drive skills and, as I have said, how best to ensure that industry can engage productively with government and that government itself is a more intelligent customer. These are the questions we should address and I am sure they are the ones industry wants us to address.

Baroness Jolly (LD): My Lords, what are the considerations when making decisions about the maintenance and growth of the supply chain, particularly on issues such as the availability of British skilled

[Baroness Jolly]
workers, the current defence industrial locations in the UK and the impact on local economies of buying overseas?

Earl Howe: In the industry consultation that we carried out, a number of areas were highlighted, all of which we are looking at in the refresh exercise. They included how we make our processes more straightforward for non-traditional suppliers, the improved use of early market engagement, and communicating our approach more clearly to industry at an early stage. Those things will all play into the issues that the noble Baroness recited.

United States: Immigration Policy

Question

3.10 pm

Asked by ***Baroness Afshar***

To ask Her Majesty's Government, in the light of the decision by President Trump to limit immigration to the United States, what steps they are taking to secure the rights of Iranian-born British citizens visiting the United States to return to the United Kingdom and not be sent to Iran.

The Minister of State, Foreign and Commonwealth Office (Baroness Anelay of St Johns) (Con): My Lords, we gained assurances that measures enacted by President Trump's executive order of 27 January do not affect British passport holders irrespective of their country of birth or whether they hold another passport. We are closely monitoring any changes and would consider intervening with the relevant authorities if necessary. Standard US policy is that visitors who are denied entry to the US are returned to the country from which they have travelled.

Baroness Afshar (CB): I thank the Minister, but what measures have the Government taken to ensure that, at the point of entry into this country, passport controls focus on the legitimate passports of individuals and do not ascribe an assumed identity to visitors in terms of their dress code, assumed nationality or religion?

Baroness Anelay of St Johns: My Lords, with regard to visitors to this country, I can give the noble Baroness that assurance. With regard to the access of visitors to the United States, its guidance says that those same factors should not determine the decision that is made: the decision is made on an equality basis.

Lord Collins of Highbury (Lab): My Lords, I welcome the Minister's comments, but can she reassure the House that on the executive order that we expect either this week or next week, the department will be prepared to offer proper advice immediately and the Foreign Secretary will not waste any time in seeking urgent clarification, unlike the last time?

Baroness Anelay of St Johns: My Lords, my right honourable friend the Foreign Secretary did seek urgent advice the last time. The difficulty was that there was some confusion in the United States's systems, as was evident from the changing nature of its travel advice online. Therefore, early engagement by the Foreign and Commonwealth Office in this country and by my right honourable friend the Prime Minister meant that we were able to get the earliest advice to British passport holders that they would not be adversely affected.

Baroness Northover (LD): My Lords, can I flag up the astonishing position whereby the noble Baroness, Lady Afshar, who was born in Iran and is a former professor of politics at the University of York and much else besides, might herself be at risk in Iran and not welcome in the United States? Does the Minister agree that we should never go down that road, and that both countries are missing out, potentially, on an absolute treasure?

Baroness Anelay of St Johns: Yes, and yes.

Lord McInnes of Kilwinning (Con): My Lords, what steps are Her Majesty's Government taking to ensure that British Iranian nationals are recognised as such by the Iranian Government?

Baroness Anelay of St Johns: My Lords, that is an extremely important question because of the problems, as we have discussed over the past six to seven months, which ensue when one country does not recognise the validity of dual nationality. Iran is just such a country. We continue to have discussions at ministerial and ambassadorial levels with Iran to try to resolve some of the consequences of its refusal to accept that one can ever revoke one's own Iranian nationality. Iran is not the only country involved and we continue those negotiations with other countries, too.

Baroness Hussein-Ece (LD): My Lords, what representations is the Foreign Office making to the American embassy on cases such as Mr Miah, the maths teacher born in Swansea who was accompanying his class to go to the United States? It seems that he was blocked in Reykjavik from boarding a plane for no other reason than that he is a Muslim. He was denied entry and then humiliated; he said that he "felt like a criminal". Are these sorts of cases being monitored and followed up, and what representation is being made about this outrage?

Baroness Anelay of St Johns: With regard to the particular case of Mr Miah, who was removed in Reykjavik from a flight to New York, he has not been given a reason for the entry refusal by the US authorities. On the wider question, naturally when we were advised by Mr Miah of his position we gave consular assistance in position, in Iceland. More broadly, a really important issue underlies the noble Baroness's question: namely, that we are not always notified when somebody holding a British passport is denied entry or, indeed, detained upon entry. We can only be sure of knowing about it if they notify us, given that the US does not commonly hold those records and there is no international rule that any country must do so.

Preventing and Combating Violence Against Women and Domestic Violence (Ratification of Convention) Bill

First Reading

3.16 pm

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

Business of the House

Motion on Standing Orders

3.17 pm

Moved by ***Baroness Evans of Bowes Park***

That, in the event of the European Union (Notification of Withdrawal) Bill having been reported to the House at the conclusion of its proceedings in a Committee of the whole House, Standing Order 40(1) and (4) (*Arrangement of the Order Paper*) be dispensed with on Tuesday 7 March to enable the Report stage to start before oral questions and the Question for Short Debate in the name of Lord Truscott to be taken between the Report stage and Third Reading.

Motion agreed.

Bereavement Support Payment Regulations 2017

Social Security Benefits Up-rating Order 2017

Guaranteed Minimum Pensions Increase Order 2017

Motions to Approve

3.17 pm

Moved by ***Lord Henley***

That the draft Regulations and Orders laid before the House on 12 January and 16 January be approved.

Considered in Grand Committee on 21 February.

Motions agreed.

Pension Schemes Act 2015 (Judicial Pensions) (Consequential Provision) Regulations 2017

Motion to Approve

3.17 pm

Moved by ***Baroness Buscombe***

That the draft Regulations laid before the House on 16 January be approved.

Considered in Grand Committee on 21 February.

Motion agreed.

European Union (Notification of Withdrawal) Bill

Committee (1st Day)

3.18 pm

Relevant document: 8th Report from the Constitution Committee

Clause 1: Power to notify withdrawal from the EU

Amendment 1

Moved by ***Lord Lea of Crondall***

1: Clause 1, page 1, line 3, at end insert "while retaining membership of the European Economic Area (EEA)"

Lord Lea of Crondall (Lab): My Lords, I think that one of the themes of these two days in Committee will be that there are no easy answers to the dilemmas we all now face in the United Kingdom. There are upsides and downsides to every option for Brexit and the country's future. That includes membership of the European Economic Area.

Perhaps I may remind the Committee that we can retain our membership of the single market without membership of the EU only through maintaining our membership, which of course we have already, of the EEA. To spell it out, membership of one or the other is required; that is, either of the EU or of EFTA. That is why I need to say a little more about how we would work within EFTA, which currently comprises three countries: Norway, Iceland and the Duchy of Liechtenstein. We cannot, as we sometimes seem to be doing, rule out all of the options before us, and certainly not rule them out prematurely. Rather, we should look at the pros and cons of each, as has been done in the outstanding report of the joint sub-committee of the European Union Select Committee on Brexit and trade options, chaired by my noble friend Lord Whitty.

We were members of EFTA from its inception in 1960 until we joined the EEC in 1973. I declare a retrospective interest, having chaired the last meeting of the EFTA consultative committee, which was made up of national employers and trade union organisations in consultation with the Council presidency. The meeting was held in Vienna in December 1972. The EEA has a two-pillar structure: the EU on one side and EFTA on the other. They meet together in the EEA council at government level, with various joint committees on particular points, along with a joint parliamentary committee and the EEA consultative committee.

The substance of consultations with the EU depends to an extent on the weight of the member states involved, but I am told by contacts in Norway that these are not without value, and I think that something like this was also the burden of the message sent by the Norwegians who gave evidence to parliamentary committees in both the Lords and the Commons. On the objection to this approach, there is of course the constant complaint that plan B, C or D falls because, "We would not be at the table". I have to point out that the famous 52% asserted—or supposedly asserted, if they knew what they were doing, which we assume they did—that, without equivocation, they did not

[Lord Lea of Crondall]
want us to be at the table. So that can hardly be a drawback to where we go from here: end of story, full stop. Surely we can all agree that we have to balance influence on the one hand and freedom of action on the other.

EFTA has its own court of adjudication on issues such as interpreting the EFTA treaty and its application of rules of origin, technical standards et cetera. So we will be bound by the rules of EFTA consequent on the relationship with the single market, but obviously there is a great deal of legal alignment with the EU. The four freedoms can themselves be interpreted in different ways. For its part, the Commons Select Committee noted in paragraph 122 of its report that the Secretary of State for Brexit had indicated on 1 December last year that the Government,

"give very high priority to both tariff-free access and access without tariff barriers … that may or may not include membership of the single market".

The Lords committee report stated in paragraph 82 that in trade terms, becoming a non-EU member of the EEA,

"would be the least disruptive option",

providing free access to the single market in services and partial access to it in goods. The trade agreements are often negotiated advantageously by EFTA itself. I believe that there is a score of such agreements rather than agreements with individual member states.

I turn now to freedom of movement, border controls, work permits et cetera. Every facet of this debate has now been opened up more than it has been for many years—and by "open" I mean open and not closed down in advance. There is a considerable degree of variance among EU countries on how free movement is interpreted. In Belgium, there is a requirement for a job to go to, it is necessary to pay the rate for the job and no job advertisements can be placed in eastern Europe without being placed also in Belgium. Our Secretary of State seems to have come up with a new form of words about the guarantees for people who are already resident and working in this country. I would simply say that this is an area where we all know that constructive thinking needs to go ahead on a bipartisan basis.

Regarding attitudes in Norway, Iceland and Liechtenstein towards our application to become members once again, which have to be thought about, it is fair to say that we have very close relations—with a possible question mark in the case of Norway about something that happened 1,000 years ago—notably because of the North Sea energy fields from Shetland through to Aberdeen and further south, in particular in the north-east of England and down the east coast. This is true for the UK as a whole in a great variety of ways, including through the activities of the Norwegians' well-managed, energy-based sovereign wealth fund, which is now worth £250 billion. A lot of that investment is deployed via London, as we were told in a recent briefing by the fund.

Without being presumptuous, and while recognising that EFTA would change its internal dynamics and, to some degree, its character and profile, the advice generally is that one would not expect hostility in Norway—the largest of the three—to any hypothetical application from the UK to rejoin the association. Positives would also arise from this for Scotland, Wales and Northern Ireland, compared with the alternatives. This is becoming more and more obvious as the weeks go by.

In paragraph 58 of its report, the Lords committee observes:

"Various studies had shown that from the EU's perspective, 'the EEA is the most preferred model' of association for third countries".

That is not a consideration to be underestimated, and it may influence attitudes among the EU 27 countries. These options for trade, investment, tariffs et cetera have to be the subject of not just theoretical argument but practical experience, such as was given by a Mr Emerson, who pointed out in evidence reported in paragraph 70 of the report that the advantage of the EEA option is, inter alia:

"It is a system that exists, offers legal clarity and actually works. It is closest among other options … to the status quo in economic terms and it would avoid uncertainty and thereby minimise damage to the UK as a destination for foreign investment aimed at the EU market".

These are among the reasons why it would be counterproductive to leave the EEA, certainly prematurely. I know that going down the route I am advocating would entail Ministers eating some words. But I am sure that their digestive systems will be up to it once they have all run a few times around St James's Park. I beg to move.

Baroness Quin (Lab): My Lords, I support the amendment moved by my noble friend as a way to probe aspects of the Government's approach to our future trading relationship with the European Union. The EEA was created when the UK, Denmark and Ireland changed from being members of EFTA to members of the EU, but the scale of their commercial relations with the other EFTA countries made it necessary to abolish customs barriers between the two groups of countries. A similar imperative will operate in the current situation as far as the UK market is concerned, given the scale of our trading with the EU. Obviously, in many ways the EEA would not be my preferred option because I would prefer to be in the single market—indeed, I would prefer to remain in the EU. However, given where we are after the referendum, I certainly think it is worth the Government considering and responding to the points that have been made.

My noble friend referred to the excellent report by the European Union Committee on *Brexit: the Options for Trade* and the fact that paragraph 5 of the conclusions says:

"EEA membership would be the least disruptive option for UK-EU trade, not least because it would maintain membership of the Single Market for services".

I specifically ask the Minister whether this paragraph of the report, highlighting the importance of services to our economy and the way that that can be handled within an EFTA-type solution, has been discussed with the City of London, and what kind of response was made by the City to the point in the report.

Obviously, we will have a further chance to look at the report when it is discussed in this House on Thursday, but it is very germane to the discussions this afternoon, both on the EEA and on the single market.

Therefore, it is quite right to highlight it today and I take this opportunity to do so. Certainly—this point has been made many times—whatever people voted for in the referendum, we are all pretty sure that they did not vote to make themselves poorer. As a result of that, exploring the best deal possible, in looking at all the possible options, is going to be vital. I believe that the Government need to take the amendment and the report very seriously.

3.30 pm

Lord Davies of Stamford (Lab): My Lords, I agree very much with my two noble friends, who have set out very well the purpose of the amendment. I, like them, feel that it is a disaster for our country to leave the European Union in any circumstances, and that the economic costs have not begun to be properly assessed in this country, although as every week goes by we become more aware of some of them. However, I think it is common ground, even with those who think that we should leave the European Union and who voted and campaigned for that, that there are economic costs and even they would accept that those economic costs are very serious.

The economic costs essentially affect manufacturing, particularly areas such as automotive and aerospace where there are a large number of supply chains in the European Union going across countries, with parts and components and so forth going back and forth more or less the whole time. That business will be very severely affected by our leaving the customs union and the single market, particularly where we would have to pay tariffs, as we would do in the case of motor cars, for example. The other area is financial services, which accounts for 10% of the gross national product of this country, as we all know. The City at the moment is the financial capital of the European Union but that is likely to cease if we left the European Union. It is very difficult to imagine how it could continue to be that unless we had some way of remaining in the internal financial market.

The great thing about the EEA is that it is a way of avoiding some, if not all, of the economic costs—there would be a loss of investment in many areas and as time went by there might be threats to our competitiveness as a country, both in services and in some of the manufacturing areas I mentioned. Nevertheless, it would mitigate and very much reduce the economic costs, which everybody is agreed are considerable and serious. Therefore, it seems extraordinary that the Government have not even bothered to consider or negotiate the possibility of our remaining in the single market by virtue of becoming again a member of EFTA or otherwise.

The Government have very reluctantly conceded that there should be some parliamentary process in this procedure of leaving the European Union. They have very reluctantly conceded that they should report to us at least as much as the European Commission does to the European Parliament on the progress of negotiations. They have very reluctantly exposed to us some of their thinking on some of these points, which have been dragged out of them in different ways—and we have to go on doing that.

However, as we begin to get clearer sight of what the Government are doing, it becomes more and more curious because we observe that they are actually breaching some of what one had always thought were the golden rules of negotiation. They are behaving in a way that is clearly irrational. No normal person gives up an option unless he or she gets to the point when they have to. There is no point in giving up an option in advance so why did the Government state in advance they were not interested in becoming a part of EFTA and remaining in the single market on that basis?

Secondly, the Government have said that their priority is to prevent freedom of movement or stop freedom of movement in future so far as this country is concerned. We now hear from Mr Davis that he does not expect any significant reduction in immigration from the rest of the EU or anywhere else for the next few years. In other words, the benefit for which the Government are apparently prepared to pay this enormous economic cost is much less than it was always made out to be. That is very clear.

Lord Forsyth of Drumlean (Con): On the subject of giving away an option in advance, is my memory playing a trick on me in recalling that the noble Lord and others on the remain side during the referendum campaign argued that membership of the EEA would be the worst possible option because we would be bound by all the rules but have no say?

Lord Davies of Stamford: The noble Lord is uncharacteristically inaccurate; he normally does his homework before intervening in this way. He is quite right that I and many on the remain side argued against the EEA being the right solution but he is quite wrong to suggest that any of us argued that it was the worst solution. On the contrary, throughout the campaign I always said while it was a very bad solution, it was the least bad solution of all those on offer. I am on record as saying that and probably said it in debates in which the noble Lord took part. Indeed, that is my strong view today and is the case I now argue.

I wish we could stay in the EU—period, as the Americans say, or full stop—but if we cannot we must try to mitigate the enormous damage. That is the argument I have been making. The way to do that is to try to find a way to stay in the single market, and one way we could certainly do that is to rejoin EFTA, as my noble friend Lord Lea set out. It is extraordinary that the Government have excluded that possibility and I now come to their extraordinary behaviour.

The Government have not only revealed that the benefit for which they are prepared to pay this high cost is nothing like as great as it was always made out to be, but not even considered negotiating on the single market regime provided by the EEA and using that as a basis for trying to get some concessions on freedom of movement. My two noble friends suggested a way forward that might be possible. I do not think that we on this side of the House will be able to take over these negotiations but we want to know—it is important that everybody in the country knows—why the Government did not even think it worthwhile to sit down with our European Union partners and say we

[Lord Davies of Stamford]
would like to stay in the single market but we would also like to curb freedom of movement at least to some extent. We could have a negotiation on that basis.

Lord Grocott (Lab): Could my noble friend refresh the House's memory on what success the previous Prime Minister had in having this as an objective in his renegotiation of our terms of membership of the European Union?

Lord Davies of Stamford: I think the previous Prime Minister was a completely incompetent negotiator. The way to make progress in European affairs—it is extraordinary that after all these decades the Tory party has not learned this—is to adopt a communautaire approach and the language of one's partners, to say that what one is seeking to do is in the interests of everybody and not purely in the selfish interests of this country, and certainly not just to get a good headline in the *Daily Express* or *Daily Mail*. We make it clear that we share the long-term objectives of our neighbours and partners for the future of western civilisation, as well as for prosperity, competitiveness and employment and these important economic but ultimately subsidiary objectives. Then we say pragmatically, as we have a reputation for being pragmatic, "Would it not be a good idea to do X, Y and Z which would strengthen our common purposes and take further forward our common ambitions?". That is the way to make progress but it is the opposite of the confrontational approach the last Prime Minister adopted. It is not surprising that he did not get very far.

I am glad that my noble friend made this brief intervention because it enables me to say that I am extremely worried—I am not alone in this—that the Tory party has learned nothing at all from this experience or from any other experience over the last 40 years of the European Union and so will make the same mistake again. It will find itself not achieving what it ought to in the national interest in these negotiations. They will be a disaster, and a largely avoidable disaster, precisely because the Tory Government have not learned the obvious lessons of the past which my noble friend was kind enough to give me the opportunity to remind them of this afternoon.

If you have somebody negotiating on your behalf—a solicitor, an accountant or some representative, agent, trustee or whoever—and you watch carefully what they are doing, you are entitled to get worried should they do something that goes quite counter to normal human common sense. I pointed out three ways in which the Government are behaving in an extremely irrational fashion. I will repeat them so that the Minister can address them when he sums up. First, why are we pursuing this particular objective with the same kind of intensity and passion when we have acknowledged that the objective that we are trying to achieve—what we are trying to obtain in exchange for the high price of giving up our membership of the single market—is not anything like as great it was previously made out to be?

Secondly, why have we not decided to negotiate on the basis of the available option, which we know exists, of our potential membership of the EEA and see if we can perhaps do a little better and achieve some additional concessions? We have not even tried to do this—why not? Thirdly, why are we proceeding in this negotiation by giving up options in advance, before we have even explored them and before we have even started the negotiations? It is a very extraordinary thing to do.

Lord De Mauley (Con): My Lords, I wonder whether the Labour Party could find room for others in this debate. Even if the noble Lord, Lord Lea, were right that we did not have to go through a process of joining EFTA and the EEA—I do not think that he was, actually—being a member of the EEA means accepting EU laws, as my noble friend Lord Forsyth has said, without any political representation or influence over them. This would, of course, result in less control for the UK over its destiny, rather than more. That is not what people voted for in the referendum. I oppose this amendment for those reasons and because it is directly inconsistent with the White Paper.

Lord Blencathra (Con): My Lords, there are those who say that, since voting to leave the EU was the only question on the ballot paper, it is legitimate to argue that people did not vote to leave the single market or the customs union. They are wrong, but we will deal with that in the fourth group of amendments. Those same people also argue that we can join the EEA and benefit from it while still leaving the EU. I believe that that, too, is wrong and misguided. However, your Lordships should not take my word for it: I will quote from the EEA website. After it describes what the EEA is, who are the contracting parties and when it was agreed, it goes on to say in point 4:

"What is included in the EEA Agreement? The EEA Agreement provides for the inclusion of EU legislation in all policy areas of the Single Market. This covers the four freedoms, i.e. the free movement of goods, services, persons and capital, as well as competition and state aid rules, but also the following horizontal policies: consumer protection, company law, environment, social policy and statistics. In addition, the EEA Agreement provides for cooperation in several flanking policies such as research and technological development, education, training and youth, employment, tourism, culture, civil protection, enterprise, entrepreneurship and small and medium-sized companies. The EEA Agreement guarantees equal rights and obligations within the Single Market for citizens and economic operators in the EEA. Through Article 6 of the EEA Agreement, the case law of the Court of Justice of the European Union is also of relevance to the EEA Agreement, as the provisions of the EEA Agreement shall be interpreted in conformity with the relevant rulings of the Court given prior to the date of signature, 2 May 1992".

Therefore, if we join the EEA, we would, in effect, still be in the EU to all intents and purposes, with the exception of agriculture, fishing, justice and home affairs. All the rest of it we would have, lock, stock and barrel. We would not have control of our borders, our laws, our courts or much of our money. We would thus betray the people who voted to leave the EU, and that is why we should reject this amendment.

Baroness Deech (CB): My Lords, I will make four very brief points. Will the Minister assure the House that this amendment is actually within the scope of the Bill? The Bill is about notifying withdrawal: this seems to me, as with many other amendments, to be about something completely different. Secondly, it is

not within our unilateral gift. Even if the Prime Minister is instructed to remain a member of the EEA on our behalf, she cannot necessarily achieve this on her own. Thirdly, it is not a good idea to tie her hands in that fashion, and fourthly, even if this amendment succeeded—and the same is true of many others—and it became a part of this Bill, as the two years unrolled, it might prove to be inconvenient and an obstacle. There would be nothing to stop the Government simply repealing, or bringing forward measures to repeal, this particular measure, were it to be added to the Bill.

Lord Hamilton of Epsom (Con): My Lords, surely the problem with the EEA is that it is a waiting room for people who want to join the EU. It was never designed for people who wanted to leave it. I do not quite understand why we have to sit here saying that we must take one of the options on offer from the EU. We are the third-biggest economy in the EU. The EU sells 50% more to us than we do to it. Why can we not have a unique free trade agreement with the EU? Why do we have to go along with any of these things that are on offer from the EU?

3.45 pm

Lord Davies of Stamford: Perhaps I may be permitted to correct the noble Lord, who I know is an expert on these matters and normally gets his facts absolutely right. We have sat on European Union committees together for quite a long time. But he is wrong about the EEA being a waiting room for applicants to the EU. Norway had a referendum which decided against joining the EU. It decided not to be a member of the EU but it decided to be a member of the single market and to join EFTA on that basis. For Norway, it is not an anteroom, it is an alternative, as it could be for us if we so wished.

Lord Hamilton of Epsom: I accept that but it was designed originally to be a waiting room for those who wanted to join and that is why it has been put in place and you have to comply with all the regulations of the EU. But I come back to my point that if we join the EEA, we do not join the customs union so we have all the problems of the customs regulations. It enables us to do free trade deals with others but it has many disadvantages and I still do not really understand why we have cannot have our own unique arrangement with the EU. I am sure that is the ambition of the Government and that is why the amendment should be opposed.

Lord Elton (Con): My Lords, in declaring an interest—which is really my only qualification for joining this short debate—as a half-Norwegian, I advise the Minister to test the noble Lord's assertion that the Norwegians are broadly content with their situation. Conversations I have had over the years with relatives and friends suggest that they see all the disadvantages that my noble friend Lord Forsyth so forcefully expressed five minutes ago.

Lord Green of Deddington (CB): One of the major difficulties that might stem from membership of the EEA is its implications for freedom of movement. I ask the Minister, when he responds, to give the Government's assessment of the implications for freedom of movement for the UK of membership of the EEA.

Baroness Hayter of Kentish Town (Lab): My Lords, I think the Committee has heard quite enough from me so I will not speak on this other than to say that this will come up when we discuss the single market and I will reserve our comments until then. The Committee will probably know that we will not be supporting this amendment.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I thank noble Lords for the amendment concerning the European Economic Area, which seeks to ensure that the UK remains a member of the EEA.

Lord Foulkes of Cumnock (Lab): My Lords, I wonder if the Minister will give way—

Lord Keen of Elie: Not yet, no. While I understand the issues raised and agree with the desire to debate them in this House, I cannot accept the amendment.

Lord Foulkes of Cumnock: I wonder if the Minister can clarify—

Lord Keen of Elie: I wonder if the noble Lord will allow me to make a little progress before he launches into the water. This Bill is about the process of our leaving the European Union. It is not about the Government's approach. I will happily debate these matters with your Lordships, and I am sure that there will be other occasions on which to do so over the coming months and, indeed, years. But as the other place has shown, this Bill is not the place to put constraints on the Government's approach.

Lord Foulkes of Cumnock: What is it that the Minister says? I am obliged to him for giving way. As this is the first time we have heard from the Minister on this subject since the weekend, I wonder if he would care to comment on one of the most significant happenings. A very distinguished Member of this House, who sat through almost the whole Second Reading on Monday and Tuesday—a former Deputy Prime Minister for whom we all have the greatest respect—has said that he is going to oppose his own Government on this. He is completely against Brexit. What is the Government's reaction? Are they not going to take account of the views of someone so distinguished, someone with such great experience of government and of the European Union? Would the Minister care to respond?

Lord Keen of Elie: Yes, of course. The noble Lord to whom the noble Lord refers is not in the House today.

It is my intention to make some progress with this matter. The Prime Minister clearly set out her vision for the future of the UK post-exit in her speech on 17 January, including our future trading relationship with the EU. She was clear that we do not seek membership of the single market. Instead, we seek the greatest possible access to it through a new, comprehensive, bold and ambitious free trade agreement. We want the

[Lord Keen of Elie]
UK to have the freest possible trade in goods and services with the EU's member states but also to be able to negotiate our own trade agreements. As the noble Lord, Lord Hamilton of Epsom, observed, we seek our own, bespoke deal.

The United Kingdom has always been a leading voice for free trade, not only in the European Union but globally, and we have been consistently clear that we want the maximum possible freedom to trade for businesses in both Britain and Europe. But we also want to take back control of our laws and control immigration to Britain from Europe.

Being a member of the EEA would mean complying with the EU's rules and regulations that implement the four freedoms—in respect of capital, goods, services and people—without having a vote on what those rules and regulations are. It would mean accepting a role for the European Court of Justice that would see it still having direct legal authority in our country. It would mean not having control over immigration. EU leaders in the other 27 states have been clear as to their belief in the indivisible nature of the four freedoms, and we respect that. The people of the United Kingdom voted to leave the EU, not to maintain partial membership of its bodies or institutions. When the people of the United Kingdom voted to leave the European Union institutions, they did not intend that we should leave by the front door and rush back to attempt entry by the back door.

As set out in the White Paper, we recognise that we will require alternative forms of dispute resolution once we leave the EU and are no longer subject to the European Court of Justice. But again, these mechanisms are common both to agreements between the EU and third countries and in international agreements to which the United Kingdom is also party, of which there are many examples. Once we leave the EU, the EEA agreement will no longer be relevant for the United Kingdom. It will have no practical effect. It will be an empty vessel. That is because the agreement is defined as covering all EU members and those three EFTA states—Iceland, Liechtenstein and Norway—which have chosen to join the EEA. As we are leaving the EU, we will automatically be outside this definition, as found in Article 126 of the EEA agreement. So there is no choice open to us to leave the EU and remain a member of the EEA, which would require a separate negotiation with the EU and the three EFTA states that I have just mentioned. For example, Switzerland, which is also a member of EFTA, has separate bilateral agreements with the EU even though it is not in the EEA. EFTA membership is not, of course, the same as EEA membership.

Although it will have no practical effect after the EU exit, we are considering what steps might need to be taken formally to terminate the EEA agreement as a matter of law, as we will remain a signatory to the agreement. This could be done through Article 127 of the EEA agreement on giving 12 months' notice, or by some other means, but no decision has yet been taken on that. We have laid out in the White Paper, however, the relationship we are seeking: a new strategic partnership which includes a new customs agreement and an ambitious and comprehensive free trade agreement. We are seeking the greatest possible access to the single market as part of this.

The noble Lord, Lord Lea of Crondall, referred to the fact that we would not be at the table. That is absolutely right, and that is not what 52% of our population voted for when they voted leave. It is one thing to have power without responsibility; it is another to have responsibility without power, and that is what we would have in these circumstances. It was suggested that freedom of movement could be open to a variety of interpretations. That is not the view in Europe. It is open to only one interpretation—one which we have been under for a number of years.

The noble Baroness, Lady Quin, referred to the report of the House of Lords committee. I can reassure her that we take the terms of that report very seriously, and we will be taking forward our consideration of it in due course. The noble Lord, Lord Davies of Stamford, referred to the suggestion that somehow we could keep our options open so far as the EEA is concerned, but that is not the case. EEA membership is not an option that is simply open to us if we leave the EU. As I said, it becomes an empty vessel. We have to face up to the indivisibility of the four freedoms, as insisted upon. It is not a case of going to Europe and saying, "We would like to negotiate out of one of the four freedoms". We are told repeatedly that they are indivisible, and we have to take that into account.

At the end of the day, we cannot embrace membership of the EEA any more than membership of the EU without freedom of movement in Europe. In these circumstances, I invite the noble Lord to withdraw this amendment on the understanding that we cannot retain membership of the EEA for the reasons I have sought to set out.

Lord Liddle (Lab): Before the noble Lord sits down, there is one issue on this question which is very important to the national interest. When the noble Lord, Lord Bridges, came to the Select Committee to answer questions about the Government's negotiating strategy, I asked him whether—as part of a transitional arrangement—they had ruled out membership of the single market or the EEA, and he said they had not. Can the Minister clarify the Government's current position?

Whatever the Front Bench opposite thinks, most observers think it will be impossible to negotiate a comprehensive trade agreement within the practical 15 months of negotiation that will be available after the German elections. This implementation phase that the Prime Minister talks about is in fact a transition. Are the Government saying that under no circumstances would we consider being members of the EEA, or the single market? If they are, we are facing the most horrendous cliff edge as an economy.

Lord Keen of Elie: My Lords, with respect to the noble Lord, Lord Liddle, I do not accept that we face a cliff edge—there is no cliff and therefore no edge. We fully intend to negotiate a suitable settlement within the period set out in Article 50 and that is the course of action on which we are setting out at this time.

The noble Baroness, Lady Deech, questioned whether this amendment was within the scope of the Bill. That is a question for others, but clearly it is not related to the purpose of the Bill. The Bill is concerned with process and, if we lose sight of that, we are liable to become rudderless in very difficult waters.

Lord Liddle: Will the Minister give me an answer to the question? It is a reasonable question on such a vital matter of national importance: is this ruled out in a transitional arrangement or not?

Lord Keen of Elie: With respect, the noble Lord's question proceeds on a supposition that I do not accept.

4 pm

Lord Lea of Crondall: My Lords, on that last point, I would point out that the Government are very good at demolishing every possible hypothesis that is put up, but at some point they will have to look at them constructively—they will have to look at the report on Thursday, as we have just heard—and consider the costs and benefits of each of them. At the moment, what seems to be happening is that one after another various ideas are brought up in debate, which is what we are here for, and the Government produce a tremendous round of artillery to blow up that particular bridge—that is, that particular idea. However, they have never laid out how those couple of sentences in the Lancaster House speech, reproduced in the White Paper, will work. We on this side are opening ourselves up to the vulnerability of saying exactly what we think might be an option. It behoves the Government very soon, in the national interest, to look at what might work rather than at what might not. We will have to return to these matters and look at the pros and cons of this option as well as all the others.

Instead of the Government just saying what is ruled out, it would be good to hear a bit more about what is ruled in. Instead of concluding, like Mrs Thatcher, that "there is no alternative", they should see that there are several alternatives to just walking away, but we have not heard about these in any detail. We are getting to the ridiculous position where we will have the so-called great repeal Bill, and this Bill will be on the statute book, but there will be no detailed prospectus at all, on the flimsy grounds that that would give the game away about our negotiating position. This does not bode well for the Government coming back with a satisfactory solution to the serious challenges facing the country. However, that is as far as we can take this today, so I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendment 2

Moved by ***Lord Hain***

2: Clause 1, page 1, line 3, at end insert—

"( ) Before a notification can be given under subsection (1), the Prime Minister must give an undertaking to negotiate under the process set out in Article 50 to support the maintenance of the open border between Northern Ireland and the Republic of Ireland as set out under the provisions of the Belfast Agreement of 1998 and subsequent relevant agreements."

Lord Hain (Lab): My Lords, this amendment is also in the names of the noble Lords, Lord Alderdice and Lord Murphy of Torfaen. It will be noted that this is a cross-party amendment by two former Secretaries of State for Northern Ireland and a former Speaker of the Northern Ireland Assembly.

In a few days, the people of Northern Ireland will go to the polls for the second time in eight months, at a moment when Northern Ireland's self-government is in a political cul-de-sac and unresolved legacy issues and the past, including the prosecutions of long-retired British soldiers, continue to haunt everyone. The settlement in Northern Ireland is built on the delicate balance of the three strands of the Good Friday agreement: relationships within Northern Ireland, between Belfast and Dublin and between Dublin and London. Brexit will test each of these relationships and, if the Government pursue a hard Brexit, they could do profound damage to all three.

When I was Secretary of State in 2005, I flew many miles by Army helicopter from east to west along the mountains and fields of south Armagh that mark the border between Northern Ireland and the Republic. Knowing what had afflicted that area over so many years, it seemed to me that it had what Yeats called, in a different but related context, "a terrible beauty".

Frankly, the border was, even at the height of the Troubles with security controls, impossible to police. Then it was dubbed "bandit country". It is estimated that along the entire 300-mile Irish border there are up to 300 crossings and countless additional paths, with 35,000 people crossing each day and each month 177,000 crossings by lorries, 208,000 by vans and 1.85 million by cars. Since family farms straddle the border, there are goodness knows how many animals on the move, from domestic pets to livestock, conceivably being forced to carry ID tags if they stray either way in future—all because the border will become the customs frontier of the European Union.

Bertie Ahern, who served three terms as Taoiseach between 1997 and 2008 and was a central player in helping to secure the Good Friday agreement and deliver power sharing, was reported in the *Observer* recently as saying that the establishment of an Irish land border could have devastating results, putting Northern Ireland's peace process in jeopardy.

"'I worry far more about what's going to happen with that,' he said. 'It will take away the calming effects [of an open border]. Any attempt to try to start putting down border posts, or to man [it] in a physical sense as used to be the case, would be very hard to maintain, and would create a lot of bad feeling.'"

I would suggest that "bad feeling" is an understatement.

"'Any kind of physical border, in any shape, is bad for the peace process', he said. 'It psychologically feeds badly into the nationalist communities. People have said that this could have the same impact on the nationalist community as the seismic shock of the 1985 Anglo-Irish agreement on unionists, and I agree with that. For the nationalist community in Northern Ireland, the Good Friday agreement was about removing barriers, integrating across the island, working democratically in the absence of violence and intimidation—and if you take that away, as the Brexit vote does, that has a destabilising effect.'"

[Lord Hain]
I agree with him. I am particularly aware that the consequences of a hard customs border between Northern Ireland and the Republic are potentially immense, and are not addressed at all in the Government's White Paper. Frankly, I am not convinced that the Government have even begun to grasp the political significance of it.

I, like Tony Blair and my predecessors—my noble friends Lord Murphy, Lord Reid and Lord Mandelson—was utterly non-partisan when dealing with the Northern Ireland parties, even though in the space of two meetings we would be accused by one of being for a united Ireland and by the other of being rabidly pro-union. But I built as close a relationship with Ian Paisley as I did with Gerry Adams, with Peter Robinson as with Martin McGuinness. I remain unaligned today—and that allows me, I hope, to talk bluntly, and some might even say inappropriately, about the politics of Irish republicanism and nationalism.

For these people, an entirely open border of the kind that has operated without security or hindrance of any kind for many years now is politically totemic. It marks an everyday reality to all republicans that progress, albeit in their terms slow progress, has been made, and is being made, towards their aspirations for a united Ireland. It has been as if the border no longer mattered. Citizens resident on either side can and do take advantage of the health and education services nearest to where they live, on a cross-border basis. Northern Ireland businesses invest without hindrance in the Republic and vice versa. The two economies are being steadily integrated: there is even a plan to cut corporation tax in Northern Ireland to synchronise with the low rate in the south.

Of course the island of Ireland has not been united politically or constitutionally—to do that would properly require endorsement by referendum, and the principle of consent is one of the cornerstones of the Good Friday agreement—but it is almost daily becoming united in everyday life. That is welcomed by unionists as well, secure in the knowledge that there can be no change in the constitutional position without their consent. Above all, it is a symbol of the normalisation of relations between the two parts of the island. The Government disturb that at everyone's great and grim peril.

Those who maintain that because the Prime Minister has said that she does not want a return to a hard border it will not happen should be aware that the Irish Government, who do not want a hard border either, have nevertheless, as a contingency measure, begun identifying possible locations for checkpoints along the border with Northern Ireland in the event of a hard Brexit.

The Northern Ireland peace and stability process is very far from over. The current disturbing breakdown and impasse in the Northern Ireland Assembly and its Executive is a manifestation of the extent of unfinished business. I do not say that we will go back to the murder and mayhem of the Troubles, but I insist that the process could easily unravel. It requires continuous forward momentum; a reimposed border with any form of restrictions is the very reverse of that. If the referendum means Brexit at any price, it might well be at dangerously high cost for the Northern Ireland peace process.

Apart from the politics, the post-Brexit border issue is fraught with practical problems. The excellent House of Lords report, *Brexit: UK-Irish Relations*, stated on page 65:

"The only way to retain the current open border in its entirety would be either for the UK to remain in the customs union, or for EU partners to agree to a bilateral UK-Irish agreement on trade and customs. Yet given the EU's exclusive competence to negotiate trade agreements with third countries, the latter option is not currently available".

The report added:

"Short of the introduction of full immigration controls on the Irish land border, the solution would either be acceptance of a low level of cross-border movement by EU workers, or allowing Northern Ireland to reach its own settlement on the rights of EU citizens to live and work there … which would require … an adjustment of the devolution settlement".

In evidence to the House of Commons Northern Ireland Affairs Committee on 1 February, international trade lawyer Michael Lux dismissed the Government's commitments to an open border as "nice words" and warned that Britain's departure from the customs union would require a significant enforcement infrastructure on the Irish side, possibly including cameras and helicopters. Lux calls for,

"a special status for Northern Ireland".

In subsequent testimony to the committee, Irish Ambassador Dan Mulhall said:

"I just don't think it's remotely possible to think in terms of having a border that would really control every movement of goods and people".

He also warned that it was,

"essential that Brexit does not affect the Good Friday Agreement, and that the people of Northern Ireland can have confidence that this will be the case".

Experienced customs officials from both sides of the border have questioned the practicality of reimposing controls. Former UK customs officer Gerry Temple told the BBC:

"The border runs through many properties and it would be impossible for customs to check what comes in the southern side and goes out the northern side. The re-opening of the unapproved roads has changed everything and made the task for customs impossible".

The Police Federation for Northern Ireland has also expressed concern about the consequences of a hard border.

"We are still operating under what the government says is a severe threat, which means an attack on our members could happen at any time and is highly likely",

PFNI chairman Mark Lindsay told the *Guardian*. He added:

"If we are saying in the future that police officers could be deployed to customs posts and other fixed points on a hardened border then they would become static targets. They would in effect become sitting ducks for the terrorists".

I am assuming that he is talking about the dissident IRA groups.

The outgoing leader of the Alliance Party and former Northern Ireland Justice Minister, David Ford MLA, observed that,

"the issue of the common travel area is not dealt with by people simply saying, 'The CTA has existed since 1923', because it had never existed when one jurisdiction was outside the EU and the other within it".

Your Lordships' European Union Committee has already highlighted the danger of exacerbating an existing smuggling problem on the border, a judgment that reflects testimony from Northern Ireland's Justice Minister and police service among others. A hard Brexit risks a double windfall for paramilitaries from increased opportunities for fraud alongside growing political tensions. One wheeze, apparently emanating from the Government, is to have electronic controls of some sort.

"I haven't found anyone who can tell me what technology can actually manage this",

Bertie Ahern said. David Ford MLA observed that it was "utterly meaningless" to talk about electronic controls as a preventive tool against cross-border smuggling. He noted that there was already evasion of the different excise duties on either side of the border. The leader of the Ulster Unionist Party, Mike Nesbitt MLA, agreed that electronic monitoring of the movement of goods, "just will not cut it".

We need maintenance of the common travel area, the right of free movement within it for UK and Irish citizens, and their right to reside and work in both countries. We need the retention of the right to Irish, and therefore EU, citizenship for the people of Northern Ireland. We need a customs and trade arrangement between the UK and Ireland if the UK leaves the customs union. We need reaffirmation by both Governments of their commitment to the Belfast/Good Friday agreement and continued support for cross-border co-operation.

4.15 pm

One suggestion is to negotiate for Northern Ireland as a special zone with exceptional status within both the UK and the EU, justified by its turbulent history. An authoritative paper by Professor David Phinnemore of Queen's University Belfast illustrated the complexities. He identifies what he terms the "reverse Greenland" option:

"This draws its inspiration from the departure of Greenland, which is part of Denmark, from the then European Communities in 1985. The idea of a 'reverse Greenland' envisages the UK remaining in the EU, but not all of its constituent parts doing so".

Scotland and Northern Ireland—as constituent elements of the UK that voted remain—would, as was the case with Denmark, remain in the EU; England and Wales, following Greenland's example, would leave. Gibraltar is another fraught problem altogether and, with 95.9% of the votes cast in the referendum for remain, it might also fall into such a category.

Phinnemore explains:

"Such an arrangement would require agreement within the context of a post-Brexit UK-EU relationship for the free movement of people to extend beyond the border of the EU into but not across the entire territory of a non-member state. This would be unprecedented, but it would not be unprecedented for special or bespoke integration and cooperation arrangements to be put in place for particular regions or territories of non-member states. Svalbard enjoys special status within the context of Norway's participation in the EEA. The EU has also granted some restricted concessions to the Russian exclave of Kaliningrad which is situated between two EU member states (Lithuania and Poland)".

Special status might mean a hard border with Wales, Scotland and England, but at least these would be at ports and airports, which are in any event already monitored and sometimes policed. Travellers now present passports or driving licences to board aircraft, for example, so would similar arrangements for the Liverpool ferry be so much of a problem? If these kind of checks were on arrival in Great Britain, would unionists see that as a de facto border between GB and Northern Ireland for the sake of free movement within Ireland and object? Alternatively, would the Irish be prepared to increase controls at their ports and airports, with any extra security presumably paid for by Britain, rather like we do in Calais? I wonder.

Creative, lateral solutions will certainly be needed, but a solution there has to be, with give and take on all sides. The free movement of people, goods and services on the island of Ireland is critical to continued momentum and deepening of the peace process. Cross-border trade and tourism have increased on the back of the peace process, as have business activity and investment. Today, crossing the border between Strabane and Lifford, Derry/Londonderry and Letterkenny, or Newry and Dundalk, is just as simple as crossing the border between Wales and England. In fact, it is easier in the case of south Wales because there is no Severn Bridge-type toll. I do not really mind how an open border is achieved, but it must be, which is what this amendment insists on.

Ours is not a wrecking amendment. It does not obstruct Brexit. It is not tying the Government's negotiating hand. All it is doing is insisting that, as Article 50 is triggered, it is only on the basis that the Government negotiate to secure what they already say they want—an open border in line with the Good Friday agreement. I trust that we never have to confront the stark choice between delivering on the Brexit referendum and deepening hard-won stability and peace on the island of Ireland.

Lord Alderdice (LD): My Lords, I have always been a fervent European. It is an emotional thing as much as an intellectual one. In my own family there are people from outside of the UK. My wife and I make our home not just in Northern Ireland but also in continental Europe. As a former vice-president of the European Liberal Democrat Party and someone always committed to Europe, it is part of me politically; and intellectually, the principles behind the European project have been a driving force in my own way of understanding a better way of doing politics, particularly, of course, in my own part of the world in Northern Ireland.

The border was not the cause of our problems; it reflected problems that were there before but it also exacerbated them. The way that the European project worked for many years provided us with inspiration and a model to change relationships within Northern Ireland, between north and south, and between Britain and Ireland. However, for me, sadly, it was neither entirely a shock nor a surprise when the referendum went the way it did. For some years, as some noble Lords will know, I had been warning that, unless those with influence in Brussels and those of us who are pro-European influenced our colleagues in Europe to change the way that the European project was developing,

[Lord Alderdice]
we would find those opposed to the European Union increasing in number and in fervour, and it would not be good for the project—indeed, it would be destined for disaster if there was no change. I said so in your Lordships' House on more than one occasion but there was not a preparedness to listen.

For me, the European project was essentially a peace project. It was not about the euro or the single market, and it was not about providing a space at the top table of global affairs for Presidents and Prime Ministers of small European countries. It was a peace project to try to make sure that Germany and France, in particular, and the rest of Europe did not go to war again, but now it has become the focus of division within Europe.

Those of us who are pro-European should have been looking for a long time at why things were going wrong. If a couple divorce after 40 or more years and the one who leaves does not do so in order to go to another partner, the one who is left needs to ask themselves some serious questions about the motivation for the divorce after such a long time. The answer is that the European Union was not developed on liberal principles of freedom, flexibility, organic growth and development, and sensitivity to differences of identity and culture right across Europe, particularly between northern and southern Europe. Instead, it was centralising and focused on itself and on the interests, concerns, preoccupations and beliefs of the elite, with the result that many ordinary people found themselves becoming disenchanted. This is a disaster. We know what happens when Europe becomes divided, but divided it has become, and our job now is to try to find a way of bringing it together.

Before turning to Her Majesty's Government, I want to refer to our colleagues in Brussels. It is not a one-sided business—relationships require movement from both sides. Immediately after the referendum, Mr Juncker demanded that Britain implement Article 50 straightaway, saying that it was a requirement. It was not a requirement but it was an extremely unhelpful intervention because it was precisely the impression of Brussels talking down to everybody that had produced the problems.

Therefore, through the medium of this intervention in your Lordships' House I need to say to our friends in Brussels and across the European Union, "Understand that relationships are a two-way affair. You have to be prepared to be flexible too if there is to be change for the better". It may be too late to do other than have a relationship where the United Kingdom is outside the European Union, and it may be almost too late for some of the other countries, because this is not just a question of Britain. Many other countries are asking themselves these questions and have deeply dissatisfied populations, and this year in particular is likely to see developments of a thoroughly untoward order.

When it comes to the border in Ireland, I hope that people in Brussels understand that it is in their interests to start being flexible over it and not simply to say, "Well, take it or leave it. If you want to do Brexit, here are the consequences". Rather, they should say, "First, this is a relationship. Secondly, we are a peace project, and we are not about disrupting a peace project that was painfully put together in Ireland. And, thirdly, if there was ever trouble again in Ireland, it would be trouble within the European Union, even if Northern Ireland isn't part of it, because the trouble would be north and south of the border, as it was before". But, of course, the amendment is particularly addressed to Her Majesty's Government. I appreciated the fact that the Prime Minister, as one of her first initiatives, contacted the Taoiseach, Enda Kenny, and expressed her appreciation of his positive regard and relationship. I know that, despite the difficulties he is in, he or any successor would be able to have useful and positive contact with the Prime Minister. However, it is not a question just of what we do and say, it is a question of our impulses.

I remember in 2013 when the then Crime and Courts Bill was being debated, one of the first things I did when I realised that problems were emerging in Northern Ireland over the question of whether there would be a legislative consent Motion in the Assembly was to meet the noble Lord, Lord Taylor of Holbeach, who was responsible for the Bill in your Lordships' House, and to say to him: "Has the right honourable Theresa May"—who at that stage was Home Secretary—"had a consultation with the Minister for Justice in the Republic of Ireland? Because the NCA, which is going to be created by this Bill, has border security as one of its fundamental requirements. That is one of the things it is about. The only land border we have in the United Kingdom is with the Republic of Ireland. We have a British-Irish Council. We have a whole series of international agreements. We have meetings of Ministers in every context. Has the Home Secretary consulted the Minister for Justice in the Republic of Ireland about this question?". The noble Lord, Lord Taylor of Holbeach, is a very honest and open man, not given to dissembling. He was clear: it had not even entered their minds to have such a conversation. It had not even entered their minds. It was not nasty, it was not malevolent, it was not a snub or a dismissal; it just had not even entered their minds.

My fear is that now she is Prime Minister, Theresa May is bringing to the office of the Prime Minister many of the attitudes, the people and the approaches of the Home Office. If that is the case in relationships with Ireland, north and south, it will create problems for her and for all of us. So my appeal is to understand that being Prime Minister of the United Kingdom is not just about being Prime Minister of England and a few add-on bits. It is about Scotland; it is about Wales; it is about Northern Ireland; and it is about many parts of England that do not necessarily feel entirely at home with the approaches that are taken here in London. That will entail a stretching of imagination and political creativity, it will mean engaging with people and it will not be entirely easy, but it is absolutely necessary if we are to create the kind of environment we need within this United Kingdom and in our other relationships, of which I hope there will be many, not just in the EU but outside the EU. Indeed, goodness knows what kind of EU, if any kind of EU, will still exist by the time we come to March 2019. We have no idea. The world is changing dramatically before our eyes.

However, there are some things that we know do cause trouble, even if we are not sure what things cause good to happen.

One of the things that will cause trouble is if people in the nationalist and republican community feel that the progress that was made in relationships, in understanding and in sensitivity are being rubbished because there is no longer the threat of violence. That is why—although I have not put my name to it, and I have some questions about the detailed drafting—I have great sympathy with the amendment in the name of the noble Lord, Lord Murphy, which reflects something that was said by the Taoiseach, Enda Kenny. That is that there needs to be an appreciation in the engagement with Brussels that if, as is the case under the Good Friday agreement, the people of Northern Ireland give their consent and show their wish to leave the United Kingdom—not something I expect in my lifetime at all—it would effectively mean that they would then become part of an Ireland which, in total, would be part of the European Union, if the European Union still existed in the same way.

It does not seem to me that this is in any way in contravention of the Good Friday agreement or any of the other agreements. It is certainly not talking about promoting a united Ireland; it is entirely different from the situation in Scotland, because Scotland would be leaving to be a separate country and then apply, whereas Northern Ireland would become part of a country that was already part of the European Union, albeit an expanded one. It does not affect other things, but it may well be one of those things that can give sufficient comfort to people in the Republic and in the nationalist community to enable us to negotiate in the way that we desperately need to. It is not about us proposing solutions but rather about insisting on the maintenance of relationships that can get us through the very difficult period that stands ahead.

4.30 pm

Lord Trimble (Con): My Lords, it is a pleasure to follow the noble Lord. His description of the difficulties that he saw arising within the European Union and the way in which the European Union has not been governed very intelligently by the people in Brussels was seriously meant and I hope that everyone will reflect on it. But I hope he will forgive me if I go back to the amendment in front of us. It is unnecessary. The amendment asks the Prime Minister,

"to support the maintenance of the open border between Northern Ireland and the Republic of Ireland".

The Prime Minister does that now. It is in the White Paper, so the amendment is unnecessary for that reason. That is a technical answer to the amendment, but I will move on to a general discussion of the common travel area.

As was mentioned in the debate, the common travel area has existed since 1923. From the mid-1920s onwards, tariff differences existed because tariffs were charged on the Irish border—and those continued right up until our entry into the European Union. So going back to having tariffs is not a new thing for us. Having to have regard to the movement of persons is not, again, a new thing. Noble Lords may not be fully aware that the impact of the common travel area on the free movement of people is not general. It applies only to citizens of the United Kingdom and the Republic of Ireland. It does not apply to other citizens.

I remember hearing in a news bulletin several months ago that the Irish police had intercepted a car that had just crossed over the unmarked border. Police stopped the vehicle in order to remove from it half a dozen persons who were travelling to work within the Republic of Ireland but had no right to do so. So that is an example of the movement of persons being monitored. How effective that monitoring is is another matter—and whether that monitoring can be done in a more effective way, again, is open. So there should not be any insuperable difference on the question of the free movement of persons, provided that there is serious co-operation between the British and Irish Governments. Without knowing the detail, my understanding is that very active discussion is going on at the moment between the British and Irish Governments about how that could be handled.

If there is a serious problem, it comes with the issue of tariffs. The tariffs that were charged from the mid-1920s to the 1970s were enough to stimulate smuggling. It was a local cottage industry, particularly in South Armagh. If significant tariffs come back, it will create, as the noble Lord, Lord Hain, mentioned, another line of activity for the boys down there who will profit from it. They might complain about it but they will certainly enjoy the profit and might not be too keen if someone took the profit away. So one has to be aware that there is more than one side to this.

There will be difficulties if there are serious tariffs, but the difficulties will exist mainly for the Irish Government rather than for ourselves. In the paper mentioned by the noble Lord, Lord Hain, Mr Lux talked about installations on the Irish side of the border. That is where they will be, because under EU law there is an obligation on countries that have part of the EU's external border to have installations on that border. So if installations exist they will certainly exist south of the border. Whether they exist north of the border I am not sure; that is a matter for our Government to consider. However, the difficulties are going to be there.

The difficulty for the Irish Government is not just to do with the installations but with trade. Although the Irish have tried to develop their trade in other ways, their largest market is the United Kingdom. A tariff between the Republic of Ireland and the United Kingdom would have very serious implications for them. Incidentally, their second largest market is the United States. Almost all their trade is done with Anglophone countries; they have very little trade with the rest of the European Union.

That actually points to a solution. When we joined the European Union in 1972 the Republic of Ireland joined on the same day; and it did so because of the economic factors I have mentioned. Those factors are still there. The Republic of Ireland is going to have to think very seriously, in a couple of years, about where their future prosperity will lie. At the moment the Irish Government are probably trying to do what they can

[Lord Trimble]
to educate people in Brussels about the problems that they will face and about the desirability of having tariff-free access. That is also the objective of our Government. They, too, want tariff-free access, and if they achieve that there is no problem—although we should bear in mind what my noble friend Lord Lawson said in last week's debate: that as things stand, it does not look as though there is much chance of getting agreement on the absence of tariffs. If we do not get that, the Irish Government will have a problem. We would of course want to be sympathetic and do what we can to mitigate matters; but at the same time that is not something that we need as a major element in this debate.

The amendment talks about,

"the open border … as set out under the provisions of the Belfast Agreement".

Look at the agreement: what provisions? I do not see any. The common travel area was part of the background at the time that we were discussing this, but to say that this is something mandated by or based on the agreement is not correct. It is just a way of hyping up the argument, in the same way that some people suggest that the current peace might be threatened by what is happening here. That is the equivalent of shroud-waving and is not something that we should be too concerned about.

Lord Lester of Herne Hill (LD): My Lords, when the Minister replies to this debate he has a choice. He can focus on the amendment and explain why it is unnecessary—which he can probably do fairly easily. If he does that, but does no more than that, the Government will be losing a very important opportunity, which is to reply to the remarkable speech of the noble Lord, Lord Hain, and seek to reassure the inhabitants of Ireland, north and south, about the very real concerns that have been expressed by my noble friend Lord Alderdice and the noble Lords, Lord Hain and Lord Trimble, among others.

I am not Irish, although there are times when I wish that I were; but I have lived in Ireland as a privileged guest of the nation for 44 years. I am a member of the Bar of Northern Ireland and of the Republic. I have been frequently to the north, as well as living in the Republic. I say to the Minister—if he does not know it already—that the concerns expressed by the noble Lord, Lord Hain, are not debating points; they are very real. As the noble Lord, Lord Trimble, said, Ireland joined the European Community when we did. I think that the Irish were always more European than we were; they saw John Bull's island as between them and Europe and saw their destiny in Europe—and Ireland has benefited enormously from its membership of the European Union, as have we.

The troubles mentioned by the noble Lord, Lord Hain, are acute and I am concerned that, whatever happens with the amendment, which I regard as trivial compared with these issues, both in the debate on Second Reading and in the White Paper the Government have shown a disregard for the seriousness of the issues affecting Ireland as a whole. I urge the Minister, if not today then as soon as he possibly can, to make sure that full reassurance is given to the people of Ireland, north and south, about the concerns that have been expressed by the noble Lord, Lord Hain. That is far more important than the fate of this amendment.

Lord Howell of Guildford (Con): My Lords, I declare two interests as the last surviving member of the Whitelaw commission which led to the Sunningdale agreement in the 1970s and as a long-standing fan of the noble Lord, Lord Alderdice, who in his assessment of the situation in the Republic of Ireland and Northern Ireland speaks for nearly all of us. The only questions for us today are what this has to do with the Bill before us and why this amendment is necessary now. If, as the noble Lord, Lord Lester, has just suggested, we are asking for reassurances, I think that we can give them. As my noble friend Lord Trimble has said, the common travel area has been in place since 1923. The trade interests of the Republic of Ireland with the United Kingdom are overwhelming and growing very fast, not only in goods and agriculture but obviously in services as well. It seems to have been largely overlooked that the services element in international trade is rising much faster than the goods element, leading to more and more of the earnings of both the whole of the United Kingdom and the Republic being expressed through digital and data transformation. Indeed, McKinsey has said that it represents more than half the total earnings of international trade. The whole pattern of trade has changed radically in the past 10 to 15 years with digitalisation and it should come into every assessment of the new relationship.

The noble Lord, Lord Alderdice, is right to say that the problem lies with the European Union. Will it be able, first, to accept the common travel area—it must because it was there long before the European Economic Community was formed—and will it accept that concessions are needed, or bilateral arrangements of the kind that can perfectly well be organised now between the Republic and the United Kingdom, of which Northern Ireland is a part? In the low-tariff world we are moving into, indeed a zero-tariff world more generally with 80% of all industrial goods not covered by tariffs—people talk as though tariffs are a wall, but they are not—I think that we can be assured that a practical solution is possible. I imagine that it has already been discussed by Ministers and many officials in Dublin, Belfast and London.

I am absolutely sure that various elements of gluing the situation together can develop, with one that I cannot resist adding being that Dublin is showing an enormous interest in association with the Commonwealth. One of the most lively branches of the Royal Commonwealth Society—I declare an interest as its president—is in Dublin. It is attracting a great deal of interest because the Republic sees more and more that its future lies in its relations with the rest of the British Isles while working within the reforming European system, which is going to be difficult because the EU is going through vast political, economic and social changes. So I see very little problem—I do not say that there is no problem because the noble Lord, Lord Hain, speaks with authority—and believe that it can be resolved through good will on all sides. I see that good will in place and there is absolutely no necessity for bringing this issue into the Bill before us.

Baroness Randerson (LD): My Lords, from our perspective here, Northern Ireland is the forgotten part of the UK. It rarely gets a mention in this House and there is little media coverage in the London-based press. I am worried about Northern Ireland, and two or three years of answering for the Government on Northern Ireland issues taught me that politics in Northern Ireland is not as solved as people in England often assume it to be. I am worried about Northern Ireland because it is clearly a difficult time, with the breakdown of power-sharing and the imminent election. Clearly there are difficulties in personal relations that have not always existed in recent years.

4.45 pm

The political parties here seem to have abandoned the position of carefully balanced neutrality on Northern Ireland politics. Theresa May relies on DUP support in the House of Commons and the Labour leader's office has members who are openly sympathetic to Sinn Féin. That situation has not existed in recent years; it used to be more balanced than that. UK political credibility in Northern Ireland is at a low ebb. To be honest, it is at an even lower ebb in the Republic, where the Brexit vote has already done damage and will continue to do more economic damage.

The big conundrum—I added my name to the amendment because I could not see a way out of it—is that whatever the Prime Minister really wants to happen about the border it seems a pretty insoluble problem. That was pointed out very effectively in this House's EU Committee's report. Symbols are important in Ireland. The powerful symbolism of a return to border posts would be hugely damaging. In contrast, the current open border is a powerful symbol of the peace process. I say to the noble Lord, Lord Trimble, that the border may not have been mentioned specifically in the Belfast process, but the whole thing was predicated on the concept of the open border and took it for granted.

Nowadays people more or less ignore the border. They cross it on a daily basis to shop, to go to the pub, to go to university and to visit relatives. They do not notice that it is there. That daily natural integration is a powerful lever for peace. Of course, to maintain an open border there has to be tariff-free trade with the Republic. That is pointed out in the EU Committee's report.

It has been suggested that there could an electronic system, rather than physical border posts. That would be deeply distrusted: the idea that people are being tracked across the border would not be appealing in Northern Ireland. The third alternative is, as my noble friend suggested, giving Northern Ireland special status in the EU and moving the border so that, essentially, it lies between parts of Northern Ireland and Wales. Clearly, that would have a major adverse effect on trade, and an impact on Wales's economy. My support for the amendment is based on my concern that none of those three options is anything like ideal.

Today we hear of government plans for a pre-emptive strike against EU citizens living here or planning to do so. This has come despite assurances from the Prime Minister that she wants to continue to welcome EU citizens, but cannot do so until the EU makes a reciprocal agreement. That news surely undermines the idea that we can rely on the assurances the Prime Minister gave about the Northern Ireland-southern Ireland border. If we have no consistency from the Prime Minister on EU citizens, surely we cannot rely on consistency in her assurances on the border.

The amendment would ensure that the island of Ireland is not forgotten and that Northern Ireland is, just for once, not an afterthought. Any deterioration in the peace process would be a very high price to pay for Brexit.

Lord Kerslake (CB): My Lords, I shall speak in general support of the issues raised by this group. I have not put my name to any particular amendment but I feel that the issues raised demand proper debate. This is the first time that I have spoken in any of the Brexit debates in this House. I have a personal interest: my mother came over from Ireland after the war and made this country her home. Due to a long-standing personal commitment, I made the start of the Second Reading debate but was not able to take up my speaking slot. Therefore, before coming to specific issues, I will say a few words about my overall position on the Bill.

I voted remain in the referendum. This did not make me a cheerleader for the EU. I could see its current difficulties and challenges all too clearly. Indeed, anyone involved in negotiations on EU structural funds would have been in no doubt about those challenges. However, on balance, I believed that it was clearly in the interests of this country to remain—if you like, a realistic rather than a reluctant remainer.

The referendum result answered one question: whether this country wished to remain in the EU. However, as others have said, it left a whole lot of other questions unanswered. Should we remain in the single market? How can we best secure the future of the United Kingdom, something I feel very passionately about? What should our approach be to EU and EEA citizens? Those are just three examples of questions that we should be debating in these amendments. To want to debate these issues is not the same as wanting to block or delay the Bill. Reviewing, scrutinising and proposing amendments to legislation is, after all, what we are here to do.

Much has been said about the ardent remainers, if I can call them that, being in denial of the referendum result. I have no doubt that there are some—maybe even some in the Chamber—who fit that description. However, my biggest concern is the ardent leavers, who seem to be in denial of the enormous risks that a badly handled Brexit will have for our economic, social and political interests or, indeed, how much we are going to have to give up in order to secure Brexit on the terms currently envisaged. We cannot simply hope for the best and leave these issues to the outcome of the negotiations. The likely result of that approach is that we will be left with Hobson's choice: vote for a deal that we are deeply unhappy about or face being bundled out of the EU without an agreement. It is much better to discuss, debate and, where necessary, vote on the issues now.

Turning to the amendments in this group, the Government's Brexit White Paper sets out 12 principles, one of which is:

[Lord Kerslake]

"Protecting our strong historic ties with Ireland and maintaining the Common Travel Area".

It rightly highlights the extensive movement of goods, services and people across the border and says that the Government will work with the Irish Government and the Northern Ireland Executive to find "a practical solution". What is much less clear in the plan, however, is how this principle will be reconciled with the other principles in the plan and, if they cannot be reconciled, which principle will take precedence.

Paragraph 4.4 of the White Paper says:

"When the UK leaves the EU we aim to have as seamless and frictionless a border as possible".

So there will be a border. Like much of the White Paper, the clear headline principle at the start of the chapter is undermined by the text. The question is not whether we have a border, it is how seamless it is.

As many have said this afternoon, the issues here go well beyond free trade and free movement. The report of the EU Committee made it clear that the implications of Brexit for Ireland were more profound than for any other member state. Indeed, in my own discussions with the Republic of Ireland when I was head of the Civil Service, the prospect of Britain exiting from the EU and the potential consequences was by far their biggest concern. This fear has now become a reality. It seems clear that the harder the Brexit, the harder the border. It will in effect become an external customs border of the EU. While of course there may be some shroud waving, we cannot ignore the comments of former Irish Taoiseach Bertie Ahern, who was after all instrumental to the Good Friday agreement, that Brexit might put the peace process in jeopardy. There must surely be no circumstances in which we could contemplate that happening.

Of course, the EU Commission negotiators have an important role here. I recognise that, but in the end this will come down to the choices we make in the negotiations. What negotiating goal finds priority over another? In my view, our commitment to both the letter and spirit of the Good Friday agreement must—I emphasise must—stand above most if not all our other ambitions. I sincerely hope that the Minister will confirm this in his response.

Lord Pendry (Lab): My Lords—

Baroness Lister of Burtersett (Lab): My Lords—

Lord Pendry: Chivalry is not dead.

Baroness Lister of Burtersett: Thank you. About 25 years ago, I was a member of the independent Opsahl Commission on the future of Northern Ireland. Through that, I learned a lot about the economic and social problems faced by Northern Ireland and also became acutely aware of how in the rest of Britain these problems, and Northern Ireland, generally were pretty much ignored other than through the lens of the Troubles. Plus ça change, as the noble Baroness, Lady Randerson, already noted.

The noble Lord, Lord Kerslake, quoted from the EU Committee report on UK/Irish relations that the implications of Brexit for Ireland are more profound than they are for any other member state. The report went on to say that the profound issues raised for the island of Ireland are often overlooked on the British side of the Irish Sea. That is why I very much welcome these amendments and believe that there is a role for us to debate them in the context of the Bill. They should not be overlooked by your Lordships' House. It would be a tragedy if Brexit undermined the Good Friday agreement and the continuing peace process—as many fear it will, despite what the noble Lord, Lord Trimble, said earlier.

At Second Reading I spoke about some of the human rights implications of Brexit, which are especially profound for Northern Ireland, as the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission both underlined. I have just had brought to my attention a speech by a member of the Irish Human Rights and Equality Commission which raises important questions for the Article 50 negotiations. She asked whether human rights and equality could be mainstreamed into European Council guidelines for a withdrawal agreement, pointing out that,

"the EU is founded in its governing Treaties on stated values including equality and human rights".

She goes on:

"What this could mean in relation to the concrete content of the negotiating guidelines and the withdrawal agreement we don't know. Questions that have been asked in the European Parliament in relation to the peace process and Brexit have been met with stock answers pending the triggering of Art 50. But it might be important to remember the primordial status of human rights and equality when it comes to questions such as how human rights can be protected for all rights holders in NI, including those holding Irish or dual citizenship under GFA, and what consideration is to be given to provision for cross-border rights in relation to free movement, welfare rights and mobility, etc. Following from Arts 2, 6 and 21, the principles of human rights and equality should be included as core in the negotiating guidelines".

So this is important for this Bill when we consider it.

She goes on to say that,

"it is vital that the EU-UK withdrawal agreement expressly protects the Good Friday Agreement. The EC treaty itself is a peace agreement which in its origins in the 1957 treaty resolved to 'strengthen the safeguards of peace'"—

as the noble Lord, Lord Alderdice, said so eloquently earlier. She said that,

"it can't be overstated that the exit agreement to be concluded between the EU and the UK must not now undermine the peace that has been achieved in Northern Ireland with such difficulty, perseverance and commitment on all sides. The GFA is founded on a golden thread of respect for human rights and equality. The EU's external action is … a binding commitment 'to preserve peace and prevent conflicts' and the withdrawal agreement must honour this".

Those are very important words and I would welcome the Minister's observations on these crucial points regarding human rights generally, and the Good Friday agreement in particular.

5 pm

Lord Hannay of Chiswick (CB): My Lords, I will raise a point that was not raised by the noble Lord, Lord Hain, but was very much on my mind as someone who was closely involved in the negotiations over Protocol 36, under which the United Kingdom withdrew from a large number of justice and home affairs provisions, and then opted back into the 35 most important ones. This point was raised both at Second

Reading, by my noble friend Lord Blair, and in the debate that we had on the new Select Committee's report on justice and home affairs.

The relevance for the matter that we are discussing today is very real, because those of us who took evidence on that matter know perfectly well that the underpinning of the Belfast agreement, the open border and everything else depends on the strengthening of law enforcement co-operation that has taken place in recent years under EU legislation. The European arrest warrant, the exchange of criminal record information, Europol: this great raft of things underpins, and above all has helped to achieve, the depoliticisation of these law enforcement issues between Northern Ireland and the Republic.

All those bits of EU legislation are now at risk. There is no doubt about that. The Prime Minister herself, who, after all, is well aware of the problems in this area and negotiated very effectively in the case of Protocol 36, knows it extremely well. However, she has said that no deal is better than a bad deal. No deal means that we go over the cliff, as far as all this law enforcement legislation is concerned. I would therefore like to hear from the Minister, when he replies to this amendment—which I am speaking in favour of—just how the Government intend to avoid that situation. They need a better story to tell than they have had hitherto. Frankly, the story has been thin and threadbare so far: it is a statement of assertions, desires and wishes but of absolutely no sense of direction in how to get there. I hope that the Minister will address this issue, along with all the other ones that other noble Lords, and particularly the noble Lord, Lord Hain, raised. It is an important one and there is no plan B in this case. If we go over the cliff there are no WTO trade rules that we can fall back on: there is just nothing.

Lord Pendry: My Lords, I wish to associate myself with the amendment so ably and eloquently moved by my noble friend Lord Hain. I intend to raise the problems that beset certain industries in Northern Ireland, particularly the largest economic provider in terms of employment and revenue, the agri-food sector. I declare an interest at this point: I served in the 1970s as a Minister in the Callaghan Administration, in particular for agriculture, which experienced enormous problems—problems galore—as a result of the complexities of the common agricultural policy, which affected the north adversely in relation to the south.

One recognises that the Government, at least on paper, are committed to doing their level best to secure the best possible arrangements for a smooth transition to a cross-border solution between the north and south of Ireland during negotiations, and will work closely with the Republic of Ireland in so doing. However, these could be soft words unless meaningful action is taken. No meaningful indications appear to have emerged from the debates in the other place of any positive proposals of a practical nature. I hope that in the course of our endeavours, the Minister in this House will cover some of the positive suggestions that were made in the other place and will give us an indication of how the Government will address some of the problems that will certainly emerge in the weeks and months ahead—indeed, in the next two years. I intend at a later stage to mention one or two of the problems facing the Ulster Farmers Union.

In the White Paper, the Government stated their intention to have,

"as seamless and frictionless a border as possible",

between Northern Ireland and the Republic, but it is not clear, certainly not to me, that this means anything that we can pin them down to. Once Northern Ireland and the Republic are no longer both members of the European Union, the question is: is a border inevitable? There are concerns among politicians from both the north and the south that the return of a border, even a light customs border, could bring about bad memories of a troubled past. Northern Ireland is distinctly different from Scotland and Wales in that it faces significant challenges from Brexit. The Irish border is a major factor for Northern Ireland, with its high dependence on the Republic. That has to be seen and understood by our negotiators and Northern Ireland needs to be armed with the necessary ammunition to fight its corner during these almost certainly difficult talks that lie ahead.

Although Northern Ireland has an overall high dependence on the EU, recent figures show that, unlike any other country in the UK, over 50% of Northern Ireland's exports go to EU countries and almost 40% to the Republic in particular. From that it is clear that if barriers were erected, the situation in both the north and the south would be detrimental. Should trade barriers be erected, without question, the agricultural and related industries will suffer.

Lord Rooker (Lab): Perhaps I might give my noble friend a practical example of what he has just said. The EU Energy and Environment Sub-Committee recently received evidence that the milk in Baileys Irish Cream crosses the border during manufacturing six times.

Lord Pendry: My Lords, I was coming to that, but may not put it as well as my noble friend did. It is understandable that farmers in the Irish agri-food sector are concerned that their fears will not be heard during these negotiations. Smaller producers especially are clearly worried, and this is where I come to the point that smaller producers and traders—fisheries, dairy farmers and meat producers, for example—cross the border daily to trade. It is of the utmost importance that we work to maintain existing trade connections between the north and the south during the negotiations before we consider withdrawing from the European Union. In both the south and the north, agriculture and the agri-food industries are highly significant to the economy. It is estimated by the Northern Ireland Food and Drink Association that the number of jobs in 2010 in the agriculture and agri-food industries was 92,000, including direct employees, farmers and those in the supply chain. The situation, I suspect, has not changed very much since then.

The North/South Ministerial Council in Dublin and the Irish Government have agreed—as, we hope, will the Northern Ireland Executive—that, following the Brexit negotiations, they will work together to ensure that the important north-south co-operative

[Lord Pendry]
structures are fully protected. Without setting up any new structures to existing frameworks, the current North/South Ministerial Council should continue to be the forum, although it may have to be strengthened in changing circumstances. The overriding aim must surely be that the sharing of information and co-operation between both sides of the divide are protected, as this will prove essential for the smooth running of Brexit.

Having served, as I said, as a Minister in the Callaghan Government, with my primary responsibility that of agriculture, I recognise that there are particular difficulties in so far as at that time the south had a massive advantage over the north. My throat is playing tricks with me, so with those words I merely say that I agree with this amendment and hope that when the Minister replies, he will recognise some of the important issues facing the agricultural industry in Northern Ireland.

Baroness Harris of Richmond (LD): My Lords, I will just make a short intervention. It is many years since I was happily debating, hour after hour, the Northern Ireland police Bill, and it is very heartening to see so many Members of your Lordships' House show such an interest in Northern Ireland matters. As a recently retired member of the British-Irish Parliamentary Assembly, I warmly support the amendment. I know how much concern there is about the effect Brexit will have on both Northern Ireland and the Republic of Ireland. The foundations of the peace process are built on an open and accessible island of Ireland. It is welcome that the Government are committed to ensuring a frictionless border between the north and south, but they have not said how this might be achieved. Can the Minister enlighten us? We must have more clarity from Ministers on the practical implications of Brexit for the 35,000 people estimated to cross the border every day. Can the Government guarantee freedom of movement on the island of Ireland? I would like to think that they could.

This was touched on by the noble Lord, Lord Hain, but your Lordships also need to know that the Police Service of Northern Ireland is on record stating that the security risks posed to police and border control officers are of great concern. Officers are still acting under severe threat, meaning that an attack from dissidents could happen at any time. There have been recent attempts on the lives of officers in north Belfast and Londonderry/Derry. If police officers were to be deployed to customs posts on a fixed border, as the noble Lord said, they would become sitting targets. What extra measures are the Government taking to ensure these concerns are addressed and that the incredibly brave and dedicated officers and staff of the PSNI will be consulted on any future changes to their functions?

5.15 pm

Lord Forsyth of Drumlean: My Lords, I hesitate to intervene on Irish matters but no one has spoken to Amendment 30, which is grouped with these amendments, or explained the thinking behind it. It has extraordinary implications for Scotland. It says that it should be a,

"priority in negotiations … for the Prime Minister to seek terms that would not give rise to any external impediment to the ability of the people of the island of Ireland to exercise the right, on the basis of the consent of the people of the Republic of Ireland and Northern Ireland, to bring about a united Ireland, to be treated as a European Union Member State".

I assume—contrary to his position—that the noble Lord, Lord Hain, accepts the view that if people vote in a referendum that should be taken as the consent of the people. If so, that suggests—as the noble Lord, Lord Alderdice, pointed out—that it should be part of the Government's negotiations to secure the right of Northern Ireland, if it voted in a referendum to become part of a united Ireland, to automatically become part of the European Union. If the Government were to embark upon such a negotiation, I would find it difficult to understand why that would not enable the Scottish nationalists to argue that what was good for the goose was good for the gander, or perhaps it is the other way round. The noble Lord, Lord Alderdice, said that it is completely different because this is part of the United Kingdom joining a state that is a member of the European Union, and not the other way round. I very much doubt if Nicola Sturgeon and Alex Salmond would present it that way.

The main point I want to make is that this is a Bill about firing the starting gun for Article 50. There are many issues, and there is great sympathy in the House for the position of Northern Ireland. The Prime Minister has said, in the clearest possible terms, what the Government's policy is. Frankly, some of these amendments and speeches do not seem to be prepared to take yes for an answer. The idea that we have to amend the Bill in order to hold the Government's feet to the fire for their policy on something as important as this is pretty extraordinary. We go back to the fundamental point: the President of the Commission, the leader of the Opposition and the then Prime Minister all wanted to implement Article 50 immediately. The Prime Minister is anxious to get on with the negotiations; these issues will have to be considered. The noble Baroness, Lady Harris, said, "We accept that, but we want to know how you are going to do it". The very worst thing you can do in any negotiation is announce in advance how are you going to negotiate, because then you are committed to that position and the people on the other side will make it very difficult for you, so I worry about Amendment 30 in particular. It illustrates how foolish it would be to amend this Bill—which is after all starting the process. I have no doubt there will be many happy hours for us to discuss those issues of the border between Northern Ireland and the Republic of Ireland in the future, and the implications for Scotland, the EEA and everything else. But I venture to suggest that this is not the Bill in which to do so.

Lord Dubs (Lab): My Lords, I remember that at the time of the negotiations leading up to the agreement in Belfast, the EU was there in the forefront being supportive, and indeed EU finance developed cross-border projects and played a significant part in the process.

I want to make two points. First, whatever we think, we know that the Irish Government are deeply concerned about this issue. We are belittling their concerns if we say, "We don't need to bother about this amendment because it'll be all right in the end". We all know that the previous Taoiseach, the present

one and many other people are very concerned. We owe it to them at least to show that we are concerned about the situation.

My key point is that I think it would be right to have the amendment in the Bill if for no other reason than that it would send a signal to Brussels. It is all right saying that the Prime Minister will do her best in the negotiations, but I would have thought that in her position she would be much better off if we had the amendment in the Bill; it would strengthen her resolve and she could say, "The British Parliament is so concerned about it that we have put it on the face of the Bill". That is why we should move forward with the amendment.

Lord Empey (UUP): My Lords, I notice that the amendment has been signed by virtually a who's who of people who have had a high profile in Northern Ireland affairs over many years. For that reason, one has to take seriously what has been put before us. The truth, though, is that today we have really been having a Second Reading debate, not a debate on the amendment. I suppose that in the absence of a Speaker to slap us down, we will probably all be tempted on to that turf.

There are a couple of things I want to say at the outset. I have heard absolutely no one, in any political party or any Government, say that they wish to see a hard border. The closest we came to anyone saying we had to have one was the official to whom the noble Lord, Lord Hain, referred. No one wants it. The British-Irish Parliamentary Assembly, which a number of us are associated with, is working to ensure that it does not happen. Both our Governments are working to that effect, and Brussels has openly said it has got the message. With that sort of momentum, I believe we will find means.

I disagree with the noble Lord, Lord Hain, to the extent that at this stage I would rule out nothing electronic or technical, or indeed any form of technology. We do not need to paint ourselves into a corner; it all may have a part to play. I am quite sure that it already has a part to play in everyday life, in tracking criminals and so on, so we should not rule out what could be a contributing factor to finding what we all want, which is a solution other than concrete and barbed wire. Why should we rule out one possible solution at the very outset?

The House is greatly adorned by many senior legal figures who have demonstrated their robustness and capability in recent months. I am not a lawyer—I am absolving myself of any responsibility in advance—but we have had two recent cases that I wish to refer to. My fundamental disagreement with the amendment is that it is my belief that we are making a mistake in linking the Belfast agreement with triggering Article 50; they are two totally separate things. That is not just me talking. I refer to the two cases against Brexit that were brought to the Belfast High Court last September, one by a well-known victims campaigner and the other by a group of human rights organisations and Stormont politicians, including the leaders of the SDLP, the Greens and the Alliance and a Sinn Fein former Minister. The premise of each case was that taking Northern Ireland out of the EU would breach the Belfast agreement. The High Court heard both cases together and rejected them on every point.

It is worth a quick run-through of those points to demonstrate how comprehensively the breach has been debunked. The plaintiffs claimed that the constitutional establishment in Northern Ireland was being changed without the population's permission, contrary to the consent principle underpinning the entire peace process. They said that the nine mentions of the EU in the agreement mean that membership is "inextricably woven" into the law enacting it. However, the High Court in Belfast came to the conclusion that references to the EU in the agreement are "incidental"—the judge's own word. The Northern Ireland Attorney-General, John Larkin, decided to refer some aspects of this to the Supreme Court because, although he felt there was no link, he wanted to make absolutely certain that there was clarity at the highest possible level.

When the Supreme Court produced its decision in the Miller case—a split decision, although there was a substantial majority—it was unanimous on the issue specific to the Northern Ireland case, and said, without any caveat, "This is not a breach". That is the highest court in the land. When it came to other treaty issues, such as the treaty between the United Kingdom and the Republic of Ireland that deals with the border poll and issues surrounding that which are obviously linked to this group of amendments, it added that nothing about Northern Ireland's removal from the EU breached any law, any treaty or any part of the constitution.

We were all horrified when the headline "Enemies of the People" appeared before us some months ago and, when the Gina Miller case came to a conclusion, everyone said that we must respect the views of the court and accept that a decision had been made. Here we have the clearest of clear decisions—that there is no breach of any treaty, of any Act or of the constitution as a result of the decision to leave the European Union, whatever we happen to think of that decision. I therefore contend that the amendment is defective, in that it tries to put on the face of the Bill an agreement that is not relevant, when no offence or violence is being done to the constitution of the United Kingdom.

The noble Lord, Lord Hain, said that one possibility was to devolve immigration powers to Stormont. If we did that, I assure noble Lords that people would need a pass to go from County Antrim to County Down. The last thing we need is to devolve immigration powers to Stormont. Stormont cannot agree a budget; it cannot agree anything at present. Sadly, the place has fallen in on itself again. The idea of giving it an immigration power is fanciful, and would be extremely dangerous.

The concept of special status has been mentioned. That term referred to the special category status of prisoners in the Maze prison—or Long Kesh, as it then was—which led to the hunger strike. "Special status", certainly to a unionist, means something less than being part of the United Kingdom—and that is exactly what it would be. The fact remains that either we are in the United Kingdom or we are not. When we were trying to design the Belfast agreement—I thank my noble friend Lord Trimble for giving me and the noble Lord, Lord Kilclooney, the opportunity to be part of the team that negotiated it—we found ways, through that agreement, of resolving these very difficult issues.

[Lord Empey]

The problem with leaving the European Union is not breaches of the Belfast agreement; the political problem is leaving the European Union. It may be what is upsetting a lot of nationalists, and a lot of people in Dublin, but it is not relevant to this Bill. There is something I want to say to Ministers about this—something I have raised with them many times, both privately and in this House. When it comes down to it, we need assurances that there are red lines in the forthcoming negotiations, and one of those red lines must be that there will be no internal border within the United Kingdom.

We have been talking about the border with the Republic, and I totally agree about an open free border. I had the privilege of being the Northern Ireland Minister who started up InterTradeIreland and Tourism Ireland—two of the north/south bodies—and I can say that nobody I have come across wishes to see any border, in terms of a physical construction.

5.30 pm

However, Ministers must also be aware that the Prime Minister says that she is a unionist Prime Minister who believes in the union and wants to strengthen it. Therefore, can we have an assurance that there will be no internal border within the United Kingdom, whether it be up the middle of the Irish Sea or at ports and airports? If Ministers are telling us that they want an open border with the Republic, they cannot then turn round and say, "You can have an open border with the Republic but you can't have an open border within the United Kingdom".

I understand the real political issues behind this amendment. The concern with regard to nationalism is real. I spent many years involved in various types of negotiations—years and years and more years. We are still negotiating. You cannot be ambiguous on these issues, either there is a United Kingdom of Great Britain and Northern Ireland or there is not. I believe that our colleagues in the European Union get this. I have absolutely no doubt that they will be helpful because they have invested a lot in this. In the time of Jacques Delors a unique funding system was brought in—the Northern Ireland peace funds. Nobody else ever got that. It is still going in its fourth iteration. We are all most grateful for the help we have received. Brussels has invested a lot in this process as it set an example of an attempt to solve an internal problem within the European Union. Unfortunately, some people have been invited into the European Union before some of their constitutional issues have been sorted out. That was done in breach of regulations, but when the euro came along the regulations were also breached. All I ask of Ministers is to give us an assurance and to be clear. The Bill is not the right place for the Belfast agreement. To contaminate that agreement by linking it exclusively to leaving the European Union does it a disservice. We have a unanimous view that we want to resolve our differences without having any borders. We should allow Ministers the opportunity to get on with this process. At the end of the day, we will have an opportunity to pass judgment on what they do. That is the correct role for this Parliament. However, I ask noble Lords to please bear in mind what the High Court in Belfast and the Supreme Court said. Given those two clear and unambiguous decisions, I believe that the amendment would be misplaced in the Bill.

Lord Davies of Stamford: What a depressing afternoon this is. If we in this legislature were trying to get rid of barriers, borders and frontiers between people, what a good day's work we would be doing, instead of which we are talking about creating new barriers and frontiers between us and the continent, between Northern Ireland and the Republic, and possibly potentially between England and Scotland. Those are all very depressing thoughts.

One of the advantages of Committee is that we can have a debate. It is possible to respond to what other people have said and, if what they suggest is plainly possible, it is obviously very desirable to take it on board. I thought that my noble friend introduced his Amendment 2, which I strongly support, with a brilliant speech. I agree with every word of it except one very important sentence, to which the noble Lord, Lord Empey, referred in a very powerful speech—namely, it is utterly intolerable and inconceivable that we should have an internal border within the United Kingdom. I regard that as an utterly unacceptable solution. We need two sets of red lines in these negotiations. We must have no borders within the United Kingdom and no border between the Republic of Ireland and the Province of Northern Ireland—between the 26 and the six counties. Those two things should be absolutely immovable desiderata and requirements of the British Government in conducting these negotiations. I hope, and believe, that we would have the understanding of Brussels and the rest of the European Union in insisting on those two points.

I was mystified by one of the things that the noble Lord, Lord Trimble, said and quite shocked by another. I was mystified when he said that freedom of movement in Ireland, called the common travel area—it is exactly the same thing—has been in place since 1923, so it would be nothing new if it was somehow modified or constrained. The Irish Free State came into being only in January 1922 when the treaty was ratified, so there was never a border before then. Clearly we were then part of the same country. If there has never been a border since 1923, on that calculation there has been only one year in the course of the last 800 years of Anglo-Irish history in which there has been any restriction on freedom of movement within Ireland. That being the case—I believe it to be the case—it would be profoundly shocking and would have a traumatic effect if we suddenly started to introduce one now. What a very sad thing to do after the last 20 years. The thing that shocked me, though, was when the noble Lord appeared to say that if the Irish Republic was observing its own interests, it should leave the European Union. I remind him that the people of the six counties voted very substantially to remain in the European Union only a few months ago. Surely, in all courtesy, we should leave it to the people of the 26 counties to make their own decision on that matter and not lecture them from the British Parliament—a habit which I am afraid has become too bad a habit over too many centuries.

The matter we are discussing is particularly important because during the Bill's passage we will debate other matters such as the single market. We have already had a go at that and will come back to it. If we make a big mistake in that regard—we know that we may well make some very big mistakes—we shall be the major sufferers. But in this matter we shall not be the major or the only sufferers; the equal or the substantial sufferers—certainly the equal, perhaps the greater sufferers—will be the people of the island of Ireland. Therefore, we should be particularly concerned to get matters right.

Some people, including probably the noble Lord, Lord Trimble, will not like what I am about to say. However, I remind the House that this country's and Great Britain's relations with Ireland over the last 800 years have been just about as hideous as relations between neighbours could ever get. Right from the 12th century, the Anglo-Norman invaders imposed on the Irish exploitation and a form of apartheid-type discrimination. In the Reformation that was followed by persecutions of a different kind. We had the massacres under Queen Elizabeth. We had the massacres under Oliver Cromwell of every man, woman and child in the cities of Drogheda and Wexford.

Noble Lords: Oh!

Lord Davies of Stamford: I knew that some noble Lords on the other side would not like this but they are going to hear it. We had the heartless expropriations of Catholic property by Oliver Cromwell, and again in the 18th century, contrary to the Treaty of Limerick. We had a series of broken promises—four major historic broken promises—the Treaty of Limerick itself, the promise made to Grattan's Parliament in 1782, the promise made by Pitt in 1800 to introduce Catholic emancipation and the promise made by Asquith to bring in, live up to and carry out the third home rule Bill. All those promises were broken.

Even at that point the British Government did not get it. We did not get the Easter rebellion. We tried to impose conscription on Ireland. Even when Sinn Fein won every seat in the November 1918 elections except, I think, for two in the 26 counties, we still did not get it and, within two months, we had the Anglo-Irish war. We know what happened to that. After the treaty, we neglected Irish matters in this House. We allowed Stormont to get away with an absolutely scandalous programme of deliberate job and housing discrimination—job discrimination even explicitly encouraged by a unionist Prime Minister by the way—and other breaches of civil rights, and, of course we did not get it. We did not intervene after the attack on the civil rights march by Paisley's thugs at Burntollet bridge. We then had the appalling violence and terrorism by the IRA.

In the last 20 years we have had the brightest moment in Anglo-Irish history that we have had in 800 years, starting with the Belfast agreement. It may have been prepared before the Belfast agreement in the great co-operation that took place between our two countries after we both joined the European Union. I remember Garret FitzGerald, a very great Taoiseach, saying to me once over lunch that that had transformed the position of the Irish and the British. After 800 years in which we had been the patronising imperialists and the Irish had been the petitioners, we were equals, involved in the same programme and the same agenda in the European Union, or the European Community, as it was originally, and we needed each other's support and votes to get our business done. That was the basis on which a new relationship was created. That has been a great asset and great achievement of the last generation. It is now at risk if we gratuitously decide to impose a border upon the beautiful country and proud people of Ireland. It does not matter whether the border is a mechanical border, a human border, an electronic border, an analogue border or a digital border, it is a border, a frontier. That is the important psychological fact and we cannot get away from it. There is no way you can get away from it. It is completely and utterly out of the question. The Government are quite good at saying that we had the discussion on the previous set of amendments about them dismissing the idea of our remaining in the single market through being a member of the EEA. Why do the Government not—as they should—dismiss the idea altogether of being a party to the end of freedom of movement in the island of Ireland, let alone, of course, within the United Kingdom itself?

Lord Cormack (Con): My Lords, we should remember Sir John Major and Albert Reynolds and the fact that my noble friend Lord Trimble shared the Nobel prize with John Hume for what they did to create the foundation for a peaceful settlement. No one in this Chamber needs a lecture from my friend the noble Lord, Lord Davies of Stamford, and a rehearsal of Irish history—a very poor rehearsal as my noble friend Lord Trimble interjects.

We have had some very notable speeches in this debate. I pay particular tribute to my noble friend Lord Empey and the noble Lord, Lord Alderdice—

Lord Davies of Stamford: The noble Lord is very welcome to correct me and if I have made a historical error I apologise, but will he tell the House what the historical error was?

Lord Cormack: The noble Lord certainly left out Henry VIII and many other things. The noble Lord, Lord Alderdice, put the thing beautifully in context and gave a very remarkable speech. We should all be grateful to my friend the noble Lord, Lord Hain, for introducing the amendment in the way that he did but I hope he will not push it to a vote. I say that with great respect. He knows I mean that because I had many dealings with him when he was Secretary of State and I had the honour to be the chairman of the Northern Ireland Affairs Committee in another place. I had members of seven parties on my committee and we remained unanimous throughout, even though we looked at issues such as organised crime, prisons and many others. He knows how closely we worked together as a committee.

What we need today—and I hope we will get it—is an assurance from my noble friend the Minister that the Government truly recognise the importance of the points that have been raised. They recognise that Northern Ireland is not only in many ways the most

[Lord Cormack]
beautiful part of the United Kingdom but also the most vulnerable. We are not going to strengthen this procedural Bill by hanging this amendment on it. There may well be a time when we return in the context of the negotiations that will follow. There may well be amendments later in this Bill that I will feel I need to support to ask colleagues in the other place to think again, but this is not one of them and I very much hope that my friend the noble Lord, Lord Hain, will withdraw his amendment at the end of the debate.

Baroness O'Loan (CB): My Lords, I actually live in Northern Ireland and have lived there for the past nearly 50 years; I have experienced the Troubles personally, having lost a child in a bomb explosion, and having nearly lost a son to a sectarian attack. Article 50 is about taking the United Kingdom out of the European Union—it is not about the Good Friday agreement; it is not about the security of Northern Ireland. To attempt to introduce it in this haphazard and hasty way—with great respect to noble Lords—does not serve the interests of the country. The interests of the security and the economy of the United Kingdom and the security and the economy of the Irish Republic will be best served if these things are dealt with in the course of negotiations, with complete flexibility. We should not, in any way, attempt to fetter the discretion of the Prime Minister. This is not an amendment that would benefit the United Kingdom or any part of it.

5.45 pm

Baroness Suttie (LD): My Lords, on behalf of these Benches I shall speak very briefly in favour of Amendment 2. As has been said by other noble Lords, the people of Northern Ireland voted to remain in the European Union and there has been a commitment by all to no return to a hard border. The years of hard-earned peace have become an example to the rest of the world and we should acknowledge that this process has in no small part been aided by UK and Irish membership of the European Union and the equality of status that this has granted at European Council and Council of Ministers meetings. However, as the Government have announced their intention to remove the UK from the customs union, the Northern Irish border with Ireland will de facto become the EU's external border. Under EU law, a bilateral customs union between Ireland and the United Kingdom is not permissible for Ireland as an EU member state unless special status is granted by the EU. The people of Northern Ireland deserve clarity on how this will work in practice before Article 50 is triggered.

I welcome that President Juncker said last week that the EU does not want a hard border. He said,

"we want land borders being as open as possible".

There has been concern that there is a lack of awareness in Brussels about the complexities involved in maintaining the Good Friday agreement post Brexit. My greater concern, however, is that there is a lack of awareness of these complexities among many British politicians, most particularly among the hard-line Brexiteers, who all too frequently have a very English focus. There are so many unanswered questions on how all this will work in practice. As the noble Lord, Lord Hain, said, there are 200 crossing points on the border, with 177,000 lorries and 1.85 million cars crossing per month. Since the Good Friday agreement, there are increased shared public services, with school and hospital provision frequently being based on the nearest available services irrespective of the border.

There are unanswered questions, too, about the freedom of movement of people within the EU. How will the promised frictionless Northern Irish border work with the promised curb on the freedom of movement of EU nationals announced in the *Daily Telegraph* today?

Visiting friends in Northern Ireland last month, I was struck by people's very real concerns about the future and maintaining the progress made through the Good Friday agreement after Brexit. At the very least, the Government need to give much greater clarity on exactly how they propose to maintain a genuinely open border before they trigger Article 50. The people of Northern Ireland deserve no less.

Lord Kilclooney (CB): My Lords, I want to comment briefly on one or two points. For example, the noble Lord, Lord Davies, in his historical analysis of Ireland forgot the Battle of the Boyne. I am amazed. Secondly, he forgot the fact that there used to be no Irish living in Ireland. They invaded the island. The Scotti lived on the island originally. The Irish invaded our island and drove the Scotti out, and they went 20 miles away to a country now called Scotland. That is where it gets its name from—the Scotti who were driven out of the island of Scotia. When the Irish invaded, they changed it to Hibernia. Read Magnus Magnusson's book on the history of Ireland.

I am the one Member here who lives near the border and I do not want to see a hard border. I want to see the common travel area preserved. I speak as one who was a very active European. I was chairman of the European Youth Campaign in Northern Ireland. I campaigned strongly in the EEC referendum. I then became an MEP for 10 years and, after that, I spent seven years in the Council of Europe Parliamentary Assembly. Likewise, living near the border, I was very keen on north-south relations at a time when the Dublin Government refused to even recognise that Northern Ireland existed.

When I became chairman of the Young Unionist Council—in the middle of the last century—I said we would meet people in Dublin to see if we could start improving relations. We arranged to have a meeting in Dublin with the central branch of Fine Gael. The Ulster Unionist Party went crackers. They said I would get expelled. We should not do it. How can you talk to somebody who does not even recognise that you exist? We went to Dublin and had our meeting. I looked at the *Irish Times* three weeks later and what did I see? "Party branch expelled". I thought, "My goodness", but it was the central branch of Fine Gael that had been expelled for meeting the unionists. That is life in Ireland.

I listened to the noble Lord, Lord Kerslake, who was quite right to say that the southern Irish are petrified about the impact of Brexit. I see it every day where I live. Thousands of people now come every day from the Republic to Northern Ireland for the obvious

reason. The depreciation of the pound sterling means that the ladies all come up to our border towns to do their weekly shop. Our border towns are now—"exploding" is the wrong word to use—absolutely thriving, and people along the border who think about the economics say what a great thing Brexit is. However, it is worse for the Republic of Ireland. The largest number of its tourists come from England and, because of the 15% depreciation, tourism is now going into decline.

A second point is that meat cannot be exported from the Republic to Britain because, again, meat prices are down by 15%. Farmers are now demonstrating outside supermarkets in the Republic because of the collapse in the prices. Furthermore, mushroom plants are closing down. Hundreds of people have already lost their jobs for the same reason: they cannot export mushrooms.

Of course, a special status is required for someone but not for Northern Ireland. It is offensive to suggest that it should have a special status. It is the Republic that needs it. We must keep the common travel area there, and we must get Brussels to recognise, as the Prime Minister of the Republic of Ireland has stated, that the Republic will be more seriously damaged than any other nation in the European Union. It will suffer badly. It is suffering already, but what will it be like in two and a half years' time when the United Kingdom leaves the European Union? The Republic of Ireland needs special status and we should support it in its attempts to get that in Brussels. As one who lives on the border, I say: keep the common travel area.

I was involved in the negotiations on the Belfast agreement and I have an original copy of it here. There is not one mention of the European Union in any of the four articles at the end of the agreement. Of course, human rights are mentioned but that is in relation to the Council of Europe; it has nothing to do with the European Union. I will oppose the amendment.

Lord Murphy of Torfaen (Lab): My Lords, this has been a fascinating debate lasting almost two hours. I am making a guest appearance at this Dispatch Box as the Minister for Political Development who partly chaired the peace process 20 years ago. When I look around this Chamber—I cannot look behind me but they are there—I see a large number of noble Lords who took part in the talks on that agreement.

I do not accept that the amendments in my name are intended to frustrate in any way the passage of the Bill. Because I am sure that the Minister will give us proper undertakings, it is unlikely that I will move them. However, I think that noble Lords would agree that the quality of the debate and the number of people who have spoken indicate the importance of the subject. I do not think that there has been anything more important in my political lifetime than the Northern Ireland peace process, and the second most significant process is what we are debating today: Brexit—and I say that as a remainer. The interrelationship between the two is extremely important. I see today's debate as a starter—a reminder to the Government that they have to address huge issues with regard to Northern Ireland and Ireland, and in the few minutes available to me I would like to touch on them.

In the debate in the other place some weeks ago, there was a speech by Owen Paterson, whom I regarded as a very committed Secretary of State for Northern Ireland, but I disagreed with him on the following. He said that he wanted to correct the narrative that the European Union played a key role in the Northern Ireland peace process. When I was appointed as the talks Minister, I was also appointed Minister for Europe. That is no coincidence, because Europe played a huge and significant role in the peace process. I say to the noble Lord, Lord Kilclooney, that strands 1, 2 and 3 of the Northern Ireland talks referred to aspects of our membership of the European Union.

I will now comment on the remarks of my noble friend Lord Empey. He said, quite rightly, that it is not the legalities of this issue that matter but what produced the agreement, and it was the politics and the international treaty between the two countries that did that. There was a will on the part of the two countries and, above all, a commitment by all the political parties in Northern Ireland to come to the Good Friday agreement. It was our joint membership of the European Union, as opposed to any legalities or technicalities, that meant that Ministers from both countries were able to meet: the Taoiseach and the Prime Minister, Ministers at Council of Europe meetings, and Members of Parliament through the British-Irish Parliamentary Assembly or its equivalent in those days. I remember taking the entire Northern Ireland Assembly to Brussels at the invitation of the European Union so that Members could see how important Europe was to the future of Northern Ireland. The excellent report produced by the House's European Union Committee on British-Irish relations post Brexit says that joint membership has been a "vital ingredient" in those relations. Of course it has.

Money was important, too. Northern Ireland had Objective 1 status, and that was significant to the people of Northern Ireland. As noble Lords have said, there was also the peace money, which was unique in the whole of Europe. Money was designated by the European Union to help the process of making peace in Northern Ireland. However, it was not simply the money itself; it was how the money was distributed. I remember, as Secretary of State, going around Northern Ireland and talking to the groups which received the money from Europe and had to spend it between them. Unionists, nationalists, Catholics and Protestants met to distribute the money—and that in itself broke down barriers in Northern Ireland.

My noble friend Lord Hain made a very powerful speech. There is no question that over the last 20 years the border has diminished visibly and psychologically. I believe that the lack of a hard border allowed nationalists in Northern Ireland to develop a sense of common identity with their fellow European Union citizens across the border. In the same way, I vividly remember the meetings at Stormont House when there was a reluctance on the part of the unionist parties to accept devolution in Northern Ireland—that is, strand 1. However, as soon as we had in Great Britain as a whole a Parliament in Scotland, an Assembly in Wales and an Assembly in Northern Ireland, it meant that it was easier for the unionist community in Northern Ireland to accept it. We had to make these compromises.

[Lord Murphy of Torfaen]

I am reminded, too, by my noble friend Lord Rooker of the milk travelling from Northern Ireland to the Baileys plant. I remember it vividly because I opened the plant many years ago—although I never appreciated the international nature of the milk. Of course, if you think about it, that applies not just to the milk but to the sheep, the cows and the whole of the agricultural industry, which straddles the border and has no match anywhere in the rest of the European Union.

So the issue of the border is hugely significant, and I know that the Government take it seriously. It is an issue that cannot be allowed to drift—it has to be top of the agenda. The brightest minds in the Department of Foreign Affairs and Trade in Dublin and in the Northern Ireland Office in Whitehall, not to mention the officials in Brussels, should be engaged in dealing with this very tricky issue.

6 pm

Amendment 30 stands in my name, although I have no intention of moving it. It concerns what would happen if there were a united Ireland. Incidentally, I am not in any way advocating a united Ireland and I am not not advocating it, either—that shows my neutrality—but what if there were? The principle of consent is so important to the Good Friday agreement, so what if that were to happen in years to come? The Irish Government will undoubtedly raise this issue, so the British Government need to be prepared to react to it. What happens if there is a vote for a united Ireland and Northern Ireland goes into Ireland? What happens to its membership of the European Union? It is not a huge issue, and it is certainly not going to happen for a very long time if it happens at all, but it is an issue.

Noble Lords will also understand, of course, that Northern Ireland's citizens can, if they so wish, post Brexit, become citizens of the European Union by becoming citizens of the Irish Republic. That is an issue which should be raised—and all this is against the backcloth of an election on Thursday to establish a new Executive and at least three weeks of negotiations—and I am convinced that the issues that have been touched upon in this House will be dealt with there. We should remind ourselves that the people of Northern Ireland voted to stay in the European Union. The people of Northern Ireland voted to accept the Good Friday agreement. The people of the Republic voted for that, too, but the people of the United Kingdom voted to come out of the European Union. This is a tough task and I wish the Government well in it.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Dunlop) (Con): My Lords, I welcome the noble Lord, Lord Murphy, to the Front Bench. He played a hugely important role in negotiating the Belfast agreement and he brings huge authority to this debate. I also thank all those who have taken part in the debate on this group of very important amendments relating to Northern Ireland. All the contributions have been thoughtful, sincere and passionate. I pay tribute to the work of the EU Committee and, in particular, its report on Northern Ireland, which has been mentioned by a number of noble Lords. The whole House is very conscious of the political situation in Northern Ireland and the need to provide support to the parties there, with Assembly elections this Thursday and the aim of re-establishing strong and stable devolved government. I am sure that we are all united in this place in our sense of duty to the people of Northern Ireland who support the devolved institutions and want to see the forward momentum of the peace process maintained.

The people of Northern Ireland have seen the benefits that flow from the peace process: a reduction in violence, although it is still far too prevalent; economic and social progress; and the gradual normalisation of everyday life. Around this Chamber, on each side and in every part, are noble Lords who have made significant contributions to the peace process and to the progress Northern Ireland has experienced over the last 20 years or so. I have said many times from this Dispatch Box that we have enjoyed the longest unbroken period of devolved government in Northern Ireland for 45 years, a period that started in 2006 on the watch as Northern Ireland Secretary of the noble Lord, Lord Hain, who opened this debate. In our House and in the other place support for establishing, re-establishing and then maintaining the devolved institutions has been a bipartisan effort. The Government recognise and are grateful for the level of bipartisan support that the parties opposite continue to provide. It is for the Northern Ireland parties to work together to form a functioning Executive, and we all have a role in supporting those efforts. Everyone in this House wants and is working for the same outcome.

The Government are very conscious that as we negotiate the United Kingdom's exit from the EU and secure our position as an open, successful trading nation, we need to make certain that the unique interests of Northern Ireland are protected and advanced. There can be no doubt about the priority the Government attach to the interests of Northern Ireland and, as the noble Lord, Lord Lester, noted, to providing strong reassurance to the people of Northern Ireland. The Prime Minister's Lancaster House speech and the White Paper set out the 12 principles that will guide our approach to the negotiations. Two of these refer explicitly to the needs of Northern Ireland. The first makes clear that the Government remain fully committed to the Belfast agreement and its successors as part of securing a deal that works for all parts of the United Kingdom and strengthens the union. The second highlights the importance of protecting our strong and historic ties with Ireland and maintaining the common travel area. Nobody wants to see a return to the borders of the past. The border is clearly a vital economic and trade issue. We recognise that the Northern Ireland economy is deeply integrated with that of Ireland, as well as with that of the rest of the United Kingdom. The issue of milk has been raised very vividly on a number of occasions so I will not repeat what was said.

However, this is more than just an economic issue. It is a social and psychological issue as well. For example, it is about families who use hospital services or are signed on with a GP across the border, or about the coaches of Northern Irish rugby supporters travelling

to Dublin to watch Ireland play in the Six Nations. It is about the ease of everyday living and how you feel about the place in which you live. The open border for people and businesses has served us well and none of us wants to see the border issue become a renewed source of tension or division between different parts of the community in Northern Ireland. We want to ensure that goods and people can still move freely across the border and the Prime Minister has been crystal clear that the Government want trade across the Irish and Northern Ireland border to remain as frictionless as possible.

Of course, I recognise that this raises practical issues of the sort that the noble Baroness, Lady O'Loan, and others raised at Second Reading about what specific solutions might be put in place to achieve our desired outcomes. Such questions have been raised again today. As we have said before, and as the noble Baroness, Lady O'Loan, expressed so succinctly and eloquently, this is a straightforward Bill that gives the Prime Minister the power to start the process of withdrawal; it does not concern the wider negotiating process that will follow or the Bills that will come before this House and the other place on such matters as immigration and customs to give effect to what is agreed. To address the point raised by the noble Lord, Lord Hannay, we will look to negotiate the best possible deal to secure practical cross-border co-operation on matters of justice and security. However, we start from a position of shared interests and common ground. The relationship between the United Kingdom and Ireland has never been closer or stronger than it is today.

There is a very strong joint commitment from the Irish Government, the Northern Ireland Executive and the UK Government to find a practical solution that recognises the unique circumstances on the land border between Northern Ireland and Ireland and all the social, political and economic implications that flow from them. I believe that the EU will be sensitive to the specific challenges around the border between Ireland and Northern Ireland. Only last week the President of the European Commission, following a meeting with the Taoiseach, said:

"During the BREXIT negotiations, the EU and Ireland must look to minimise the impact. We don't want hard borders between Northern Ireland and Ireland".

I also welcome Guy Verhofstadt's comments about prioritising,

"the specific needs of Ireland and Northern Ireland",

and Michel Barnier's remarks about doing the,

"utmost to uphold the success of the Good Friday Agreement".

This reflects, I think, an acute appreciation in Brussels and in other European capitals of the important role the European Union has played in helping to ensure and preserve peace in Northern Ireland, a point touched upon by the noble Lord, Lord Alderdice. I hope that this will continue.

Before I turn specifically to the amendments I want to address a point raised by both the noble Lord, Lord Hain, and the noble Baroness, Lady Randerson, on the even-handedness with which the UK Government deal with the political parties in Northern Ireland. Let me be very clear: the Government recognise the importance of establishing good working relationships with political leaders representing both unionist and nationalist traditions. We have always said that we govern in the interests of the whole community in Northern Ireland. In recent years, two very significant cross-party agreements—Stormont House and Fresh Start—have been reached, which demonstrates our ability to work effectively across the community with the major parties in Northern Ireland.

I turn now to the three amendments. Amendment 2 in the name of the noble Lord, Lord Hain, would include in the Bill an undertaking by the Prime Minister to support the maintenance of the open border between Northern Ireland and Ireland. No such undertaking is necessary in the Bill, as my noble friends Lord Trimble and Lord Howell have made clear, particularly in light of the strong assurances that I have given and our desire to keep this Bill clean and simple.

The Government's intentions on this matter are already clear and there is no fundamental difference between us on the outcome that we seek. Maintaining the common travel area and protecting the high level of operational co-operation that underpins it will be an important priority for the UK in the talks ahead. As has already been pointed out, there has been a common travel area between the United Kingdom and Ireland for many years. Indeed, it was formed before either of our two countries were members of the European Union and reflects the historical, social and economic ties between its members.

Similarly, we recognise that Ireland is by far Northern Ireland's biggest trading partner with goods exported worth £2.1 billion and imports of £1.6 billion in 2015. This underlines the strong mutual self-interest that exists. We will work closely with the Irish Government and the Northern Ireland Executive to find practical solutions to keep cross-border trade as seamless and frictionless as possible.

In finding solutions to the land border between Ireland and Northern Ireland, my noble friend Lord Empey sought reassurance that we will not create an internal border between Northern Ireland and the rest of the United Kingdom. I can give my noble friend firm assurance that this Government are clear that we must do nothing that makes any citizens of our country feel strangers in that country. Our guiding principle as we leave the EU will be that no new barriers to living and doing business within our own union are created.

Amendment 10 would exempt provisions derived from the Belfast agreement. The Government's commitment to the Belfast agreement and the three-stranded approach—which makes clear that the government of Northern Ireland will be determined by consent—is rock solid, including the principles that recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose. The United Kingdom's departure from the EU will not change that. The institutions, including the North/South Ministerial Council and the six implementation bodies, remain intact. So while the Government do not disagree with the core sentiment lying behind this amendment—namely, unwavering support for the Belfast agreement—there is no need to legislate for it.

6.15 pm

Amendment 30 would make it a priority for the Article 50 negotiations not to impede the ability of people on the island of Ireland to exercise the right to bring about a united Ireland and to be treated as a European Union member state. The Belfast agreement makes it clear that the constitutional position of Northern Ireland will be determined by consent. While this Government fully support the union and Northern Ireland's place within it, Northern Ireland's constitutional future will always be for the people of Northern Ireland to decide. We will always back the democratic wishes of the people. The majority of people in Northern Ireland continue to support the current political settlement, so the requirements in the Belfast agreement for a border poll are therefore not met.

If a majority of the people of Northern Ireland vote at some point in the future to become part of a united Ireland, the UK Government will honour their commitment in the Belfast agreement to enable that to happen. The amendment is therefore unnecessary and also not appropriate for a short and simple Bill that is designed to initiate the process of withdrawal, not the wider negotiating process that follows.

We must now work closely together to ensure that as the United Kingdom leaves the EU we find shared solutions to the challenges and maximise the opportunities for the United Kingdom and Ireland. We want to build on all the progress that has been made on the island of Ireland, not set it back. The outcome of the referendum will do nothing to undermine the absolute commitment of the United Kingdom Government to the settlement in the Belfast agreement.

As this debate has shown, there are clearly a number of crucial matters for the upcoming negotiation, which are recognised in the Government's White Paper. But I ask that noble Lords accept the will of the people and the decision of the other place and pass this Bill unamended so that the Government can make a start on these important negotiations.

Lord Hain: My Lords, I think that brevity is called for so I will briefly respond to clarify the point made by my noble friend Lord Empey. I did not advocate the devolution of immigration to Northern Ireland; I simply quoted from your Lordships' European Union Committee, which said that that might be one of the issues on the table. The paradox I see is that everyone is actually agreeing with me, or so they say, except that as the noble Lord, Lord Kerslake, pointed out, the harder the Brexit, the harder the border. I hope that the Minister, who responded very ably and encouragingly, will bear that in mind. As the noble Lord, Lord Hannay, said, there is no plan B for the border in that respect. The trouble is that if we get this wrong—and it is enormously complex, as all noble Lords have understood—for the United Kingdom it might be perilous, but for Northern Ireland it could be politically lethal. That is the problem. In light of the Minister's firm assurances and undertakings, I beg leave to withdraw the amendment.

Amendment 2 withdrawn.

Amendment 3

Moved by ***Lord Newby***

3: Clause 1, page 1, line 3, at end insert—

"( ) No agreement with the European Union consequent on the use of the power under subsection (1) may be ratified unless—

(a) it has been laid before and approved by a resolution of each House of Parliament;

(b) the Prime Minister has obtained authority to put it to a national referendum; and

(c) it has been approved by such a referendum."

Lord Newby (LD): My Lords, this simple amendment would require the people to ratify in a referendum any agreement reached by the Government pursuant to triggering Article 50, and I thank my co-signatories from across the House who support it.

I set out the arguments for such a confirmatory referendum in my Second Reading speech. Fundamentally, we believe that the people, having initiated the Brexit process, should have the final say. It is clear that the Government's preferred option is that they should have the final say. Under pressure, and no doubt as a result of votes that we shall have in your Lordships' House, they will be dragged slowly but inexorably towards giving Parliament a final say on all the options. However, while that is better than the Government simply taking the final decision themselves, it simply will not do.

As we saw with Parliament's votes in advance of last year's referendum, the Government's track record in judging the public mood on this issue is poor. While as a general principle it is accepted that parliamentarians should exercise their own judgment and not simply echo that of public opinion on this issue, Parliament has already said that our membership of the European Union is for the people to decide. Trying to take back power at the end of the process having ceded it at the outset is both devoid of principle and likely to stoke further public dissatisfaction, whichever way the decision goes.

Secondly, and flowing from this, is the fact that in contradistinction to what the Prime Minister asserted in the White Paper, the country is more divided than ever over Brexit. That is largely because those who were in favour of remaining in the EU were relatively passionless in advance of the referendum because they complacently thought that they would win it. They were wrong, of course. Now many of them are angry about the issue for the first time. No small part of that anger is caused by the fact that they believe that many people were decisively influenced in the way that they voted by what they see as a number of misrepresentations, most notably on NHS spending, which were assiduously asserted by the leave side, including of course a number of members of the current Cabinet. They are also angry that, by leaving the single market and customs union, the Government have chosen a particularly harsh form of Brexit. As a result, they believe that the people should have a vote on the final deal, when it will be impossible to conceal the real consequences of leaving the EU—as happened last summer.

At Second Reading, the Minister asked me why such a vote would help to bring the country together. The answer is that such a vote, conducted in the full light of the facts of the deal, would produce a result that could not be questioned, in the same way as last June's vote, on the basis that the people were misled. I believe that that would apply to the losing side as well as to the victors. At Second Reading the noble Lord, Lord Butler, asked why,

"those who base their arguments for Brexit on the will of the people are now opposed to consulting the people on the outcome of the negotiations".

As he said:

"Do the Government regard the views of the British people on the outcome of the negotiations as irrelevant to our departure?".—[*Official Report*, 21/2/17; col. 208.]

In reply, the noble Lord, Lord Bridges, said that the Government opposed a referendum on the terms on the grounds that it would dash the certainty and clarity that we need. I agree that we need that too, but nothing would give greater certainty and clarity than the people having expressed the final view on the deal. The Government's attitude is that if the views of the people were to change significantly against Brexit over the next 18 months, the Government would still ask Parliament to ratify any deal it reached, or simply crash out of the EU. How could that be justified? They are saying in effect that the people are not allowed to change their mind—an approach that is the antithesis of democracy, which is that the people are regularly asked to express their preferences and do indeed regularly change them. This is from a Government with many members who have very publicly changed their minds from being convinced remainers to being cheerleaders for Brexit.

Lord Grocott: My Lords, the noble Lord may be coming to this in his speech, but the first requirement of his amendment is that any agreement must be,

"laid before and approved by",

both Houses of Parliament. I ask him: if one House says, "Yes, we agree with the agreement that has been negotiated", but the other House says no, what happens next?

Lord Newby: My Lords, we will spend a lot more time on Wednesday discussing the role of Parliament. The point I make in my amendment is that Parliament will want to express a view before the vote goes to the people again. We will talk in great detail on Wednesday about how it might do that. That part of the amendment is not its most central part.

Lord Grocott: My Lords—

Noble Lords: Oh!

Lord Newby: Some have argued that if Parliament rejected the Government's Brexit deal, the will of the people could be tested in a general election. I think that that would be extremely unsatisfactory. We all know that general elections are about many things. For example, any election called by the present Prime Minister with the same leader of the Opposition would not be simply or even primarily about Brexit, but be about who was best fitted to lead the country. We all know the answer to that. If the people are to be consulted, therefore, it must be through another referendum—and the people should certainly be consulted.

Lord Robathan (Con): The noble Lord was talking about people changing their minds. Given that he campaigned for a real referendum in 2008—in or out of the EU—could he tell us when he then changed his mind to decide that we should not accept the judgment of this last referendum?

Lord Newby: My Lords, I am arguing in favour of the principle that, when events change, people change their minds. I do not consider that to be a dishonourable practice. When I look at the Government Front Bench in either this House or another place, I see person after person who apparently had a miraculous change of mind either just before or just after the referendum; I accept that that is sometimes what people do. The noble Lord possibly has never changed his mind, but most people in your Lordships' House have a greater flexibility of approach, which is to be welcomed. I beg to move.

Lord Lamont of Lerwick (Con): My Lords, although I oppose this amendment, I can imagine two circumstances in which a second referendum might be justifiable. The first would be after we had actually completed the negotiations, left the EU and then people decided they wanted another referendum. That would seem perfectly justifiable.

The second situation where a second referendum would be well justified would be if the original referendum question had been framed in such a way as to say, "Do you wish the Government to enter into negotiations about leaving the EU, and then to put the result of that referendum to a second referendum later on?". However, that was not the question on the ballot paper. As we have heard endlessly, the question was whether to remain or leave; it was quite unambiguous. It seems that we are slipping into the habits that the EU itself has with referenda. Mr Juncker on one occasion famously said, "If the people vote the wrong way, we must go on voting until we get the right answer". I suspect that that is the real motivation behind the amendment. We saw this in the EU with the referendum on Maastricht. After the Danes said no, they had to vote again. We saw it with the treaty of Nice: when Ireland said no, we had to have another vote and that reversed the first one. We saw it most blatantly of all with the European constitution, as proposed, which was rejected in recommendations by both France and Holland. In order to avoid a referendum, that was then translated by a device into the Lisbon treaty. We absolutely should not go down that road.

Lord Cormack: If we had a second referendum and the question was, "Do you want to stay out or go back?", how could that realistically be asked, unless we knew that they wanted us back?

Lord Lamont of Lerwick: I think that the question of whether they want us back is a very real one. I wanted to come to that very point. At Second Reading

[Lord Lamont of Lerwick]
I quoted the noble Lord, Lord Ashdown, as having said that he was firmly opposed to a second referendum. He is shaking his head; if he wants to correct me I will gladly be corrected, although I have three other press reports of where he said a second referendum was not desirable and should not take place: one in the *Times* on 20 September; a report from Asia House of his speech there on 6 September, together with a second report of that speech; and an article in *Somerset Life* on 24 June—so I have quite a lot. The noble Lord may have been misreported. If he has been misreported once, I apologise to him, but he seems to have been misreported several times.

6.30 pm

Lord Ashdown of Norton-sub-Hamdon (LD): I am content to be misquoted by the noble Lord and I am content to be able to intervene, not least because my words have been used in the past. I shall make an intervention later in which I shall clarify the position.

Lord Lamont of Lerwick: We look forward to that clarification. If we wanted to, we could quote many other Liberals, not least Mr Vince Cable, who I am sorry is not in this House. He made it clear that he thought that there should be no second referendum:

"The public have voted and I do think it's seriously disrespectful and politically utterly counterproductive to say: 'Sorry guys, you've got it wrong, we're going to try again', I don't think we can do that".

My noble friend Lord Cormack made the point that there is also the assumption that the EU definitely wants us to remain in. There is also the assumption behind the amendment that Article 50 is reversible. As I understand the position, this is legally an open question. The Supreme Court did not opine on it because the two parties to the case, Mrs Miller and the Government, agreed that they would not argue about the issue in front of the court, so it did not take a view. I understand that lawyers are divided on the matter, but it is by no means clear that Article 50, once it has been invoked, is reversible.

Regardless of what the legal argument is, politically it seems difficult to believe that Article 50 could be reversed. Would the EU really want to negotiate with a country that is saying, "Well, we will get some terms from you which we will put back to the people, and then we may come back and ask for a better set of terms if they are not satisfactory"? If my noble friend Lord Cormack and I are wrong about this and the EU definitely and 100% wants us to remain in, it will give us the worst possible bargain, knowing that it has to be endorsed by both Parliament and a referendum. The amendment that has been proposed seems to be opportunistic and it does not have any logic to it at all.

Baroness Wheatcroft (Con): My Lords, "the will of the people" is a phrase much bandied around in the wake of the referendum and it has taken on a totemic significance. Anyone who suggests that the country should not now blindly leap off the cliff into the unknown that is hard Brexit risks being accused of trying to defy the will of the people. When the Supreme Court judges examined the Government's plans to ride roughshod over the principle of the sovereignty of Parliament, they met with a disgraceful headline labelling them "Enemies of the people". Their determination to stand up for the rule of law rather than the rule of the mob was seen as defying the will of the people.

I do not wish to defy the will of the people. Amendment 3, introduced so persuasively by the noble Lord, Lord Newby, proposes the opposite of defying the will of the people. It is about upholding democracy, not denying it. It simply proposes that once the terms of our withdrawal from the EU are clear, the public should be given the final say on whether to accept them. As I said at Second Reading, I cannot understand why even the most devoted Brexiteers would not wish to give the public the final say on the terms of such a momentous decision unless they feared that the terms might not be acceptable.

The process would demand simply that Parliament should approve the terms by a resolution of both Houses. In answer to the noble Lord, Lord Grocott, it would be the vote of the Commons that was decisive; we know our place in this Chamber. If there is no deal, however, and the Government simply decide to withdraw from the EU, this too should be the subject of a resolution of both Houses. I will support a later amendment that calls for that procedure. I believe it to be absolutely crucial that, if the Government think that they have secured a good deal for this country, that deal should be put to the public in a referendum.

We are a proudly democratic country. We hold elections and we abide by the results even if the majority is wafer thin. The party with the largest number of MPs gets to govern. But the difference between a general election and the referendum is that a few years down the line the country has a chance to change its mind and to think again. People judge the efforts of those whom they have elected and, if they are not satisfied, they throw them out. A Parliament is not for life. However, when the country is now embarking on one of the most momentous decisions ever, a decision that will affect our children and our children's children, there seems to be a perverse determination to insist that the people have made their bed and that, no matter how uncomfortable it may be, they are jolly well going to lie in it in perpetuity.

Lord Forsyth of Drumlean: While we are on the subject of being uncomfortable, is my noble friend comfortable with the many press reports following the referendum of her saying that she would use her position in the House of Lords to prevent and reverse the decision taken by the people? Is she comfortable with the idea of unelected Members of this House using procedure to try to frustrate the result of the referendum?

Baroness Wheatcroft: My Lords, I have just said that I have no intention of defying the will of the people; I am giving the people a chance to exercise their will, which some noble Lords may not wish to do. I do not believe that we should not give the people the final say.

When a majority of those voting voted to leave the EU, they had different visions of what that would entail. In answer to my noble friend Lord Lamont, I

do not think that the original referendum was, with the benefit of hindsight, drafted as well as it might have been, because I think that people were voting for different things. Some might have favoured an arrangement that continued to give us strong trading links with Europe while others might have voted with a view that we could remain very close to the single market. Some might have hoped that our students would be able to continue their education throughout Europe while others, particularly those in the financial services sector, would almost certainly have been hoping that what they were voting for was an arrangement that would allow their products to be passported into Europe so that they could continue doing business as they do now. That looks increasingly unlikely to happen, with dire consequences for our Exchequer. The one thing on which most voters would surely have agreed is, as others have suggested in this debate, that they were not voting to get poorer.

The most logical solution is that, once the terms of departure are clear, the public should be able to weigh them up and decide whether they want them. Do those who oppose such a suggestion not believe that the British electorate are capable of examining a deal and judging it on its merits? To take that view certainly would be to show contempt for the electorate and I do not. I am not a fan of government by referenda, but nevertheless once one has embarked on that route, it seems that only a referendum can complete the process. This is about listening to the will of the people, not defying it.

Lord Grocott: My Lords, I had not intended to speak but I need to, because so far no one has addressed the specific terms of the amendment that is before the Committee. There is no element of sarcasm in this when I say that that is uncharacteristic of the noble Lord, Lord Newby. I asked him a specific question about his amendment. Also uncharacteristically, the noble Baroness, Lady Wheatcroft, has made a speech that is not based on the terms of the amendment. So let me remind the Committee briefly of what the amendment states. Three conditions are set out:

"No agreement with the European Union … may be ratified unless … it has been laid before and approved by a resolution of each House of Parliament".

I do not know what meaning that has other than that it has to be approved by a resolution of each House of Parliament, which the noble Baroness, Lady Wheatcroft, said is not a problem because we always defer to the lower House. If that is the case, it needs to be in the amendment.

Viscount Hailsham (Con): Perhaps the noble Lord would be good enough to look at Amendment 32 tabled in my name, which will be debated on Wednesday. He will see that this point is addressed in the proposed new clause by using the phrase "both Houses". I take the point that the noble Lord is making with regard to "each House", but does he agree that if the phrase "both Houses" is substituted, the point is made?

Lord Grocott: I am a long way from reaching Amendment 32, but I shall certainly look at it in good time. Before we get to any question of consulting the people on an agreement, which was the thrust of the comments of both the noble Baroness, Lady Wheatcroft, and the noble Lord, Lord Newby, it has to clear the first hurdle of being passed, or I should say approved, by both Houses of Parliament. We need to know what happens if one House says yes and the other no, because it occurs to me that there is a considerable possibility that the House of Commons, with a Conservative majority, might well, on the recommendation of the Prime Minister, agree to approve the Prime Minister's recommendation. There is also a considerable possibility that this House, not being so bound by recommendations of Prime Ministers of whichever party, will decide that it does not agree with the recommendation made by the Prime Minister and the Government. That is the question: what happens if one says yes and the other no?

That is the first hurdle that would have to be cleared before there can be a referendum, but there is another. New paragraph (b) says,

"the Prime Minister has obtained authority to put it to a national referendum".

That would require a Bill and an Act of Parliament. That is the second hurdle that would have to be cleared by the House of Commons and the House of Lords before we could reach the third stage, which is the referendum itself—new paragraph (c) provides that it should have been,

"approved by such a referendum".

I say to those who have spoken so far that unless there are rather better answers to the question, particularly about the two Houses—

Lord Rooker: On the issue of the two Houses, I agree with the amendment, although I will vote against it.

Noble Lords: Oh!

Lord Rooker: No—the amendment's flaw is: are we seriously going to attempt to send an amendment to the other place that requires the accession of some 15 to 20 Conservative Members of Parliament to vote with the rest of the Opposition to keep it in the Bill? That is the only audience we have. It is not ourselves or the people; it is the 20 Tories in the other place who would be prepared to vote for what we send. They are not going to vote for this, so why are we going to try to send it there?

Lord Grocott: After the best part of 40 years over which my noble friend and I have been in Parliament, we do not disagree on much. I am delighted to see that we clearly do not disagree on this amendment either. In the absence of any satisfactory answers to the questions I have put, I hope that the House will decide against the amendment, should it be put to a vote.

Viscount Hailsham: My Lords, I intervene briefly in opposition to the amendment. In fact, referring to an amendment coming down the track that I hope will be discussed on Wednesday, I have tabled a new clause that would enable Parliament to direct a referendum. The amendment that we are discussing would require Parliament to hold a referendum. That seems to be fundamentally different in kind. If two years down the track the public mood has changed after the negotiations, I for one believe that the public's opinion should be

[Viscount Hailsham]
tested in a referendum, which Parliament would then decide. Alternatively, if in two years' time Parliament decides not to approve agreed terms, I fancy that Parliament would decide that its decision had to be underwritten by a referendum.

That is different in kind to this amendment, which would require Parliament to direct a referendum, whether there is a change in opinion or not. That seems fundamentally undesirable, because we know that referenda are profoundly divisive mechanisms. They are the policy of last resort. If there is not a perceptible change in public opinion, or if Parliament is not minded to vote down the agreed terms, I see no need to require the holding of a referendum. This is a mandatory amendment; I am against it for that rather narrow reason.

6.45 pm

Lord Empey: My Lords, the noble Lord, Lord Newby, is one of the most distinguished Members of this House. I gently say to him that I do not think that I have heard him defend an argument in such threadbare circumstances. We have sometimes been lectured on the fact that we have a representative parliamentary democracy. Now we seem to have developed referendumitis. What about the implications of this proposal for Scotland? What would it do to the Scottish nationalist argument? We said that we were having a referendum for a generation. This would open the door to the argument, "If they can do it for Europe, they can do it for us". That is the second time that that has been mentioned today.

The ball was dropped, if dropped it was, when the referendum Bill came to this House. That was the opportunity to put in a back-up clause to say that we would put it to the test at the end. Speaking for those of us who have had referenda—in our case, the border poll in the 1970s, on the Good Friday agreement in 1998 and the potential for another one—if we are going to do this on an ad hoc basis to suit a party management situation, or a bright idea someone happened to come up with, we will destabilise the whole constitution of the United Kingdom. I caution Members on this. The time to fix this was when we started it. We should have put it in the Bill. If I recall, this House was silent when it came to that question in the Bill. That was the opportunity to do it. The question asked was amended by the Electoral Commission, if I recall correctly, which produced the clarity in the question. There was no caveat or qualification.

If we send Ministers to Brussels to negotiate with Michel Barnier and so on—

Viscount Ridley (Con): Further to the point that the noble Lord is making, I remember spending long hours discussing the referendum Bill in this place. One of the things that we particularly discussed was the need to make sure that this was a decisive result that was accepted by the losing side as well as the winning side. Those of us who then went into the campaign with all sorts of disadvantages because of the Government's ability to spend and so on were none the less just about content that, if we lost, we would be able to accept the result. The other side appears not to have come to that conclusion.

Lord Empey: I am grateful to my noble friend. Perhaps I should rephrase what I said: we were silent on amending the legislation to provide for a second referendum. Therefore, the Electoral Commission changed the wording, which was accepted to get the clarity that we need.

I fear that if we go down the road of trying to send Ministers to Brussels against the backdrop of a number of these amendments, we would not be sending Ministers with whom Brussels will negotiate. We are sending a second 11: we are sending delegates, not Ministers. As someone who has been in a prolonged negotiation, I know that it requires a stretch on the part of both parties. If you were sitting in Brussels and were minded to try to reach an agreement with our Ministers, why would you stretch yourself outside the four freedoms or take a big leap if you thought, first, that you were not dealing with people who could make agreements with you and, secondly, that you would be shot down because there were people in this Parliament and in this country who could undermine you after you had made the effort to reach an agreement? There are a number of amendments along these lines. We need to think carefully of the mechanics and atmosphere around the negotiating table.

Lord Flight (Con): On the territory about which the noble Lord is talking, I cannot understand, if negotiations have gone on for two years or more and we have finally agreed all the thousands of things that need to be agreed, how we could possibly then put it to a vote. The whole process of negotiating the deal with the EU will not work if we have a vote at the end.

Lord Empey: One way of dealing with it would have been to make it clear that we were going to put things to a vote at the end. But now we are in a position of risking getting any kind of meaningful negotiation from Brussels because we would be sending people there who are incapable of making an agreement. We understand that it has to be approved by Parliament. Let us not forget that the European Parliament has to approve it—anyone who has had experience over there will know that that will not be a pleasant experience. I caution the noble Lord, although I understand what he is trying to say.

Lord Robathan (Con): But is that not the point of the amendment—to undermine the negotiations and, in fact, reverse the decision?

Lord Empey: I cannot attribute the motivation. The noble Lord has his view. I am simply saying that if we are going to send people to Brussels to do a good deal for us—and whether they can, I do not know—the one thing we cannot do is saw their legs off before they go; otherwise we will get absolutely nothing.

Viscount Hailsham (Con): But the noble Lord will recognise that that is already the case under Section 20 of the 2010 Act. Every treaty has to be ratified by Parliament. If that is true of every other treaty, why not of the present negotiations?

Lord Empey: I am not opposed to the concept, of course. We have already said that it is going to be ratified by Parliament. I make the point that if these

amendments are inserted—and there are others on the Marshalled List to be dealt with at a later sitting—we are going to send a team of people to negotiate on our behalf. Clearly people in Brussels will say, "These people do not have the juice to do a deal so why would I take a political risk as a Brussels negotiator to stretch out towards them"—which is what is going to be needed on both sides—"because they know that they have no chance of getting a deal at the end of the day?".

Baroness O'Neill of Bengarve (CB): My Lords, we have already seen this afternoon in our very serious debate about the implications of the present situation—let us put it neutrally—for Northern Ireland that the referendum was, in fact, about a matter of the greatest constitutional importance and about the integrity of the United Kingdom, a great worry to any of us who come from Northern Ireland. However, although I agree with my noble friend Lord Empey that we should not tie the hands of negotiators, that a referendum at the end is a bad idea and that one constitutional error cannot be remedied by another constitutional error, nevertheless something needs to be said about the possibilities of no deal or of a bad deal. Those are two realistically possible outcomes. I think that at this stage it should be possible for the Government to say a bit about their plans in the event of either contingency.

Lord Warner (CB): My Lords, I have added my name to the amendment. I thought that the noble Baroness, Lady Wheatcroft, and the noble Lord, Lord Newby, set out the case pretty well. I do not want to go over that ground again about a second referendum. However, I am a strong believer in the sentiment that those who giveth can also taketh away. It seems that that is an underlying principle: if the people have spoken but they are given new information, they can change their views at the end of the process.

I will say a bit about why I put my name on this amendment because the reason is a theme that will keep coming up on some of the other amendments. It will certainly come up on Amendment 8, which is in my name and that of the noble Lord, Lord Oates. Do we actually trust the Government to conduct these negotiations unsupervised after what we have seen of their behaviour so far? We are entitled to be fairly sceptical. We also have no reason to believe, if I may say so, that in Whitehall—and I speak as an old Whitehall warrior—there is this crack team of negotiators who we are going to send across the English Channel and who are going to do a fantastic job without any involvement in Parliament. We have no reason to believe that they will come up with a solution at the end of this process and we will all sit here and nod very sagely and say, "Fantastic. You have hit every particular button". The world, on the whole, does not work that way.

We all have views about how to conduct negotiations. Many noble Lords have had a go at conducting such negotiations, and we will all have our own approach. Sometimes I have actually thought it quite useful in negotiations not to have too much flexibility—that I have got a mission that I want to deliver. It is quite good to be able to shelter behind that kind of instruction about the way in which I conduct the negotiations. As a former senior civil servant, I certainly did not want a lot of Ministers telling me to go out there and do my best. I would like to have a bit of guidance. I would have thought the same applies to Ministers. I have been a Minister and wanted to know what the Government and public were likely to accept while I did those negotiations. Therefore, I see nothing wrong in principle with the approaches in the amendment.

The noble Lord, Lord Grocott, knows as well as I do—he has been a Chief Whip—that it is often the case in Committee that we put down an amendment that may be technically a bit defective. We are trying to have a debate about a principle or an issue and we often withdraw them and come back at a later stage in the Bill with a rectified amendment that meets the concerns expressed. That does not mean it is wrong in principle to put these issues before the House and see what people's views are. I support the amendment. We should think very seriously, as we discuss further amendments to the Bill, about whether we really believe that it is safe to send the Government into these negotiations without any requirements about the involvement of Parliament with that process.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, the noble Lord has made the central case for the amendment: do noble Lords trust the Government and the way that they have used the vote on the Brexit referendum or not? Frankly, we do not, for very good reasons that I shall seek to explain in a moment. That is not to say that we challenge the fundamental decision made in that referendum. Since I have been substantially misquoted on many occasions, let me say what I said on the night of the referendum, because government Ministers have been frequently using this as though somehow or other we had behaved in a way inconsistent with these words:

> "I will forgive no-one who does not respect the sovereign voice of the British people once it has spoken. Whether it is a majority of 1% or 20%, when the British people have spoken, you do what they command. Either you believe in democracy or you don't".

Those are my words and I stand by them because we do believe in democracy on these Benches. We accept the sovereign voice of the British people.

Noble Lords may laugh but that is the fundamental question: do we challenge the "yes" or "no" outcome of that referendum? No, we do not, and this amendment does not in any way. We accept the decision that has been taken, and the decision is that we should leave. We are naturally bitter and sad about that, but whatever our personal feelings the judgment of the British people has spoken. However, to say we leave is not the same as the British people providing a mandate unto the solution that the Government choose in order to leave. The Government have actually taken what they claim to be a mandate to leave—which we concede the Government have, of course—and turned it into a mandate for the most brutal form of leaving possible.

I ask noble Lords to look back to the conduct of that referendum, in which many of us took part. I had a number of interesting debates with the noble Lord, Lord Forsyth, and very good they were too. On every single occasion during that referendum, we asked those who proposed Brexit to say what kind of Brexit. Did it mean leaving the single market? Did it mean a complete

[Lord Ashdown of Norton-sub-Hamdon]
ban on immigration? Never were we given an answer. I have Mr Hannan, a well-known lion on the Brexit debate, on the record many times: there is nothing about this that says we must leave the single market. If I recall, in the meeting that I had with the noble Lord, Lord Forsyth—I do not think I am wrong—he too said that it was not necessary to leave the single market.

Lord Forsyth of Drumlean: What I said, as the noble Lord will recall, was that there was a difference between being a member of the single market and having access to the single market and that those who were arguing for remain were deliberately deceiving the people.

Lord Ashdown of Norton-sub-Hamdon: As I recall, the conclusion that I and the audience reached—but we probably cannot go over this now—was that the noble Lord would leave but it was not necessary not to continue with access to the single market. However, that is what the Government have now said. We accept that the Government have a mandate to leave the European Union, but what mandate do they have to leave the single market or the customs union? None. The Conservative Party manifesto at the last general election committed the party, as a manifesto promise, to continue to stay in the single market. They have taken the British people's votes—

7 pm

Lord Lamont of Lerwick: Would the noble Lord please correct what he said about the Conservative manifesto saying we would stay in the single market? That was in the context of the negotiation that the Prime Minister promised to undertake, and was on the assumption that, as he wanted, people would say "yes" to remain. If the referendum went the other way, it was made perfectly clear that the single market would no longer encompass Britain.

Lord Ashdown of Norton-sub-Hamdon: The noble Lord could have been much quicker if he said, "Yes but we just changed our minds"—which is exactly what the Government have now done. The Government have a mandate to leave but they have no mandate whatever for this brutal form of leaving that will damage this country. By the way, it is not us that has been undemocratic but the Government. They have taken the British people's vote and hijacked it for their anti-European prejudices. That is why now they need a referendum on the outcome—not a second referendum on "in or out" but a referendum on the deal. Noble Lords and the House will know the enormous difference between the hard Brexit that the Government propose, with no access to the single market and no membership of the customs union, and a Brexit maintaining access to the single market. The difference between these two options is huge for the people of this country, for our influence in Europe and the wider world, and for jobs, industry and our economy. Maybe the Government have got it right in their judgment—their guesswork—that the British people are content to leave the single market, but let them test that. They have no mandate from the referendum outcome whatever for that solution.

Lord Wolfson of Aspley Guise (Con): Surely the most brutal form of leaving would be to leave with no deal at all. The problem with this amendment is that it does not say, "We should have another referendum on whether we stay or leave". It says, "We should have a referendum on whether we accept the terms of the deal". If we say we do not accept those terms, that does not mean we stay in the European Union. Article 50 is very clear about that. Be careful what you wish for.

Lord Ashdown of Norton-sub-Hamdon: I am grateful that the noble Lord led me on to that because I was coming to it next. The Government say that this is the deal they will do. It will be the hardest possible deal with no access to the single market and huge damage done to our industry, jobs and influence. If they cannot get that, the alternative is to tow this country out into the middle of the Atlantic as some kind of mid-Atlantic Singapore: a total free market with no regulations at all. The Foreign Secretary has been very clear about that outcome. The difference between these two things is basically asking the people of this country and our Parliament to either say "yes" or jump over a cliff. That is not a reasonable option to put. When the High Court said that Parliament should have a say, it meant a real say, not an option between "take it" or "leave it". That is not the kind of solution that will produce the best outcome for this country. Our proposition is simple. We accept the case that has been made and the judgment of the British people that we must leave. We do not accept that the Government have a mandate for a brutal form of Brexit that will damage our country's influence and economy. They have no mandate whatever to take this country out of the single market. If they want to test that proposition, let them do so before a court of the British people.

Baroness Smith of Basildon (Lab): My Lords, if we can get back to the amendment—I thought for a moment we had segued into the next debate—it is on a second referendum or ratification that I think initially sounded quite attractive to a number of noble Lords. However, when you actually look at the amendment it is flawed.

First, there is the point made about the two parts of the amendment. Paragraph (a), which says that it must be,

"laid before and approved by a resolution of each House of Parliament",

fails to recognise the primacy of the other place. That is not how we have handled this Bill or other issues. On that point, our later amendment on a meaningful vote is a better way to judge parliamentary opinion and for Parliament to deal with this issue.

Demands for a second referendum started even before the polls closed on the first one. An online parliamentary petition called for a second referendum should the first have less than a 60% vote for either remain or leave on a 75% turnout threshold. That set a high bar and it received around 4 million signatures. We do not require that level of support for Governments; the last time we had a turnout of higher than 75% was back in 1992, nearly 25 years ago. This amendment does not seek such conditions. I agree that it would be strange to set new and different conditions for a second referendum from the first one but the point has

been made previously in debates that for such a major constitutional issue to be decided by a simple majority has caused concern.

National referendums are rare in the UK. As we know, there have been three UK-wide ones. In 1975, Harold Wilson called a referendum on remaining in or leaving the European Economic Community. In 2011, during the coalition Government, we had a referendum on whether to change first past the post to the AV voting system. Then we had the EU referendum in 2016. I must confess that I am naturally cautious about politicians demanding a national referendum on an issue. If I was a cynic—of course, I am not—I would suggest that we do that rarely on a point of principle but more often because we think it will endorse a position we take and give us the result we want. However, I feel differently when there is public demand for a referendum. I accept that it is not always easy to judge that. Certain petitions and polls are not satisfactory. Yet it becomes clear over time and the polls for the EU referendum were evidenced by the turnout.

Let us look at the public support for these referendums. In the EEC referendum in 1975, 64% voted. That was probably depressed by most people thinking that it was clear the UK would remain. Some 72% voted in the referendum in 2016. Yet when we had the referendum on the voting system, for which there was no real public demand as it was politician-led, it motivated fewer than half our fellow citizens, with a turnout of just 42%. My fear now is that, with no significant public demand for a second referendum at this time, this is being seen as a campaign to challenge the result of the first referendum. That in itself creates a mood of opposition and hostility from the public.

The noble Lord, Lord Newby, reinforced that view in his speech, but in the *The House* magazine he said it was "implausible" not to grant a second referendum if public opinion shifts in favour of the EU. What if it shifts away and more people are opposed to the EU? Is that still grounds for a second referendum? Not according to his article. Indeed, the noble Lord and the noble Baroness, Lady Wheatcroft, spoke of having a second referendum so people could express a change of mind. That is not solely a reason to have one.

As the previous debate illustrated clearly, the coming months of negotiations will be complicated and complex. We are pressing the Government to ensure that Parliament is kept fully engaged and informed throughout the whole process, and that Parliament has the opportunity for a real, meaningful final say on the exit arrangements or deals. The noble Lord, Lord Newby, made a good point on this when he said that the Government did not want to engage with Parliament through a vote and had to be persuaded to do so by a court judgment. However, Parliament will now have to make its judgment and the MPs who do so will be accountable to their constituents. That is what parliamentary sovereignty means: taking responsibility.

I must say to the noble Lord, Lord Newby, that his logic is flawed because he and others from his party feel no need to respect the result of the referendum. The noble Lord, Lord Ashdown, just refuted this but I find that hard to accept. I do not, as the noble Baroness, Lady Wheatcroft, said, call the result the will of the people. I am not sure that referendums express that. However, there is a clear result. The noble Lord's party said that there is no need to respect that result and voted against it in the House of Commons. It is now calling for a second referendum. Is that to be the same, to be seen as advisory, or do we just accept what a second referendum says? I find it hard to see the circumstances in which a second referendum could deal with all of the detail that would be required on the terms of an exit deal and not just be a rerun on the principle of continuing the process to leave or staying in. That is, in effect, the same as the first one.

The final judgment on the exit deal has to be very measured. It is going to involve forensic detail and it cannot just be an appeal to the emotions without hard, actual facts. In the first referendum, we saw different sides campaigning; they lobbied around the principle of staying in or leaving. I am on record as saying that I was deeply unimpressed with both the remain and leave campaigns. I have not yet been convinced that the approach of a referendum works well when dealing with the detail of negotiations over a period of two years. We have to have some faith in our Members of Parliament and in your Lordships' House to make a serious, factual judgment on the benefits or otherwise of a final deal. I agree with the noble Lord, Lord Warner, who asked whether we trusted the Government. I have been clear that I do not trust the Government enough to wave them off for two years and come back, and that is why we have later amendments about parliamentary engagement and votes. However, there is no impediment: if, as time and negotiations progress, there is genuine evidence of a widespread public demand for a second referendum, that should be listened to, but at this stage, our priority has to be that Parliament has the final say.

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, the House will be delighted to hear that I intend to speak briefly on this amendment, as I get the sense that many of your Lordships' minds have already been made up on this issue. I am going to explain why the Government believe that this approach would be wrong in principle and wrong in practice. A number of your Lordships have already made a number of good points, which I will not repeat.

I begin by taking a step back to consider people's trust in politics today. It is at a somewhat low ebb. For many people, there is a sense that too many politicians say one thing and then do another. There is a sense that Parliament is divorced from day-to-day life, and this frustration and disillusionment with mainstream parties encourage them to look to others to represent their views. This is the backcloth to the debate on this Bill and this amendment.

Let us not forget the democratic path that has brought us here. The Conservative Party promised to hold a referendum and respect the outcome. This Parliament gave people the choice of whether to leave or to remain in the European Union: a choice without caveat or condition. It was a choice that the people exercised, having been told by the Government in the leaflet sent to every household in the land:

"The Government will implement what you decide".

[Lord Bridges of Headley]
The majority voted to leave, not to have a second referendum and not to think again. The people have spoken and this Bill delivers on their wish.

My first question to your Lordships is: would it help build trust in politics if we, the unelected Chamber, were to tell the people, "We did not like your first answer; please try harder"? I think not: quite the reverse. When Scotland voted against independence, what was the response from any politicians? I shall quote one:

"You have to abide by the outcome ... I don't think re-opening old wounds would be good for Scotland".

Those were the words of Mr Nick Clegg. Whatever the cynical machinations of the Scottish Nationalists today, I believe that what Mr Clegg said was true then as regards Scotland and is true today as regards Europe. We promised a referendum, not a "neverendum". The government leaflet said the referendum was a once-in-a-generation decision, not a twice-in-five-years decision. We cannot keep asking the question until we get the answer that some want.

Lord Ashdown of Norton-sub-Hamdon: The Minister is making the case against a question that we did not ask, which is, "Shall we have another referendum on in or out?". We accept that that is not going to happen. We accept that the Government have a mandate for Brexit. Will he tell us what mandate they now have for leaving the single market?

7.15 pm

Lord Bridges of Headley: My Lords, I am sorry to say that the noble Lord is just making my point for me. We had a referendum in which people were asked very explicitly whether they wanted to leave or remain in the EU. The leaflet that I have here said it very clearly, and many people in this House and outside it—on both sides of the argument—made the case that a vote to leave was a vote to leave the single market. That was the choice, people were aware of it and that was the decision that they made. We are going to come on to this in the next hour or so.

Furthermore, many people on both sides of the argument, leave and remain, are now coming together to make a success of our exit from the EU and to forge a new place for our nation in the world. Why would we want to open up all those old divisions again by holding a second referendum, as this very debate has just shown? Well before last June, a number of politicians argued—

Lord Dykes (CB): When the Minister talks about the advisory referendum which was giving an opinion, that was the result that we had to respect at the time. Of course, there are comparisons with other European countries; in the process of the European constitution and subsequent Lisbon treaty, it was very interesting that in France, Denmark and the Republic of Ireland, there was always under the compulsory written constitutions a "no" vote in that first referendum. Each one was reversed by their Governments because they knew it was a vote about the unpopularity of internal politics and nothing to do with Europe.

Lord Bridges of Headley: I hear what the noble Lord is saying, but I am sorry to say that that boat, and all this argument, sailed when we passed the referendum Bill. That is just simply the fact.

Well before last June, a number of politicians argued that a referendum on our membership of the EU was needed precisely because Europe was poisoning the body politic. One politician said some years ago that it was,

"time we pulled out the thorn and healed the wound, time for a debate politicians have been too cowardly to hold for 30 years ... Let's trust the people with the real question: in or out".

Again, these were the words of Mr Nick Clegg back in 2008. I agree with the Nick Clegg of 2008. Now that we have had that referendum, I would argue that another would put that thorn back into British politics, and rub salt in the wound.

Lord Campbell of Pittenweem (LD): Since this is an occasion for quotations, I remind him that John Maynard Keynes said:

"When the facts change, I change my mind. What do you do, sir?".

Is it the Government's position that if, after these negotiations, they decide that no deal is better than a poor deal, the Government will not put that to the people of the United Kingdom?

Lord Bridges of Headley: My Lords, the Government's position is very clear. We are absolutely going to stand by the instruction given to us by the British people to leave the European Union. That was the decision and that is the Government's policy, and that is what it will remain.

Lord Spicer (Con): Is not the real reason people are calling for a second referendum that one side lost and they do not like it? Then, might it not be the case that somebody loses another referendum and we would have to have a third one? Indeed, we might even have to have a fourth referendum to decide which referendum was the real thing.

Lord Bridges of Headley: I agree with my noble friend, and this is why we have the prospect of a "neverendum".

Baroness Kennedy of The Shaws (Lab): Does the Minister really think that the British people had any idea at all what it would mean if there was no deal and they ended up in the arms of the WTO and all that that means?

Lord Bridges of Headley: I am sorry to say that I dispute what the noble Baroness is saying. The British people voted to leave. There was a very loud and passionate discussion, with lots of people issuing lots of papers about what it would mean to leave, and the British people made a decision.

My noble friend raised the issue of a "neverendum". This brings me to certainty. One thing we all agree on is the need for certainty. Therefore, let us think of European families here, of British families in Europe and of the thousands of businesses right across this country that are listening to our debate. For them, the

prospect of another referendum at some unknown date years ahead, with a Bill—as the noble Lord, Lord Grocott, said—and a question we do not yet know, would simply create more uncertainty.

Let me say here a word about business in particular, given that my noble friend Lady Wheatcroft edited the *Wall Street Journal*. I would like to draw the Committee's attention to a report just issued by the Institute of Directors. It recommends:

"A … measure to boost both political confidence and certainty for business would be for all parties to rule out a second referendum over the next parliament—either a repeat on EU membership or on the final terms of the deal".

The IoD represents 35,000 businesses which employ hundreds of thousands of people. Those businesses are saying that they want certainty.

Baroness Kramer (LD): Perhaps I might press the Minister for clarification. He says that people want certainty. Is he saying that if that certainty is, to a business, "Yes, you must move your headquarters, you must take jobs out of this country", and to people that, "You will face higher prices and fewer opportunities for your children", that is what the Government will choose to make the British people live with—and with no voice to challenge it?

Lord Bridges of Headley: The noble Baroness and I have many interesting discussions, but I dispute the grounds on which she is approaching this. We have set out very clearly, to provide clarity and certainty, a view regarding what we wish to achieve in the negotiations. That has provided a considerable amount of certainty and clarity to many of the businesses I have spoken to and in nation states across Europe. That is exactly what we now need to deliver on.

I will turn quickly to the issue of parliamentary scrutiny, which the noble Lord, Lord Newby, slightly dismissed. Parliament will be heavily involved in the process of our leaving the EU. This Bill, the Bill to repeal the European Communities Act 1972, primary and secondary legislation, Statements, Select Committee appearances—the list is quite long. On top of that, the Government will bring forward a Motion on the final agreement to be approved by both Houses of Parliament before it is concluded. So the nub of the matter is very simple. On 23 June people voted to leave the EU. It was a choice that this Parliament gave them and it is a decision that, now it has been made, we must obey. So I hope that the noble Lord will withdraw his amendment.

Lord Judd (Lab): The Minister has deployed with great moral strength the argument that the people have spoken. I remind him that the majority of those who voted have spoken—but, in fact, barely a third of the potential electorate in Britain voted. The situation is not as absolute as he suggests. I say to your Lordships that this is a very good reason for taking very seriously the argument that the road of referenda is a very dangerous road indeed.

Lord Wigley (PC): My Lords, the Minister said a moment ago that the decision will come back to both Houses after there has been an outcome to the negotiation. What if both Houses reject the negotiated settlement that is forthcoming? Does Parliament then overrule the people or do the people have a chance to make the final decision?

Noble Lords: Answer!

Lord Newby: My Lords, the Minister is entitled not to wish to answer the question—and I can understand why. I will make just three points. First, I am sorry to the noble Lord, Lord Grocott, that I was so hard on him earlier on. I should have welcomed—and indeed do now welcome—his intervention because he has given me some very helpful drafting advice for the amendment that I will be bringing before your Lordships on Report.

Secondly, I have never heard the noble Lord, Lord Rooker, sound so defeatist. If this House took the view that the House of Commons might not accept an amendment that we passed, we would hardly ever pass any amendments. We would certainly not have passed the amendment on tax credits. Therefore, I urge him to take that as a precedent and think that, so impressed by the quality of our arguments, those 20 Conservative Back-Benchers might change their minds in an instant on reading *Hansard* and that we would get our victory when it went to the other place.

Thirdly, in response to the noble Lord, Lord Empey—a number of noble Lords spoke about the parallels with or differences from Scotland—this is a completely different situation from that which obtains in Scotland. The SNP wants a second bite at the same cherry. We want a vote of the people on a firm proposition, rather than the vote which did take place on 57 varieties of proposition that were assiduously and separately propounded by different people on the leave side. So it is a completely inapt parallel and I cannot accept it.

Lord Forsyth of Drumlean: The noble Lord says that the Scottish situation is completely different. The Scottish nationalists argue that people did not know what they were voting for because of project fear. Surely that is precisely the same argument that is being used by the noble Lord.

Lord Newby: I have the greatest respect for the noble Lord but I am afraid that that argument simply does not hold water. The principle that we are putting forward in this amendment is straightforward: who decides at the end of a process initiated by the people? Our view is that the people should decide and nothing that any noble Lord has said this afternoon has made me question that principle in any regard. For today, I will withdraw the amendment.

Amendment 3 withdrawn.

Lord Taylor of Holbeach (Con): This would normally be the time when the House would be looking to take dinner-break business. I have spoken to my noble friend Lord Hodgson, who has a regret Motion for debate in the dinner hour. He has agreed that we should adjourn that debate to a future day so that we can carry on with the Bill—because obviously there is a lot to talk about. Noble Lords who have expressed an interest have spoken to the usual channels and we all agree that this is the right course of action. I hope that the Committee agrees.

Amendment 4

Moved by ***Lord Hain***

4: Clause 1, page 1, line 3, at end insert—

"( ) Before a notification can be given under subsection (1), the Prime Minister must give an undertaking to negotiate under the process set out in Article 50 on the basis of the United Kingdom retaining membership of the European Single Market."

Lord Hain: My Lords, Amendment 4 is sponsored also by my noble friend Lord Monks and the noble Lords, Lord Oates and Lord Wigley. Since I hope to divide the Committee later, I will be briefer than I thought I would be before proceedings went on.

The hard Brexit the Government seek will be the worst possible outcome for the United Kingdom, for which the referendum gave them absolutely no mandate whatever. Cutting us off from our largest market and seeking new trade partners elsewhere will cause huge job losses and many business closures. Over the 10 years or so that it will take to adjust to the shock of exiting the single market, we must expect a pound of pain for every ounce of gain.

When the country voted by a narrow margin to leave the European Union, the single market was not on the ballot paper. Voters were never asked about it. In fact, in the run-up to the general election of May 2015, the Conservative Party manifesto promised to,

"safeguard British interests in the Single Market".

The manifesto said:

"We say: yes to the Single Market. We want to expand the Single Market, breaking down the remaining barriers to trade and ensuring that new sectors are opened up to British firms".

There were further contributions.

"Absolutely nobody is talking about threatening our place in the single market",

said leading leave campaigner Daniel Hannan MEP.

"Only a madman would actually leave the market",

said ardent Brexiteer and Tory ex-Cabinet Minister Owen Paterson MP. Some leave leaders said that the UK could quit the EU while remaining a member of the biggest, richest single market in the world, accounting for nearly half our trade. Others talked variously of Norway, Switzerland, Canada and even, bizarrely, Albania. There was the very opposite of clarity on this issue. I know because I knocked on many hundreds of doors in the referendum campaign and people voted to leave the European Union, not the single market.

Reaching an agreement on withdrawal from the single market within two years of triggering Article 50 will be difficult, if not impossible—and extremely complex. In my drafted speech, I was going to go into the many complexities. It will also need to be followed by subsequent trade agreements, and not only with the remaining 30 EU and European Economic Area member states; new agreements, under WTO rules, will be required with around 52 third countries outside the EU with which we have existing trade deals through the EU.

Trade deal outcomes are about relative economic power and weight. Contrary to breezy and I think complacent claims by government Ministers and their Brexit acolytes, the UK and the EU will not somehow be equal partners in any negotiation of new trade agreements. The UK depends on the EU for 45% of its exports, whereas the EU exports only 8% of its produce to the UK. We have a trade surplus in services, mainly financial, with the rest of the European Union of £17 billion.

7.30 pm

The Chancellor has said that if the United Kingdom loses access to the single market, it would consider abandoning a European-style social model with European-style taxation and regulation systems and becoming "something different". Not only would this clearly mean lower labour and environmental standards, it would mean even further and more savage cuts in public services. That is why leaving the single market poses a threat to the social progress and increased prosperity which we have seen in this country over the last 40 years.

Fears about immigration were undoubtedly one of the main motivations for Brexit, as I discovered—if I did not know it already—on the door-step. However, the right to free movement has never been unconditional. Even under current European Union rules, the UK has a number of effective tools that are used by other countries in the EEA to manage migration effectively if we wished to do so. Rather than turning our back on our largest export market by leaving the single market, would not a more constructive approach have been to try to agree a new interpretation of free movement of labour?

It is quite possible to impose restrictions on immigration, reflecting a country's needs, while remaining in the European Economic Area and therefore in the single market. Belgium, for example, does precisely this by returning to their European Union country of origin each year thousands of migrants who no longer have jobs or never did. Leaving the single market will cause untold harm to the economy and people's jobs, which will be felt most keenly in the already disadvantaged nations and regions: for example in Wales, where I live. A hard Brexit will therefore have damaging consequences for the union of our United Kingdom and also for the island of Ireland.

I will just address a paradox that we find ourselves in. Both the Government and, sadly, my party leadership in the other place have effectively put the migration issue ahead of jobs and prosperity. That is fundamentally mistaken. Of course human rights and migration issues have to be addressed, and I will of course vote for our amendment on European Union citizens, but to put migration first, ahead of the jobs and prosperity which depend on the single market, is perverse in the extreme.

Then it is said that if we remain in the single market we will effectively have no representation. That is true—which is why it is not as good an option as remaining in the European Union. But we are where we are, and you have to go for the least worst options. Norway, for example, which is in the single market but outside the European Union, has considerable unofficial influence when new single market rules are drawn up. It may not be in the Council of Ministers—you need to be in the European Union to be in the Council of Ministers, making the rules and influencing the Commission—and it may not be in the European Parliament for the very same reason. But it has

considerable unofficial influence. Is anybody telling me that the United Kingdom, with its massive economy, the third-largest in the European Union, as we have heard in this debate and previously, will not have substantial influence on shaping the rules of the single market? I do not think that that is credible.

Of course it is not ideal to stay in the single market without the benefits of being in the European Union and on the central, inner-core decision-making bodies, but it is the best solution, given that we are due to leave the European Union. Turning our backs on the single market could be catastrophic for prosperity and jobs, and especially for the most vulnerable citizens in our country. That is why I will, with the permission of the House, put this amendment to a vote later on.

Lord Howell of Guildford: At the outset of this debate, the whole focus is on the concept that we have benefited and will continue to benefit from being members of the single market, and that by being outside and only having access to it—like every other country that exports into the European region—we would be vastly disadvantaged. I am afraid I am going to say something that will probably be unpopular on both sides and which asks your Lordships to look more closely at what is actually happening in the patterns of both European and world trade currently. I am not talking about 1990, or the world of globalisation in the last century, but about the fantastic, revolutionary disruption and transformation of the pattern of trade that has gone on for the last five or 10 years. Unless we understand that, and the impact it is having on trade throughout the region and on the relevance and nature of the single market, which has changed beyond recognition from the single market of a decade or so ago, we will not reach very sensible conclusions.

Lord Keynes was quoted earlier. He said many things, but one of the interesting things he said was that his real quarrel was not with those who disputed his economic theories or arguments but with those who persistently failed to see what was actually going on. That is the theme I want to develop. We can expend enormous indignation on asserting that in the single market everything will be okay but that out of it there will be disaster. Indeed, the noble Lord, Lord Hain, has suggested that with great eloquence and clearly believes it to be the position. But we have to grasp what is going on and understand the nature of the flow of trade to see just what the disadvantages would be if, instead of having membership of the single market, with all the standards, regulations, access, tariff-free areas, co-ordination of regulations and so on, we were outside it, although still obviously able to trade into it like any other country.

I start from a rather remarkable statement made by the chief economist to the Bank of England, I think last week, that from his point of view whether we were inside or outside the single market would have no "material" effect on the UK's growth over the next three years—he put a time on it. That is rather a remarkable statement from a very high authority, not someone known to be biased one way or the other but someone speaking totally objectively. I had to ask myself how he could come to that conclusion. Have we not been told that outside the single market it will all be disaster and we must somehow stay in as full members? This raises all the other issues we have so vigorously debated, including the problems in the island of Ireland and many other issues. If one begins to look at the detail, the answer is very interesting.

I suspect what he has seen, and what your Lordships might possibly turn their eyes to, is that the whole nature of international trade is shifting at record speed in two directions. First, there is the vast growth in services, digital information, data transmission and information exchange, so much so that McKinsey is telling us that more than half the wealth generated worldwide comes from the transmission of data and information and not from goods trade at all. The old world of trade being dominated by containers or great ships sailing out of Felixstowe, or whatever it was, is rapidly disappearing. Services are the huge growth area in every aspect of international trade, including into the European Union. The noble Lord, Lord Hain, is quite right that sales of services into the European Union have been large—they are about a third of our total export of services throughout the world—but frankly they are not doing very well. In so far as they have got in to Europe's single market, services have gone through a bit of a struggle, not through tariffs—because you cannot put tariffs on those services—but through all sorts of local and national regulations and control. They have been pretty flat over recent years because there never was a glorious single market in services. We struggled for 40 years to improve one and got nowhere at all, and the chances are that countries outside the European Union have done rather better with our services and imports into the European Union than we have.

It may be that in future, outside the single market—this may be in Mr Haldane's mind—we can do rather better with services in Europe. If we cannot do better in Europe—it is very difficult because of the all these local restrictions on how things are set up—we should look to the areas where service developments are growing at a very fast pace. This is certainly right across the part of the world that deals in the English language and has common legal, political, social, ethical and cultural practices, which tends to be a Commonwealth network in English-speaking nations, including the United States of America, which is our biggest export market of all. We have no single market and no free trade agreement with America, but it is by far our largest single market of any country.

That is the first point: services are growing at a phenomenal exponential rate and now dominate world trade and are beginning to dominate our own earnings overseas. Secondly, services know no boundary or tariff barrier, so the services we sell into Europe—this, again, may be in Mr Haldane's mind—will not be very much affected by whether we are in the single market or not. It is a tough area anyway. We export £89 billion, gross, of services of every kind, including financial services, into the European market and that is about a third of the much bigger degree of service exports all around the rest of the world. It is not a question of tariff barriers. The tariff barriers are anyway extremely low, except for one or two things such as car components, which are at 10%. We would have to think about that, but generally we are moving into a zero-tariff world.

It is quite different from 1990, when developing southern and eastern countries were taught that they would have to have high tariffs and heavy investment protection.

Lord Davies of Stamford: My Lords—

Lord Howell of Guildford: I shall just finish this sentence. The culture before 1990 was of high tariffs and protection against foreign investment, which was deemed colonial. The culture of the last 30 years has been the opposite, with low tariffs all around the world and direct investment agreements to encourage more investment. I give way.

Lord Davies of Stamford: I am grateful to the noble Lord for giving way. I am listening to him with great attention, as I always do. He is making the case for certain aspects of the digital services market; he does not say much about whether we are part of the single market or not. Does he not agree that for manufacturing, which is about 10% of our GDP, the imposition of tariffs would be extremely serious? Does he also not agree that for financial services—which, as I have already mentioned in a different context, accounts for about 10% of our GDP as well—the loss of the passports which enable us to trade in the single market would be equally catastrophic?

Lord Howell of Guildford: Although manufacturing is very important, it is a smaller and diminishing proportion of our export earnings. As I think the government White Paper points out, at least 33% of the value embedded in any manufactural product—I think the figure is 37%—comes from services. When you think about manufacturing, you have to think about something that is really not quite a manufacture or a service; it is a product of a service and high technology. A good example for the noble Lord is the Japanese company Uniqlo, which produces garments—not from Japanese manufacturing but from Japanese technology and services. All around the world, this pattern is developing. What I am trying to bring before your Lordships is the realisation—

Lord Berkeley (Lab): Is the noble Lord aware that chapter 9 of the White Paper shows that the fastest growth in goods and services exported from this country is in Liechtenstein, at 40%? In the first 20 of the only 21 countries shown in the White Paper, the United States does not even get a mention.

7.45 pm

Lord Howell of Guildford: I am not sure I follow the power or logic of that particular point. I am afraid that only three of the 20 fastest-growing countries in the last 10 years, in terms of exports, are members of the European Union—and we are not one of them.

Without delaying your Lordships further, I point out—in the words of the European Commission and their analysts—that "90% of world demand" over the next ten years,

"will be generated outside the EU".

I suspect at least half or two-thirds of that will be generated from the fantastic, disruptive explosion in the transfer of know-how, information and digital technology of every conceivable kind. This is the world of the very near future: we may have arrived there already. What it means is that there is this apparent cliff edge, as it has been called, disaster, or dividing point between being inside today's single market and being outside it, but we are dealing with many things that do not have a tariff on them—our services know no national boundaries and can be transmitted regardless of distance whether to a nearby European region or to the other side of the world—and it is becoming a completely new pattern in which we have to operate. To operate effectively, we must think in terms of a vast improvement in skills and a massive acceleration in innovation, and find our way into the gigantic, new growth markets of the future, which I am afraid are going to be largely outside the European Union.

Europe remains very important to us; the bilateral arrangements we have with European countries remain important to us. We are not all sure at the moment—this outlines the absurdity of trying to tie down the Government—whom we will be negotiating with, how much power Mr Barnier will have or what the 27 capital countries will say. I noticed that the Visegrad group—four at the moment—are coming together and have said they want a separate treaty; they do not agree with the approach of the European Commission in Brussels and they are thinking about separate arrangements because they are not satisfied with the general approach. We all heard the day before yesterday one of Mrs Merkel's chief spokesmen saying that they disliked the whole aggressive approach of Jean-Claude Juncker and the Brussels Commission. We have no idea what is being brewed up as a position on the other side of the Channel to approach us, or whom we will be dealing with. What we do know is that the trade trends I have described are proceeding at a great pace; they are driven by technology that is growing at an exponential pace, with the development of Moore's law, Metcalfe's law and all the other aspects we know about; this is what we should take account of.

All I plead is that before your Lordships express too much indignation about whether we are inside the single market or outside it, we might reflect that, as we proceed in this entirely new pattern of international trade, we can do pretty well in dealing with all the aspects—they will be complex—of all the industries and services that will ensure our survival and prosperity in an extremely competitive world.

Lord Monks (Lab): My Lords, I would like to address the question of the single market, which the noble Lord, Lord Howell, has just been talking about and rather discounted its importance, both currently and in the future. I do not whether he and other noble Lords have noticed but there is rather a tide of protectionism running through the world at present, not least in the United States of America—"America first" has been said a lot of times. Just remember that that is the context in which we are operating. I am not going to bandy too many statistics, but if 42% of our exports are going to the EU, compared with 15% to the United States of America, that is still a lot on both accounts, but you do not throw 42% into some lottery for the future. You hang on to what you have got and

you seek to improve elsewhere. I agree with the noble Lord about the need to improve our game and raise our skill level, our innovation level and business investment—which, by the way, is going down because of the uncertainty which surrounds the future of the British economy at the present time, and that is a major worry. We are not innovating to the extent that we should be, and certainly not to the extent that certain other northern European countries are. Chucking that away rather lightly in the hope that we will catch a surfer wave of innovation and become the new silicon whatever-it-is island seems to be a rather fanciful notion.

I am not familiar with what Mr Haldane said—I read it but I did not get the same impression as the noble Lord, Lord Howell—but the Treasury's most recent forecast is that if we collapse out of the single market, that will cost us 7.5% of GDP after 15 years. I am not an expert and I do not know who is right and who is wrong, but we should bear those facts in mind.

I am not going to speak for very long as my noble friend Lord Hain covered this topic very well and the earlier debate about the EEA, on the amendment moved by my noble friend Lord Lea, covered it too. However, I remind Members of the Conservative Party in particular why they should consider the single market to be important. After all, Mrs Thatcher was, as much as anyone, the originator of the single market. She, with Jacques Delors adding on a social bit, basically came up with the idea of the big single market. I remember, as will my noble friend Lord Lea, Jacques Delors explaining at a TUC conference the conversation that the two of them had had. She said, "I want a big market", and he said, "You can have one. I'll do my best". He added in some helpful social things that the trade unions liked; to be honest, they were about the only reason why we liked the single market. However, we may not like a free-trade agreement that does not have any social protections. A NAFTA-type agreement would certainly not suit us because that becomes a race to the bottom on labour standards, welfare and social considerations.

It was not just Mrs Thatcher, either. My noble friend Lord Hain reminded the other side about the number of people in the referendum campaign who spoke in favour of staying in the single market, not least the current Foreign Secretary, Boris Johnson, who said he would vote for the single market. He differentiated between the single market and EU membership, and that is what we are seeking to do today with this amendment.

The single market is important for inward investment, which is the point that was so important in the 1980s. It is important for companies' supply chains; we have heard about the milk in Ireland but there are many other examples where things are going backwards and forwards—the car industry, Airbus and so on. Let no one dismiss those as old technology that the digital revolution is going to make redundant; they are not. They are fundamental to who we are and what we are, the kind of country we are and what it is going to be in future.

The tariffs on some goods will be substantial if we collapse into the WTO system. As for the passporting issues in the City of London, there are already signs of banks establishing extra offices and extra staffing within the EU—at the moment, particularly in Paris. Even HSBC, our biggest bank, is doing so, so we should not be complacent about this issue.

Membership of the single market would of course ease the problems in Ireland, as debated earlier, and would perhaps remove at least one reason for another referendum in Scotland. What is at stake here is jobs, living standards and rights. We should bear that in mind; if we go down the Government's route, we will be playing poker with people's livelihoods on a big scale. Are we likely to get that comprehensive free-trade agreement within two years? I have not yet met anyone who knows anything about trade negotiations who thinks that is the case. Before we ditch the single market, we should be very careful. I was disappointed when I heard what the Prime Minister said at Lancaster House, and indeed in the government White Paper: that the Government are moving in that direction. I hope they will keep the scope to change direction.

We should also bear in mind the points that my noble friend Lord Liddle made earlier: could this be an issue on which there could be an interim provisional transitional measure while we negotiate a trade agreement? Is there something that we could put in place that we could continue with? In fact we do not have to put anything in place because it is in place already, so why do we have to give it up? It is in place and we should try to hang on to that, pending the negotiations that the Government seem so keen on.

That is my plea today: we should have a look at the amendment and at keeping our membership of the single market. I would like to see us keep it on a permanent basis but, if that is not possible, keeping it on a transitional provisional basis might just be possible. It might in fact be the only game in town when we get to the end of those two years.

Lord Spicer: My Lords, a distinction is made on purpose between access to the single market and membership of it but most of the speeches made on behalf of remain make that confusion. No one is arguing—or at least I have never met anyone who does—that we should not have access to or do business with the single market, in the same way as they will still want to do business with us. The question is whether we want to be members of it. I so agree with what my noble friend Lord Howell said about the fact that the world is changing now. For a start, the single market is a trade bloc, and it has a long and noble history of being one. It is based upon German technological protection and general French centralisation and protection. That is the foundation of it philosophically. Britain is a high-seas trading nation and, I think, should not be part of that market, but of course it should be trading with it. No one argues otherwise, although of course one has to point out that it is a fairly sluggish market because that is what protected markets are.

Lord Lea of Crondall: On the idea that you can choose between access and membership—membership has some obligations regarding what you have to do on standards and so on—I ask the noble Lord to reflect on whether it is Alice in Wonderland to say, "Oh, we would much prefer to have access but not membership".

Lord Spicer: Of course not. The choice is there. As has been said today from the Front Bench, the public certainly believe that by leaving the EU we will be leaving the single market as well. Of course we can make that choice, and of course the members of the single market will want to choose whether they want to continue trading with us, but since we are one of the largest markets the answer is likely to be yes.

I turn to my other point: my noble friend Lord Howell is absolutely correct in his diagnosis of the markets changing. The fact is that much of what is now up for grabs in negotiation is outside the terms of the single market. One example, which the proposer of this amendment and I have had discussions about in the past, is the air service agreements. People talk about Open Skies. When I was Minister for Aviation I started to negotiate that agreement, but I did so on a bilateral basis. The ASAs are outside the terms of the single market. That is just an example of what my noble friend was saying about other aspects of trade, services and so on.

I quite agree with what he said both in its detail and in its contemporary context. In its context, it becomes far less important—in fact, unimportant—to be a member of the single market, but of course we must have the biggest trading relationships that we can with it. In my view the noble Lord, Lord Ashdown, made the same confusion about access and membership. I really think we have to get that sorted out.

8 pm

Lord Wigley (PC): My Lords, I have put my name to Amendment 4, which was so effectively moved by the noble Lord, Lord Hain. Amendment 5, which is in my name and grouped with it, covers some of the matters that have already been discussed in the debate on Amendment 1.

The issue here is vital to much manufacturing industry in the UK and I am grateful to the noble Lord who spoke a moment ago emphasising that. The EU market is absolutely critical for manufacturers. This is generally true throughout the UK, but it is particularly true in Wales, where manufacturing represents a significant part of the economy and where the service sector is somewhat smaller than it is in other parts of these islands. I note the points made by the noble Lord, Lord Howell, and I respect them, but those arguments do not carry so much weight in Wales, given where we are now.

That is why the Welsh Government, led by Labour First Minister Carwyn Jones, jointly with the official Plaid Cymru Opposition led by Leanne Wood, have taken the unusual step of publishing a joint White Paper, *Securing Wales' Future*, which has been endorsed by the National Assembly for Wales as a body. The White Paper calls for us to have,

"a new relationship with Europe",

so it obviously accepts that, as a result of the referendum, we are leaving the EU as it is presently composed. That is something that I greatly regret, but it seems to be the reality.

The central theme of the White Paper is encapsulated in the following summary paragraph:

"We believe that full and unfettered access to the Single Market for goods, services and capital—including our key agricultural and food products—is vital for the forward interests of Wales and the UK as a whole and we urge the UK Government to adopt this as the top priority for negotiation with the EU".

The reason for putting so much emphasis on this dimension is simple. When the old heavy industries in Wales declined as a source of employment, the replacement strategy adopted by successive Labour and Conservative Governments in London, and thereafter by Governments of Wales in Cardiff—and central to the highly successful work of the WDA—was to maximise inward investment to Wales by companies from America and Asia wanting to secure a manufacturing base in order to sell to the EU market.

This approach has been the key strategic element that has helped Wales to build a new manufacturing economy over the past three or four decades. I personally saw the merits of this at first hand, having worked before entering politics with three American corporations—Ford, Mars and Hoover, which was at Merthyr Tydfil at that time—and then having helped to set up a small company, Alpha-Dyffryn, which I chaired for nine years. This company was the sprat that caught the mackerel and secured the Siemens factory at Llanberis, which employs some 400 people and was established to sell to the European market.

What I know about all American companies coming to be based in Wales—companies such as Ford at Bridgend—is that they do so in order to sell to a European market of 500 million customers. If such companies had to overcome tariff or technical barriers, they would think twice before locating in Wales—or, indeed, in north-east England, Merseyside or the Midlands. They would certainly think twice about increasing their existing investment. Such unhampered access is equally relevant to key Welsh industries such as agriculture: 90% of our exports of beef and sheepmeat go to the European market.

The Welsh Government are not blind or deaf to the outcome of the referendum. They recognise that two elements that influenced some, though not all, of the out voters were, first, migration levels from the EU to the UK—although this amounts to only 2.6% of the population in Wales—and, secondly, the wish to avoid what some saw as unnecessary regulation. Those two elements may militate against our continuing full membership of the single market—although we note that, as has been mentioned, this is a price that Norway finds worth paying. Indeed, as has also been mentioned, some of the campaigners to leave the EU argued during the campaign that we would be able to seek a Norway-type relationship.

The Assembly White Paper states explicitly that the Welsh economy,

"will continue to need migration from EU countries to help sustain our private sector economy and public services".

This is true of the tourist sector, of food processing, of the university sector and of much more. It is in the interests both of Wales and of the EU to reach an agreement that allows barrier-free access to the single market in return for an agreement to allow

EU migrants to come to Wales to work. I emphasise the words "to work". That is the key element in the approach of the Assembly White Paper, which explicitly states that,

"freedom of movement of people is linked to employment".

That is the requirement and it should be acceptable both to EU countries and to ourselves.

What we ask in the amendments is that the Government commit to such an approach in their negotiations with our 27 EU partners. Equally, with regulations that may be needed to avoid market distortion, it should be possible to agree, and for the UK to legislate, for such regulations as may be needed to maintain a level playing field. In fact, the European Union Committee recognises this in its report *Brexit: The Options for Trade*, which, in paragraph 43 of the summary, on page 76, says:

"The notion that a country can have complete regulatory sovereignty while engaging in comprehensive free trade with partners is based on a misunderstanding of the nature of free trade. Modern FTAs involve extensive regulatory harmonisation in order to eliminate non-tariff barriers, and surveillance and dispute resolution arrangements to monitor and enforce implementation. The liberalisation of trade thus requires states to agree to limit the exercise of their sovereignty".

In the context of these amendments, that is a very pertinent paragraph.

What is being sought by the cross-party approach in Wales is neither unreasonable nor impractical. Indeed, the wording of the Government's White Paper leaves a small chink of light that suggests that they may in their heart be amenable to such an approach. Indeed, in paragraph 8.3 of the White Paper they say that a new negotiated agreement,

"may take in elements of current Single Market arrangements in certain areas as it makes no sense to start again from scratch when the UK and the remaining Member States have adhered to the same rules for so many years".

Precisely. So why will the Government not accept one or other of the amendments as a token of their sincerity in that approach, or at least table their own amendment along these lines on Report? Industry, business and agriculture would then sleep much more easily—and so would the Government of Wales.

Lord Blencathra (Con): My Lords, I have no problem in agreeing with the noble Lord, Lord Wigley, that a good trade deal, and a fair trade deal, is important for Wales—and, indeed, for all parts of the United Kingdom. My problem with the amendments is that they fly directly in the face of what the people voted for. Since the referendum, many remainers have been peddling the myth that the people voted to leave the EU but not to leave the single market. The single market was not on the ballot paper, they say, so the people could not have voted for it. Apparently they just wanted to leave the EU but to stay in the single market; we heard that point put passionately by the noble Lord, Lord Ashdown, a few moments ago.

Remainers have accused my right honourable friend the Prime Minister of "opting" for a hard Brexit. I submit that that is nonsense. The Prime Minister is not opting for a hard Brexit, a soft Brexit or any sort of squishy Brexit; she is merely attempting to carry out the wishes of the people to leave the EU. That automatically means leaving the single market, because if we stay in the single market we are still in the EU, to all intents and purposes.

Lord Lea of Crondall: Would the noble Lord respond to the notion that the people decided that they wanted access but not membership? So the 48%—let us get this right—wanted membership of the single market and the 52% wanted access? Was that on the ballot paper, by any chance?

Lord Blencathra: My Lords, it would be difficult to respond to that without tying myself in circles, because the noble Lord has got it slightly wrong. But I will come on to the point about people saying we could access the single market. At one point during the campaign, it may have been my right honourable friend Boris Johnson who said, "We could leave the EU and still access the single market". What happened? All hell broke loose. It is not that we were shot down but the Government and their advisers dropped the equivalent of all their bunker-busting bombs on us. "No, no", said the then Prime Minister, the Treasury and the BSE campaign. "If you vote to leave the EU, then you are out of the single market. You are out of the customs union. You can't have one without the other", said all the government spokesmen. "You can't have your cake and eat it", they said. On that occasion that is what the Government said. Opposition Members have quoted various leave spokesmen who have said, "Oh yes, we want to be in the single market and leave the EU", or, "We want to access the single market and be in the EU", but the response from the official BSE campaign, the Prime Minister and the Government was, "No, you can't. Leaving the EU means leaving the single market too". On that occasion, the remain campaign was not economical with the truth.

Baroness Kramer: I just make the point that the argument that leave made was that the remainers were exaggerating and they were wrong. To their credit, people believed them and voted on that basis. So if you were a leave voter and you had listened to Daniel Hannan, if you were a leave voter and you had listened to Boris Johnson, if you were a leave voter and you were at any one of the many hustings that I went to, you would have heard the leave campaign saying absolutely clearly that you would have identical access; indeed, you would be in the single market even if you voted leave. That happened over and again and there are witnesses to it throughout this House.

Lord Blencathra: If the leave campaign tried that early on in the campaign, it was certainly shot down by the Government, the Treasury and all their spokesmen very early on.

Lord Forsyth of Drumlean: Is not the point a very simple one which the noble Lord does not appear to appreciate—that every country in the world has access to the single market? The issue was whether one was a member of the single market, which would mean that all businesses—that is, 90% of the businesses in this country—would be bound by these rules and regulations, which would apply to exporters. That was the distinction made.

Lord Blencathra: My noble friend, as an expert in these matters, is absolutely right. He puts it very succinctly. Please correct me if I am wrong—I am very happy to be shot down on this point—but is it correct that if we stay in the single market, then we have to accept what the EU calls the four fundamental freedoms, including open borders? Is it true that if we stay in the single market, we have to pay into the EU budget to a certain extent? Is it correct that, if we stay in the single market, we have to let the European court rule over us? Is it correct that, if we stay in the single market, we have to accept laws made by a body over which this Parliament would have no say or control? That is not leaving the EU, and those who advocate staying in the single market know it full well. It is staying in the EU by the back door, and that is not what the British people voted for.

Lord Hannay of Chiswick: Perhaps the noble Lord would explain about the people of Norway who voted to not join the European Union and accepted all the things he said they had accepted.

8.15 pm

Lord Blencathra: My Lords, the last thing I heard about Norway was in the news last week. I believe that a Norwegian Minister, or former Minister, said, "Whatever you do, don't join the EEA like we did. It was a terrible mistake". I am not here to answer for Norway's decision. I am here to support the decision of the British people—all 17.2 million of them. I was part of the leave campaign, a little junior cog, and after we were successful, some detailed studies were done. Contrary to the public view that everybody voted leave to stop or control immigration, the vast majority of people—72%—voted leave because they said that they wanted to get back control and sovereignty of their country. Only about 23% put immigration at the top of the list. Of course, admittedly, if you are taking back sovereignty and control and putting Parliament in charge, that means Parliament is in charge of immigration and a lot of other things as well. But let us not pretend that people voted leave purely because of immigration or because they wanted to stay in the single market.

I conclude with a comment that I made in my Second Reading speech, when I quoted my right honourable friend Sir Oliver Letwin MP, one of the Government's foremost remain campaigners, and one of the then Prime Minister's gurus when thinking about these things. He said in the other place on 31 January:

"I made it … clear … that … an inevitable consequence of leaving the EU would be leaving the single market",

and leaving the customs union. He continued,

"it seems to me … that the people who voted to leave were voting with their eyes wide open, knowing that the consequence might be our falling back on the WTO".—[*Official Report*, Commons, 31/01/17; col. 871.]

The Government made it clear at the time that leaving the EU meant leaving the single market. There is no excuse now to try to build in this amendment to thwart the decision of the British people.

Lord Oates (LD): I support Amendment 4. I do so because what the Government are doing is beyond me with their extreme form of Brexit in taking us out of the single market. Why are they doing it? Above all, why are those on the Conservative Benches who supported remain allowing them to do it? It is true that there was an instruction from the British people that we should leave the European Union but there was not an instruction for us to leave the single market, however much the noble Lord, Lord Blencathra, might wish there was. That was for the very simple reason that, as the noble Lord, Lord Hain, pointed out, that matter was not on the ballot paper. The noble Lord, Lord Blencathra, and other noble Lords on the leave side of this argument can speculate as much as they want about the reasons people voted the way they did, and I can speculate as well. However, the truth is that none of us actually knows. All we know is the instruction that was given on 23 June. The referendum campaign did not help much. The campaign on either side, frankly, in terms of getting to the facts, was not terribly helpful. The noble Lord quoted a number of Conservative politicians. That is part of the problem. The referendum campaign was effectively a factional fight between two wings of the Conservative Party, which did very little to illuminate the facts but, tragically, a very great deal to divide and damage the country.

What we do know—however much those opposite may protest—is what all the mainstream parties promised the electorate at the time of the last general election. It was that we would stay in the single market. That was at a time when the referendum was likely. Indeed, it was a pledge in the manifesto of the Conservative Party. As the noble Lord, Lord Hain, also mentioned, the Conservative Party manifesto could not have been clearer. To avoid any ambiguity it emphasised its clarity. It said:

"We say: yes to the Single Market".

There was no caveat in the way that people suggest, so it is unclear to me why the Prime Minister has decided—given that she has no other mandate on this matter than that manifesto—that she is saying no to the single market. I have heard the noble Lord, Lord Lamont, and other noble Lords, including some Ministers, argue that the unambiguous pledge in the Conservative manifesto was somehow trumped by the fact that there would be a referendum and the Government would respect the result. You can respect the result of the referendum and withdraw from the European Union without withdrawing from the single market. Deciding to leave the EU does not mean leaving the single market, however much noble Lords opposite would like it to do so.

As has been mentioned, a number of countries are members of the European single market but not members of the European Union. Norway, in particular, was mentioned by the noble Lord, Lord Hannay. Norway sought to negotiate joining the EU at the same time as us in the 1970s. In the end, it had a referendum and voted against but it became a member of the single market. We should be very clear that when Norwegian Ministers were saying it was not ideal, they were not saying, "Don't be members of the single market"; they were saying, "For goodness' sake, stay in the European Union". To suggest otherwise is just nonsense.

It is clear that it is possible to be both outside the EU and inside the single market. The question, therefore, is whether it is desirable. In my very strong view, it is.

We know that the issue in world trade increasingly is not tariffs but non-tariff barriers. As the IFS noted in its report on the single market published in August last year, the service sector is particularly important to our economy and to our tax receipts and is particularly vulnerable. The financial services sector is likely to be disproportionately hit by loss of the single market.

For many of us, the decision to leave the EU is a tragedy that goes far beyond economics but it is compounded by the Government's decision to pursue extreme Brexit no matter the cost to our economy. We have the opportunity tonight to ask them to think again. We should take it.

Lord Green of Deddington: I can be extremely brief. I just want to take up one point that the noble Lord, Lord Hain, raised earlier. He acknowledged the significance of immigration to the result of the referendum. He did not say that it was the main reason but he acknowledged its significance. So it seems to me that a key question is whether we can stay in the single market and control immigration. He mentioned that other countries such as Belgium have found a way to control immigration within the single market by removing people without a job.

The situation in the UK is entirely different from that of Belgium. We have more than 2 million European citizens working here—which is fine, but we cannot skate over the fact that the whole situation is different. The numbers are much larger. Noble Lords may not know that last year 625,000 EU citizens took out national insurance numbers. They will not all be working; some will be short term. But the scale of it is enormous. We know that net EU migration is 180,000, equal almost to that from the rest of the world. There is no prospect of any serious measures of control if we remain in the single market.

Lord Cashman (Lab): My Lords, I am grateful to follow the noble Lord, Lord Green. I am going to be brief—I hope very brief. For far too long during the campaign and since we have had the fear of the stranger. The fear of someone who comes from another country and, none the less, comes to this country and wants to play by the same rules. I have no fear of such strangers.

I am not interested really in what was said during the campaign—

Lord Green of Deddington: I hope that the noble Lord is not suggesting either that I have such a fear or that I am trying to create it. I am certainly not. For 15 years I have tried to bring to people's attention the broad facts on the issue and I hope that the noble Lord will acknowledge that.

Lord Cashman: I acknowledge that fully and I hope that the record will reflect that I referred to "the campaign and since".

I am not interested in what was said during the campaign—who said what and where they said it. What matters is now, and how we build on this. It was wonderful to listen to the noble Lord, Lord Howell—and he always listens with such generosity to others—but I am going to take a slightly different approach.

I want also to revisit something that was said by the Minister about people's trust in politics. He is absolutely right. It was at an all-time low and it is our duty to pull it back up. However, at the root of that is a real fear, and I sense that that fear is growing. People are wondering what will happen to them and their rights when we start to negotiate our way out of the European Union. It is a fear shared by UK nationals living in other countries, such as the more than 1.2 million people living in Spain; it is a fear of others who have come to this country to live, work, study and contribute; and it is a fear that we must address. That is why, I suggest, there is such a large number of amendments to this very simple Bill; they reflect a real, deep concern outside.

I make no apology for my attachment to membership of the single market. It gives social responsibility to the market; it gives rights to consumers and to the people who work within it; and, as I said in my previous speech, it gives wonderful rights of non-discrimination, not least in the workplace and in access to training and vocational training. There is a fear that, when we remove the freedom of movement that quite rightly comes from membership of the single market, all those rights that people enjoy—although they no longer take them for granted—will disappear. That is why I very much support this amendment, as I do the protection of the rights of EU nationals.

Lord Smith of Finsbury (Non-Afl): In the light of what the noble Lord has just said, does he share my dismay that the leaders of the Official Opposition appear to have set their face against supporting this amendment? At the heart of the amendment is surely an instruction to the Government to put membership of the single market at the very heart of their negotiating strategy.

Lord Cashman: I promised brevity. I share the noble Lord's dismay for the very simple reason that when I negotiate and have a vision, it is not for the short term or to pander to public opinion but about where I want this country to be in the long term, generations down the line.

I conclude by saying that my deep concern is that, when we no longer have access to the single market, the rights that are currently enjoyed will not be replicated in their entirety elsewhere. It has been suggested that no deal would give us the opportunity to do whatever we want. That is not the reality. No deal will bring great costs. One of those costs—or benefits, as has been suggested—is that we will become a tax haven. My deep and bigger fear is that we will become an offshore, unregulated sweat-shop of Europe, and I am happy to support the amendment.

Baroness Altmann (Con): My Lords, I have listened carefully to all the contributions on the amendments so far and I feel that I must intervene. I have been deeply troubled in trying to understand why the Government are so set on the idea that no deal is better than a bad deal and that we can contemplate leaving the single market and the customs union with some kind of equanimity. That was brought home to me by the comment of my noble friend Lord Howell

about the failure to see what is going on. It brought to mind his eloquent description of how he sees the future of global trade and global business, which is not in manufacturing but in services. But that vision is not shared on other Benches across the House, and nor indeed by me. Indeed, I would argue that it is not shared by the majority of the people in this country. His remarks imply the destruction of our manufacturing sector and of millions of jobs across the country, and I do not believe that that is what the British people voted for.

Lord Howell of Guildford: The implication is not that at all; it is that the patterns and processes of production are now being internationalised on a scale that we have never seen before, so that even different stages in the processes of production are spread through fantastic new value chains right across many nations. Of course production will go on—but it is now very much an international rather than a national affair. That is happening now.

8.30 pm

Baroness Altmann: I do not disagree with my noble friend that that is what is going on, but by leaving the single market we are hampering our manufacturing industry and putting barriers in the way that will ensure the destruction of millions of jobs. Unless we get some kind of access to the single market, we are sacrificing the integrated supply chains so many of our smaller businesses depend on. If we believe that no deal is better than a bad deal, we are gambling millions of manufacturing jobs, 10% of our GDP and peaceful developments in Northern Ireland—our debate on Northern Ireland was particularly important this evening—in exchange for the hope that we will achieve the White Paper wish list. My noble friend the Minister did indeed set out what we wish to achieve, but we still have no idea what might happen if we do not manage to achieve that. We are giving up the integrated supply chains and Euratom membership, and leaving the customs union, the EEA, EFTA and the single market in the hope that we can benefit from the growth in services and technology.

We need to recognise that leaving the single market was never put to the British people. I believe that it will be hugely damaging to our economy. Somebody may decide to buy a house and, on the basis of the estate agent's details, may make an offer that is accepted and decide that they will move there. If they then have a survey done, or their lawyer discovers some unexpected legal small print, they want the chance to change their mind. They do not want to be bound by their original decision if what they end up with is not what they imagined. Therefore, I believe it is the duty of this House to ask the other place to think again on some of the vital issues that are bound up in what is, I agree, a very short and potentially uncomplicated Bill.

Lord Mandelson (Lab): My Lords, I am very pleased to follow the noble Baroness because, with her sharpness and clarity, she has brought this debate back to earth with a bump. Yes, whether we stay in the single market goes to the heart of the Brexit debate but, much more importantly, it goes to the heart of our future prosperity as a country—the lives, livelihoods, jobs and standards of living of all our fellow citizens—and therefore we should dwell on it.

In the coming negotiations, Britain should have three primary objectives: first, to secure, as far as possible, the continuity of our existing trade in the European Union; secondly, to be in the best position to attract future supply chain investment in Britain by international companies; and thirdly, to optimise our ability to make future trade agreements with other countries. All these objectives would best be served by our continuing in the single market, through the European Economic Area, as Norway did when, in the 1990s, its public rejected membership of the European Union but, seeking the economic opportunities available to it in Europe, decided instead to join the EEA. I believe this very strongly. I have to say this not only in opposition to the Government's chosen path—what has rightly been called, "Brexit at all costs", which is both desperate on their part and potentially very damaging indeed to our economy—but also in disagreement with the argument on grounds of sovereignty, made by Keir Starmer in the other place, that staying in the single market through the EEA would make Britain subject to rules that the rest of the EU has made. That is what lawyers would describe as a piece of Nelsonian knowledge. It is what happens when you intentionally place a telescope to your blind eye.

I accept that, hitherto, the EEA shows what small countries such as Norway, Iceland and Liechtenstein were able to secure when committing to being part of the single market, but Britain is not of the same status, size or type as any of those countries. A British version of membership of the EEA—this is a key point—would retain much more influence and clout in setting the standards for our largest export market. By removing ourselves from the European Union and the single market, we would only theoretically be more sovereign and we would be considerably poorer. I am reminded of what the noble Lord, Lord Heseltine, said:

> "A man alone in the desert is sovereign. He is also powerless".

I respect the result of the referendum, but I part company from the Government in my belief that we now have an absolute duty to obtain the closest and best possible economic relationship with our largest export and investment market after we leave the European Union. Merely seeking a future free trade agreement between Britain and the EU that deals with tariffs and some customs procedures will fall far short of actually being in the single market. Yes, that is the difference between access and actual participation through membership of the single market that the noble Lords, Lord Spicer and Lord Forsyth, drew to our attention. The former—access—we have to beg for; the latter, we have by right. That is a fundamental difference.

If we simply do as the Government are proposing and seek a free trade agreement, I assure noble Lords, as a former Trade Commissioner and this country's Trade Secretary, that it will give us significantly less trade than we have at the moment, no automatic market rights in Europe and a paltry means of enforcing those rights that we have. Believe me, I have negotiated

those things on Europe's behalf with countries trying to access the European single market. I know how ponderous the European Commission can be when it comes to such negotiations. I know how difficult it is for third countries, which is what we would be, to get access on the terms that they want and need.

A free trade agreement would not cover all trade; it would not cover services as well as goods, which is a fundamental point. The agreement—if we ever get one, given how relations between ourselves and our European partners have gone downhill since the Prime Minister's October speech to the Conservative Party conference—will take a very long time to obtain and will certainly stretch way beyond the two-year cut-off point of Article 50 itself. That is why John Major was absolutely right to make his speech this evening at Chatham House in which he strongly and in vigorous terms attacked the Government's approach to Brexit and called, quite rightly, for a little more charm towards our erstwhile partners and a little less cheap rhetoric.

In a number of key national capitals—

Lord Dykes: With his distinguished European background, why does the noble Lord not fight to keep us in the European Union, as Kenneth Clarke is doing in the Commons?

Lord Mandelson: Why am I not fighting to keep us in the European Union? My word! Judging by my email inbox, the noble Lord must be the only person in the country who does not believe that I am fighting for Britain's continued membership of the European Union. Of course being a democrat, I respect—oh, there is no point his waving his hand in that Edwardian way.

I am afraid that we have had a referendum, but the point is this: we can now make a choice between leaving the European Union and wrecking our economy, or leaving the European Union and making the best economic job that we can of doing so. There is a huge difference between negotiating our future trade relationship from the safety of being a relative insider, which is what we would be as a member of the EEA, as opposed to being an outsider and jostling for preferential access to Europe's marketplace like any other country—fighting with many others for access at Europe's border. Of course the single market is not perfect, notably in its coverage of all services. However, almost half of British trade in goods and services takes place in the European market. It should therefore be an absolute priority for us to secure the continuity of that trade we already have.

There is another crucial issue for us, given the nature of our manufacturing sector in this country. Other noble Lords have touched on that. The point is that the single market is not just a huge trading space: it is also a giant factory floor. Among mature economies trade is now increasingly less in finished goods than in part-finished goods moving back and forth across borders, often many times, as part of increasingly sophisticated value chains.

Lord Spicer: If everything is so hunky-dory, why is there such a massive balance of payments deficit?

Lord Mandelson: My Lords, it is not a question of everything being hunky-dory, but of how desperately worse off we would be were we not to remain in the single market. For goodness' sake, let us apply a little reality to this. Even President Trump may wake up one day and realise that, given the nature of 21st-century trade in the world today, 40% of the content of Mexican exports to the US actually originates in the US. That is the reality of trade and of the single market; that is why I have no hesitation in describing it as a vast factory floor.

Another thing that is changing interests is that while tariffs and customs controls are important, as we will find out, increasingly so are product standards, copyright and intellectual property rules, investment rules and, yes, rules governing data sharing and transfer. The point is that in the single market we have a single rulebook that covers all these things and therefore we have an even playing field across the entire European single market on which our businesses can conduct their business. We will struggle outside it, especially if in pursuit of a US trade deal we choose to comply with equivalent American rules instead of European ones. The more we diverge from European rules, the more difficult we will find it to trade in our own vast home European market.

8.45 pm

That brings me to my last point, which is the Government's version of global Britain. We are right and they are right to seek greater access to global markets for Britain's goods and services. I spent four years painstakingly doing that as the Trade Commissioner. But let us be clear: we are not pushing against an open door in the international trading system. Many fast-growing and emerging economies where we want to deliver our goods and services in the future are becoming more protectionist than ever. Public sentiment is hardly making the prospects for trade more positive in these economies, and President Trump will make things a whole lot harder. If we are not careful, the policy of "America first" and the protectionism that goes with it will spread like a contagion across the international trading system, making new agreements even more difficult to negotiate in the future than they are now. That is why I think that the Government are taking a huge risk in jeopardising what we currently have, the trade that we currently bank in the single market, for the sake of entirely speculative future gains elsewhere. They are not gains, they are speculations about what we hope we will be able to achieve elsewhere in the world later.

Let us remember that we cannot even begin to negotiate any sort of trade arrangement with the European Union until we have finally left it, and when we know what we will have to offer to other countries in future trade agreements will depend largely on our future relationship with Europe's single market. If we entered the EEA and stayed in the single market but left the customs union, as Norway has done, we could trade more easily in Europe and form trade agreements with others in the rest of the world. That really would be having your cake and eating it. Out of the EU and the single market, on the other hand, it is not yet clear how the Government will manage the negotiation, but if the word on the street is right that Ministers will

seek sectoral agreements in, for example, automotive goods and financial services, I think we are going to be disappointed. I would be very surprised if the EU negotiated on that basis because of its completely understandable objection to cherry-picking and because of the sheer practical difficulties involved in creating customs arrangements that would be very problematic to design and introduce, and even harder to police.

I have the feeling that the Government simply do not understand exactly what they are biting off in trying to negotiate a whole new trade deal, on the basis that they are with the European Union outside the single market. Perhaps they understand how difficult it is going to be and secretly agree with the noble Lord, Lord Lawson, that, when it comes to it, it would be better just to pay the bill and leave without getting a deal at all. I hope very much that that does not happen. It would be an economic disaster for our country.

Let us be clear. Any deal on offer on the basis of the Government's current approach would be highly suboptimal for us. That is why I support the amendment—to leave the European Union, if that is the will of the people and of Parliament, but to stay in the single market. Yes, it would mean compromising on some of the political objectives that many leave campaigners hold dear, but there is the whole country to think of, not just the ideologues among the leave campaigners. That is what Parliament is meant to do: reflect and represent the interests of the whole country, not just one part of it.

Baroness Ludford (LD): My Lords, we on these Benches fully support the amendment and the excellent arguments made by the noble Lord, Lord Hain, and the other signatories, the noble Lords, Lord Monks and Lord Wigley, and my noble friend Lord Oates. We also support the tour de force from the noble Lord, Lord Mandelson, and the remarks of the noble Baroness, Lady Altmann. They are extremely convincing. My noble friend Lady Kramer answered the noble Lord, Lord Blencathra, who said that it was clear that leaving the EU means leaving the single market. That is absolutely not the case. The point was made by the noble Lord, Lord Hain, about the Conservative manifesto of 2015, which said:

"We say: yes to the Single Market".

He answered very effectively the noble Lord, Lord Lamont.

The Government claim they want free, seamless and frictionless trade, at least as possible. Those two words "as possible" have great import and meaning, because it will not be possible to have free, seamless and frictionless trade if we are not in the single market and the customs union. Anything else is very much second best. The noble Baroness, Lady Altmann, and the noble Lord, Lord Mandelson, summed it up: it is about integrated supply chains. If it was not important whether we are in the single market and the customs union we would not have had such reactions from successive car firms, such as Nissan and Vauxhall. Now, apparently, BMW is about to move production of electric Minis out of the UK. No doubt it will knock on the Government's door very soon to try to get a similar comfort letter out of them.

The noble Lord, Lord Howell, talked about how goods sailing out of Tilbury was passé. It does not seem to be passé to manufacturers in this country. Any alternative to being in the single market and the customs union is more bureaucratic and more cumbersome. In addition, any terms for trading freely with the EU single market will mean compliance with product standards, other regulation and data standards, which were mentioned. That has caused huge problems for non-EU members, including the United States. On this fetish that the Government have to pretend that we have never heard of the European Court of Justice, they will have to face up to the fact that, one way or another, directly or indirectly, we will have to accord with EU law and the rulings of the court. As I said the other day, there will be some sort of smoke and mirrors there.

The noble Lord, Lord Wigley, stressed how important the single market is to Wales. I pick that up, because my noble friend Lady Humphreys stressed it at Second Reading. Indeed, she mentioned the Airbus factory in Wales, which must have the same integrated supply chain issues that were mentioned.

The noble Lord, Lord Howell, was dismissive of the EU market, which takes only 42% or 44% of our exports. That is three times as much as the US market takes. The point is that the EU is a battering ram to try and open up US and other markets. One of the problems is state-level public procurement in the US and with "Buy America" being reinforced by President Trump, we are going to need all the help we can get from the European base. We are not going to be able to open up those markets on our own.

The other red line, besides the Court of Justice, is the fetish of free movement. It has been made a red line by the Government and, I am afraid, by the Labour Opposition. It became apparent in exchanges we have had in the last few weeks in this House at Question Time that the UK Government do not even know whether they are enforcing the existing restrictions on free movement, and they are refusing to explore the flexibility and change that it might be possible to get across the EU or the EEA. The noble Lord, Lord Green, says that there was no prospect of any serious measures of control. However, what was interesting about the renegotiation of the former Prime Minister David Cameron was the quite extraordinary principle introduced of the possibility to discriminate on the grounds of nationality, which was actually pretty revolutionary.

The Government are not even trying to explore the flexibility there, as well as, of course, ignoring the two-way street and opportunities that it gives the British people. Just throwing away free movement is telling particularly our young people, as well as retirees, that they can dish any plans they had to work, study and retire in Europe. Therefore, from these Benches we fully support the amendment. I hope that the speeches from distinguished noble Lords on the Labour Benches—and even not on the Labour Benches—and the dialogue, will have persuaded the noble Baroness, Lady Hayter, to join these Benches in supporting the amendment.

Baroness Hayter of Kentish Town: My Lords, what a nice invitation to have from the noble Baroness. It is almost impossible to disagree with my noble friends

Lord Hain, Lord Monks and Lord Mandelson, and, indeed, most of the other noble Lords who have spoken, certainly from this side but elsewhere, about the benefit of the single market to the UK's economic and social prosperity. As many noble Lords know—they have had to hear from me far too many times—my commitment to the EU long predates the creation of the internal market, although it was perhaps more for me the peace project referred to by the noble Lord, Lord Alderdice, in an earlier amendment. I nevertheless believe that the internal market has contributed to these wider objectives in addition to the trade and prosperity that it has helped to generate.

Indeed, the arguments we have heard are exactly those that I used day after day during the referendum. However, some of the speeches today, I fear, were about trying to rerun that argument. Amendment 4 is rather as if the referendum had not happened and the result was not for leaving. The Bill is about authorising the Prime Minister to begin the process. It is not about going over the arguments. What it demands is a statement from the Prime Minister contrary to her White Paper. I think she is getting the approach wrong, but that it different from making it a statement from her, that only at that point could we trigger Article 50 because that statement makes it conditional within the amendment. I think asking a Prime Minister to eat her own words before she triggers it is something that this House probably cannot and would not want to do.

Anyway, our continued membership of the single market once we are outside the EU—that is, back in the EFTA, which we left in 1972—is also difficult as we would have to accept ECJ jurisdiction as well as free movement. I cannot see the problem with the ECJ. I simply do not understand the Government's horror at accepting an international court. We will need some sort of adjudication system anyway in any free trade agreement with the EU. Whether the Government will then complain about that I do not know.

9 pm

It is true that during the referendum I heard from a number of leave supporters that they wanted the UK to make its own rules but never once did I hear that they did not like the ECJ. The Government are just wrong on this. If that were the only obstacle to EFTA membership, I certainly believe we could win that argument. However, we cannot simply airbrush free movement from the referendum decision. If we turn round to those who voted out and say, "Yes, well, we're out but still have everything exactly as it was, with free movement unchanged", I think that might evince some surprise.

More than that, this Norway/EFTA option contains a large democratic deficit. My noble friend Lord Mandelson says that that is Nelsonian knowledge. I had to ask what that meant but I understand now and I do not think it is: there is a real democratic deficit in what would be on offer. It would mean that instead of being a member of a club that sets the rules we would be mere recipients of rules decided elsewhere.

Lord Mandelson: Sorry, but would my noble friend allow me?

Baroness Hayter of Kentish Town: Let me finish on this particular point. I will give way if I can first make one statement, as I think I am allowed. It would make us mere recipients of rules decided elsewhere, as I found when I worked in the European Parliament. Those were the only words I wanted to add before giving way.

Lord Mandelson: With great respect, we would not be mere recipients. We would be large, senior, influential members of the EEA negotiating our membership of it on terms that would give us significant influence over policy-making and rule-making in the European Union. Everyone accepts that and I cannot understand why my own Front Bench cannot see it.

Baroness Hayter of Kentish Town: I wish that my noble friend Lord Mandelson was right on that. If it were the case, we might be in a different position but at the moment it is a hope rather than a guarantee.

When I worked in the European Parliament, as any noble Lords who may have been in the Commons at the time might remember, we saved 1000cc motorcycles. We also saved kippers and Scottish Arbroath smokies. As noble Lords may remember, on the 1000cc motorcycles we had those wonderful big bikes going round and round Parliament Square before they headed off to Brussels. I think it was Commissioner Bangemann who had tried to ban 1000cc bikes. Of course, other than in the States they were made only in Britain. Elsewhere they made smaller ones and they came up with this argument that the larger ones were inherently unsafe. Actually, it turned out that they were safer than small bikes, partly because they are ridden by safer riders. Unfortunately, we won not because of the great display of bikes going round Parliament Square but because we had a Minister at the Council of Ministers as well as MEPs. He is not in his place but I think my noble friend Lord Tomlinson was probably the MEP concerned at the time. So we were able to challenge that argument and we won.

It was similar with the smokies, on a smaller issue. Some bright spark in the Commission thought they should be transported only below a certain temperature. Of course, they can be sent by post—in those days, we used to get them early enough for our breakfast. We managed to save those, too, but we did it because we had MEPs in the European Parliament, we had a Commissioner and we obviously had a Minister at the Council of Ministers.

What worries me—and, indeed, what worries me about the intervention just made—is that we would become rather like what we saw a lot there, namely lobbyists around the corridors of Brussels, using others to make the arguments for us. Norway said to us, "We use our Scandinavian friends; we have a very close relationship, for obvious reasons, and they make our representations for us".

The other issue, of course, that we are all beginning to see, relates to the regulations. These are the regulations that your Lordships' House will soon have to put into the great repeal Bill. These have all been passed by the European Parliament and the Council of Ministers, in both of which we are represented as a member of the EU. Once we put those into the great repeal Bill,

others will continue to be made. In the short term, there will be no problem, and in the transitional period, membership of the EEA is extremely attractive because it will take a long time before those are replaced. Certainly, if we remain in the customs union, which I very much hope we will be able to do, we will have to abide by rules, even if we have not made them, on those elements with which we trade and by which we export. That, however, is different from being bound by the whole acquis and judged by the ECJ, with no British member, on rules that we have not made, in a Parliament in which we have no seats and in a Council in which we have no vote. That is not what the referendum said.

Therefore, my heart is with the movers of the amendment and with wanting to stay as we were, but I also have time, occasionally, to read books. I am a great fan of Lampedusa's *The Leopard,* with its famous advice:

"Everything needs to change, so everything can stay the same".

Alternatively, in some translations—Italian speakers will know better than I—he says:

"If we want things to stay as they are, things will have to change".

I want things to stay as they are, in that we should continue to trade freely with the EU 27, but to achieve this, we will have to change, and negotiate tariff-free, encumbrance-free access to that single market and it to us. That is what we must aim for. We have a fight ahead of us to keep our position in the customs union, to ensure that tariff-free trade and to work for the three objectives that have just been set out by my noble friend Lord Mandelson and the closest possible relationship with the EU 27. Our task is to persuade the Government that they have set their sat-nav for the wrong destination. That is where our energies must go. However, it is unfair to give people the unrealistic hope that staying in the single market, despite the referendum and our exit, is a possibility. We need to continue to trade as freely as possible with the EU that we have to leave. For that reason, we are not able to support this amendment.

Noble Lords: Shame!

Lord Bridges of Headley: I think that I would like to say a few words, despite what the noble Lord, Lord Mandelson, says. I sense there is some division. Let me start by trying to mend some bridges—pardon the pun. All of us in this House wish our country to prosper. We all want to see more investment and more jobs. The very simple question raised by these amendments is this: in light of the vote to leave the EU, how can we best do that? I know that the noble Lords, Lord Hain and Lord Monks, and other noble Lords whose names are on these amendments, have long-held views that the best route to achieve that aim is, at least in part, for the United Kingdom to remain within the EU and within the single market. I respect their views and the steadfastness with which they hold them. I will try my best to be eloquent, but I am sure that what I am about to say will not deflect them and a number of other noble Lords, such as the noble Lord, Lord Mandelson, from supporting this amendment. But I will briefly set out why the Government oppose the amendment. The first and most obvious reason is that it has nothing to do with the Bill. The Bill has one purpose only: to enable the Government to start the process of negotiation. It is not a means to dictate the terms of the negotiation.

The second reason concerns the democratic arguments. Very briefly, as I said earlier, the Government promised to hold a referendum and to honour its result. Yes, I know that the Conservative Government said that they would protect our role in the single market in the manifesto. But as my noble friend Lord Blencathra pointed out, the manifesto also promised to respect the result of the referendum—a promise which this Parliament endorsed by passing the European Union Referendum Act.

As the noble Baroness, Lady Hayter, said, the debate we have heard tonight has been a rerun of the referendum campaign. As I said earlier, during that campaign, every household was sent a leaflet which spelled out the consequences of leaving as regards our membership of the single market. A number of people on both sides of the argument pointed out that we could not vote to leave and then try to remain in the single market. Criticising the leave campaign, one of those arguing to remain said:

"Some of those advocating British withdrawal suggest that we can have our cake and eat it by staying within the European single market to retain the great bulk of our trade which is with EU countries".—[*Official Report*, 2/3/16; col. 855.]

Those are the words of the noble Lord, Lord Hain, and he was quite right. The four freedoms are seen by many across Europe as indivisible, and we should respect those views.

Much more than that, as other noble Lords have said, remaining a member of the single market would mean complying with the EU's rules and regulations that implement the four freedoms, without having a vote on what those rules and regulations are. It would almost certainly mean accepting a role for the Court of Justice of the European Union. It would mean still not having control over immigration—relying on enforcement powers rather than creating an immigration system, which this Government intend to build, which allows us to control numbers and encourages the brightest and best to come to this country.

As to the customs union, were we to remain a full member, we would remain bound by a common external tariff, which would greatly limit our ability to strike our own trade deals and our freedom to determine the level of UK tariffs. Were we to remain within the common commercial policy, we would not be able to pursue freely our bold, ambitious trade agenda with the rest of the world. We would instead, as now, be ceding responsibility for this to the European Union. So to remain a member of the single market and to remain a full member of the customs union would, to all intents and purposes, mean not leaving the EU at all.

As to the EEA, I agree with the noble Baroness, Lady Hayter, that it suffers from a democratic deficit. Once we leave the EU, as my noble and learned friend said earlier, the EEA agreement will no longer be relevant for the UK. It will have no practical effect. But we expect a phased process of implementation to cover our withdrawal from the EU in which both

Britain and the EU institutions and member states prepare for the new arrangements between us. This is intended to give businesses enough time to plan and prepare for the new arrangements. The interim arrangements that we rely on will be a matter for negotiation.

Lord Liddle: Does that mean that the Government are not ruling out EEA membership for the transition?

Lord Bridges of Headley: I have nothing further to add, other than to say that it is a matter for the negotiations. It is a matter for the negotiations and I am not going to go further. I checked the transcript of the Select Committee hearing that the noble Lord so rightly brought me up on earlier and that is what I said. It is exactly consistent with what I have said.

I turn to our approach to trade with the EU once we have left. My noble friend Lord Howell pointed out the intricacies of this. It is absolutely true—a basic point—that across the world countries which are not members of the single market trade with Europe. The single market is not a tablet of stone. As the noble Lord, Lord Mandelson, so rightly said, in services, which drive so much of our wealth creation, the single market is incomplete; likewise, on digital services. With that in mind, the Government have a clear aim: to seek an agreement for the freest and most frictionless trade possible in goods and services between the UK and the EU. We start these negotiations from a unique position. The EU exports to the UK £290 billion of goods and services each year, and on day 1 we will have exactly the same regulations and standards as our negotiating partners. The focus will be not about removing existing barriers or questioning certain protections but about ensuring new barriers do not arise, and the scale of trade means that it should be in our interests, and Europe's interests, to come to an agreement.

9.15 pm

As to achieving frictionless trade, some have highlighted the non-tariff barriers—standards, conformity assessments and so on—that might arise when we have left. These are indeed important issues, as well as intricate and complex issues, and I am not going to dismiss what the noble Lord, Lord Mandelson, said about the challenges that some of them pose. In the interests of time, I will address just one, customs.

As noble Lords know, sophisticated supply chains can operate between countries that do not, for example, have a formal customs union. The US and Canada do not have a customs union, but highly complex and integrated automotive supply chains operate across their borders. Next, there are many precedents of means to reduce border bureaucracy. The EU has agreements with China, Japan, the US and other countries, to allow businesses with "authorised economic operator status" access to simpler and faster customs procedures. Today, UK companies with AEO status account for around 60% of UK imports and 74% of UK exports. Next, we have one of the most advanced customs systems in the world: 99% of customs declarations are received electronically and 96% are cleared in seconds.

I am not disputing that there are challenges ahead; however, I am saying that there are precedents on offer and that we are building on a strong base. I would ask those of your Lordships who, like me, voted to remain, to stop fighting the battles of the campaign and to come together to help us to think of ways in which we can continue to thrive, continue to trade and overcome some of the challenges.

The issues raised by this amendment are indeed worthy of debate, but with the greatest of respect, this amendment has no place in the Bill and would undermine the expressed intent of the British people, which is to leave the EU. I therefore ask the noble Lord to withdraw his amendment.

Lord Hain: My Lords, respectfully, I completely disagree with the proposition that the Minister has just made. Yes, I did say that the European Union was preferable to staying in the single market—that was my belief. That was also what he believed and what the Prime Minister of the day, David Cameron, argued. It is what all of us on the remain side argued—but now our task is very different. Given that we are due to leave the European Union, we have to make the best of a bad job. We have to rescue something from this which will protect jobs and prosperity, and that is what this amendment is about.

It is suggested that this will add delay. No, it will add no delay. The text of the amendment says that,

"the Prime Minister must give an undertaking to negotiate under the process set out in Article 50 on the basis of the United Kingdom retaining membership of the European Single Market".

It talks about achieving and negotiating—it is about trying to go down that road. This would be a lot easier and quicker than the alternative under the WTO rules and the completely unknown waters that we are about to sail into. We do not know how difficult that will be and how long it might take. If the Minister is concerned about delay, he should support this amendment, because it will produce a much simpler outcome than the one that otherwise awaits us.

I would also say that remaining in the single market would not be against the outcome of the referendum. The referendum was about leaving the European Union. That was the question on the ballot paper; it was not about the single market. If we retain our membership of the single market, there is a much better chance of Scotland staying in the United Kingdom. If we retain membership of the single market, there is a much better chance of resolving the problems that we discussed earlier in respect of the border between Northern Ireland and the Republic.

I do not accept the case put—very eloquently—by my Front Bench that staying in the single market will result in a democratic deficit. The WTO alternative will result in a much bigger democratic deficit than is perceived by those who criticise this amendment. As a very large economy we will still—as my noble friend Lord Mandelson said—have the opportunity to have significant influence; maybe not in the Council of Ministers or the European Parliament because those bodies require a membership of the European Union that we will no longer have, but by having the clout that we will have in the negotiation for future rules and so on in the single market.

I make no criticism of those on my Front Bench—they have done a fantastic job in very difficult circumstances.

My criticism is of my party leader. I think that he will be judged by history as being on the wrong side of this argument and of forcing us to do something that we in the Labour Party do not in our hearts really believe in. What we will be doing, in my view, is nodding through a Conservative agenda for a right-wing, hard-right Brexit—Trump-like—of deregulation, low-tax, small state, shrinking public services and even more austerity.

Noble Lords: Hear, hear.

Lord Hain: "Hear, hear", they say—there we have the confirmation. I do not go lightly against my party Whip. In my 26 years in Parliament—in the Commons and in this House—I have only ever done this once or twice. But this for me is a matter of crucial importance to this country and to the future of the people, their jobs and their prosperity. The Minister—with all due respect—is doing a great job on a sticky wicket. But the truth is that he and the Government have no clue where we are going. They have no idea where they are taking us. For the sake of our jobs, prosperity and businesses, it is important to pass this amendment and I therefore wish to divide the House.

9.21 pm

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9.39 pm

Amendment 5 not moved.

Amendment 6

Moved by ***Baroness Quin***

6: Clause 1, page 1, line 3, at end insert—

"( ) Subsection (1) does not come into force until Her Majesty's Government has laid before each House of Parliament an assessment of the impact of—

(a) withdrawing from the European Union, and

(b) Her Majesty's Government's negotiating strategy for withdrawal,

on the economy of the North East of England."

Baroness Quin: My Lords, this amendment stands in my name and that of the noble Lord, Lord Shipley. It calls on the Government to lay before Parliament an impact assessment of the effect on the economy of the north-east of England of both withdrawing from the EU and their negotiating strategy. I say at the outset that this is a probing amendment and I do not aim to divide the Committee on it. However, through this amendment I wish to highlight the situation in my part of the country and the region where I live—the north-east. I recognise that this group of amendments raises a number of other issues about taking various parts of the UK into account in the negotiating strategy. I support many of those amendments, although I am obviously speaking to my own amendment in this instance.

In tabling the amendment, I was conscious of the fact that the north-east of England has a particularly heavy dependency on trade with the EU. Some 58% of its exports are destined for the European Union and

[Baroness Quin]
its largest trading customers by far are in the European Union. I am proud of the fact that the north-east has a positive trade balance. It is unusual in that respect as compared with other regions of the UK. However, I am also concerned that this situation is very much under threat because of the Brexit strategy adopted by the Government.

In tabling this amendment, I also seek to ensure that the north-east has a voice in the Brexit process and that the Government are committed to taking the interests of the region to heart. I recognise that in many of the other amendments the importance of consulting the devolved authorities is mentioned and I would certainly not argue with those amendments in any way. I also support the amendments before the House that refer to the importance of environmental protection in the Brexit negotiations and those concerned that equalities provisions are not endangered. However, I am concerned that in our current devolved structure the regions of England—particularly the northern regions and the north-east itself—often risk being the Cinderellas of our political and economic system and are easily overlooked, despite the fact that the size of their populations and the importance and potential of their economies should give them a more important say.

My amendment is in line with some that were tabled in the House of Commons, in particular proposed new Clause 31 about the impact on regions and proposed new Clause 163 on the importance of consultation with regions. I echo some of the words spoken in the other place, particularly, as regards the north-east, the comments made by my honourable friends—if I can call them that—Catherine McKinnell MP and Phil Wilson MP. However, the amendments in the Commons overall received little attention and almost no response from the Minister, no doubt in part because of the rushed timetable and the programming that governed the Commons proceedings on this Bill. Therefore, I make no apologies for introducing my amendment and supporting other amendments before us this evening.

My amendment is about process so, given that earlier the Minister kept saying that the Bill should stick to process, I hope that it will appeal to him. Also, it cannot be criticised for giving away the Government's negotiating strategy in advance or tying the Government's hands in their dealings with our European partners. Where it tries to tie the Government's hands is in committing them to a proper structure for dialogue and consultation with the north-east and the rest of the United Kingdom.

In the referendum, some areas of the north-east voted remain—Newcastle in particular—and some voted leave, but I believe that all parts of the north-east would not wish to become less prosperous as a result of Brexit. The Government should bear that very much in mind. The Government have a responsibility to do what they can to create a balanced economy throughout the United Kingdom and to ensure the future economic well-being of all parts of the United Kingdom, including the north-east.

Last month, the IPPR report *The State of the North 2016* was debated in this House thanks to my noble friend Lady Massey of Darwen, who is in her place. The report expressed great concern about the possible effects of Brexit on the northern regions and it called specifically for a north of England Brexit negotiating committee to identify how the north can thrive post Brexit, given that it is more dependent on trading in advanced goods such as pharmaceuticals and automotives than the south of England.

9.45 pm

I would like to know from the Minister the Government's response to that proposal. Will he ensure that, if such a body comes into being, all parts of the north will be represented and not just those that have directly elected mayors? I say that because I believe that Brexit is too important to be sacrificed on the altar of disagreements between the Government and certain areas of the north regarding elected mayors. All regions of the north need to have their interests taken into account.

In conclusion, I imagine that the Minister will say something like, "Yes, don't worry. We will consult. We are very much aware of the regional dimension", and so on, but I would like something more concrete in his reply. I would like to know how the Government will consult, when and how often they will consult, and who will be consulted. If he cannot answer any of those questions, I would like an undertaking that he will come back to us with these details very soon. We certainly need specific answers, as well as kind words. We need clear answers and clear reassurances. I beg to move.

Lord Blencathra: My Lords—

Lord Shipley (LD): My Lords, I support Amendment 6, moved by the noble Baroness, Lady Quin. I will speak to Amendment 9, which is in my name and refers to all parts of the United Kingdom and not just the north-east of England. This whole group relates to the impacts of Brexit and the need for there to be assessment before the Government go much further.

It is estimated that around 160,000 jobs in the north-east of England are directly linked to our being part of the single market. That is because 58% of north-east exports go to the European Union, against a national figure of 42%. After 2019, with a hard Brexit there will be no automatic access to the single market, which is the largest free trade area in the world. Therefore, what are the economic advantages to the north-east of England or indeed to any part of the United Kingdom of losing that automatic access? I would like the Minister to explain how the Government plan to protect it.

I understand that the Minister met the North East Chamber of Commerce last Friday following an initiative by my noble friend Lord Beith. Will this be the first of many such meetings? I ask that because there are structures in London, Scotland, Wales and Northern Ireland for the Government to relate to, but what about the rest of the United Kingdom—the English regions? Regular meetings must be held with those regions to put them on an equal footing with Scotland, Wales, Northern Ireland and London. For that reason, I think that we need regional impact assessments of leaving the European Union. As an example of the problem, and as the noble Baroness, Lady Quin,

emphasised, the north-east of England has a net balance of trade, with total exports amounting to £12.14 billion in 2015. No other region does so well in having such a positive balance of trade. The trade surplus in 2015 was £3.4 billion in the north-east—that is, the north-east local enterprise area and the Tees Valley local enterprise area added together.

It would be a disaster for jobs for this surplus to be lost. Chemicals had a trade surplus of £2 billion and the machinery and transport sector had a trade surplus of £2.3 billion. Some sectors had a trade deficit, which accounts for the overall surplus being £3.4 billion. Such a trade surplus is a very impressive figure for a small region in population terms such as the north-east of England. That is why I have concluded that the Government should establish resilience task forces in each part of the United Kingdom to work with the Government on the problems that will arise if we leave the single market and the customs union.

The abolition of government offices in England has not helped this situation and it has resulted in England being treated as a single entity run out of London. England is not a single entity and its differences should be reflected in the Government's work on Brexit. In terms of EU funding support, we could look at our universities. The north-east universities are receiving £155 million in EU funding in the current funding period, 2014-20. They stand to lose access to much of that funding once we have left the European Union. Will the Government pick up the bill? Will they guarantee equivalent funding after 2020? In terms of structural funding, the north-east of England, including Tees Valley and the North East LEP, is receiving £590 million in structural funding from the EU in the 2014-20 period. Cornwall will receive £476 million, and Greater Manchester and Leeds City Region will receive more than £300 million each. England will receive £5.6 billion and the UK as a whole more than £8 billion. Will the Minister tell us what the Government's plan is to make this money available after Brexit?

The question matters because it is the poorer parts of the country that voted more strongly for Brexit, but those are the very parts of the country that are in receipt of much higher levels of EU support. This is the challenge for the Government: have they any plans in place, eight months after the Brexit vote, to make those poorer parts of the United Kingdom resilient in the face of Brexit? The danger is that it is these very areas that will fall yet further behind once we leave the EU in 2019. What are the Government's plans, in the face of Brexit, to generate growth in the poorer parts of the United Kingdom?

Lord Blencathra: I apologise to the noble Lord, Lord Shipley, for attempting to get in before him: I had forgotten that other noble Lords had amendments they might wish to speak on. I must warn my noble friend the Minister that I am very tempted to support these amendments, provided he can give me two firm assurances—first, that these assessments will be carried out by the Bank of England, the IMF and the same geniuses at the Treasury who forecast that by 2030 we would all be £4,322.15 worse off; and secondly, that he will send these assessments to Mr Juncker and Mr Barnier. I can think of nothing more likely to completely mislead those with whom we will be negotiating. Better still, he might get PricewaterhouseCoopers to do it, after its spectacular success at the Oscars last night where it could not count up a few hundred votes correctly.

In all seriousness, when have we ever seen an impact assessment attached to a government Bill which was remotely worth the paper it was written on? They are meaningless rubbish and no one takes them seriously. I did take one seriously when I was asked to chair the joint Select Committee on the original draft so-called snoopers' charter Bill, which some noble Lords and Members of the Commons served on. We went through that impact assessment in detail and tore it to shreds. It estimated about £900 million as expenditure and our committee calculated that the real figure would be about £2 billion to £3 billion. We all know that impact assessments are not very accurate.

On the other hand, let us suppose that the Government did manage to write a proper impact assessment. We could do that on a sector-by-sector basis for each industry. I suppose that we could get the leaders of all those industries and all the other experts to draw up a proper SWOT analysis where Ministers have a pretty accurate assessment of the strengths, weaknesses, opportunities and threats to that industry from staying in or leaving the EU. Let us say that those SWOTs were spot-on accurate. Does anyone seriously suggest that we should then publish them and hand them straight over to the EU negotiators so that they can spot all the weaknesses in our position and the strengths that we want to exploit? It would be the height of folly to do such a thing. Indeed, it would be barking mad. If we were to do that, why stop there? Let us send Mr Putin a list of all our defence weaknesses and get MI6 to tell ISIL about any gaps in our security. Will Mr Barnier and the EU give us a paper on their strengths and weaknesses? Will they tell us their impact assessment of Britain? Of course not.

I am not being totally facetious. We will embark on negotiations that will determine the future of this country. The EU is reported to be demanding a £50 billion divorce settlement from us. I hope that we will strongly resist that. But if we are so daft as to publish any weaknesses in our arguments against it, we could end up robbing the taxpayer of billions of pounds. Billions of pounds are at stake.

I am not against impact assessments per se, although I prefer the SWOT analysis. Indeed, I hope that our Ministers and the Prime Minister have them. But I also hope and pray that they are keeping them under a top secret cover and keeping them very close to their chest. The last thing we want is to have them published or shared or laid before Parliament, which is probably even worse than publishing them in the press.

Lord Hannay of Chiswick: My Lords, I will be slightly less cynical than the noble Lord, Lord Blencathra, on the subject of impact assessments. I will speak to Amendment 22 in my name and that of the noble Lord, Lord Lennie, the noble Baroness, Lady Hayter, and my noble friend Lord Kerslake. I will take a less cynical view about impact assessments.

For the historical record, it might interest noble Lords to know that when we were negotiating our

[Lord Hannay of Chiswick]
accession to the European Union, the first thing that we tabled in Brussels was an impact assessment of the European budget on the United Kingdom, which of course had not been part of the European budget until then. It was a very long way different from the one tabled by the Commission in return, but we were actually right. The consequence of being right was a very long negotiation in the 1980s under Baroness Thatcher that resulted in the rebate system. My point is that when we were negotiating with the European Union from the outside, we had no hesitation whatever about producing an impact assessment—and thank heavens we did. Otherwise, we would not have got the commitment from the European Union that if things went as we predicted rather than as it predicted, it would adjust the budgetary burden, which eventually it did.

I want to look forward now and not backwards, because this seems quite odd. We are now a little over eight months from the referendum and it defies belief that the Minister and his colleagues have not conducted impact assessments by now. If not, I am not at all sure what they have been doing—but since I know that he is an extremely hard-working person I can assume that they have in fact quite a lot of impact assessments but are not sharing them with anyone else. It was rather odd, when the Prime Minister spoke at Lancaster House, and even odder when a White Paper was published, that there was not a single blooming figure in either of those two documents—not one. That was a trifle odd. It is not what the Government normally do. It is even odder if they do have impact assessments; it could be that they are so awful that they do not want to tell anyone about them. That also would not be hugely comforting.

I would like to play the game by the Minister's rules. He has argued several times that to publish impact assessments would be to give the game away and give the people with whom we are negotiating some deadly secrets that they would be unable to get from anyone else. Okay, let us play the game by those rules. In that case, there are two impact assessments that could be published which would not have the slightest possibility of doing damage to us. The first is an assessment of where we would be in terms of our economy if we stayed in the European Union. That is not difficult to do, because the previous Government did it. If he looks at the papers that were published last March he will find it all there.

10 pm

The second one—the other bookend is that—the Government could perfectly easily publish the impact assessment of the effect of crashing out without an agreement and applying World Trade Organization tariffs, non-tariff obstacles and all that. Why would that be easy? Because we are doing it already. Those are the rules that we apply to third countries now. Those are the rules which, if we crash out, we will have to apply to our markets in the European Union—and vice versa. So that could be published, and it would not be giving away any secrets: it would simply tell us what the two bookends are. Bookend one is the impact assessment of staying in the European Union; bookend two is the worst possible scenario, namely that we crash out and apply World Trade Organization rules.

I am coming to the end of my remarks. I would like the Minister to say why the Government cannot publish those two bookends, because if we have them we will be able to judge what the Government are negotiating between the two—and I do not think the Minister will deny that they are negotiating somewhere in between those bookends. Somewhere in the middle there is a mysterious thing called a bespoke agreement. If I remember rightly, bespoke suits take longer to make and cost twice as much—but let us leave that to one side. It will be somewhere in the middle, and when we get it we will be able to judge whether it is near one bookend or the other—so why not do it?

Lord Howard of Rising (Con): The noble Lord, Lord Hannay, seems to place great faith in these assessments or forecasts—but they have almost universally been completely wrong, ever since before the referendum. If noble Lords would like an example, I have from the House of Commons Library some comments on the Treasury:

"In May 2016, the Treasury published forecasts for the immediate economic impact of voting to leave the EU. It forecast for a recession to occur in the second half of 2016, with quarterly GDP growth of minus 0.1% in both Q3 2016 and Q4 2016".

A second "severe shock" scenario was an even worse forecast.

"In reality, the economy continued to grow at its pre-referendum pace, with quarterly growth of +0.6%".

That has now been adjusted by the Governor of the Bank of England to close to 2%. Frankly, the assessments and the forecasts are absolute rubbish and there is no point in publishing them.

Lord Hannay of Chiswick: I remind the noble Lord that the impact assessment he is reading from was of course produced by the Government that he supports—although he seems to have little shame about that now. Moreover, if one looks at government legislation that comes through every day, hundreds of impact assessments are produced by the Government he supports. Is he saying that they are all rubbish?

The Lord Bishop of Newcastle: My Lords, I declare an interest as a member of the court of Newcastle University. The amendment tabled by the noble Baroness, Lady Quin, and the noble Lord, Lord Shipley, asks for an impact assessment of the effect of Brexit on the economy of the north-east. When we think about that economy, perhaps our thoughts turn first to the EU funding that the economy receives and then to the manufacturing sector. But the city of Newcastle is deeply enriched by the presence of two first-class universities, and there are 50,000 students in Newcastle. Tomorrow a report will be released to the media which details the extraordinary contribution of Newcastle University to the economy of the north-east.

The university adds £1.1 billion to the economy overall. Newcastle University alone, not including all the other universities in the north-east, is the fourth-largest employer in the region and accounts for 6% of all jobs in Newcastle. In addition, research grants totalling £105 million have helped to support major investment in research projects ranging from research into ageing to subsea and offshore engineering on the banks of

the Tyne. I hope that the Minister can reassure us that the Government will assess the impact of Brexit on our universities, and in particular on our universities in the regions, which clearly are major players in our economic flourishing. If universities are undermined by not being able to attract students from this country, Europe and beyond with limitations on immigration and if they are not able, as Newcastle University does at the moment, to go for staff who are at the top of their field and not see nationality as a limiting factor, as well as being able to attract the EU funding referred to by the noble Lord, Lord Shipley, it will have an impact on them as world-class institutions and on their contribution to the economy of a place such as the north-east.

Newcastle University, like other universities, is a major player, so I hope that the impact assessment will value the economic significance of universities and the contribution that they make to our economy, as demonstrated by the report to be published tomorrow on Newcastle and the north-east.

Baroness Jones of Moulsecoomb (GP): My Lords, I rise to speak finally to the three amendments in this group tabled in my name, Amendments 13, 14 and 15. These are not about the negotiations or begging the EU for a decent Brexit, they are about the things we have to do here in the UK to make sure we have enough environmental protection for the future.

Amendment 13 would ensure that, in relation to EU-derived environmental protections, the UK judicial system would be ready, following departure from the EU, to perform effectively the enforcement functions currently undertaken by the institutions of the EU. As has been noted by many Members of the Committee, the environmental protections currently guaranteed by our membership of the European Union rely on an established and robust system of monitoring and enforcement provided by EU institutions and agencies. We must make sure that we replace them with something. The most important part of the system has been the strong pressure to implement the law, and to do so within a specified timescale. This incentive to adhere to the law arises from the monitoring role of the EU agencies and the Commission acting as the guardian of the law and responding to legitimate complaints. If the Government are serious in their ambition to be the first to leave the environment in a better condition than that in which they found it, Ministers must give details on how this complex and robust system of legal enforcement will be replaced here in the UK.

Amendment 14 concerns environmental regulators and would ensure that, following withdrawal from the EU, the UK's environmental regulators and enforcement agencies—that is, the Environment Agency, Natural England and the Department for Environment, Food and Rural Affairs—are adequately funded and authorised to perform effectively the regulatory functions currently undertaken by EU institutions. Again, effective and robust environmental protection relies on well funded and staffed institutions to monitor compliance with environmental law. It also needs powerful regulators and courts to ensure that breaches of the law are challenged.

For the past 40 years this system of environmental enforcement in the UK has been grounded in the institutions of the European Union, the European Commission and the European Court of Justice. So far, we have had only a few offhand comments from Ministers and one line in the White Paper giving no detail about how this important system of checks, balances and safeguards will function once we are out of the EU. The Government are basically asking us to vote blindly and without caveat for a major upheaval in the way our countryside, wildlife and natural environment are protected. We still do not know whether the Government intend to rely on existing regulators to fill the gap after we leave the EU. It is time to be very clear about what we are going to do, because millions of people care about this.

Amendment 15 concerns access to justice relating to environmental legislation, so that the UK Government would remain committed to providing access to justice on environmental issues for citizens of the UK following withdrawal from the EU. The enforcement mechanisms established by the EU legal framework have been sophisticated. If a member state is deemed non-complaint with EU environmental law, the European Commission can bring infringement proceedings that can ultimately lead to large fines. This independent accountability mechanism has proved quite effective and the risk of penalties for non-compliance has been particularly important in motivating Governments to act, albeit rather slowly at times. But there has been little indication so far of what institutional mechanisms would perform this role. Many of us are concerned that there will be no mechanism at all.

I have listened to most of the debate in this House, either in the Chamber or from my office. I want to combat something I heard earlier. Somebody on the Benches opposite said something about the will of people being that the Bill passes unamended. That is complete nonsense. It is a Bill dreamed up by the Government. Although I understand exactly why the Government have made it this simple, it is our duty to amend it because it simply is not enough.

Somebody else mentioned how it is quite anti-European to be talking in these terms. Personally, I am very pro-European. I can manage to get by in two European languages—three if you count English—and I have many friends who are from the European mainland. I want to dispel the myth that what we are doing from these Benches in trying to amend the Bill is in any sense against the will of the people.

Lord Forsyth of Drumlean: My Lords, it most certainly is against the will of the people. The noble Baroness is quite wrong. The Bill is about firing the starting gun to bring forward what the people voted for, which is our withdrawal from the European Union. The mechanism the Government have chosen is the use of Article 50. I have some sympathy with some of the amendments, including hers, but these are matters that will become the responsibility of the United Kingdom's Parliament. An amendment I should like to make is to the Long Title of the so-called great repeal Bill. As a name, I can think of nothing more inappropriate—

A noble Lord: The Short Title.

Lord Forsyth of Drumlean: Yes, the Short Title; I have been corrected. The Bill's name is misleading, because it will enable us to bring into UK law all kinds of measures, under the jurisdiction of this Parliament. May I ask the noble Baroness a question: is there any aspect of European environmental regulation that she dislikes?

Baroness Jones of Moulsecoomb: I thank the noble Lord for the opportunity. Yes, there is quite a lot I dislike, but that is not for now. There are parts of the common agricultural policy and the common fisheries policy that I dislike very much.

Noble Lords: She voted leave!

Baroness Jones of Moulsecoomb: My point is that we have to make sure our standards do not drop, because we as a nation have got used to very high standards. We need not only to transfer the decent things, but to make them even better.

Lord Forsyth of Drumlean: I have the opportunity to kill two birds with one stone. The noble Baroness has very honestly answered on the things that she would like to see changed. The great news is that, as a result of this, she will be able to persuade this Parliament to do so. Currently, she can make many speeches in this House, as can people in the other place, but we do not have the power to change these matters. That is the great breakthrough. I am surprised that the noble Baroness is tabling amendments to a Bill that is simply starting the process that will enable her to make the kinds of changes that she wants, provided she can persuade a group here. The other bird that can be killed came from a sedentary position. As we heard from the Liberal Benches, the noble Baroness is a leaver. We are all leavers now.

Noble Lords: No!

Lord Forsyth of Drumlean: Oh, apparently we are not. Well, I have been listening to speeches from the Liberal Benches telling us that they accept and respect the results of the referendum.

10.15 pm

Baroness Ludford: Does the noble Lord accept that there is a difference between accepting the result of the referendum and changing one's own personal, passionate convictions?

Lord Forsyth of Drumlean: I do not think we are particularly interested in the noble Baroness's personal conviction when, in the other place, more than 300 elected Members of Parliament put aside their personal conviction and voted for the Bill to come here to enact the will of the people. We had a very revealing glimpse there of how the Liberals are trying to refight the referendum campaign when we should be following the lead of the amendments put down by the noble Baroness, Lady Jones, and others, and thinking about what our policy should be in the future. However, this is a completely inappropriate place to do it. There will be weeks and months ahead when we can debate these matters.

I want to ask the noble Baroness, Lady Quin, a question. Perhaps I am a bit stupid, but I cannot for the life of me imagine how the Government could possibly do an impact assessment without knowing the results of the negotiation and starting that process. Noble Lords on the Liberal Benches say, "Absolutely". If they think that it is impossible to do an impact assessment, why are they putting down amendments asking for the Government to do impact assessments? The answer is: because this is a wrecking measure—another attempt to delay the Bill and prevent it going forward. For example, Amendment 9 in the name of the noble Lord, Lord Shipley, lists all the regions—

Baroness Quin: My Lords, I said at the outset that my amendment was a probing amendment to raise various issues that I thought it was important to bring to the Government's attention. I cannot see the inappropriateness of doing that in this debate.

Lord Forsyth of Drumlean: I am most grateful to the noble Baroness. I suppose then that she will be withdrawing Amendment 6 and I do not need to argue against it any further. As she has always been a doughty champion for the north-east, I completely understand why that should concern her. I simply point out that this is not the Bill in which to make that argument. I have no doubt that there will be an opportunity to discuss these matters when we get the great repeal Bill, as well as in the intervening period. There is nothing to stop people putting down Motions in either of the Houses of Parliament and pressing the Government on any of these matters.

Amendment 9, in the name of the noble Lord, Lord Shipley, lists every region of the United Kingdom and asks what the impact of withdrawing from the European Union will be. Every penny of regional aid for any of these regions is our money. It is money that we have given to the European Union that comes back. That money is not going to disappear. I remember as Secretary of State being forced into supporting projects that were not priorities for us because we had to get agreement that they were additional and that they represented the prevailing policy at the time of the European Union. The difference will be that we are actually able in this Parliament to decide how our money is spent on our priorities in each of the regions. That is a great step forward. I do not, for the life of me, understand how the noble Lord could expect the Government to come up with an impact assessment of that. It will depend on the negotiations, on how much of our money we get back, and on a whole range of issues.

Lord Shipley: The noble Lord said two things that I do not accept. First, he said that the money that comes from the European Union is not going to disappear. There is a real danger that it will disappear because the country is going to be poorer and the Government's tax income is going to be less. There is no evidence at all that all the money that is currently used in structural funds is going to carry on in the same volume. I do not accept that the money will simply be there and will be redirected again by the UK Government.

The noble Lord also asked who would do the impact assessments. Impact assessments are being done for London, Scotland, Wales and Northern Ireland because there are governance structures in place that can do so. The Government have regular meetings with all those bodies. My point has been that the rest of England is being left out from that process. That is the problem and I hope that the Minister can alleviate my concerns later.

Lord Forsyth of Drumlean: I am sure that the Minister in his excellent way will respond to these particular details. I am looking at this amendment, which says that we cannot start the process of leaving the European Union until we have,

"Her Majesty's Government's negotiating strategy for withdrawal on the economy, investment and regional funding of",

all these regions. That is ridiculous—absurd. Perhaps the noble Lord put down the amendment just to have a debate and is not proposing to press the matter, but to say to the Government, "You cannot implement what the people voted for until you have done a set of calculations that are impossible to do until you start the negotiations", looks to me like a circular argument and yet another device from those Benches to prevent us from getting on with what people voted for.

Lord Shipley: Amendment 9 is a probing amendment and I think that the other amendments in this group are similar. There is an issue about whether the Government are prepared to guarantee the levels of funding post-2019 and again post-2020. I very much hope that the Minister will assure this House that the levels of funding will not disappear.

Lord Forsyth of Drumlean: That is not what the noble Lord's amendment says. It is an interesting argument. When he says that the money is going to disappear because we will be poorer, that brings me to the extraordinary Amendment 22, which appears to be supported by a former Cabinet Secretary. It asks for,

"any existing impact assessments or economic forecasts relating to the United Kingdom's future trading relationship with the European Union conducted by HM Treasury, the Department for Exiting the European Union, the Department for International Trade or the Office for Budget Responsibility".

As my noble friend Lord Blencathra pointed out, the Treasury and the Office for Budget Responsibility told us that we would have a recession and limited growth and that unemployment, interest rates and mortgages would go up, all of which has not happened. We have turned out to be the most successful economy in the G7. This continuing running down of our economy and telling people that we will be worse off is not good for confidence or for the Government and it flies in the face of what people voted for. They listened to all these impact assessments and decided not to believe them, which is why they voted to leave the European Union.

Lord Bilimoria: Is the noble Lord finishing?

Lord Forsyth of Drumlean: Is the noble Lord wishing to intervene? The noble Lord, Lord Berkeley, wants to intervene.

Lord Berkeley: I just wonder if the noble Lord would find it useful if one of the four noble Lords whose name is down on Amendment 22 spoke to it before he responded to it.

Lord Hannay of Chiswick: To be absolutely fair, I spoke to Amendment 22 earlier in the name of the others. I am sure that my noble friend Lord Kerslake will now manage to deal with the aspersions cast upon him.

Lord Forsyth of Drumlean: Except that I have not finished. Finally, on Amendment 22, there is an interesting idea in subsection (2). Ministers have been extremely active in engaging with Select Committees and both Houses of Parliament. My noble friend Lord Bridges has done an outstanding job in talking and engaging with everyone. There is an interesting idea that perhaps it is possible as we go forward with the Bill to find some way of operating with committees of Parliament with some degree of confidentiality, although experience tells me that dealing with Parliament with some degree of confidentiality is not always easy to achieve. I am just about to sit down but I give way to the noble Lord, now that he is awake.

Lord Foulkes of Cumnock: The noble Lord is giving former MPs in this House a bad name.

Lord Forsyth of Drumlean: I just say to the noble Lord that at least I am not asleep.

Lord Bilimoria (CB): My Lords, I intend to build on the comments made by the right reverend Prelate in relation to universities and to link that subject into the whole debate about leaving the single market. The Indian Finance Minister is in the country and he was asked a question today about free trade agreements between the UK and India. He made it clear that free trade agreements are not just about tariffs and goods; they are about goods and services and people. He specifically mentioned students and the ability of Indian students to study over here.

A report came out on 23 February saying that almost a third of university academics are from outside the UK. If you look at certain areas—engineering and technology—non-UK academics account for 42% of the staff. In maths, physics and biology, 38% of staff are non-UK and most of them are from EU countries. Then you have the statistic—I declare my interest as chair of the advisory board of the Cambridge Judge Business School and Chancellor of the University of Birmingham—provided by Professor Catherine Barnard from the University of Cambridge, who told MPs that her university had seen a 14% drop in applications this year from EU students. There is, therefore, already a worry about the future of EU students and EU academics.

You cannot just say, "We don't do impact assessments". That would be foolish in business: if I make a forecast and I get that forecast wrong, does that mean that I stop forecasting in future? I would be foolish not to forecast. You have to keep trying to forecast, even though you might not always get it right. Impact assessments are absolutely essential. It is wrong to keep going on about the will of the people and saying

[Lord Bilimoria]
that we therefore do not need to do anything, or to say that the forecasts were all wrong so we can ignore forecasts and experts. We are going to start sounding like Donald Trump complaining about the elites and ignoring the experts. No, we must continue to forecast and have impact assessments. We must look at the concerns of our universities, our academics and our students and at the potential loss of EU students and academics in the future.

Baroness Massey of Darwen (Lab): My Lords, I will speak to Amendment 27. I am pleased that the noble Lord, Lord Bilimoria, has just said what he did about impact assessments, because I, too, am going to speak about them, but in this case in relation to inequality. I support the views of the noble Lord, Lord Hannay, on impact assessments and other issues. Of course they are not all rubbish; they are for measuring and calling to account. That is what we should be doing.

The Equality Act 2010 provides a basic framework of protection against direct and indirect discrimination, harassment and victimisation in services and public functions. It provides protection for people from discrimination because they are perceived to have, or are associated with someone who has, a protected characteristic. It extends the provisions related to disability and includes gender pay discrimination, private clubs and new powers for employment tribunals. The purpose of this new clause is to ensure that the impact of decisions on those with protected characteristics is considered, taken into account and debated at every stage of the negotiation process for Brexit. That is all—just looked at and debated.

The word "equality"—and its implications—is curiously absent from documents from the White Paper onwards. Given the various debates that Britain and Europe have had about race, disability, gender, sexuality, employment and so on, it seems amiss not to be screening for discrimination in these and other areas related to equality. We must have regard for such potential discrimination during the process of our deliberations and in the final deal. This new clause would ensure that considerations of equality were at the forefront of government thinking throughout the withdrawal process and would inform the new arrangements. That is necessary to ensure a good deal for everyone and to make sure that any negative impact on those with protected characteristics was presented up front and that steps were taken to deal with potential negative impacts.

The Minister in another place responded to the deliberations on this new clause by saying:

"The Prime Minister has been clear: we want the UK to emerge from this period of change stronger, fairer, and more united and outward-looking than ever before. We want to get the right deal abroad, but ensure we get a better deal for ordinary working people at home. In the White Paper, we set out our ambition to use this moment of change to build a stronger economy and a fairer society by embracing genuine economic and social reform".—[*Official Report*, Commons, 7/2/17; col. 392.]

What I am seeking in this amendment is a reassurance that practical measures, such as scrutiny of equality implications, and protection will be built into the Brexit process for all, whatever their condition, in all aspects of life.

10.30 pm

Lord Foulkes of Cumnock: My Lords, I will speak briefly in support of my noble friend Lady Quin. Before I do that, I want sincerely to say a word of thanks to the Front Benches on both sides. They have to sit through all these debates—they are obliged to, unlike those of us on the Back Benches. I pay particular tribute to my noble friend Lady Hayter, who has had a very difficult job, treading a high wire; she has done it with great skill and good humour and she deserves our thanks for doing so. I also thank the noble Baroness, Lady Goldie. I do not think that under normal circumstances she would have chosen to spend her birthday in this way, but I am sure that we all wish her many congratulations.

I say to the noble Lord, Lord Forsyth, that the Labour Party was against this referendum. We did not want a referendum. Mr Cameron got us into it in a casual way, without any careful thought of the implications or the impact that it would have. If we had had impact assessments before the vote, we might not have voted to come out. We would have known the implications. That is when we should have had these. We are going to have some very serious impacts in Northern Ireland, as we heard earlier, and in Scotland. The way things are going, we could end up with this whole United Kingdom breaking up, with Northern Ireland opting to be part of a united Ireland and with Scotland as a separate country. That is what David Cameron in his casual way has let us in for. I think that he will go down in history as one of the worst Prime Ministers this country has ever had.

Lord Kerslake: My Lords, I support my noble friend Lord Hannay's Amendment 22. I do so for one simple reason. I have a passionate belief that open government is better government. If we—as those who are in charge, if you like—want people to buy into what we are trying to do, we have to be able to trust them with the information that should be available to them. That is particularly true in relation to Brexit. We know that the referendum campaign was deep and divisive. We reached a point where virtually no one trusted anyone in that debate. That is fundamentally undermining to democracy. There is a growing gap between the governing and the governed, and one response to that is to have transparent government.

We have heard two arguments this evening for why a very simple amendment—to publish the impact assessments that can sensibly be published, which have already been done since the referendum—cannot be made. The first, from the noble Lord, Lord Forsyth, is that you cannot trust impact assessments. Not every impact assessment is good. I might even have been responsible for a few that were not that good. But if that is the argument we are now making—that we will not publish impact assessments because they might be wrong—that way madness follows. What about trusting the people and Parliament to make their own judgment about the quality of the impact assessments? That is what transparent government is all about. If we cannot

trust people to make their own judgment about the information, if we worry that they will be depressed because the impact assessments are too downbeat, there is something seriously wrong with our thinking.

The second argument that we have heard is that it might in some way interfere with the negotiations. It is possible that some information published might cut across them, and there has to be a responsible attitude to that, but I worry that that argument is going to be rolled out time and again to keep Parliament and the public in the dark about what is actually happening through the negotiating period to the point where it is impossible to impact the outcome of the process. We have to have a better system than that. I quite believe that Vladimir Putin does not want to publish his impact assessments, but we are not Russia: we are an open democracy and should trust the people to use the information that is made available to them responsibly. That is why I support the amendment.

The Earl of Sandwich (CB): My Lords—

Baroness Finn (Con): My Lords—

Lord Bassam of Brighton (Lab): My Lords, it is not my job to do this but the House needs to move on. We should hear from the noble Earl, Lord Sandwich, and then go the Front Benches.

Noble Lords: No!

Baroness Finn: My Lords, I do not see the need for any requirement for impact assessments in the Bill, because the need does not arise. As my noble friend Lord Forsyth has said, the Bill is not taking us out of the EU but simply enabling the Government to trigger Article 50. There is no impact to assess from that enabling. This is not the place to get into detail over the negotiations or the structures around them, and it is vital that we do not bind the Government, either administratively or legally, in their negotiations, because that will only undermine their ability to get the best possible deal for the country.

I appreciate that the noble Lord, Lord Hannay, said that my noble friend Lord Blencathra was being cynical about impact assessments, but I dealt with a number of impact assessments when I worked in government and was frequently frustrated by their lack of accuracy. This was in part due to the lack of management information in government departments. Non-executive directors of government departments appointed from outside the Civil Service were often shocked by the poor quality of the information on which decisions were based. My noble friend Lord Maude, who I see in his place, made valiant attempts to improve the quality but I fear there is still a long way to go. Just last week, my right honourable friend Sir Oliver Letwin criticised the quality of advice from civil servants, in particular expressing the concern that not enough of their advice was factually based. My concern is therefore a general one about the utility of such impact assessments.

The other point I was going to make, which I think has already been made, is that impact assessments are inherently driven by a number of assumptions and predictions. I do not want to labour the issue, but various predictions made about the immediate consequences of Brexit—not only by Her Majesty's Treasury but also by the IMF, the IFS, the OECD and the Governor of the Bank of England—failed to materialise. My concern is that impact assessments could well be of dubious quality and accuracy. On that basis, I urge noble Lords not to press their amendments.

The Earl of Sandwich: My Lords, I do not know what the Conservatives are worrying about. I have listened to the noble Lord, Lord Forsyth, saying the same thing again and again. We need to have open government, as my noble friend Lord Kerslake has just pointed out. We are helping the Government by moving probing amendments. The noble Baroness, Lady Quin, has given a direct reply and that should surely be satisfactory. I am not going to waste too much time but will speak about developing countries, because I believe we should have an impact assessment relating to the effects on those countries. I have spoken to the Minister and know that he is kindly going to reply to this. I will be as quick as I can and will not repeat what I said at Second Reading.

Amendment 28 reflects my concern about the effects of withdrawal on the least developed countries and countries recovering from conflict. I have consulted the Overseas Development Institute and Traidcraft, the experts in this field. I know one of the answers the Minister will give is that we really cannot tell what the effects will be in numerical terms at this point. It might be of interest to him that the ODI estimates that the least developed countries could lose approximately £323 million annually if current preferential access in the UK is discontinued.

I accept that there will be pluses and minuses. On the one hand we may be sacrificing the interests of the ACP countries that currently benefit from their association with the EU, especially the smaller states and islands that are vulnerable to climate change. On the other hand, some countries—sugar cane producers, for example—will have suffered from the EU's protection of its own markets and may well want us to abandon fortress Europe in favour of bilateral agreements through the WTO, or a new version of the generalised system of preferences, and I accept that.

But not yet knowing the maths does not mean that we can take no action. The interests of LDCs have not been mentioned in any of the documents relating to withdrawal. The Government must surely undertake a review of some kind and assess whether these countries will be damaged; how we respond to that must be part of the negotiations. We may well have to introduce or reintroduce aid policies to make up for any losses in trade and investment. Aid agencies generally see fair trade agreements as more beneficial than aid, but they fear that Brexit will mean new free trade agreements or EPAs that could disadvantage poorer countries. They would like to see trade policies which are linked to the sustainable development goals, so crafted that they are lined up with those countries' own objectives. I quote Sir Simon Fraser's Tacitus lecture. He said,

"these EU trade agreements are vital for their development goals. The UK will no longer be able to champion their access to the EU market as we have in the past. We have a moral responsibility to address the concerns of these countries, which illustrate how Brexit may have unforeseen repercussions well beyond Europe".

[The Earl of Sandwich]

Finally, I mentioned security and enlargement in eastern Europe, another area in which we may need to use our aid programme to make up for shortfalls left behind. NATO membership will not be enough. If we withdraw from the EU the economies in those countries will suffer. We need to know the effect of our withdrawal on aid programmes as well.

These are my concerns and it is not asking a lot of the Government to say that they need to make some assessment. We have a considerable reputation as a trading and aiding nation and we must take care not to damage our relations with countries that respect our values and traditions, both in the Commonwealth and in the rest of the world.

Baroness Kramer (LD): My Lords, it is getting late and I will therefore try to be brief. First, I congratulate the noble Lords and noble Baronesses who put their names to the various amendments in this group, because probing amendments are an entirely appropriate part of our process. Every one of these amendments reflects an underlying anxiety that exists in different sectors and in different regions of our country. People engaged in activities, from universities to working with less developed countries, feel that their issues are not being considered by the Government at this crucial time as they choose to trigger Article 50 and that, if those issues are not considered at this time as the Government consolidate their negotiating position, they will never be properly considered anywhere in this process, so I see this as entirely appropriate.

Lord True (Con): My Lords, I fear that this is an entirely spurious argument. We have wonderful Select Committees in this House which have produced outstanding reports; we have had debate after debate on these matters; we have opportunities for many other such debates; and we have other legislation coming. What we have before us is a one-clause Bill. We have had seven hours of debate and we are on only the fifth group of amendments. We have probing amendments which people say they have no intention to carry. There are other fora in this House to have those kinds of discussions. We should get on with delivering what the people and the House of Commons have asked us to deliver.

Baroness Kramer: I say to the noble Lord, Lord True, that there is a real difference of opinion within this House. For many, the point at which Article 50 is triggered is one at which they need that reassurance, and I hope that the Minister will take that on board because we have quite a range of amendments that have come forward. The amendment of the noble Baroness, Lady Jones, stands rather separately because it focuses on issues around the regulation and enforcement of environmental protection under whatever will be the new regime. However, nearly all the other amendments call for an impact assessment because there are regions of the country and sectors of our economy that are concerned that the Government have not taken their issues on board and do not understand the impact that the shape of their negotiations will have on those regions and sectors. My noble friend Lord Shipley is exactly right to say that the Government have thought that impact assessments were entirely appropriate for some sectors and regions, including London, the region that is closest to my heart. That does not mean that the same degree of attention, engagement and dialogue is not necessary for other parts of the country and those many varied sectors. As I say, I hope the Government will take that very much to heart.

10.45 pm

A number of noble Lords said that impact assessments were pointless. Let us hope not, because it is precisely on the basis of impact assessments that the Government are shaping their trade negotiations and sending out their negotiators to talk to Mr Barnier and the other members of the EU negotiating team. If they have done those assessments badly, we are all going to pay a price.

One way to be assured that the assessments have not been done badly is to pick up exactly the point of the noble Lord, Lord Kerslake, and ensure that they are in the public arena so that there is proper dialogue around them and, where there are problems and issues, that they are identified before mistakes are locked into a negotiating process. I say this as someone who has watched government negotiations very close-up on a number of issues, and I am very concerned about the closed thinking that often shapes government negotiations and becomes their inevitable flaw.

A point that was made by the noble Lords, Lord Blencathra and Lord Forsyth, was that an impact assessment that showed where we had strengths and weaknesses would undermine our negotiating position. The first rule of any negotiation is to respect the other side. The assumption that Mr Barnier, with all the resources of the EU behind him, is incapable of doing an impact assessment in as much detail as the British Government, or perhaps even greater detail, is a foolish one. The other side will know our strengths and weaknesses before we go into that negotiation, and that is something that our negotiators in turn should be very well aware of. It means that a level playing field is established very quickly in the negotiation.

Lord De Mauley: The noble Lord, Lord Hannay, told us earlier of a specific example of where our impact assessment was completely different from that of the EU.

Baroness Kramer: You can have differences, but the point is that those differences become relevant in the process of negotiation. The noble Lord, Lord Hannay, pointed out that by being clear about our impact assessment we gained strength and opportunity and were able to position ourselves far more effectively in the negotiation. As someone who has spent a lifetime in negotiation, one thing that bothers me is constantly hearing negotiation discussed as if it were some sort of poker game. It is not; it is a grown-up activity. Making sure that our negotiators fully understand where they stand and what the issues are, and that that is done best by transparency, is fundamental. I say to those who simply dismiss the idea that we need to deal with our weaknesses as well as our strengths that that strikes me as just an extraordinary situation. If we do

not recognise, discuss and understand our weaknesses, I do not know how we will put together a negotiating position.

I am not going to continue because these are only probing amendments. I look very much to the Government to take on board the underlying message, which is that many parts of the country and many sectors feel disengaged. The Government have said that they have certain priorities. When I talk to those in the financial services industry, they say, "We've been guaranteed top priority. Others will be sacrificed for us". If that is the message, it is one that leaves people genuinely, and appropriately, worried. That discussion has to take place; we need to know on what basis all this will move forward.

Impact assessments are a normal part of a normal process. Transparency around such assessments is also a normal part of that process. I hope that the Government will recognise that and not try to pretend that they are entering into a poker game rather than a mature negotiation.

Lord Lennie (Lab): My Lords, Amendment 22, on impact assessments, seeks to put us on a level playing field with the Government. We want the information that has already been published—the impact assessments that may have taken place, or have taken place, since the referendum in the various departments listed: nothing more, nothing less. Others have commented on other areas of the work of the European Union where we stand to suffer a loss, and they are right to make those comments. They referred to the north-east, the environment, equalities and so on.

In the Commons the big issue was how to deal with confidentiality. We have made provision for that by the subsection of the proposed new clause in Amendment 22 that defines the right of the Government to hold back from publishing anything that they feel would harm our negotiating position in any way, for any reason, and to restrict it to a few wise heads. We do not even define how that should happen. It could be on Privy Council terms or whatever other terms the Government wanted. That seems to me an entirely sensible way to proceed. I shall not detain the House any longer, but I ask the Minister to respond to these requests in the spirit in which they have been made. These are probing amendments, which we expect to be useful, and we look forward to a positive outcome to the discussion.

Lord Bridges of Headley: My Lords, I, too, shall try to keep things brief. To pick up on what the noble Lord just said, I share the motive that I believe genuinely and sincerely underpins many of the amendments, which is to ensure that Parliament has the means to scrutinise the negotiations as they proceed. Obviously, that is the subject of the next group of amendments, which we want to get on to, but let me say now that the challenge that we—that is, Government and Parliament—face is to get the balance right between providing enough information to enable scrutiny and ensuring that our negotiating position is not revealed.

I would argue that some of the amendments fail that test, as they would expose the Government's negotiating position. The noble Lord, Lord Bilimoria, and others spoke about business and business experience, and I have to say that I disagree with the noble Baroness, Lady Hayter, on this point. We have had many amicable discussions but I disagree with her on this. I see it as a cardinal rule of any negotiation not to tell those on the other side of the table how much certain scenarios and outcomes would cost or benefit you—but that is what the publication of an impact assessment would do. I fully accept that Amendment 22, which the noble Lord just mentioned, accepts that an impact assessment could be kept confidential. The whole matter of sharing information is the subject of the next group. All I would say at this stage is that this Bill is not the vehicle to insert conditions on negotiations.

Since the referendum the Government have indeed been undertaking rigorous and extensive analysis work to support our exit negotiations, to define our future partnership with the EU and to inform our understanding of how EU exit will affect the UK's domestic policies and frameworks. This includes analysis of what it means right across the UK, including regional analysis. I realise that this House and the other place are obviously eager to know more. So let me repeat to your Lordships what I and my fellow Ministers have said before—I am thinking specifically of the noble Lord, Lord Hannay, when I say this. If and when we believe we can share further information, we will—so long as it does not undermine our negotiating position. We will ensure that our Parliament receives at least as much information as the European Parliament.

Let me now address some specific points that were raised. Amendment 27 refers to the Equality Act 2010 and protected characteristics. We are of course aware that exiting the EU will herald change in a whole host of ways. I can assure the House that all the protections covered in the Equality Act 2006 and the Equality Act 2010 will continue to apply once the UK has left the European Union. The UK is already well placed to continue championing equality, thanks in part to the legal protection assured by the Equality Acts.

The public sector equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations between people who share protected characteristics and those who do not. We will continue to comply with our legal obligations under that Act.

I agree with the sentiments of Amendments 13, 14 and 15. The UK is fully committed to remaining an international leader on environmental co-operation. As part of the great repeal Bill, we will bring current EU law, including the current framework of environmental regulation, into domestic British law. As my noble friend pointed out, any changes to it would be subject to parliamentary scrutiny and approval. However, this is not the time to set down in statute anything on environmental regulation.

As to the Aarhus convention, this is a United Nations agreement to which the UK is a party in its own right, meaning that the convention will continue to apply to the UK after we leave the EU. Many of those convention obligations are currently implemented through EU law, which, as I say, will be converted into domestic law.

[Lord Bridges of Headley]

Amendment 28 refers to the impact of withdrawal on the UK's trade, security and aid policy towards developing and post-conflict countries. As I have said, leaving the EU does not, and cannot, mean the UK turning its back on Europe or the rest of the world. We will continue to face the same global challenges. We want to work with our partners in Europe and elsewhere to alleviate suffering and hardship. Doing so is not just in our national interest, it is the right thing to do. Therefore, we aim to enhance our strong bilateral relationships with our European partners and beyond, projecting a truly global UK across the world. As your Lordships will know, we are one of only a handful of countries in the G20 that has pledged to, and delivered on, spending 0.7% of GNI on overseas aid, and the UK will continue to be one of the most important global actors in international affairs.

As to trade, to which the noble Earl referred, the UK's exit from the EU creates a major opportunity to send a positive signal that our markets are open and that we wish to forge new trade deals with nations across the world, both developed and developing. I know that this House and the other place will wish to debate this in the months to come. My door remains open to the noble Earl and others to discuss this. However, once again, now is not the time, and this Bill is not the place, to commit to publishing a report on this prior to notifying under Article 50.

Amendments 9 and 6 call for impact assessments on the individual regions of the UK to be published before we trigger Article 50. I assure the noble Lord, Lord Shipley, that I and my fellow Ministers in other departments regularly talk to local government and regional organisations about a whole range of issues as we are completely committed to securing a deal that works for the entire United Kingdom. To illustrate that, my Minister of State met the chairman of the Local Government Association in January and will hold further regular meetings. He has held a joint meeting with the Local Government Associations in England, Scotland, Wales and Northern Ireland. There are monthly meetings hosted by the DCLG, including representation from local government, the local enterprise partnerships, the National Housing Federation and the Society of Local Authority Chief Executives. On top of that, my Secretary of State is already committed to bringing together the northern elected mayors for a summit in York in the summer, to which the mayors of Liverpool, Greater Manchester, Tees Valley and Sheffield will be invited. So we are very engaged. If the noble Lord or the noble Baroness wish to meet me to discuss this, and have further ideas on how we can do more, I am all ears.

As regards funding, all I can say is that where we can we will give as much certainty as possible. My right honourable friend the Chancellor has confirmed that the Government will guarantee EU funding for structural and investment fund projects, including agri-environment schemes, signed before, and which will continue after, we have left the EU. Funding for projects will be honoured by the Government if they meet the two following conditions: they are good value for money and in line with domestic strategic priorities. However, when considering this amendment, I repeat the point I made earlier that such a publication of regional impact assessments would not serve to strengthen our negotiating position, any more than a general impact assessment would.

While I understand the wish and desire for more information, the Government cannot, and will not, do anything to undermine our negotiating position. We will not accept conditions being attached to a Bill that has a very simple purpose—to deliver on the result of the referendum. Therefore, I ask the noble Baroness to withdraw her amendment.

Baroness Quin: My Lords, as I made clear from the outset, my amendment and, I believe, others in this group simply sought to raise issues that we feel it is important for the Government to consider, even at this early stage. I am glad that the majority of contributions to this debate show that that purpose was worth while. I thank the Minister for his reply. I am sure that I and others would like to take up his offer of further dialogue on these important issues. I hope, too, that he and his officials will look at some of the points raised in this debate that he has not been able to answer in his wind-up speech and perhaps write to us on those important subjects. Having said that, and repeating that it was a series of probing amendments, I beg leave to withdraw this amendment.

Amendment 6 withdrawn.

Amendment 7 had been retabled as Amendment 9A

11 pm

Amendment 8

Moved by ***Lord Warner***

8: Clause 1, page 1, line 3, at end insert—

"( ) Within a period between 9 and 12 months from the date of a notification under section 1, the Prime Minister must lay before each House of Parliament for their approval a report on progress on withdrawal negotiations with the EU that covers progress on—

(a) future trading relationships with the EU, and an assessment of the implications of likely changes in those relationships for the major United Kingdom industries and sectors;

(b) future arrangements for the movement of citizens of the EU and the United Kingdom between each other's territories;

(c) the cost and make-up of the exit charge to be paid by the United Kingdom to the EU;

(d) the likely implications of these negotiations for the devolved administrations, especially the border between Ireland and the United Kingdom; and

(e) such other matters the Prime Minister considers should be included."

Lord Warner: My Lords, we come at this late hour to an important group of amendments, which provide for greater parliamentary oversight of the withdrawal negotiations. I support all these amendments but I will contain my remarks to Amendment 8 in my name and that of the noble Lord, Lord Oates.

As I hope I have made clear already, I am not seeking to delay the start of the negotiations but I believe strongly that there must be statutory provision for much greater parliamentary oversight of the

negotiations before we reach the end game than the Government have so far been willing to accept. Amendment 8, rather kindly, lets the Government get on with the negotiations after Article 50 is triggered for about half the two-year period provided for in Article 50. That is in part because I am not convinced from what I have seen from both the EU's and the Government's likely approaches that much will be settled that quickly.

However, as we approach—if I may put it this way—the half-time period in this game, I suspect there will be more goalmouth scrambles and possibly even a goal, but I am less than sure of the net. Some time after nine months and before 12 months from the triggering of Article 50, this amendment requires the Prime Minister to lay before both Houses of Parliament for their approval a progress report on the withdrawal negotiations. It specifies four key areas that must be covered in the report: future trading relationships for the major UK industries and sectors; future arrangements for the movement of EU and UK citizens between each other's territories; the cost and make-up of the exit charge to be paid by the UK; and the likely implications for the devolved Administrations. The amendment enables the Prime Minister to add to the report any other aspects of the negotiations she wishes and to decide when within the three-month period she reports to Parliament. But return she must and secure Parliament's approval of the progress that has been made—or not, as the case may be.

The reason for this amendment is the deep scepticism many of us have about the capacity of the Government to secure a satisfactory outcome from these negotiations that serves the best interests of the UK. As I said on Amendment 3, there are widespread concerns about the Government's approach to the negotiations, even among those who voted to leave on 23 June. Some of those people are saying to me and to others that they would not have voted to leave if they had realised how the Government were going to go about the withdrawal negotiations, particularly the withdrawal from the single market and the customs union. Announcing that decision up front has only increased those anxieties and concerns and made people wonder what other mischief the Government will get up to in the negotiations.

I believe that there are big question marks over the quality and quantity of the UK's negotiating capacity. If I may say so, there has been a great deal of swagger and bravado from Ministers and their parliamentary supporters about the strength of their hand and how much the EU needs the UK, together with the glittering array of trading opportunities that await us once we are out of the EU. I have not noticed that optimism being shared by many of the expert trade or EU negotiators. Most of the stories that have appeared have been about the lack of Whitehall's preparedness for the leave negotiations and the shortage of skilled negotiators available to the Government. There is no crack negotiating team just waiting to be helicoptered over the English Channel in the best traditions of the SAS.

We should be extremely cautious about allowing the Government to effectively bypass Parliament on these negotiations until it is too late to do much about an unsatisfactory outcome other than reject the deal. That is why, when we come to it, Amendment 17 on parliamentary approval of the outcome of the negotiations will be so important, and I shall certainly support it.

However, I suggest that it is not sufficient to rely simply on Amendment 17, important though it is. Parliament needs to be more clearly and statutorily involved in the withdrawal negotiations at a much earlier stage and to be able to sound warning bells if things seem to be going seriously off piste. That is why I hope something like Amendments 8 or 18 will be agreed before the Bill leaves this House. I am not a proud author. If Amendment 18 is liked more, I shall be happy to support it.

I suggest that if I were in the Prime Minister's shoes—although perhaps that is not a very good metaphor—I would be secretly pleased that a load of parliamentarians were overseeing these negotiations and some of the likely deals that might have to emerge at some stage before the end game. I suggest that that would give her a bit more political cover if things were going a little awry and were not where she wanted them to be. Therefore, I think that this is a helpful amendment for the Government and I hope the Minister will consider it carefully. I beg to move.

Lord Oates: My Lords, given the late hour, I shall speak briefly in support of the noble Lord, Lord Warner, and the amendment he has just moved. Many of us have been deeply shocked by the approach that the Government have chosen to take post the referendum. Clearly, none of us in this part of the House was happy with the referendum result, but some of us thought that with a new Government we had a grown-up as a Prime Minister and that the approach taken would be sensible, measured and thoughtful. However, I am afraid that since 23 June the evidence has been absolutely in the opposite direction. Therefore, it is particularly important that Parliament has a proper role in this matter.

The noble Lord, Lord Warner, has set out some of the key points of the amendment relating to our trading relationships, the movement of citizens, the potential exit charge and the implications for the devolved Administrations. The Minister, the noble Lord, Lord Bridges, has said a number of times, including recently, that the Bill is not the place to constrain the Government's negotiating position, but I think many of us here want to ensure that Parliament has a role in constraining because we are so alarmed at what has taken place since 23 June. I am afraid that scepticism has been caused by the Government's actions, and they have only themselves to blame for that. I think the Government, Parliament and the whole process would benefit from proper information being provided to Parliament so that we can assess this process as it goes on and do not just get to a cliff edge at the end, finding the catastrophic position that some people outlined in earlier debates. On that basis, I strongly support the amendment moved by the noble Lord, Lord Warner.

Baroness Jones of Moulsecoomb: I support Amendment 18. All these negotiations are going to be complex and long and for the Government to

[Baroness Jones of Moulsecoomb]
expect a respite from parliamentary scrutiny would be quite wrong. If we have a commentary it will also raise the likelihood of Parliament accepting the outcome, because there is nothing worse than something being sprung on you. My noble—I was going to say my noble enemy, but my noble opponent—the noble Viscount, Lord Ridley, said earlier that the leavers had actually come round to the thought that if we lost the referendum, we would accept the result, and I think that that is partly because we talked through those things, we actually thought about it. It will be true for the EU negotiations as well that if the Government give as much information as they possibly can then the whole nation is more likely to accept what has happened.

Lord Blencathra: My Lords, I oppose this amendment partly on the basis that we do not need to put it in the Bill and partly because I think I have heard my noble friend say on countless occasions that we will have scrutiny after scrutiny in this House and, no doubt, in the other place. We have no legislative requirement at the moment to scrutinise the EU. Does the Minister have at his fingertips, or will he be able to tell us in his reply, how many Oral Questions we have had answered on this? We seem to have one on the Order Paper every day on an EU issue. Half the Order Papers have Written Questions on the EU. We have some excellent Select Committee reports from our Select Committees—we seem to debate one every week—and we have countless other debates. We are having more scrutiny that I think we can cope with.

My worry is that once we trigger Article 50 this House will have nothing much to do next year. The other place will start with the great repeal Bill. All we will have will be the EU retaliating immediately after we have put in our bid and saying, "We are not having any of that nonsense—we want £50 billion, thank you". We will have German and French elections—the Dutch elections may be over by then—and we will have information coming from Europe which will be from politicians and will not be helpful. All we will have, in the other place and in this place, will be colleagues rushing in, demanding Urgent Questions, putting down Motions here, there and everywhere, demanding ministerial Answers.

Lord Warner: If the noble Lord reads my amendment he will see that the Government will actually have a clean bill of health for at least a year before they need to come back to Parliament on any of these issues.

Lord Blencathra: Exactly what I was about to say was, if we could have these amendments where we will have an annual report, or a quarterly report, I think I would be happier to have that, in a structured form, agreed between the Government, the usual channels and the Select Committees, so we could have proper, structured debates on good nuggets of EU information, rather than the daily panics we are about to have as colleagues from all sides and in the other place, rush in demanding Urgent Questions on every rumour and scare story which comes from Europe. I do not think that we need to put in the Bill that we are going to have scrutiny: we can do scrutiny at the moment—we may be doing too much of it. Let us try to structure it so as to have sensible debate over the next two years.

The Earl of Kinnoull (CB): My Lords, oddly, I am in the very strange position of mildly disagreeing with the noble Lord, Lord Blencathra, but certainly disagreeing with Amendment 18. I commented in my Second Reading speech that I felt that anything that added to uncertainty was very bad news and that uncertainty where commerce was concerned was bad news because that was the root of our prosperity and gave us our services that we need so dearly. I felt that uncertainty for people was particularly bad. We have had lots of uncertainty for people; we talked about the people of Northern Ireland this evening and there are lots of other people as well.

The other thing I said was how powerful our Select Committees are. I sit, as I remind the House, on the European Union Select Committee. We have already delivered, since Brexit, 10 reports for debate in eight months and there are a further seven reports for debate coming along. Tomorrow, I am sitting in a meeting talking about other reports that will come up before the anniversary.

Amendment 18 reckons that there should be one debate every quarter. I cannot believe that that is right. The Select Committees are serving up things for the House at a good rate and we are completely impartial. We are of this House and as and when we identify matters that need to be debated, boy are we down there like a rat down a hole. We make sure that the relevant people come before the House and the full expertise of the House can be brought to bear. Putting in place a structure like this makes the work of the Select Committees more difficult. It makes it more difficult for us to get Ministers, their staff and others before us answering sometimes more than two hours of tough questioning from people who are intelligent and engaged in what is going on. It would shut down opportunity to debate in this House were we to support Amendment 18. We should not fetter the House at all.

It is not only the Select Committees that will keep the Government right. One year after the end of this process, of course, there will be an election. If the Government are not right, they will be flung out. Accordingly, the best way of handling this is not to have formal structures, quarterly meetings or any of the other things in these amendments, but to rely on the strength of our own wonderful system of Select Committees. We should use them and the threat of being thrown out at the next election to make sure that the Government are fully held to account in this difficult process which will require all of us to co-operate.

11.15 pm

Lord Berkeley: My Lords, I will speak briefly to Amendment 24 in my name and that of my noble friend Lord Lea. In the last grouping, I thought that the response of the Minister to my noble friends Lady Massey and Lady Jones on the issues that they raised was very helpful. As we are in Committee, it is reasonable for us to be able to probe issues of concern to us and I

hope that we will be able to continue to do that. Amendment 24 asks the Minister whether the Government have considered what will happen to these 22 different agencies—there are probably an awful lot more—with a very wide remit. We will be talking about some of them such as Euratom on Wednesday. What do the Government think will happen to these agencies? It would still be possible under certain circumstances for the UK to be represented on some of these agencies, depending on the future structure of and our relationship with Europe.

What I get from discussions with many different organisations—some of the ones listed here, particularly the railway ones, but quite a few others—is the uncertainty. Manufacturers and the industry are worried about it. My noble friend Lord Mandelson spoke about this earlier. This is to do with standards and who administers them and it affects whether or not a piece of equipment can be sold or operated within the EU.

I hope that the Government have started thinking about all these agencies. They obviously have about some of them because the medical agency has already decided to leave, which is very sad. But each one is a fairly major agency in its own right and affects a lot of people's jobs and businesses. So I would be very pleased to hear from the Minister what thought has been given to this. I cannot believe that any of it is really confidential, but I look forward to hearing his comments.

Baroness Ludford: My Lords, I support this amendment. A good case was made by the noble Lord, Lord Warner, and my noble friend Lord Oates. Indeed, the noble Lord, Lord Blencathra, made a very good case for structured scrutiny instead of ad hoc questioning. That is exactly what these amendments do. I cannot see what objection there could be to laying down the parameters for progress reports or access to documents, as proposed in Amendment 18. Today we heard a second former Prime Minister give a very interesting speech. John Major said he has watched with concern as the British people have been led to expect a future that seems unreal and overoptimistic. He urged the Government to be realistic about the timescale and complexity of the huge undertaking that lies ahead. Those are wise words. I thought that the words of Tony Blair were wise, too. It is funny what kind of alliances one is forging in these times.

Such warnings should be heeded. The complexity of the task demands the kind of scrutiny and reassurance that would come from regular reporting. I am sorry to disagree with the noble Earl, Lord Kinnoull, who contributes so wisely on the EU Select Committee and, indeed, on the same sub-committee that I do. Select Committee inquiries and reports are very different because they are on certain topics and issues. They are not the same as regular reporting on the progress of negotiations and the detail of what exactly our relationship is going to be with all the agencies listed in the amendment tabled by the noble Lord, Lord Berkeley.

We on these Benches believe that it is very important to lay down an overall framework covering the regularity and content of reports and knowledge of documents. We have heard pledges from the Secretary of State that the Westminster Parliament will not be treated any worse than the European Parliament—a scenario evoked by my noble friend Lord Teverson. There cannot be any objection to the Government agreeing these kinds of parameters.

Lord Lennie: My Lords, in Amendment 18 we seek a quarterly report on the position that the Government have reached in negotiations across the European Union. It is quarterly rather than bi-monthly because the latter was dismissed by the Commons as being rather too frequent—so it was looked at and extended. We want to make sure that we are at least as well informed in this place as in the European Parliament by the provision of the public documents that are available there during this process.

The Government have now said that we will always be as well informed as the European Parliament, so now is the opportunity for them to prove that they mean what they say and confirm that this will be an acceptable way forward. It will not be sufficient to come back at the end of the process with a take it or leave it deal. Much, much more will be needed in the intervening period. The Government should properly recognise the expertise available in this place, which has been contributed partly today and partly in the debate that has already taken place—and which will also be contributed next week.

The technical agencies listed by the noble Lord, Lord Berkeley, are essential working bodies. They are bodies that the Government volunteered to become part of; they exist because of the unanimity about their need to exist in the European Union. It therefore seems perfectly appropriate to ask what on earth happens when we leave the European Union to those affected by the work that these bodies undertake.

These are the two fundamental questions in the amendments and I ask the Government to agree to quarterly reporting and to publish a report about continuing co-operation with the agencies listed in the amendment tabled by my noble friend Lord Berkeley.

Lord Bridges of Headley: My Lords, restoring parliamentary sovereignty lay at the core of what the British public were seeking to achieve when they voted to withdraw from the EU, so it is right that Parliament must and shall play a key role in scrutinising and shaping our withdrawal. As I said in my remarks on the previous amendment, the issue is one of balance. Parliamentary scrutiny must not come at the price of exposing our negotiating position and jeopardising what is in the national interest. All the evidence suggests that we can find common ground on this issue and get the balance right.

The EU Committee of this House produced a report last autumn that noted:

> "Parliament can make a significant contribution to the development of the Government's thinking, using conventional means such as debates and Select Committee inquiries".

However, it also got to the heart of the matter when it acknowledged that scrutiny cannot jeopardise our national interest, saying:

[Lord Bridges of Headley]

"We agree with the Government … that Parliament should not seek to micromanage the negotiations. The Government will conduct the negotiations on behalf of the United Kingdom, and, like any negotiator, it will need room to manoeuvre if it is to secure a good outcome".

It is worth remembering that this is something that the other place agreed with overwhelmingly when it was put to a vote on 12 October last year. Furthermore, it should be noted that this approach is shared by the European Commission itself. Its factsheet on EU trade negotiations states:

"A certain level of confidentiality is necessary to protect EU interests and to keep chances for a satisfactory outcome high. When entering into a game, no-one starts by revealing his entire strategy to his counterpart from the outset: this is also the case for the EU".

Before I turn to the amendments, let me set out some of the steps that the Government have taken and will continue to take to ensure that Parliament is able to scrutinise Brexit. I start by answering a question asked by my noble friend Lord Blencathra about what I have done since Brexit. Since 23 June, I have given six Statements to your Lordships; my noble friends and I have taken part in four debates and answered 18 Oral Questions, which shows my willingness—I enjoy every minute of it—to deliver on this commitment. Along with that, Ministers in my department, myself included, have made no fewer than 13 Select Committee appearances. We believe that this approach is better than the one suggested in Amendment 18 for reasons that I will come on to.

We will continue to support and welcome the Take Note Motion debates that will tackle the most difficult aspects of our withdrawal, as well as the debates that emanate from the Select Committee reports referred to by the noble Earl and produced across Parliament. We are also continuing the programme of debates in government time in the other place. DExEU Ministers will also continue to appear at the EU Committee after every European Council and General Affairs Council, in addition to the Prime Minister giving a Statement in the other place, and my noble friend the Leader in this House, after every European Council. Ministers from across the Government will continue to give evidence at Select Committees on a wide range of withdrawal-related issues. Over and above this, we will also deliver on our commitment to ensure that this Parliament gets as least as much information as the European Parliament.

Parliament's role goes beyond scrutiny, a point that I would say the noble Lord, Lord Warner, somewhat underplayed, for Parliament will also be a decision-maker. The Government will bring forward a Motion on the final agreement to be approved by both Houses of Parliament before it is concluded. We expect and intend that this will happen before the European Parliament debates and votes on the final agreement. Parliament will also shape the legislation required to give effect to our withdrawal from the EU, including the Bill to repeal the ECA and the legislation that will be required for any significant policy changes. For example, we have said that we expect to bring forward separate Bills on immigration and customs, plus a programme of secondary legislation to address deficiencies in the preserved law. So we entirely accept the spirit of the amendments before us today.

However, there are several reasons why the Government cannot accept them. Some are superfluous in that what they are seeking to achieve while others are prohibitively inflexible or prohibitively broad, but most important of all, none of them is relevant to this Bill which has a sole purpose: to trigger the process by which we leave the European Union. Let me expand briefly on these points.

As regards Amendment 18, I recognise the desire to formalise a timetable for scrutiny of negotiations, but it is much better that the Government should come back to this House at the point at which they have something significant to update noble Lords on, and as I have said, we have shown our willingness to do that. Amendments 8 and 24 will delay us from triggering Article 50 until the Government have reported to Parliament about how the UK will continue to co-operate with some 16 agencies or institutions. The noble Lord, Lord Berkeley, is right to highlight the importance of these agencies. I am more than happy to meet him to discuss them all. They are very important and flagged in the White Paper. But, looking at the words of the amendment, I argue that many people want us to get on with the negotiations. I do not think they want us to hang around while the Government produce reports on agencies such as the Community Plant Variety Office, even though we are a nation of gardeners.

Other amendments are problematic because they force us to reveal what should remain confidential and may well still be under negotiation. Amendment 8, tabled by the noble Lord, Lord Warner, requests Parliament's approval on a report about the progress of the negotiations some nine to 12 months after we have notified. It includes an impact assessment on how trading relationships with the EU will affect UK industries and sectors, and a report on the cost and make-up of the exit charge to be paid by the UK to the EU. It also says that these reports should be made for Parliament's approval, meaning that the Government could be committed to an outcome from negotiations before we are able to judge what might be deliverable. Plainly, the Government cannot accept such prescription. Doing so would fall foul of the very concern that the Select Committee of this House raised: micromanagement and restricting the Government's room for manoeuvre.

The Government entirely accept the need for parliamentary scrutiny, but these amendments are unnecessary or detrimental and have nothing to do with the purpose of the Bill, which is to deliver on the referendum result and to allow the Government to trigger Article 50. I therefore ask that noble Lords do not press them.

Lord Warner: My Lords, I am grateful to the Minister for his explanation. It does not totally surprise me what his attitude is towards this, but the idea that there is one report back to Parliament half way through a two-year negotiating period hardly seems micromanagement of the Government's negotiations. Some would say that I have been rather kind in waiting for nine to 12 months before we got that report back. I will certainly read the Minister's comments and consider what has been said, but there is an issue about how we

take an overall look at the negotiations at a reasonable period after they have started, but before we reach the end game. I will talk to other colleagues before Report, but in the meantime I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Amendment 9 not moved.

House resumed.

House adjourned at 11.32 pm.

Grand Committee

Monday 27 February 2017

Technical and Further Education Bill

Committee (2nd Day)

3.30 pm

Relevant document: 16th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Dear) (CB): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Amendment 12

Moved by ***Lord Watson of Invergowrie***

12: After Clause 1, insert the following new Clause—

"International students and staff

(1) The Secretary of State has a duty to encourage international students to attend further education providers covered by this Act.

(2) The Secretary of State shall ensure that no student who has received an offer to study at such a further education provider shall be treated for public policy purposes as a long term migrant to the UK, for the duration of their studies at such an establishment.

(3) Persons, who are not British citizens, who receive an offer to study as a student or who receive an offer of employment as a member of academic staff at a further education provider, shall not, in respect of that course of study, or that employment, be subject to more restrictive immigration controls or conditions than were in force for a person in their position on the day on which this Act was passed."

Lord Watson of Invergowrie (Lab): My Lords, it is fair to say that the question of international students is, to put it mildly, a somewhat thorny one. I do not want to draw parallels too closely with the higher education sector, but there is no reason why the further education sector should not seek to attract more students, and indeed staff, from overseas. The debates that have taken place on the Higher Education and Research Bill suggest that the Government do not fully appreciate the value to many institutions of the contributions made by students from abroad, and I am not just talking in financial terms. The financial contribution is of course important to the further education sector, but no less so is the general contribution made by the presence of students from other countries. Despite the result of the referendum, we do not—and, I would say, must not ever allow ourselves to—live in a world of our own, unwilling to acknowledge or embrace the benefits that flow from interacting with those from other countries and cultures.

There is not a consistency of view regarding the value of those benefits. The Foreign Secretary is a man with whom, I must say, I rarely see eye to eye, but I was at one with him when he said in a recent speech that overseas students should be excluded from the immigration statistics. That is certainly the position of the Labour Party, and I know that it is shared by many others across your Lordships' House and much further afield. Of course, Mr Johnson was not espousing government policy and he was overruled by 10 Downing Street, but on this occasion certainly he was right. It is common sense to treat international students as a benefit to, and not a burden on, this country.

Amendment 12 would place the onus on the Secretary of State to encourage international students. She could of course delegate that role, and might usefully do so, to the institute. Some further education colleges already reach out and have a presence in other countries—some more successfully than others, it must be said—so this is an area in which there is surely room for expansion. It should be made widely known, particularly when government Ministers are abroad, that applications to further education colleges by young people or by those who want to teach in FE colleges would be welcomed. Students may use this provision as a means to gain the qualifications needed to enter higher education, or teaching staff may use it to broaden their expertise, but whatever the reason, as we close the doors to the European Union, we should be opening them wide to many other countries. This amendment offers a means of doing so by highlighting what further education providers have to offer internationally, and I hope that the Minister will accept it in that light.

Baroness Garden of Frognal (LD): My Lords, I support this amendment and entirely agree with the noble Lord, Lord Watson, on the importance of signalling to international students and staff that they are welcome. Not only are they welcome, they are invaluable in providing teaching skills that we are unable to provide from UK citizens and in bolstering student places in both quality and quantity.

Through this Bill, we would hope to send out positive messages to those from other countries that we are open for business, that we shall honour any commitments to staff or students and that we shall minimise the immigration conditions for all bona fide students and staff who wish to come to our further education colleges or providers. These measures are particularly important now in respect of EU nationals, who play such a significant part in the success of our further and higher education institutions and who are feeling particularly beleaguered and undervalued at the moment, but they are important too for the much wider international community. I hope that the Minister is able to accept this amendment.

Lord Knight of Weymouth (Lab): My Lords, I shall speak briefly in support of this amendment. I want to remind your Lordships and the Minister that FE colleges come in a number of different guises and there are some specialist FE colleges for which this is particularly important. I am particularly a fan of the Ada Lovelace College—the newest college, I think, to be given FE status by the department—which is the National College for Digital Skills, based in Haringey. We have an acute shortage of digital skills throughout this country, including here in London, and there is a massive demand for them. If we can allow more international students to come and take advantage of studying at that college,

[Lord Knight of Weymouth]
we would do our economy and some of those young people an enormous service. I urge the Minister to listen carefully, as is his wont, and to be sympathetic to this amendment.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, the Committee will be aware that this issue is already being considered as part of the Higher Education and Research Bill. As a Government, we will want to consider our position across the board, and I can assure noble Lords that we are doing this. This topic is best discussed in the context of the Higher Education and Research Bill, where there will be ample opportunity to consider the issue during the forthcoming Report stage. However, I will briefly address the more specific points of the amendment.

While there are some further education colleges that have centres of expertise or offer higher level study that attract a significant number of international students, such as the one referred to by the noble Lord, Lord Knight, as a whole the number of international students in FE is much smaller than for the higher education sector. Courses are on average shorter, and delivery is more locally focused and reflects local economic priorities. Where colleges take significant numbers of international students, the issues will parallel those that have been considered through proposed amendments to the Higher Education and Research Bill.

I do not propose to repeat the arguments that my noble friend Lord Younger of Leckie made during that debate. I do wish to emphasise that we have and will continue to set no limit on the number of genuine international students who can come here. The controls in place are there to prevent abuse of the system and ensure that the reputation of the UK educational sector continues to be internationally renowned. The immigration statistics are controlled independently by the Office for National Statistics. It is not up to the Government to create the statistical definitions. Our responsibility is to set the policy, which in this case places no limit on numbers of students.

As I have said, there will be an opportunity to debate these issues further as part of the Higher Education and Research Bill, which is the more appropriate forum. In those circumstances, I hope that the noble Lord will withdraw the amendment.

Lord Watson of Invergowrie: I thank the two noble Lords who contributed to the debate and the Minister for his response. I agree with the noble Baroness, Lady Garden, about the positive message that this sends. That is what I was trying to get across in moving this amendment.

Equally, I accept the Minister's use of the term "abuse of the system". No one would be tolerant of that at all. There were such situations in the past in the case particularly of language schools. Some of them had been—to use about the kindest adjective that could be applied to them—"bogus". Very largely, these have been driven out of the system. I would not say that there is no abuse, but there is not a great deal. Opening up the further education sector does not necessarily increase the likelihood of such abuse.

I take the Minister's point that the Higher Education and Research Bill is the place to deal with that. Fortunately for him, he will not have to do that, but I will be returning to these subjects next week. I wanted to draw attention to the fact that, hopefully, the further education sector has the opportunity to broaden its scope a bit. Whereas local provision is what it is mainly about, there is scope to expand that and I hope that the sector will take the opportunity to do so and will not be prevented from doing so through the inability to bring students in from abroad.

With those remarks, I beg leave to withdraw this amendment.

Amendment 12 withdrawn.

Amendment 12A

Moved by ***Lord Watson of Invergowrie***

12A: After Clause 1, insert the following new Clause—

"Apprentices as qualifying young persons for the purposes of child benefit

(1) The Child Benefit (General) Regulations 2006 are amended as follows.

(2) In Regulation 3 (education and training condition)—

(a) after paragraph (2)(a) insert—

"(aa) is undertaking a statutory apprenticeship as defined under section A11 of the Apprenticeships, Skills, Children and Learning Act 2009 (only statutory apprenticeships to be described as apprenticeships);";

(b) in paragraph (4) after "(2)(a)" insert ", (2)(aa),"."

Lord Watson of Invergowrie: My Lords, this proposed new clause may not at first sight seem as if it is appropriate for this Bill or for the scope of the Department for Education. I would concede the second point, but not the first, and I hope that I can demonstrate that that is not a contradiction in terms. The new clause would enable families eligible for child benefit to receive that benefit for children aged under 20 who are undertaking apprenticeships.

The landscape of apprenticeships is changing, and from April the introduction of the levy will mean a greater focus on giving young people key skills and up-skilling current employees. Apprenticeships are receiving greater support from government than for generations, and the numbers of young people starting them are increasing exponentially. So it felt odd to read in a survey that more than 90% of 18 to 24 year-olds were not interested in starting an apprenticeship. It seems that apprenticeships still have a significant image problem. The survey results showed that not just young people but two-thirds of people aged over 55 thought that going to university would always be a much better career option. The biggest reason for this was said to be poor careers advice being given at school.

That is not the only reason why young people may be discouraged. In some cases, their parents may actually prevent them taking up apprenticeships because of the economic consequences. In one sense at least, apprentices are treated as second-class citizens, with those from the most disadvantaged backgrounds being denied thousands of pounds of financial support that is

available for college and university students, according to a survey carried out by the National Union of Students. The research, which that body carried out in conjunction with the *Times Educational Supplement*, revealed that apprentices are also excluded from a number of means of support available to their counterparts in further education institutions.

In April, the apprentice national minimum wage will increase by a whopping 10%—I am sorry, I wish it were by that, but it is by 10p to £3.50 an hour. A college student with one child could be eligible for more than £10,000 a year in financial support and their families could receive thousands more. Apprentices, including those on the minimum wage earning as little as £7,000 a year, are not entitled to any of this. As well as being ineligible for Care to Learn childcare grants—again, unlike further education students—some apprentices also miss out on travel discounts, council tax exemptions and student bank account packages.

The reason is that apprenticeships are not classed as approved education or training by the Department for Work and Pensions. This means that, in the case of apprentices who live with their parents, their families could lose out by more than £1,000 a year in child benefit. Families receiving universal credit could lose more than £3,200 a year. Why should families suffer as we seek to train the young people desperately needed to fill the skill gaps in the economy? University students receive assistance from a range of sources, from accessing finance to discounted rates on council tax. Apprentices currently receive none of these benefits. The system must be changed so that both are treated equally and there is genuine parity of esteem between students and apprentices.

A large number of examples of apprentices being unable either to take up their apprenticeship or to complete it have been reported by further education colleges to the Association of Colleges. I would like to highlight one case involving a young man aged 16 at the time, who was enrolled in a full-time carpentry and joinery programme at New College Durham. He came from a disadvantaged area within County Durham, where he lived with his mother, a single parent, and his half-sister. From the outset of the programme, he made it clear that he was very keen to transfer to an apprenticeship and enquired weekly at the apprenticeship office about possible vacancies. Within a matter of weeks, he was offered a work trial with one of the employers with whom the college worked. The employer told the college that he was pleased with the commitment and work ethic demonstrated by the young man and offered him an apprenticeship, which was enthusiastically accepted. Soon after starting it, though, the college received a phone call from the employer saying that he would not continue to employ the young man, as his mother had been in contact to say that she would lose her housing benefit due to her son being classified as employed. Despite his disappointment, the young man continued on the full-time programme and completed his level 1 diploma but, understandably, the employer was disgruntled due to the wasted time and effort and stipulated that he would not again interview a potential apprentice from a welfare-dependent background. That really is a sad story.

We need to bear in mind such situations when we think about the extension of apprenticeships. Barriers surely should not be put in the way of young people who genuinely want to start an apprenticeship and see it through, better themselves and help the economy in broader terms. As the National Society of Apprentices said in its submission to the Public Bill Committee in another place, "It seems inconsistent—to put it mildly—

> "that apprentices are continually excluded from definitions of 'approved' learners, when apprenticeships are increasingly assuming their place in the government's holistic view of education and skills (which this Bill itself represents through unifying apprenticeships with technical education)".

To repeat, there should be genuine parity between all educational and apprenticeship routes.

The risk of losing out financially can and does deter some of the most disadvantaged young people from becoming apprentices. The Government need to act to close this loophole and, although I accept that it is not within the Minister's gift to do so, I suggest that he might at least signify his understanding of the position in which some apprentices find themselves—many of them from the kind of backgrounds where we are trying to attract more apprentices than is currently the case. That would help to reach the Government's target of 3 million apprentices by 2020 and to ensure that every young person attracted to starting an apprenticeship was not prevented from doing so for financial reasons. I beg to move.

3.45 pm

Baroness Cohen of Pimlico (Lab): My Lords, I know personally several young people who will probably have to pursue a course much less suited to them than an apprenticeship because their welfare-dependent families will otherwise lose too much in benefit. That seems wrong. The Bill is surely not entirely about getting us a skilled workforce; it also has a social purpose—rescuing children from unsuitable parts of the education system, places where they will never learn what they need, when they really need to be in a decent apprenticeship. Finance must not stand in the way, but stand in the way it will—nobody wants their mother to lose housing benefit—unless we can find a way around this issue, which I suggest is by treating people in apprenticeships as if they were in further education.

Baroness Garden of Frognal: My Lords, I wholly support what the noble Lord, Lord Watson, said, while equally recognising that benefits are not directly a matter for the Department for Education.

There are anomalies in the way in which we treat young people. For those in approved education or approved training, child benefit continues until the child 20 years-old. Reading the list of what counts as that, it seems even more incongruous that apprenticeships are not included. For instance, it includes A-levels, Scottish Highers, NVQs up to level 3—which, of course, can be closely linked to apprenticeships—a place on the access to apprenticeships scheme, foundation apprenticeships for traineeships in Wales, the Employability Fund programmes and places on Training for Success. There is a whole raft of education and training courses on which young people continue to get their benefits, but they lose them for apprenticeships.

[Baroness Garden of Frognal]

We know that only 10% of apprenticeships are taken up by young people on free school meals, which is surely an indicator that that is a disincentive, particularly for families, because they will lose out on additional benefits when a child goes into an apprenticeship. An apprenticeship salary on minimum wage may be barely over £3 an hour, so the loss of child benefit and tax credits may be a significant penalty for that family to bear.

The National Union of Students said:

"If apprenticeships are going to be the silver bullet to create a high-skilled economy for the future, the government has to go further than rhetoric and genuinely support apprentices financially to succeed".

We urge the Minister, in the interests of joined-up government, to talk to his colleagues in the benefits department to see whether something can be done to ensure that disadvantaged young people do not feel that this is a major disincentive to taking up apprenticeships.

Lord Storey (LD): My Lords, I spoke on this issue at Second Reading, so I just reiterate what my colleagues have said. It seems strange that benefits are available to young people until the age of 18, so we can have a university student who has a couple of lectures and a couple of tutorials a week, if they are lucky, who gets the benefit, and a young person doing an apprenticeship, where 20% of the time should be for training, who loses that money. As we heard from my noble friend Lady Garden, only 10%—let us underline that—of apprentices come from those entitled to free school meals. If we really believe in social mobility, we should be asking why it is only 10% and whether finance is a handicap.

The National Society of Apprentices said in its written evidence:

"It seems incongruous to us that structural barriers exist to disincentivise the most disadvantaged from taking up an apprenticeship".

We need to take those comments on board. I realise this is slightly beyond the scope of the Bill, but it would be helpful if, in his reply, the Minister could suggest that we meet his colleagues outside the Committee and talk about this issue because if there is a resolution, it would really help those people in society whom we must support.

Lord Young of Norwood Green (Lab): My Lords, I support all the points that have been made. I shall speak on one narrow issue. I was surprised to learn that an apprenticeship is not an approved form of learning. I assume that, when the Institute for Apprenticeships recognises these apprenticeships, they will automatically be an approved form of learning along with all the others. I hope that when the Minister replies, he will cover whether an apprenticeship is an approved form of learning and whether, when the Institute for Apprenticeships recognises the range of apprenticeships, they will come into that category.

Lord Blunkett (Lab): My Lords, I support the amendment. It would be very useful if the Minister were prepared to meet separately with my colleagues to see whether a solution could be found. I want to reinforce a point about the challenge of transport costs for apprentices. They can be extremely irksome and difficult for them. The proportion of a very small income going on getting to and from work can be way beyond anything that we, as adults, have experienced.

Baroness Wolf of Dulwich (CB): I, too, support the amendment. Like other noble Lords, I recognise that this is not something that is easily in the Minister's gift, but it is a major issue and has been for some time.

Apprentices are employees and they should be employees, so they are different from full-time students, but it is also important to recognise that they are not skilled workers, which is why they are apprentices. That is why it is also important that there is an apprenticeship wage, but that apprenticeship wage is very low. This is a major issue and has been a major issue for a while, but, curiously enough, the improvement in the quality of vocational training and the drive to improve vocational training and to make sure that young people go into apprenticeships rather than into some form of quasi, not-real apprenticeship has made the problem worse, because more parents are now faced with the situation in which they tell their children, "I can't afford for you to take the apprenticeship".

This is a major issue, and it cannot be beyond our capacity to do something about it. I add my voice to those urging the Minister to see what can be done to prevent young people from the most deprived families feeling that there is a serious barrier to them taking up an apprenticeship.

Baroness Donaghy (Lab): My Lords, I shall make one additional point in support of the amendment. I was one of the founding members of the Low Pay Commission. When it was first established, its job was to create the infrastructure around not just the minimum wage but the wage for apprentices and how that would play out in the world of employment. It was 19 years ago that we first grappled with these issues, so the noble Baroness, Lady Wolf, is quite right that this has been a problem for quite some time. It is a structural issue.

I know that the Minister is very good at leaping over barriers to try to solve problems. I know it is not easy, but he can see the broader pictures and can try to bang heads together on an issue which will not go away unless something positive is done.

I fully endorse what my noble friend Lord Blunkett said. The Low Pay Commission had to agree to a very low wage not only to get a unanimous report but because we were pioneering and wanted to be absolutely sure that we were not going to damage the economy. When we look at that low wage, as it still is, and the transport implications, to be honest it is a miracle that anybody whose family receives benefits goes in for an apprenticeship at all. Far from being the group that needs the least motivation—we are trying to tackle the fact that the education system is failing that group at the moment—these people require the most motivation to keep going.

This is a plea for the Minister to do his Superman act—he is about to take his jacket off, so I am feeling

much more optimistic—and try to find ways of breaking down barriers and breaking through this structural anomaly, which we all want to do.

Baroness Buscombe (Con): My Lords, I am sorry to disappoint, but Superman is not responding to this amendment, and I am certainly no Superwoman.

We welcome the sentiment behind Amendment 12A tabled by the noble Lords, Lord Watson and Lord Hunt, that young people should not feel financially disadvantaged by taking up an apprenticeship. However, I hope I will be able to persuade noble Lords who have taken part in this debate that sufficient safeguards are in place to support this aim. In saying that, the amendment focuses on child benefit rather than the broader issue of all other benefits, which are not part of this Bill. Therefore, it is very difficult to widen my response in that regard, but let us see what we can do.

One of the core principles of an apprenticeship is that it is a genuine job and is treated accordingly in the benefits system. A young person on an apprenticeship will receive at least the national minimum wage, which is now £3.40 per hour for apprentices following a 3% increase in October 2016. Of course, these figures do not remain static—indeed, I am moving a Motion on an SI tomorrow on upgrading the figures—and most employers pay more than the minimum. The 2016 apprenticeship pay survey estimates that the average gross hourly pay received by apprentices in England was £6.70 per hour for level 2 and 3 apprentices.

The purpose of child benefit is to support parents financially with the extra costs of raising a child—for example, with the cost of food, clothing and other necessities. If a young person is undertaking an apprenticeship, or is in training or education by virtue of a contract of employment, their parents are no longer eligible for child benefit for supporting that young person. However, parents can still receive child benefit for other children and qualifying young persons in their family.

An apprentice has to work only 6.1 hours—less than one full day's work—on the minimum wage to earn the equivalent of the weekly child benefit amount for the eldest or only child, or four hours to earn the equivalent of the second and subsequent children's amount. In that sense, there is more than a catch-up there. So I hope I have provided sufficient reassurance that the wages from an apprenticeship, even if paid at the apprenticeship minimum wage, will more than offset any household income reductions through the loss of child benefit.

Noble Lords talked also about the loss or reduction in housing benefit, credits and so on. As I said at the beginning, that is not within the scope of this Bill. Noble Lords have said they would like an opportunity to talk to my noble friend the Minister about this issue before Report. My noble friend is very happy to meet, but it is not within our gift to make a difference on this. The point has certainly been well put by noble Lords, but within the confines of this Bill it is very difficult to look beyond what we are already able to do for apprentices.

I hope that, on that basis, the noble Lord will withdraw his amendment.

Baroness Cohen of Pimlico: Is there not a fairly simple way of bringing this within the scope of the Bill, as was suggested by my noble friend Lord Young? All you have to do is get the new Institute for Apprenticeships to design apprenticeships that count as further education, attract child benefit and do not interfere with benefits in the same way as a child in normal sixth-form education would? Is that not the short way home? I wonder what my noble friend Lord Young thinks.

4 pm

Lord Young of Norwood Green: I was going to ask the Minister to address that point. If the apprenticeship is approved by the Institute for Apprenticeships, is it an approved form of learning? The apprentices are in training for the most part. They are released at least one day a week. I would welcome some guidance on that.

Baroness Buscombe: The difficulty is that the institute cannot change the definition of an apprenticeship. However, my noble friend will meet with noble Lords who would like to discuss this issue further following Committee.

Baroness Garden of Frognal: If the institute cannot change the definition of an apprenticeship, who can?

Baroness Buscombe: My Lords, the difficulty is that the definition of a job is a question for Parliament.

Lord Watson of Invergowrie: I thank the Minister for her response and all colleagues who have spoken in the debate. I particularly welcome the support of the noble Baroness, Lady Garden, and the noble Lord, Lord Storey. One of them mentioned social mobility, which is an important point. It is within the scope of the Government's overall objective to increase social mobility; it is mentioned often enough. I do not see how it can be outwith the scope of the Bill, as the Minister said, because we are able to discuss it today.

There is no point in repeating a lot of the points that have been made, but I certainly take the issue about an approved form of learning, which my noble friend Lord Young mentioned; it needs to be clarified. Will the Minister write to noble Lords on that point?

The noble Baroness, Lady Buscombe, perhaps did not fully hear my noble friend Lord Blunkett when he asked whether we could meet with the Minister separately to discuss the issue. It was not just with the Minister but with his opposite number in the Department for Work and Pensions as well to see what might be achieved on this. I accept the Minister said that more or less nothing could be achieved, but we are going to meet, so let us broaden the meeting so that we have somebody who has experience of those matters and we can go into them in greater detail.

My noble friend Lady Donaghy has a great deal of experience in these matters, as noble Lords will know. However, I am not sure that her metaphors stand close scrutiny of the very urbane Minister—leaping over barriers and banging heads together is not quite his

[Lord Watson of Invergowrie]
modus operandi, and I will not go anywhere near the Superman reference. However, I think the Minister can at least open up channels for discussion on this. We would certainly need to have those discussions before Report.

At this stage, it is our intention to return to the matter because, at the end of the day, we want to increase the number of apprenticeships from all backgrounds. We need to increase the overall number, but many are being put off for reasons that will not be assuaged by the figures quoted by the noble Baroness, Lady Buscombe, and we have to find a way round this. With those comments, I beg leave to withdraw the amendment.

Amendment 12A withdrawn.

Schedule 1: The Institute for Apprenticeships and Technical Education

Amendments 13 and 14 not moved.

Amendment 15

Moved by ***Lord Hunt of Kings Heath***

15: Schedule 1, page 21, line 7, at end insert—

"( ) After subsection (5) insert—

"(5A) In the exercising of its functions, the Institute must cooperate with—

(a) Ofqual,

(b) Ofsted,

(c) The Office for Students,

(d) The Skills Funding Agency, and

any other body identified by the Secretary of State as having an interest in the delivery or monitoring of apprenticeships.""

Lord Hunt of Kings Heath (Lab): My Lords, at the heart of many of our debates so far there has been a desire to ensure that there is clear accountability for ensuring that at the end of the day we see the development of high-quality apprenticeships. Given the number of bodies involved and the complexity of the organisation and regulation of apprenticeships and technical education, I do not think there is any surprise that we see some ambiguity around this area. The question raised just now by the noble Baroness, Lady Garden, about the definition of an apprenticeship and how to change it showed some of the complexities that we are struggling with.

The Minister very kindly sent us a chart showing where current responsibilities lie. In summary, they seem to be as follows. The Education Funding Agency funds provision for pre-19 students. The Skills Funding Agency funds provision for students over 19, plus apprenticeships, and operates the apprenticeship service. Ofqual regulates the qualification and awarding bodies, including certain apprenticeships. The Institute for Apprenticeships determines the scope of technical education, sets the criteria and awards licences for the delivery of technical education qualifications; it approves and reviews standards and ensures they are upheld through contractual arrangements. Then there is Ofsted, which inspects the quality of training for level 2 and 3 apprenticeships. The information from the Minister is that HEFCE's role in relation to levels 4 and 5 is still to be determined.

On any reading, that is a pretty complex picture. Is any one of those organisations responsible, in the end, for high-quality apprenticeships? Which of those bodies does the Minister hold ultimately accountable? For instance, which would be called in by the Education Select Committee, or, as I suspect, would they all be because no one is actually going to take ultimate responsibility?

What about the actions of employers? We know that some apprenticeships fail because of a lack of commitment from employers. My noble friend Lady Cohen described this very eloquently on our first day in Committee. What enforcement powers can be taken against employers who, for instance, undermine the apprenticeship schemes which their employees are on, for one reason or another? Ultimately, if the institute is the nearest we have got to an oversight body, does it have enough clout to ensure that it can influence all the other agencies involved? If the answer to the question is Ministers, what mechanisms do they have to give strategic direction and oversight? My noble friend doubted whether the noble Lord liked to bang heads together. I assume he does like to, but can he and how is it going to be done?

The amendment is a modest but, I hope, useful contribution to this. I have borrowed the concept from health legislation, where we are used to having a number of national bodies—either quangos, quasi-independent or to a certain extent independent—which are under a statutory duty to co-operate with each other. It might be useful to have a similar concept in relation to apprenticeships and technical education, given the diffusion of responsibility among many different organisations. The amendment is modest, but behind it lies the plea that, in the end, there is some organisation that can clearly be held to account for the quality of apprenticeships in future. At the moment, I have some doubts as to whether we can actually do that. I beg to move.

Lord Lucas (Con): My Lords, I have a couple of questions to add to those of the noble Lord, Lord Hunt. It is important that a single organisation should keep a list of approved qualifications. At present, it is unclear whether this is going to be IFATE or Ofqual. I hope the Committee can have an answer to that. Secondly, I am unclear how far IFATE's remit goes into the world of commercial qualifications: the sort of things where a commercial training provider will persuade an industry that this is a particular bit of training they should have for their staff; it has some sort of qualification name attached to it but is completely outside the government-funded system. Will IFATE have any influence in this area, or is it entirely outside its remit?

Lord Young of Norwood Green: My Lords, I will focus on just one area because, as I understand it, the various bodies set out in the amendment each have a different role. When we debated this on the first day in Committee, the Minister told us that the body that was going to look at the quality of apprenticeships

was Ofsted and that it was going to work on a risk-based approach. I told him that I understood the approach but would welcome some clarification of how it is going to apply. He said that he would get back to us on that. As far as I am concerned, there are two things here. I support the thrust of the amendment, in that we need to be clear about the roles and responsibilities, but my overall concern is ensuring that we deliver quality apprenticeships so that the brand has a good reputation among teachers, potential apprentices and parents. If the Minister has replied to this point, I have not yet seen it. Is he in a position to tell us how this risk-based approach will apply to apprenticeships?

Given that we are looking to drive up the number of SMEs involved, the risk will not be with the larger organisations with well-established reputations, such as Rolls-Royce, BT, British Aerospace and a whole host of others that have been mentioned before. We know that people who go into those organisations will get a quality apprenticeship. That is not the problem. The problem will be in small and medium-sized concerns. Given that the success of this enterprise in driving up significantly the number of apprenticeships will depend on ensuring that we embrace more of those organisations in providing apprenticeships, a lot more than currently do, this is not an insignificant issue.

Lord Storey: My Lords, this is a very important amendment. The Government have set an ambitious target of 3 million apprentices, and it is good to have a target to work towards. However, as we have just heard from the noble Lord, Lord Young, those have to be quality apprenticeships. In a sense, I would rather have 2.5 million apprentices, knowing that there was real quality in the education and training.

I went to look at the apprenticeship scheme run by the BBC. I was struck by the diversity of the apprentices and the quality of the training and education component of the scheme. Young people deserve quality education and training. It is not enough to say, "Here are some books—go and sit in that corner. Here is a day off—go and learn that". Somebody has to direct the training and education. If a scheme is to work, we need to make sure that somebody is responsible for that quality.

I hope the Minister will not mind me saying that, when we met before the Bill, I raised this question with him. He said then that Ofsted would be "sampling" some of the providers. To me, that is not good enough. We have to be absolutely sure that every apprentice gets only the best.

Baroness Cohen of Pimlico: I support the amendment. I feel that, in all this, there is tension between what the Bill would like to see and what the Bill will be able to achieve. I keep looking for measures of enforcement, and not just because I am a native head girl or predisposed to police-type solutions. The history of apprenticeships in this country shows that they have mostly failed because of the employers. Indeed, why would it not be because of the employers? They are in charge; they are the ones with the power.

4.15 pm

I believe that the role of the state must be to intervene where there is complete inequality between two parties. Between employer and apprentice, there can be little doubt where the power lies. I keep nagging on to see whether we can find out who has the right to complain, how to complain and what is decreed by the state to make sure that employers stick to the terms. It is all very well having perfectly designed apprenticeships, but if people do not stick to the terms, that is not a lot of use.

These sorts of things lie behind the amendment of the noble Lord, Lord Hunt. This side of the Committee is trying very hard to persuade the Government to adopt these amendments, because we are all desperately keen that this apprenticeship system should work. We are very keen to get to 3 million apprenticeships, if we can. We do not think we are taking seriously enough the role of enforcement, and which organisations are doing it.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): I am grateful to the noble Lords, Lord Watson of Invergowrie and Lord Hunt, for this amendment. I could not help but notice that the moment the noble Baroness, Lady Donaghy, made the very inappropriate comparison with Superman that I appeared, according to the annunciator anyway, to be in two places at once, as was pointed out to me by the noble Lord, Lord Watson of Invergowrie. I am not sure that even Superman managed that, but at least I am back now.

It is essential that all the public organisations that have a role in the delivery of apprenticeships and technical education, as elucidated by the noble Lord, Lord Hunt, work together to ensure a coherent system which delivers a high-quality result.

The noble Lord asked the perfectly fair question, "Who is in charge?". The Government will work to ensure that the system works and will keep this under review via the accountability statement, which we will share with noble Lords.

The noble Lord asked what the Minister's role in this was. I guess, if the system does not work, Ministers will intervene to change the system, but individual bodies are responsible for their individual part of the system. The strategic guidance document will ask the institute to carry out a leadership role—a co-ordination role—across the system.

In response to the point made by the noble Lord, Lord Storey, on quality versus quantity, I repeat a point I made on the first day of Committee that our target is 3 million. We believe it is a realistic target, but quality must come first.

Paragraph 10(1)(b) of Schedule A1 to the Apprenticeships, Skills, Children and Learning Act 2009, which will be inserted into that Act by the Enterprise Act 2016, will allow the Institute for Apprenticeships to co-operate with any organisation that it deems necessary for it to carry out its specific functions. It is therefore unnecessary to include the requirement in the Bill.

The Bill includes a data-sharing provision to allow the named organisations freely to share data and information between them, to ensure that they can all deliver their functions properly. This, in addition to the legislation referred to above, is all that is needed in primary legislation to allow those bodies to work together.

[Lord Nash]

In addition, the amendment would require the institute to co-operate with the named organisations but, without a similar requirement on them in return, the effect would be unbalanced. However, that is not my main point.

It is in the interests of all of the organisations named in this amendment to work well together to enable them to fulfil their statutory duties. Past experience demonstrates such a willingness. As the legislation will permit this, we see no need for a further requirement. In preparation for the launch of the institute in April this year, these organisations and others are working together to agree an accountability statement which sets out each of their separate roles and responsibilities in relation to apprenticeships. There is a very positive working relationship between them and a palpable desire to ensure the institute is a real success.

In answer to the point made by the noble Lord, Lord Young of Norwood Green, about how Ofsted will carry out its risk assessment approach, I am meeting Ofsted later this week and will discuss this with it in some detail and write to the noble Lord and copy my letter to other interested Peers. I hope that the noble Lord will feel reassured enough by what I have said to withdraw the amendment.

Lord Hunt of Kings Heath: My Lords, I am grateful to the Minister. We always thought that he had super powers and are glad to have confirmation of it. This debate has been helpful.

The Minister has promised an accountability statement and it would be helpful to have that before Report. He said that Ministers will intervene and, importantly, that the institute will have a leadership and co-ordinating role. One question is whether it would be helpful to have that backed up by some legislative provision to reinforce it, which is perhaps something that we can come back to.

On the question of the 3 million and quality, I hear what the Minister says. I take his point that 3 million is deliverable but that quality comes first. The question I would like to ask him is whether the Treasury and No. 10 Downing Street share that view. My experience is that, when push comes to shove, the key indicator on which his department will be held accountable will be the 3 million, rather than the quality indicator. Essentially, we are trying to give some cover to the Government to say that at the bottom line quality is more important than the numbers.

I take the point about the drafting of the amendment —that the duty should have been reciprocal—and we can probably come back to it, but this has been a very helpful short debate. I beg leave to withdraw my amendment.

Amendment 15 withdrawn.

Amendment 16

Moved by ***Lord Watson of Invergowrie***

16: Schedule 1, page 21, line 13, at end insert—

"( ) After subsection (6), insert—

"(6A) In performing its functions, the Institute must make provision to ensure that those undertaking education, training or apprenticeships as specified within subsection (6) have representation within its structures, which may include but shall not be limited to establishing—

(a) a panel of persons undertaking approved English apprenticeships to inform and advise the Board of the Institute; and

(b) a panel of persons undertaking study towards approved technical education qualifications to inform and advise the Board of the Institute.""

Lord Watson of Invergowrie: My Lords, I shall speak to Amendments 16 and 18, which deal with the issue of representation within the structures of the institute.

Apprentices should be able to influence the way in which their training is developed and delivered. From the front line, they know what has been and is being helpful to and successful for them and, equally importantly, what is not. I hope that the Minister, who has been clear in his support of apprenticeships and apprentices, appreciates that point. The National Society of Apprentices has said:

"At the moment, apprentices have no real opportunities to improve their education. Although most students going through the 'traditional' education system at college or university are able to give feedback through their class representative system, similar structures do not exist for apprentices".

I might add that students can also give feedback through the National Student Survey.

The panels that we know are to be established for apprentices and technical education students were the subject of considerable debate in another place, in the Public Bill Committee. The Minister of State for Skills, Mr Halfon, was clear that he was in favour of them. He gave assurances related to them and the assurances were taken on board. As things stand, they will not be enshrined in the legislation.

We believe that to ensure that a future Secretary of State or Government less welcoming to the needs of those groups of young people cannot sweep away their right to a channel of communication, which is what it is, rather than representation, they are entitled to representation in some form. The rationale behind this amendment, at its most basic, is that it is better to have and not need than to need and not have. The concerns of those directly involved should have a means of being conveyed. At the moment, other than those panels—and we do not know how and when they will be established—nothing else is on offer.

Amendment 18 concerns the need to have a wide range of types of employer involved in setting the standards for the 15 occupation routes. The fear is that, because only employers with a wage bill in excess of £3 million will pay the apprenticeship levy, they will be the most prominent employers involved. Certainly, they will be spread across the sectors and the 15 occupations. That is self-evident. The question is what types of employer—not just the largest—there will be.

What about small and medium-size enterprises? They are very prominent in providing apprenticeships. Many of them feel that they have been marginalised in the current drive towards expansion. Whether that is the case, that is how many view recent developments. Whether the Government achieve their target of 3 million apprenticeship starts will ultimately depend on how many SMEs contribute to meeting that target. They are

a vital part of the economy and should not be undervalued by government. If their needs are not factored in and they feel their voice is not being heard in the corridors of power, particularly when standards are being prepared, we can legitimately ask how they can be expected to play their part in this brave new world with enthusiasm. We might also say that of our other major employers—local authorities, for instance. They will be playing a significant role, I hope, in this, and they have to be borne in mind. It is about widening the base of employers involved in setting standards.

Referring to the Government's proposals for reform of the sector, in giving evidence to the Public Bill Committee, the Association of Employment and Learning Providers stated:

"Reform proposals may not currently be giving sufficient weight to the input of stakeholders and the concerns of and about learners, which must be rectified by the inclusion of stakeholder representatives on the Board of the Institute".

I am never quite comfortable with the word "stakeholder", but I get the point that the association is trying to make.

I therefore supported in principle the amendment similar to this amendment that was submitted by the Opposition in another place. The arguments made then stand now, because although we are not advocating a place on the board of the institute—we would, if we thought it was achievable—we are seeking that a duty be placed on the institute to allow representation within its structures for those directly involved in delivering apprenticeships and technical education. If the institute's foundations would be shaken by such representation, the foundations are by no means sufficiently robust. I beg to move.

Lord Knight of Weymouth: This is an important amendment. I very much enjoyed the exchange at Oral Questions today in which the noble Lord, Lord Prior, responded for the Government on the importance of employee engagement. I felt he really understands how important it is in the private sector and, in some ways most surprisingly, in the public sector, particularly from his comments about junior doctors. In that spirit, obviously I hope that apprentices—who, as we have discussed this afternoon, are employees—will enjoy employee engagement with their employers, even though they are apprentices. It is equally important that the institute feels that it is accountable to learners and that the accountability of the institute is not more upwards to the Government than it is to employers and learners.

As I said last week in this Committee, I have general concerns that the dynamic, rapidly changing nature of the labour market presents ongoing challenges to the institute. I was set a challenge by my noble friend Lord Hunt to come up with a solution to some of that before Report. I have been mulling on that and may have at least the beginnings of a solution, but I shall wait to surprise the Minister with it at some future date. The point remains that, if the institute does not have within its structure a way of listening acutely to the learner experience, of assessing the relevance of the qualification in the labour market for learners not only while they are going through their apprenticeship but in the months immediately after they have completed it, and of being accountable to employers of all sizes, as my noble friend pointed out, I worry that our efforts in this Committee to try to help and advise the Government in making the institute a success will be in vain because it will too quickly become out of touch and out of date.

Baroness Wolf of Dulwich: My Lords, I shall speak to Amendment 36A, which is in my name and has been placed in this group. It is also about accountability, but a rather broader form of accountability which links the Government, who are encouraging young people and adults to enter training, and the changing environment, which means that many of them are put at risk in a way that was never the case before.

The amendment relates to Clause 13 and asks that any,

"training provider offering publicly funded apprenticeship training or offering publicly funded education training for students aged 18 or over",

should be included in the requirements of that clause—in fact, what I would like to see is that extended through the whole chapter.

4.30 pm

I apologise for telling people in this Room something that they probably know very well already, but which many people in the country do not know. A very large number, and proportion, of young people and adults in training or some form of technical or vocational education are not in further education colleges or universities but are with small or large training providers which are not in the public sector. Until now, this has been an extraordinarily ill-monitored part of the training sector and is almost unique in this country. For decades, Governments of different persuasions have encouraged the growth of a very wide range of providers.

We are finally getting some clear data on the scale of enrolment and the number of providers through the Centre for Vocational Education Research at the LSE. I am delighted that the Government are funding this; it is giving us really good data—on a number of things for the first time ever—but I declare an interest as chair of its advisory board. It confirms that this is a very large segment of the training and technical education sector, but even these researchers cannot track the flow of institutions as they come and go, change their names, are taken over, are reconstituted or, as happens all too often, fail. Many of them are very small affairs, but some are really quite big. There has always been a problem here, because many providers get overstretched and many start up then close down as they do or do not get contracts. We have added student loans to this mix and dramatically changed the nature of post-18 education and training across the country.

My amendment takes account of the resulting situation in which the Government encourage people to take loans at any eligible training provider, further education college or university. It is implicit that this is a good and safe thing to do, but at the moment the provider can, in many cases, walk away. I welcome the move to have an education administration regime for further education, but it is extremely important to recognise that a large number of people are now taking out loans who are not in further education colleges and who receive very little protection.

[Baroness Wolf of Dulwich]

As an example, I will read from the most recent issue of *FE Week*, which does get its facts right although it sometimes adds some rhetoric.

"Another 100 learners appear to have been left with heavy student loans debt but no qualifications to show for it, after their training provider under investigation by the Skills Funding Agency went bust. … It comes … after the demise of John Frank Training",

where people were left with student loans that were really sizeable—especially in relation to the incomes many of them were earning—but no recourse and no obvious regime to help them.

We have to recognise that a combination of this unique system in the United Kingdom, particularly in England, with the advent of student loans has changed the nature of the training environment dramatically. We need to make sure that government accountability catches up with it. This is important, morally, at any point but especially so in the context of this Government's laudable desire to revive and improve technical education and reverse what has been happening over the last decades. On the one hand, we have had a rapid decline in the number of people doing any form of enhanced but non-degree technical qualification and, on the other, clear evidence of shortages in those skills.

When I raised in the House, in the context of the Higher Education and Research Bill, the absence of a protection regime for higher education students comparable to that now offered to further education students, I was told by the Minister that it was not necessary for higher education students, as they were not local in the way that further education students were. He said that they did not need this level of protection. I did not and do not accept that argument, but you certainly cannot advance it with respect to learners who are with training providers. They tend to be adults—often, low-income adults—who are now being asked to take out sizeable loans. These are a genuine burden for which they may well go on being liable for a long time. I really would like the Minister to take a serious look at whether it is not possible to extend this regime, perhaps in a slightly different form, to the many thousands of people who have loans and are with training providers, and where a continuation of this flux, collapse or reforming movement among these small organisations leaves them in an even worse situation than in the past.

Lord Young of Norwood Green: My Lords, I support the principle of Amendment 16. It is right and important that the institute should have regular input from those actually undertaking apprenticeships and technical education. That will be essential if they are to have a state of awareness about what is actually happening.

I also support the point made by the noble Baroness, Lady Wolf, in relation to training providers. Whether or not they are involved with student loans, they will still be involved in providing apprenticeships and, allegedly, in ensuring that those young people whom they recommend to employers are in a state of preparedness to undertake those apprenticeships.

My recent experience of one provider, which I will not name, leaves me with a great deal of doubt because the not-so-young person concerned—I think this one may have been 22 years old—arrived with little or no understanding of what was required of her when undertaking an interview. She arrived without us being supplied with any CV. We decided to stick with this organisation to see whether it had improved the next time we used it, after it promised us that that was an oversight—and the next time it still did not provide a CV until, on the morning of the interview with the next potential apprentice, it emailed one to us.

The noble Baroness, Lady Wolf, is quite right to bring it to our attention that a significant amount of government money goes into these organisations and they ought to come under scrutiny. I was assuming that Ofsted has some sort of role in scrutinising training providers, but it was probably an unwarranted assumption on my part. When the Minister replies, it would be welcome if he covered this point.

Baroness Cohen of Pimlico: I too support the amendment, although I think I may have got out of my depth with training providers. I should remind the Committee that I am involved with the BPP group and that we not only have a university but are training a lot of 16 to 19 year-olds. However, we are not providing all the training. If an employer comes to us and says, "Will you train our apprentices?", then we do that. That is not the same as training apprentices to be interviewed; they have already been interviewed and are the employer's pigeon. Indeed, I had barely heard of these training providers who are leaving people in a mess.

However, this inclines me the more to support the amendment because there is very little in the Bill about who students should complain to. Hopelessly, I asked my son, who lives in Germany and is a veteran of German apprenticeships, who German apprentices complain to. The question meant absolutely nothing to him because they do not do that. Apprenticeships work there because they have worked for 20 years, and I think you would be drummed out of the local CBI, or hung or something, if you abused your apprentice in any way. I am not thinking of physical abuse but of people being given a broom or a photocopying machine rather than proper training.

I do not know, and do not think that the Bill says, to whom the learner or student may complain if the employer is not doing its bit. I think they know to whom they can complain if the trainer is not doing its bit—they can complain to us, for a start—and we know that structure. However, we do not know the structure for what to do if an employer is looking after an apprentice very badly and not offering proper training. I do not think that this amendment totally resolves that. Input from students would be very useful but, again—and I feel as if I am banging on a bit—enforcement will matter in this area. Can the Minister tell me what that will be?

Lord Aberdare (CB): My Lords, I want to make a couple of points on these amendments. First, as I said at Second Reading, I very much welcome the desire and requirement to have learners themselves represented in the governance of the institute. I welcome also the fact that the Government have announced an apprentice panel for the institute, but I think it would be good if that was a statutory requirement in the Bill.

Secondly, it is important we ensure that the bodies creating the standards are employer-led but, at the same time, represent a cross-section of organisations. However, there is a further point to make on that. Yes, we should have SME representation, but that is easier said than done. Most SMEs find it hard to devote the time, resource and energy to being involved in these quite complicated standard development processes. I am very interested to hear the Government's thinking on how the views of SMEs—which, after all, deliver more than half of all apprenticeships—can be represented in a way that is comparable to the others that will be represented.

I very much agree that independent training providers need to be subject to accountability and scrutiny, and that learners need to know who they can complain to. However, at the same time, I believe that independent training providers deliver a very substantial proportion of the training needed for apprenticeships, and we should be rather careful that we are not killing that golden-egg-laying goose. It is very important to have the right balance. Again as I said at Second Reading, I have a feeling that the role of independent training providers, including commercial training providers, is not very well reflected in the Bill as it stands. It is a key role and we should make sure we understand how it is going to be delivered in a way that meets suitable standards and scrutiny.

Lord Storey: My Lords, I support the amendment from the noble Baroness, Lady Wolf. *FE Week* seems to be getting quite a few mentions. I came across a piece on training providers by Peter Cobrin, who runs the Apprenticeships England Community Interest Company, which is important to highlight. He says that training providers feel,

"vulnerable, unrepresented, unsupported, unprotected, exploited and undervalued".

Let us not forget that there are some very good training providers, just as in higher education there are some very good private providers and colleges. However, quite frankly, some need examining carefully. As the noble Baroness, Lady Wolf, said, it is important to remember that many of the people who go to these private providers take out big loans, and if that private provider collapses or reforms, they are left. That is not good enough. The noble Baroness, Lady Wolf, said it is important that accountability catches up with them. I hope that, following her wise words, we might look more carefully at this area between now and Report.

Baroness Garden of Frognal: My Lords, I support these amendments and the views of the noble Baroness, Lady Wolf. Equally, I hear what the noble Lord, Lord Aberdare, and my noble friend Lord Storey say about getting the balance of this right. That is important.

I have one small thing to say on Amendment 18. I agree that it is almost impossible to get SMEs to participate meaningfully in these sorts of activities, however much you wish them to do so. The federation can sometimes be helpful in providing for somebody to speak, but individual SMEs very seldom have the time or interest to take part. In Amendment 18, proposed new paragraph (b) refers to, as well as employers,

"at least one person engaged in delivering relevant education linked to the standard being assessed".

It is important that this group of people includes trainers and awarding bodies, who bring a dimension to these affairs. To have a broad range of people within this group would be particularly important.

4.45 pm

Lord Nash: My Lords, I am grateful to the noble Lords, Lord Watson and Lord Hunt, for their two amendments relating to issues of representation for the Institute for Apprenticeships.

With regard to Amendment 16, the institute should obviously understand the views of those people undertaking this training to ensure that it is meeting their needs, because it is the organisation responsible for apprenticeships and technical education. Section ZA2 of the 2009 Act, inserted by the Enterprise Act 2016, already requires the institute to have regard to,

"the reasonable requirements of persons who may wish to undertake education and training within",

the institute's remit, and to other interested persons. The institute is also required to engage interested groups as part of the review of standards and assessment plans.

The institute has purposely been established as an independent organisation, with high-level responsibilities set out in legislation but with the freedom to decide how it delivers them. It is essential for the credibility of apprenticeships and the wider apprenticeship reform programme that the institute retains as much autonomy as possible. Government can provide the institute with advice and guidance about how it could carry out its functions. It has to have regard to this advice and must provide justification if it chooses not to follow it. The Government recently consulted on a draft of their guidance to the institute for 2017-18, which includes a request for the institute to establish an apprenticeship panel to advise the board. The shadow institute has already committed to doing this by the time that it is launched and good progress is being made. Members for the first apprenticeship panel have already been shortlisted and an initial meeting is planned for March.

Lord Watson of Invergowrie: On that point, can the Minister say how this was done? Were applications invited?

Lord Nash: I will have to write to the noble Lord about that.

As well as advising the board, the first panel will decide how the panel will be run, including how future members will be recruited. The proposal is for the institute to take on responsibility for technical education from April 2018. I can confirm that it would be our intention to include a request in its guidance for 2018-19 for a panel to represent those undertaking technical education.

Amendment 18 would stipulate the make-up of the group of persons whom the institute could approve to develop a standard. In particular, it would require that the group includes a range of employers and at least one provider. I agree that it is essential that the standards that form the basis of reformed apprenticeships and new technical education qualifications are of high

[LORD NASH]
quality, and meet the needs of a wide range of employers and learners, but I am not convinced that this amendment is necessary. I have already explained that the institute needs to be independent from government to be able to undertake its functions with credibility. It will be well placed to make decisions about who can develop a new standard, based on a range of factors, and it is right that it should be given the flexibility to do so without the constraints that this amendment would impose.

However, in my remarks on the preceding amendment I referred to the strategic guidance providing a vehicle for government to advise the institute. The current draft of the guidance includes the recommendation on who should be able to develop standards and makes it clear that we will expect the institute to continue to ensure that standards are developed primarily by employers, but with input from others with the relevant knowledge and experience, such as professional bodies, other sector experts, providers and assessment organisations. If the institute decides not to follow the government guidance it must give reasons in its annual report, but it is crucial that, as an expert, independent organisation, it retains the ability to make decisions itself about delivery, taking into account all the relevant circumstances. We believe that our approach strikes the right balance. I hope that, on the basis of my explanation, the noble Lord will feel reassured enough to withdraw this amendment.

I thank the noble Baroness, Lady Wolf, for her Amendment 36A. I am sure it was prompted by concerns for publicly funded learners who may find themselves without a place to complete their course in the event that an independent provider shuts down. I share her concerns but just as with FE bodies, the likelihood of independent training providers becoming insolvent is low. The Skills Funding Agency has a robust entry process in place to ensure providers are capable of delivering a high-quality learning offer to loans learners. Once providers have met the entry criteria and are eligible to offer loans-funded provision to learners they are subject to a range of further measures and controls, including review of their financial health, audit, and assessment of their qualification achievement rates. Providers are also required to comply with robust funding and performance rules. A small handful of providers is facing difficulty, but the numbers affected by these cases represent less than 1% of providers operating in the advanced learner loans programme.

Baroness Wolf of Dulwich: If it is not necessary to have protection because not very many people get affected, why is it necessary to have it for further education colleges, which also do not fail very often?

Lord Nash: I will come to that in my explanation. These are private companies and it is not our role to interfere. I will elaborate in a moment.

In cases where independent providers delivering publicly funded training courses have closed down, our first priority is to support any publicly funded learners affected, ensuring they can continue their courses with minimal disruption. The SFA works closely with the SLC to ensure that, wherever possible, we identify a suitable alternative training provider or college where individuals can complete their learning. We have been doing just that in a recent case, which received a certain amount of publicity, when a provider went into liquidation in November: we have matched all the learners to alternative provision.

However, these are private companies, and it is not for the Government to involve themselves in their financial matters any more than those of other private companies. This is, essentially, the point I made in answer to the noble Baroness. We will always work to support learners affected in cases where the provider fails and it is right that we do so, in the way I have outlined. But as to whether we should have a special administration regime, we cannot make the same special and complex arrangements, which will often involve significant and additional public funding, where a private company has failed. This is, and must remain, a matter for the company and its creditors and shareholders. I hope the noble Baroness will agree, and will therefore not press her amendment.

Lord Young of Norwood Green: I asked how they are subject to scrutiny and accountability for the quality of service they are providing, never mind the financial side. I gave the Minister an example where I thought they would. I take the point made by the noble Lord, Lord Storey, that there are some good examples of training providers, but who scrutinises the quality of service they are actually providing? That was what I wanted to know.

Lord Nash: It is Ofsted.

Baroness Wolf of Dulwich: I am happy not to press my amendment, but I would like some clarification on why a private company which is often entirely dependent on public funding should be in some sense exempt from any requirements. This does not seem to be consistent with much of what goes on elsewhere in the public sector and what it requires of people.

Lord Watson of Invergowrie: I think the Minister has sat down now and that the point made by the noble Baroness, Lady Wolf, is very pertinent. From what has been said over the past half-hour or so, it is likely that we will return to this subject on Report. I have no doubt that the Minister and his officials will be looking at this in greater detail because the question of accountability is very important. Whether or not these are corporations, they are, as the noble Baroness, Lady Wolf, said, dealing with public money.

My noble friend Lady Cohen asked what recourse students have if they are dissatisfied. The Minister did not answer that point. Again, this comes down to accountability. People have to have some come back if they do not get what they thought they were getting. I am talking about situations that fall short of the provider collapsing into insolvency. Many people may feel that they are getting an inferior product and that has to be something that can be followed up.

I take the Minister's point in respect of Amendments 16 and 18 about the institute being independent and having the freedom to decide how it delivers. However,

he went on to say that there would be two panels: one for students and one for apprentices. That is what our Amendment 16 asks for and it goes no further, other than to say that it need not be limited to those two panels. The Minister has conceded the point, as did his colleague Robert Halfon in another place, as I said earlier. We knew that, but it would be helpful to have a commitment because—we say this in respect of many pieces of legislation—we may get a commitment from Ministers now, but what about the Ministers or Government who follow them? There is nothing to fall back on should views change. That is why it is important on occasions such as this to have it written into the legislation.

The same could be said about Amendment 18 on employers. The Minister said—I wrote it down—that there would be a range of employers. We are asking for almost the same wording,

"a number of employers who, taken together, comprise a broad range of employer types".

We are surely talking about the same thing and I do not understand the reluctance. The Minister clearly wants to see a broad range; so do we.

I think we might want to revisit these matters because we are capable of reaching a situation where both sides are satisfied. We want to make sure that this works and works well: that the boards are representative and that the standards set are proper and reached with the full support of the sector. They have to be acceptable to employers within each of the 15 occupational groups and seen to be representative of their needs. We have a bit of common ground but there is some ground yet to be made up before we reach what either side might find a satisfactory outcome. At this stage, I beg leave to withdraw the amendment.

Amendment 16 withdrawn.

Amendment 17

Moved by ***Lord Lucas***

17: Schedule 1, page 23, line 1, after "outcomes" insert ", including at least one recognised technical qualification,"

Lord Lucas: My Lords, I shall also speak to the other amendments in this group. I remind the Committee that I am associated with City & Guilds, which obviously has an interest in what happens under this part of the Bill. I will leave remarks on intellectual property, as far as I can, to the next group, which seems to focus on that subject.

As part of the Sainsbury review, we have a proposal that each of the 15 routes that it suggests should have a single awarding body allocated to it and that those awarding bodies should be subject to review every seven years. The Department for Education took a long time thinking about this structure in regard to GCSEs and decided against. It decided to keep the current three and a half, as it were, awarding bodies available for every subject and I think it did that for a very good reason. A single awarding body is a single point of failure. If it goes wrong, we are stuck.

5 pm

A seven-year franchise within education is a very short timescale. You really do not get time to invest in something, develop it and then make any money out of it. On a seven-year franchise, the awarding bodies cease to become long-term repositories of how to do things well and they lose any interest in the long term. In addition, we do not have a structure proposed for IFATE which offers the capacity to take on that long-term role. The institute employs 80 people. Apparently, 33 of them are involved in approving apprenticeships, presumably a similar number are in quality control, there are some in management and there are none left over to perform the role that the Government are proposing to destroy by having a single awarding body.

If you have multiple awarding bodies, with two or three bodies within a route, each thinks that it is probably there for the long term. Even if their fortunes fluctuate, they expect to be there. It is worth their while to build for the long term and to compete with the other awarding bodies in that route for the favour of employers and training providers. If you go for a single awarding body, particularly in an area such as this where the individual routes are very different from each other, why is an awarding body going to maintain an ability to create qualifications in, say, construction, if they are not the awarding body for that route? Come seven years' time when you have the retendering, who else is going to be there except the existing awarding body? How would an awarding body begin to think that it could recreate what it had lost? Even if it did, why should it afford that level of investment when it has only a chance of becoming the next sole awarding body and may well—probably will—fail? You get to a system where awarding bodies that are in possession have no interest in improving the qualifications that they are in charge of and become impossible to remove from their posts. That seems to be not an ideal way of doing things.

We had a lot of debate, as noble Lords doubtless remember, about going to single awarding bodies for each GCSE qualification. The DfE must have somewhere in it an institutional memory of why it came down in favour of the system of multiple awarding bodies, but here we seem to have moved straight from a report to a Bill without going through a White Paper or a real digestion of whether this is actually the right way of dealing with awarding bodies.

We also have a proposal that all existing qualifications, names and reputations are to be swept away, so that we will just have IFATE qualifications. They will be that, and they will remain that whatever the awarding body is for any individual route. Have we really thought through whether we want to lose all that reputation and whether, in areas where employers really think they have some good qualifications, we want to junk them? Sometimes these qualifications have international reputations, particularly in areas such as technology. Are we going to say that this is a qualification we originated, the awarding body that supports it is here, but we do not recognise it in this country? Will we say that we have a history of employers recognising these qualifications and there is a hierarchy of people who have come through this qualification and are now looking for people to follow them, but we have abolished it?

In some areas, particularly technology, there is a system of qualifications which is independent of this country. In technology, CompTIA, Cisco, Microsoft

[LORD LUCAS]
and various other companies and bodies are creating qualifications acknowledged around the world and what employers want. Will we really say that we will not recognise them in this country but recognise only the IFATE equivalent? Is that what employers are asking for? I talk a lot to technology employers, and I am unaware of any of them who would like to go down that route.

I do not place any particular value on the wording of the amendments—I am not sure I have that right; I am happy just to address the principle—but I encourage the Government not to do something in the Bill which makes it impossible to go down the same route as we decided to go down for GCSEs. Do not make it impossible to stick with the existing qualifications if that is what an industry wants. Let us give ourselves the time that it will take to put IFATE and the other structures together to consider whether we took the right decision on GCSEs or whether the Sainsbury proposals are better. I have great worries that, in our enthusiasm to create something better, we are destroying all that is good. I beg to move.

Baroness Garden of Frognal: My Lords, I entirely support what the noble Lord, Lord Lucas, said. We have no pattern of a single awarding body which has been a success in any shape or form. With GCSEs, O-levels and all previous exams there was always a choice of learning styles, and each of the vocational awarding bodies brought something different in the material they used or type of learning style that lead to the final qualification. It was always up to the trainers, the teachers, to decide which awarding body they felt best met the needs of their students. Provided the standard is set, so you can guarantee that the same standard will be reached, there is immense benefit in having variety among awarding bodies and competition.

It is slightly ironic that whereas in higher education the Government seem to view more competition as the virtue above all others, in the Bill they are moving to a single source of awarding bodies. As the noble Lord, Lord Lucas, said, we need to be very cautious before destroying some worthwhile and reputable organisations and qualifications, not just in this country but internationally.

Baroness Wolf of Dulwich: My Lords, I must rise to defend the position of the Sainsbury review, as I was a member of it and signed up to it, after a great deal of debate. No one in the group moved easily to the position where we recommended a single qualification for the college-based route—not, I should add, for all apprenticeships. Nothing in the Sainsbury review says that employers do not have a choice at that level. We did so for historical reasons and for comparative reasons. Historically, the model described by the noble Baroness served us quite well, but it is pretty much unique. Other countries have a single set of national qualifications. They do not have competing awarding bodies.

Historically, the Government set out consciously to destroy any near-monopoly in the vocational area. Back in the 1960s and 1970s, although there was no formal monopoly for City & Guilds, for example, none the less, construction awards were City & Guilds. If you wanted to train as a nursery nurse, you did NNEB. These were extremely well-known and well-respected qualifications. Since then, we have had repeated attempts to break that situation open and instil standardisation via standards. The result has unfortunately been in many cases a clear race to the bottom and, worse, the disappearance of any qualification which is clearly recognised and therefore has a brand and market value. This was, in a way, a slightly sadder but wiser recommendation.

When I wrote the vocational education review for 14 to 18 year-olds, I did not recommend a single awarding body. I hoped at that point that a regime within the Department for Education, which had clear standards for a qualification passing muster, would lead to a serious improvement in the quality of the vocational awards and the assessment, and the emergence of recognised market leaders. It really depresses me that that did not happen. We have a real problem at the moment: the old recognition has gone and the modified regime, which was brought in in the middle, does not seem to have done the trick. We have a gigantic number of qualifications on the books, many of them taken by tiny numbers of people, with no clear recognition at all. This area is by necessity very different from GCSE, where the Government really do not give awarding bodies much freedom any more. The degree of freedom which you have in the key areas of English or maths is pretty notional. The decision not to go ahead with the single awarding body was not because of a belief that we should not have one but because of Ofqual's well-justified conclusion that it would not merely disorient the whole system but so destabilise it that we might have a national disaster.

There is a real issue in how the institute does its licensing, but it is not true that a body which holds a licence does so forever. Clearly, nothing will prevent the institute varying its regime in future years. However, I feel we are now in a situation where if we do not make a clear attempt to create a recognised, national qualification for each of these routes, people will not take them. They will feel that everybody knows what an A-level or a BTEC is, but we still have 15 of these things and do not know what any of them mean. So for once, unusually, I disagree with the noble Lord, Lord Lucas, and the noble Baroness, Lady Garden. The Sainsbury review was right to feel that a single licence for these classroom-based routes is what we have to do now, in 2017.

Lord Lucas: Yes, it is perfectly possible to do that but does the noble Baroness not think that we need a decent level of staff in IFATE in the middle of that? If she is saying that it will be the repository of this qualification and will maintain quality, integrity and innovation down through the years, can that be done on two and a half people, who seem to be all that are left to spare?

Baroness Wolf of Dulwich: I hope that with the licensing situation there will be a chunk of time when it is worth investing. There are issues relating to the licensing system, which we will get to later in the Committee, but we are not asking the institute to run the qualification. We are saying that there should be a

licensed awarding body but that if the situation is not restored to where there is one clear, recognised qualification for a route, the qualification will have no brand recognition. The Government also tried repeatedly to kill off BTECs and they failed, because people value and need something that is known. In the current situation, we have created something of a desert with a few rather feeble weeds.

Lord Young of Norwood Green: I must admit that I am torn now between the two positions, having heard what both sides have said. I must admit that my fear is that while I understand the point the Sainsbury review came to, that there are too many qualifications and there is a need for rationalisation, I have a sinking feeling that the baby could well go out with this bathwater—I cannot think of another cliché. To describe some of these well-known qualifications, whether they are City & Guilds, HND or HNC as bathwater seems unfair, but they are recognised brands with good reputations. As I understood it from previous debates, it was not absolute that they would go.

I accept the point that if you have too many qualifications, that creates confusion. I welcome that bit of it but I would welcome hearing some analysis from the Minister which says that we need not worry about these well-established brands which I have referred to and that if they go, so be it.

I cannot help but feel that the noble Lord, Lord Lucas, is right to issue a word of caution about putting all our eggs in one basket. It will take time to establish a new brand—we know how difficult that is. The idea of these debates is to probe, and this is an area where we need to be sure that we are heading in the right direction.

5.15 pm

Lord Knight of Weymouth: My Lords, I remind the Committee that I am a patron of an awarding body, ASDAN. Also, as a Minister, I spent three years building a clear, recognised qualification in the form of diplomas, which then got killed off after a huge amount of time, effort and money were spent trying to develop them, although some of them certainly seemed to be well received—engineering comes to mind.

I paid close attention to what the noble Baroness, Lady Wolf, said. I respect the work that she and the Sainsbury commission did. I certainly agree that we need these to be clearly recognised qualifications, but there are a number of ways to get to that point. I remember well the SATS marking crisis through which I had to navigate as a Minister. We had a problem with the company carrying out the marking. We ended up having to dismiss it from the contract and had to re-let the contract. We found that there was only one awarding body with the capacity to do that work. Edexcel effectively had us over a barrel. Happily, it was a responsible organisation and did not want to exploit the monopoly position in which it found itself, but it is really dangerous if you find yourself without the competitive capacity for different people to respond as and when circumstances change.

I welcome what the noble Lord, Lord Lucas, has done by raising this issue and giving us an opportunity to explore it. Clearly, there will be general capacity if different awarding bodies are awarded the contracts for different groups, but there would remain issues about their specialism in the subjects attached to each of those groups. My instinct is that the Sainsbury review might have got it wrong in this case. It may be that I just do not understand well enough what the department has in mind in terms of the model. I may not understand the extent to which it wants to specify the inputs into the qualification, how much it is concerned with the outcomes, how detailed it wants to be, how much it wants to specify the pedagogy, or whether it is thinking that these are wrappers in which you could put other qualifications, so that there is a single overarching contract-awarding body. Perhaps the Minister can enlighten me in his response or in some other way.

As the Committee has discussed, we must put quality first. As I keep saying, we must ensure that we have agility. The time it takes to develop qualifications reduces agility, and a seven-year contract makes me very anxious about how that agility can be preserved as skills needs change in the economy. I am particularly keen that we embed in the design the potential for innovation in assessment and awarding. I see innovative practice going on around the world, particularly by employers using digital badges that can have wrappers put around them to keep up-to-date with skills and the value of an employers' own qualification, with a meta-qualification on top through the wrapper mechanism. It is crucial that we allow for that. The notion of a single contract for these qualifications, thereby reducing competition, makes me worry profoundly about innovation. I find myself, as a Labour Peer, arguing with a Conservative Government that we want competition. I hope that the Minister will revert to instinct, listen and agree competition is good to improve delivery and agility in the system.

Lord Storey: I remember that my nursery nurses were terribly upset when their NNEB qualifications went and they became NVQ level 3. They were devastated, so there is something in a name and perhaps in a bit of tradition. I am a bit torn. I understand the Sainsbury review and the Government saying: let us create and agree a standard for the different pathways and maintain it. That is the qualification we will have so, presumably, various organisations can bid for it and, if they win the contract, the Government will ensure that they maintain the quality and standard.

However, as has been said, there is something about having competition. You have to look only at GCSEs, where the Secretary of State at the time wanted to have a single provider. There was a sort of rebellion against that and it did not come to pass. Schools and young people themselves can choose which awarding body to go for. Different awarding bodies suit pupils for different reasons—the content may match their study. We must think carefully about this. It is important for parents, young people and employers. Getting the name right is important but sometimes people also like letters after the name—there is a later amendment from my noble friend Lady Garden about that. I am caught on this, but I hope that we can explore the best way forward.

Baroness Cohen of Pimlico: I am responsible for 2,000 degree-level apprentices and about the same number of others. At the moment, we do what the

[Baroness Cohen of Pimlico]
employer wants. If the employer arrives and says: "I would like the formal training to have these outcomes", we say, "Right", then we discuss it and bid for it. I had been assuming that we could adjust to the new regime. If the Institute for Apprenticeships stated the outcomes that it wanted, we could teach to those outcomes because that is what we do. We would be able, in essence, to do a wraparound to suit a particular employer, which would include the vital bits that the Institute for Apprenticeships wanted. I am a little puzzled if we are to be told that we all have to teach the same thing on, say, the finance course by the bit of the Institute for Apprenticeships that is working out finance training. At the moment, let us say that KPMG tells us how it wants us to do finance training. We would do that but if someone else wanted it to be slightly different, our competitive advantage over the years has been built on adjusting to do a different sort of finance training.

I am not quite sure where I am going with this, but are we providers still to be allowed variation in any way if an employer asks us to do it slightly differently, provided we include a certain number of outcomes and standards, as set out by the institute? To take an example from my experience, with our graduate law course we made our name by introducing a City law course that the City wanted. "Wait", we said, "we'll do that". Of course, it is all the same law but it was specialist. We did that and not some other bits of law. I can imagine that being the outcome still: some City firms want varieties of law taught that nobody else cares about, as in shipping law, and some accountants want things that nobody else much cares about taught, as in shipping finance. Are we to end up with an agreed set of standards to which we must adhere, but around which we can wrap something that employers might want, or not? I am arguing for a setting of outcomes and standards by the institute but with a little deviation allowed, provided those apprenticeships include the basic standards and outcomes. Will the Minister tell me about that?

Lord Aberdare: My Lords, I share the concerns that have been expressed about a single awarding body. I would have thought that the idea would be to have the sort of single recognised qualification that the noble Baroness, Lady Wolf, is looking for, but delivered in slightly varying ways by two or three highly qualified, well-regulated and well-managed organisations. Having all one's eggs in a single basket worries me from the point of view of what happens if it does not work and what happens if you want to change the franchisee.

Amendment 17 would require,

"at least one recognised technical qualification",

in the outcomes. I very much welcome the fact that standards are to be employer-led. That should ensure that they are focused on skills for which there is a market and which will lead to jobs, but it is also very important to ensure that the needs of the learner or trainee are properly reflected. One of those needs is to acquire portable skills and attainments that are transferable to the different jobs or activities that trainees might move into. Having recognised technical qualifications included in the standards is a way of doing that. Many of those qualifications already exist in the form of NVQs, diplomas and what have you; new ones will no doubt emerge under the new process.

When I used to run employability training programmes for young Londoners not in employment, education or training, we quickly learned the value of including recognised qualifications in our programmes. Many of the young people we worked with had what you might call relatively chaotic lives and did not necessarily follow what might be considered a well-organised career trajectory. The fact that at the end of the programmes they could demonstrate achievement of some specific qualifications, whether in English, communications, basic employment skills, or ASDAN qualifications, which we also used, or health and safety or creative skills, gave them something to work with when it came to taking a new and possibly quite distinct step into a job or a career.

The noble Baroness, Lady Cohen, mentioned that her courses are geared to what employers need, but the employers which tend to be predominant in defining those needs are the larger employers. Very often the requirements do not necessarily reflect the needs and realities of SMEs and the sort of young people seeking jobs in SMEs, as I define them. For that reason, there is great value in the amendment proposed by the noble Lord, Lord Lucas.

Lord Baker of Dorking (Con): My Lords, this is an important part of the Bill because this is how the Government clearly intend the institute to instil some rigour in technical qualifications and apprenticeships. The method they are using is set out fairly clearly. There are two words which need clear definition in this part of the Bill: one is "standards" and the other is "outcomes".

On standards, as I understand it, you have to choose your occupation. Let us say it is plumbing. The institute would then say, "We are going to do plumbing today", so it would get a group of plumbers together to determine what the standards should be. Are the standards likely to have labels 1, 2, 3, 4 and 5? I assume that the department has worked out what a standard would look like. Could the Minister give us an example or write to us about it? It does not look as though the department have prepared them. It would be interesting to know what a standard would look like. That is not clear from the Bill.

Then there are outcomes. Can the Minister give us an example of what an outcome would be? Is it the same as on the next page of the Bill, "an approved educational qualification"? What will the outcome be of this operation? Will the institute say, "We have studied all the plumbing qualifications and we think the one from BTEC is the best"? "Outcome" means a specific something so that someone can say, "That is the end of it all". It would be very helpful to have some explanation of how this system is to work.

5.30 pm

Lord Hunt of Kings Heath: My Lords, I join the noble Lord, Lord Baker, in saying that, at heart, we want to hear how this will operate, because that will inform our future debates. Like my noble friend

Lord Knight, I have no problem at all with competition where it can drive quality and innovation. However, that depends on the nature of the market and the capacity and nous of the commissioning body. Frankly, my concern is that government procurement has not usually shown itself able to have the agility that my noble friend asked for. The constraints put upon public sector procurement drive you to award tenders on a crude price basis. Ministers always sign up to concepts of value for money and outcomes, as the noble Lord, Lord Baker, said. But as anyone dealing with the Government will know, the reality is that it always comes down to price. The noble Baroness, Lady Wolf, made a very convincing argument on the principles, but the real question is on the practice of procurement and licensing.

There was a tension in what the noble Lord, Lord Lucas, said. He had two worries: one was that the franchising system envisaged would allow too little time for a provider to invest morally, intellectually and financially in the very long term; equally, the other was that because of the single-provider approach, there will be little competition at the end of the franchise period. I suppose he would say the risk is that we end up with the worst of all worlds, with low-quality provision and a provider that is not interested in the long term, and the institute having no choice at the end of the day.

It comes down to capacity. We are talking about an institute with 80 people. I hope that most of their time will be spent overseeing standards, because I for one simply do not trust the approach that is being taken. How can we rely on employers, given that their record in this country is so dismal? I hope the institute will have people who can talk to and challenge the panels. But who will be left to oversee these contracts? The record of government and public sector bodies in procurement is dismal.

My other question is to the noble Baroness, Lady Wolf. In its deliberations, did the review look at the ability of the public sector to commission in a sensible, grown-up way, rather than the usual crude way that is taken? My noble friend Lord Adonis is in his place, and I am tempted to invite him to talk about some examples of that in rail franchising. The noble Lord, Lord Lucas, mentioned this at Second Reading, and clearly there are a number of examples of where the Department for Transport has gone for a bid that was overambitious from the company concerned and has had to come to the rescue. There are also examples of the argument around whether a franchise can be extended to enable the train operator to invest in the future development of services. I hope that the Minister's department will look at that experience before getting into this sort of system. For me, it is not so much about the principle but about the capacity of the institute to handle what could be a very difficult issue.

Baroness Buscombe: My Lords, I thank all noble Lords, and in particular my noble friend Lord Lucas, for this very helpful debate on these amendments. My task is to try to reassure all noble Lords that we are on the right page and that we are not talking about what we have had in the past, which was all about a race to the bottom. That was the reason the Sainsbury review was set up in the first place. I hope I can reassure noble Lords that we are trying to achieve the right thing, and I shall explain in more detail how this is going to work.

On Amendment 17, good-quality standards developed by employers and other relevant experts are at the heart of the apprenticeship and technical education reforms, and we must ensure that they are fit for purpose. In future, standards will form the basis of both apprenticeships and technical education qualifications in the reformed system, and they must be appropriate for both pathways. One of the cornerstones of the apprenticeship reforms has been to move away from a qualifications-based system—in the past, apprentices have collected a number of small, often low-quality, qualifications throughout their apprenticeship—to a single end-point assessment that tests all-round competency in the occupation.

By mandating, as the amendment proposes, the inclusion of a technical education qualification in each standard, we would be moving back towards this system, and reintroducing something which was a significant factor in the decreasing quality of apprenticeships in the past under the framework model. There may be some cases, such as degree apprenticeships, where including a qualification is appropriate, but we should not require it in every case. The purpose of the apprenticeship reforms is that they are employer led, so employers and other experts should have their input for each standard.

In addition, this approach may also blur the lines between the two pathways, which are intentionally different. For those on an apprenticeship, the individual primarily gains the knowledge, skills and behaviours set out in the standard through learning on the job and 20% off-the-job training, which is then tested through a single end-point assessment. A technical education qualification is taught largely in a college environment, often supplemented by a work placement and other steps leading to the new TE certificate. By including a technical education qualification in all apprenticeships—which would be the effect of the amendment—we would lose the essential flexibility of standards developed by employers and others and limit the breadth of skills that can be obtained through an apprenticeship.

I noted that a number of Second Reading speeches, particularly that of the noble Baroness, Lady Morris of Yardley, were very strong on this point of flexibility. Several noble Lords have touched on this this afternoon. We do not want to lose flexibility through this process, and we must have some clarity.

The apprenticeship end-point assessment is the equivalent of the technical education qualification for those who have undertaken an apprenticeship, but also captures a wider range of skills and behaviours as well as knowledge. It needs to be given time to gain the value and worth with employers that many currently associate with qualifications. Including a technical education qualification would undermine this by narrowing an apprenticeship so that the measurement is more focused on a knowledge-based qualification and less on occupational competency.

I can, however, reassure the noble Lord that our apprenticeship system is flexible and that qualifications can be included in apprenticeships where that is what

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employers need, in circumstances, for example, where failing to include a qualification would put the learner at a disadvantage in the workplace or where it is a statutory requirement. We do not believe that technical qualifications should be included in all apprenticeships.

Amendments 26 to 30 relate to copyright. I understand the concerns my noble friend Lord Lucas has raised on copyright, and I hope that I might be able to provide an explanation that will put his mind at rest. My noble friend has proposed that the institute should retain the copyright for standards and common qualification criteria rather than for relevant course documents. Amendments in the Enterprise Act, due to come into force in April, already make provision for the copyright for standards to transfer to the institute upon approval. It follows that the institute would own the copyright for any common qualification criteria that it has produced. By common criteria, we mean design features of the qualifications that are the same, irrespective of the route studied.

The qualifications system in England is unique. Qualifications that attract public funding are developed and supplied not by the Government but by awarding organisations. Our reforms will see the institute taking responsibility for ensuring that only high-quality technical qualifications that match employer-set standards are approved by the institute. This will see the institute working with employers and other relevant stakeholders to set the content of qualifications. There will be a number of people involved in this, on the different panels, including ex-apprentices.

While we recognise that it is a departure from the current system, the transfer of copyright for relevant course documents is an important feature of the reforms. The scope of the licences for the delivery of qualifications and the details of relevant course documents will be established in due course. These may well include a specific technical assessment design specification, as well as other documents that are key to the make-up and assessment of a qualification. We would expect the institute to work closely with key stakeholders, as we propose to do, to make sure that the detail is right. This will, of course, include the organisations that develop qualifications.

If copyright for relevant course documents does not reside with the institute, we could end up with a technical education system where any innovation and employer needs are undermined by commercial interests. While we believe absolutely in competition, we want competition to raise quality and standards. If an organisation other than the institute holds the copyright for a particular qualification indefinitely, this would effectively create a stranglehold that would make it difficult for other organisations to enter the market. This would clearly not be in the public interest or fair value for the taxpayer.

However, we do not want an inflexible system. The institute will be able to grant a licence to an organisation or person for use of documents for which it owns the copyright. This could include granting a licence back to the organisation that has developed the qualification. There are also important safeguards provided for in new Section A2DA.

Amendments 28 and 29 seek to clarify that the institute may grant more than one person a licence or be assigned a right or interest in any copyright document. I would like to reassure noble Lords that it is precisely our intention that more than one person may be assigned a licence if in particular circumstances this is appropriate. I would also like to draw noble Lords' attention to Section 6 of the Interpretation Act 1978. This stipulates that, unless it is clear that there is a contrary intention, wherever there are words in the singular these include the plural and vice versa. This means that the institute may grant a licence, right or interest in any copyright document to more than one person, should this be appropriate.

I hope that that goes some way towards reassuring noble Lords. In addition, I would like to touch on one or two of the questions—all of them if possible. If I do not reassure everybody, I would be very happy to write to noble Lords. My noble friend Lord Lucas questioned this single route, but each route will include a number of qualifications, each based on a cluster of occupations. If an awarding organisation fails, the institute's copyright arrangements will allow another awarding organisation to step in. What is important is that this primary legislation does not tie our hands. Panels will be starting work this summer on the detail of the different courses. The noble Baroness, Lady Wolf, who is, sadly, not in her place, has explained in detail why the commission decided to depart from the existing system and say that it is much better to have one organisation.

5.45 pm

My noble friend Lord Lucas expressed concern about who would be involved in advising on the content of qualifications. A panel of professionals will advise on the content of qualifications. The Government are currently recruiting employers and other relevant experts and will continue to do so over the next few months.

I say to the noble Lords opposite that the one thing we are not doing is leaving it to the public sector—I look at the noble Lord, Lord Hunt, and hope that he is listening. He talked about it all coming down to price. Absolutely not. That may have been the situation under his Government, but if it was, we want to move away from it.

Lord Hunt of Kings Heath: With the greatest respect, that is a ridiculous comment, and I do not know why the noble Baroness said it. We have not heard whether the institute, with its 80 staff, has the capacity to handle what looks to me like a very complex procurement situation. In fact, we have heard very little about the institute's capacity, when it must also be concerned with whether the panels producing the standards are doing the right thing. I have yet to hear any explanation of why the contracting process that has been undertaken will ensure that quality is at the forefront. What I said was that public sector procurement tends not to go down that route. If the noble Baroness wants an example of what the Government are doing at the moment—I must declare my interest as president of the Health Care Supply Association—I would say that many of the current procurement processes in health are very much about price at the expense of quality.

Baroness Buscombe: I respect the noble Lord's response, but 80 employees is quite a lot of people, and that is not where it will end. The number will rise by another 30 later this year as the process is introduced and developed. It is also important for noble Lords to appreciate that we want to use the expertise and interest of outside individuals who understand the needs of employers and what it was like as an apprentice and so on to support the institute so that we have a flow of expertise seconded, in a sense, to the institute, to work with it. So they are not the same individuals who are stressed and stretched at the number of 80.

The noble Lord does not look content with that answer, but is very important that price is not the point here.

My noble friend Lord Baker talked about standards. I am pleased to say in response that a number of standards for apprenticeships have already been published and are in use. We can, of course, send examples to noble Lords, but there are not enough completions to share outcomes yet. That will follow.

Lord Baker of Dorking: I understood the Minister to say that an outcome is not necessarily an educational qualification. Is that correct?

Baroness Buscombe: It is.

Lord Baker of Dorking: Then what is an outcome? I think that at some stage in her speech the Minister said that it was a level of knowledge. She then went on to say that it does not necessarily mean competence in applying that knowledge. When it comes to plumbing, I am all in favour of knowledgeable plumbers, but I want plumbers who can fix things.

Baroness Buscombe: I agree entirely with my noble friend. Forgive me if, when talking about knowledge, it seemed as though that was the end of the story. We are looking for occupational competence. That is the key to certification: that people are absolutely prepared and competent to enter the world of work as a fully-fledged employee in that area.

Lord Young of Norwood Green: I want to be sure I understand this. If we stick to the example of plumbing, I am assuming that the individual would have carried out an apprenticeship that met the occupational standards that have been determined by the panel of employers. That may or may not include a technical qualification. I hope I have got that right. There are 15 routes, and panels have been set up under the categories of employers—there may be other people on the panels—and they are going to set the occupational standards that will form the basis of the apprenticeship. When an individual reaches the end of their apprenticeship, they should have met all those standards and there will, I hope, be some assessment outcome that will prove to the satisfaction of the noble Lord, Lord Baker, that they can do a Yorkshire fitting and a compression joint. I would like an example of where the noble Baroness feels an apprenticeship would not include a technical qualification.

Baroness Buscombe: Off the top of my head, I cannot give a particular example. The noble Baroness, Lady Cohen, talked about shipping law. Perhaps a technical qualification is not so appropriate for that.

Baroness Cohen of Pimlico: A lawyer's qualification would be required, but it does not necessarily have to be called "shipping law".

Baroness Buscombe: Surely that is a good example.

I have been talking plumbers with officials so that I can understand what we are trying to achieve here. The noble Lord is absolutely right: it is about achieving occupational competence. However, if that panel decides, through time and through outcomes, that something is not right, we do not want the hands of the institute to be tied. The point is that the primary legislation will allow flexibility so that those standards could be changed in the light of any perceived failure or lack of occupational competence through practical application of the examinations of the qualifications. I hope that is helpful.

Baroness Garden of Frognal: This is surely what awarding bodies are doing all the time—they are awarding qualifications but if things change, they adapt the qualifications as they go along. I do not quite see why we need this supra-body in the form of the institute to oversee work that goes on all the time with vocational qualifications.

Baroness Buscombe: That goes back to the core reason why we are doing this. There were multifarious organisations rather than one overarching body to say that the standards are just not good enough and the qualifications are not preparing x or y for the world of work. This is why the review was set up: there was no consistency in the standards and those bodies were allowed to fail the apprentices. That is what this legislation is all about. As noble Lords said at length at Second Reading, for too long we have failed apprentices and allowed them to be second class and ignored. The same rigour has not been applied in further education as in the higher education system, and that is what we are seeking to put right.

Noble Lords have asked some important, incisive questions this afternoon, and I am sure they will continue to do so throughout the passage of the Bill, about how we do this and what the process is. I reassure noble Lords that this legislation is a framework. It is not intended to prescribe the detail of what the institute will do going forward. The point is to set the framework to allow the institute and excellence to thrive. It will ensure standards of competence so that young people going out into the world of work have something in their hands which means something to all employers and which they can rely on for their future employment.

In response to the noble Baroness, Lady Cohen, providers will need to make sure that they include the core outcomes approved by the institute and developed by employers and others. However, they can add additional elements to meet employers' needs. In a sense it could, as the noble Baroness suggested, be bespoke for a particular employer's requirements, as it is currently.

[Baroness Buscombe]
For technical qualifications at level 2 and 3, the content will be the same wherever it is taught. That is key: it gives employers a sense that they can trust that a person turning up with a qualification has something which is recognised and will provide what they are seeking. However, colleges will be able to tailor wider programmes of study to meet local needs.

I hope I have gone some way to reassuring noble Lords that these amendments are not necessary. On that basis, I ask—

Lord Young of Norwood Green: I think I am clearer now on the standards. In the last part of her contribution, the Minister referred to technical qualifications. The Bill is very prescriptive on the institute's control of approving and licensing technical education certificates. How does that leave the current technical education qualifications? The Bill says that:

"The Institute must maintain a list of approved technical education qualifications".

How does that impact on existing technical education qualifications?

Baroness Buscombe: In essence, I am assured that it will lead to new qualifications. Is that any help to the noble Lord?

Lord Young of Norwood Green: I would welcome a letter clarifying that situation. What happens to the existing ones? We have mentioned these brands almost ad nauseam. Will there be some transition process?

Baroness Buscombe: I would be very happy to write to the noble Lord but, in essence, the current qualifications will become obsolete and the funding will be removed. There will, obviously, be a transitional process.

Lord Baker of Dorking: We are learning a lot as we go along. It was quite interesting, although it was not very specific in the Bill. When all the existing qualifications are binned and new ones emerge, the awarding bodies which have lost will almost certainly challenge it under judicial review. This is going to be a lawyer's paradise. If you are now going to decide that it is going to be City & Guilds for plumbing, BTEC will want to know exactly why you have said that and why its plumbing qualifications are no good. That is for the lawyers to decide is it not?

Baroness Buscombe: I reassure my noble friend that there will be a proper tender process for this. Through it, the current organisations can apply for a licence to continue what they are doing now as an awarding organisation.

6 pm

Lord Knight of Weymouth: I want to pick up on the very interesting point that the noble Lord raises. If you have a single relationship with a provider, when it comes to renewal you are in quite a perilous place, given the closeness that the organisation will have had to government, in terms of being assured that the retendering will be as fair as can be—and not just in terms of capacity. The Minister said what she said about copyright. I have some concerns about how much valuable work you will get from awarding bodies if they are going to hand over their IP to government, but I will park that worry to one side. Given this closeness to government, how are you going to make sure that the reprocurement will work?

Baroness Buscombe: First, it is not being handed over to the Government but to the institute, which is funded—

Lord Hunt of Kings Heath: My Lords, there is no such thing as independent bodies in this area. All the bodies listed are going to be in one way or another under the heavy influence of government. The very fact that we are legislating for it means that, in the end, Ministers will take responsibility for what the institute does. There is no other way the Government can discharge accountability. Clearly, the Government will use the usual public sector tendering approach, which is a dead hand and will not, in my view, allow for innovation.

I do not know what the noble Lord, Lord Lucas, is going to do, but one thing that has struck me about the meetings we have had so far is that we have not really met the institute or its acting chief executive or the board members. I think it would be invaluable to listen to them to understand how they are going to take this process forward. We have not been convinced that the institute, to which I assume all the usual public accountabilities will apply, will have the actual capacity to handle the kind of sophisticated tendering that is required. That seems to me to be the problem.

Baroness Buscombe: I am sorry that the noble Lord seems to be taking quite a negative approach to this. As I said earlier, this Bill is for primary legislation to set a framework. Of course, there may be a situation where Ministers may have to have oversight, but the reality is that we want this to work as charged by the Sainsbury review. We are responding to a situation where we want to turn around something that has clearly not worked, and has clearly not been successful or provided the best outcomes for young people going into the world of work. We are trying to change that.

All I can say at this point is that we are happy to write to noble Lords to explain in more detail what we are trying to achieve through this process. As I said earlier, the legislation will not tie the hands of the institute. Flexibility and quality are key words in how this will develop.

Lord Lucas: My Lords, I am very grateful to my noble friend for her lengthy explanation. The main thing I would like to ask her is that, between Committee and Report, we have the chance to sit down and discuss this, as the noble Lord, Lord Hunt, says, with the people who are going to deliver this, as far as we can find them, so that we can get a real understanding of how this process is going to work.

I am delighted that my noble friend uses the word "flexibility", but I cannot see how a seven-year provider four years into a contract is going to react when faced

with an industry which says that it wants things changed because the technology or the requirements have moved on. The provider is going to ask, "How am I going to do this? It takes two years to change things and then I have a year to get my money back on this. What's the game?". I cannot see why, within the structure the Minister has described, two or three awarding organisations would be a problem; I can see why a single awarding organisation is a very deep problem in terms of the power transfer from government to the organisations.

I do not think that anybody who has spoken is opposed to the Government trying to make things better. We all have a sense of what is wrong with the current system, but we do not see that what is proposed answers that. That is not because the structure cannot answer it but because, to do the things that is asked of it, IFATE has to be a much stronger organisation. Alternatively, we need an arrangement, as we have with GCSEs, where below IFATE there is a layer or organisations that have a long-term commitment to and belief in improving things—they may be competing with each other but, essentially, they will work in partnership with IFATE and should expect to be there for the long term. That is better than a circulating body of people who are there and not there on a seven-year cycle, given that education cycles are so much longer. We would like to get an understanding of that and I very much hope my noble friend may be able to organise a meeting for us.

Baroness Buscombe: I am very happy to say that a meeting on the basis my noble friend suggests would be welcome between now and Report.

Lord Lucas: I am very grateful for that, and I am sure that other Members of the Committee would be delighted to come. I do not think there is any virtue then in continuing my peroration. I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Amendments 18 and 19 not moved.

Amendment 20

Moved by ***Lord Hunt of Kings Heath***

20: Schedule 1, page 25, line 23, at end insert—

"(1A) A technical education qualification approved under this section, which is undertaken by a person over compulsory school age but under 19, must support the person's entitlement to the core entitlement under section 17C of the Education Act 1996 (the core entitlement)."

Lord Hunt of Kings Heath: My Lords, Amendment 20 is designed to ensure that 16 to 19 year-olds in danger of an endless cycle of resitting maths and English GCSEs have the right to a full technical course in those fields. The background to this is the decision of the Government that, from August 2014, all students aged 16 to 18 who are starting or have already started a new programme of 150 hours or more and do not hold a GCSE at grades A to C in maths and English, or the new GCSE grades 9 to 4 equivalent, are required to study those subjects as part of their study programmes in each academic year. In 2015, this was changed so that the requirement applies also to all those with a grade D in those subjects—I am not quite sure who I am addressing at the moment on this; usually one addresses hot air, but there we are.

One can understand why the Government went down this route, but the problem is that figures released in August 2016 by the Joint Council for Qualifications show that almost 122,500 learners aged 17 or above did not get at least a grade C in maths, while 93,000 failed to secure at least a grade C in English. I looked at the comment of Mark Dawe of the Association of Employment and Learning Providers, who said:

"this is evidence … that hitting students over the head with the same form of learning and assessment is not the way forward. Functional skills, designed to develop core maths and English skills but with the learning contextualised and relevant, is proven to engage and motivate these learners, particularly those who have been turned off these subjects by their school experience".

Anyone who has come across teachers who have to teach and meet these students, resit after resit, will know that it can become a totally depressing exercise for everyone involved.

This was discussed in the other place and I note the comments of the Secretary of State, Justine Greening. She said:

"We have been clear that we do not want children to be left behind by not getting a GCSE in maths or English when they could have achieved one, so we want those who score a D to take resits. For others, however, there is the option to study for functional skills qualifications, and it is important for employers that we make sure those functional skills qualifications work effectively".—[*Official Report*, Commons, 14/11/16; col. 41.]

I understand that the Minister, Mr Halfon, has pointed out that the Secretary of State has directional powers over the institute to achieve this.

No one doubts the need to ensure that relevant literacy and numerical skills courses are available to young people aged 16 to 18 that clearly support further technical education and apprenticeships. Clearly they are an opportunity to get employment. There is, however, a real concern that at the moment too many young people are having to go through a very dispiriting process of repeating studies that they have already failed, and which many of them will continue to fail.

I hope that the Minister will be able to assure me that the Government are looking again at this area, in parallel to Sir Adrian Smith's study into the feasibility of compulsory maths being continued for all pupils to the age of 18—the two very much run together. I beg to move.

Baroness Garden of Frognal: My Lords, I shall speak to Amendments 21, 24 and 25 in my name in this group. I pass on apologies from the noble Baroness, Lady Wolf. She has had to leave for an emergency meeting and has said that she will bring her Amendment 23A on Report.

Amendments 21 and 25 deal with issues of copyright. The Minister addressed issues of copyright in the previous group and I have been left somewhat confused. Issues of copyright were not referred to in the skills plan. It appears that the Government wish to retain

[Baroness Garden of Frognal]
copyright and intellectual property rights of qualifications, thus enabling them, if they should so choose, to transfer delivery of qualifications from one awarding body to another. It is not clear why the Government should wish to do this. It is hard to think of another market in which a supplier would freely cede ownership of copyright of its product for no material benefit. The model offers no incentive for any provider of regulated qualifications to enter into a market or take the responsibility for developing and supporting a qualification for which the copyright ownership has been transferred to a third party.

The issue of copyright is complex. The policy intention here seems to be one of control and safeguarding delivery of a consistent qualification should the Government wish to remove a supplier from the market. Surely adding further complexity to intellectual property ownership is not the best way to meet this policy objective. There is no detail on how the process might work. A lack of clarity in this area, especially if export earnings were put at risk, could be a further disincentive to awarding bodies to engage.

If the proposal is that the qualification should be wholly owned and developed by government, we would counsel some detailed research into previous forays by central Government into the vocational qualifications market space, including individual learning accounts or as the noble Lord, Lord Knight, has mentioned, the 14 to 19 diploma. I bear the scars of the development of GNVQ, which nearly bankrupted BTEC when the Government came up with a new design of the qualifications, and it was not at all clear that any promotional material had gone into convincing the public, pupils, teachers and learners that this was a good qualification. GNVQs did some good things, but they had such rotten publicity that they never had the chance really to get off the ground. A great deal of time and money were spent in trying to promote those. If we are to learn anything from the past, surely it is that qualification and assessment ownership, and design and development work, are better left to professional bodies with specialist expertise in qualification and assessment rather than being controlled centrally by civil servants or quangos or, dare I say, even by politicians.

Government ownership of qualifications is not a feature of other qualifications, or of undergraduate or postgraduate qualifications offered by the higher education sector. No evidence base has been provided to support the proposal to move to nationalisation of qualifications, nor any assessment of the intended benefits, costs or risks of any such model. If an awarding organisation did not wish to hand over its intellectual property, it would be in a position where the institute would not approve its qualification for use in the funded market. This effectively closes the 16 to 19 market to awarding organisations which do not wish to relinquish their intellectual property.

6.15 pm

The copyright issue has the potential to impact on the adult education market, too. In some cases, AOs develop a single qualification which is suitable for use in different segments of the market, included the funded 16 to 19 segment. If an AO developed a qualification and was required to hand the IP over to the institute, it could not then continue to offer it in other segments of the market. So this arrangement completely closes down the opportunity for the AO to recoup development costs and constrains its ability to have a single offer in different market segments. This is a powerful disincentive to develop innovative materials and will deny learners access to the materials and qualifications they need. We have already heard of the importance of innovation in these qualifications. Awarding organisations—whether charities, professional bodies, chartered institutes, SMEs or other types of body—cannot reasonably be expected to invest in the development of a qualification only to have to sign away their copyright and, potentially, see it licensed to another AO in the market.

Amendment 24 is for clarification. As we have touched on already, qualifications currently feature in the Ofqual regulated qualifications framework. Will this list be separate and, if not, how will it relate to that framework? There are currently around 1,800 qualifications at levels 4 and 5 on Ofqual's register of regulated qualifications. If the list proposed in Section A2HA is a replacement, there ought to be clear transitional arrangements in place now. If this list is parallel to the RQF, will this not add an additional level of complexity, rather than simplifying the system? Perhaps the Minister can clarify government thinking on this too.

Lord Lucas: My Lords, most of what I want to say has been said very well by the noble Baroness, Lady Garden. I have a couple of questions to add. First, some of the existing awarding organisations have quite substantial overseas businesses in the qualifications that they currently run. Is it the Government's intention that these should be destroyed? I cannot see how they could be continued under the proposed IP arrangements. Secondly, how do the Government propose to deal with the incorporation into their regulated qualifications of qualifications whose IP they cannot hope to own, such as a CompTIA or Cisco qualification? In other words, if an apprenticeship can have four or five of these qualifications stuck in it like a currant bun—which is very much what employers want—presumably no transfer of intellectual property is involved. If this is the case for CompTIA, why should it not be the case for any existing awarding organisation?

Baroness Whitaker (Lab): I remind noble Lords of my fellowship of the Working Men's College. I support Amendment 20, not only for all the reasons so eloquently expressed by my noble friend but because it also offers a much more solid opportunity for young people from the Gypsy and Traveller communities to enter apprenticeships and to gain qualifications. These people have often dropped out of secondary school. A high proportion do so, for a variety of reasons. High among them are bullying and discrimination, and there is also a degree of alienation. However, these young people want to earn a living. They live in a work culture, an entrepreneurial one even. Their traditional trades—tarmacking, tree-lopping and scrap metal dealing—now need a high enough standard of literacy and numeracy to understand quite a lot of documentation, such as safety regulations and all sorts of papers. They do not

often acquire these at school, so the implementation of this worthwhile amendment could result in many more such young people gaining a credential and raising their earning potential, so allowing them to join a society which, in the past, has tended not to be sympathetic.

Baroness Cohen of Pimlico: I support Amendment 20. I had hoped that one of the most important things we were doing in the Bill was providing a route to employment that did not involve crossing apparently insuperable academic barriers, which some children seem to have no way to get through. These are children who, for some reason or another, have been unable to follow conventional education paths, such as the Travellers of whom my noble friend spoke, or who have suffered parental negligence or have been in care—those children have a notoriously poor track record in conventional education; or are children whom I did not know existed until I was in my 20s who learn not from books or from being told things but through their hands.

We had a nanny for my children who, after six years decided to leave us to train as a nurse, but she could not muster the necessary two O-levels to become a state-enrolled nurse. With the aid of very good references, we managed somehow to persuade the Royal Free to take her for that training. She passed third in the hospital because she was one of the people for whom, if your hands can do it, she can write it down and explain it.

I so hope that this will be another group of children who will be rescued, if you like, from misery in conventional education by the way out of an apprenticeship. I do not want them retaking their GCSEs. I want a special provision, and I hope that the Institute for Apprenticeships will be able to make it, while, by all means, if they need it, providing for further maths or other education. By the way, this proved a very successful way of integrating some of our immigrant population who do not have an academic background but are well capable of undertaking apprenticeships. The more enlightened jobcentres have been pointing them in exactly that direction, but you have not to disqualify them before they start. That goes back to the point that we were all making earlier about the benefit trap: many of our children will be unable to access an apprenticeship without paying an unaffordable financial penalty.

The Bill must be about rescuing many of our young from insuperable barriers to employment, and I very much hope that we can manage not to put any more in their way.

Lord Young of Norwood Green: My Lords, I support the amendments and shall speak specifically to Amendment 20. When I ask employers what they value most about young apprentices, the qualities are what I often hear referred to here as soft skills, but they are not, really they are essential skills. They are the skills of being able to turn up on time regularly, work as part of a team, show enthusiasm and so on. Often, ironically, the complaints that you get from employers are about those who are technically well-qualified but lack those essential skills. This amendment is about creating flexibility and recognising that there are young people who will, for a variety of reasons explained today, find it difficult, as my noble friend Lord Hunt said, to go through the demoralising impact of resits for qualifications that will not assess their innate capabilities, as my noble friend Lady Cohen described. I hope that we will get a constructive response.

Lord Storey: My Lords, I add my support to Amendment 20. Yes, it is absolutely right that we do all in our power to ensure that young people are numerate and literate. It seems reasonable to say that we want them to get to a certain level in mathematics, but that should not be a barrier to everything else. Special needs have not been mentioned. Are we to insist that children who have particular special needs or an aversion to numbers are to be included? We would not expect children who are dyslexic to get to certain standards in literacy because of the severity of their dyslexia.

We have heard about Travellers and immigrants, but there are young people for whom the system—perhaps poor teaching—has not helped them to get it. We then have this whole re-sit culture, and they get more and more fearful of failing and we do not want to label people as failures. I enjoyed the argument and think the word "flexibility" is so important. I know young people who have been taken on by employers, and the employer has said: "Well, they've got problems with numeracy and literacy, but they really sparked at this particular job". Some of them have gone on to take some qualifications later. Let us not label people, let us have flexibility and do all we can to make sure that young people get to a certain level—"C"—in mathematics, but that should not be the be all and end all.

Baroness Buscombe: My Lords, I thank all noble Lords for the amendments and welcome the opportunity to debate them. I fully understand why the noble Lords, Lord Watson, and Lord Hunt, are supporting Amendment 20. Having a sound grasp of English, maths and digital skills is fundamental to getting ahead in work and life. Raising literacy and numeracy levels at all stages of education, including post-16, is essential and remains an absolute priority.

We recognise that current requirements are still low by international standards, and we believe that individuals should have higher aspirations. In the longer term, as the quality of pre and post-16 English and maths teaching and associated learner outcomes improve, the Government should raise maths and English requirements to reflect those of higher-performing international technical education systems.

Since we made it a condition of funding, all 16 to 19 year-olds beginning a study programme who have not achieved an A* to C GCSE in English and maths must continue to study these subjects until they do so, unless specific special educational needs or disabilities prevent them. I will repeat that to underline it: unless specific special educational needs or disabilities prevent them from doing so, so there are exceptions. This has resulted in thousands more students securing these GCSEs by the age of 19. The OECD has commended us on our reforms and, working with schools, colleges and employers, we will build on them.

[Baroness Buscombe]

We will do so by implementing the Sainsbury panel's recommendations on English and maths. We have accepted the panel's recommendation that there should be a single set of English and maths exit requirements governing college-based technical education and apprenticeships, and we will continue to require all 16 to18 year-olds to study English and maths if they have yet to achieve GCSE A* to C in these subjects.

The Government consider that English and maths requirements should be included as steps towards occupational competence. As well as good literacy and numeracy, everyone needs an essential set of digital skills to succeed in the modern workplace. Digital skills requirements should be tailored and groups of persons will be in the lead to specify digital skills that are required for entry into particular groups of skilled occupations.

We believe that there should be a minimum level of English or maths which all individuals must achieve ahead of securing technical education certification, as is already the case for apprentices. We will work with the institute to ensure that occupation-specific English and maths requirements are incorporated into each route.

Before I turn to the amendments in the name of the noble Baroness, Lady Garden, I repeat the point about exceptions. We are talking about people with special needs and so on, where it may be just too difficult. The noble Lord spoke about the resit culture, and we absolutely understand that. However, in an environment where we are offering young people the opportunity through apprenticeships for genuine employment in the world of work, there is a hope and desire that those people should understand that basic core skills in English, maths and digital skills will be essential for their future. That is not least because we all know that, in the current world of work, people change jobs a lot and are not necessarily going to follow the same role for ever. Therefore, they need that basic requirement to support themselves into their future.

6.30 pm

Lord Storey: I am grateful for the Minister's reply, but how will these exceptions be decided? Will they have to have an education healthcare plan or will they be notified by the school? What will be the mechanism for exceptions?

Baroness Buscombe: The noble Lord raises a good question. I do not know the answer, so I will write to him on that.

Lord Young of Norwood Green: I want to make sure that I understood what the noble Baroness said. Nobody would dispute that these young people should carry on learning English and maths—I certainly would not—but I would like clarification. Is the noble Baroness saying that if they still did not get a grade C, that would be a barrier to them undertaking an apprenticeship? We all agree on the importance being attached to the basic skills of literacy, numeracy and digital skills, but what if an individual did not achieve that, having made real and determined efforts? Suppose they managed only a D when they reached the age of 18, would that be a barrier to them undertaking an apprenticeship, assuming that the employer would be willing to take them on?

Baroness Buscombe: I hope that I can help the noble Lord, Lord Young. That would not be a barrier to an apprenticeship. We are saying that they would have to continue to study through the apprenticeship and stay in that process in order to receive their certification.

Lord Storey: That is very helpful. So it is not a barrier to them doing an apprenticeship but they would be studying for their GCSE maths at the same time. Would the family then be entitled to tax credits because the young person is studying maths?

Baroness Buscombe: The noble Lord, Lord Storey, makes an interesting point, but I certainly would not want to commit on that. Let me clarify: they would study and do these resits, as we have been calling them, through the apprenticeship process—they would do them at the same time.

I want to attempt to reply to my noble friend Lord Lucas, who asked what would happen if awarding organisations have business overseas. The answer is that the institute can grant a licence back to the awarding organisation for use of the qualification documents—in other words, for use abroad. If there is an existing qualification for an awarding organisation that is out of the institute's scope then the institute holds no copyright on that.

I thank the noble Baroness, Lady Gardner, for tabling Amendments 21 and 25. I appreciate why she has put forward these amendments, which would allow awarding organisations to retain ownership of the copyright of documents under the new reforms. However, with respect, I cannot agree to them for the following reasons.

First, the qualification is to be approved by the institute, so it is right that the institute is the ultimate owner of the copyright. This will ensure that it can carry out its functions, including awarding licences for the delivery of the qualifications. Also, as there are likely to be multiple contributors to each qualification, the amendments are likely to make it impractical for the institute to carry out its functions to approve the new qualification. All contributors are likely to want a say in matters that relate to their particular part of the qualification. The institute should have the final say if the qualification is to be approved by it.

Secondly, the amendments would be likely to stifle competition once the licence comes to an end. Those awarding organisations whose documents have been approved by the institute would be in a far stronger position than those who were unsuccessful to rebid for a licence. Of course, the authors of documents that make up a technical education qualification should decide whether to give their consent to the copyright being transferred to the institute before the qualification is approved. If they do not, the institute can remove that document from the qualification. That is provided for in the Bill: I draw the noble Baroness's attention to

the provisions in new Section A2DA which provide safeguards for both the institute and the awarding organisations.

Furthermore, awarding organisations do not have to submit a bid to the institute for the new approved qualifications if they do not like the arrangements offered. Under the reforms, it is expected that awarding organisations will go through a comprehensive procurement process before being granted a licence to deliver a qualification for an occupation or group.

Baroness Garden of Frognal: My Lords—

Baroness Buscombe: I just want to reassure the noble Baroness that we absolutely understand that the market must be attractive for awarding organisations to operate—I wonder if that is what the noble Baroness wanted to touch on.

Baroness Garden of Frognal: Yes, that is the gist of it, but the question that both I and the noble Lord, Lord Lucas, raised was: what possible incentive is there for awarding organisations to put a whole lot of their expertise into developing materials towards qualifications if they will all be snaffled by the institute?

Baroness Buscombe: It is not a question of their being snaffled by the institute. This happens in other sectors where people develop something but the copyright is retained by someone else. It is not peculiar to this sector, a first in this area or unique. If we are to have a single organisation that is to retain and underpin the standards and quality which we all want, and have flexibility without compromising the students, it is really important that we have one body that retains the copyright: the institute.

I understand where the noble Baroness is coming from: people feel that because they have created the content, they should hang on to it. However, the point is that we are changing the system so that the copyright will be with the institute, but those who have created the copyright can bid, along with others, for the licence. It is clarifying for awarding organisations what part of copyright should be retained by whom.

Baroness Garden of Frognal: I wonder whether we could have a meeting on the copyright issue, because I find what is proposed incredibly confusing, and I do not think I am the only one around the table who finds that. It would be helpful if we could see how this ends up being a win-win situation for the awarding organisations and the institute, because at the moment it seems to be lose-lose for the awarding organisations.

Baroness Buscombe: I am perfectly happy to have such a meeting between now and Report. I re-emphasise that the whole point of this is not to undermine those who produce the copyright but all part of developing a new ethos, so that the best can be retained and be consistent across the board for all those who bid for the licence for those qualifications. On that basis, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Lucas: My Lords, I am feeling very disoriented here. A Conservative Government are arguing for nationalisation and against competition while I am arguing for more civil servants. This is not where I expected to be. My noble friend did not answer my question about external qualifications, such as Cisco or CompTIA, being embedded within apprenticeships or FE qualifications. Am I right in assuming that the Government are quite content under those circumstances to have no copyright whatever over those qualifications?

Baroness Buscombe: Yes, that is right. It would be absolutely outside the scope of the Bill.

Lord Hunt of Kings Heath: My Lords, this has been an interesting debate, with two completely separate discussions. On the issue of copyright, a meeting would be helpful. I am puzzled, because the Government are saying they would encourage those people who wish to bid for work to be innovative in the bids they put forward, but actually the reward for innovation is to be stuck in a competitive tendering exercise—and, by the way, at the end of the tendering period we will nick your ideas. That does not seem to be quite what we want. Surely we want some partnership here and some commitment from the private sector to commit to R&D and innovation, but they must have some share of the proceeds. The idea that they can get that back in the short tender period that is going to operate is, at the least, problematic.

It seems that the Government are relying on the institute to be the innovator and then to tender that out. Okay, if that is the way it is going to work then we should be explicitly told that, but I do not think they can have it both ways. It would be interesting to have that debate.

On Amendment 20, regarding resits, I take what the Minister has said—that many of those young people who resit their GCSE maths and English as a result of the new policy introduced in 2014 now have grade C—and that is a good thing. However, we know there are thousands and thousands of young people who resat but are never going to get their GCSE maths and English. My point is that this can be a very discouraging process for both students and teachers, and I am looking for a more imaginative approach. I acknowledge it is important that someone going into employment can add up and understand percentages and percentiles, but this does not necessarily mean they have reached the GCSE qualification.

Some clarification is required as there is a point I am not entirely clear on. Is it the case that for someone who goes on to an apprenticeship under the auspices of the institute and continues to resit, and can satisfy the employer at the end-point assessment, because they do not have their GCSE maths they are not going to be able to qualify as an apprentice? I may have got that wrong, so having a letter in response to that would be helpful—I am certain I have got it wrong because officials are telling me so.

Lord Young of Norwood Green: That is good news.

Lord Hunt of Kings Heath: It is. I look forward to getting the letter. I think this has been an extremely useful debate, and I beg leave to withdraw the amendment.

Amendment 20 withdrawn.

Amendments 21 to 30 not moved.

Amendment 31

Moved by ***Baroness Garden of Frognal***

31: Schedule 1, page 28, leave out lines 27 to 32 and insert—

"(b) about permission for the use of the DfE logo and standard wording on technical education certificates."

Baroness Garden of Frognal: My Lords, we now move on to the question of certificates, which has been raised already this afternoon. There are quite a few questions to be asked about the institute's power to issue technical education certificates. This is another significant proposal and was not canvased in the skills plan. The proposal potentially removes any continuing link between the awarding organisation and the qualification that it has produced.

The amendment seeks clarity on the relationship between the issuing of the proposed certificates and the qualification certificates issued by the awarding organisations. Will these technical education qualifications be alongside the awarding organisation certificate? The Minister said that employers would pay for this certificate. Does that mean that the submission for it would come from the employer, the training provider or the awarding body? What assessment has been made of the resources required by the institute to authenticate, print and send out the 3 million apprenticeship certificates to meet the government target? Will the institute require the addresses of all the candidates, or will they be sent to the employer or training provider to distribute?

Government issuing of certificates is not common procedure at qualification level in any other area of the education and training system and would appear to bestow unnecessary cost, duplication and complexity on the Department for Education and/or the institute. Would it not be simpler if the certificate issued by the awarding organisation also carried the logo of the institute or of the Department for Education? The amendment proposes the much simpler solution of adding the backing and status of the institute or DfE to a certificate which has already been validated, processed and issued. I beg to move.

Lord Watson of Invergowrie: My Lords, I have added my name to this amendment, and the Labour Benches support the remarks made by the noble Baroness, Lady Garden of Frognal. She has a great deal of experience in the field of technical qualifications, so I have little meaningful to add. In earlier debates on the Bill, I have said that I hope to see a situation develop which leads to a small and relatively focused group of technical education qualifications. GCSEs and A-levels are instantly and universally recognised and accepted; I want to see something similar for technical education certificates. The current plethora of qualifications means that too few are understood, far less valued, and that diminishes the hard work that young people put into gaining them. How dispiriting it must be to emerge successfully from the end-point assessment only to find that the qualification gained is not widely recognised or transferrable to other employers.

Allowing the use of the DfE logo and consistent wording would standardise the technical education certificates issued, make it clear that they are overseen by the Department for Education and thus have a value transferrable throughout England. That measure is long overdue.

Lord Lucas: My Lords, I will speak to Amendment 32. I am trying to follow up on Second Reading and make a couple of suggestions to the Government which I hope are helpful.

First, if they have got this system of issuing certificates, they should make sure that, at the same time, they get the ability to communicate with apprentices. If I were in government, I would use this as a means of making sure that quality was being delivered, by sending questionnaires out to apprentices as a means of improving the quality of apprenticeships by asking what needed to be done better, particularly by asking them a couple of years after their apprenticeship what, with the benefit of experience, might have been improved. I would also use it as a way of getting information with which to celebrate the schools that apprentices went to. Schools pay far too little attention to the apprentices they have educated, mostly because they do not know anything about them. With university it is there; it is easy; it happens immediately. Apprenticeship information is not gathered in the same way; it is not celebrated by schools or made available to them. There are lots of things that the Government could do on the back of having the ability to communicate and I encourage them to give themselves that.

Secondly—I am echoing what is being said in Amendment 31—let us give these young people something really worth having, something to which they can put their name. The point of GCSEs and A-levels is that they are recognised. If we are taking away the plethora of sometimes well-valued names that attach themselves to technical qualifications, let us create a name and be able to give young people some letters to put after their name, such as BA—I do not actually know what these letters should be, but they should be something that say that the young person has done this and have got the right to this. I am not a wordsmith to create this, but once they are not an apprentice they are nothing—they are a former apprentice; it is like being a former priest, something suspicious. We should give them something that celebrates what they have achieved, in the same way that we do for people who have followed the academic path.

Baroness Cohen of Pimlico: My Lords, I support both amendments. I add—and would venture to do so only in Committee—a private loop around the question of naming and how apprentices get to be made more important. On further consideration, I do not like the title of the Bill: "Technical Education" does not seem to cover it. I have no idea how this could be done, but I wonder whether we could consider changing the name

of the Bill to the "Professional and Technical Education Bill". Among the groups named in the Bill that will be considered are lawyers, accountants and other variants. We tend to refer to ourselves as professionals. It would cheer up apprentices in those fields no end to know that they were recognised as professionals. In fact it would cheer up apprentices generally if it was not just about a technical education, but about a professional one, indicating that they will be a professional in their field. I am thinking also of some of the nursing and auxiliary qualifications that would sound a lot better if they were named as the professional qualifications that in fact they are.

Lord Baker of Dorking: We are learning such a lot this evening, and it is really very interesting. Clearly, the Government are taking draconian measures—and perhaps they should—to clear out a vast number of technical qualifications. That would be the consequence of this particular Bill finding its way to the statute book.

As a result of the process of establishing, with the help of industry, standards and outcomes, the Institute for Apprentices might apparently come to the conclusion that one particular technical qualification, for example in plumbing, is best done by City & Guilds. That seems to be the purpose behind what we are doing in this part of the Bill. The other awarding bodies would presumably not think it worthwhile to attempt to replicate that and have another plumbing qualification that is different, because that is the one that has the real stamp of approval with the Institute for Apprentices. Presumably, someone who is apprenticed to be a plumber will actually work for that qualification and hopefully get it.

This is a different system from that which has operated so far, but it is authoritative. If it is so perfect, are the Government intending to do this at GCSEs? If this wonderful system of technical awards is developed, should it not also be done for maths, English, history, geography and French? If what the Government are going to do is so wonderful and perfect, why should one stop with just technical subjects? If they are really persuaded that they have the best system for determining the best qualification in a technical subject, surely they should be able to decide what the best is in maths. If you are going to standardise things to this level, it might be GCSEs that would be the most effective. We must try to appreciate how thorough and complete a transformation will occur as a result of this.

Baroness Donaghy: My Lords, I want to follow the important point made by the noble Lord, Lord Baker. At the beginning of the first day of Committee, I said I hoped at the end of this to have a clearer understanding of the organisational chart and who was responsible for what. The longer the discussion has gone on, the more I am clear that this will be, as the noble Lord, Lord Baker, said, a fairly draconian change, which may be for the better.

However, I offer a word of caution. Some of us have lived through the birth, life and death of the Council for National Academic Awards or CNAA, some of us through the B Ed, and some of us through the area training organisations. At one stage, one of my roles at the former Institute of Education was to look after 48 teacher training colleges, which were training 26,000 teachers. It had a central and, it has to be said, very bureaucratic system of recognition for teachers at the university to ensure that they were all of the right standard and that all the institutions were offering the right quality. I emphasise that we had a complex and inadequate system. In trying to do something which is much needed and replace one system with a better system, we should not make some of the mistakes that we have all made—all Governments have made them; I am not trying to make a party-political point—by creating a structure which turns out to be Frankenstein.

Lord Young of Norwood Green: My Lords, I shall not make any general assertions of what may or may not happen. I take the "all is for the best in this best of all possible worlds" approach to this. However, is the institute going to issue an apprenticeship certificate? The schedule refers to the:

"Power to issue technical education certificate".

We heard some examples of where there could be an apprenticeship without a technical qualification, so is the institute involved in that?

I want to address the point the noble Lord, Lord Lucas, made that on the completion of an apprenticeship there should be a stamp of approval, so that you have something to show. In the old days, you got a beautifully illuminated manuscript. I was not assuming that the Government would go that far, but I remember that the master bricklayer who lived across the road from me had an exceedingly impressive document from his apprenticeship. I am not expecting that but I want to know what this actually includes. Can we be assured that every apprentice, on completing their apprenticeship successfully, will get a certified stamp of approval?

Baroness Buscombe: My Lords, I am grateful to the noble Baroness, Lady Garden, and my noble friend Lord Lucas for tabling these amendments relating to certification. While I appreciate the intention behind the proposed changes I hope that after I have outlined my concerns, they will withdraw or not press these amendments.

The primary purpose of a technical education certificate is to enable individuals to demonstrate to employers that they have obtained the knowledge, skills and behaviours necessary to undertake their chosen occupation. Those completing either an apprenticeship or a technical education course will receive a nationally awarded certificate from the Secretary of State. This will confirm that they have attained as many of the key skills and behaviours as the institute has deemed appropriate for a particular occupation. To answer the question asked by the noble Lord, Lord Young of Norwood Green, the Secretary of State will issue the certificate but it will be branded by the institute. For a technical education certificate, this is likely to include confirmation of maths and English qualifications, successful completion of a work placement and other route-specific qualifications. This will provide clarity for employers and support the portability and progression value of the qualifications.

[Baroness Buscombe]

The organisation or consortium of organisations which the institute has approved to deliver the technical education qualification will, however, be entitled to issue its own certificate for that qualification. It is therefore right that responsibility for issuing technical education certificates should be retained by the Secretary of State. This will also ensure that certificates for technical education align as closely as possible with certificates for apprenticeships.

Amendment 31 would allow this function to be delegated to individual awarding organisations. To do so could lead to unequal status or recognition of the value of certificates. It is also right that the Secretary of State should be able to determine whether to charge for the initial technical education certificate or further copies and, if so, how much to charge. Likewise, it will be up to the organisation to decide whether and how much to charge for issuing a certificate confirming that an individual has successfully completed their qualification. I will come on to questions when I have finished speaking to Amendment 32.

7 pm

Amendment 32 would entitle those who successfully complete a technical education certificate to add letters or words after their name, in a similar way to those holding a degree level of certain professional qualifications. In academic education, the use of letters after the name signifies achievement at degree level or above. Also, certain industries use post-nominal letters to indicate an individual's professional membership or accreditation.

The technical education certificate is not in itself a qualification or accreditation. Its purpose is to capture an individual's attainment and experience in the round, and it will enable the individual to provide a signal to employers of what they can do. To receive such a certificate, the individual will be required to pass a technical education qualification, for which they will also receive a certificate from the relevant awarding organisation. Some students may pass their technical education qualification but be unable to complete all the components of the course, and therefore will not be issued with a technical education certificate.

The reforms to technical education are intended to simplify the system, making it easier for young people and adults to navigate and for employers to understand the skills that individuals have gained. Most importantly, the certificate shows that a person has completed a course of technical education in alignment with the same standard as a person who has undertaken an apprenticeship in the same occupation. There is already a large variety of post-nominal initials or titles used to indicate that an individual holds a particular position, qualification or accreditation. If the Government were to introduce further post-nominal initials for those who hold a technical education certificate, we risk confusing employers and individuals. For the reasons above, we believe that the certificate will speak for itself. The reforms will ensure that we operate a system for the future, providing a national offer recognised and understood by employers, regardless of the qualification or where it was undertaken.

I will quickly refer to specific questions asked by noble Lords. First, the noble Baroness, Lady Garden, asked about apprenticeship skills. The Skills Funding Agency will print the certificates. The information for certificates to be sent out is contained in the individualised learner record. The Skills Funding Agency will not award a certificate without confirmation from the awarding organisation that the apprentice has passed the end-point assessment. Also on Amendment 31, the noble Baroness, Lady Cohen, asked whether it would be beneficial to add the word "professional". I absolutely understand where she is coming from, and I am assured that we will reflect on that between now and Report. It is important that in changing the system, we recognise that these qualifications are meaningful and important. They will give people a status that gives them confidence when they enter the world of work, which we have been very poor at hitherto.

On Amendment 32, my noble friend Lord Lucas asked how data on apprentices could be used. The Skills Funding Agency will keep data on who has completed the apprenticeships as part of the certification process. It will be able to share these with the institute.

In conclusion, I absolutely understand where the noble Baroness, Lady Donaghy, is coming from, too. Of course there are lessons to be learned from the past and, to the best of our ability, we must ensure that we encourage the institute not to make the same mistakes again and look to a brighter future. On that basis, I hope that the noble Baroness will feel able to withdraw the amendment.

Baroness Garden of Frognal: I am grateful to the Minister for her reply and to all noble Lords who have spoken. As the noble Lord, Lord Baker, said, we have had some interesting discussions this afternoon on various aspects of the Bill.

I am not sure that my questions about certification were entirely answered. We had a lot of experience with this when NCVQ came in. I realise that my memory is longer than others'. Like the noble Baroness, Lady Donaghy, some of us go back a bit too far. There was never any problem about putting that brand on the certificate along with BTEC or whatever else it was. Awarding bodies are quite used to having a national branding on their certificates alongside their own award. The Secretary of State is going to have his job cut out issuing all these certificates to people. I would be interested to see the detail of how that is going to happen. The duplication of certificates is not necessarily helpful and will not help employers.

I congratulate the noble Baroness, Lady Cohen, on getting her idea of "professional" at least agreed to be thought about. It would be something if we could add that word to the title of the Bill, because many of us are a bit concerned about its narrowness.

The noble Lord, Lord Lucas, brought up the business of post-nominal letters. When I worked for City & Guilds, I set up the senior awards department there, which was rationalising post-nominal letters for levels 4 to 7, some of which had been awarded for over 100 years. Because of the royal charter, we had to get Privy Council approval to do an additional one. It always struck me how much it meant, particularly to the level 4 people who got a licentiate award and could put

the letters "LCGI" after their name. They often went into being small business people, and it raised their spirits and gave them status and standing to know that they could have LCGI after their name on their cards. I went on to get robes designed for them, but I am not suggesting that we do that for apprenticeships. Post-nominal letters are an issue. I am not sure how it would work with the institute to get approval for them, and I entirely take the Minister's point that it can be more confusing to get a whole range of post-nominal letters that people do not understand. In our case, we were starting with 100 years of people having understood some of our City & Guilds post-nominal letters.

I am still baffled about quite how the mechanics of issuing all these certificates is going to happen and what the benefit is to the students and people who have succeeded in getting one certificate from the awarding body and a duplicate one from the Secretary of State, however prestigious that might be. I would welcome a little bit more clarity on quite how this is going to work but, for the moment, I beg leave to withdraw.

Amendment 31 withdrawn.

Amendment 32 not moved.

Amendment 33

Moved by ***Lord Nash***

33: Schedule 1, page 28, line 37, leave out from beginning to end of line 13 on page 29 and insert—

""40AA Sharing of information by or with the Institute

(1) The Institute for Apprenticeships and Technical Education may disclose information to a relevant person for the purpose of a relevant function of that person.

(2) For disclosure of information by the Institute for the purposes of its own functions, see paragraph 10 of Schedule A1.

(3) A relevant person may disclose information to the Institute for the purpose of—

(a) a function of the Institute, or

(b) a relevant function of that person.

(4) In this section "relevant person" means—

(a) Ofqual,

(b) the OfS,

(c) Ofsted, or

(d) a prescribed person.

(5) In this section "relevant function" means—

(a) in relation to Ofqual, the OfS or Ofsted, a function of that body, so far as the function relates to England;

(b) in relation to a prescribed person, a prescribed function of that person, so far as the function relates to England.

(6) In this section—

"Ofqual" means the Office of Qualifications and Examinations Regulation;

"OfS" means the Office for Students;

"Ofsted" means—

(a) the Office for Standards in Education, Children's Services and Skills, and

(b) Her Majesty's Chief Inspector of Education, Children's Services and Skills.

(7) Regulations under this section prescribing functions of a person may prescribe all of the person's functions."

Lord Nash: My Lords, these government amendments will allow the Secretary of State to make sure that the data-sharing gateway in new Section 40AA remains fit for purpose through regulations. The regulations can include persons to whom the institute can disclose information or who can disclose information to the institute, and the functions about which the information may be disclosed. New Section 40AA will establish data-sharing gateways between the institute and Ofsted, Ofqual, the Office for Students or any other person set out in the regulations. There is already a separate provision for the institute to share information in relation to its own functions.

The bodies with which the institute is likely to need to co-operate and share information to do its job effectively are expected to change over time. That is particularly important given the reforms in higher and technical education. For example, the Quality Assurance Agency will not be named specifically in legislation and the quality arrangements in that area may change over time. It will be important to ensure that the institute can work effectively with whatever body is designated in that case, as well as any other bodies which take on roles in relation to education and training. All the disclosures under the gateways take precedence over any non-statutory restrictions, but they would be subject to all the important safeguards in the Data Protection Act 1998.

I reassure noble Lords that I am, however, absolutely mindful of the need to ensure full parliamentary scrutiny each time the Section 40AA power is used. Although not common in relation to similar regulations, where the negative procedure will be used, it is proposed that these regulations will be subject to the affirmative procedure. In view of this, I hope that noble Lords will accept this amendment.

Lord Lucas: Will the DfE be able to access this data, for instance to try to understand what history at school leads to what sort of performance in technical qualifications and apprenticeships?

Lord Watson of Invergowrie: My Lords, I welcome these amendments and want to say just a brief word about them, and in particular about Amendment 33.

On Report in another place Labour raised the issue of introducing the Quality Assurance Agency as a body to whom the institute can communicate information. The Minister, Mr Halfon, resisted at that time, saying that it depended on developments in the Higher Education and Research Bill. That Bill is still under way, but things have clearly moved on and the Minister has had second thoughts because we are pleased to hear that the Government now want to empower the institute to exchange information with all bodies with which it might need to do business, apparently without worrying about data protection legislation.

[Lord Watson of Invergowrie]

I would like one point of clarification on that. The amendment to Schedule 1 refers to "a relevant person" —we understand that a "person" is an organisation—and lists Ofqual, the OfS and Ofsted and then "a prescribed person". The Quality Assurance Agency would be a prescribed person. When the Minister replies, will he specify the difference between somebody who is "relevant" and somebody who is "prescribed"? Presumably a prescribed person is not irrelevant but is not relevant.

The Minister and his colleagues are adopting the Opposition's wider view of the role of the institute. Will he say which persons or bodies he and his colleagues have in mind to add, apart from the QAA, to which he referred? An obvious one is local government which can provide a bridge between school education and the world of work. Local government still retains various statutory duties for 16 to 18 year-olds, including duties under the Education Act 1996 in respect of ensuring education and training for persons over compulsory school age and of encouraging employers to participate in the provision of education and training for young people. The Minister may be aware that local authorities have duties in respect of young people with special educational needs and disabilities for whom the local authority maintains an education, health and care plan and for care leavers up to the age of 25. I should have said the Minister will be aware; it is a bit unfair to say he may be.

I also note that government Amendments 48 to 54, which we shall consider on Wednesday, make the local authority director of children's services a person who must be informed about the insolvency of an FE college because, according to the Government's explanation, such colleges will be educating care leavers, and the local authority needs to know to ensure that the local authority–appointed personal advisers to the care leavers know of the insolvency.

There are numerous reasons for local government to be involved. Perhaps the Minister will make a statement—I will be perfectly happy for it to be on Wednesday—about the anticipated roles of the local authority and the institute and how they will interact.

7.15 pm

Lord Nash: If I may answer my noble friend Lord Lucas's point, the answer is yes under a separate provision in the Bill. On the point about the difference between relevant and prescribed, a prescribed person is somebody set out in regulations and a relevant person is set out in the Bill or in regulations.

Amendment 33 agreed.

Amendment 34

Moved by ***Lord Nash***

34: Schedule 1, page 29, line 13, at end insert—

"27A In section 40D(3)(interpretation of Part 1A)—

(a) the words from "affects" to the end become paragraph (a);

(b) after that paragraph insert—

"(b) authorises the disclosure of any information in contravention of any provision made by or under any Act which prevents disclosure of the information.""

Amendment 34 agreed.

Amendment 34A not moved.

Amendment 35

Moved by ***Lord Nash***

35: Schedule 1, page 29, line 33, at end insert—

"29A In section 262(6)(orders and regulations subject to affirmative procedure), after paragraph (aa) insert—

"(aza) regulations under section 40AA;"."

Amendment 35 agreed.

Schedule 1, as amended, agreed.

Clauses 2 to 6 agreed.

Amendment 36

Moved by ***Lord Nash***

36: After Clause 6, insert the following new Clause—

"Records etc

(1) The Secretary of State may by regulations make provision for or in connection with—

(a) the delivery to the registrar of companies of documents that relate to the insolvency of further education bodies;

(b) the registrar's function of keeping records of information contained in such documents under section 1080(1) of the Companies Act 2006;

(c) the publication of, or access to, those records or related information.

(2) The regulations may, in particular, provide for any provision made by or under the following sections of the Companies Act 2006 to apply (with or without modifications) in relation to those documents or records.

Provision of Companies Act 2006	*Description*
sections 29 and 30	copies of resolutions etc to be forwarded to the registrar
section 859K	registration of enforcement of security
sections 1077 and 1079	public notice of receipt of certain documents
sections 1081, 1084 and 1085 to 1091	keeping and inspection of register of companies
sections 1093 to 1097	correction or removal of material on companies register
section 1104	documents relating to Welsh companies
sections 1112 to 1113	supplementary provisions

(3) The power under subsection (1) includes power—

(a) to impose requirements on a person who delivers a document to the registrar in relation to the insolvency of a further education body to provide supplementary information;

(b) to confer power on the registrar to make rules in accordance with section 1117 of the Companies Act 2006 imposing such requirements.

(4) Provision made under this section is in addition to any applicable provision made by Part 35 of the Companies Act 2006 or elsewhere.

(5) Regulations under this section are subject to the affirmative resolution procedure.

(6) Section 1114(1) of the Companies Act 2006 (meaning of document etc) applies for the purposes of this section."

Lord Nash: My Lords, we have tabled this amendment to ensure that should an FE body become insolvent, there will be an accessible public record of documents relevant to the insolvency procedure for that body. FE bodies that are statutory corporations are exempt charities and not companies. As such, they are not subject to filing requirements with any particular regulatory body, although they are required to keep audited accounts and to publish them, for example on their websites.

When the Bill was originally drafted, it was thought that we could rely upon certain provisions of the Companies Act 2006 so that an insolvency practitioner could file documents required by the court as part of any insolvency procedure, including education administration. However, it is now clear that specific provision is needed within the Bill to ensure that an accessible and workable file for insolvent FE bodies may be created and managed by the registrar. This amendment therefore creates a new clause to provide for exactly that and allows the Secretary of State to make regulations relating to the delivery of documents about the insolvency of FE bodies to the registrar, about the registrar's function of keeping records of information within those documents and about the publication of and public access to such records or information.

The power in the new clause also allows the Secretary of State to permit the Registrar of Companies to make rules relating to filing requirements, such as about the form of documents to be filed. As I hope the Committee will appreciate, this amendment is necessary to permit the paperwork of an insolvency procedure for an FE body to be properly managed. I beg to move that this amendment be accepted and that the new clause stand part of the Bill.

Amendment 36 agreed.

Committee adjourned at 7.18 pm.