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PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

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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

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House of Lords

Wednesday 1 March 2017

3 pm

Prayers—read by the Lord Bishop of Newcastle.

Retirement of a Member: Lord McCluskey *Announcement*

3.06 pm

The Lord Speaker (Lord Fowler): My Lords, I should like to notify the House of the retirement, with effect from today, of the noble and learned Lord, Lord McCluskey, pursuant to Section 1 of the House of Lords Reform Act 2014. On behalf of the House I should like to thank the noble and learned Lord for his much-valued service to the House.

Immigration *Question*

3.07 pm

Asked by Lord Green of Deddington

To ask Her Majesty's Government what percentage of the change in the total number of households in the United Kingdom between 2010 and 2014 is attributed to households with a non-United Kingdom born household reference person.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, according to the Office for National Statistics, 90% of the growth in households from 2010 to 2014 can be attributed to households with a household reference person born outside the UK.

Lord Green of Deddington (CB): My Lords, I have been asked to explain that a “household reference person” is modern bureaucratic-speak for head of household. Now we know what we are talking about, I thank the Minister for his response. Does he agree that we should welcome the many contributions that immigrants make to our society and economy, but that we should also be frank about the costs? Does he recall telling this House on 19 January that in the main scenario, just over one-third of additional households were due to net migration? Yet today he tells us that in the most recent period, 90% of additional households were headed by an immigrant. Surely it is now obvious that the DCLG should be using the high-migration scenario—that is, the one that implies a demand for a new house for a migrant family every five minutes, night and day.

Lord Bourne of Aberystwyth: My Lords, it is the case that 37% of household growth is due to net migration. I certainly endorse the noble Lord's comment that we have every reason to be grateful for immigration;

it adds to the diversity of national life and makes a significant contribution to national life, not least to the public services.

Lord Paddick (LD): My Lords, these statistics need to be interpreted very carefully. For example, the Minister's right honourable friend the Foreign Secretary was born in the United States of America so—although Marina might argue to the contrary—Boris Johnson is the head of a household who was born outside the United Kingdom. Does the Minister agree that overall, migrants, particularly those from the European Union, contribute far more to the United Kingdom than they take out, and not only should they be welcomed but, if they are already here, they should be allowed to stay?

Lord Bourne of Aberystwyth: My Lords, it is interesting to speculate that as the Foreign Secretary was, as the noble Lord has said, born in the United States, that makes him, I think, eligible to stand and become President of the United States—an interesting scenario. I certainly endorse the noble Lord's effective point about the contribution that the immigrant communities have made to this country. As the Prime Minister has indicated, that will continue to be the case: in any scenario we will still be welcoming many people to this country as immigrants.

Lord Clark of Windermere (Lab): My Lords, does the Minister realise that the Foreign Secretary renounced his American citizenship only last year and that he is therefore not eligible to stand for President of the United States of America?

Noble Lords: No!

Lord Clark of Windermere: But while I am on my feet, will the Minister also confirm that about 60,000 individuals from the European Union are working in our National Health Service, and that the service would collapse completely without them?

Lord Bourne of Aberystwyth: My Lords, I am grateful to the noble Lord for correcting me in relation to the Foreign Secretary. I certainly was not trying to whip up a campaign on his behalf, and I now know that there would be no point in doing that any way.

The noble Lord's very serious point about the contribution of EU citizens—as well as of other people who were not born in this country—to public services, including the National Health Service, is well made and the Government are well aware of that.

Baroness Farrington of Ribbleson (Lab): My Lords, I would not dream of asking the Minister a question about how many EU citizens are involved in building houses because he is very proficient and I am sure he would not have that information. However, would he agree with my observation that many houses—for both incoming and existing families—are built with the endeavours of migrant workers from the EU?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness is very kind and her point is well made. It is certainly the case that a significant number of people

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who work in construction are from communities that were born overseas. We have regular discussions with the construction management board to ensure that the needs of that sector are taken account of, in view of the independent Farmer review which looked at that area.

Lord Bilimoria (CB): My Lords, does the Minister agree that our universities are—along with those in the United States of America—the best in the world? This is greatly because of the foreigners who make up almost one-third of our academics. According to a recent report, almost 50% of academics in some subjects are from abroad. Without them we would not have excellence. It does not matter that they were foreign born: they are of benefit to this country.

Lord Bourne of Aberystwyth: My Lords, the noble Lord makes a very important point about our universities, which I think are the best in the world, independently of America. Many people in them are undoubtedly from overseas, including many students.

Baroness Lister of Burtersett (Lab): My Lords, the Minister rightly pointed to the contribution made by immigrants to the health service, but a growing proportion of households have someone needing care at home. A report today from the TUC suggested that 7% of social care workers are from other EEA countries, with others from outside the EU as well. What effect would it have on informal care in the home if immigration were significantly reduced?

Lord Bourne of Aberystwyth: My Lords, the noble Baroness makes a very valuable point about the care sector, a large number of the employees of which undoubtedly come from overseas—not just the European communities. The Government are well aware of this and it will inform our immigration policy. We recognise that we need significant numbers of the brightest and best people with particular skills for our public services and elsewhere.

Lord Low of Dalston (CB): My Lords, does the Minister agree that, as the series of questions to which we have just listened shows, it is completely counter-productive to keep harping on about the quantity of immigration, not the quality?

Lord Bourne of Aberystwyth: My Lords, I think that that is the essence of the Government's policy. We recognise the need for particular skills. We recognise that over time we have relied on the skills of immigrant communities who have made a massive contribution to national life, and continue to do so. I endorse what the noble Lord said.

Lord Tebbit (Con): My Lords, we have heard a number of questions and all of them have commented on the very good things—the advantages of immigration to this country. Will my noble friend tell me how many of those convicted of terrorism or aiding terrorism have been immigrants, and how many of them have been the children of immigrants?

Lord Bourne of Aberystwyth: My Lords, my noble friend will appreciate that I do not have those figures to hand, but it is undoubtedly the case that there are people from any community who are involved in crimes—terrorist crimes or other crimes. I will endeavour to get the figures that my noble friend asked for and ensure that a copy of the letter is placed in the Library.

Circuses: Wild Animals

Question

3.15 pm

Asked by Baroness Jones of Moulsecoomb

To ask Her Majesty's Government whether they will bring forward legislation further to their manifesto commitment to ban wild animals in circuses.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, the Government remain committed to banning the use of wild animals in circuses, and primary legislation will be introduced when parliamentary time is available. In the meantime, ahead of a ban, to safeguard the welfare of any wild animals still used in circuses, Defra introduced a licensing scheme in 2013, which is currently in use for 16 wild animals in two travelling circuses.

Baroness Jones of Moulsecoomb (GP): I thank the Minister for his reply, and I take his point that only a few animals are subject to this, but however well-regulated, they still suffer physical and social deprivation. Given that more than a dozen Private Members' Bills on this issue have been blocked in Parliament over the last few years, will the Minister give us a timetable for the Government's delivering on their promise of a ban?

Lord Gardiner of Kimble: My Lords, I am not in a position to say precisely, but I would like to take one issue up. One of the reasons we introduced the licensing scheme was to ensure the welfare of the animals. I have seen the conditions of the welfare scheme associated with the licensing, which is rigorous and requires inspections by vets and inspectors at least four times a year. The welfare standards of these animals—six reindeer, three camels, three zebras, one fox, a macaw, a racoon and a zebu—are high. On ethical grounds, this situation should be prohibited.

Lord Borwick (Con): My Lords, does my noble friend agree that such legislation might obstruct the ability of the Chancellor of the Exchequer to pull a rabbit out of a hat next week?

Lord Gardiner of Kimble: I am afraid my noble friend is a bit too fast for me there. The truth is that this is important legislation that we wish to put forward, but I am confident that the welfare elements, which are so important, are well-provided for in the licensing scheme.

Baroness Parminter (LD): My Lords, wild animals are not just kept in circuses—they are still kept in homes. About 5,000 primates are kept as pets in the UK. The Primate Code was due for review in 2015. When are the Government going to get on and do it?

Lord Gardiner of Kimble: My Lords, there is of course legislation, and under the requirements of the Dangerous Wild Animals Act the primary focus is public safety, but clearly, the Animal Welfare Act 2006 absolutely applies. We are absolutely clear that it is not appropriate at all for primates to be kept as pets.

Lord Trees (CB): My Lords, I was going to ask about primates myself. Both the BVA and well-respected animal welfare organisations such as the RSPCA all agree that primates are totally unsuitable to be kept as pets; they are highly social, highly intelligent animals and many welfare problems arise when they are kept in captivity as pets. Will the Government consider taking stronger action to remedy this serious welfare issue?

Lord Gardiner of Kimble: My Lords, I will certainly take back what your Lordships have said, but it is absolutely clear that the Animal Welfare Act 2006 makes it an offence to cause unnecessary suffering to an animal. This is backed up by a code of practice, and no one should keep a primate in solitary conditions, as the noble Lord has said, keep it in a small cage or feed it with an inappropriate diet. In other words, I repeat: primates should not be kept as pets.

Baroness Jones of Whitchurch (Lab): My Lords, perhaps I may push the Minister further on the real reason for the delay in introducing the Bill. According to the latest Defra consultation, 95% of the population support a ban and the issue has cross-party support, so it cannot be because the Government fear a backlash. We are prepared to work with the Government to introduce what ought to be fairly simple legislation, and I really do not understand why there is continuing delay.

Lord Gardiner of Kimble: My Lords, I obviously understand what the noble Baroness is saying, and I too would like to make progress. However, I repeat that 16 wild animals are currently under a very rigorous licensing scheme. I deliberately mentioned their species so that your Lordships could understand which animals were involved. I emphasise that there are very regular inspections, and one reason why primary legislation is necessary is that there is a view that a legal challenge would be made because there would be insufficient grounds to secure a ban on a welfare basis.

Baroness Fookes (Con): My Lords, even if enforcement is rigorous in relation to animals in circuses, what about the position of the other animals that have been referred to—the primates which are inappropriately kept in people's homes? Who is enforcing the laws relating to that?

Lord Gardiner of Kimble: My Lords, these are all matters that local authorities are required to ensure are enforced under the Dangerous Wild Animals Act. Clearly, if there were any issues, Defra would want to work with local authorities because it is absolutely essential that suitable animal welfare provisions are in place. I will take back what has been said about primates—I am very conscious of that—and if I have anything further to add, I will report back to your Lordships.

Baroness Miller of Chilthorne Domer (LD): My Lords, a lot of the wild creatures kept in people's homes as pets, whether birds or any other creature, have been smuggled into this country. Is the Minister confident that the National Wildlife Crime Unit has sufficient capacity to deal with the level of smuggling?

Lord Gardiner of Kimble: The noble Baroness raises a very important issue. The answer is that we believe that there are sufficient resources at the border, but clearly we need to be ever more rigorous. There are all sorts of schemes under many directives. From an animal welfare point of view, it is hugely inappropriate to smuggle in animals, whether they are domesticated or wild, and this is one area I will very much look at addressing.

Lord Clark of Windermere (Lab): My Lords, as the Minister is aware, there are very strict conditions on keeping animals in zoos. Has he seen the report in this morning's papers about the zoo in the Furness district of Cumbria, where there has been an appalling number of deaths of wild animals—over 500, I think—in recent years?

Lord Gardiner of Kimble: My Lords, I have indeed. Of course, a zoo-keeper also died in that case. It is inappropriate for me to reply in detail because this matter is subject to the consideration of an application renewal by Barrow-in-Furness Borough Council, which will be happening very shortly. However, I am very conscious of what I think are far too many deaths among animals in that zoo.

Personal Injury Claims: Motor Vehicle Incidents

Question

3.22 pm

Asked by Lord Hayward

To ask Her Majesty's Government what progress has been made in tackling the abuse of personal injury claims relating to incidents involving motor vehicles.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, reforms to address road traffic accident-related soft tissue or whiplash personal injury claims have been taken forward through the Prisons and Courts Bill, introduced on 23 February. These include a fixed tariff of compensation for whiplash

[LORD KEEN OF ELIE]

claims and a prohibition on offers to settle such claims without medical evidence. A number of changes to the small claims limit for personal injury will also be made.

Lord Hayward (Con): My noble friend will be aware that a year ago to the day I asked a Question in relation to John Elvin, who reported to his insurer, Sheilas' Wheels, an accident that he was convinced would be the subject of a false whiplash claim. It was settled and we now have the figures. Sheilas' Wheels paid £1,500 for damage to a car that was not inspected and the people concerned were given over £6,000 for personal injury, despite the fact that they were able to leap out of the car and protest about a non-existent injury. Is it not the case that the industry has enough to do in putting its position right, as well as dealing with other issues that apply in these cases?

Lord Keen of Elie: My Lords, I quite understand the point that has been made. That is why we have included in the proposed legislation a ban on insurers making offers to settle such claims without medical evidence. We have of course addressed the issue of medical reports through the MedCo scheme.

Lord Beecham (Lab): My Lords, I refer to my interest as an unpaid consultant in the firm of solicitors in which I was senior partner. The increase in the small claims limit for whiplash cases is likely to lead to greater activity by claims management companies, which will take a substantial cut from any damages. Will the Government take steps to control this parasitic industry? This week, the Lord Chancellor announced changes to the way in which damages for personal injuries are calculated. Such damages are estimated to cost the National Health Service, which recovers the costs of treatment for motor accident claims, an estimated £1 billion a year, and they increase insurance premiums. Is this not a classic example of a ministerial car crash?

Lord Keen of Elie: No, my Lords, this is not a ministerial car crash. I remind the noble Lord that the increase to which he refers arises as a result of the application of the discount rate introduced by the Damages Act 1996, which was last reviewed in 2001. The object of the change in the discount rate is to ensure that those who suffer catastrophic and life-changing injuries are fully and properly compensated for those injuries by reference to the damages calculation for their future care and support.

Lord Goddard of Stockport (LD): I have a copy of the report. Will the Minister comment on the following two simple statements? The report says that, once this is implemented, savings of £1 billion will be made and the average motor policy will come down by £40. Huw Evans, director-general of the Association of British Insurers, says that a 21 year-old's policy will rise by £1,000 and 30 million other comprehensive policies will rise by £40 to £75 a year. Which is accurate, which is correct and which, in the long run, will prove to be right?

Lord Keen of Elie: My Lords, there are two distinct issues to be addressed in this context. The reforms with regard to whiplash will, on the basis of completed impact assessments, result in very considerable savings in motor insurance premiums of the order of £1 billion. It is estimated by the industry that this will result in an average reduction in motor insurance premiums of about £40. The major operators within the motor insurance industry have undertaken to pass those savings on to the motorist, the consumer. However, the changes in the discount rate will inevitably impact on the cost of insurance, including motor insurance, and that will give rise to certain increases. One may offset the other, but I add that the Lord Chancellor indicated when announcing the change to the discount rate that this will be the subject of consideration and indeed a consultation, which is due to commence no later than Easter.

Viscount Hailsham (Con): My Lords, I begin with a declaration of interest: I do not now practise as a personal injury lawyer but I have done in the past. Does my noble and learned friend recognise that the reduction in the Ogden tables to a discount rate of minus 0.75 will inflate the damages that are recoverable in personal injury cases to an extravagant and unconscionable extent, which is bound to inflate the numbers of fraudulent or unjustified personal injury cases in motor claims to the prejudice of all drivers? That being so, may I welcome the fact that these proposals are going to be looked at again, I hope constructively?

Lord Keen of Elie: My Lords, the way in which the discount rate is calculated will be examined with some degree of urgency. However, I do not accept that the discount rate will result in the inflation of the value of damages claims. It was designed originally to ensure that those claims would be properly calculated so that those who suffer life-changing injuries are properly compensated for the future.

Lord Campbell-Savours (Lab): Does that mean that if the interest rate goes up, the discount rate goes up? I am only following the noble and learned Lord's logic.

Lord Keen of Elie: The discount rate is related to the rate of return on government bonds, because there is an underlying assumption that those who receive large damages awards for future care will invest them in a very conservative manner, in bonds. Therefore, as the interest rate drops, so the discount rate will also drop.

Lord Faulks (Con): My Lords, I should declare an interest in that I practise in this area. May I suggest to my noble and learned friend that one way to get round this difficulty would be for the Government to legislate to reverse the effect of *Wells v Wells*, which was decided on the basis that a notional investor would invest in gilts? That is not realistic and has resulted in this extraordinary change to the discount rate.

Lord Keen of Elie: My Lords, I agree with the observation that the level of the discount rate reflects a very conservative assumption about how a person

would deal with a large lump-sum payment of damages in order to protect their future position. That has to be the subject of review, because it is clearly outdated.

Baroness Kramer (LD): My Lords, surely the review and the consultation should have come before the change in the discount rate, which is, as the Minister has heard from around the House, absolutely preposterous. As he knows, it is a fixed number based on three-year index-linked government securities, a commodity in which nobody who is investing funds for an injured claimant will put their money—it is less than you would earn by putting it into a local bank account. The fact that the number is preposterous means a big increase in premiums for motorists and a billion pound additional burden for the NHS, as well as an unnamed additional burden for the Ministry of Defence.

Lord Keen of Elie: My Lords, I am glad that the noble Baroness acknowledges that the basis of the calculation of the discount rate clearly requires review. However, the Lord Chancellor was under a legal obligation to deal with the discount rate and we are now concerned to ensure that we consult fully and address the question of how it should be calculated in future.

Business Rates: Revaluation *Question*

3.31 pm

Asked by Lord Kennedy of Southwark

To ask Her Majesty's Government what action they propose to take in the light of the concerns expressed about the increases in business rates facing some businesses.

Lord Kennedy of Southwark (Lab): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I refer the House to my interest in the register.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, a significant majority of businesses will end up paying less as a result of the business rates revaluation and changes to relief. The generous reliefs we are introducing mean that 600,000 small businesses are set to pay no business rates at all. We have also confirmed £3.6 billion of transitional relief to help those companies facing increased bills. We are looking at the hardest-hit businesses ahead of the Budget.

Lord Kennedy of Southwark: Mary Portas has described the valuation as madness. The chief executive of Sainsbury's, Mike Coupe, has called for the revaluation to be abandoned. The Federation of Small Businesses is against it. In Southwark, the borough I grew up in, one business in the north of the borough is facing a 50% increase in its business rates—which equates to £66,000 per annum or, to put it another way, three jobs at risk. Will the noble Lord agree to speak to his

colleagues in the Treasury to impress upon them the concerns expressed and to make it clear that real substantive action needs to be taken in the Budget to deal with this problem and protect the high streets? Tinkering around the edges will not do.

Lord Bourne of Aberystwyth: Yes, my Lords. I should say, however, that the revaluation system has been a constant of life since the 1988 legislation, and three revaluations were held under the Labour Government on exactly the same basis as this one, at arm's length. But the noble Lord is right: some businesses, particularly larger businesses in London, have been hard hit. My right honourable friend the Secretary of State for Communities and Local Government is speaking with the Chancellor and looking at possible options, and we can expect an announcement in the Budget.

Baroness Rebuck (Lab): My Lords, does the Minister agree that sometimes we can actually learn from our European neighbours? France exempts 500 bookshops from business taxes, recognising them as cultural assets in their local communities. But our Government want to clobber our bookshops with rates rises that are, on average, 100% in London and up to 50% for a small independent bookshop in Lincolnshire. Meanwhile, large retailers' distribution centres get massive cuts. I declare an interest as a publisher. Can the Minister confirm that he will look at the impact of this regressive tax on the one in four of our bookshops now threatened with closure?

Lord Bourne of Aberystwyth: The noble Baroness makes a powerful case. As I have already indicated, small businesses are set to pay no business rates at all, and we have increased the number of small businesses by moving the threshold to a rateable value of £51,000. Therefore, any business under that will not be paying business rates at all. However, the point is well made and, as I say, there will be action in the Budget for businesses that got steep rises.

Lord Palmer of Childs Hill (LD): My Lords, I do not recognise the Minister's description of the high streets. Our high streets are in crisis. How can they compete with the likes of Amazon, with their low-rateable land away from the high street? During the coalition, a Liberal Democrat Minister commissioned a review of business rates which was scrapped by the Conservative Government. Can the Minister say whether they now regret scrapping that review, bearing in mind the mess they are in? Can he also comment on the fact that business rates are dealt with by the DCLG—which obviously considers it a good earner—whereas it should really be dealt with by the Business Secretary?

Lord Bourne of Aberystwyth: My Lords, there are quite a few questions there. The point that the noble Lord made about the high street and other forms of business activity has some merit, but it is quite separate from the issue of revaluation, which is done at arm's length. We are open to looking at options, but obviously it will take time and we could not expect to do anything on this before the Budget. As the noble Lord will be

[LORD BOURNE OF ABERYSTWYTH]

aware, the Treasury did look at this in 2015 and, having consulted widely, concluded that the present system was best. However, I appreciate that globalisation, the internet and the vitality of the high street are factors that have to be weighed in the balance, so we are happy to look at this. The noble Lord asked a few other questions. If I may, I will respond to him in writing on those and put a copy in the Library.

The Lord Bishop of St Albans: My Lords, will the Minister inform the House whether Her Majesty's Government would look at the feasibility of setting the threshold of business rate relief at a local level, thereby protecting small independent businesses, many of which are now at risk, especially in high-value areas?

Lord Bourne of Aberystwyth: My Lords, the right reverend Prelate makes an important point. In a sense, of course, localism is already fed in because the valuation is done locally and should reflect local conditions. As I have indicated, small businesses, with up to £51,000 in rateable value, get the small-business rate; and many small businesses—600,000 in the current rollout from April this year—will be exempt. But the local factor is taken account of by the fact that there is a local valuation that reflects local rental values.

The Earl of Clancarty (CB): My Lords, not just businesses but council-run schools, among others, have expressed concern about these increases, which will put yet another unacceptable pressure on our education system. Can his department and the DfE perhaps get together to address what are very real concerns?

Lord Bourne of Aberystwyth: My Lords, I would be interested in hearing more from the noble Earl on that particular issue. Clearly, as we have found out and as has been true of any revaluation, you always hear from the losers, for understandable reasons, and I am not objecting to that. But once again I remind the House that there are significant numbers of people in large parts of the country, particularly in the north and the Midlands, who benefit from this revaluation, and understandably, they are not the people rushing to the press and saying how wonderful the Government are. It is always going to be those who lose out. But many people have gained from this process.

European Union (Notification of Withdrawal) Bill

Committee (2nd Day)

3.37 pm

Relevant document: 8th Report from the Constitution Committee

Clause 1: Power to notify withdrawal from the EU

Amendment 9A had been retabled as Amendment 16A.

Amendment 9B

Moved by Baroness Hayter of Kentish Town

9B: Clause 1, page 1, line 3, at end insert—

“() Within three months of exercising the power under section 1(1), Ministers of the Crown must bring forward proposals to ensure that citizens of another European Union or European Economic Area country and their family members, who are legally resident in the United Kingdom on the day on which this Act is passed, continue to be treated in the same way with regards to their EU derived-rights and, in the case of residency, their potential to acquire such rights in the future.”

Baroness Hayter of Kentish Town (Lab): My Lords, it is a particular pleasure for me on St David's Day to be opening this session on the Bill. I move Amendment 9B on behalf of the noble Lords, Lord Hannay and Lord Bowness, and the noble Baroness, Lady Ludford, but also on behalf of perhaps 3 million people, who quite literally feel that they are being used as mere bargaining chips in order to secure the rights of another 2 million or so UK nationals who live, study or work elsewhere in the EU. It is legitimate for them to think that they are being used as negotiating capital because that is exactly what the Home Office told them. All of these 3 million, and indeed the four of us whose names are on this amendment, also share a real concern for those UK expats who, thanks to our EU membership, have settled in one of the other 27 countries. We have all heard of the serious worries of Britons living abroad with their homes, children, jobs and lives settled there. [*Interruption.*] We are in Committee, so I am sure the noble Lord will have plenty of time to come in.

As I was saying, we have all heard representations of the serious worries of Britons who have settled abroad. They have homes, children, lives and jobs there and now fear for their rights, and their access to medical treatment and other services and wonder what the future holds for them. It is not acceptable to place such people under that pressure. But these two groups of people should not be traded against each other. There are twin objectives, both to look after the EU and the UK nationals who live in each other's countries.

I reckon that the Minister knows a thing or two about twins because his own, being a boy and a girl, are not identical. But neither are these two groups of people identical. Indeed, the big difference is that for EU nationals here, it is in the gift of our Government—the UK Government, answerable to this Parliament—to decide how to treat people resident in our country. So, contrary to the letter that was sent yesterday by Amber Rudd, we do not accept that this is a matter for our negotiations with the EU. This is a matter for the UK.

Amendment 9B would ensure that the rights that EU citizens here would have if we remained in the EU should stay the same on exit day. These people need to know now, not in two years' time or even 12 months' time. They simply cannot put their lives on hold. Some are planning schools for their children or moving jobs, renting or buying homes or acting as carers. Some are receiving healthcare. Many more are working in our health service. All should have their uncertainty removed,

particularly as the reality is that many would have other rights to remain under the European Convention on Human Rights. Do we really want to clog up our courts and cause these people dismay by forcing them to court in order to assert those rights?

We should be clear that this view, decoupling their future from that of UK residents abroad, is supported by organisations representing British citizens in the EU which support the guarantee of such rights before the start of Brexit negotiations. Their statement on 20 February called on the Prime Minister unilaterally to guarantee rights of EU nationals in Britain. They say that it is,

“damaging to the UK’s reputation for UK citizens living in Europe and EU citizens in the UK to be treated as negotiating currency”.

They go on:

“Like UK citizens living in Europe, EU citizens in the UK have come and settled in another EU country in good faith on the basis of their EU citizenship rights ... rights that cannot be withdrawn retrospectively and the guarantee of their rights should be given before the Brexit negotiations”.

The main, short-term request from UK nationals abroad that I know of, as Fiona Benson in Italy wrote to me, is that they want a helpline through our consulates for getting their documents sorted out.

In addition to the moral obligation that we have to all these workers, students and families established here and who want some certainty, we also need to think of the industries that depend on them—science and academia, large parts of the public sector, especially the NHS and social care, as my noble friend Lord Clark will outline. There is little wonder that the Conservative chair of the Commons Health Committee has called on the Government to guarantee the rights of EU nationals to stay, without delay. Consumers will suffer if the food and drink industry suddenly loses its workforce, which includes over 100,000 EU nationals at all skill levels. Unsurprisingly, the Food and Drink Federation survey indicated that 10% of them were already thinking of leaving Britain. And this in a sector already facing a large skills gap, due to demographic change. Indeed, the FDF estimates that it will need 130,000 new skilled workers by 2024. The Food and Drink Federation joins the 3 million-plus group and the British Chambers of Commerce in seeking urgent reassurance from the Government on the status of those already here and employed in the UK. I do not think that the Home Secretary’s letter is going to satisfy them—nor, indeed, the public. A post-referendum poll found that the vast majority wanted EU migrants living here and working in the UK to be allowed to stay. Just 5% demurred.

3.45 pm

On Sunday, I was sorry to hear Amber Rudd say that it would be meaningless for your Lordships’ House to pass amendments, since the Government would use its majority in the Commons to dismiss them. What sort of response is that, before she has even heard the arguments, before she has thought of the people affected? And this from the Home Secretary who wrote that the status of EU citizens here can only be changed after Parliament has approved a new system. First, we are the Parliament and we can do that. Secondly, she can

now, without waiting for the EU 27, extend to those already here what were their reasonable expectations as EU citizens when they arrived.

In 1985, my noble friend Lord Kinnock had to say to his own party:

“You can’t play politics with people’s jobs”.

I now want to say to the Government: you cannot do negotiations with people’s futures. They are too precious to be used as bargaining chips. I beg to move.

Viscount Hailsham (Con): My Lords, in supporting this group of new clauses and amendments, I shall vote for any one of them that is most likely to commend itself to your Lordships’ House.

Perhaps I may begin by acknowledging that the Government have indeed shown sensitivity about this issue. Their position is essentially pragmatic. Their case is that unilateral action will not address the needs of UK citizens now resident in Europe. In essence, the Government’s position is that in order to increase the leverage that they have with the EU as regards UK citizens residing in Europe, they wish to keep on the table, as a bargaining chip, the right of EU citizens resident in the United Kingdom.

While I understand that argument, I remain extremely uncomfortable with it. I cannot accept the assumptions and implications inherent in that policy. We need to remind ourselves of the central facts, which are these: there are millions of EU citizens—maybe over 3 million—who have come to this country in the legitimate expectation that they will be able to live and work here for as long as they choose. For many of them, that has been a career-changing, maybe even a life-changing, decision, which may be irrevocable.

Their decision was entirely reasonable and proper, based on their assumptions. It accorded with the law that then existed. It accords with the law that exists today. For the United Kingdom now to disturb that expectation would involve an act of retrospective legislation and policy that would offend natural justice and, I suspect, the principles of human rights legislation. Indeed, it is probable that if we seek to deny European Union citizens now resident in the UK the right to continue to stay here, we would be challenged in the courts, and that challenge might well succeed.

Moreover, as a matter of general principle, legislation and policies that are retrospective in their operation should be avoided. Individuals are entitled to regulate their affairs in accordance with the law that exists at the time they make their decisions. To depart from that principle exposes all of us to risk to our freedoms and our ability to make safe choices.

I suggest that we test this this way. Many of us have relatives who were born outside the United Kingdom. My paternal grandmother was born in Tennessee. She came here to marry her first husband, who alas died, then she married my grandfather while she was living here. Both my maternal grandparents were brought up in County Galway. They came here after the First World War to settle permanently. Had my grandparents’ right to reside in those circumstances been challenged, and had I been aware of it as an individual, I would have said that that was a profoundly unconscionable prospect and I could not have supported it.

[VISCOUNT HAILSHAM]

I cite a more recent consideration. On Monday I was lunching in the Members' Dining Room of the House of Commons, where I was meeting staff whom I have known for many years. One of the waitresses there whom I have known for years came up to me and said, "What is going to happen to me when Brexit takes place?" She was born in France, but she has worked in the United Kingdom and been in the House of Commons for many years. I gave her my personal opinion, which was that there would be no problem, but I was not able to give her the guarantee she was entitled to deserve.

In the end, this is a matter of principle. This House can make a unilateral decision and give a unilateral guarantee. That is what we should do. Let us all remember how shocked we were when Idi Amin expelled the Asians from Uganda—so shocked that we offered them refuge in this country. Indeed, for those who are historians, keep in mind how shocked Europe was when Louis XIV revoked the edict of Nantes, causing thousands of Huguenots to flee France—often to this country—to its great impoverishment.

I do not say that we are going to do this. I do not think it likely that we will. But we have not put it outside our power for it to happen. That is wrong. I ask your Lordships to take the moral high ground and give reassurance to the millions who have made their home here in the expectation that they can continue to live and work here. To the pragmatic among my noble friends who sit on the Front Bench, such as the noble Lord, Lord Bridges, I say this: the moral high ground is very often the best ground on which to fight a campaign.

Baroness Ludford (LD): My Lords, in supporting Amendment 9B I shall speak also to Amendments 25 and 41. It is a pleasure to follow the powerful speech of the noble Viscount, Lord Hailsham, and to agree with the noble Baroness, Lady Hayter. I assure the House that the colour co-ordination between us is a complete coincidence.

The Government's case is that these matters will be dealt with in negotiations. They claim that, but for the obduracy of our EU partners, they would have had a negotiation before the notification of Article 50. It was never realistic to expect ad hoc negotiations on one particular very important issue in advance of notification. There has to be an expectation of structured negotiations.

If the UK Government give a unilateral guarantee now to the millions of EU citizens who are contributing in this country, not only will they be doing the right thing morally and economically but they will be supplying a crucial catalyst for a quick reciprocal deal. It was reported in the newspapers on Monday that the Prime Minister expected to reach a quick deal on the issue, so that it could be removed from the rest of the Brexit negotiations as soon as possible—an expectation which I think would generally be supported—but the truth is that the Government are holding EU citizens here not as hostages and bargaining chips for British citizens in the EU but for other goals. It is disingenuous to inflame the fears of British people settled elsewhere in Europe that their case would be undermined by a

unilateral move by the British Government. I think that those groups have appreciated that their case would not be so undermined.

The noble Baroness, Lady Hayter, mentioned some of the figures about the contribution of EU nationals to our economy. It is worth remembering that 10% of doctors here are from other EU countries. Sadly, there are reports of many of them wishing to leave or of others being deterred from coming here because of the uncertain environment that they face. Nine per cent of the workforce in construction are continental Europeans—my noble friend Lord Stunell emphasised that—with all the infrastructure ambitions that we have in this country. Similar figures, of 10% and 14%, can be cited for other sectors.

There were rather conflicting press reports earlier in the week about the Government's intentions regarding a cut-off date. On Monday, it was reported that it was intended to set a cut-off date of 15 March—one's instant reaction was, "beware the ides of March"—because it was said that government lawyers had advised that using the date of the referendum would be illegal. There was considerable comment that using any date short of our departure from the EU could also be illegal, because while we are in the EU free movement rights continue. There was then a rowing-back from No.10.

The Home Secretary, Amber Rudd, has stated that after Britain leaves the EU,

"we will be ending free movement as we know it".

Not only must that apply to arrangements for the future but it must have some significance for people already here. While we are in the EU surely EU law on free movement, as on other matters, applies. Indeed, the letter from the Home Secretary states that,

"nothing will change for any EU citizen, whether already resident in the UK or moving from the EU, without Parliament's approval".

If that can be said, I think the Government can be in a position to make the unilateral guarantee that I hope this Committee will back today.

I want briefly to mention the problems that EU citizens, and particularly their families, are having in applying for permanent residence at the moment. Last July, the then Immigration Minister, James Brokenshire, gave assurances that nobody needed any documentation to demonstrate that they had a right permanently to reside if they had acquired five years' permanent residence. I bobbed up and down occasionally to say, "But surely they will need some of kind documentation". That has proved to be true. It has proved to be an 85-page document. One witness to the Brexit Select Committee in the other place displayed 34 kilograms of documentation, and she was only halfway through the collection. She had been here for 30 years, but she had to show the Home Office evidence of every time that she had entered and left the UK. Has anyone kept documentation for 30 years?

The goalposts have been moved retrospectively. People are being asked to document every move in their lives and they are being required to prove that they have private medical insurance. Although they were previously entitled and allowed to use the NHS, they are now told—having never been warned throughout possibly decades of residence—that they are not entitled to use

the NHS. This is a matter of legal dispute, and I believe that the European Commission is making a statement on that subject to the European Parliament this afternoon. We might be enlightened about possible future infringement proceedings.

The upshot is that people are living in a state of anxiety, uncertainty, real dismay and turbulence. This is surely not a state of affairs that a Government whose Prime Minister has talked about the need for a kind and fair society can tolerate. The Government ought to accept that the weight of opinion is in favour of that unilateral guarantee, which will then trigger similar rights for Britons abroad.

4 pm

Lord Howard of Lympne (Con): My Lords, it is a pleasure to follow the noble Baroness, but I do not know what evidence she has for her assertion that the Government intend to use this issue as a negotiating encounter for wider issues once the negotiations start. On the contrary, at the end of last year the Prime Minister made an attempt to resolve this issue in advance of the negotiations on a reciprocal basis, but that was rejected out of hand by Chancellor Merkel and President Tusk on the grounds that no discussion of this issue could take place until Article 50 was invoked.

My noble friend Lord Hailsham, in his extremely eloquent speech, launched a great deal of obloquy on the legislation that would be necessary to deprive EU nationals of their rights. I agree with him, but that legislation is not before your Lordships' House this afternoon. The question that your Lordships have to decide this afternoon is what action to take in the light of the truth—perhaps unpalatable to many of your Lordships, and unpalatable to me, because I have made it clear on numerous occasions that I actually favour a unilateral guarantee and think that that is what the Government should give—that the Government are not going to change their mind and that the other place, where this issue was raised, considered, voted upon and resolved by a majority of 42, is not going to change its mind either.

Noble Lords: Oh!

Lord Howard of Lympne: There are murmurs from the Benches opposite, but there are no new facts in this debate. This is an issue that is essentially simple. The arguments have been gone through in the other place; there are no new facts. The noble Baroness, Lady Hayter, criticised the Home Secretary for saying what she said in advance of the arguments, but we know what the arguments are. There are no new arguments on this issue.

Lord Richard (Lab): A slight thought went through my mind as the noble Lord told us what will happen in the House of Commons: "If that is so, what is the point of the House of Lords?"

Lord Howard of Lympne: There are many occasions when this House can bring forward new arguments and a fresh perspective on a situation, and genuinely make the other place think again. I do not believe that

this is one of them. The question we must ask ourselves today is: how can we best help the EU nationals resident in this country? The best way is to bring the uncertainty of their position to an end as quickly as possible and the best way to do that is to pass the Bill and activate Article 50 as quickly as possible.

Lord Hannay of Chiswick (CB): My Lords, on the issue of new facts, does the noble Lord agree that one new fact is the communication from all the expatriate groups across the European Union that they wish the House to pass this amendment because they believe it is the best way to secure their position?

Lord Howard of Lympne: I am sure many of those groups made their views known when the matter was debated in the other place. Though of course their views need to be taken into account, I do not see that as tantamount to a new fact.

Baroness Farrington of Ribblesdale (Lab): My Lords, during this debate, which may be lengthy, it would be helpful for those of us sitting listening if speakers from the Conservative group of Peers did not refer to the Opposition raising objections when objections are being raised all around the Committee. That will not do any good to the image of the House.

Lord Howard of Lympne: My Lords, I do not think I ever referred to the Opposition raising objections. The noble Baroness uttered a legitimate rebuke but I do not think it needed to be directed at me on this occasion.

Lord Cormack (Con): I entirely endorse what my noble friend said when he replied to the last interjection. However, he told the House a few moments ago that he was a unilateralist on this issue. The whole theme of the remain campaign, of which he was a distinguished leader, was taking back control. Why can we not have a unilateral gesture before the negotiations begin, seize what my noble friend Lord Hailsham called the moral high ground and make a declaration?

Lord Howard of Lympne: My Lords, we could but the Government decided not to. I wish we would. I would like the Government to take that view but they decided not to. I believe that this House needs to face—

Lord Winston (Lab): The noble Lord, Lord Howard, has made one major assertion repeatedly: he kept saying that there are no new facts. There are new facts and they are really important to the British economy. The Government made it clear that science and technology is one way in which we will lead. Yet we are bleeding the best academics from this country at present. They are leaving one by one, or thinking about leaving, because they do not see themselves having a future in this country. That is urgent. It needs to be dealt with now.

Lord Howard of Lympne: My Lords, the debate in the other place was very recent. That fact, along with the others, was well known to those in the other place. With great respect, it is not a new fact. Clearly, many will disagree with me most profoundly but I believe that these amendments will work against the best interests of those they are designed to help. The best way to help them is to pass this legislation as quickly as possible, activate Article 50 and then negotiate to give these people the rights they deserve to stay in our country.

Lord Bragg (Lab): My Lords, 3 million foreign nationals in a population of about 65 million represents a minority. This country has benefited greatly from minorities for centuries. Sometimes they are minorities of a people fleeing tyranny; most markedly in the middle of the last century, the Jews came to this country and enriched it immeasurably. Sometimes they are minorities who fight for the rights of their religion, such as the Roman Catholics and Unitarians over the past couple of centuries; or for their own rights, such as votes for women; or for the rights of others, such as the magnificent vote in the other place a couple of centuries ago that abolished the slave trade. Again and again, minorities have helped us become the best of what we are, as do the minorities here today in the 3 million we are treating so shamefully. From my own experience and that of others in your Lordships' House, I can point to the dazzling contribution of minorities across the arts, the sciences and the widest spectrum of our cultural and intellectual life.

I speak strongly for minorities because I am a member of one—a bullied and beleaguered minority whose views have been dismissed and effectively gagged. I, like the Prime Minister, voted to remain. We have become a minority. I am rather surprised that with her pride in her sovereign intransigence, she did not stay on to lead the 48%—

The Countess of Mar (CB): My Lords, I am sorry to interrupt the noble Lord but he seems to be launching into a Second Reading speech. Perhaps he might confine his observations to the amendment in hand.

Lord Bragg: I thank the noble Countess. I have a short speech—about as third as long as the previous speech—and I have nearly finished it. I was wondering why the Prime Minister did not lead the remain campaign after we had become a minority. Why did she not fight on, as so many other minorities have successfully done, to achieve what they honourably and passionately think is best, as we all do, for this country? It is outside the democratic development of our history that a single-issue vote should be allowed to change the course of that history for ever so dramatically and, in my view, so potentially disastrously.

Finally, one major aspect of the disaster is to turn our backs on those who have come here and given their talents and skills to the United Kingdom, settling here and transforming us in so many ways for the better. They are now reduced to pawns in a government strategy which, to many observers here and abroad, seems largely clueless and without any response, save bluster,

to any critical questions. The answer to the question of foreign nationals, for our own national pride in who we are, is to tell those who are here now that we want them to stay here and be welcome.

Lord Hannay of Chiswick: My Lords—

The Archbishop of York: My Lords—

Baroness Goldie (Con): My Lords, we shall hear next from the most reverend Primate.

The Archbishop of York: My Lords, Uganda was referred to by the noble Viscount, Lord Hailsham. It was regrettable that Idi Amin kicked out two types of Asians—British citizens and Ugandan citizens. My opposition to him was over the Ugandan citizens, who were the largest number. He kicked them out and my coming here in 1974 was as a result of my opposition to such behaviour. So I know how minorities can feel in a place. I know that we need to reassure our European friends who are resident here and want to remain here.

However, I have one great difficulty. Your Lordships' House can scrutinise and revise legislation, but this simple Bill is simply to confer power on the Prime Minister to notify under Article 50 of the Treaty on the Functioning of the European Union that there is an intention to withdraw. It is giving her the power which I believe only Parliament—not the royal prerogative—can give her. At the meeting of the Lords Spiritual before all this came about, I questioned her right to simply use prerogative power because of what had gone on way back in 1215 in Magna Carta. Clause 39 says:

“No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land”—

and by “man” of course we now mean “woman” as well. Clause 40 says:

“To no one will we sell, to no one deny or delay right or justice”.

I think that is still enshrined in the rule of law in this country.

As far as I am concerned, until we have done the negotiation two years down the road, European citizens who are living here now will have every right to be here, like anyone else. People want to give assurance, but I think the assurance will be when the big Bill comes and we begin the debate. Remember, the European Union has free movement of people, free movement of goods and free movement of services. All that this little Bill is doing is starting a race: on your marks, get set, bang—and then they take off.

It will take two years to run this race. During the running of the race, we want to be sure that the concerns that are raised in this debate will come back. If, as I do, we want to see the Government take this decision on behalf of all of us—that EU citizens should be given a guarantee to remain—the best way to do it is to call the bluff of Angela Merkel by saying that we have now triggered Article 50, we will talk

about it and unilaterally give the guarantee. It will be much quicker than the three months proposed in this amendment. I want it to be quicker than three months.

4 15 pm

The other thing is that if the Government are about to start negotiation, we do not want to legislate piecemeal. Those rights can only be guaranteed not by the Government but by Parliament. We will have to go through another Bill in the middle of other matters. So as far as I am concerned, we need to scrutinise and revise the legislation. I do not want this little enabling Bill, which gives the Prime Minister power to say that we intend to get out, to grow into a very big Christmas tree with many baubles put on it. This House is aware of the concerns of EU citizens. I want to say, “Trigger it”, and then for the Prime Minister to return to the EU and say, “We want to guarantee as of today”, without waiting three months for more legislation, more proposals and more ideas. I do not want to do that.

I voted remain. I wrote in the *Telegraph*:

“It is sad that one issue has not emerged in the referendum debate: the keeping of promises. The campaign’s two sides seem to agree that the world began yesterday and we are faced with a clean slate and may position ourselves to greatest advantage. But the world, our European neighbours and we ourselves all have a recent history”.

I argued about the need to keep promises about the things we have entered into. Well, that fell on deaf ears and 52% decided to vote to leave, in spite of all the promises we had made and the things we had entered into.

I want to suggest that we leave the Bill as it is. Pass it as quickly as possible and, after all the speeches about guaranteeing European citizens their right to remain, let us do it as quickly as possible—but do not attach it to this Bill. As far as I am concerned, that is not revising or scrutinising the Bill. It is simply adding material which I do not think is very helpful.

Baroness Jones of Moulsecoomb (GP): Does the most reverend Primate not understand the moral obligation on this Government? These people are not bargaining chips. If we say quite freely that they are free to stay, that gives the moral high ground to the Government in their negotiations. I would argue that all noble Lords, including the noble Lord, Lord Howard, should vote with their conscience and not with their party.

The Archbishop of York: I never want to see any human person used as a bargaining chip. They are made in God’s likeness and as far as I am concerned, they are people and must be treated according to the rule of law in this country. The Prime Minister tried to give a guarantee. Angela Merkel did not want it before Article 50 was triggered. My suggestion is to trigger it and go back to what you promised.

I may be a Primate, but thank God I am not in captivity. The other Primate is definitely in captivity, because he is unwell and his legs have just had an operation—but I am not. I suggest that the sooner this becomes law, the greater the challenge we can give the Prime Minister on what she attempted to do but was prevented from doing because Article 50 had not been triggered. As soon as it is triggered and the power is

given, we shall shout as loudly as we can and campaign as much as we can for her to go back to what she originally suggested.

People such as me were shocked, after being here and having to travel round on a travel document and pay huge sums for visas to visit the rest of Europe, to suddenly discover that when naturalised—that is the word that is used—as a British citizen we could suddenly visit the whole of Europe without a visa. That was great stuff, and I applaud it—but, please, this is a very limited Bill and we should pass it as it is.

I have one more suggestion for our Minister: to set up a truth and listening commission in every one of our four nations, so that the divisions which we are seeing at the moment can be healed and to listen to the truth and to what the people of Britain and Northern Ireland are looking for, rather than simply locking it in the Government. For those reasons I will vote against any of the amendments, as I do not think they are revising or improving the legislation. They are simply adding on and adding on.

Lord Hannay of Chiswick: My Lords, I support Amendment 9B, which is in my name as well as those of the other three noble Lords. It is about the rights of EU citizens in this member state, of course, not those in other member states. I support the amendment without hesitation because I believe we have a commitment to honour here, to recognise not just the rights of these citizens—although that is important enough—but the contribution they have made, are still making and will, I hope, continue to make to our economy and our society. The amendment does not seek to dictate to the Government the details of how these rights should be secured. That will be for the Government to sort out in the proposals that are called for in the amendment, and for Parliament then to decide. I would say here to the most reverend Primate that nor does it entail any delay in the triggering of Article 50 beyond the Government’s deadline at the end of this month.

So far as I can see, there is in fact only one faintly respectable argument against the amendment, which is that to speak unilaterally now about how we will treat European citizens here is not the right way for the UK to help the position of its own citizens who are living in other European countries. But that argument simply does not hold water. Otherwise, why on earth would British citizens right across the European Union have today issued a statement making it quite clear that they support our taking the decision in the amendment and believe that it is the best way to secure their rights?

I do not think I could be accused of supporting the cause of those fellow citizens right across Europe in a half-hearted way. I moved an amendment in the House which would have given them the right to vote in the referendum—which, quite shockingly, they were deprived of by the majority who voted against that. My own view is that for us to move unilaterally to protect the rights of EU citizens here is in fact the best possible step towards safeguarding the rights of our own citizens elsewhere in the EU.

I say that as someone with a little experience of EU negotiation. I negotiated our accession to the treaty, in a very modest way, as well as the budget rebate, the

[LORD HANNAY OF CHISWICK]

establishment of the single market and the opt-out on the euro. Of course, I cannot be sure that I am right, but I do think that there is a reasonable chance that I am right—and I do not believe that the transactional approach, which is the way that the Government wish to go, is the right way to proceed or is likely to produce good results—or will produce them quickly. So I hope that your Lordships' House will approve this amendment when we come to vote on it.

Lord Wigley (PC): My Lords, I support Amendment 9B, which overlaps with other amendments, including Amendment 37 in my name. There is a moral case—a human rights case—which has already been very well made and which I therefore will not repeat. I want to pinpoint four different categories of employment in which this issue is particularly acute. I do so from my own experience in Wales, but it is equally relevant throughout the United Kingdom.

The first group that I highlight are workers in the tourism sector, particularly those in the hotels and catering trades. In Wales, we benefit from having hundreds of workers from EU member states, such as the Baltic states, Slovakia and Hungary. It can be argued that most of these jobs could be done by residents in Wales—they could, of course, but the reality is that the work in this sector is not particularly popular, partly because some jobs are highly seasonal and partly because the wage levels are sometimes low. In Wales we now have a low unemployment rate of 4.4%, which is below the UK average. It is no exaggeration to say that if these employees were to depart overnight, the sector in Wales would be in crisis. Employers need to know now that their current staff will be able to remain and, indeed, to have some indication of the circumstances after Brexit or during any prolonged Brexit negotiations under which they will be entitled to employ staff from other EU countries.

Secondly, there is the food processing industry. Many of the same arguments apply—in some cases, to an even greater extent, because firms often overdepend on EU workers. Thirdly, in a different category, is our university sector in Wales and throughout the UK. In Wales, we have 1,355 EU nationals employed at present, often in key jobs where they cannot be easily replaced. Fourth is the NHS in Wales where, as in England, there is a high level of dependency on staff who have come here from other EU countries. I believe that more than 1,100 such EU employees work for the NHS in Wales at present. Without these, the service would be in real danger of collapse. More than 6% of our doctors are from EU countries, and we already have a critical shortage of GPs. Regarding this fourth group, I have been told of key jobholders, fearful of what may happen to them after Brexit, who are already actively seeking jobs in their home countries in case at some later stage there is a stampede of their fellow EU nationals seeking to return home, and getting a job there consequently becomes that much more challenging.

The Government have been taking the line that they will give priority to the position of EU workers in the UK when the negotiations start, but it is not at that point that the necessary assurances can be given to these workers. If the issue is subsumed as part of the overall negotiation package, the outcome will not

be known until the negotiations are nearly complete. That would be totally unacceptable not only to thousands of such workers living in Britain but, I believe, to this House and the other place. That is why this amendment must be written into the Bill and why MPs must be asked to think again on this critical matter. If they do not, I believe that we should have the courage of our convictions next week, or whenever, to insist that this provision be enacted. Thousands of people are looking today to this House to give a lead, and I earnestly hope that we do not let them down.

4.30 pm

Lord Mackay of Clashfern (Con): My Lords, what faces us today is an extremely serious issue, and I want to put before your Lordships the way I happen to look at it. Throughout the European Union there are a large number of people who were born in one European country—by that I mean a country that is a member of the European Union—and now reside in another, under the protection of the laws prevalent in these countries in consequence of the treaty that puts the EU together. Many people in our country and in other countries are in this situation.

I believe that the moral high ground is to treat all these people equally. They are absolutely equal people—and they are people. I completely repudiate the idea that I should treat any fellow human being as a bargaining counter or anything of the kind. I thoroughly reject that and have no truck with it whatever. I believe it is essential that all these people be treated properly and equally. The problem is that their rights of residence in the countries in which they live are now threatened by the vote that this country has taken—against the views of a number of people here, including my own—to leave the European Union.

The European Union, in its wisdom, has formulated a way in which such matters should be settled—by the terms of a negotiation under Article 50. Some members of the European Union have refused to get into any kind of negotiation until that mechanism, set up under the treaty, is triggered, and this Bill is intended to enable our country and our Government to trigger that mechanism. The Bill is necessary because it is appreciated, and was appreciated in the courts at both levels where the cases were heard, that this would affect people's rights, secured by Act of Parliament, in this country. Of course, that applies to the same extent in the other countries of the European Union, because the law of the Union, by virtue of the treaty, has to be accepted as the law in those countries as well. So those people's rights are all rights in terms according to the Treaty on European Union.

The European Union has stipulated a way in which, if any country wishes to leave, it should do so—and Article 50 is that way. I think that all these people have to be treated fairly. They are all in the same boat, and they are all people whose security in the country in which they are residing is threatened until that matter is settled under the European Union negotiation structure. I believe it is right that that should be done in a way that is fair to them all.

I am the first to acknowledge that we owe a tremendous amount to people from other European countries who are resident here—in the National Health Service and

a whole lot of other places. I myself have often seen extremely good work done by people who have come from, for example, Poland, to work here. The work they do and the benefits they give to us are very great. However, that is not a reason to give those people preference over the other people who are affected in exactly the same way.

As the most reverend Primate has said, the right thing is for Article 50 to be triggered and for the Prime Minister to immediately ask—as she has said she will—for this to be settled, in a way which would cover the whole of the European Union. The only excuse that has been offered so far in Europe for not agreeing to this is that Article 50 negotiations, which are the way out of the European Union, have not been triggered. I would confidently expect—I have the greatest possible respect for the noble Lord, Lord Hannay of Chiswick—

Lord Anderson of Swansea (Lab): What is the argument against a unilateral gesture on the part of this Government, generating good will which could permeate the rest of the negotiations? There is no need for any negotiations.

Lord Mackay of Clashfern: A unilateral declaration of that kind is not treating fairly all the people who are affected by this problem. The moral high ground is fairness and that is the only ground we can take in a negotiation of this kind. I thoroughly believe that the chances of a complete settlement of this matter are greatly increased if the negotiations are triggered and the Prime Minister makes this the very first requirement, as she has said she will. Nobody in the European Union has so far given any reason for not agreeing with it for all European nationals who are in other countries of residence.

Baroness Royall of Blaisdon (Lab): I respectfully point out to the noble and learned Lord and to the noble Lord, Lord Howard, that Liam Fox said at the Conservative Party conference that the uncertain status of EU nationals living in the UK is one of the “main cards” in the Brexit negotiations. For that reason, I do not trust the Government on this issue.

Lord Mackay of Clashfern: My Lords, I do not regard myself as bound by remarks made by Dr Liam Fox anywhere. I have been given the responsibility, so far, of being a Member of this House and of attempting to explain to your Lordships, as fully and briefly as I can, what I believe to be the moral high ground: to treat all people from the European Union who are in countries other than their countries of origin according to the rights secured by the European Union treaty. The time for a fair negotiation of the whole matter is when that treaty is departed from, in accordance with the rules set out in Article 50. That would come very quickly because, as I have already said—I am repeating myself now but I will not do it again—I have heard no argument from Europe against this, except that the negotiations have not been triggered in accordance with the provisions of the treaty itself.

Lord Oates (LD): My Lords, I will speak to Amendments 16A and 38 and I also support Amendment 9B. Whether or not one favours a unilateral guarantee to EU citizens in this country, as I do, there

are key questions about the Government’s approach which can and need to be answered now. Amendment 16A is a probing amendment which seeks to draw out the answers to these questions. I hope that the Minister will respond to them fully when he winds up. First, what rights do the Government intend to provide for EU citizens and their families in the UK and to seek for British citizens and their families in the EU? The Government should tell us now. If they did so, they would provide much-needed clarity for EU citizens here and British citizens in the EU. Those citizens need to know that they and their families will not just have a right to residence and to work, but also have access to public services—in particular, health—without which, for many, the right to residency is meaningless.

Thirdly, what procedure do the Government envisage by which EU citizens in the UK will gain rights of residency under British law? As the report of the EU Justice Sub-Committee on acquired rights makes clear, the current indefinite leave to remain procedure would not be suitable. It would not be able to cope with the applications which would have to be processed and it requires documentation which, in many cases, EU citizens simply will not have because they have never needed it, or had any expectation of needing it.

Fourthly, what do the Government intend to be the qualifying date for the rights that they grant to EU citizens? Will it be the date of withdrawal—as it was in the case of Greenland’s exit from the European Union, which is the only precedent we have—or do the Government intend some other date? Again, people need to know the Government’s intentions so that they can get on with planning their lives.

Next, there is the question of comprehensive sickness insurance cover, or CSIC. As my noble friend Lady Ludford said—many noble Lords will be aware of this—there is a dispute between the UK and the EU on whether the National Health Service qualifies as comprehensive sickness cover. The EU maintains it does, but the UK maintains it does not. Whatever the merits of the dispute between the EU Commission and the UK Government on this matter, three facts are clear. First, many EU citizens had no idea this requirement existed. Secondly, those who did thought they were covered by their right to use the NHS—a reasonable assumption, given that that is the position of the EU Commission. The third and final stark fact is this: if the Government adhere to their current position on CSIC, thousands of people, many of whom have been resident in this country for decades, will find themselves without the right to remain in the country that they have made their home—that cannot be right. This issue is causing huge anxiety to millions of people and it is in the power of the Government to resolve it by stating that evidence of CSIC will not be a requirement for EU citizens to gain permanent residence. They should do so now.

Amendment 38 simply makes explicit the unilateral guarantee to EU citizens resident in the UK and provides that no agreement under Article 50 can be entered into which does not protect the rights of UK citizens and their families in other EU countries.

It is not my intention to put either amendment to a vote this afternoon, but I hope that the Minister will address the questions raised by both of them. I will

[LORD OATES]

support the cross-party amendment because it offers the best opportunity to send a clear signal to the elected House. But I will want to come back to the issue of British citizens in the EU, addressed in Amendment 38, because their rights are also of crucial concern to my noble friends, myself and many noble Lords across all parties in the House.

Many British citizens living in the EU have contacted me and many other noble Lords to say how abandoned they felt by the elected House and how heartened they were that this House was addressing their concerns. We must not abandon them again. Through no fault of their own, as the result of a referendum from which the majority of them were excluded, millions of British and other EU citizens suddenly find their future at the mercy of the whims of politicians. They fear that they may be excluded from the countries that they have made their home. In some cases, they fear being split up from their husbands or wives or partners. These are not spurious fears; they are not the result of scaremongering; they are the result of the Government's failure to provide either moral leadership or administrative clarity. Take the example of an elderly couple—

Viscount Waverley (CB): My Lords—

Lord Spicer (Con): My Lords, even if you are a Liberal Democrat you cannot have it both ways. You either give priority to people living here—those you think should have priority—or you do not. This amendment, which the noble Lord has spoken in favour of, does precisely that—it gives priority to EU citizens living here, rather than British citizens living elsewhere. He cannot have it both ways.

Lord Oates: Perhaps the noble Lord will forgive me but if he listens to my argument he will understand the answer to his question. Let us take, for example, an elderly couple, resident in Germany, who wrote to me recently—one a British citizen, the other a German citizen. They wrote to say that they are terrified that, if the final agreement does not provide for continuing access to healthcare, they will not be able to continue to live in the same country, and the same fears have been expressed by EU citizens in the UK. These are not abstract issues; this is about the lives of millions of people, it is about the anxiety and fear that has been inflicted on them since Brexit, and it is about the uncertainty that means that their lives have been put on hold. The Home Secretary claims in her letter to us that—

4.45 pm

Viscount Ridley (Con): The noble Lord talks about fear and anxiety but does he agree that what we have heard this afternoon—the inflaming of the fears of these people—has come from only one side, including spurious mentions of the edict of Nantes and Idi Amin?

Lord Oates: My Lords, no, I do not agree with the noble Viscount for one moment. These are fears expressed to me and to noble Lords across the whole House. They are not manufactured; they are real and present, and the Government need to address them.

The Home Secretary claims in her letter to us that a unilateral guarantee to EU citizens resident in the UK would cause uncertainty for British citizens in the EU. As the noble Lord, Lord Hannay, pointed out, that is not the view of the many groups representing British citizens in the EU that have written to me and have published a statement today. Not only do they accept the need for a unilateral guarantee but they have strongly urged it on me and, I am sure, on other noble Lords. Far from causing uncertainty, they believe that it would provide them with reassurance.

During the debate on this Bill, there has been a lot of discussion about who said what in the referendum campaign, but no one disputes that the leave campaign claimed that the rights of EU and British citizens resident in other countries would not be affected. That is what they said; they also said that to state anything else would be scaremongering.

Since the vote to leave, politicians from across the political spectrum have been clear that we should unilaterally state that we will protect the rights of EU citizens here. A prominent leave campaigner, the noble Lord, Lord Howard, spoke earlier. In evidence to the Justice Sub-Committee, he made it clear that that should be the case, at least as far as residence and rights to work and study were concerned. He said that he did not think we should, “wait for any question of reciprocity”.

The noble Lord, Lord Cormack, rightly advised the Government—some months ago, I think—that they should lead by example. He has taken a clear, principled stance on this issue throughout, as have many noble Lords in this House, including the noble Lords, Lord Bowness and Lord Hannay, my noble friend Lady Ludford and the noble Baroness, Lady Hayter, who moved the amendment—noble Lords of all parties and none, remainers and leavers alike, because this is not a partisan issue; it is a question of principle.

Doubtless the Minister will tell us that this Bill is not the place to concern ourselves with such principles, but it is the only place. It is our one opportunity to send a clear signal back to the elected House that we regard the principle of protecting the rights of EU citizens resident here and British citizens resident in the EU as a matter of honour for our country, and, in doing so, to show that we have heard the distress and anxiety of millions of British and other EU citizens, and that we have been prepared not just to offer warm words but to act.

Lord Tebbit (Con): My Lords—

Lord Bowness (Con): My Lords—

Lord Taylor of Holbeach (Con): My Lords, we need to try to organise this debate so that we hear all sides of the argument. I hope that noble Lords will understand if I suggest that it is the turn of my noble friend Lord Tebbit.

Lord Tebbit: My Lords, in a manner which has not been followed by anybody else in the House today, I should declare my interest in this matter. I have a nephew who has lived and worked in Germany for 20 years and I have a Danish son-in-law who has lived in this country for over 30 years.

Being here today has been an extraordinary experience. First, we have been unfortunately and unusually denied the presence of my noble friend Lord Heseltine, who is not in his usual place.

Noble Lords: He is there.

Lord Tebbit: Then perhaps he will do us the kindness of addressing us, because it is an almost unique experience.

The other reason that this is a remarkable day for me is that, at a time when we so often hear slave traders criticised, my noble friend Lord Hailsham has made the most splendid defence of them. He said that a man who decides to do anything is entitled to do so in accordance with the laws as they were when he took the decision. I hope that we will hear a little less about students tearing down portraits of slave traders now that my noble friend has dealt with that so effectively.

It seems to me that the first duty of this Parliament of the United Kingdom is to care for the interests of the citizens of this kingdom. If we are to be concerned about anybody's rights after Brexit to live anywhere on this continent of Europe, we should be concerned for the rights of British people to live freely and peacefully in other parts of Europe. Somehow or another, today we seem to be thinking of nothing but the rights of foreigners.

Noble Lords: Oh!

Lord Tebbit: My Lords, people of nationalities of other countries within the union are foreigners.

Lord Cashman (Lab): Will the noble Lord develop the argument about protecting the rights of UK citizens a little further? What would he say to a UK citizen married, perhaps, to a German or Dutch national and now worried about their right to remain, to work and to live in this country?

Lord Tebbit: That is exactly what the Prime Minister has said: we will look for an equitable solution. That means, in my view, that the rights of those who are currently resident here who, although they are not British subjects, are citizens of the EU, should be kept. But, of course, so should the rights of British citizens living within the EU. That is not a difficult matter. Why is everybody here today so excited about an amendment that looks after foreigners and not the British?

Baroness Royall of Blaisdon: My Lords, I point out to the noble Lord that the amendment is structured as it is because we are conscious of the powers of the British Government, who are able to determine the lives of the EU citizens resident in this country but not able to determine the lives of our own citizens abroad. That does not mean to say that we think any less of them; we are fighting for them.

Lord Tebbit: Of course we do not have the power to look after our citizens overseas—not in these days when we do not have many gunboats—but we have an obligation to look after the rights of those people and

to look after those rights first. The best way we can preserve the rights of all those concerned—EU citizens here and our citizens on the continent—is to allow Article 50 to be proceeded with as expeditiously as possible, to get the worries over, and for a decent and proper arrangement to be made. I only wish that European statesmen such as Mrs Merkel would come forward, perhaps arm in arm with Herr Juncker, and say that that is exactly what they want, too. We do not need this amendment; it would make it much more difficult to get to that solution.

Lord Bilimoria (CB): My Lords—

Baroness Kennedy of The Shaws (Lab): My Lords—

Lord Taylor of Holbeach: I am sorry. It is the turn of the Labour Party. I suggest we hear from the noble Baroness, Lady Kennedy.

Baroness Kennedy of The Shaws: My Lords, I support this amendment. I also have my name on Amendment 16A with the noble Lord, Lord Oates, and on Amendment 38. I want to reiterate the point about the position at the time of the referendum. During the campaign, reassurance was given to EU nationals living here, and to our citizens living abroad in the European Union, that their rights would be protected. They were told this would happen under the international law of acquired rights.

As chair of the European Union Justice Subcommittee, along with my colleagues on the committee, I heard evidence on the international law of acquired rights. It became very clear to us—and this is the basis of the report which is available to all noble Lords—that international law does not provide the kind of protections that were being given as a reassurance to those many people. Our committee embarked on an evidence-taking session which showed us that, with regard to the position of European Union nationals living here as well as our citizens living around Europe, they would be in extremis if we did not take steps very quickly to secure their rights.

As we have heard, more than 3 million European Union nationals live in this country. But they are not the only ones experiencing anguish; it is also their family members, their employers and their neighbours. This will affect a whole cadre of people beyond the people themselves. I suspect that our committee is at the receiving end of the greatest number of communications from those people about their distress, their anxiety, the fears of their children and their fears about their future. So we should not think that this is about only 3.5 million people and that we are preoccupied—as the noble Lord, Lord Tebbit, seems to think we are—with the rights only of people living here. We have received a huge mailbag from people around Europe who are fearful of what their pension positions are. They are fearful because they retired to places such as Spain and now wonder what their prospects are: they worry about their healthcare situation and so on.

When we say our position should be that we leave it to the great negotiation and that it should be number one on the list, I want to remind, for example, the most reverend Primate that our Prime Minister did not go

[BARONESS KENNEDY OF THE SHAWS]

to Europe and say that we would give a unilateral declaration. She said that she wanted a negotiation before the triggering of Article 50. It was not on the table because, as we know, negotiation begins only after that. What she should have done—and what we urge her to do—is say that we will take the principled position of honouring our responsibilities to people who live and work with us, because of the impact on their lives, the lives of their families and the lives of all the people around them.

I would like to explain something. We discovered while taking evidence something that was mentioned by the noble Lord, Lord Oates—that the law around permanent residence is incredibly complex and byzantine. In fact, Lord Justice Jackson described it as being such that its complexity would even have made Byzantine emperors envious. We have taken evidence about the impact of this on people making applications. The new piece of evidence that I offer to the noble Lord, Lord Howard, is this: we now know that in the period since the referendum, 30% of the applications made for permanent residence have been rejected. The refusals have been on the grounds of incomplete documentation or—and this is one of the most painful things to hear—that women who took time off from employment to have children did not pursue the private sickness insurance that the Government say was required. They are supposed to provide documentation to show that they had sickness insurance. If they are not able to provide it, they are told that they are not entitled to permanent residence. Many have received a refusal on that ground. These are the mothers of children, married to men here in Britain, living their lives here and having sent their children to school here. Many of them have been here for more than 20 years. We should understand the scandal that that creates.

I want to say to people who have been involved in any kind of business negotiation or legal negotiation that when you take a principled position at the beginning of a negotiation, it wins you so much good will. In communications we have received only today and yesterday, and from all those people in the European Union who are in contact with me as the chair of the sub-committee, people are saying to us, “Please pass the unilateral declaration amendment in the House of Lords”, because it is giving reassurance not just to those nationals there but to all of us in Europe who are fearful about the future and who feel that it will give strength to our arguments in relation to Governments such as the Spanish Government, the Portuguese Government and so on.

I urge your Lordships to accept that this is a matter of principle. This is about the honour of this House. This is about us speaking to what people need to put their fears and their anguish at bay. We have a real responsibility to those people, and in taking the responsibility for the ones whom we can make decisions about, we therefore take responsibility for our citizens living in other parts of the European Union.

5 pm

Lord Bowness: My Lords, I did not participate at Second Reading because I could not be present for the closing speeches, but I have sat through, watched or

read all the proceedings. Had I been present, I would have spoken in support of the Government taking the action urged in this amendment, to which I have added my name—something for which I have no regret, despite this afternoon.

Our attitude to this amendment will help define the kind of country that we want to be. I have read very carefully the letter to your Lordships from my right honourable friend the Home Secretary urging rejection of the amendment. I do not disregard it lightly, but I do not find acceptable the argument that we should be prepared to confirm the rights of EU nationals living here only as part of the negotiation about our own citizens. I think it is a misjudged position to adopt, and wrong both politically and in terms of justice and fairness. I find it neither justifiable nor, with respect, credible to prolong the uncertainty of EU nationals in this country. I wish that we could remove the uncertainty for our nationals in other EU countries, but that is not in our gift.

Our stance on this matter implies that, without a satisfactory outcome to the linked issues of UK citizens, the rights of EU citizens here might not be safeguarded. If we may use the rights of EU citizens here as a bargaining tool in connection with UK citizens' rights, why not, some people think, for other important issues? But I do not believe it to be a credible argument. Does anyone believe that we in the United Kingdom would actually deprive EU citizens of their rights? For that matter, do we believe that our current partners in the European Union would want to make our nationals' continued residence in their country impossible, impractical or intolerable? If we do indeed believe that, it says much about our attitude towards our partners. I suggest that in negotiations we need to demonstrate some greater trust. Before we start negotiations, we should reject outright the idea of some kind of diplomatic tit for tat.

Let us remember that we are not dealing with enemy aliens in times of war but with people who came to this country with our consent under the treaties of accession. In 2003, the United Kingdom, together with Sweden, Greece, Ireland, Denmark and the Netherlands, agreed not to impose transitional arrangements limiting free movement. That was a brave decision at the time, which recognised that the countries of eastern Europe had waited a long time for freedom and membership.

That European Union (Accessions) Act was passed in the other place with no votes against. There were some discussions about transitional arrangements, and likewise, in this House, some discussions but no votes. Although any transitional arrangements would by now have long expired, there is no doubt that the United Kingdom and this Parliament offered an unconditional welcome, which was an attraction to many. We felt what has been described this afternoon: that we had the moral high ground. I suggest to my noble friend on the Front Bench that now is the time to take that high ground again and give certainty where there is now uncertainty and clearly state that we in the United Kingdom do not bargain with people.

We have chosen to leave the European Union. That is our choice and our right, but we should also recognise that as a nation we made it possible for people from

other countries to come here and build a new life. Let us give reassurance and show that we are indeed the generous, outward-looking, internationalist country that we are stated to be heading for in these Brexit negotiations. Let us also not play a blame game with other leaders in Europe. I say with great respect to noble Lords who spoke earlier: do not read the Prime Minister's Lancaster House speech as an unconditional offer to settle the issue of EU nationals in this country. Within the words of that speech, the "deal", which I think was the word used, was inextricably linked to a deal on UK citizens in Europe.

I am very aware of the injunction that we should pass this Bill without amendment—indeed, I have been made very aware of it just in case I had not received the message. If we accept that we will not deprive EU citizens of their rights, what possible motive can we have for being so reluctant on this issue? I hope that it is not because we think it would be seen as a sign of weakness on migration issues. It remains my preference to hear the Minister say that the Government will make a statement that will meet the concerns of those who have put forward this amendment and other amendments in this group. But if he cannot do that now or later, then the matter has to be settled by a Division. For the Minister to take such a step would be preferable, because there are many issues that have been raised by me and other noble Lords that need clarification.

Our amendment refers to EU citizens "legally resident". That should cover people resident here under their treaty rights. The noble Baroness, Lady Kennedy of The Shaws, referred to that at some length. I ask the Minister to confirm that the Government recognise the rights of those EU citizens who may just be family members living with an EU citizen who has a permanent residence certificate.

To vote for this amendment is not to delay the Bill, to thwart the outcome of the referendum or to deny the will of the other place. It is a simple request to look at a very serious issue. Indeed, were we to do so, it would be in line with the recommendations of your Lordships' European Union Committee report on this issue. There is plenty of time for it to go back to the other place and come back here. I hope that my noble friend on the Front Bench will understand that I, for one, do not want to be associated with a position which, whatever the motive for adopting it, appears mean-spirited and does us no credit.

With this amendment or a government commitment to EU citizens, we could commence negotiations—I hope that the future of UK nationals will be top of the list—by saying to our EU partners that we have already done the proper thing by their nationals. That could even assist in creating a good climate in which to start our talks. We want a new relationship with Europe. Let us make no mistake: there are many things that we shall need from our partners in the future. To open the talks with a generous gesture, freely given, would not be a bad start.

Viscount Waverley: My Lords, emotions understandably run high on this issue, both here and on the continent. As a long-term resident on the continent, and after a lot of soul-searching over the weekend, including

consultation with multiple UK residents' organisations that are consistent in the messages they project, I see, however, that the only course of action is to allow the Government a clear run on these negotiations.

A mixture of issues are at play this afternoon, some of which belong elsewhere. Matters such as meeting the dire needs of our health service should be parked as a subject for another day, as should other regrettable circumstances, including those of families, many with children, facing the stark reality of enforced separation or, worse, having to split up because of the quirks of being a non-EU spouse and not meeting immigration criteria set for residence in the UK. Let those needs indeed be recognised but tagged for resolution in legislative debate and amendments to an immigration or any other appropriate Act.

There is no guarantee that, should EU citizens be offered the right to remain in the UK in advance of negotiations, UK citizens' rights to remain on the continent will be secure. It could be argued by Brussels, for example, that the UK's need to propose this is more pressing than that of the 27 remaining members. This is where there is a coup de grâce, of which the Minister will be aware. It addresses the point wished for by the noble Lord, Lord Howard, about the need for a new fact or perspective.

Eight member states have thus far failed to notify the Commission of complete transposition into their national legislation of a citizens' rights directive, thereby enabling working by citizens in another member state. Failure to react to the formal notice and the recent reasoned opinion necessitating compliance will be referred to the ECJ within two months. This does not help the cause behind these amendments. "Beware the small print" is an adage.

After the trigger, however, the Government could, with Brussels, agree to an across-the-EU process of removing a first stage of uncertainty by announcing that those compliant with national residency rules are good to remain. A limited grace period for compliance by others could then be agreed by mutual consent. The only practical way forward is to establish red lines on the criteria on rights to remain. Two sets of issues would then determine where the line in the sand could be drawn. First, two dates are relevant: the date of the referendum and the date of leaving the EU. Secondly, two sets of persons are relevant: those compliant with individual national residency criteria, who should be correctly registered with the national authorities of the country concerned; and those compliant with bilateral tax-treaty terms and correct reporting on the 183-day rule, taking into account primary residence status and centre of economic interests, paying national social security and municipal taxes as required, including conversion of driving licences and so on. In other words, there should be visible and verifiable commitment of intent. By complying with those conditions, one should be afforded the right to equal treatment as nationals in the country in which one is living, including the right to healthcare. The road map I propose would remove a first stage of uncertainty, from which could follow an incremental, reciprocal and mutual consent approach with Brussels that would be considered throughout the Article 50 process.

[VISCOUNT WAVERLEY]

I will therefore not be supporting these amendments. They would complicate the process of exiting the EU, probably fail to deliver on a reasonable, timely and negotiated settlement, and lead to a hard Brexit.

5.15 pm

Baroness Hamwee (LD): My Lords, I have tabled Amendment 25 on behalf of the Joint Committee on Human Rights, of which I am a member. It is also supported by the noble and learned Lord, Lord Woolf, and the noble Baroness, Lady Lawrence, who are also members, and the noble Lord, Lord Kerslake. Inevitably, I will speak a little to the other amendments in the group, but I assure noble Lords that I have crossed out quite a lot of the speech I arrived with.

Of course, I am aware of the statements made by Ministers, most recently the Home Secretary's letter to noble Lords, but none of these amounts to an acknowledgement of rights—I stress rights. That is almost where we started, with the second speech from the noble Viscount, who referred to natural justice. The JCHR has reported largely on the basis of the European Convention on Human Rights. In the spirit of the committee's very moderate amendment, I assure noble Lords that our amendment, unlike others in this group, does not amount to an attempt to delay or frustrate leaving the EU.

I am puzzled by the logic of the Government being committed to assurances, while at the same time saying that nothing can be settled now. The latter must call the former into question. Noble Lords have talked about how offensive it is to treat people as commodities, but even if it were appropriate, how useful would it be as a bargaining chip? Ministers are saying that we have their assurances that this issue is a priority. Does not that give us the worst of all worlds—a bargaining chip without any negotiating advantage—because we have acknowledged its priority? Have we downgraded other issues? I leave these questions hanging.

It is said that a unilateral arrangement makes no sense, but I put a different view to your Lordships. Even at the cold, unemotional level of negotiating tactics, I believe it does. As the noble Lord, Lord Anderson of Swansea, said, a good will gesture or a moral gesture can be a very effective negotiating tool in itself. I do not have other noble Lords' impressive record of high-level negotiation, but I have done my share of all-night stints constructing some agreements. I have found that it can be effective.

We are putting the responsibility on other states by saying that they insist on no negotiation before notification, but there is no technical reason why there cannot be a unilateral position. Of course, UK citizens in other European states have the same rights—or, if you like, a mirror image of them—so the scope for negotiation may be a little limited. Given the age of the many UK citizens abroad, particularly those living in Spain, I cannot help thinking that if they return at the same time as we lose or send away so many people working in our health service, we will be shooting ourselves in both feet.

It is not the best reason, but there are also practical reasons for the JCHR's amendment and others. If some such provisions are not embedded, the burden

on the Home Office of dealing with large numbers of applicants seeking to establish their position, and on the courts called on to apply Article 8 of the convention, would be enormous. I do not want to start considering what would then be the logical step of deportation.

We have referred to morality as well as rights. A guarantee is simply the right thing to do. Although I am disciplining myself from repeating what other noble Lords have said about representations that have been made to us, I take this opportunity to thank the enormous numbers of people who have emailed us, very personally, individually and in a very heartfelt way. The noble Lord, Lord Howard, said that there are no new facts. I do not think he could argue that there is not an increasing weight of evidence.

There is one cohort I want to mention: people who are vulnerable to exploitation. They are perhaps not hugely competent, and are often in the agriculture, construction and care industries. There is evidence now, which the JCHR has heard, that unscrupulous employers are taking advantage of their readiness to believe it when they are told, "You are illegal", when no such thing is true.

We have heard many times, "Don't tell the other side your bottom line. Don't put your cards on the table". I think this card is on the table, so that argument falls away. This Chamber should demonstrate that it is with those who want their nation to be one which understands common humanity and, dare I say it, human rights.

Lord Kerslake (CB): My Lords, I rise to speak in support of Amendment 25, to which I have added my name, and in general support of the amendments in this group. Like the noble Lord, Lord Tebbit, I declare my interests: as chair of King's College Hospital, chair of Peabody and president of the Local Government Association—this may be the only point of similarity in our speeches. My views are of course my own and not those of the individual organisations.

I should start by saying that this is a difficult judgment for us to make and it will be one of many that we face over the coming years. Like other noble Lords, I have read very carefully the Home Secretary's letter, much of which I sympathise with, and reflected on the issues overnight. Having reflected, I still come firmly down on the side of supporting an amendment to protect the rights of EU citizens in this country.

The arguments for this are both principled and deeply practical. The principled arguments have already been well made today, so I will not repeat them all. More than 3 million EU citizens have come to this country in good faith. Many have made it their home and, in doing so, contributed enormously to the good of this country. I doubt if there are very many Peers in this House or indeed many people in the country who would actively want them to leave. The only argument we have heard for not confirming their position now, put forward by the Home Secretary in her letter, is that it would weaken our hand in the negotiations on UK citizens in Europe. Whichever way you dress up that argument, whichever way you think about it, it is using the rights of EU citizens as a bargaining chip.

In my view, it is not even a very good bargaining chip, because it is perfectly clear to the Commission

negotiators that we need them to stay as much as they wish to do so—if not more so. So our negotiating position amounts to saying, “Do as we wish or we will shoot our own foot off”. I think the EU negotiators will see through that.

My practical reason for supporting the amendment is that, for our own sakes, we need to end the uncertainty for EU citizens now. The Government have said that we can debate this issue at a later stage. They have said that they will seek to reach an early agreement on the matter with the EU. I have no doubt about their sincerity on this point, but the hard truth is that early resolution is not in their gift. In the meantime, the uncertainty creates risks for desperately needed skilled staff, with devastating consequences—let me give just three.

For the building of new homes, which I am passionate about, we know that something like a quarter of construction workers in London come from the EU. In respect of the effective operation of our hospitals, I know that King’s would simply not be able to function without the European doctors and nurses who work for us. For the delivery of social care, EU workers form a vital part of the residential and home care provider workforce. Without those skilled workers, it would simply be impossible to run these functions properly and it is not possible to replace such workers in the short term. It may be that they will continue to stay here, but the survey that we saw in the *Guardian* today on European doctors immediately puts that in doubt. It may be that early resolution with the EU is possible: I have to say, from my own conversations with those closer to the process, that I am doubtful of this.

In the end, the key question for me is this: given the potentially devastating consequences for all the things I hold dear—new homes, a functioning NHS and delivery of good quality care—do I think that this is a risk worth taking? I do not. Sometimes in life—in fact, very often in life—the right thing to do is to do the right thing. I hope that today we do the right thing.

Lord Lawson of Blaby (Con): My Lords—

Baroness Symons of Vernham Dean (Lab): My Lords—

Lord Taylor of Holbeach: My Lords, I think it would be appropriate to have my noble friend Lord Lawson and then hear from the Labour Benches.

Lord Lawson of Blaby: My Lords, I assure your Lordships that I will be very brief indeed. I shall start by declaring an interest, an even more personal interest than that declared by my noble friend Lord Tebbit. My home is in France, yet despite that, I have gone on record—in this House on a number of occasions and elsewhere—as saying that I would have liked to see the Government give an unconditional assurance that EU citizens in this country, legally here with a right to remain, should continue to remain. There should be no question of that right being taken away. I believe that the idea of somehow linking it with the position of British citizens resident in the European Union was well intentioned—in order to reassure

those people—but mistaken. I cannot agree with this amendment, partly and fundamentally for the reasons so well set out by the most reverend Primate the Archbishop of York. This amendment has no place whatever in this Bill.

Secondly, the Home Secretary’s letter has been referred to. One of the things that she said—in fact, the most important one—was that,

“nothing will change for any EU citizen, whether already resident in the UK or moving from the EU, without Parliament’s approval”.

It is quite clear to everyone in this House that there is no chance that Parliament would approve the expulsion of EU citizens legally resident here. This is understood by the Government and there is no way that they would propose this, so there is no danger whatever to EU citizens resident in the UK.

Apart from a certain amount—too much, in my opinion—of virtue signalling, what is the purpose of this amendment and what is its likely consequence? The only consequence of this amendment would be to stir up fear and concern among the EU residents in this country that they might not be able to stay, when there is no question that they will be able to. That is something that I find wholly deplorable.

Baroness Symons of Vernham Dean: My Lords, I have put on one side the remarks that I was going to make because I want to concentrate on the remarks made by the right reverend Prelate—I am sorry, the most reverend Primate—and I do so declaring my interest as a member of the Church of England and a regular churchgoer.

The most reverend Primate seemed to base his argument on two points. The first was that the EU would agree to prioritise this issue above all things and not make it dependent on other parts of the negotiations. That is certainly the Prime Minister’s view but I do not know whether that prioritisation will be recognised by the EU. As for not making it dependent on other negotiations, I have negotiated as part of the EU and negotiations are never concluded until everything is concluded. The square brackets stay around everything until you can finally decide what you are prepared to bargain with, what you will give away and what you want to keep. That is the reality of negotiations and I am afraid that to say otherwise is misleading.

5.30 pm

The other point is that somehow there would be a recognition that reciprocity will be guaranteed on this issue. Again, reciprocity will not necessarily be guaranteed at all. This brings us to the point of the noble and learned Lord, Lord Mackay, that there should be equality of treatment on all sides. Just suppose that the EU negotiators say something different. All our debate has been based on the premise that somehow we will get what we want in the end because there will be reciprocity but suppose that there is not. Will we really at that point turn round to EU nationals in this country and say, “On your way”? Will we say, “Take your children out of school”? Will we say to the elderly, “Please leave our care homes”? This idea of it as a negotiating point—I agree it is being used as one—is totally unrealistic and unacceptable.

[BARONESS SYMONS OF VERNHAM DEAN]

The Home Secretary, Amber Rudd, said in her letter to your Lordships that this,

“is less a matter of principle than one of timing”.

I rather like and respect the Home Secretary but on this I disagree with her wholeheartedly. This is a simple matter of principle, of being prepared to do the right thing because it is the right thing, and being prepared to say so. That is what I hope these Benches and Members on all sides of the House, if not all Members, and including the Bishops’ Bench, will be prepared to do when it comes to taking the vote.

Lord Campbell of Pittenweem (LD): My Lords, I have the misfortune to disagree with the conclusions reached by the noble and learned Lord, Lord Mackay of Clashfern, although I agree with him about the disregard we should have for anything said by Dr Liam Fox. I take some consolation from the fact that I wholly agree with the compelling speech made at the outset of this debate by the noble Viscount, Lord Hailsham.

I do not need to trouble the House for long because at Second Reading I addressed this issue to a large extent but nothing I have heard today persuades me of anything other than the catastrophic consequences for the economy and so many of the services in the United Kingdom as a result of those non-British EU nationals who work in these industries and services no longer being available. I also recoil from the notion that we should say to husbands, wives, mothers or fathers of UK citizens, “You must leave the United Kingdom”. I recoil even more at the notion that were we to be in the position of expelling people, we would knock at doors—as I said at Second Reading—either at midnight or midday, saying, “You must leave the United Kingdom”.

Let us look at this from the point of view of families. What sort of stress and strain would it put upon a family? Indeed, what sort of apprehension has this already caused in many families? It is said that there are no new facts. The mounting volume of anecdotal evidence of anxiety on the part of those who may be struck at as a result of there not being an amendment of the kind we seek to pass today is exemplified day after day. The *Guardian* was mentioned a little while ago. There is a compelling article in that about a family who has already decided to go because the lack of a satisfactory understanding has become too much.

There is a further new fact in the utterances of Mr David Davis. He said earlier that it will be years and years before United Kingdom citizens would be able to take over those jobs fulfilled by non-British EU citizens. What is to happen in the interim? If you are a non-British EU citizen working in a hospital but you know that the long term depends upon whether enough British citizens can be found to take over the job you are doing, what kind of compulsion does that create in wanting to stay? Ultimately, the services you provide will be disregarded.

I go back to the question of the assurance of the Home Secretary. I tried to put myself in the position of those about whom we have been concerned in the course of this debate. I do not doubt that the assurance of the Home Secretary is given in good faith but I believe in belt and braces. I would rather have that

assurance on the statute than depend upon the decision of a Home Secretary who in five years may no longer be in office.

Lord Forsyth of Drumlean (Con): The noble Lord just made the point that he would rather have this amendment on the statute. I do not know if it has occurred to him but that is not for this House to decide but the other place, which already voted against this proposition. He is a very distinguished lawyer. This amendment refers to people who are “legally resident”. I cannot find any definition of what “legally resident” means. Which groups is he referring to?

Lord Campbell of Pittenweem: Just as Brexit means Brexit, legally resident means legally resident.

Noble Lords: Oh!

Lord Campbell of Pittenweem: We might have to take the expert opinion of the noble and learned Lord, Lord Mackay of Clashfern, but I fancy that the courts will be able to reach a conclusion on that.

I was saying that I endeavoured to put myself in the same position as those who find themselves under anxiety and apprehension. Were I in that position, I would be much more concerned to have a statutory right than a political assurance.

Lord Forsyth of Drumlean: My Lords—

Lord Campbell of Pittenweem: No doubt the noble Lord will try to intervene at another stage, given his characteristically generous attitude towards the Liberal Democrats.

The noble Viscount, Lord Hailsham, referred at the outset to the legal implications of what we are discussing. He is perfectly right because there may well be convention rights, and it is also the case that Parliament and even more so the courts have often been very reluctant to pass legislation with retrospective effect. Indeed, in my recollection the only time that has been done recently was in relation to former Nazi war criminals for whom the United Kingdom was determined to exercise retrospective extraterritorial jurisdiction. However, the mere fact that these issues are live in this debate surely indicates just how complicated any kind of expulsion might be and the extent to which its effectiveness would undoubtedly be adversely affected by people going to law. I venture to guess that they would get a successful outcome from any effort at judicial review.

It has been said already that this is the right thing to do. I doubt very much whether anyone’s mind has been changed to any extent by today’s debate. At least in my mind, it is still the right thing to do and I will vote for it.

Lord Bilimoria: My Lords—

Lord Kerr of Kinlochard (CB): My Lords—

Lord Green of Deddington (CB): My Lords—

Lord Taylor of Holbeach: My Lords, I have suggested that we hear from the noble Lord, Lord Green. We will have a chance to hear from the noble Lord, Lord Kerr, later.

Lord Green of Deddington: My Lords, I will speak to my Amendment 40 and comment on Amendment 9B, which is the main focus, of course, of the discussion. My own amendment has a clear and simple purpose: to place British citizens in the EEA and EEA citizens in Britain on an equal footing. I am puzzled to hear it suggested that abandoning 1 million of our British citizens in the EU is the moral high ground. I was encouraged to hear from the noble and learned Lord, Lord Mackay of Clashfern, who dealt rather effectively with that argument.

I put it to your Lordships that the nature of the problem we face has been widely misunderstood. In effect, what we are considering here is permanent residence for three different categories. First, those who have already been here for five years exercising their treaty rights will have acquired an automatic right to residence under EU law. It is simply not in doubt. They are sorted. The question is how to identify them. They will have to have their cases considered. It can be done no other way. They will then be granted ILR. That lot are not a problem. Secondly, there are those who will be arriving in the next two years before we leave. To grant them automatic right to permanent residence would be to risk a very large inflow of people from eastern Europe before the date of withdrawal. The third and probably trickiest category is those who have arrived to live here within the past three years. They will not have acquired the five years that they need so there will have to be a decision. I note that if that decision goes in their favour, and judging by the mood in the Committee today, it is rather likely to, some 85%—yes, 85%—of EU citizens currently in the UK will qualify for permanent residence. When we are talking about this, we should offer that reassurance to the EU citizens who are here.

There has also been some confusion over the role of EU workers. It has been suggested that we cannot build the houses we need without workers from the EU. That may well be true, certainly until we train our own, but there will be nothing to stop EU workers coming here to work on a work permit but without the automatic grant of permanent residence. We should not confuse the two issues. Certainly, we need their work and their help and they are welcome, but permanent residence will become a different matter.

Any suggestion that we should use the fate of EU citizens in the UK as some kind of bargaining chip is absolutely wrong in principle and in practice. I think everyone here agrees that its only effect would be to sour the atmosphere of a very important negotiation, but nor should we simply put aside the vital interests of 1 million of our own citizens. It has been recognised by the noble Baroness on the Front Bench that it will be a long time before the status of British citizens in the European Union is sorted by the 27 countries in which they reside. Therefore, we need a careful review, together with our former partners, to find a way forward in each of the many aspects of this problem. To take a very obvious and important issue—health—the

solution may well be to extend the current EHIC system for another five or 10 years. But as of today, before the negotiations start, we have no idea whether or not that will run, so we have to be there, round the table with them, to see what is a sensible way forward.

Sadly, Amendment 9B completely disregards the position of British citizens in the EU. I suggest that in the real world, if our negotiating partners are assured in advance that the requirements of their own citizens have already been satisfied, it is inevitable that the issues relating to British citizens in their countries will slip down the agenda, which is already very long and complicated. It has been claimed that such a unilateral guarantee will set the right tone for negotiations. The Government have already offered that. It did not work, did it? It was turned down flat. That is not the way forward. There is a fine judgment there and the noble Lord, Lord Hannay, comes down on the other side of that, but we have to be aware that the judgment is a fine one and the interests of 1 million British citizens are in the balance. So there we are. I leave it there. I think the two matters should be considered together.

5.45 pm

Lord Clark of Windermere (Lab): My Lords—

Lord Kirkhope of Harrogate (Con): My Lords—

Lord Taylor of Holbeach: My Lords, it is in fact the turn of the Conservatives.

Lord Kirkhope of Harrogate: My Lords, I was not able to be present at Second Reading, although I have—like, I am sure, other noble Lords—read the entire *Hansard* record of all the speeches that were made on that occasion. But like many noble Lords, and as a remoaner or remainer or whatever you like to call me, I would probably have preferred never to have been in this situation. But as we are, I felt I must contribute at this point, as a former leader of the Conservative Members of the European Parliament and a former UK Immigration Minister, working under my noble friend Lord Howard, and support the government position on these amendments. I also agree very much with my fellow Yorkshire resident, the most reverend Primate.

I want to intervene particularly in relation to Article 50 and its relationship to these amendments and because I believe, as do the Government, that we need to have sensible arrangements in place to secure the position both of citizens from the EU in the UK and of those who have left the UK for EU destinations. In acknowledging the role of the noble Lord, Lord Kerr, who was Secretary-General of the Convention on the Future of Europe in 2002-03, and his final drafting of what later became Article 50 of the Lisbon treaty, I point out that I was a member of that convention and took a particular interest in the article, actually attempting to amend it to add some political aims relating to the future trade arrangements of any country that decided to leave the EU later. Of course, the amendment, like others, failed because the convention did not favour such amendments. As we were reminded then, and are rightly being reminded now, the article was designed

[LORD KIRKHOPE OF HARROGATE]

to be a process, not a manifesto—a process to enable a state to legally and honourably leave the EU. As noble Lords know, before the Lisbon treaty and this article, it was against international law to leave. But Article 50 was never designed to be used as anything more than a technical process in a limited form, so pursuing the wider aims that are now being pursued in these amendments is inappropriate. We all agree that EU citizens in this country deserve to be treated fairly and respectfully. We all owe them a great debt of appreciation for what they do while in our country, just as we expect our EU friends to treat UK citizens living in other states in a similar fashion.

As the Government have said, preliminary discussions have taken place. It is not really the will of the Government that they were not able to go further. Indeed, the Government are determined to achieve their ends in relation to fairness so far as the EU citizens are concerned. Ultimately, these issues might well be reflected later in an immigration Bill that might follow the great repeal Bill, which might not be the right vehicle to deal with these matters. But in the meantime, no one's rights are affected. No one's rights are going to deteriorate. No threats have been made by anybody. Some noble Lords are saying that these threats are being made. Okay, some newspapers might do so but in truth there is nothing, so far as this Government are concerned, that is any way threatening the present status.

As a former Immigration Minister, I have always believed that the key to any arrangements relating to those who wish to live and work in the UK and our citizens who wish to do the same elsewhere is reciprocity. The word "reciprocity" was referred to earlier by a noble Lord and a noble Baroness. There is nothing negative about reciprocity. All the agreements that we enter into, for good, for this country and its citizens depend on reciprocity. Our European neighbours are well aware of that and are positively inclined to that approach.

As far as I can see, although there is a lot of sensitivity and a lot of passion, these amendments in this context and for this Bill are inappropriate and, in my submission, illogical.

Lord Clark of Windermere: My Lords, I support Amendment 9B and shall speak to my own Amendment 42. Amendment 42 is very limited but I move it quite deliberately because it exemplifies much more of the wider debate. There have been some very fine speeches in the course of this debate. I will be very brief and not repeat the ground that has been so clearly covered.

I believe that the least we can do is to offer the 60,000 individuals who work in our National Health Service the right to remain in this country. I do so for a number of reasons. First, I believe that our National Health Service, which is under threat at the moment, is unique in Europe and something that we need to fight for. It is under threat because of the shortage of labour. The OECD says that we need an extra 20,000 doctors and an extra 47,000 nurses, just to bring us up to the European standard. And yet we currently depend on 10% of our doctors from the European Union and 5% of our nurses.

As the noble Lord, Lord Kerslake, said, we are not in a very good negotiating position when we are negotiating for our interests. Many of these people are more use in their own countries, the European Union might say, than they are propping up—as it would see it—our National Health Service.

Before I make my two main points, I have a question for the Minister. The noble Lord, Lord Green, said, I think, that 85% of European Union citizens would have the right to permanent residency. When we had a series of questions on this issue in this House, within the last month, it was pointed out that European citizens in this country who had worked for five years had a right to permanent residency. However, the noble Baroness, Lady Williams, was not able to give us an assurance that permanent meant permanent and that, when we leave the European Union, it was indicated to us that in fact permanent would no longer be permanent. Can the Minister confirm that permanency means permanency?

Lord Green of Deddington: May I clarify what I said? Eighty-five per cent of EU migrants in the UK will have completed five years by the time we leave the European Union and therefore, in principle, would be entitled to permanent residence. However, each case would have to be looked at. That is the point.

Lord Clark of Windermere: I am very grateful for that intervention and I am sure that the Minister will be as well.

I have two points. The advantage of this amendment is that it is a win-win situation, because it is practically right for us to do so, and it is morally right to do so.

I was struck by the argument of the most reverend Primate. I understood it but does he not understand the pain, suffering and uncertainty of individuals working in our health service who feel hurt that they put in so much effort and give their time trying to help the people of Britain? They and their families feel very hurt and I think we owe them something in that respect.

The Archbishop of York: It would be quite invidious to suggest that those of us who are sticking to the rules in relation to Bills do not understand pain or suffering. As far as I am concerned, the Bill deals solely with the formal process of notifying the intention to withdraw. It does not relate to the substance of what withdrawal might look like. For the noble Lord to impute that I do not understand pain or suffering is not on. I said at the beginning that I feel the pain and anxiety, but as a legislator, my role is to look at what the Bill is about, not what the Bill ought to be about.

Lord Clark of Windermere: The point really is that we then move from the practical to the moral. Some of us take the belief that we have the high moral ground here and that is the ground which is occupied. I say this because we are in a win-win situation. As my noble friend Lady Kennedy said, we are going to have a much stronger negotiating position if we spell it out and show our European neighbours that we can be generous and that, even if we are not in the European Union, we want to remain part of the continent of

Europe, working together with our neighbours. That is why I believe we are in a win-win situation with this amendment.

Lord Bilimoria: My Lords—

Lord Dykes (CB): My Lords—

Lord Taylor of Holbeach: My Lords, I believe the Lib Dems still want to make a contribution. Let us hear from the noble Baroness, Lady Smith.

Baroness Smith of Newnham (LD): My Lords, I shall be brief. It has been a long debate, but this issue has exercised your Lordships since the week after the referendum, when it appeared that there was virtual unanimity across this House on how we should deal with the rights of EU citizens resident in the United Kingdom at the time of the referendum.

I will briefly give two quotations. The first came from the debate in July. I will name the noble Lord in a moment. He said:

“In common with other noble Lords, I am appalled by the unwillingness of the Government to give a clear undertaking that EU nationals resident here before 23 June will be able to remain, come what may”.—[*Official Report*, 5/7/16; col.1862.]

Another noble Lord, asking a question of the then Leader of the House, said:

“Could she say, on behalf of the Government, for whom she speaks in this House, that any European citizen living in Britain has a right to remain here and that right will not be in any way affected by Brexit, and that the position is not negotiable? She must be aware that many people are concerned about their position and their future and surely it is the responsibility of the leadership of this Government to make it absolutely clear that there is no question mark over that”.—[*Official Report*, 29/6/16; col.1576]

It would appear that there has been a mass outbreak on the Conservative Benches of believing that somehow the letter from the Home Secretary, who was with us momentarily and has now disappeared, deals with this matter and that somehow the statements that have come from the Front Bench give the guarantees that EU nationals currently resident in the United Kingdom deserve and desire.

We have all been receiving emails from people saying, “We are concerned about our future”. If the noble Lord, Lord Lawson, in his comments in July, and the noble Lord, Lord Forsyth, in his question in June believed that there were concerns about EU nationals, the Government have said nothing so far to reassure those EU nationals. If the Government are not going to concede on Amendment 9B which deals with this matter—

6 pm

Lord Forsyth of Drumlean: I normally have the greatest respect for the noble Baroness’s diligence, but she is wrong to say that nothing has changed. What has changed is that the Prime Minister has said that this is her first priority. She said that the fate of those people living in this country from Europe will be determined by primary legislation and that no change will be made other than with the agreement of the

other place and this House. That is good enough for me to not wish to amend a Bill that allows us to get on with the process of making that happen.

Baroness Smith of Newnham: My Lords, we have heard much about the issue of EU nationals being a priority, but, as the noble Baroness, Lady Symons, pointed out, whatever the ambition of the Prime Minister and however great her negotiating skill is likely to be, the nature of EU negotiations is that nothing is agreed until everything is agreed. So having this as a priority will not, in itself, give EU nationals the security that they need. If the Government do not feel able to accept the amendment—and I suspect that they will not—could the Minister give further clarification not about some distant immigration Bill that will come after the great repeal Bill but about something in line with and in the spirit of Amendment 9B that will occur in the immediate aftermath of triggering Article 50?

Lord Kerr of Kinlochard: My Lords, I very much agree with what the noble Baroness said at the end of her speech. As the noble Baroness, Lady Symons of Vernham Dean, said, this will be a nothing-is-agreed-until-everything-is-agreed negotiation. If we do not do the decent thing now—if we do not listen to what the noble Viscount, Lord Hailsham, said at the start—when will we do it? This negotiation could last all of two years and could end without an agreement. It certainly will not end with dossiers agreed in this calendar year. So if we all believe that the decent thing will have to be done at some time, why not do it now? The Tory party really needs to remember that its guru is Burke, who said:

“Magnanimity in politics is not seldom the truest wisdom”.

Lord Blencathra (Con): My Lords—

Lord Davies of Stamford (Lab): My Lords, I shall be very brief—

Lord Taylor of Holbeach: My Lords, it is the Conservative Party’s turn. The noble Lord, Lord Blencathra.

Lord Blencathra: My Lords, I, too, will be brief. When I was supporting Vote Leave, I, like many others, took the view that we should make a grand unilateral gesture to state that we would grant residence rights and other rights to all EU citizens living in the UK. I thought that for two reasons: first, because it was a nice, decent thing to do, but also because I reckoned that we would get an immediate response from our EU partners, who would reciprocate and confirm that all Brits living in the EU would get similar rights. I thought that we could get this simple issue off the table before the tough and contentious talking began. I was utterly wrong—not for the first time, of course.

The best outcome to get security and certainty for both EU and British citizens would have been a reciprocal agreement immediately after the referendum. That is exactly what my right honourable friend the Prime Minister tried to do—and I was surprised and indeed shocked that the EU rejected her approaches and has apparently refused to talk about reciprocal residency rights until we have triggered Article 50.

Lord Cormack (Con): Would my noble friend not recognise that we are the ones walking out of the EU? We are the ones who have an obligation to those who, in all good faith, came to this country and invested their future in it. Should we not have done with sophistry and make a moral gesture?

Lord Blencathra: Yes, my Lords, but we also owe an obligation to almost 1 million British citizens living in the EU who could be left in limbo for up to two years unless the EU addresses this issue urgently. It is the case that the Prime Minister raised this with some EU leaders. However, I understand that, although 20 states were happy to agree reciprocal arrangements immediately, Angela Merkel and Donald Tusk refused to do so until we had triggered Article 50. So this venerable institution, the EU, lauded by many in this House as a bastion of decency, and Angela Merkel, are the ones who have given us harsh treatment and been intransigent; they are the ones who are not on the moral high ground.

The other worry is this. When we see the EU and Mr Barnier stating that nothing else will be discussed until we have agreed a divorce settlement of £50 billion, it seems that we are likely to spend all of this year, or at least until the German elections are over, arguing about that money while everything else, including all our citizens in Europe, will be left in the lurch. Indeed, if we have given away citizenship to Europeans in the UK, why on earth should the EU bother dealing with our citizens in Europe as a priority? This would be a very bad position to be in. We would have betrayed our own citizens and thrown them under the equivalent of a European bus.

This is not using people as bargaining chips; that is a silly description. Using people as bargaining chips would be saying something like, "If you give us access to the single market, we will let your people stay", or, "If you put tariffs on our cars, we will not grant your people citizenship". That would be grubby and unethical, but it is a million miles away from saying, "Can we agree, as a priority, reciprocal arrangements?". It is our duty to look after our people in Europe just as much, if not more, than European citizens here.

Noble Lords: Front Bench!

Lord Taylor of Holbeach: My Lords, I hear the desire of some Members of the House to have Front-Bench speakers. However, it would be good to hear from the noble and learned Lord, Lord Woolf, and then from my noble friend Lord Strathclyde.

Lord Woolf (CB): My Lords, I will be extremely brief. After such an extensive debate, there is just one aspect that I would like to draw attention to. We are dealing here with residents in this jurisdiction who at present have the right to go to the European Court of Human Rights. We are also dealing with residents in the rest of the European Community who also have that right. The present situation in this country is a matter to be dealt with by Parliament and not by the courts. I strongly urge us not to force people to seek to go to the courts, as they could in this situation in this jurisdiction. It is a matter which should be decided by

both Houses of Parliament. As far as I am concerned, I shall vote for the amendment, for the very clear reasons given by the noble Viscount, Lord Hailsham. This is a matter of moral principle as well as one which could be a legal principle—and, so far as the moral situation is concerned, there is only one answer.

Lord Strathclyde (Con): My Lords, much has been said this afternoon surrounding the whole issue of uncertainty. But the reason I cannot support these amendments is the fundamental flaw that lies at their heart: they will create more uncertainty, in particular for the 1 million British citizens living abroad. Noble Lords opposite have made two defences of that. The first is that they have received some letters from expat groups. Dare we believe that they may be wrong in asserting that giving unilateral rights now to EU citizens living in the United Kingdom will convince overseas Governments to give them the same rights? Secondly, they have said to trust the other EU Governments. But we do not know which Governments they will be dealing with in the EU. There are elections in a few weeks in France and Holland and, in a few months, in Germany.

Baroness Miller of Chilthorne Damer (LD): I am one of those who lives in France, and I must therefore declare an interest. Perhaps the noble Lord did not hear the noble Lord, Lord Hannay, when he made the point that all the ex-pat UK groups living in the EU have come together to make the case that they support this amendment.

Lord Strathclyde: I heard the noble Lord, Lord Hannay, loud and clear. What I suggest is: can we believe that these groups might be wrong and that, therefore, this House is putting at risk the future of a million British citizens living in the EU? That is why we should not support these amendments.

Noble Lords have said that they do not know what the policy of the British Government is. All they have to do is read the White Paper; it is there very clearly:

"We want to secure the status of EU citizens who are already living in the UK".

We all agree with that. The bit that noble Lords opposite do not agree with says,

"and that of UK nationals in other Member States".

Lord Bilimoria: I thank the noble Lord for giving way. He said that we should trust the British Government; the Home Secretary has written a letter to all of us in which she says:

"I ... reassure colleagues that Parliament will have a clear", say. This is the same Home Secretary who wanted companies to list every foreign worker, from a Home Office with a Minister who wanted companies to pay £1,000 per EU worker. How can we trust the Home Secretary?

Lord Strathclyde: Very simply—the law can be changed only with the agreement of Parliament. That is why these amendments are at the wrong time, in the wrong Bill and on the wrong subject. We should support the rights of British citizens living in Europe.

The Parliamentary Under-Secretary of State, Department for Exiting the European Union (Lord Bridges of Headley) (Con): My Lords, we have had a very good debate here tonight—

Lord Davies of Stamford (Lab): My Lords—

Noble Lords: The Minister.

Lord Taylor of Holbeach: I think the mood of the House is to carry on and to hear from the Front Bench.

Lord Davies of Stamford: My Lords—

Noble Lords: Order!

Lord Taylor of Holbeach: There is no constitutional crisis; there is good order in this House and I hope that the noble Lord will understand that we all want to hear from the Government Front Bench.

Lord Bridges of Headley: My Lords, the status of EU nationals living here and UK nationals living in the EU is, as this debate has so very clearly shown, one of the most emotive issues—if not the most emotive—created by our country's decision to leave the EU. Whereas so many other matters that we debate focus on dry economics, this touches on the most basic and immediate of issues: the lives of over 4 million people who have chosen to make a foreign country their home—Europeans who are our neighbours and our friends, many of whom work in our public services, such as the NHS; and British citizens, who may live hundreds of miles away, but whose interests this Government and this Parliament have a duty to represent and protect.

We all agree that we have a duty and responsibility to British citizens in Europe. We also all agree that European nationals make a very valuable contribution to our nation, especially in organisations such as the NHS. We all know the uncertainty that Brexit has brought to these people's lives, and we all want to do what we think is ethically and morally right. So we all wish to sort this issue out as quickly as possible, to bring certainty to the lives of these millions of people. The very simple question before us today is: how? I know this question has created a dilemma for many of your Lordships, on all sides of the House. The amendments before us make various points but, as we have debated, they coalesce around one point: they wish the Government to make a unilateral declaration to guarantee EU nationals' rights. I could labour the point that such amendments have no place in this Bill, and that is true—others have said that this is a very simple Bill—but shall not dwell on this, because when one is discussing the issues of more than 4 million people, such arguments may seem somewhat overly legalistic. Instead, I shall make just two core points.

6.15 pm

First, let me set out the position of EU nationals living here in the UK and the protection afforded to them. Between now and the date of exit, nothing will change for EU nationals living here in the UK. We are still bound by the EU treaties and the free movement directive. Under that directive, any EU citizen who is

exercising treaty rights, or has acquired a permanent right of residence, continues to have a right to reside in the UK while we remain a member of the EU. There is no need to apply for a document to prove this, although I obviously understand that some will prefer to do so. We are doing all we can to make this process as simple and pain-free as possible, for example by introducing a European passport checking service to reduce the burden of providing original documents and by moving the application form online. It is worth mentioning that no applicant is required to complete every page of the application. To those who have raised the need for people to show that they hold private medical insurance, I stress that this is an EU requirement, not a British Government one. Again, I emphasise that an EU national who has been continuously and lawfully residing in the UK for five years does not, under current rules, need to apply for a document to prove their right to be here permanently.

As to the future, the Government remain bound by the European Convention on Human Rights and, in particular, the obligation to protect the right to a private and family life. We will continue to remain bound by the ECHR after we leave the EU. I assure noble Lords that all decisions that the Government take, all policies that they formulate and all positions that they adopt in the negotiations will comply with our obligations under Article 8 of the ECHR on the right to respect for private and family life. The questions raised by the noble Lord, Lord Oates, are all perfectly valid, but I would argue—and the Government believe—that they are the subject of further legislation that we in this House will debate.

Let me now turn to the Bill to repeal the European Communities Act—the great repeal Bill. It will not be used to change our immigration system; this will be done through a separate immigration Bill, subsequent secondary legislation and immigration rules. To address the very valid point made by the noble Lord, Lord Campbell, nothing will change for any EU citizen—including their residency rights—without Parliament's approval. To summarise: any EU citizen who has been lawfully and continuously residing in the UK for five years or more automatically acquires permanent residence, under EU law.

After we have left the EU, the UK will continue to be bound by and observe the ECHR which, in accordance with Article 8 and appropriate case law, will protect EU nationals' right to respect for their private and family life, as it does for others. Perhaps most crucially of all, nothing will change for any EU citizen without Parliament's approval. This is the protection afforded to EU nationals here at the moment.

However, as the noble and learned Lord, Lord Woolf, said, we do not want EU nationals to have to rely on the ECHR for the right to remain once the UK leaves the EU. So my second point is about the future. It can be summarised in one word—a word we have heard so often this afternoon. That word is fairness. From the outset we have said that we want to secure the status of EU nationals living here, but in doing so we also need to secure the status of UK nationals living elsewhere in the EU. The Government believe that this approach is fair and respects our duty of care to UK nationals in the EU.

[LORD BRIDGES OF HEADLEY]

As has been said, we were keen to come to an agreement before the negotiations begin. The Prime Minister raised this issue last autumn and made it clear subsequently to a number of her counterparts across Europe that she was prepared to start discussions on the issue before we triggered Article 50, so that we could try to reach an agreement quickly on what we have always recognised as one of the most important issues of the negotiation. However, as your Lordships will know, a small number of our European counterparts insisted that the phrase “no negotiation without notification” was itself non-negotiable. So it was not possible to act on our intention to press ahead with negotiations leading to an early agreement.

Consequently, as has also been mentioned, the Government have said that this issue will be an early priority for the negotiations. The encouraging messages from European leaders, most recently heard during the Secretary of State’s visit to the Baltics, makes the Government confident that we will indeed be able to reach a quick and timely agreement with the European Union. This all means that for anyone in this House who wishes there to be certainty both for EU nationals in the UK and for UK nationals across Europe, it is imperative that we pass this Bill as quickly as possible, so that the negotiations can begin.

The basis of Amendment 9B appears to be that this issue can be agreed only once Article 50 has been triggered, and the negotiations have begun. On that, given what I have said, the Government agree. Furthermore, as I have said, the Government see it as an early priority for the negotiations, as do other EU states—which, again, the amendment reflects. On that we also agree.

The point of difference is therefore very simple, but fundamental. It is the word “fairness”. If we had failed to come to an agreement on this issue after three months of negotiation, and we were forced into this course of action, where would that leave those 900,000 UK citizens in Europe? Would this bring certainty to those people, to whom we have a duty of care? Would the European Union, and all the 27 member states, see it as a negotiating priority to give them clarity as to their status? And when would they get that clarity?

These are questions that each of us should bear in mind as we decide how to vote on the amendment—an amendment that would touch the lives of over 3 million Europeans here and 900,000 of our own citizens across Europe. The sooner we pass this simple Bill, the more quickly we can seek that agreement: a fair agreement—fair to EU citizens and fair to UK nationals. So, while I would not for a moment question the motives of those who have tabled the amendments, I would ask every one of your Lordships to think of the consequences if this course of action were to be followed, and I ask the noble Baroness to withdraw her amendment.

Baroness Hayter of Kentish Town: My Lords, it has been one of the highlights of one’s life in the House to hear this debate. I always like debates in which the words “moral” and “principle” are at the top of our agenda. I shall be brief, because I only want to say three things. First, the idea that, because we are asking for action on EU citizens here, we do not have equal concern for the others is completely wrong. Apart from

anything else, my great-niece and my great-nephew live in Belgium and France respectively, so I am frequently reminded of this situation.

The morals, the principles and the decency of the case have been stressed, and I think this is the issue. There are insecurity and uncertainty now, and we have already heard that some people are leaving. It is all going to take time. We are all getting lots of messages, even while we are here: they are coming hot every moment to me. Nicholas Tilson from France says:

“You are quite right when you say that we ... are not bargaining chips ... The best way to protect us is to take a firm moral position and protect those EU nationals living in the UK”.

That is only one: there are another million, and I appreciate that. Do not think that we have done this without thinking and talking to people who live abroad.

The problem with using this issue in the negotiations is, first, that that would be wrong. Secondly, there are countries—such as Slovenia, Estonia and Croatia—that have only about 500 UK nationals in them. Unlike my noble friend Lady Symons, I have not negotiated. But I do know, from stories that I have heard, that sometimes one country holds up something irrelevant to them because they are trying to get something else. I understand that is why the European Parliament still meets in Strasbourg. When John Major was in Edinburgh, France wanted something, we wanted something else—maybe it was JET at the time; I do not know—and we ended up with the Parliament staying in Strasbourg. That is what happens with negotiations. At the point of negotiation there could be one country, with a very small number of UK citizens living there, which for some unrelated reason held up the agreement. We will finally have an agreement, but the uncertainty would be too long, and we should not make people wait.

It has been said that an assurance is enough. But your Lordships will understand—I do not think that my noble friend Lord Dubs is here.

Noble Lords: Yes he is.

Baroness Hayter of Kentish Town: I think my noble friend would probably testify that assurances are not enough. We want this on the face of the Bill. It would not delay the Bill or the negotiations; it simply asks the Government within three months to come up with proposals about what they are going to do with EU nationals. I would like to hear what the Committee has to say about that.

6.27 pm

Division on Amendment 9B

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Amendment 9B agreed.

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6.46 pm

Amendment 10 not moved.

Amendment 11

Moved by Lord Teverson

11: Clause 1, page 1, line 5, at end insert—

“() Section 3(2) of the European Union (Amendment) Act 2008 does not apply to subsection (1), and in subsection (1) the term “EU” does not include the European Atomic Energy Community (Euratom).”

Lord Teverson (LD): My Lords, I will reduce the temperature of the House a little during this debate, but perhaps I will wait an atomic second, or minute, until one or two Members have disappeared.

As I said, we are moving on to what I hope will be a rather less contentious area to debate in Committee. I thank the Government and in particular the noble Lord, Lord Prior, for having had extended discussions with me around this amendment on the subject of Euratom.

I do not stand here as a remainer or a Brexiter. This is an issue that I believe is important for our country. The amendment does not challenge the result of the referendum in any way but, if it were accepted, it would make the job of government easier over the next two years. I put forward the proposition of this amendment on that basis.

I would like the Minister to answer one question, as it seems to me that this amendment may not be necessary at all. On Euratom, the Explanatory Notes to the Bill say:

“The power that is provided by clause 1(1) applies to withdrawal from the EU. This includes the European Atomic Energy Community (‘Euratom’), as the European Union (Amendment) Act 2008 sets out that the term ‘EU’ includes (as the context permits or requires) Euratom (section 3(2)).”

Yet Clause 1(2) of this 137-word Bill says:

“This section has effect despite any provision made by or under the European Communities Act 1972 or any other enactment”. That seems automatically to disapply the European Union (Amendment) Act 2008. The Explanatory Notes therefore seem to contradict the Bill, but they are not the opinion of Parliament and cannot be taken as part of the authority of any Act that comes into force.

My main point is that legally—this is a certainty—Euratom is not part of the European Union; it is a legally separate entity. As I am sure all noble Lords will remember, the referendum question was whether the United Kingdom should remain a member of the European Union or leave the European Union. It did not in any way mention Euratom and nor was Euratom part of the parliamentary debate that took place during the passage of the referendum Bill. They are separate legal entities. Indeed, when I have been in discussion with some government Ministers, one of their concerns has been that giving notice on Euratom will in some way leave the Article 50 notification open to challenge.

Legal advice that I have taken has made it clear that the Government have no mandate to give notice under the Euratom treaty, nor have they entered into any consultation. Therefore, given that there has been no consultation on leaving the treaty—despite the fact that a number of rights would inevitably be lost through doing so—by giving notice on Euratom they open themselves up to judicial review. Therefore, the Government have an interest in not triggering withdrawal from Euratom, although there is currently a process for doing so.

The processes are very different. Admittedly, Article 106a of the Euratom treaty refers to the Treaty on European Union, but it is a Euratom treaty clause and method. Article 50 mentions only the Treaty on European Union and nothing else. Therefore, there have to be two notification processes, for only one of which is there a clear legal mandate, which is Article 50 to give notice on the European Union.

Why is this important? It is important not because of all those legal issues but for two reasons. One is what Euratom does and the benefit that it brings for this country. The other—in some ways, this is the more important and more political argument—is that over the next two years the Government have a huge amount to do to achieve a successful exit from the European Union and clearly it would be in the national interest for that to be successful rather than the possibility of having no deal on the cliff edge. So why do we risk going down the more perilous route of giving notice on Euratom at the same time? It will mean that we have to undertake another whole area of negotiation on which this country could, if the negotiations under Article 50 are not very successful, be held to ransom.

Euratom is important because of its functions. It effectively operates under the International Atomic Energy Agency; it is the body regulated and approved by the IAEA for nuclear safety and, even more important, nuclear safeguarding. That includes all the areas of non-proliferation treaties and would encompass areas such as Sellafield. It is also concerned with nuclear fuel supply security—clearly, we still have an important nuclear fleet that keeps our lights on. We also have nuclear research coming out of Euratom with a five-year budget of £1.6 billion. The UK is involved in 12 of those projects, the best-known of which are the JET project at Culham in Oxfordshire and the ITER project. I am aware that one of the few industries given a strong mention in the Government’s industrial strategy is the nuclear industry and nuclear research.

Trade in parts and nuclear fuel and the movement of key people all rely on our being a signatory to the Euratom treaty. That will be a problem if we exit from Euratom. The UK does not have a safeguarding authority, as it is known in these agreements. Internationally, at the moment Euratom has some 11 core agreements. There are 50 altogether, including with the United States, Canada and Australia. Without those, because we do not have a safeguarding authority that has been approved by the International Atomic Energy Agency, all that trading will stop. We are reliant on nuclear fuel from Australia and we have a number of important domestic nuclear issues with the United States and with France in relation to Hinkley Point C, as well as various other generating stations. We do not have a

[LORD TEVERSON]

sufficient amount of those fuels in this country. It is not just a question of nuclear fuel; we need isotopes for radiology in hospitals as well.

It is not just a case of saying that we will get around this somehow. I remind noble Lords that Section 123 of the United States Atomic Energy Act 1954 makes any movement of such materials illegal under US domestic law if we do not have an approved safeguarding authority. I am aware that we can probably put all this in place at some point, although it might be more difficult with the remaining members of the European Union if the negotiations do not go well. We are dependent on French nuclear technology at the moment. Indeed, will we be able to have an agreement with Euratom? I hope that we will, but let us not forget that countries such as Austria try to block most things that go on in Euratom because they are anti-nuclear. We do not know what will happen in the German elections this year. Germany has got rid of its nuclear fleet operationally and is also anti-nuclear. Perhaps with a change of Government it will be difficult to negotiate with Euratom about continuing those relationships.

To sum up, I am not trying in any way to constrain Article 50 or the referendum result, but there is no need to leave Euratom at this stage. If we do not, we can ensure that the lights do not go out some time around September 2019, we can avoid the political risk of Austria and Germany vetoing future relationships with Euratom and we can take our time to make sure that the UK has a fully-fledged and effective safeguarding authority that will be recognised by other realms, including, in particular, Australia, Canada and the United States. But, most of all, I ask again: why go down the route of giving notice on Euratom now when as a country, as a Government and as a Parliament we have a huge amount to negotiate over the next two years? Let us give ourselves a break, think about it longer and do this properly—not threaten our energy industry, our radiology and all the other research that we undertake at the moment. I beg to move.

7 pm

Lord Hunt of Chesterton (Lab): My Lords, I support this amendment and I support the noble Lord, Lord Teverson, who is an expert on Euro law. Euratom has shown considerable importance for past and future research, and in the practical use of atomic energy. The UK's research and economy will benefit by continuing membership of and participation in Euratom. As an example, one of the profound scientific issues which will last long after even the EU, perhaps, is what to do with nuclear waste. This was not mentioned by the noble Lord, Lord Teverson. There was an interesting PQ about 10 years ago from the noble Lord, Lord Sainsbury, on the question of transmutation. The question was about how we should deal with waste that could last 10,000 or even 100,000 years. Putting it in the ground is one possibility, which is favoured. But Euratom is considering transforming the waste material so that it will have a much shorter life of only around 100 years.

This is the kind of thing we can do with the other countries of Europe, in Euratom—it might be easier and more effective for us to remain. Another issue

raised by the noble Lord, Lord Teverson, was the ITER fusion programme. This is a very considerable investment involving many other countries, and Euratom is playing an important role in it. The UK is a part of this. The ITER programme will need to evolve, but it is more likely to do so if we remain part of it. I support this amendment and I hope it will go through.

Lord O'Neill of Clackmannan (Lab): My Lords, I am a supporter of nuclear power and I would like to facilitate nuclear energy in any way I can. However, I am not sure whether the legal forest through which the noble Lord, Lord Teverson, tried to take us can be dealt with as simplistically as he suggests. In the first instance, we signed up to a separate treaty when we joined the Common Market in 1973, but by 2008 circumstances had changed. Euratom was by that time integrated into the EU in a way that I do not think renders it the separate entity that the noble Lord has suggested. It is worrying that the Government clearly had not given any serious attention or thought to this. In the course of the last two or three weeks, there has been quite a major change in the climate, in so far as a number of people, myself included, have raised this issue at different times. But we have to recognise that, when we talk about the nuclear industry, we are not talking only about power generation. At the same time, it has to be said that EDF—the agent of the French Government, which I imagine will remain in Euratom—will be running 20 power stations for some years to come. Therefore, in that respect at least, it may be somewhat premature to get too worried about this.

The fact is that the nuclear industry is not just about generation. It is concerned with the fuel cycle, decommissioning procedures, regulatory arrangements for safety and general UK regulatory competence. In all these areas, we enjoy a position of world leadership. The industry gets castigated because we do not build our own reactors any more—we build them for our nuclear submarines, but not for civil generation—but there is an incredible amount of science and manufacturing expertise at stake here. Frankly, I am not too concerned at this stage about whether we are in Euratom, we are going to leave or we have to leave. I am concerned that this industry should demand the proper attention it requires. It has already been suggested that in the Government's industrial strategy, such as it is, nuclear is going to play an important part. If so, we need to give proper recognition to the international character of the industry and to the fact that a considerable number of British businesses, and considerable British academic and industrial expertise, are still invested in this industry. In many respects, we will be pretty well the only country in the developed world with a nuclear new-build programme. We will see programmes in China and India, and there is one in America, but we do not see the kind of nuclear power development that we might have wished for.

If Britain is to carry on with and take advantage of this industry, the Government will have to give a lot more attention to it. I would like us to get beyond the platitudinous responses which have characterised the Government's answers in debates and discussions so far. It would be helpful if the Minister gave us a little

detail this evening on what is going to be done. How will we address this worrying conundrum of whether we will have a nuclear industry capable of operating on an international basis, and how can we take advantage of the very strong cards we still have to play?

Lord Krebs (CB): My Lords, I refer to a report of the Science and Technology Select Committee from a few years ago, when I was its chair, on the subject of nuclear R&D in this country. In doing so, I support this group of amendments. In the report, we asked: given that the UK is committed to a civil nuclear programme and a refreshing of nuclear energy generation capability, do we have the skills in this country to deliver—not just in overseeing the build by foreign companies, but in the regulation? When we heard evidence from the witnesses, we realised that such capability in the United Kingdom has been seriously eroded. Here are some numbers: the workforce in nuclear energy and nuclear science decreased from 8,000 in the 1980s to under 2,000 by the early part of this century. Our investment in nuclear R&D is half that of the Netherlands and Norway, one hundredth that of France, and less than that of Australia, which does not have a nuclear energy programme at all.

Traditionally, we have not been investing enough in nuclear R&D capability. Therefore, the research capability sponsored through Euratom is, I believe, crucial to the future of our civil nuclear programme. In our report, we said:

“The nuclear industry and the regulator rely on the research base to train the next generation of experts. Once lost, these capabilities will not easily be replaced”.

It is important that the Government reassure us that, if we are to withdraw from Euratom, which I do not think we should, we have a mechanism in place to ensure that that nuclear capability is being developed. The Select Committee report made 14 recommendations, the vast majority of which the Government accepted. One was that the Government should set up a nuclear R&D strategy board. Has the nuclear R&D strategy board been consulted on this issue, and what is its view?

The Earl of Selborne (Con): My Lords, I was lucky enough to serve on the Select Committee under the chairmanship of the noble Lord, Lord Krebs, and I now chair the Science and Technology Committee. We are revisiting this issue at present, looking at developments since the 2011 report. One of the recommendations, which was not fully implemented by the Government, but on which, nevertheless, there was a bit of progress, was that a strategy board be set up to advise government in the long term—and nothing could be more long term than a nuclear energy strategy. An organisation was set up called the Nuclear Innovation and Research Advisory Board. NIRAB was set up on a limited term of three years and produced its final report in February—last week, in fact—which is a survey of civil nuclear research in this country. I echo the question of the noble Lord, Lord Krebs: what will follow NIRAB? While in principle it is often a good idea for advisory boards and strategy boards to have a built-in termination—otherwise, they go on for ever—in practice we do need continuity of thought. That has clearly been lacking. Indeed, there has been no thought;

that has been part of the problem. Successive Governments kicked this into touch. Nuclear research was an issue that, until recently, simply was not addressed adequately.

In its February report, NIRAB pointed out something totally obvious that nevertheless needs saying: that international collaboration is the main route for developing nuclear technologies. Of course, there are a number of ways of undertaking international collaboration, but we are quite a small player, however much we manage to build up our dismally low nuclear capability compared, say, with the 1960s, when we were indeed a large world player. We have been overtaken by a number of countries. If the industrial strategy, which has nuclear as one of its 10 pillars, is to be implemented, we have clearly got an awful lot of catching up to do.

I agree with the noble Lord, Lord O'Neill, that the noble Lord, Lord Teverson, slightly failed to note that, although we joined Euratom before the European Union evolved from the EEC, the European Union (Amendment) Act 2008—which I must admit had escaped my notice—joined Euratom and the European Union at the hip in some way. A lawyer can explain to me the implications of that but paragraph 18 of the Explanatory Notes explains that we have to withdraw from the European Atomic Agency Community, Euratom, because it is now part of the EU in legal terms. Be that as it may, it is absolutely clear that we have to have a relationship with Euratom and with other organisations around the world which are collaborating.

One such collaboration, again thinking long term, is the Generation IV International Forum. This is looking very long term, leapfrogging through to new technologies which have still to be developed—we are thinking about the year 2030 and beyond. At the moment, the NIRAB report describes us as only participating as an inactive member—that was the case in 2011—through the subscription to Euratom. When the Government responded to the Select Committee report, they said, “We don't have to worry about joining the Generation IV Forum if we want to remain connected to the emerging technologies, because we are members of Euratom”. Clearly, that answer does not work anymore if Brexit is going to happen and we are going to leave Euratom. We clearly need quite quick answers.

I agree entirely that this is not controversial. The Government are the first to say that we simply have to develop a nuclear strategy and a nuclear capability, and we have to collaborate. If, for legal reasons—and I do believe they are only legal reasons—we have to withdraw from formal membership, surely when the Minister responds he can tell us, without prejudicing any negotiating position in this case, exactly what ideal situation we would like to achieve.

Lord Hutton of Furness (Lab): My Lords, I shall say a few brief words in support of the amendment that the noble Lord, Lord Teverson, has moved this evening. Before I say anything further, I should bring the attention of your Lordships' House to the interests I have declared in the register. I am the chairman of the Nuclear Industry Association here in the United Kingdom.

[LORD HUTTON OF FURNESS]

I do not think there is any doubt at all that membership of the Euratom treaty has brought very significant benefits to the UK nuclear industry and, in doing so, has served some vital strategic interests of our country. Unlike membership of the European Union itself, which remains a polarising and deeply divisive issue in our country, I have not heard anyone mount any argument at all—ever, at any point in this process—in favour of leaving the Euratom treaty. I get the very strong sense that the position of Her Majesty's Government has come very late in this process. Having looked at how these two treaties have become intertwined in recent decades, the Attorney-General, giving advice to the Cabinet, has clearly favoured separation entirely, so that as we leave the European Union we face this rather grim and desperate situation where we might find ourselves without any internationally recognised nuclear safeguards operating in the UK.

7.15 pm

As the noble Lord, Lord Teverson, has rightly said, if we were to find ourselves in that position, it would not be comparable, for example, to other aspects of the UK economy. If we leave on only WTO terms, clearly trade would continue. In the international nature of the nuclear industry, that would not be so. If we were to leave without having these alternative arrangements in place, it would not be possible for companies in the United States, Canada, Japan, India, South Korea or many of our nuclear allies, not least our European friends and partners, to continue to trade with us in nuclear goods and services. We tend to exaggerate for a living in this House—we cannot help ourselves, bless us; many of us are former politicians—but this would be a catastrophe for the industry and we should be under no illusion about that.

My understanding is that the Government have come to the view that we need to disentangle ourselves from Euratom as well as the institutions of the European Union for the very simple reason that they have, over time, become inextricably linked. Given that the Government's two objectives in this process of leaving the European Union seem to be absolutely to end the jurisdiction of the European Court and to end the free movement of labour, I perfectly understand the Government's position. However, in the strict context of the Euratom treaty and its relationship to the European Union treaty, we need to be clear about two things. This would give only a very limited jurisdiction. If we were to stay in Euratom for some indeterminate period until we can negotiate these alternative arrangements, the ECJ would have only a very limited jurisdiction, specifically on the issue of nuclear goods and services. If we think, as we should, that the nuclear industry is an international trade by its very nature and definition and is absolutely pieced together and hung together by international agreements, it is no great breach of principle or faith to accept that the ECJ should, for a period of time, have a continuing jurisdiction in these matters. I do not think that that would bring the house down.

Some in this House and outside are worried about the free movement of labour. Again, we should remind ourselves, in the context of the Euratom treaty, that

free movement of labour applies only to nuclear specialists working in nuclear installations. We do not need to fear, in my view, some back-door invasion of mass migration because we remain for some longer period of time a member of the Euratom treaty. I am clearly arguing that we should take our time before we leave the Euratom treaty. I do not believe that there is any legal case, and certainly no economic or political case, for linking the process of leaving the European Union with the process of leaving the Euratom treaty. I simply do not accept that.

I would like some clarification from the Minister today, if it is possible, about what conversations Her Majesty's Government have already had with the European Atomic Energy Community to explore what a transitional arrangement might look like, because a lot does depend on getting this right. Is it the Government's case that they intend to serve notice to leave the Euratom treaty at the same time as leaving the European Union? I do not believe, and the noble Lord, Lord Teverson, made this point, that there is any compelling legal case or reason why these two processes have to be conducted simultaneously. I believe that he was absolutely right to say to this House that we are going to make the job of leaving the European Union 10 times more difficult if we compress into that two-year period not just the enormous complexity of dealing with the European Union disengagement process and all that that means but the task of having to negotiate simultaneously maybe 20 international nuclear co-operation agreements, replicate and devise in the UK a new system of nuclear installation inspection and safeguarding and secure the nuclear fuels that our current and future fleet will need to rely on in the future. Those matters are all covered today by the Euratom treaty, perfectly sensibly.

I do not believe that the Government are doing this because they want to leave the Euratom treaty. I believe that they are doing it because they believe that they have no other choice. I think they have a choice, which is to take their time on this and make sure that there is no cliff edge when we leave, because the consequences of leaving without these alternative arrangements in place would really be so serious for the nuclear industry as to raise a genuine question mark about its future in this country.

Lord Inglewood (Con): My Lords, I rise to add a few words to what has already been said about the Euratom treaty and its relationship to the UK nuclear industry. I declare an interest as a Cumbrian and as chairman of Gen2, which is one of the main suppliers of apprentices for Sellafield and some of the other west Cumbrian nuclear businesses. There is considerable concern because people just do not really know what the Government have in mind. As my noble friend the Minister knows, I have been interested in this topic over the past few months, and when I read the Lancaster House speech, I did not see any reference worthy of the name to the nuclear industry and the Euratom aspects, which have been vividly described by a number of speakers. What do the Government have in mind and how do they think they are actually going to bring about the changes they appear to want, in a manner which will enable the nuclear industry to continue in a way which contributes to the well-being of the country as a whole?

Lord Fox (LD): My Lords, I too, have the pleasure of serving on the Science and Technology Select Committee under the watchful eye of the noble Earl, Lord Selborne, so I am sure he will mark my card next week at the next meeting. The theme so far has been one of questions to the Minister, and I am afraid I am going to add to them. The overriding concern of the House seems to be that we need to get some idea of where this is going. This is a very important part of our industry and a very important part of both science and industry.

I will restrict myself very briefly to just two areas: research and safeguarding nuclear materials. The Minister knows that Euratom provides the UK with access to considerable R&D funding, as the noble Lord, Lord Krebs, pointed out, and I believe that at least 25 UK organisations are involved in that research. It would be useful if the Minister could tell this House what arrangements are planned to ensure international collaboration can continue in the event that we are no longer in Euratom. Some have said that each of those relationships will have to be separately negotiated. What is the Minister's view? Do we have to unilaterally renegotiate each relationship, whether business or research? Very importantly, what is the position of JET, the Joint European Torus at Culham, which was raised by my noble friend Lord Teverson? I have friends working there, and there is a great deal of anxiety there about what is going to happen to that project and where it sits. Can the Minister give any comfort to our scientists there both for their future and how they are viewing that project going forward?

On safeguarding nuclear materials, I bow to the superior knowledge of a number of other Peers who have spoken here, not least the noble Lords, Lord O'Neill and Lord Hutton. Of course there are concerns around laboratories and other organisations that have to dispose of materials. I was speaking yesterday to someone who runs an academic laboratory who had occasion over the summer to dispose of some thorium. Of course, who did he call, how did he go and what were the protocols? It was all through Euratom. How does all this get replaced? Can the Minister explain what work is now under way and what scoping has been carried out as regards what will replace all the processes that currently exist for that? Can he confirm that there is some sort of timeline that says it will be ready to operate, fit to go, as soon as we exit the European Union, which plays to the point made by the noble Lord, Lord Hutton? If we are not ready at that point, then we effectively drop off a cliff in terms of the governance that we require.

The noble Lord, Lord Tebbit, mentioned that it is a busy period for the Government, to say the least. We see that DExEU is already galvanising other departments around issues such as immigration, air traffic control, customs systems and all sorts of processes are going on. If the Government were able in some way to delay this particular complication, their objective of a frictionless exit might be easier to attain. So I have two final questions. Can the Minister tell us what the experts are saying and can he publish what the expert view has been on this? Can he tell us how many civil servants are currently being deployed on the process of managing and planning this exit?

Lord Rees of Ludlow (CB): My Lords, I support this amendment. As a former member of the Science and Technology Select Committee, I particularly endorse the remarks of the noble Lord, Lord Krebs, and the noble Earl, Lord Selborne, about the current—and rather weak—state of many of the nuclear activities in this country. It is clear that the Euratom issue has been, as it were, caught in the slipstream of the EU legislation, to the surprise of some people, and is an extra complication that needs to be sorted out in the most frictionless way. It is crucial that if we did not have our EU membership, we would have to reconstitute something very similar in relationships with the EU countries and also, as has been said, with the United States, Japan and Australia in order to continue our collaborations. We need these collaborations in so far as we are involved in not just the building of nuclear power stations but the medical use of radioactive materials, radioactive waste disposal and other safety issues, where Euratom has been very effective.

It is also important to bear in mind that, as has been said, even though we are rather weak—depressingly so—in many areas of nuclear technology, we are not so weak in fusion. The JET project, based in the UK, is one of the major projects in the fusion arena. We have other private projects in this country and we have a major involvement in ITER, so the involvement in fusion is very important.

It is important to ensure that there is going to be no hiatus in the ability to forge ahead with these collaborations if we were to have to leave Euratom. As a final comment, I point out that, although the Euratom issue has come up because of the special link, legally, with the EU, we are going to have similar problems in connection with other international projects. I will mention just two: one is Galileo, the European counterpart of the GPS satellite system, which involves us and is not solely an ISA project—it involves the EU; the other one is Copernicus, which is a set of spacecraft to do environmental monitoring. These are two things where our continued major participation will depend on some legal adjustments when we are no longer in the EU.

I hope the Minister is aware that it is not just in the context of nuclear energy but in other contexts of big international high-tech projects that we need to worry about what will need to be changed if we leave the EU.

Lord Warner (CB): My Lords, I, too, support these amendments and associate myself with the comments of the noble Lord, Lord Krebs, and the noble Earl, Lord Selborne. I, too, was on the inquiry of the Science and Technology Select Committee that the noble Lord, Lord Krebs, so ably chaired. I just want to put a question to the Minister about the implications for the NHS of a messy withdrawal from Euratom. The NHS radiological services in particular are heavily dependent on the safeguarding arrangements for the transportation of radioactive material of one kind or another and also some of the waste disposal issues that are involved. What efforts have the Government made to discuss with the NHS, the Department of Health and the technologists in that sector about ensuring and guaranteeing the safe supplies of materials that the NHS depends on on a day-to-day basis?

Lord Lea of Crondall (Lab): My Lords, I would like to add three points. I have a non-remunerated interest as patron of Trade Unions for Safe Nuclear Energy. The first point is on the referendum question. People have stretched it so far in its meaning, and it means all sorts of things, but I do not think anyone would claim that people voted to leave Euratom. I am not trying to make a debating point; I am trying to answer a point often made from the Government Benches: that you cannot drill down into the referendum question. Let us put that the other way round.

It occurred to me after the contribution the noble Lord, Lord Hutton of Furness, that in the past three weeks we have heard quite a lot of party politics about Copeland and how the Labour Party is not really lined up in favour of nuclear energy. Historically, that is nonsense. But a lot of things were said on the part—

7.30 pm

Lord Hunt of Chesterton: That was not said about the Labour Party: it was said about a certain person in the Labour Party.

Lord Lea of Crondall: That was a cheap point from my noble friend. The Labour Party position was criticised and it led to some switching of votes. The fact is that the Conservative Party made a great number of gains by saying that it was the friend of the nuclear industry.

The nuclear industry is a lot smaller than it was. It is, as has been said, a long-term industry. Indeed, one could say that jobs at Sellafield are guaranteed for 20,000 years—which is a pretty good length of time to guarantee a job. Seriously, the Nuclear Decommissioning Authority is one of the best if not the best in that field in the world, and that will be a very important issue. We have been a world leader in promoting nuclear safety. We persuaded the Russians to accept mandatory safety inspections. All of these matters were through the World Nuclear Association, to which the role of the noble Lord, Lord Hutton, is affiliated. We have often led the progress being made—from training, health and safety, investment and so on. So this has to be looked at as a major issue of industrial policy.

Do the Government recognise that there is a legalistic question here? If a country joins Euratom, does that mean that it has joined the European Union? No, it does not. I remember Ireland in 1961 announcing its accession to Euratom, which was a precursor to joining the European Union. But they are not umbilically connected like that. As a matter of industrial policy and of looking at the long term, does this not illustrate that the sooner we get to where we are going to engage positively with the EU in the future, being outside it, to have a real central engagement on all these issues of industrial policy is a very high priority for the country that we have not yet heard enough about.

Lord Hayward (Con): My Lords, I will raise a brief point in relation to Culham, to which there has been reference. I am Lord Hayward of Cumnor—and, for noble Lords who do not know the geography, Cumnor it is a mere few miles from Culham and Harwell. I was brought up there and my family have regarded that as their home community for many decades.

I am not going to comment on the overall agreement on Euratom, but, as I understand the position—and I know that Ed Vaizey, John Howell and Nicola Blackwood have been pursuing this in another place—there is a need to underwrite JET through to 2020. That underwriting has to be completed by the end of this month for European Commission purposes. I am aware that discussions have been taking place on the subject, but clearly this specific issue is truly immediate. In answering this debate, will my noble friend comment on what progress is being made to ensure that discussions between different government departments, including the Treasury, will meet that contractual requirement?

Lord Wigley: My Lords, I support Amendment 11, moved by the noble Lord, Lord Teverson. Amendment 23, to which I added my name, is grouped with it. I shall be brief because we have heard many experts who know much more about the subject than I do. In any case, I think we are all on the same side in this particular debate.

Both these amendments address the concern within the nuclear industry and within the communities in which they are located at the possible, perhaps unintended, consequences for the nuclear industry arising from Brexit. My own interest arises not so much from the fact that my physics degree at Manchester University many moons ago had a large element of nuclear physics in it. Fusion, incidentally, was around at that time as well. The ZETA project was the bright new hope that we are still waiting for. My interest more directly arises from the fact that my home county of Gwynedd has two nuclear installations at Trawsfynydd, the decommissioning of which is still in progress 20 years on, and at Wylfa, which is awaiting the go-ahead for new reactors. Indeed, Trawsfynydd has also been identified as a possible location for a new generation of mini-reactors if these are given the go-ahead. I hope that the uncertainty arising out of the Euratom question does not in any way undermine those projects.

Many associated with these plants are very anxious to know that the co-operation across Europe from which they benefit, and sometimes on which they actually depend, will not be undermined in any way by Brexit. They and the whole industry have a right to know exactly where they stand, and I hope that the Government will be in a position to tell us.

Baroness Bowles of Berkhamsted (LD): My Lords, I am in favour of this group of amendments. Amendment 39, in my name, follows the position that I suggested at Second Reading. The Euratom treaty is a separate treaty and can be separately amended. It provides options for Euratom other than being part of an all-in-one main deal. There is no doubt in my mind—and I have had reason to look at quite a lot of the EU treaties—that Article 106a, which imports various aspects from the main EU treaties, nevertheless restricts it again in the second paragraph by saying that wherever the EU is mentioned it means Euratom and wherever it mentions treaties it means the Euratom treaty. So I believe that they stand alone. My point also deals later on with some of the entanglements, but some of them go in the sense that the two treaties

stand alone. If we were left with any parts of the institutions, again, it would be in a very narrow focus, as has already been explained.

My amendment would not stop this Bill giving the Government the power to trigger Article 50 by way of Article 106a, if that power exists in the Bill, but would delay triggering it at least until the Government lay their final draft of the arrangements for leaving the EU before Parliament. By that stage, I hope that the Government would have settled the institutional arrangements for managing the new partnership with the EU.

It may be that at that stage Euratom could slot conveniently into those arrangements and that Euratom would be part of the deal. It could also be that a suitable transition arrangement would be to stay in Euratom a bit longer at least until the UK had substituted all its arrangements at international level. Or it could even be that a UK position outside the EU but inside Euratom could be an agreed way forward in the longer term, with a Euratom treaty change—and there are good reasons for changing that treaty, given international developments.

Noble Lords could ask why some special arrangement should be made for Euratom when there are many other compelling industry problems. One reason is simply that we have the opportunity because there is the separate treaty. The second and compelling reason already alluded to by other noble Lords is that while loss of trading arrangements in other sectors is economically damaging, it will still be possible to buy things—at a price. But outside Euratom, without a replacement agreement, international trade in fissile material and various other products would be illegal. So exiting Euratom and following up with a subsequent free trade agreement is not a viable option. Nor is crashing out without an agreement.

Presently, there are some 13 EU countries in the UK supply chain of fissile materials, and a similar number in other third countries. As we have heard, some of those will be for medical use and cancer treatments, and others for nuclear reactors with some 20% of our electricity generation being from nuclear. Then there is a whole industry of nuclear components, repairs and auxiliary products, and other more remote industries such as automobile, aeronautics, mining and petroleum, that would be affected. Euratom is a key player in research, including fusion. It is the vehicle for the UK's participation. Keeping some kind of "same as in" arrangement is important for research both at our atomic energy establishments and at our universities.

Modification of institutional arrangements and Commission permissions will be needed whether we are in or out of Euratom because all EU countries will have to have permission in order to trade with us. Nothing should be dismissed prematurely. Euratom operates on a far more intergovernmental arrangement than the EU, which therefore makes looking for an intergovernmental solution conceivable. The role of the Parliament is smaller—for example, seeking opinion rather than requiring consent—and there are provisions for consulting national parliaments. That could provide openings for negotiating new arrangements.

Finally, not many cases have gone to the European Court on Euratom issues. I found a 2011 post-doctoral paper in the *German Law Journal* that had managed to unearth only 30 cases that had ever gone to the ECJ, compared with around 700 cases annually for the court. Of those 30, only 15 were Commission versus member-state cases. Most notably, in contrast to the EU treaties, expansion of competence and cross-sectoral applications have not happened under the Euratom treaty to any great extent. For example, when the Commission tried to apply civil rules to the decommissioning of UK submarine nuclear reactors and submarine repair, the court found in favour of the UK on the basis that the matter came under security and defence. The court resisted extending the judgment to civilian aspects, although they clearly existed.

We will never escape the effects of some jurisprudence that comes from the European Court because it governs interpretations that the EU will apply to our new relationship. But Euratom is one area where the court is hardly interfering and could be tolerated for longer, at least in transition. So I urge the Government to think seriously about the additional flexibility that the separate Euratom treaty offers. It would be not only the UK that wished to get some kind of regularisation of the arrangements—but in this we can give ourselves, as of right and under our control, more time, more options and more security.

Lord Liddle (Lab): My Lords, I support these amendments. As a member of Cumbria County Council I have an obvious interest in the prosperity of the nuclear industry in our part of the world. I will ask the Minister a number of questions that I hope he will be able to answer.

First, what is the Government's justification for this policy? All that I have heard so far is something like, "Well, the European Court of Justice has some jurisdiction and we therefore have to come out of Euratom". Frankly, that is facile. The idea that one would be so ideological as to endanger a major British industry for that reason is extraordinary. What actually is the reason?

Secondly, I would like to see a strategy paper on how the Government propose to manage the new relationship if we are to withdraw from Euratom? How does it fit with the great prominence given to nuclear questions and the priority for the nuclear industry in the Government's excellent industrial strategy paper? Where is the consistency between this destructive proposal and the priority for the nuclear industry that the Government claim is top of their concerns and work?

7.45 pm

Thirdly, the point made by my noble friend Lord Hutton was terrifying. What will happen if negotiations for our exit break down? I know that Ministers will say that we will get a good agreement and so on, but most experts think that there is a high chance that the negotiations will completely break down. Most people I know who have done a lot of European negotiation think that there is a reasonable chance of this happening. What would then be our position in Euratom? Because we would have invoked Article 50, would we be

[LORD LIDDLE]

automatically out? In the case of ordinary trade, we have at least the WTO to fall back on. In this case we would have absolutely nothing. The Government are being highly irresponsible on this whole question and have to give this House a clear explanation of their motives, plans and fallback position are if this whole nasty thing goes badly wrong.

Baroness Miller of Chilthorne Domer (LD): My Lords, the nuclear industry has been widely mentioned this evening and I should briefly point out that under Euratom and as a nuclear power we have special responsibilities and obligations. The nuclear non-proliferation treaty and the original Euratom treaty are very closely intertwined. It is not just a question of the nuclear industry. At a point where we are considering building the new generation of Trident, it behoves the Government to give answers on this issue, too.

Lord Redesdale (LD): My Lords, from these Benches, I was the Lib Dem spokesman on energy for 10 years and was often the lone Peer who was attacking atomic energy as something we should be relying on. Our problem at the moment is that 20.9% of our power—I checked with UK Energy five minutes ago—came from nuclear energy. It is coming from an aged nuclear fleet that is almost past its sell-by date and will be decommissioned. If we are to keep the lights on, we probably will need nuclear power stations. I know that the noble Lord, Lord O'Neill, thought that he would never hear me say that.

The Minister will come up with an extremely cogent and persuasive argument for why we should leave the Euratom treaty and how everything will work well. I will ask one question, though. Considering that our new power plants will be designed and built by the French, Chinese, Americans and Japanese, we will need some standards—and, of course, Euratom provides them. The Minister will say, however, that we need to move into the new age and will look at this. Can he say—because work must have been done on this—how much the new standards body will cost to run and set up? I very much hope that he can give me a figure, or perhaps write to me on this issue—or maybe not. If he cannot give me that figure off the top of his head, can he say which department will be responsible for setting up this new body? Will it be BEIS—because DECC has gone the way of many great organisations in the past? If it is BEIS, what new funding will be made available to it to meet its new obligations?

Lord Bradshaw (LD): My Lords, I live in the shadow of Culham. Like the noble Lord, Lord Hayward, I am well aware of the problems that this debate is already causing. I met a number of people from Culham last Thursday. A number are already discussing the opportunities that exist outside this country to move away, because they are uncertain. Many are married to EU nationals who do not know what their position is.

Also, from my association with Oxford University, I can assure noble Lords that not only are we in danger of losing some of the best scientists in medical science, energy and technology, but applications for post-doctoral fellowships for PhDs are declining because

people are afraid of what is going to happen. Reference was made to our shortage of nuclear technologists: if those who are there at present were to go away, we would be even shorter—almost bereft—of them.

Lord Oxburgh (CB): My Lords, by now the Minister will probably have got the message that this House thinks Euratom is pretty important for the reasons given. I shall not repeat them, but they are very sound. Indeed, sitting yesterday as a member of the Science and Technology Committee, under the chairmanship of the noble Earl, Lord Selborne, we received evidence on nuclear matters. We raised Euratom. There certainly was dismay among our witnesses at the prospect of the UK leaving it.

Nuclear energy will play an important part in the energy plans of the present Government and, I suspect, any Government we are likely to have in the near future. That said, as my noble friend Lord Krebs pointed out, our expenditure on nuclear R&D is simply derisory by international standards. For that reason, we get enormous benefit from our membership of Euratom—proportionately more than almost any other member.

Probably the most important point to recognise is that Euratom governs not just non-proliferation, but the movement of nuclear materials and, above all, nuclear IP. If Brexit goes ahead on the timetable we have at the moment and nothing is put in place effectively to give us continuing membership of Euratom by some means or other, that occurrence would come right in the middle of the build at Hinkley. It is not impossible that Hinkley would come to a serious and grinding halt unless the Government somehow manage a better arrangement for the future.

Lord Stern of Brentford (CB): My Lords, we have heard very clear and convincing arguments about the future of Euratom. They are clear and strong. But it is more than that. Science depends on collaboration, mechanisms of collaboration, funding and movement of people. Many of us would see the attitude to Euratom as symbolic of this bigger issue. The noble Lord, Lord Winston, made the point that our academics worry about the mechanisms of collaboration, the funding and the movement of people.

I am a fellow of the Royal Society but I am an economist, so I will give an example from my department. We could replicate them in physics departments and all the others. Half of our professors at the LSE, which has one of the best economics departments in the world and is where I am a professor, are EU non-UK. They come to us because we are outstanding and we are outstanding because they come to us. This could be said about every physics department of the highest quality in this country. Scientists—and I, as president of the British Academy for the humanities and social sciences—will be looking at this kind of example to see whether our collaborations, our funding and the movement of people are secure—or at least as secure as they could possibly be. Through the response on Euratom and more broadly, we would welcome clear statements about the priority of collaboration, the mechanisms of collaboration and the funding.

In putting the question in this way, I salute the Government for the support they have given to research. We are on the way up in terms of funding for research. We have a long way to go, but still, the first derivative is positive. May it keep moving in that direction. But it is not just the funding but the people, the collaborations and the mechanisms. This is why, as well as the arguments in their own right, which are very powerful as we have heard, Euratom is so important.

Baroness Hayter of Kentish Town: My Lords, I do not think I need to declare a particular interest. I happen to be married to a physicist, but he is a low-temperature physicist, whatever that is—he knows. Although his colleagues are at Culham, he is not involved there himself.

A new word entered our lexicon after June, which is Brexatom—the exit from Euratom. I am sure that those of us who campaigned in the referendum had no idea that this would be a result, or of the implication for the nuclear industry and research and technology. However, as we have heard from the noble Lord, Lord Oxburgh, in that lovely understatement, Euratom is “pretty important” for our nuclear industry. Part of its job is ensuring our compliance with the non-proliferation treaty, including inspection, reporting and accounting. As we have just heard, some 20% of our electricity depends on it, as well as 78,000 jobs, a number that is expected to grow.

We have heard some—I hope too alarmist—warnings that power stations could be forced to close if new measures are not in place by the time Britain has to leave Euratom, if we do. In fact, a senior nuclear energy lawyer told MPs yesterday that leaving could see trade in nuclear fuel grind to a halt, as my noble friend Lord Hutton and others said. It is not so much about our standards, but we have to demonstrate that our standards comply with international nuclear standards. That is part of the work that happens through Euratom.

Euratom manages and develops the nuclear co-operation agreements, which we have also heard about, with non-EU countries on behalf of its members. The expectation is we would need our own bilateral agreements with those countries, as my noble friend Lord Hutton and the noble Lords, Lord Fox and Lord Rees, mentioned. To go back to the negotiations, I understand that these would take rather longer than two years.

One of the benefits of Euratom has been to establish the UK’s credibility and, indeed, acceptability within the nuclear community. That enables us to have a number of co-operations that we otherwise would not have because they are predicated on us abiding by these standards.

The Nuclear Decommissioning Authority and the Office for Nuclear Regulation also rely on Euratom as it has responsibility for the overarching framework for standards. Unsurprisingly, the Nuclear Industry Association is keen that we remain in Euratom or, if it really proves impossible legally, that there should be some transitional arrangement; otherwise, as we heard from my noble friend Lord O’Neill, it is possible that trading not only in nuclear goods but in material and people, and, as we just heard, the new build at Hinkley,

could if not grind to a halt be held up. I assume we would also need a whole lot of new staff to do the monitoring, or an intervention from the UN’s IAEA.

On JET, I understand that the funding that comes via Euratom is guaranteed only until 2018. The new work programme has not yet been agreed, but without that funding the whole future of JET is at risk. As we have just heard, that is a great threat to a great swathe of scientists, engineers and experts, not only those who are based here but those come through during the year to work there. I understand that there is also a risk also to our ongoing participation in ITER, which may be one of the places that our scientists move to if there is any question over the future of JET.

8 pm

The real issue is why we have heard nothing in response from the Government—I think there were just three rather measly paragraphs in the White Paper. Whether it be a strategy document or a White Paper, some serious work is needed now on what the alternatives might be, because the benefits of our membership are clear—noble Lords will have received lots of comments from the Institution of Mechanical Engineers and others—for our nuclear industry, for IP and for our scientific staff and our scientific centres of excellence. Their situation will be difficult if we have to come out. A lot of reassurance is needed. I hope we can be promised a proper strategy, with the full engagement of all those involved, but we certainly seek reassurance that the Government will make sure there is no possibility of our leaving Euratom until an equivalent framework and safeguards are in place.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, when one lawyer comes face to face with many scientists and nuclear experts and the issue is one of science, I know where my money would be. However, the issue is not one of science at this stage; it is essentially one of legal competence in the context of the treaty provisions that we have to face up to.

I thank all noble Lords for tabling these amendments and enabling a debate on our withdrawal from Euratom. I thank them, too, for raising the critical issues that surround Euratom and our participation in it. We share those interests and we share concerns about our position in Euratom. If nothing else, the amendments give me the opportunity to offer some reassurance—indeed, complete reassurance—that the Government are committed to maintaining the highest standards of nuclear safety and safeguards and to make clear that our aim is to maintain our mutually successful civil nuclear co-operation with Euratom. The issue is how we do that.

Amendments 11 and 23 would exclude Euratom from the parliamentary authorisation to trigger the Article 50 process. The noble Baroness has proposed an amendment that would separate withdrawal from Euratom from that from the EU so that the two could run, effectively, on different timescales.

The noble Lord, Lord Teverson, asked whether any of this was required, to which my response is that we consider that it is. Clause 1(2) of the Bill deals with the

[LORD KEEN OF ELIE]

disapplication of the European Communities Act 1972, which would be required pursuant to the decision of the Supreme Court in *Miller*. Section 3(2) of the European Union (Amendment) Act 2008 deals with an interpretive issue and not with an operative issue so far as the European statutory provisions are concerned. It makes the point, as is underlined by other matters to which I will come in a moment, that references to the EU include references to Euratom. As has been noted already, the provisions of Article 50 of the Lisbon treaty were then incorporated into the Euratom treaty by Article 106a, so that we have those side-by-side mechanisms.

Let me seek to explain why, when we trigger Article 50 and start the process of exiting the EU, we will also start the process of leaving Euratom. We clearly recognise that Euratom provides the legal framework for civil nuclear power generation and radioactive waste management for members of the Euratom Community. All Euratom member states are EU member states, and vice versa. Of course, Euratom has relationships with other countries such as the United States, Japan, Canada and so on through the medium of international nuclear co-operation agreements. At the present time, Euratom is a party to those agreements, but it means that there is an international family of countries interested in maintaining essentially the same standards with regard to civil nuclear generation and related matters concerning trade.

Although Euratom is a separate treaty-based organisation, one that came into existence in 1957 and which we entered in 1972 when we entered the European treaty pursuant to the 1972 Act, it shares a common institutional framework with the European Union. This makes the European Union and Euratom uniquely legally joined. For example, the Euratom Community relies on a common set of institutions provided for under the EU treaties, including the European Commission, the Council of Ministers, the European Parliament and the Court of Justice. The noble Lord, Lord Liddle, asked whether it was just that we did not want to be associated with the European Court of Justice as a matter of ideology, but that is not the case at all. The two treaties have institutions which are common. The United Kingdom's participation in these institutions, either as Minister, Commissioner, MEP or judge, currently makes no distinction between EU and Euratom matters.

Reference was made to the referendum—

Lord Lea of Crondall: On the point, often made, that X, Y or Z is not what people voted for in the referendum, did people consciously vote to leave Euratom?

Lord Keen of Elie: I am most obliged to the noble Lord for his second sight, because I was about to address that very point.

In the context of the referendum, people voted to leave the European Union institutions. They voted to leave the European Parliament. They voted to leave the European Commission. They voted to leave the Council of Ministers, and they voted to leave the European Court of Justice. They spoke in terms of

reshoring their sovereignty and the supremacy of UK law. You cannot leave those institutions if you remain within Euratom.

It is the Government's view that, once we have left the European Union, we will seek to engage with the members of Euratom, just as do many other nuclear-enabled countries around the world, by way of nuclear co-operation agreements. However, once we have left the EU, substantive negotiated changes to the Euratom treaty would be needed if we were to continue participating in Euratom, whether on a permanent or temporary basis. Not only is it difficult to see how that can be done given the commonality of the institutions, but it is extremely doubtful that the remaining 27 member states would be willing to take on such negotiations, particularly for a temporary change. Therefore, when we formally notify of our intention to leave the EU, we will also commence the process for leaving Euratom.

Let me be clear: the United Kingdom supports Euratom and wants to maintain continuity of co-operation and standards. As many of your Lordships have quite rightly stated, the nuclear industry is of key strategic importance to the United Kingdom. Therefore, we want to maintain our mutually successful civil nuclear co-operation with Euratom and, indeed, with all of our other international partners, which we do by means of nuclear co-operation treaties.

We maintain that the UK remains a world leader in nuclear research and development, and there is certainly no intention to reduce our ambition in that area. We fully recognise the importance of international collaboration in nuclear research and development, and we will ensure this continues by seeking alternative arrangements for our collaboration in international fusion research and development projects.

Reference has already been made to the JET project, which is based in Oxfordshire. At present, the financial commitment to JET runs to 2018 and there are proposals that that should be extended to 2020. We are committed to seeing that extension.

There is also the ITER project, which is to be based in France and is not limited to Euratom members; it is hoped that that will be operational by 2025. Again, we can foresee a commitment to further fusion research in that context.

Lord Hutton of Furness: I really did not want to interrupt the Minister; he has been very candid and helpful. Is it the Government's intention to seek associate membership status of the Euratom treaty in order to continue to participate in the research programme at Cadarache?

Lord Keen of Elie: It is not at present, as I understand it, our determined intention to seek associate member status, but that will be a matter for discussion in negotiation.

Let us be clear: this is an area where there is enormous mutual interest. It is not just the UK as a supplicant, putting its hand out. We are one of the world's leaders in nuclear research and development. We have something to offer our partners, just as they have something to offer us. That is how we see it: a

continuing partnership, albeit one in which we cannot credibly continue with the institutions of the EU, which are central to the operation of Euratom itself.

Lord Hutton of Furness: But the only way that non-EU members of Euratom have been able to contribute and participate in the research programmes has been through associate membership.

Lord Keen of Elie: I fully appreciate the noble Lord's point. That is why we will engage with Euratom and its members in order to determine continuity. Whether it will be by associate membership or by means of some additional agreement has yet to be determined.

A number of points were raised about whether we can maintain trade and standards. We trade, we have safety standards and we intend to maintain them. We had the opportunity to secure mutual recognition of our standards and trade by means of international nuclear co-operation agreements.

I have been asked by a number of noble Lords about the question of strategy and consultation. Let me be clear: we are at the beginning of this process, not at the end of it. We appreciate the need to develop a clear strategy in order to implement our desire for continuing co-operation with Euratom going forward.

A number of particular questions were posed with regard to where we were on certain issues of strategy and relationships with other international nuclear partners and how we intended to demonstrate the development of our forward strategy for nuclear research and development. The noble Lord, Lord Redesdale, raised the question of how important this was in the context of the proportion of our energy that is actually provided by nuclear installations. I understand that the figure is 17%, rather than the figure he quoted.

Lord Redesdale: If you look at Energy UK, which gives it by the half-hour, it is about 17% at the moment, but it goes up to about 22% and down to about 14%.

Lord Keen of Elie: I am most obliged for that clarification. It will elide the need for me to write any letters.

BEIS has a very direct interest in how its strategy is going to be developed, and here I commit not myself but my noble friend Lord Prior, because, going forward, he would be pleased to meet with any of your Lordships who have particular issues that they want to raise in the context of developing strategy and consultation on this point. At this stage, however, I do not consider that it would be appropriate for me to become engaged in that detail.

However, we have come to the very firm conclusion that, if we are to give an Article 50 notice that is effective going forward and that reflects the will of the people of the United Kingdom as expressed in a referendum, it must involve us withdrawing from the institutions of the European Union. Given the inextricable link between the European Union, as properly defined in some quarters, and Euratom, so far as those institutions are concerned, it will be necessary that that notice

applies both to the EU as it is generically termed, and to Euratom itself, as defined as part of the EU, pursuant to Section 3(2) of the 2008 Act.

I hope that in these circumstances, the noble Lord will consider it appropriate to withdraw the amendment.

8.15 pm

Lord Oxburgh: Twice in his speech, the Minister has commented that the UK was an international leader or a world leader in nuclear energy—I am not quite sure of the words he used—but it would be very unfortunate if our Ministers or officials entered any negotiations in this general area with that belief. There are certain areas in which UK achievements are considerable, but to describe it as such or imply it across the board would, sadly, be misleading.

Lord Keen of Elie: I am most obliged to the noble Lord, because it gives me the opportunity to refine the statement that I made. Essentially, we are world leaders in the area of nuclear fusion.

Baroness Young of Old Scone: I should say that I am also a member of the Science and Technology Committee, which is looking at this issue at the moment. I am also a former nuclear waste regulator. Is it true to say that this caught the Government on the hop as an unintended consequence of leaving the European Union? Will he tell us how many more of these unexploded bombs there are in there?

Lord Keen of Elie: I am obliged to the noble Baroness. This Government are never caught on the hop.

Lord Teverson: My Lords, I thank everybody for their contribution to this extended meeting of the Science and Technology Committee of the House. I hope that the noble Earl will make sure that we are all on the attendance list next time it meets. Again, I thank the Government and I thank the noble Lord, Lord Prior, who is in his place, for the conversations that we have had.

However, what this debate shows us is that this is a hazardous route to go down. It has risk. In my corporate life, we have risk registers, and I suppose that coming out of Euratom would be somewhere up in that top, right-hand red box. It would be right up there. The board of the company would then say, "How do we mitigate this risk?". The obvious answer would come from the newest non-executive director who had not yet got into groupthink. He would say, "We actually don't do it". For the moment, it might be the strategy and objective that we have as a nation and as a Government, but actually, doing this while we are doing all the rest is not a very good idea at the moment.

Furthermore, I was disappointed with the Minister's response; I find it very difficult tonight and I want to come back on some of the legal arguments, but I do not agree with them. The two are separate institutions.

More importantly, he mentioned the question on the ballot paper. The question was very clear—it gave me no movement to get out of it, as someone who regrets the decision—because it said, "Shall we leave

[LORD TEVERSON]

the European Union or shall we remain in the European Union?” Euratom is not the European Union. I take his point about the institutions, but the public did not vote specifically about the institutions; they voted about getting out of the European Union. Using that argument devalues the direction that that argument goes in.

Lastly, sure, staying in Euratom even for just another two years has its challenges organisationally and in trying to make that work, but the point is that those challenges and risks are absolutely nothing in comparison with coming out altogether.

I will withdraw my amendment and thank everybody for debating this issue. I will engage more with the Minister and other colleagues who put forward amendments—in many ways, they are better than mine. I suspect that, together, we will consider bringing this back on Report, but at this stage I beg leave to withdraw the amendment.

Amendment 11 withdrawn.

Amendment 12

Moved by Baroness Jones of Moulsecoomb

12: Clause 1, page 1, line 5, at end insert—

“() A notification may only be given under subsection (1) once—

- (a) Her Majesty’s Government has laid before each House of Parliament a White Paper setting out its approach to any transitional arrangements with the European Union following the expiry of the two-year period specified in Article 50(3) of the Treaty on European Union; and
- (b) the approach set out in the White Paper has been approved by a resolution of each House of Parliament.”

Baroness Jones of Moulsecoomb: My Lords, Amendment 12 is about transitional arrangements. It would require the Government to set out, prior to triggering Article 50, a detailed plan for transitional arrangements with the EU covering from the end of the two-year Article 50 notification period to the coming into force of a final treaty on the UK’s new relationship with the EU. It would further require that that plan be approved by Parliament.

I very much welcome the White Paper’s recognition that if a final deal with the EU can be successfully secured within the two-year Article 50 negotiation period there will need to be a gradual transition from what we have now to the trading relationship set out in the final agreement. In other words, we will not leave the single market overnight and there will be a phased implementation to give businesses the chance to adapt as necessary. However, that is not the same thing at all as needing a period of transition should, as most experienced observers expect, the two-year Article 50 negotiation period proves insufficient to reach a final agreement.

This simple amendment seeks to guarantee a meaningful transition arrangement to govern UK-EU trade relations during the period, which could of course be as long as a decade, between the UK leaving the EU at the end of the two-year Article 50 notification

period and whatever longer-term agreement on the future UK-EU relationship is concluded. Currently, when we hit the two-year mark, which in reality could be as soon as 18 months given the requirement to bring the deal before this House, the other place and the European Parliament, the only option if a deal has not been secured is to send Britain over a cliff edge. We face having to leave the EU effectively overnight, crashing out of the EU on WTO-only terms. The Government stated clearly in their White Paper that they want to avoid cliff edges but it seems at the moment that they have done nothing to stay away from this one. In short, my amendment is a safety net.

Amendment 16 is about employment and equality protections and was drafted in collaboration with the Women’s Equality Party. It would ensure that once the UK had withdrawn from the EU any changes to workers’ rights or equality legislation derived from EU law would be subject to full parliamentary scrutiny. In recent weeks we have heard repeated very welcome statements by Ministers, most notably the Secretary of State for Exiting the EU, that EU-derived workers’ rights are not at risk from Brexit. The White Paper states that the,

“Government will protect and enhance the rights people have at work”.

That is obviously good news. However, the White Paper also says that the forthcoming great repeal Bill—or whatever we will call it—will enable changes to be made to such vital EU-derived law by secondary legislation. Perhaps that would not be by this Government but by a future one.

My amendment simply seeks to write those welcome ministerial assurances into the Bill, with particular regard to equality and women’s rights. Even half a century after the passing of the Equal Pay Act, women working full time still earn 14% less on average than their male counterparts. That is a cause for concern given the segregation of our labour market, the systemic undervaluing of work traditionally done by women and the unfairly shared burden of childcare. According to the disgracefully underfunded Equality and Human Rights Commission, pregnant women and new mothers are now twice as likely to face workplace discrimination as 10 years ago, yet the number of employment tribunal claims for sex or pregnancy discrimination has fallen sharply because of the introduction of hefty fees. We definitely need to retain and indeed work to enhance the legal protections against pregnancy, maternity or sex discrimination currently provided by EU-derived law, as well as similar protections against race, disability, age, religion or sexual-orientation discrimination.

I also support Amendment 29 from the noble Lord, Lord Wigley. It is clear that on 23 June last year the British people did not vote to cut the number of EU students in the UK. Why on earth would they? Those EU students bring benefits to our universities, economy and culture. The point of these amendments is to make the Government think again on all sorts of issues and I hope that they will. I beg to move.

Lord Wigley: My Lords, I have my name down in support of Amendment 16, which the noble Baroness, Lady Jones, just spoke to. It addresses the key question of ensuring that after Brexit and the repatriation of

EU law—whether to Westminster or the devolved Administrations, as the case may be—there is not any erosion of the safeguards in law protecting the rights of workers and the interests of those protected by equality legislation.

My concerns are threefold. The first is the interests of disabled people, for which I worked for four decades and was involved directly in many of the key legislative steps, particularly the Disability Discrimination Act, which, incidentally, Sir John Major did much to facilitate as Prime Minister. Secondly, I am concerned about the safeguards for working people. Much progress has been achieved over the past 40 years and we must not let it be washed away by the Brexit tide. Thirdly, if we are to have unfettered access to the single market for our manufacturing products, as the Government hope, despite their unwillingness to include this in legislation, we must maintain equivalent standards to those on mainland Europe. We cannot allow these groups to suffer in a race to the bottom of that sort.

Amendment 29, in my name and that of the noble Baroness, Lady Jones, focuses on the paramount need to safeguard the whole higher education sector before committing to Brexit. In particular, the amendment refers to tuition fees, Horizon 2020 and other EU research programmes, Erasmus+ and, “continued participation in the Bologna process”.

I hope the Minister will give the Committee some categorical assurances on these important matters, which are all fundamental to our higher education sector. If the Government are not forthcoming, these issues are not going to go away. They may well be addressed by a further amendment on Report for the Higher Education and Research Bill. An amendment has already been tabled in the name of the noble Lord, Lord Hannay of Chiswick, and others. In other words, one way or another, I am certain that this House will not allow our higher education sector to be undermined by Brexit. I would be very glad to have some assurances along those lines from the Minister.

Baroness Drake (Lab): My Lords, Amendment 33 is in my name. Many women voted in the referendum but few will have done so in the belief that the result could prejudice their rights. Despite assurances from Ministers on employment rights, real concerns remain about the potential negative impact of Brexit on women’s rights. Concerns have been expressed by the Fawcett Society and many other organisations that the commitments from the Government are of a general kind and, when it comes to it, may not be honoured.

Amendment 33 seeks that before issuing any notification under Article 50,

“the Prime Minister must give an undertaking to have regard to the public interest during negotiations”,

in three areas: employment rights derived from EU legislation; violence against women and girls; and protection orders. The EU has proved an important source of rights for women. The rights of part-time workers and pregnant women at work and to equal pay for equal value derive from the EU. The White Paper argues that the UK maternity leave system is more generous than the EU requirement—yes, it is; a Labour Government introduced it—but we cannot assume it is secure.

8.30 pm

Rights for part-time workers are crucial to the interests of millions of women. Some 75% of part-time workers are women. There are nearly 15 million women in work; 42% of them work part time. Thanks to EU law, equal pay for work of equal value is a key part of the armoury protecting women’s economic interests. It derives from the case of a speech therapist brought to the European Court of Justice in 1993. Low-paid women are still fighting equal value cases in organisations such as Asda and Reading Borough Council.

The White Paper states:

“The Government is committed to strengthening rights when it is the right choice for UK workers and will continue to seek out opportunities to enhance protections”.

But what does “right choice” mean? The phrase is carefully crafted. What will be brought to bear in making that choice? Not so long ago the Government undertook the Red Tape Challenge, which included a review of the Equality Act 2010 to identify which measures in the Act placed unnecessary or disproportionate burdens on business. The very rights the Government now say they are committed to had previously been considered an appropriate subject for a red tape review. Little wonder there is concern that leaving the EU may result in weakening rights underpinning the lives of millions of women.

When they are at the negotiating table, thinking about the future of the UK economy, what will the Government prioritise? What will they consider to be a low priority? Will their view of the “right choice” be to protect women’s rights or to undercut our EU neighbours by becoming a low-regulation, low-tax economy, putting employment rights at risk, expendable in a vision of a deregulated country? Will they tilt back to seeing pregnant women as a burden on business or tilt forward, empowering women’s economic life chances, lifting them from low pay or pushing them through the glass ceiling?

The Prime Minister is prepared if need be to make Britain a low-tax, low-regulation economy. The Brexit Secretary, David Davis, has told the Cabinet to prepare for the possibility that a free trade agreement cannot be achieved. Commitments given by the Government will weaken as the negotiations progress and pressures to deregulate increase. The great repeal Bill may give the Government powers to make expedient changes to existing rights. My amendment seeks a more concrete commitment through an undertaking from the Prime Minister to have regard to the public interest during negotiations in maintaining employment rights derived from EU legislation. I ask the Minister to give an assurance that the rights of part-time workers, the rights of pregnant women at work, and the rights of women to equal pay will remain safe and protected whatever the outcome of the Brexit negotiations. I also ask him to give an assurance that the powers in the great repeal Bill will not be used to remove any existing equality and employment rights at a later date.

The undertaking sought from the Prime Minister also includes the protection of women escaping domestic violence, female genital mutilation and trafficking across the EU to the UK. EU cross-border co-operation is

[BARONESS DRAKE]

vital to tackling FGM and trafficking. In the UK alone, there were 5,700 newly recorded cases of female genital mutilation in 2016. The UK has been influential in the EU on this issue, but there is a distance to go before this horrendous practice is eradicated. Will that international co-operation continue?

Human trafficking disproportionately affects women. Eurostat data reveal that women and girls are overwhelmingly the victims of trafficking for sexual exploitation—96%—and the majority of victims of trafficking for all other purposes, at 75%. Co-operation across EU borders is a key part of prosecuting the traffickers and identifying victims. The EU victims directive established minimum standards for the right support and protections for victims of crime and obligations for member states, including specifically towards victims of violence.

There is a danger that vulnerable women and girls escaping violence will be neglected, given the plethora of matters competing for attention in the time-constrained negotiations for exiting the EU. The great repeal Bill should mean that all existing victims legislation deriving from the EU will be replaced in UK legislation. Will the Minister give an assurance that all such existing provisions will be fully safeguarded in domestic primary legislation?

The final part of the amendment addresses European protection orders, which provide for the restraining, protection and barring orders issued in one member state to be quickly and easily recognisable across the EU through simple certification, guaranteeing the rights of victims of violence wherever they are in Europe and providing women who have suffered domestic violence protection from the perpetrators. Previously, victims faced complex procedures to get their protection orders recognised in individual member states. In February 2016, the first European protection order was imposed in England and Wales, protecting a female survivor of violence in both Sweden and the UK.

Subject to negotiation, the Government may continue with parts of EU policing and justice co-operation. This amendment identifies the need to continue to recognise European protection orders. The White Paper omits mention of violence against women as an area for continued co-operation. On crime, only organised crime and terrorism are mentioned. There is a real concern that vulnerable people, so many of whom will be women, will be neglected in the negotiations. Again, will the Minister give an assurance that ending violence against women and girls and the UK's continued recognition of European protection orders will be a determined intention of the Government during the Brexit negotiations?

On 17 January, the Prime Minister said that,

“this Government has a plan for Britain. One that gets us the right deal abroad but also ensures we get a better deal for ordinary working people at home”.

An undertaking that during the negotiations the Prime Minister will have regard to the public interest in maintaining employment rights and protections for women will help to ensure that better deal for women, who make up over 50% of the UK population.

Lord Bruce of Bennachie (LD): My Lords, I speak to the amendment in my name and that of my noble and learned friend Lord Wallace of Tankerness. It has the simple objective of ensuring that the Government give high priority to making sure that our fishing industry gets the best possible deal and is not traded away on the basis of some other priorities for the Government. The important thing about the fishing industry is not only its location, obviously, but also the communities that it affects. Its value is about £750 million, but we import about 50% more fish than we produce and export—we are far from being self-sufficient in our fish consumption.

We have to be realistic and say that a lot of our fishing communities voted to leave in the hope that they would get a better deal, and certainly not a worse deal, than they currently have. The point that I would make, coming as I do from Aberdeenshire, is that fishing may not be a large part of the national economy but it is an important part of many communities. In a county such as Aberdeenshire, with the ports of Aberdeen, Peterhead and Fraserburgh, as well as the small ports along the Moray Firth, the future of the industry is a great local concern, as the industry has a significant impact on its economy, its future and its expectations.

We recognise that before we joined the Common Market we were in an era of 12-mile limits and had not moved to adopting the 200-mile economic zones, which have effectively been jointly negotiated and policed by the European Union. It is a major undertaking for the UK, post Brexit, to be able to define its area for fishing and to secure the right balance of protection and conservation to ensure sustainability. Indeed, I am sure that Ministers will still have to negotiate with the UK fishing industry to ensure that the deal that emerges balances those interests.

Given the importance of the industry from Shetland to the Isles of Scilly, communities there and in places in between are highly dependent on it. On that basis, we think that it is also important that any agreement secures the consent of the Welsh Assembly, the Northern Ireland Assembly and the Scottish Parliament, because the impact on those areas is disproportionately large, although that does not in any way mean that this is not of significant importance to the fishing ports of England too—it absolutely is.

I seek an assurance from the Minister that he recognises that the fishing industry has a clear and legitimate interest. The industry has a real expectation that the Government will secure a deal for the future that enables it to thrive and survive and that they will not trade away any existing rights in a way that diminishes the impact of the industry, but if possible get a better opportunity for it across the board.

Lord Balfe (Con): My Lords—

Baroness Northover (LD): My Lords, I will speak to the last amendment in the group—in fact the last amendment on the order paper, although there is one more that still needs to be addressed. Then we will get into a general debate, when I am sure that the noble Lord, Lord Balfe, will be given his opportunity to speak. I note that the Minister is looking a little weary after a long afternoon, and he is not there yet.

All the amendments address what the priorities should be in negotiations. Amendment 44, in my name, seeks to establish that in negotiating and concluding any agreements in accordance with Article 50(2) of the Treaty on European Union, the Government should have as a negotiating objective continued participation in the EU common foreign and security policy. This was established to seek,

“to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter ... strengthen the security of the Union in all ways ... preserve peace and strengthen international security ... promote international cooperation ... develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms”.

It recognises that armed conflict, destruction and the loss of human lives in the EU’s neighbourhood calls for such collective action. So of course does the UN, but this brings our geographically close group much closer together to seek to achieve these extremely difficult goals.

The right honourable Malcolm Rifkind, former Defence Secretary and former Foreign Secretary, put it this way in the Foreign Affairs Select Committee last year:

“The irony is, if we were not in the European Union, such are the common strategic interests between Britain and the rest of Europe that a lot of our foreign policy effort would have to be devoted to trying to influence the European Union ... There is no geostrategic threat to France or Germany or continental Europe that would not also be a threat to Britain, as we found both in 1914 and in 1939. So we would be in the extraordinary situation of having given up the power to either control or influence policy, but seeking as outsiders nevertheless to influence it anyway, because the outcome would be very important to us”.

Surely, therefore, it is vital that continued participation in the common foreign and security policy should be our aim. The UK Government’s balance of competences review in 2013, in which my noble friend Lord Wallace played a key role as a Minister within the Cabinet Office, concluded that it was,

“in the UK’s interests to work through the EU”,
in foreign policy.

The election of President Trump makes this even clearer. As one former diplomat recently put it to me, “The most important element of the common foreign and security policy is, of course, the unquestioning, underlying support for NATO. And NATO itself is now questioned by President Trump. Uncertainty pervades today’s world with this new US Administration”. Working together on foreign, defence and security policy is now more important than ever, with the rise of isolationist, nationalist populism not only in the US but in continental Europe.

8.45 pm

It was under this policy that the big three EU members—France, Germany and the United Kingdom—took the lead on nuclear negotiations with Iran and it is through this that we play our part in the quartet in relation to Israel and Palestine. We face the continued challenges on Europe’s borders of Ukraine, where the EU has played a key role in stabilising its economic situation. We have worked together with our EU allies on restrictive measures against Russia. We all have an interest in the resolution of conflict in Syria. We hope

that the rest of the EU will see that close co-operation makes sense but, as others have pointed out, the Brexit negotiations—on either side—are not necessarily putting interests, whether economic or security, at the forefront. If we are not, why should the EU? Therefore, we must redouble our efforts to work with our current EU partners and ensure that we stay in the common foreign and security policy. I commend this amendment to your Lordships’ House and look forward to hearing what the Minister has to say on the matter.

Baroness Smith of Basildon (Lab): My Lords, I rise to speak to Amendment 20, in the names of my noble friends Lady Hayter and Lord Lennie and the noble Lord, Lord Kerslake, and also to comment on the other amendments that have been spoken to already. This amendment is on the conduct of negotiations and the key issues on which we believe the Prime Minister should give an undertaking to have regard to the public interest as she negotiates. Those issues are, “maintaining a stable and sustainable economy ... preserving peace in Northern Ireland ... trading”—and tariff-free trading—and co-operating on a number of issues, including,

“education, health, research and science, environmental protection ... domestic security, and ... crime and ... maintaining all existing social, economic, consumer and workers’ rights”.

I suppose it was inevitable that, during the week of the Oscars, there would be one group of amendments that would remind us of a famous film. As much as I would like to cheer the Minister up, I am afraid that I am not going to cast him as some dashing hero in a “Superman” film—I can see the disappointment on his face—but instead refer to the political and satirical comedy, “Monty Python’s Life of Brian”, specifically the “Before the Romans” sketch, which some noble Lords will recall. We can all picture the scene: the People’s Front of Judea is meeting to plot its campaign against the Romans. In a rhetorical question, Reg—otherwise known as John Cleese—shouts, “What have the Romans done for us?” After numerous suggestions of what the Romans had done, he has to conclude, in some exasperation,

“All right, but apart from the sanitation, the medicine, education, wine, public order, irrigation, roads, a fresh water system and public health, what have the Romans ever done for us?”.

One lone hand goes up: “Brought peace”.

So, having listened carefully to our debates so far on this group of amendments, perhaps we should film a new scene: “What has Europe done for us?” We have heard from noble Lords who have spoken and in other debates that we have had on the Bill about the benefits that have been gained through our participation in the Europe Union in education, employment rights, the economy, consumer protection, science, the environment, women’s rights, business, trade, tackling organised crime, and of course—as in Rome—peace and security. But perhaps we will leave filming the scene for another day—I can ask the Minister which character he would like to take the part of.

One aspect of the referendum campaign that always concerned me was the notion that somehow Europe was something that was done to us, almost as if it were without our consent and that somehow we had no say. Yet in so many of these issues, it has been UK negotiators,

[BARONESS SMITH OF BASILDON]

UK commissioners and UK Members of the European Parliament who have taken the lead and at all times have been fully engaged.

We have already heard some articulate and persuasive speeches on the impact that our participation has had on our citizens, and on wider Europe. Our amendment and the others in the group seek to ensure that in the negotiations that follow invoking Article 50 we do not, as my grandmother would have said, throw the baby out with the bathwater. It is all very well for those who have campaigned for our withdrawal from the EU to claim that we can maintain those protections, but we all heard the noble Lord, Lord Lawson, when, speaking of the consequences of leaving the EU on Second Reading, he said:

“First among these is the consequence of the promised great repeal Bill, which will enable us to repeal or amend damaging EU regulations, which is of particular importance to our smaller businesses. I know that the party opposite”—

that is us—

“is concerned that this may adversely affect workers’ rights but less than 10% of the vast corpus of EU regulation concerns workers’ rights. It is the other 90%-plus that needs to be judiciously culled”.—[*Official Report*, 20/2/17; col 45.]

Those are chilling words.

I do not ascribe those motives to the Prime Minister, the Secretary of State or even the Minister here, but he will know that that is exactly what many of those who advocate the hardest and fastest form of Brexit seek. When we get to the great repeal Bill process, I trust that the Government will hold to their promises and not seek to weaken existing EU legislation that applies in the UK, including in the areas I have mentioned and all those listed in our Amendment 20. If in the future the Government want to bring forward any such changes, that should be done only in the normal way, as the noble Baroness, Lady Jones, outlined, through primary legislation allowing appropriate parliamentary scrutiny.

Meanwhile, alongside that process, the Government will be negotiating with the EU and the other 27 countries, and will need to, in the words of our amendment, “have regard to” these key issues. That is the undertaking that we seek from the Minister. I am not asking for detail at this stage, because all the amendments, like the Bill, are concerned with the process. That is why we are seeking undertakings from the Minister on behalf of the Prime Minister.

Let us look specifically at some of the issues raised. Consumer protection is not even mentioned in the White Paper; it has not been highlighted in any way as a priority for the Government. Yet it is a key issue for many—probably most—of our citizens. It has also been clear since the referendum that trade is a concern. Then there is environmental protection—clean air, clean rivers, clean waters. There is a huge issue about air quality. We appreciate that the Government are not achieving the appropriate standards—but it is not the standards that are wrong, and the answer is not to reduce those standards, or to cease being committed to them, but to do more to meet them.

Another issue mentioned in our amendment is security and peace. On Monday we had a long and fruitful discussion on Northern Ireland, also on one of our

amendments. Now we are talking specifically about UK domestic security and tackling serious and organised crime, including terrorism. In some ways, I am surprised that we even need to have a debate on this issue. Some noble Lords will recall—I see the noble Lord, Lord Hannay, in his place, and he will recall this as well as I do—the many hours that we spent debating this subject in your Lordships’ House, when the coalition Government made great play of the idea that they were opting out of all EU police and criminal justice measures, and would opt back in only to those that were effective and useful.

I thought that was quite a bizarre exercise, and it caused enormous concern—but in the event, quite rightly, we did not opt out of anything that applied to the UK and was in effect. All we opted out of were defunct and non-relevant measures. That is relevant to this debate because even then, the Government’s conclusion was that those measures were important to tackling serious and organised crime, to protecting our national security, and to our role in doing so, both within the EU and more widely.

My noble friend Lady Drake made some powerful comments about violence against women and girls, particularly with regard to trafficking. Those are exactly the sort of reasons why we needed those measures then, and we need them now. We need some assurances about how the Government are going to approach this matter. It has to go beyond mere co-operation.

I do not know whether the Minister has had the opportunity to speak to Rob Wainwright, who I heard on the radio a few weeks ago. He is the director of Europol and was formerly head of the Serious Organised Crime Agency. He has a lifetime’s experience in wider security issues as a civil servant and with the agencies. With his leadership, the UK has been taking a lead on these issues; we have an extraordinarily important role here. In the interview, his comments from a measured and professional position made a powerful and irrefutable case for continued co-operation and engagement, as close to the level we have now as possible. Any reduction of or drawing away from that only goes against what, two or three years ago, the Government said was essential and in British interests.

My noble friend Lady Drake covered the issue of women’s rights particularly eloquently and powerfully. Her speech explained why there are concerns about employment and social protection for women. I hope the Minister will be able to address her questions. In her remarks on transitional arrangements, particularly for trade and business, the noble Baroness, Lady Jones, took a reasonable and measured approach. She wisely described a safety net so that we do not have the cliff-edge fall which noble Lords have spoken about in other debates. I look forward to the Minister’s comments on that.

I know that the Minister and his ministerial colleagues do not like to refer to “transition” and that the preferred term is “implementation phase”. I do not really care what we call it, but I have an image in mind. Noble Lords of a certain age, like me, may recall the Road Runner cartoons. “Beep beep”, he goes as he runs, hurtling towards the cliff edge. Only when it is too late does he look down and find there is nothing there. At that point, he plummets hard and fast to the ground.

I do not believe that the Government want us to replicate Road Runner, but if we are not going to do so they have to have a plan. Whether it is called “transitional” or an “implementation stage” that plan must be brought before Parliament. The Minister may recall that my noble friend Lord Liddle asked a similar question on Monday evening about arrangements for trade. The Minister may not want to respond on this immediately, but I ask him to reflect on it. The consequences of a cliff-edge Brexit—the Road Runner Brexit as it should now be known—are real and dangerous.

To summarise, I have made two key points. First, we need an assurance that, on the key issues in this group of amendments, there is no attempt to use Brexit in any way to water down or reduce benefits and protections for UK citizens. Secondly, that cliff-edge, Road Runner Brexit is to be avoided at all costs.

Lord Balfre: My Lords, I declare an interest as a former Member of the European Parliament and all sorts of other things that the *Daily Mail* gets very worked up about us not declaring. We are debating the negotiating priorities and it is becoming very clear how absolutely complex that exercise is. Whatever people were supposedly voting for, I—who was strongly for remain—interpreted it as voting to take back control. I do not agree with them, or with their definition of control, but apparently that was what was happening. The Bill takes back control because it puts it back into the Government’s hands to negotiate a sensible settlement. Taking back control does not mean repudiating every single international institution and body connected with the EU. Quite apart from the Commission, the Council, the Court of Auditors and all the rest, there are 22 different agencies listed in the amendments, all of them providing specialist functions of one kind or another.

Two of those agencies are based in the United Kingdom and I want to speak about them tonight: the European Banking Authority and the European Medicines Agency. They are different institutions in different fields, but what they have in common is that both of them are here and are EU institutions. I was involved very much—at the margin—with the European Medicines Agency, which was an achievement of John Major. It was not quite as big an achievement as getting written into the treaty that the European Parliament would always meet in Strasbourg—which also came out of that package—or that the Patent Office would move to Munich.

9 pm

A noble Lord earlier said that all of these things are a package—part of that package is the European Medicines Agency. At the moment, the medicines agency is in a state of considerable despair. Let me tell your Lordships why. There are 890 staff working in London, subject to their staff regulations. Of those 890 staff, 49 are UK nationals and of those 49, 30 of them have no possibility of getting another nationality. Staff regulations of the EMA state that you have to be an EU national, which poses great worries for those staff. I believe that could be negotiated, but I am afraid that when we get down to the post-Article 50 position, a lot of very detailed negotiation will have to

be undertaken. Those 890 staff are in London and do not know where they will be. Between them, they have 593 dependent children under the age of 18 in full-time education. Those children had a reasonable expectation of being educated within the system that they are in. Their relocation is a major concern—relocation to where? They now face a future of uncertainty. There is a possibility that they could be relocated to a country where they do not speak the language at all. English may well be the language of the agency—it largely is—but if you suddenly have to start going to a school in a country where English is not the first language and they differ in their welcoming level, let me say, that can be a major disrupter of education.

Employment under the staff regulations of the EMA can be terminated if you are not an EU national. That is something which Ministers have to start taking on board and negotiating about. They also want to know whether their pensions will be guaranteed. At the moment, they are eligible for EU pensions. That needs safeguarding, as does the system of taxation. Community civil servants are subject to Community tax. There are other arrangements: for instance, Members of the European Parliament are subject to Community tax and they have a top-up tax in the UK. Many of those staff want to know what will happen to them. There are 890 staff but we can assume a few of them are married to each other so probably a couple of thousand people, if you take the staff, the partners and the children, are living in considerable uncertainty. They have a right to have this dealt with at an early point.

I invite the Government to look at what the EMA does. Will we have a separate regulatory mechanism in the United Kingdom for medicines? If so, that means extra costs on the medical and pharmaceutical industries. If so, it probably means that medicines will first be licensed with the European Medicines Agency, then with the Food and Drug Administration in the United States and only latterly, in the third market of the United Kingdom. We could well lose out on that, unless we negotiate a single European marketing authorisation. At the moment, we have one. If the EMA approves a medicine, it can be marketed. Are we going to withdraw from that?

These are extremely complex questions but they are at the front of the minds of quite a lot of civil servants in an agency that we fought hard to bring to London. Incidentally, it is also an agency that puts a lot of money into the London economy. The UK has had a voice for industry in Brussels through the medicines agency, and that has been its input into the pharmaceutical discussions within the Commission.

We could go on a long time but, finally, there is something called the rapid alert procedure that notifies people—in this case, the United Kingdom Government—about the recall of medicinal products. We take part in that at the moment. However, if we leave the medicines agency, we will be outside it unless we negotiate in some way to stay within it.

I have a final statistic. The medicines agency generally has tests done by what is called a “competent authority”. It does not take a lot of understanding of the English language to know someone who has the skill to carry them out. At the moment, 20% of the medicines

[LORD BALFE]

agency tests are undertaken by UK-based companies. Will that 20% be lost? If we are outside the medicines agency, we will not qualify to do them. Those are among the many points that need to be addressed.

I now turn to the European Banking Authority. These are human beings who are being affected and their attitudes are shaped by the way in which this situation is developing. Their number is much smaller, with only 158 staff. Only 12 of them are UK nationals but they have 116 children under the age of 18—all the arguments I have just deployed are the same—and 14 are at universities in the United Kingdom. The families live in the United Kingdom. In 2015, they ran no fewer than 296 events in the UK, bringing people to conferences in the UK to look at matters within banking regulation.

The banking authority is different from the medicines agency, and this is a key point. Nearly all these institutions have different charters. Article 75 of the banking authority's founding regulations provides for participation to be open to—

Lord De Mauley (Con): I am grateful to my noble friend. Is he going to address the amendments?

Lord Balfe: I take the amendments as being about our negotiating stance and, as such, I consider that I am addressing them. Article 75 provides for third countries with concluded agreements to take part in the agencies. I would like to know from the Minister whether we are going to seek to be a third party. If we do, we can contribute to the budget but we will then have to be subject to the rules under which they operate, which, incidentally, are also basically the rules of the ECJ. The point I am making—I am coming near to the end—

Noble Lords: Hear, hear.

Lord Balfe: Thank you very much. I ask noble Lords to understand that we are talking about the future of human beings. This is not something to jeer about. Because of my role in the trade union movement, I have met these people and they are very upset. A few of them will be tuning in to the broadcast of this debate and will hear the jeers.

I just say that we have to be sophisticated in the way we treat these agencies, and we have to be humane in the way we treat their staff. A thank-you would not go unmet by some of the agencies. We have to look at the employment, welfare and pension provisions of these staff. These are people who went to work for Britain. They are British nationals and they deserve our support.

Finally, I ask the Minister two things. First, will he appoint a dedicated civil servant to deal with these agencies so that they have a point of contact, and, secondly, will he meet them, or at least representatives of their staff associations, to hear at first hand what I have reported only as an intermediary?

Lord Bilimoria: My Lords, I agree with the noble Lord, Lord Balfe: we are talking about people. The greatest issue arising from the European Union referendum is the uncertainty that it is causing, in

every aspect of our lives. Amendment 29 talks specifically about the priorities of the UK's higher education institutions, students and academics. Our universities are the jewel in the crown of Britain. They are the best in the world, along with those of the United States of America, and international students contribute up to £14 billion to our economy. Yet Cambridge University has just announced a 14% drop in students applying from the European Union. I declare my interests as a chancellor of the University of Birmingham and as chair of the advisory board of the University of Cambridge Judge Business School. I am also president of UKCISA, the UK Council for International Student Affairs, which represents the 450,000 international students in this country, of which 180,000 are from the European Union.

This is not just about the money; it is about what these students contribute to our universities. They enrich the experience of our domestic students and they build lifelong bridges between our country and their countries around the European Union, with friendships that last for generations. Our international students and universities are one of the strongest elements of soft power that exists in this country. It is not only the students but also the academics at our universities, up to 20% of whom are from the European Union.

When it comes to research, the amendment speaks about Horizon 2020 and European research area programmes. A lot of funding comes into our universities from the European Union. For example, the University of Cambridge—at the top of the list, I think—took about £100 million of funding. But again, it is not just the funding that is in jeopardy. The Government might say, "We will replace that funding". But what is at stake are the collaborations we might lose out on. The power of collaborative research is extraordinary. At the University of Birmingham, our field-weighted citation impact is 1.87 when we do our own research; Harvard University's is 2.4 when it does its own research. But when we do combined research with Harvard University, the figure is 5.69. That is the power of collaborative research—and I am proud to be an alumnus of the Harvard Business School.

When you put all that together—the students, academics and research funding from the European Union, as well as our collaborative research with the European Union—it is all in jeopardy, all under threat and all uncertain. Could the Minister give us as much certainty as possible about this vital area of our economy?

Baroness Lister of Burtersett (Lab): My Lords, I very much support what the noble Lord just said, but I am speaking in support of Amendments 16 and 33. My main focus will be women's rights—covered by Amendment 33—but first I want to mention briefly the rights of disabled people, with reference to Amendment 16. Concerns have been raised by groups such as Disability Rights UK and the Papworth Trust, concerning, in particular, issues around employment, personal mobility and transport, accessibility and health and social care. On this last point, there is a very real concern that, apparently, a disproportionate number of personal assistants to disabled and frail people are from other European Union countries. There is a real worry about

what will happen to the caring services. These issues were raised in the recent Lords debate on Brexit and disabled people, but I do not think they were satisfactorily addressed by the Minister responding to that debate.

On Amendment 33, while I value the Government's commitment to preventing the erosion of equalities protections at the point of leaving the EU, I hope they will take on board a broad warning of the Women and Equalities Committee report, published yesterday, that the process will be complex—as has been said—and that there could be an unintentional regression if the greatest care is not taken. The committee advises on how this could be done and how to embed principles of equality in our own law, mirroring, for example, the Human Rights Act 1998.

It also makes a point I made at Second Reading about what happens in the future. My noble friend Lady Drake pointed out that the EU has been the driver of many women's rights, not just the principle of equal value but, for example, opposing direct sex discrimination in social security law. I spent many hours campaigning in the 1970s against the very real discrimination that married women faced in social security law and it was thanks to the EU that we got rid of it. It would have taken us a lot longer if it had not been for the EU. At present there are discussions in the EU about, for example, strengthening leave for fathers and for carers. It is important that we are not left behind as the EU itself progresses, particularly—again echoing what my noble friend said—given all the talk about the possible move to a radical enterprise economy if there is no deal. I note what Sir John Major said about the implications of this for our welfare state.

At Second Reading I cited the Equality and Human Rights Commission, which has called on the Government to commit to taking on board future rights-enhancing laws emanating from the EU where appropriate. I asked the Minister to clarify the Government's position on this. I do not know whether the Minister is listening. I understand that he did not have the time to respond then, but I would very much appreciate a response now.

9.15 pm

Baroness Burt of Solihull (LD): My Lords, I shall speak very briefly to Amendment 16 in my name and that of others and support all the amendments in this group. I will not delay the Committee for long, but it is important to explain and emphasise why I and parliamentarians across parties and across both Houses wish to pursue this amendment. As previous speakers have explained, the amendment covers protections for groups with protected characteristics who are covered by secondary legislation that arose in the EU. We need these protections built in before Article 50 is triggered because otherwise they could be altered by the Executive and might not be subject to parliamentary scrutiny.

We are simply asking for oversight by one Parliament, the European Parliament, to be replaced by that of another, the UK Parliament. We believe that women will be disproportionately affected and at risk. Protections already mentioned include: preventing less favourable terms for part-time workers, under the part-time workers' regulations; the duty of employers to assess health and safety aspects of work for pregnant workers afforded

under the pregnant workers directive; the right to return to work to an equivalent post or equally favourable conditions after maternity leave, in the maternity and parental leave regulations; and, perhaps the most at risk—and one over which the Government dragged their heels for two years in implementing—the working time directive, which protects rights to rest breaks, annual leave and not to be required to work excessively long hours.

We are not saying that the Government would use the opportunity to get rid of worker protections in this way, but it would reassure this House if they were not able to do so without scrutiny from both Houses of Parliament. We must not wait until Article 50 is triggered. As soon as it is triggered, these rights become exposed and unprotected. If the Government have no intention of taking the opportunity to change some of these protections without benefit of parliamentary scrutiny, there is no reason why they should not accept this amendment.

Baroness Crawley (Lab): My Lords, I support these amendments. I particularly support my noble friend Lady Drake's compelling case for preserving and improving workplace rights for women after we leave the European Union. That is not least because I, as a former MEP, like the noble Lord, Lord Balfe—or “another obscure MEP”, as the *Daily Mail* put it—played a modest part in the creation of the maternity leave directive 25 years ago. As my noble friend Lady Drake said, so many British women—hundreds of thousands—have benefited from that EU law in the intervening years.

Maternity rights for British women have indeed progressed—in that sense the Minister is right—and we should be proud of that. But in the early 1990s, they came from a very low base, much lower than the rest of the European Union, and we do not want to go back to that low base. Therefore I call on the Minister to give us what guarantees he can that we will not go back to bargain-basement rights.

In this debate on the importance of securing transitional arrangements, as my noble friend has said, I ask the Minister whether he agrees with his noble friend, the noble and learned Lord, Lord Keen of Elie—he was in his place but I do not see him now. In our debate on this Bill on Monday, in answer to a question on the EEA from my noble friend Lord Liddle, the noble and learned Lord said,

“I do not accept that we face a cliff edge—there is no cliff and therefore no edge”.—[*Official Report*, 27/2/17; col. 588.]

Does the Minister agree? That was certainly not the message that the Prime Minister took to the CBI last autumn when it was extremely worried, and it continues to be worried about the need for transitional arrangements.

Lord Wallace of Tankerness (LD): This has been a wide-ranging debate. I put my name to Amendment 34. The fishing industry is important; part of the problem is that people have too often tried to shut the fishing industry up, when it has had genuine concerns about the way the common fisheries policy has operated over many years. Indeed, there are concerns now that in the Brexit negotiations it might yet be forgotten about.

[LORD WALLACE OF TANKERNESS]

I had the privilege of representing for 18 years in the House of Commons and for eight years in the Scottish Parliament a constituency which had many fishing communities. I am aware that there was a concern as to what happened when Britain entered the European Union and that the interests of the fishing industry were sold short. It was a belief that, when the papers were subsequently released under the 30-year rule, was proved to have some substance. A briefing note from the Department of Agriculture and Fisheries for Scotland in the early 1970s warned:

“In short, at present it is much easier to see the drawbacks for our fishermen likely to be involved in the Common Fisheries Policy than to be at all positive that there will be benefits to offset, let alone outweigh them”.

The amendment that my noble friend Lord Bruce of Bennachie and I have put forward is intended to try to ensure that some way or other there will be an engagement of the devolved legislatures in Scotland, Wales and Northern Ireland to help allay some of these concerns.

The House has had the benefit of a very good and well-informed report on Brexit and fisheries from the EU Energy and Environment Sub-Committee, chaired by my noble friend Lord Teverson. It makes clear the complexities of untangling the United Kingdom from the common fisheries policy and the need for agreement. For example, my noble friend Lord Teverson said in Grand Committee on 16 January that,

“the moment we leave the European Union, the EEZ will become our exclusive economic zone, exactly as it says on the tin. There will be no automatic right for us to fish in other people’s EEZs; nor will there be any automatic right for other nation states to fish in ours. We will be excluded immediately, if we have not renegotiated access, from agreements with Iceland, Norway and the Faroes, which are particularly important to our Scottish fleets”.—[*Official Report*, 16/1/17; col. GC 1.]

It is not academic. Important negotiations will have to take place about the future of our fisheries, not only in terms of fishing opportunities but in terms of our trade in fish. It is said that we export the majority of fish caught by our UK vessels and import the majority of fish that we eat. Measured by volume, 49% of our domestic production is exported to the European Union and 32% of the imports that we eat are from the European Union. Fishing will be an important part of these negotiations in terms of catching opportunities and in terms of trade, not only for the fishermen in the immediate area but for the fish processors and all who are dependent on the fishing industry.

In terms of our total United Kingdom GDP, the fishing industry does not loom very large, but in terms of the many communities around our coast in Scotland, Wales, Northern Ireland and many parts of England it is important. I remember taking part in the annual debate on fisheries in the House of Commons where it was clear from the wide range of people who took part the importance to many communities of the fishing industry. Therefore, it is important we focus on this and that we give the devolved Administrations, Parliaments and Assemblies an opportunity for involvement.

In replying to the debate on 16 January, the noble Lord, Lord Gardiner of Kimble, said:

“Obviously, we must work—and are working—as closely as we have always done with our colleagues in the devolved Administrations and Crown dependencies as we develop our positions, and will ensure that their views are fully taken into account as negotiations move forward”.—[*Official Report*, 16/1/17; col. 29.]

I do not expect the Minister to have the answer tonight so he can write to me, but can he tell us up until now what discussions have taken place at official and ministerial level on fisheries with the respective devolved Administrations? As I said, it is a small part of our GDP but vital for our many coastal communities and it is vital that their interests are advanced and safeguarded as we go forward into these negotiations.

Lord Judd (Lab): My Lords—

Noble Lords: Minister!

Lord Judd: My Lords—

Lord Bridges of Headley: My Lords, I think that the view of the Committee is probably that we should continue and that I should try to wrap this up.

Lord Judd: My Lords—

Noble Lords: Minister! Order!

Lord Taylor of Holbeach: I think that there is a consensus that we should allow the Minister to address the Committee.

Lord Judd: My Lords—

Noble Lords: Order!

Lord Taylor of Holbeach: I thank the noble Lord and I call on the Minister to speak.

Lord Bridges of Headley: My Lords, we have discussed a veritable cornucopia of issues over the past hour and five minutes. Trying to sum up and string them together is something of a challenge, but I will attempt to do so. I fear that I may at this late hour incur the frustration of those noble Lords who put their names to these amendments. I will gently say that while I absolutely agree that we should debate these issues and that they are worthy of debate and scrutiny, the amendments themselves have no place in the Bill. I stress that I am sure that my noble friends on the Front Bench and I will return to the House on many occasions in the weeks and months ahead to discuss these issues in more detail.

A number of the topics that were raised have been touched on and were covered in the White Paper and other announcements that were made before and since the publication of the White Paper. A number of the points raised, especially in Amendment 20, were covered. The Government’s wish to seek a new agreement to enable free and frictionless trade has been made clear, as has our wish to continue to co-operate with Europe where it is clearly in our national interest to do so. On combating crime and terrorism, one of our stated negotiating objectives is to establish a new relationship with the EU to preserve UK and European security—I will return to that point later.

Before I move on, I hope that the noble Baroness, Lady Smith, will forgive me for picking her up on a very small point. I am going to sound pedantic but consumer rights and consumer protection are mentioned. The words, “consumer protection”, are featured in the White Paper, at paragraph 8.36.

9.30 pm

Baroness Smith of Basildon: The point that I was making was that they are not in the list of priorities. They may feature down the list, but consumer protection is not one of the Government’s 12 priorities.

Lord Bridges of Headley: The rights of consumers are very high in our minds. My noble friend Lord Balfe made an eloquent and passionate speech about the position of UK nationals in EU agencies and about the role of the agencies themselves. I absolutely repeat what I said at Second Reading: the Government would indeed like to thank all those UK nationals for the contribution that they have made and continue to make. I hope that my noble friend will forgive me if I do not go into great depth and detail now on each of the agencies—there are 16 of them. They are important and are referred to in the White Paper. We will be looking for ways in which our relationship with those agencies might continue in some shape or form.

Ireland was mentioned but not discussed in this debate. Obviously, it was debated on Monday. I shall simply repeat that we will stand by the commitments in the Belfast agreement and its successors.

I will turn first to the issue of higher education and our world-class universities, which is the subject of Amendment 29. In the White Paper, a priority is indeed for us to ensure that the UK remains the best place for science and innovation. With regard to student fee support, we of course recognise the significant contribution that EU students make to the UK’s world-class universities and have already made commitments that we will give existing EU students and those due to start courses in 2017-18 certainty with regard to both their student loans and their home fee status. This is not just for the short term but for the duration of their courses. I can also confirm that research councils will continue to fund postgraduate students from the EU whose courses start in 2017-18. It is worth noting in passing that no similar commitment has been made to UK students currently studying in other member states.

A number of noble Lords referred to collaboration and co-operation in higher education. I entirely endorse the importance of this in the years ahead. The noble Lord, Lord Bilimoria, who is not here, spoke about this. I should like to say for the sake of the entire Committee, though, that as regards Horizon 2020 and Erasmus, the Prime Minister has made clear that we will continue an agreement to continue to collaborate with our European partners on major science research and technology initiatives. There may be specific EU programmes that we want to participate in.

With regard to the Bologna process, it is important to underline the fact that this is an intergovernmental agreement among countries in the European region and, as such, it is not tied to EU membership. I can

therefore assure noble Lords that UK participation will not be part of our negotiations as it will be unaffected by our departure from the EU.

Next, a number of your Lordships spoke about rights, especially on employment and equalities. In a number of areas, the UK Government have already extended workers’ rights beyond requirements set out in EU law. For example, women in the UK who have had a child can enjoy 52 weeks of statutory maternity leave and 39 weeks of pay, not just the 14 weeks under EU law. That said, and importantly, we have already made—as a number of noble Lords have noted—a clear commitment that there would be no erosion of workers’ rights as a result of the UK leaving the EU and to ensure that those rights keep pace with the changing labour market. The great repeal Bill will make provision for this legislation.

Baroness Drake: The hour is late but this is an important point. I have chapter 7 of the White Paper in front of me. I seek clarity because the words in the document are quite general. Can the Minister give an assurance that each and every existing equality and employment right will be protected, not weakened, whatever the outcome of the Brexit negotiations? Can he give absolute clarity that each and every employment and equality right will be protected and not weakened as a consequence of Brexit?

Lord Bridges of Headley: I totally understand the noble Baroness’s concern and interest in this issue. I will pick my words carefully. The Government’s position is that, through the great repeal Bill, EU law and regulations will be ported into UK law. I will come on to equalities in a moment. If the noble Baroness feels that that does not address the point, I will be happy to discuss this with her more directly. As I said, the great repeal Bill will make provision for this legislation to continue to stand once the European Communities Act is repealed, so the same protections for workers as are currently in place will remain after we exit the EU.

On equalities, as I said on Monday, the Equality Act already provides a strong framework to ensure that the UK is well placed to continue driving equality forward. I assure your Lordships 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.

On the issue of violence against women, the Government are committed to tackling domestic violence, modern slavery and human trafficking. The UK already has some of the most robust protections in the world to tackle violence against women. To address one of the points that noble Lords made, after we leave the EU the UK will maintain its place as a prominent international actor. We will continue to work with our European partners and globally to promote women’s rights and work towards ensuring the safety of women everywhere.

I turn now to fishing, which the noble and learned Lord, Lord Wallace, just spoke about. I entirely agree about the importance of the fishing sector and the fishing industry. It is also referred to in the White Paper. It is a matter that my department and other

[LORD BRIDGES OF HEADLEY]

ministerial colleagues across Whitehall are very focused on. I totally heed the points he made about the issues raised. I hope he will forgive me if I do not go into great depth and detail, but there is one point I will focus on, which is the approval mechanism for the negotiations—again, a very valid point.

The Government have made it perfectly clear that we want to come to an agreement that works for the whole of the United Kingdom. We have created a process to work with the representatives of the devolved Administrations to ensure that their views are taken into account. I certainly commit to write to the noble and learned Lord to set out in more detail what that means, but I need to make clear to him and to the Committee, and to repeat, that no part of the UK has a veto on fishing or anything else.

I turn to another topic of the amendments that is covered in the White Paper—the potential transitional period following negotiations. As noble Lords will know, the White Paper states that we want to reach an agreement with the EU within the two-year Article 50 period. Article 50 states that the process for withdrawal will take account of the framework of the leaving member state's future relationship with the EU, and there is a clear connection between the terms of our withdrawal and the future relationship we wish to establish.

We do not want to get ahead of the negotiations or set out unilateral positions. How we take the process forward will be a matter for discussion with the European institutions and our European partners. But, given the language in Article 50 and the connection between our withdrawal and our future relationship, it is our intention to seek to deal with both sets of issues together wherever possible—something we believe would clearly be in the interests of the European Union as well as the UK. We believe that both sides would benefit from a phased process of implementation that would allow the United Kingdom and the European Union to adapt to and prepare for any new arrangements. It is in nobody's interests for there to be any disruption. The implementation arrangements we may rely upon will be a subject for negotiation and their nature will vary considerably depending on the agreement we reach with the EU.

I turn to the common foreign and security policy, picked up in Amendment 44. As I have said before, after we leave the European Union we will remain committed to European security and aim to add value to European Union foreign and security policy. Our objective is to ensure that the European Union's role in defence and security is complementary to and respects the central role of NATO.

More broadly, although we are leaving the European Union, the UK will continue to be one of the most important global actors in international affairs. Indeed, along with France we are the only EU member state with an independent nuclear deterrent and a permanent seat on the UN Security Council. Again, as with other amendments in this group, our participation in the common foreign and security policy cannot be resolved through unilateral action. Instead, it must be addressed through discussion with the other 27 members.

This topic and all the other issues that have been raised are worthy of debate—I do not dispute that for one moment. Where I differ from noble Lords who have tabled the amendments is on whether they should be in the Bill, the core purpose of which—indeed, the only purpose—is to enable the Government to deliver on the referendum and trigger Article 50. Therefore, with great respect, I ask that the amendments not be pressed.

Baroness Jones of Moulsecoomb: My Lords, I thank the Minister for his reply. It has been an interesting debate, ranging widely from women's rights and the protection of minorities to education, medicine, foreign policy and fishing. We understand about the movement of all such protections straight into UK law. At the same time, we also understand that there could be a steady erosion afterwards by various means. That is why we are asking for corroboration that this simply will not happen. We want to be better than we were in the EU, not worse. A noble Lord on the opposite Benches said that this is very complex. When you do something for the first time, it is always much harder than doing it subsequently, so we are bound to make mistakes. One role of this House is to make sure that we raise issues that we feel will cause problems—and it is for the Government to respond appropriately. I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendments 13 to 16A not moved.

Clause 1, as amended, agreed.

Amendment 17

Moved by Lord Pannick

17: After Clause 1, insert the following new Clause—

“Parliamentary approval for the outcome of negotiations with the European Union

- (1) No Minister of the Crown may agree to arrangements for the withdrawal of the United Kingdom from the European Union under Article 50(2) of the Treaty on European Union until—
 - (a) Her Majesty's Government has laid a copy of the final draft of the proposed arrangements before each House of Parliament, and
 - (b) each House of Parliament has passed a resolution approving the final draft of the proposed arrangements.
- (2) The requirements under subsection (1)(a) and (b) must also be met where a Minister of the Crown proposes any separate arrangements pertaining to the future political and economic relationship between the United Kingdom and the European Union.
- (3) In the case of a proposed agreement with the European Union setting out the arrangements for the withdrawal of the United Kingdom from the European Union, any resolution under subsection (1) must have been passed by each House of Parliament before the proposed terms are agreed with the European Council, with a view to their approval by the European Parliament.
- (4) No Minister of the Crown may agree to the termination, or terminate unilaterally, the negotiations regarding the arrangements for the withdrawal of the United Kingdom from the European Union under Article 50(2) of the Treaty on European Union without the prior approval of each House of Parliament by resolution.”

Lord Pannick (CB): My Lords, Amendment 17 is in my name and those of the noble Baroness, Lady Hayter, and the noble Lords, Lord Hannay and Lord Oates. It would ensure parliamentary sovereignty at the end of the negotiating process for our withdrawal from the EU. Noble Lords will know that the Prime Minister has promised that any draft agreement with the European Union on the terms of our withdrawal and any draft agreement on our future relationship with the EU will be put to both Houses of Parliament for their approval and that, in relation to the withdrawal agreement, this will occur before any such agreement is sent to the European Parliament for its consent. That must be right. This Parliament must have at least the same powers as the European Parliament to disagree with the terms of any draft agreement.

However, the Government are refusing to include that commitment in the Bill. I say that a political promise made by the Prime Minister in good faith is no substitute for an obligation in an Act of Parliament. On a matter of this importance, it is vital to ensure that there is a clear, binding obligation on the Government to return to Parliament at a defined time.

The amendment also addresses what happens if this country and the EU cannot agree on the terms of our withdrawal from the EU. Parliamentary sovereignty should also apply in those circumstances. The Government should be required to seek and obtain the approval of both Houses of Parliament if they decide to reject a withdrawal agreement offered by the EU and to leave the EU with no deal. It must be for Parliament to decide whether to prefer no deal or the deal offered by the EU.

This amendment will not delay the Article 50 notification; it does not constrain in any way the substance of the negotiations. All it does, importantly, is to guarantee parliamentary sovereignty at the end of the negotiating process. I look forward to hearing from the Minister why that is resisted by the Government. I beg to move.

9.45 pm

Lord Spicer: My Lords, I am going to be very brief, because I have forgotten most of what I wanted to say. This is part of a group of amendments purporting to strengthen the role of Parliament in our affairs. Like other groups, it is pretty well irrelevant to this Bill, but it is there. It is ironic that those who most object to the Bill are also those who are pressing for greater sovereignty for Parliament. It is ironic because the whole purpose of the Bill—of leaving the European Union—is to give sovereignty to Parliament. It is the essence of the whole process. Therefore, it is very ironic that those who do not particularly like this objective are those pressing most for increased sovereignty. One has to assume, therefore, that they are doing it out of some sort of ulterior purpose.

Lord Pannick: I am sorry, but the noble Lord is suggesting that I am bringing forward this amendment for some ulterior purpose. I voted to remain in the EU, but I entirely agree with the Government's position that in the light of the referendum result, this country has to notify and has to leave the European Union.

I am not bringing forward this amendment with any ulterior purpose: my purpose is to ensure parliamentary sovereignty.

Lord Spicer: Of course I trust the noble Lord, but what he is doing is slowing down a process that we should get on with as quickly as possible in order to increase the sovereignty of Parliament. That is the whole purpose. It is the main purpose for those of us—

Viscount Hailsham: The purpose of the new clause that we are discussing is simply to ensure proper parliamentary control at the end of the negotiations. That does not slow down the negotiations; it merely ensures that at the end of those negotiations, Parliament has a proper say as to the outcome.

Lord Spicer: I personally agree totally with anything that increases the sovereignty of Parliament. I only make the point that this is totally unnecessary, because if we got on with this Bill, we would end up having a much more sovereign Parliament than we would have without it. That is the whole purpose of what I am saying. Indeed, it is necessary that we should have greater sovereignty because the powers of Parliament have been eroded ever since the Maastricht treaty, with which I was associated. That has been something that has been going on for some time—ever since there was a single currency. The powers of Parliaments have been reduced because the single currency is irrevocable, and we have a system in this country whereby no Parliament can bind another Parliament. There is no doubt in my mind, at least, that had we not started the process of leaving the European Union, the European court, which the noble Lord will know a lot about, would have moved in on us for not joining the single currency at some point. There is no question in my mind about that.

Lord Hannay of Chiswick: I am not sure what is in the noble Lord's mind. If he just tries reading the treaty, he will see that there is no basis for proceeding against the Government of the United Kingdom for not being a member of the euro. It is actually written in the treaty that we do not have to be, so perhaps he will clear his mind.

Lord Spicer: I am also sure that the European court would have found a way into this at some point. I have no doubt about that at all. If one really is concerned with the sovereignty of Parliament, we should get on with passing this Bill as quickly as possible and begin the task of unwinding the historic process of eroding the powers of Parliaments, including our own. We should not take too much notice of the amendments coming up: most of them are irrelevant to the Bill.

Lord Wigley: My Lords, I support Amendment 17, moved by the noble Lord, Lord Pannick, which is linked to Amendment 35, standing in my name. Amendment 17 is critically important. If there is no clarity tonight, we should certainly return to this subject on Report next week.

In fact, the amendment arose from the end of one of the banks of debates on Monday night, when I asked the Minister—this is in *Hansard*, col. 641—what

[LORD WIGLEY]

will happen if, at the end of the negotiations, we reach a position where both Houses of Parliament refuse to endorse the basis for Brexit recommended by the Government. Will the Government accept the decision of Parliament as binding or will they under those circumstances allow the voters to decide, either by general election or further referendum? The Minister refused to respond or give any indication of the Government's intentions. He now has a chance to make clear beyond doubt the Government's position, which the House has the right to know. The best way to achieve this would be to accept Amendment 17 or, if that cannot be carried, by insisting on Amendment 35 which provides that if the UK Government fail to reach agreement, the status quo would remain in force.

Lord Howard of Lympne: My Lords, I oppose this amendment on grounds that are rather different from those advanced by my noble friend. I submit that this amendment is wrong in principle, constitutionally improper and unnecessary. Your Lordships might think that given that it was proposed by the noble Lord, Lord Pannick, I am being rather courageous and perhaps foolhardy in suggesting that it is constitutionally improper but I hope to explain to your Lordships why I take that view.

My view is based in particular on subsection (4) of the new clause. That would make possible—indeed it encourages—a never-ending situation in which the Government reach an agreement with the European Union and brings it to Parliament, Parliament rejects it, sends the Government back to the European Union, the Government come back to Parliament and Parliament rejects it again. The only way that process can be ended is by the Government having the power to bring the negotiations to an end. What would happen if the process envisaged by subsection (4) were to take place is the intrusion of Parliament into the negotiating process. That is why I say this amendment is constitutionally improper.

Lord Kerr of Kinlochard: I wonder if the noble Lord is familiar with Article 50, where it is clear that if no agreement is reached within the two-year period the state that intimated its intention to withdraw, if it has not withdrawn that intimation, leaves the European Union at the end of those two years. The idea of the never-ending negotiation is a fantasy. The article is completely clear.

Lord Howard of Lympne: It is hardly a fantasy if the negotiations are brought to an end speedily, as we all hope they will be. If they are brought to an end six months before the end of the two-year period, the process I identified as being made possible by new subsection (4) could well take place. Parliament should not intrude itself into negotiations. It is not the job of Parliament to negotiate. That may seem self-evident but since this amendment was moved by the noble Lord, Lord Pannick, I thought I had better look for some authority for the proposition I am advancing and went to the supreme authority on these matters—I went to Dicey. Dicey says that Parliament, “should neither directly nor indirectly take part in negotiating treaties with foreign powers”.

That is what subsection (4) of this amendment would make possible, which is why I suggest that it is constitutionally improper.

Lord Tyler (LD): I do not think that the noble Lord has followed the process of the Constitutional Reform and Governance Act 2010, which specifically gives both Houses of Parliament a role in the ratification of treaties. That completely updates where Dicey got to.

Lord Howard of Lympne: I am afraid that it is the noble Lord who misunderstands the position. I am not disputing the role of Parliament in ratifying an agreement. That is perfectly proper, but that is different from Parliament refusing the ability of the Government to terminate the negotiations. That is what intrudes Parliament into the negotiations and that is why, in my view, the amendment is constitutionally improper.

The amendment is also unnecessary, for one very simple reason. If at the end of the negotiations—I devoutly hope that this will not occur; I do not believe that it will occur; I do not think that there is much chance of it occurring—the Government find themselves completely at odds with Parliament, in particular with the other place, it is always open to the other place to pass a Motion of no confidence in the Government. Clearly, that would bring matters to a head and perhaps achieve the result that the noble Lord, Lord Pannick, seeks to achieve. Parliament is always supreme in that respect. Parliament can always pass a vote of no confidence in Her Majesty's Government.

Lord Pannick: If all this is unnecessary, why was the Prime Minister asked for, and why did she give, a specific undertaking that this matter will be brought before both Houses of Parliament at the end of the process? Surely that shows that in relation to this vital constitutional issue it is not enough to rely on the possibility of the House of Commons exerting its power and, if an undertaking is given, why is it not in the Bill?

Lord Howard of Lympne: I think that I have already answered that question. I quite accept, as I said to the noble Lord, that it is proper for Parliament to ratify an agreement that has been reached—or, indeed, reject it. That is what Parliament's role should be. That is in accordance with what the Prime Minister has said. What I am objecting to is subsection (4) of the proposed new clause, which could have the effect that I have identified and would lead to an extremely unsatisfactory and unconstitutional position.

Lord Hannay of Chiswick: Has the noble Lord given proper consideration to a circumstance in which the Prime Minister and the Government wish to throw in the towel in the negotiation? It cannot possibly be ruled out because, as I understand it, his right honourable friend the Minister responsible for Brexit has just told the Cabinet that it might well happen. So why on earth is it wrong to put in the Bill that Parliament should have the right to say yes or no to such a decision?

Lord Howard of Lympne: Well, for all the reasons that I have given. I do not want to repeat my speech to the noble Lord. The effect of the proposed new clause,

the effect of giving Parliament the ability to say, “You cannot bring the negotiations to an end”—not just once, but twice or three times, or four times or any number of times; that is all in the proposed new clause—is to intrude Parliament into the negotiating process. It is wrong, it is improper and it should not be in the Bill.

Lord Oates: My Lords, I support Amendment 17. Given the late hour and the clarity of the points made by the noble Lord, Lord Pannick, in moving the amendment, I will not detain your Lordships for too long, although I must say that the noble Lord, Lord Howard, has shown very little faith in the sense of Parliament, which slightly surprises me, from the side of the argument that has stressed parliamentary sovereignty so much.

At Second Reading I expressed my concern that the Bill, unless amended, would provide a blank cheque to the Prime Minister to negotiate an exit deal on any terms whatever or, indeed, to return with no deal at all. The Government intend that at that point—when the PM returns with a deal or no deal at all—both Houses of Parliament will be given a vote. The Prime Minister made that pledge in her Lancaster House speech. Effectively, Parliament would be given a choice of the deal or not the deal. But I think that noble Lords do not have faith in the Government, given some of the undertakings that they have made in the past, not least, as was mentioned in an earlier debate, in relation to the noble Lord, Lord Dubs.

We want something more secure in the Bill. The purpose of the amendment, as the noble Lord, Lord Pannick, has pointed out, is to ensure that both Houses of Parliament are able to have a meaningful say once the final draft of the proposed arrangements for withdrawal from the European Union is produced and that this must be before the proposed arrangements are agreed with the European Council. As we have heard, it would also prevent the Government from terminating negotiations for withdrawal from the European Union without the express consent of both Houses of Parliament. In short, the amendment will ensure that with regard to the most—

10 pm

Lord De Mauley: If what the noble Lord, Lord Kerr, said earlier is correct, and I think it is, how does subsection (4) work?

Lord Oates: I am not quite clear to which point made by the noble Lord, Lord Kerr, the noble Lord is referring.

Lord De Mauley: If at the end of the two-year period we are out anyway, what is the impact of the Minister’s decision on termination?

Lord Oates: The point of subsection (4) is that, “No Minister ... may agree to the termination”, prior to that point. Clearly, that is the point of it.

Lord Pannick: The answer to the noble Lord’s question is that surely Parliament should decide, not the Government. Parliament should decide whether we

leave the EU with no agreement or whether we leave the EU with whatever agreement is being offered to us by the EU that the Government think is unacceptable. That will be the choice and Parliament should make that choice.

Lord Oates: I thank the noble Lord, Lord Pannick, for his clarity on that matter. In short, the amendment will ensure that Parliament will have a proper and meaningful oversight of the most important decision that the United Kingdom Government will have made in my lifetime.

Lord Faulks (Con): The noble Lord will probably remember that at Second Reading the noble Lord, Lord Kerr of Kinlochard, indicated that he thought that the Europeans negotiating would give us an extension of the two-year period and, furthermore, that they would probably allow us to withdraw the Article 50 notice altogether. If that is so, would he agree that subsection (4) together with the extension would result in our negotiators being locked for ever in a room labelled Article 50 until we give up?

Lord Oates: No, I would not agree with that. Fascinating as it is for me to comment on what the noble Lord, Lord Kerr, said at Second Reading or otherwise, I will leave it to him to comment, but I do not agree that that would be the case.

Those who argued that the purpose of Brexit was to take back control and restore parliamentary sovereignty should have no problem with this at all. I would say with respect to the noble Lord, Lord Spicer, that the real irony is that people who talk so much about parliamentary sovereignty want to surrender it so easily to the Executive.

As the House will be aware, while the Liberal Democrats fully support this amendment and its objective of giving Parliament a real and meaningful say, we believe that, once Parliament has spoken, the people should have the final word in a national referendum. Noble Lords have different views on this subject but, whatever one’s view on the referendum, this amendment will ensure that we make real the promise to take back control and that our Parliament has real and meaningful oversight of the outcome of negotiations. I am very pleased to support the amendment.

Lord Hope of Craighead (CB): My Lords, perhaps I can make my position clear. I think that we have four different attempts to find a solution to a problem that we are all looking for. For me, it would be neater if I made my points on Amendment 17, before others introduce their solutions. I am very much in sympathy with most of what appears in Amendment 17, but I share quite a lot of the difficulties that the noble Lord, Lord Howard, expressed, although perhaps not exactly for the same reasons. I will explain myself a little more.

At Second Reading, I made the point that there was a respectable argument that only Parliament has the constitutional authority to authorise the act of concluding an agreement with the EU or the act of withdrawal, if that is what the Government seek to do. For that

[LORD HOPE OF CRAIGHEAD]

reason, I respectfully suggest that it is in the Government's best interests, for their own protection, to look for a form of words that will provide them with the answer to any possible challenge that might be made along lines that would impede progress towards a final agreement. It was with that view that I was searching for some kind of solution to the problem. I said at Second Reading that I would not seek to put forward an amendment myself and that it was more for the Government to try to find a way of doing it, which it is perhaps still open to them to do.

I will explain my views on proposed new subsections (1) to (3). As the noble Lord, Lord Pannick, has explained, the Government have given an undertaking. David Jones said in the House of Commons:

"First of all, we intend that the vote will cover not only the withdrawal arrangements but also the future relationship with the European Union. Furthermore, I can confirm that the Government will bring forward a motion on the final agreement, to be approved by both Houses of Parliament before it is concluded".—[*Official Report*, Commons, 7/2/17; col. 264.]

There are three elements in that undertaking, all of which find their place in subsections (1) to (3) in the proposed new clause. However, I have to say that I have a quarrel with the wording. Clause 1 of the Bill, as I mentioned at Second Reading, is beautifully crafted in the simplest possible language. I am troubled by the fact that, if you cast the undertaking in the framework that you find in Clause 1, you can produce that undertaking in four lines instead of 16. Just from the point of view of the aesthetics of drafting, I would have thought that it would be proper to try to use the undertaking as a basis for an amendment. The amendment would be very simple: another four-line amendment, which would fit neatly into the character of the Bill. It would provide the Government with the protection that I suggest they need and would produce the answer to the point made by the noble Lord, Lord Pannick, with which I entirely agree, about the sovereignty of Parliament. I believe that the sovereignty of Parliament is absolutely paramount in reaching an agreement.

I do not want to elaborate on this point because I agree with everything that the noble Lord, Lord Pannick, said, apart from the wording, which I suggest might be more attractively put. As he might recognise, I am adopting a tactic that advocates adopt in court: if you are addressing a judge, trying to find a way of formulating your proposition, and the judge comes out with some form of words that is not exactly in accordance with it but is in accordance with what you are driving at, it is quite a good tactic to pick up his words, as it is more likely that he will accept your answer. I am just adopting that tactic, as we have this there on a plate before us. You draw together the two things: the language of the undertaking and the interest that the Government have in getting the thing in the Bill for their own purposes. The undertaking that the Minister gave in the House of Commons was not given lightly. We can all understand that it would have been carefully worded and approved by somebody a good deal higher up the line of government than the Minister who was giving it. It really is a gift to adopt those words and get it into the Bill in that language.

I respectfully suggest that it would be wiser to detach subsection (4) from subsections (1) to (3), because we can grapple with subsections (1) to (3) for the reasons that I have given, but subsection (4) raises problems. I do not want to go over all the ground but, through a simple reading of the wording, you can see immediately the difficulty that it runs into. First, it tries to combine two different situations, in that it talks about "the termination" or termination "unilaterally". I presume that when it talks about termination the first time, this is where both sides are unable to reach an agreement and there is a complete breakdown between both sides. If that is the situation, I, for the moment, cannot understand what can be done. There is no point in coming to the Government and asking for it to be approved, because you cannot get back to the negotiation table. It is a Humpty-Dumpty situation: Humpty-Dumpty has fallen off the wall and you cannot put the bits together again. So I cannot understand that part of the amendment.

The second part talks about terminating unilaterally. Although I can understand what that situation might be, the problem is that subsection (4) requires the Government to come to both Houses for prior approval before they can do that. You can imagine a situation where the Houses say, "We are not satisfied, go back and have another go", and then we have the neverendum situation that has been referred to—going round and round in a circle with no way out.

Lord Hannay of Chiswick: I am most grateful to the noble and learned Lord for giving way. I was following with great interest his ratiocination until he got to the point about neverendums. As the noble Lord, Lord Kerr, has made clear, there cannot be a neverendum, because the two-year guillotine comes down. The only way to get beyond the two-year guillotine—and this answers the point that the noble Lord, Lord Faulks, made—is by the agreement of all 27 member states and the United Kingdom. If the United Kingdom refuses a prolongation of the two-year period, then it cannot be prolonged. So can we please drop the references to neverendums and just address whatever problems the noble learned Lord has with the wording of subsection (4)?

Lord Hope of Craighead: I entirely understand the point that the noble Lord is making, but the trouble with subsection (4) is that it does not mention the two-year period—we do not know what period we are talking about. That is one of the problems with it. It does not think through to the factual situation that would arise in the situation that is being addressed.

I do not at all underestimate the importance of finding a solution to the point that this subsection seeks to address; I am in sympathy with it. I just say that it is not suitably worded and it should be rethought. It is for that reason that I suggest that we should not try to struggle to put the two things together. We should separate out subsections (1) to (3) and adopt my solution, which I need not repeat, as to how they might be simplified and made more attractive and then think again about subsection (4). We can find a way to address exactly the particular situation that it seeks—of separating out the unilateral termination from the bilateral situation—and then try to find ways

of meeting that. I do not need to elaborate, but these are the points that I wish to make in broad sympathy with what Amendment 17 is seeking to achieve.

Lord Howell of Guildford (Con): My Lords—

Baroness Goldie: My Lords, I am aware that we have not heard from the Labour Benches at all in respect of this group of amendments and the noble Baroness, Lady Kennedy, has her name attached to one of the amendments.

Baroness Kennedy of The Shaws: I am grateful to the Minister and I hope that the noble Lord, Lord Howell, will not mind my stepping in here. I have my name attached to Amendment 31, but I really support Amendment 17 as it has been described by the noble Lord, Lord Pannick. As an advocate, I would always follow the indications given by a judge such as the noble and learned Lord, Lord Hope, whose advice is very useful, given that he is by and large in sympathy with what is being sought here.

I remind the House of a question that was asked previously by the noble Baroness, Lady O'Neill—I can see her sitting on the Cross Benches—on what happens if there is an agreement that is really a bad agreement, a bad deal, or what happens if there is no deal at all. We did not hear a proper answer to that question, and I think that it is one that we sought to answer in Amendment 31. I agree entirely with the noble Lord, Lord Pannick, and—to spare his blushes—he did not make mention of the judgment in the Miller case, in which he was counsel. In that case—the noble and learned Lord, Lord Hope, said something about this on Second Reading—a very important matter of principle was involved. It was not just that the Supreme Court made the decision that Parliament's approval was necessary for the triggering of Article 50. What was also dealt with there was the principle at the heart of this—the principle that when it comes to fundamentally changing law, or removing rights from our domestic law, Parliament has to be the place that authorises and approves such matters.

10.15 pm

That principle has to apply at the end of this process—because this Bill does not authorise withdrawal. It authorises the triggering of the process leading towards withdrawal, but it does not authorise withdrawal. When we come to that stage, it is Parliament that, looking at the deal, will have to give its approval or not—because this will touch upon fundamental changes to our law, and to the rights of citizens of this country. That is why we must insist that this be on the face of the Bill.

That is why the noble Lord, Lord Lester—unfortunately he cannot be here this evening—and I, supported by the noble Baroness, Lady Jones, added an amendment that mentions the possibility of no agreement being reached, and says what should happen in that case. That too should come before Parliament. If we end up reverting to the World Trade Organization's trading rules, that too will involve a diminution of rights and laws in this country. So it too will have to

come back before Parliament. A bad deal has to come before Parliament, and any approvals, but no deal at all also has to come before Parliament.

I do not think there will be any votes tonight, so I urge noble Lords that when we reconsider the drafting before we come back here next Tuesday morning, we remember that that is what a good amendment should say. The noble Lord, Lord Pannick, is the perfect person to put such an amendment together: it should also cover the possibility of no agreement being reached, and say that that too has to be approved by Parliament.

I shall not labour the point at this time of night, but I happen to agree with the noble Lord, Lord Kerr, that Article 50 does not mean that there cannot be a change of heart. We could unilaterally withdraw our triggering of Article 50. I imagine that is very unlikely, but if there came a point when we looked at the World Trade Organization's trading rules and at the full panoply of what they would mean, we could decide that we did not want to go down that route and would rather remain in the European Union. Unlikely as it may seem, that has to be an option that Parliament could decide on. I urge the House to find the right amendment before next Tuesday morning.

Lord Howell of Guildford: My Lords, I shall come at the amendments from a slightly different angle. It seems to me, listening to the debate, that those who have tabled them may not fully understand what goes on in the House of Commons, or what the nature of parliamentary sovereignty really is. As we know, and as Bagehot reminded us 150 years ago, it is actually the majority in Parliament at the time—or whoever can muster a majority—and the managers of the party or parties behind that majority, who seek to maintain the majority, get the Government's business through and carry out the Government's intentions.

I am totally in favour of maximum parliamentary involvement in this process, and I have been from the start. I am sorry that it had to go to the Supreme Court; I thought the Government made a mistake in not putting it openly and fully to Parliament from the beginning. I am glad the case went as it did and, peering into the next two or three years or however long it takes, I welcome the fact that all along the way Parliament will be heavily and continuously involved—particularly the Commons, but ourselves as well, of course. That is my forecast.

People say that Parliament should not involve itself in negotiation. I hear my noble friends say that, and it sounds very sensible. In practice, the daily newspapers, the media and Parliament will all involve themselves in negotiations. There will be leaks in every direction and constant debates. Motions will be moved in the House of Commons. The Government may deplore that or try to avoid it; the Whips may manoeuvre to try to suppress it but that will not happen. There will be a massive and continuous debate about this matter over the next two years. When we eventually get to the point where there is some kind of resolution—whether it is the divorce papers; the new relationship; a bundle between the two; or a single core of views with a long trail of dozens of different sectoral views and arrangements and complex and numerous regulations—Parliament will be deeply involved. Whoever has the

[LORD HOWELL OF GUILDFORD]

majority in Parliament will be in a position to assert their will over it, to reject or accept it. It needs no statute law whatever in practice and Parliament will not need to authorise, criticise or reject any arrangements for the divorce and new relationships that Her Majesty's Government seek to put before it. They will have to do that; the Prime Minister has undertaken to do so and it will happen. The arrangements will be extensive and complex and will have numerous bilateral elements.

This is where the puzzle grows greater. If, at that point, the Government cease to have a majority, lose control or there are too many rebels and a majority is formed against the proposals, which are then rejected, arrangements leading to a general election will be triggered. I am not sure how that works with the five-year rule but the rejection would be a vote of no confidence in the Government and would trigger, one way or another, a general election. So the people would have their say and that is what will happen. The supporters of the amendment seem curiously unaware that MPs, including Back-Benchers in all parties—both official and minor opposition ones—are perfectly capable of bringing whatever the Government agree to the Floor of the House of Commons and voting on it. Votes can be engineered on crucial aspects which, if they were central enough, could destroy the Government. They can bring matters to Parliament by well-trying procedural devices at any time during the negotiating period.

The elaborate amendments, which distinguished lawyers around me are discussing, are totally unnecessary and do not fit in with the way in which Parliament has evolved and worked over the last 200 years. We have the doctrines of Bagehot, the realities of parliamentary manoeuvres and Governments being brought down by people switching sides. All this has happened and may well happen again. To put it on the statute book is to create an absurdity. There is no need for any statutes to tell Parliament how to behave.

Lord Hope of Craighead: One of the points made by the Supreme Court is that it is legislation that provides the authority for the kind of exercise we are talking about. It is all very well having Motions on the Floor of the House, but legislation is the key. That is why I suggest the Government need legislation for the protection I mentioned at Second Reading. If it is in the Bill, we get legislative authority.

Lord Howell of Guildford: My Lords, if Parliament voted to bring down the process—the whole confection the Government had worked on and negotiated over two years—it would not need a law, just a majority. Three or four years ago, Parliament voted against the Government's wish to mount military action against Syria. No one wrote a statute saying that we must not fire cruise missiles at Bashar al-Assad and no one needs a statute here. A majority may well move against this. It is quite possible that, over the years, the media view may build up that this is unacceptable, as the noble Lord, Lord Kerr, and others have rightly reminded us. Some reversal may happen half way through. The Governments of France, Germany and Italy are all likely to change and turmoil is about to take place in

the European continent. The people we are negotiating with may well change completely in the next 18 months. All this could happen and would change the approach totally. At that point, whoever can muster a majority in Parliament and form a Government—until they are overthrown—can and will have their say. That is called the sovereign role of Parliament. That is the reality. We are moving around ideas of statutes, which belong nicely in the world of law but not in the world of reality—of parliamentary procedure, parliamentary history, parliamentary action or parliamentary will when MPs really get going. It is a different world down there and that should be understood by the supporters of these amendments, which are unnecessary.

Lord Deben (Con): My Lords, this is not a debate which will be solved on the basis of this group of amendments. It is quite clear that we have to make an amendment to ensure parliamentary sovereignty. I remind your Lordships that we are only having this debate now because we had to go to court to insist upon having it. I remind your Lordships that it is not a proper way for Parliament to proceed via the courts. This happens in other countries without our history and without, I am afraid, the intrusion of Parliament. That phrase should be remembered. Parliament does not intrude when it makes a decision about the future of this nation.

We need to say to the Government that they cannot make a decision without it being put before Parliament in circumstances where Parliament is empowered to make that decision. It is perfectly happy for my noble friend to say, "Well, Parliament will do that anyway", and "My goodness, we have been doing it all over the years" and all the rest of it—but we have not made a decision of this kind in these circumstances which can possibly be brought forward as a parallel. We have for the first time invented a system whereby we have asked the people for their decision. They have made a decision, but we do not really have a system by which we can naturally enforce and carry it through.

It is therefore perfectly proper for this House to seek the way that most defends parliamentary sovereignty. We do not work on the basis of "one man, one vote, once". We try to accept what happened in the referendum. I admit, as this House knows, that I am a fierce opponent of Brexit—but that is not the point of this debate. The point of this debate is to stand up again for parliamentary sovereignty. My noble friends can say what they like about the details of the law, but they have to accept that we had to go to court to have the discussion. Therefore, they must also accept that this House ought to ensure that there is a copper-bottomed statutory protection for what the Prime Minister has promised in all good faith.

We also have to take seriously the issue of what happens if the Government decide that they do not like the solution that they have come to and therefore want to relapse into a WTO arrangement, or whatever it may be. If that happens, we will have to have a procedure by which both Houses of Parliament are able to make the decision. Why do the Government not want to do it? I do not understand this. I would have thought that the Government would have wanted to make sure that everybody accepts that this very

difficult decision, based on a 52-48 vote and a good deal of misunderstanding on both sides, needs to have proper parliamentary procedure.

The only people who really oppose it—it is very difficult for me to say this, because I am always against lawyers, but I am much attracted to the proposals which we have just heard—and are really pressing for this not to happen are those newspapers that are determined to press their case, irrespective of what we will think in two years' time. All I want to say is that I do not want to reverse, or fight, or stop what was in my view an entirely wrong decision. It has been made. But I remind us all that we are a parliamentary democracy and that it is necessary for Parliament to be sure that it has a proper say.

Finally, if we insist on this, we will also strengthen the hand of those who are trying to reach a solution which we can all accept and win the best solution for Britain, and will strengthen the hand of those who get up in this House and argue the case for it. We strengthen the hand of moderate, sensible people against those who appear to think that it does not matter how you do it as long as you do it. In that sense we will be asserting not only parliamentary sovereignty but the right of Parliament to insist that the case is put to Parliament and that Parliament is enabled to answer it.

10.30 pm

Lord Trevethin and Oaksey (CB): My Lords, I hope that this is not too legalistic an intervention but I wish to seek some clarification. There have been a number of references to the Miller case. In paragraph 36 of its judgment, the Supreme Court said:

“The applicants’ case ... is that when Notice is given, the United Kingdom will have embarked on an irreversible course that will lead to much of EU law ceasing to have effect in the United Kingdom, whether or not Parliament repeals the 1972 Act. As Lord Pannick QC put it for Mrs Miller, when ministers give Notice they will be ‘pulling ... the trigger which causes the bullet to be fired, with the consequence that the bullet will hit the target and the Treaties will cease to apply’”.

I may be being obtuse, and of course there is an important difference between the role of the applicant and the role of the legislator, but I am curious to know whether the amendment would, if enacted, provide a bullet-proof jacket to the bullet which my noble friend Lord Pannick so effectively deployed in argument in the Supreme Court.

Baroness Jones of Moulsecoomb: My Lords, I support Amendment 31. I realise that I am feeling a bit fractious, which is probably because I have not had my dinner. I cannot answer for other noble Lords’ fractiousness this evening but I imagine that it is for similar reasons.

I have no legal training but I think that the situation is perfectly logical. We had to have an Act of Parliament to go into the EU, and therefore surely it is completely logical to have an Act of Parliament to enable our withdrawal. To those people who keep on about taking back control, I say that if we do not have that Act of Parliament and that scrutiny, we will be giving the European Parliament or the EU more control over the terms than we have ourselves. So I commend Amendment 31.

Lord True (Con): My Lords, I have a slightly different point to make. I do not want to repeat what I said to your Lordships on the first day of Committee but perhaps I may again read the Long Title of this legislation. It is a Bill to:

“Confer power on the Prime Minister to notify, under Article 50(2) of the Treaty on European Union, the United Kingdom’s intention to withdraw from the EU”,

and that is followed by one clause.

We have had a most entertaining disquisition and a whole series of teach-ins on various aspects of what the nation will be debating over the next year, including tonight from some extremely eminent lawyers and diplomats. It is clear to me as the Bill advances that the noble Lords, Lord Hannay, Lord Pannick and Lord Kerr, are emerging as the Thomas Aquinas, Duns Scotus and St Bonaventure of the details of this argument—the scholastic philosophers of what is before us. Unfortunately for the scholastic philosophers, the Christian communities involved did not accept that they had a monopoly of wisdom, because brilliance has to be tempered by practicality and practical wisdom. The problem that Parliament in its entirety has to wrestle with is how we respond to a vote by the British people with a majority of one and a quarter million to leave the European Union. That will exercise us for some time, but I do not think this is the time for scholastic argument. I take the same view on this amendment as on many others: it is an unnecessary obstruction—not in time or in practice, but we should focus on the purpose of this Bill.

I make a further point, which we should wrestle with over the next few months with some care. A great deal has been said about parliamentary sovereignty. I agree with the comments made by my noble friend Lord Howard and the noble and learned Lord, Lord Hope, on subsection (4). But there is a deeper difficulty in this talk—and it is good talk; I am a devout parliamentarian—about parliamentary final say. In our parliamentary system there are two Houses. There is a House of Commons, which is elected and which can ultimately enforce its will, if need be through the Parliament Act—as is envisaged in one of these amendments—and there is another House, your Lordships’ House, which is unelected.

Today we established a new fact. We had a vote. In that vote, which is the second highest vote ever recorded in the House of Lords, 614 Peers voted. The result was, I believe, 356 to 258, or it might have been the other way around—

Lord Tyler: It was the other way around.

Lord True: I thank the noble Lord, Lord Tyler. So it was the other way around—358 to 256—which strengthens my argument. There is—if those 358 care to unite again and again—an insurmountable wall in your Lordships’ House, an unelected House, against the will of the other place, Her Majesty’s Government. I will not use the phrase “the will of the people”—we are acting on the instructions of the people, but I know it offends some. There is an insurmountable wall. It is inconceivable that the Government could form enough people in this place to overcome it. So when I read these amendments, which, effectively, have said that nothing can proceed and nothing can be terminated

[LORD TRUE]

without the consent of your Lordships' House, I see them as effectively giving your Lordships' House—an unelected House, with a force that the world out there sees today—a veto on the procedure to take this forward. I give way to the noble Lord—

Lord Hannay of Chiswick: I am grateful to the noble Lord. I wonder whether he has had a word with the Prime Minister, who basically coined this approach. She put in the Lancaster House speech a statement that both Houses should have their say. She then replicated it in the White Paper. So, rather than addressing people like myself and the noble Lords, Lord Kerr and Lord Pannick, about this, could he perhaps have a word with his right honourable friend?

Lord True: It may be that the noble Lord has more access to my right honourable friend than I do. My right honourable friend is perfectly capable of forming a judgment and I have no doubt we will hear from my noble friend on the Front Bench. I do not resile for a moment from the advice that I am giving. I would give that advice to my right honourable friend as well. But it would be a strange place to put this country, at this time, on this Bill, at this stage of these proceedings, if we pass legislation that effectively gives a veto to a House that has voted with 358 Members against the request of the Front Bench to allow this Bill to proceed unamended as the House of Commons did. This is a major issue that needs to be addressed and it is one to which I hope the country and this Parliament will turn its mind.

Lord Tyler: My Lords, I have now served in Parliament for over 25 years—roughly half that time in each House. I do not think the noble Lord who has just spoken has had experience of the House of Commons.

I want to address two insidious arguments. One argument—which we have heard often over recent days and the noble Lord has repeated it—is that somehow, the House of Lords should not intervene because the House of Commons has already spoken. If we take that argument to its extremity, there is no point in your Lordships' House. It is simply giving ammunition to those, who are now increasing in number, who want a unicameral Parliament, who want to abolish this House, not just to reform it or to make it an elected Senate, as I do. I am very firmly in favour of a bicameral Parliament, as are my noble friends on these Benches, but there are now more people, many more people, who wish to abolish this House than want it to retain its present, appointed basis. That is very dangerous. If the noble Lord, Lord True, wants to persuade your Lordships' House that we do not have a status on an issue as important as this, that we do not have a perfect right to tell the other place to think again, then I do not agree with him. It was evident from that very considerable vote on the earlier amendment that that is not the majority view in your Lordships' House.

The other insidious argument which I think is really dangerous is to say, as many Members of your Lordships' House seem to be saying, "Yes, we are very keen on the sovereignty of Parliament, but we are not prepared to reiterate that point now". If not now, when? The Minister

has on several occasions—he is persistent and sometimes persuasive—made a good point about some of the amendments that have come before your Lordships' House about the process of negotiation; there will be other opportunities. There will not be another opportunity to set out a simple and sensible process within Parliament—both Houses—for the way we decide the outcome of the negotiations.

I was very impressed by the speech of the noble Lord, Lord Deben. He and I used to have discussions in the other place; I used to have to try to shadow him. He and the noble Viscount, Lord Hailsham, are the true Thatcherites, because they helped the great architect of the single market to make real sense for Britain of the single market, as, indeed, did the noble Lord, Lord Heseltine, who was here earlier. But I do not think that we can really wait for the end of the process to decide how Parliament is going to take the process. That is why I thought the contribution of the noble and learned Lord, Lord Hope, was so helpful. If the Government cannot, between now and Report, find a way of setting before our House and, in due course, the other place, a process that we can all agree is one that defends the sovereignty of Parliament, defends our rights, in both Houses, to take these important decisions, then the Government are seriously at fault and may well find themselves losing a vote in your Lordships' House, albeit perhaps not with the same majority as on Amendment 9B.

This is an extremely important moment, not just for the future of our country—of course it is—but for the future of our Parliament. If we effectively tie one hand behind our back, in either House or both Houses collectively, then we are doing a great disservice to the whole principle of the sovereignty of Parliament. I do not know whether the noble Viscount, Lord Hailsham, is going to follow me but he is the ideal person to spell out the importance of defending Parliament against an elective dictatorship. It is clear from the attendance at this late hour, nearly 10.45 pm, that many in this Committee share these concerns about how we are approaching this issue. We have not got it right yet. The noble and learned Lord, Lord Hope, made a very valid point about the way these amendments have come forward. It is the Government's responsibility to find a better solution to what I think we all agree is a very serious problem.

Baroness Stowell of Beeston (Con): My Lords, I think we would serve ourselves a little better if we did not focus on this as an issue between this House and the other place, or, indeed, between the Executive and Parliament. We need to think about this as a matter which is between all of us, whichever House we sit in, whichever side of the argument we were on during the referendum campaign, and the people who are outside. It is important that we reflect on something that the noble Baroness, Lady Hayter, said on Monday during the debate on the single market. She quoted Lampedusa, saying that for things to stay the same, we have to change.

10.45 pm

I feel very strongly that in this House, as indeed in the other place, there is a huge amount of expertise and wisdom that should be heard over the next couple

of years as we are debating and considering the terms of Brexit. What we have to understand is, for us to be heard and taken seriously by the Government and for those arguments to be persuasive and listened to, we have to ask what it is about us, whatever House we sit in, that needs to change. But right now, by demanding that we enshrine in legislation the right to have a vote on something at the end—which the Prime Minister has said we will get—we will start to fuel distrust and questions about people's motives. I do not question anybody's motive in this debate, but we have to reflect that all of us who have some power, wherever we sit and wherever we were in the argument on the referendum, are sometimes questioned. Yes, people voted for greater control and for sovereignty to come back to the United Kingdom when they voted to leave. But they also wanted some kind of rebalancing of power, and we should not assume that when people voted to leave, they wanted all control and power to sit in Parliament. We ought to reflect on that.

In the period between now and next week, when my noble friend on the Front Bench reflects on what the noble and learned Lord, Lord Hope, said about how we might consider what needs to be done to make sure we do not end up in the courts again, all of us need to support the Government in making sure that we place Parliament in the best possible place to serve the public best, and that is not necessarily giving ourselves more power.

Lord Higgins (Con): My Lords, Amendment 17 is tremendously important because it seeks to assert that the decisions on these matters should be taken by Parliament. I have great difficulty understanding why the Prime Minister and, apparently, the Government have seemed so determined to avoid that happening, to the extent of bringing a totally unnecessary court case. They could have gone back right from the start on the procedure we are now going through at considerable public expense. Against that background, it is very important that we should get this amendment right. We must have an awful lot of thought between now and next week to ensure that the amendment we actually pass is the right amendment.

The other point that one needs to take into account is the situation likely to arise towards the conclusion of the negotiations. It seems to me essential that Parliament should decide whether it does or does not accept those negotiations. The difficulty is that if no deal is reached, the whole deal is off and we are back to the situation before we joined the European Union. The interesting question is: if the deal is clearly worse than remaining in the European Union, what happens then? At that point, Parliament needs to consider whether it has accepted the result of the referendum. If it has done everything possible to bring it about but now finds itself in the situation where it is blatantly obvious that the deal is worse than remaining in, it ought to make that decision. Those who voted in the referendum in favour of leaving should realise that that is a sensible solution for us to adopt.

There is one further point that we need to consider before next week and we will need to read very carefully everything that has been said this evening. We may find at the end of negotiations that we would like to

change our minds and it would be better to go back to the situation before the referendum. A committee of your Lordships' House dealt with that issue very clearly having taken expert advice from, I am assured, some very good lawyers, who said that we could change our minds. That possibility was disputed by a number of other lawyers, not least international lawyers. It would be extremely helpful if we could have a definitive view from the Government next week on what the situation is.

We have a lot of work ahead of us for the next few days, but this has been an immensely helpful debate. There is a problem with proposed new subsection (4) of the amendment. I interpreted that as being enormously pro-Brexit. It states that Ministers are not allowed to stop the arrangements if they want to. Having said all that, it has been helpful to have this debate this evening and I look forward to hearing my noble friend Lord Hailsham, who was kind enough to give way to let me speak before him.

Lord Lisvane (CB): My Lords, I hope that the noble Viscount will be kind enough to allow me to interpose very briefly. I support the thrust of Amendment 17 and certainly the aim that it seeks to achieve, but I have a couple of questions about the mechanisms that it proposes to do that. It proposes proceeding by resolution of each House. There are two issues. First, what happens if a straightforward approval Motion is amended and the final result is a resolution that overall approves an outcome but contains some sort of rider or condition? Regulating parliamentary proceedings by statute, in my experience, generally ends in some sort of tears. A question of whether the outcome met the requirements of the legislation could be resolved only by the courts, and that might not be a welcome result.

Secondly, what happens if one House comes to the required resolution but the other does not? Perhaps the solution is one that would endorse the sage advice given earlier by my noble and learned friend Lord Hope of Craighead which is to employ primary legislation, because that contains very well-understood mechanisms for securing agreement between the two Houses.

Viscount Hailsham: My Lords, I know the hour is late so I will be very short; I will confine myself to making three points. The first is to adopt the language of my noble friend Lord Deben. This House must recognise that, ultimately, the decision has to be made by Parliament. Historically, there has always been tension between the Executive and Parliament and I happen to be a Roundhead on this matter. Let us not forget, as my noble friend pointed out, that we would not be debating this Bill had the courts not intervened. The truth is that Governments always seek to advance ministerial power at the expense of Parliament and we must push back. The historians among us will remember John Dunning saying that,

"the influence of the crown has increased, is increasing, and ought to be diminished",

and, with suitable alteration, that is where I stand.

My second point refers to what the noble Baroness, Lady Kennedy, said a propos the risk of there being no agreement. The noble Lord, Lord Kerr, assessed that risk as being higher than 30% and I entirely share

[VISCOUNT HAILSHAM]

that view. We need to address that in statutory language. That is what I tried to achieve in the new clause that would be introduced by my Amendment 32.

My final point, turning to the noble Lord, Lord Pannick—I know it is the view of the noble Baroness as well—is that assurances are well and good and I do not at all doubt the good faith of the Ministers who give them. But I prefer to see assurances in statutory language. Prime Ministers can go, Ministers can be sacked, Parliaments can change and Governments can cease to exist. One needs to enshrine assurances that stand against those changes in circumstances. Therefore, whenever we come to divide on this group of amendments, whichever is chosen, I shall support it because I stand in favour of parliamentary government.

Lord Ashdown of Norton-sub-Hamdon (LD): My Lords, it is very late. We are tired. I do not know about the rest of your Lordships but I certainly am. I have sat here for four hours, a speech burning in my head, but listening to the speeches that have been made, I would not make any point that has not been made already, particularly in regard to the speeches of the noble Lord, Lord Deben, and the noble Viscount, Lord Hailsham, which were probably better than any I could ever have made. I am content to leave their words as mine on the record, in the hope that we may hear from the Minister fairly soon.

Baroness Hayter of Kentish Town: Noble Lords will be pleased to know that I, too, am not going to repeat the arguments put so succinctly by the noble Lord, Lord Pannick, nor the wise words of the noble and learned Lord, Lord Hope—although my noble friend Lord Lennie said at one point, “Oh dear, it sounds like a redrafting of Clause 4”. A certain group would understand that.

The agreement that the Government negotiate, or fail to negotiate, has enormous implications for this country. As has been said from the Dispatch Box many times, the referendum gave the UK a final say: that we should leave the European Union. That is the destination. However, it said nothing about the route or the pace of that change. As someone said to me, it is a bit like deciding to jump out of an aeroplane. You know exactly where you are going, but doing it before you have learned how to use the parachute could be troublesome. You could have a hard landing—that was the wrong phrase—if you do not know about the wind, the altitude and particularly the position of the ripcord.

The referendum gave no hints about any of the trade-offs that will come in what I hope will be a harmonious partnership that we will be able to negotiate with the EU 27. The Government will negotiate that, but Parliament must agree it. The agreement will have to go to the Council and the European Parliament; that is written in law in Article 50. It is therefore mandatory in law that the European Parliament will have to give its consent. But there is nothing in law that states that this Parliament must give its consent.

Although assurances have been given and the Prime Minister has said that there will be a vote in both Houses, it is not good enough. That is partly because

it is a vote rather than legislation and partly because the same protection that the European Parliament has is not written in statute. That is all we are asking for. There must be equal legislative requirement on the exit deal for this Parliament to cover all eventualities. The debate has been on whether we have just the divorce, the withdrawal, or we have the withdrawal plus the framework, or the withdrawal and even a treaty—I doubt it will be within two years—or whether we get nowhere. Surely, as has been said by my noble friend Lady Kennedy, only this Parliament can decide on that. That is all that we are asking. The drafting can improve.

The most interesting questions were asked by the noble Lords, Lord Deben and Lord Higgins: why do the Government not want to do this? What is troubling them? They are going to have to do it at some time. They can either bring forward another piece of legislation later, which I think was the advice of the noble and learned Lord, Lord Hope, or they will be taken there by a court—but get there we will. That is another part of the destination; there will have to be legislation and this sort of amendment, tweaked if necessary, is one that this House will want to support.

Lord Bridges of Headley: My Lords, this has been an excellent and interesting debate, and I am slightly wary at this late hour to be inserting myself between the noble and learned Lord, Lord Hope, and the noble Lord, Lord Pannick, who, as I said at Second Reading, is such a worthy adversary.

What everyone, myself included, clearly shares is the sentiment and perfectly legitimate intention to ensure that Parliament is able to hold the Government to account as we leave the European Union. But there is one fact of brutal simplicity that towers above this whole debate. Much though it may bore or irritate some noble Lords, I fear that it is one we cannot and must not ignore. It is simply this: the majority of people voted to leave the EU. I know that a number of your Lordships have argued with great passion that this was the wrong decision, but the decision has been made and we are going to withdraw from the EU.

11 pm

A clear democratic path has been followed. People voted for a Government who promised them a referendum. Parliament voted to put the choice in people's hands, without caveat or condition. The majority of people then voted to leave, and the other place has debated this Bill, considered amendments and passed it unamended. So the clarity of the decisions made so far—decisions made at the ballot box and by elected politicians—could not be greater.

Therefore, the Government's position remains clear and totally unchanged. We are leaving the European Union with a clear intent to do all we can to forge a new partnership with the European Union. We approach these negotiations not expecting failure but anticipating success. We want our exit to be smooth and orderly: disruption is not in our interest, nor in Europe's. We are confident that the UK and the EU can reach a positive deal on our future partnership as this would be to the mutual benefit of us and the EU. We will approach the negotiations in this spirit.

The Government are very clear that Parliament will play a valuable role throughout the process, not just in scrutinising but in making key decisions on legislation to repeal the European Communities Act, and on legislation on immigration, customs and more. Crucially, as we committed to on the Floor of the other place, there will be a vote in both Houses of Parliament on the final agreement before it is concluded—a vote we fully expect and intend to be before the European Parliament debates and votes on the final agreement. As I said, this commitment goes above and beyond what is contained in the Constitutional Reform and Governance Act. As I said at Second Reading, any new treaty we agree with the EU will be subject to the provisions of CRAG before ratification.

This commitment by the Government may explain why the other place did not amend the Bill to insert new conditions for the approval process. Indeed, the shadow Brexit Secretary, Sir Keir Starmer, called the commitment I described “huge and very important”. This commitment mirrors the powers of the European Parliament, which is entitled to a simple yes or no vote. So Parliament will be able to hold the Government to account in the usual way as the negotiations proceed—and, crucially, Parliament will vote on whether to accept the deal that the Government have agreed. This vote is the most meaningful vote imaginable: a vote on how we leave the EU, not a vote on whether we should leave the EU—for, as I have said, that decision was made in June. That was the point of departure.

This House and Parliament should be in no doubt. We are leaving the EU, either through the deal we agree with the EU or without a deal. As has been said many times before, as a matter of policy we will not withdraw our notice to leave or put this issue to another referendum. Yet our intent to deliver on the referendum result collides with the effect of the amendments before us, which would insert more conditions such as a second referendum.

I shall address Amendment 17 specifically, which goes well beyond what the Government have committed to. The amendment, in the names of the noble Baroness, Lady Hayter, and the noble Lord, Lord Pannick, seeks to fix the timing of the vote in Parliament. As I understand it, the intention behind proposed new subsection (3) in the amendment is to have the vote in our Parliament before any initial agreement with the Council. As my noble friend Lord Howard said, just consider what this would mean. As we draw to the end of the most complex negotiations ever, the amendment would effectively bring all of Parliament to the negotiating table. How would that engender good faith between us and our European partners? How would that create certainty?

What of the two-year deadline for the negotiations, as set out in Article 50? What if that expires? As has been said, under the terms of Article 50, we need all the member states to agree to an extension.

That brings me to my next point. Amendment 17 seeks to make it a condition that no Minister of the Crown may agree to the termination of negotiations without parliamentary approval. It is not in our gift to make this a condition. If the European Union refuses to negotiate with us or does not agree to an extension of the negotiations, that is its decision. If that happens—

if the EU terminates the talks and refuses to extend the negotiations—what then? How does this sit with subsection (4) of the proposed new clause, which states that no Minister of the Crown may agree to the termination without parliamentary approval?

This brings me to the point that has been made before by my noble friend Lord Higgins: that we could or should make it clear that we will revoke our notice to withdraw. That brings me neatly back, full circle, to that very simple, brutal fact. The United Kingdom has voted to leave the EU. The instruction is clear and we are determined to see it through. That is why the Government’s position could not be clearer. As I said, it is a matter of firm policy that we will not withdraw our notice to leave.

The key point, the only point, is that the people have voted to leave the European Union—a decision that was made without condition and on which we must now deliver. Therefore, I ask noble Lords not to press their amendments.

Lord Pannick: I am grateful to the Minister, although I am disappointed that he did not give the undertaking that the noble Lord, Lord Higgins, asked of him: that he answer definitively by next Tuesday complex questions of EU law. I look forward to seeing that.

The mood of the Committee tonight has been broadly supportive of writing parliamentary sovereignty into the Bill. I say to the Minister that Amendment 17 is concerned not with whether we withdraw from the EU but with parliamentary sovereignty over the terms of our withdrawal.

However, valuable points have been made from around the Committee as to the drafting of Amendment 17. I for my part want to reflect on those points before we bring back the amendment, as we will, on Report on Tuesday. I see the considerable force of the points made by the noble and learned Lord, Lord Hope, to whom I am grateful, that the amendment should be kept as simple as possible, mirroring the undertakings already given by the Prime Minister. However, it must also address the real possibility—and it is real—that the Prime Minister may decide that we should leave the EU without an agreement on terms. That also, surely, must be a matter for Parliament to decide. For now, I beg leave to withdraw the amendment.

Amendment 17 withdrawn.

Amendment 18 not moved.

Amendment 19 had been withdrawn from the Marshalled List.

Amendment 20 not moved.

Amendment 21

Moved by Baroness Hayter of Kentish Town

21: After Clause 1, insert the following new Clause—

“Involvement of Scotland, Wales and Northern Ireland

(1) Within six months of exercising the power under section 1(1), the Prime Minister must publish a document setting out arrangements that have been agreed between the Prime Minister and the devolved administrations for the Secretary of State to—

(a) consult the devolved administrations on the matters referred to in subsection (2),

- (b) specify how their views on those matters will be taken into account, and
- (c) seek to reach a consensus on those matters.
- (2) The matters are—
 - (a) the terms proposed for withdrawal from the European Union (including the initial negotiating position), and
 - (b) the framework for the United Kingdom's future relationship with the European Union.
- (3) The arrangements referred to subsection (1) must make provision for statements to be published setting out the extent to which consensus has been reached.
- (4) The arrangements may make provision for functions to be exercised by Joint Ministerial Committees.
- (5) Before concluding an agreement under the process set out in Article 50 with any institution of the European Union, the Prime Minister must consult the devolved administrations on the terms of any proposed agreements, and specify how their views have been taken into account.
- (6) For the purposes of this section, the devolved administrations are—
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Executive Committee of the Northern Ireland Assembly."

Baroness Hayter of Kentish Town: My Lords, Amendment 21 would underpin the involvement of devolved Administrations in the Brexit process. It would both formalise and strengthen the arrangements that the Government have already put in place through the joint ministerial committee, whose terms of reference commit the Government to seek to reach consensus on their negotiating position with the devolved Administrations. The amendment does not ask for the Government to do anything more than they have already undertaken other than to report on what is going on to Parliament, but we need it in the Bill, not least because the undertakings given by the Government have already been honoured more in the breach than in the observance.

Neither the content of the Prime Minister's Lancaster House speech nor the White Paper was discussed at the JMC; indeed, the devolved Administrations were given virtually no notice that either was imminent. This is particularly regrettable given that the Prime Minister convened a full JMC at heads of government level on 30 January, just three days before the White Paper. The gentle encouragement and legal requirement in the amendment are, therefore, needed.

Amendment 21 also requires Ministers to consult the devolved Administrations on any agreement, both on our exit from and on our future relationships with the EU, and to report on such discussions. That is the least that this House would expect before we form our own view of those agreements. As the Supreme Court recognised in the Miller case, leaving the European Union has profound implications for the devolved Administrations, because they have direct responsibility for some of the areas—such as agriculture, fisheries, the environment and economic development—that are most regulated or influenced by the EU.

This has been explored helpfully in relation to the environment by our Select Committee on the EU in its thoughtful report *Brexit: Environment and Climate Change*,

which devoted a whole chapter to devolution. While acknowledging Andrea Leadsom's admission that, in relation to the great repeal Bill, perhaps a third of the environmental regulations will not be easy to transpose, our committee considered that, in the absence of an overarching EU framework, the four parts of the UK could see considerable divergences in their environmental law. As we know, rivers flow, winds blow and the sea covers many shores, so it will be essential that the Government's negotiations in this area are completely harmonised with the thinking in the devolved Administrations.

Furthermore, changes relating to non-devolved policies will have huge significance for devolved Administrations, particularly if the Government whisks the UK out of the customs union. Needless to say, any such decision could threaten the open border in Ireland, as we discussed on Monday. With the UK Government free to develop their own trade policy, that could undermine key policies of the devolved Administrations. As the Welsh Cabinet Secretary for Environment and Rural Affairs pointed out, a free trade agreement with New Zealand that permitted tariff-free imports of lamb could completely undermine Welsh hill farming and, with it, the environmental well-being of the Welsh uplands. I just realised that I lost my daffodil, today of all days.

This modest amendment, asking the Government to commit to consult the devolved Administrations and report on that, is wholly in the spirit of the Sewel convention, which requires Parliament to consult those bodies on legislation that affects their competences. I understand from the somewhat weasel words of the White Paper that the Government believe that they should take powers currently exercised by the Commission to themselves over areas that are wholly devolved, such as agriculture and environment. Needless to say, that would be absolutely unacceptable to the Scottish and Welsh Governments, as well as inconsistent with devolution legislation, because that qualifies the devolved legislatures' freedom to act only by requiring them to do nothing that conflicts with EU legislation. Clearly, that is going to be meaningless post our exit from the EU.

This was recognised by the Supreme Court, which said:

"The removal of the EU constraints on withdrawal ... will alter the competences of the devolved institutions unless new legislative constraints are introduced. In the absence of such new restraints, withdrawal from the EU will enhance the devolved competence".

Should the Government, however, wish to introduce such constraints, this could provoke—as it was kindly called in one of the meetings that I went to—a constitutional fracas, which we can ill afford just when Brexit provides the most significant political challenge in a generation.

The White Paper *Securing Wales' Future*, issued jointly by the Labour-led Welsh Government, which includes the Liberal Democrat from my home seat of Brecon and Radnor, and Plaid Cymru, sets out an alternative, which would both preserve the devolution settlement and recognise legitimate concerns about potential market distortions if each part of the UK acts independently on things such as farm subsidies,

emissions or pollution once they are no longer regulated by the EU. The Welsh White Paper argues for a new set of constitutional arrangements based on voluntary agreements in devolved areas between all four Governments, supported by independent arbitration. There would be similar structures for the non-devolved issues such as trade agreements and state aid, which have major implications for devolved polices.

We on this side have not had time to consider these matters in detail, but the Government should now turn their attention to them. Amendment 21 therefore suggests joint ministerial committees only as one vehicle. Another constitutional settlement looks to be necessary and there may be another way forward. I urge the Government both to prove that they are earnest in their commitment to working with the devolved Administrations on the many complex issues and to look forward to how in future they can all work together. I beg to move.

11.15 pm

Lord Wigley: My Lords, as the noble Baroness mentioned, it is still St David's Day—just. I have my name on Amendment 21 and support what was said about the absolute need to ensure that the devolved Administrations in Wales, Scotland and Northern Ireland are at the centre of reaching a consensus—meaning, of course, some give and take—across the UK on what will be the proposed terms of withdrawal from the European Union and the future frameworks for our relationships with the EU.

As the noble Baroness mentioned a moment ago, the National Assembly for Wales already indicated its good will in this matter by publishing the White Paper, *Securing Wales' Future*. It is an excellent and very constructive White Paper and I invite the Minister to endorse the positive approaches taken in it as a basis for the co-operation and consensus the Government pledged to seek. I hope that they can do that either by accepting Amendment 21 or in other ways.

If the Minister cannot or will not do so, that will undoubtedly be seen as an indication that, although warm words may be said about securing a UK consensus, it will not be underpinned by a legislative guarantee. In those circumstances, the provisions of Amendment 36 would be needed, preventing the Government from exercising the powers of this Bill until all devolved Administrations have agreed. However, if the Government can move along the lines of Amendment 21, I would see that as a positive way forward.

The noble Baroness also referred to the powers that, post Brexit, should be transferred to the devolved Administrations. Clearly, if Brexit goes ahead and powers are repatriated from Brussels, some will deal with matters that are totally devolved, such as agriculture. To my mind, these functions should immediately be directed to Cardiff, Edinburgh and Belfast as appropriate. Clearly, there needs to be some mechanism to resolve any disagreements about what should be passed on to the devolved Administrations. In that context, I await the words of my noble friend Lord Elystan-Morgan, whose Amendment 43 possibly addresses that.

In conclusion—these will probably be my last words in Committee—what matters so much is that, in Edinburgh as in Belfast and Cardiff, there is a feeling

that the Government are working with them as partners in this project. Clearly, the power rests in London, but if it is a question of “London knows everything better” and if it does not take on board the objectives and tactics put forward by any of those devolved regimes, and does not give them serious thought, then it creates problems for itself in its relationship with these organisations.

I seriously suggest to the Minister that he please consider this White Paper as a basis. It has cross-party agreement in Cardiff and it is not impossible also to form a cross-party basis here.

Lord Elystan-Morgan (CB): My Lords, in proposing Amendment 43, I accept totally everything that has been said by the noble Baroness, Lady Hayter, and my noble friend Lord Wigley in respect of their amendments. Those amendments are social and political in their nature. They constitute an overwhelming case for why, in order to preserve the unity of the United Kingdom, the reality of devolution and the harmony between the various constituent parts of the United Kingdom, respect should be shown by the mother parliament to the parliaments of Wales, Scotland and Northern Ireland.

Those are political and social considerations; the matter that I wish to propose is in no way contrary to that but runs parallel. It is a constitutional point. It is a marvellously simple constitutional point, and I think I can deal with it in very short compass. It concerns the reserved powers constitution that Wales achieved under the Wales Act which became law a few weeks ago. The purpose of that Act was to change the whole pattern of devolution for Wales from a conferred pattern of devolution—bit by bit over the years, a confetti type of development—to a reserved powers constitution.

It is axiomatic as far as a reserved powers constitution is concerned that two matters should be dominant. The essence of a reserved powers constitution, as we appreciate, is that there is a transfer in the first instance of the totality of power from the mother parliament to the subsidiary parliament, but that at the same time there should be a reservation of a strict number of exceptions and reservations. It is axiomatic, therefore, that two conditions must prevail. First, the mother parliament must be seized of all the legislative power and authority that is relevant to the situation. That is obvious. Secondly, the mother parliament must be cognisant of the powers that it has and must be in a position to know exactly where to draw the line between that which is transferred and that which is reserved. Neither of those conditions exists in this case.

Why is that so? I remember a piece of dog Latin that I learned many years ago when I was a law student in relation to the sale of goods: “*nemo dat quod non habet*”—no man can give that which he does not have. Nobody can transfer that which they do not have. When it came to the question of deciding what powers Wales should have, the mother parliament did not have a mass of those powers that are relevant to the situation. There is a huge area that is missing. It may be 25%; it may be 30% or 40%. It is massive in relation to the totality of legal authority. That authority was missing from 1 January 1973, ever since the European Communities Act 1972 came into force. It never was

[LORD ELYSTAN-MORGAN]

with the mother parliament to dispose of. It could not possibly give it to Wales, or to Scotland for that matter—in Northern Ireland, the situation was entirely different, because its constitution goes back to 1922.

What, therefore, is to be done? The following matters have some relevance, broadly. Of course, there is the question of the Sewel convention, which has been written into both the Scotland Act and the Wales Act. That will have its effect gradually over the years. There is also the question of the joint ministerial committee, which meets in confidence and is able to discuss in a situation of total secrecy matters which are of the utmost importance to the mother parliament and the devolved parliaments. There is also the question of protocols, which was greatly promised in the late 1990s when legislation in relation to Scottish and Welsh devolution went through but has been as dead as the dodo, I am afraid, and should be revived.

I think—this is where we have the amendment—there is the necessity for something that is much more focused. That is why I have proposed that the Prime Minister and the First Minister for Wales should be responsible within a period of two months for forming a body that will look carefully at the situation to determine: first, what is the scope of legislative authority that is missing here; secondly, what is the nature of that authority; thirdly, what entrenched rights—what established rights—have come into being in relation to that since 1 January 1973; and, lastly, what situations are there where there has been legislation under the 1972 Act which has been deemed to be incompatible with the European instruments. That is a very substantial job, and I suggest that the period that I have nominated of 12 months is not unreasonable in the circumstances.

Many people will say that this is not necessary and that Wales from Cardiff and the Westminster Parliament from here can negotiate at arm's length. I do not believe for a moment that that is possible. We have seen exactly over the last few months when we were dealing with the Wales Bill how almost impossible it was to persuade Parliament that much of what had been reserved was utterly trivial and was an insult to the Welsh nation. Things such as sharp knives, axes, dogs, licensing, prostitution, hovercrafts—all those matters which scream for domestic consideration—had been reserved.

Years ago, a very famous Welsh statesman said, “Why look into a crystal ball when you can read the book?”. We know exactly what happens when Wales and England deal with each other in that way. It is not the basis of partnership and equality at all. The cobwebs of colonialism still exist in the relationship between Wales and England, I am afraid. Something better has to be done, and I believe that my amendment can bring that about.

Baroness Randerson (LD): My Lords, the first point in my notes is to remind your Lordships that today is St David's Day. There have been moments in the last couple of hours when I wondered if I would have to scrub that bit, because it would no longer be St David's Day. However, I maintain that discussing these things here on St David's Day is the best possible way of celebrating it.

St David's Day and its celebration emphasise the point that the UK is a voluntary association of four nations bound together by tacit consent. With that comes the obligation to mutual respect. I acknowledge that the Government are grappling with a very complex picture. Scotland voted to remain but has a Government who wished to remain. Wales voted to leave, but has a Government who wished to remain. Northern Ireland voted to remain, but has a pro-Brexit First Minister and faces elections this week. England voted to leave and that vote has dominated and outweighed the size of the votes in all the other nations. The UK Government's determination to take a strict and harsh interpretation of the Brexit vote has made that more obviously difficult for the other nations to accept.

I added my name to these amendments because they express, in very clear terms, the need for formal structures for consultation with the devolved Administrations. Mere informal assurances of consultation will be totally inadequate; there must be formal structures.

11.30 pm

I totally acknowledge the Supreme Court judgment. From the outside but as someone who understands a fair amount about devolution, that judgment did not surprise me at all. But despite the judgment, it is important to remember that these are not advisory bodies, but Governments with real power. Many of the powers that will be repatriated from the EU, as the noble Lord, Lord Wigley, pointed out, relate directly to the powers already devolved to these Governments, Parliaments and Assemblies, including agriculture, health, environment, consumer rights—a long list. So there should be no assumption that the UK Government will inherit these European Union powers. Many of them will more suitably sit at devolved level, and that discussion will have to be taken.

The Government have a perilous path to tread in a very sensitive situation. If they do not tread that path carefully, they will find they are on the slippery slope to Scottish independence and could be on a slippery slope to further turmoil in Northern Ireland—an issue we discussed earlier this week. A sensitive and sensible Government will recognise formally the role of the devolved Administrations and ensure that they are fully consulted. A very sensible Government would use the repatriation of powers from the European Union to establish a new federal state of equals, and a new UK could emerge out of this division and turmoil—although perhaps, as I am talking about a federal state, I am actually already so tired that I am asleep and dreaming, as that is one of the Liberal Democrats' cherished beliefs about the future of the constitution of the UK.

The Earl of Kinnoull (CB): My Lords, I will briefly make three points about Amendment 21. I should say that I am a member of your Lordships' European Union Committee, and that I am a great fan of devolution. I am certainly a fan of onward devolution, such as that of the Crown Estate, which has not taken place yet in Scotland.

Recently, the European Union Committee was in Edinburgh and in Cardiff, and I was part of the delegation. We were taking evidence because we are

preparing a report on the devolved Administrations in the context of Brexit. My first point is that interestingly we heard in those meetings, which were only two or three business days apart, different takes on the JMC meetings that had just taken place a few days beforehand. The Welsh take appeared to be very much that it was a good start: there could perhaps be some greater level of detail, but it was a start and they were certainly engaged in the JMC process, were grateful for the investment of time and felt that they had traction.

The Scottish team had a very different feeling, and gave us quite a negative report. The reports were so diametrically opposed that one could not help but feeling it was odd that they were talking about the same meeting. I cannot speak for my fellow delegation members, but I left with a feeling that a lot of the Scottish problem was driven by an SNP agenda and trying to drive a grievance, and that they were deliberately setting off to try to persuade the world that the JMC structure—which I think is a good idea—is not working, right at its birth. I think that is unfair, and should be noted.

Lord Wigley: I am grateful to the noble Lord. Far be it for me to try to defend the SNP; I have no authority to do so and probably no ability or knowledge either. But is not one of the factors that the outcome of the referendum in Scotland was a yes vote and, therefore, any Government in Edinburgh will clearly be coming to it from a different viewpoint from that of a Government in Cardiff or the UK as a whole?

The Earl of Kinnoull: I am grateful for that point but, as we sit here tonight, we have heard a lot of very different views; it does not mean that we do not sit down, discuss things and try to persuade people to come round to our view. My impression was that there was a lack of engagement on the part of the SNP in the JMC, which is regrettable because, if the SNP does not engage, it cannot represent its own view successfully with the United Kingdom Government. I really wish it would engage; I felt that was a problem.

As I begin to look at Amendment 21 carefully, two areas concern me. The first is in subsection (1) of the proposed new clause, where the words “agreed between” arrive, because if my analysis about a grievance agenda was right, the prospect of there being an agreement between all the parties would seem likely to be bloody difficult and possibly impossible. Accordingly, it is almost like handing a whip to a hostile SNP Government to try to cause difficulties. I do not think that is wise in what will be a jolly difficult set of negotiations with masses of countries; I do not think we need to create another whip.

The second area, on which I have a more general, final point, is to do with the Sewel convention itself. In many ways, we have been quite lucky that the Supreme Court has said that the Sewel convention within the Scotland Act and, I presume, the Wales Act, is exactly that—a convention and not a statutory power. I worry that if we start putting more Sewel convention-type language into statute, we might damage that and end up with a Wallonia-type situation in the UK, which would be problematic. I am afraid I cannot really support Amendment 21 and I, for one, feel that the JMC arrangements should be given a chance to work. I hope that others also feel like that.

Lord Empey (UUP): My Lords, we might still get the opportunity to wish our Welsh colleagues a very happy St David’s Day. As somebody who has a maternal name of Owens and a fraternal name of Morgan, I suppose there might be some fellow feeling there—I do wish noble Lords a very happy St David’s Day. That is probably the departure point of any agreement there might be between the noble Lords who proposed these amendments and me.

Let me say at the outset that I fully accept the principle that every effort should be made to engage the devolved Administrations. Anybody who has been in this House, even for a few years, knows how things across the United Kingdom are terribly London-centric. Indeed, that was part of the reason for the upsurge of negativity at the time of the referendum; people rejected the “London bubble” approach. We have seen that repeated on a number of occasions.

The Prime Minister has indicated that she has been trying to engage, but there is a big difference between making a genuine effort to engage with the Administrations and putting things in the Bill. Amendment 36, for example, states:

“The Prime Minister may not exercise the power under section 1(1) until at least one month after all devolved administrations have agreed a United Kingdom wide approach”.

I can assure noble Lords that we would then never trigger Article 50, because there will never be agreement. Why would there be? Why would Nicola Sturgeon agree to participate in something to which she is opposed? Sadly, in my own circumstances in Northern Ireland, we are on the eve of elections and the Assembly—the Executive—has effectively imploded. The two parties leading the outgoing Executive could not agree on anything except a two-page letter last August, which has been their sole contribution since we took the decision to leave the European Union.

Unless there is a very significant change in voting patterns—which could happen, and I hope it does; there would then be the outside chance of getting an Administration we could work with—things will be the same. We will know by the weekend if that is not true. If patterns are repeated, we know what will happen. The Brexit Secretary came to Belfast in September and instead of meeting an Administration to hear their views, he had to have two meetings in the First Minister’s office, one with one party and a separate meeting with the other party. They could not even meet him together, so how could the Prime Minister conduct any business on behalf of the Government if such an amendment were made?

As for the powers that would be repatriated from Brussels, may I just remind the Committee that in agriculture, for instance, there has been nobody in the United Kingdom with any policy-making capacity for 40 years? There is nobody. We have not been doing it. The policy has been made in Brussels. We do not even have this in Whitehall, never mind in the devolved Administrations. We would have to consider issues such as a national food policy and various other things. These are complicated issues, but they are not for putting in the Bill.

Lord Wigley: I understand that in broad agricultural terms there is a European policy, but the agricultural policies followed in Wales at the micro level have been

[LORD WIGLEY]

very substantial. Some of the powers being repatriated from Brussels would undoubtedly fit in with the powers that have been exercised on agriculture in Wales over the past 18 years. It would be ludicrous if they were not there.

Lord Empey: I am not disputing that. We have had agricultural powers in Northern Ireland for even longer, but they are confined within a broad policy set by the CAP. Yes there is micro stuff, and I am 100% for that; I am simply saying that there is a big gap. However, we are talking about putting these amendments into the Bill, and that is a different matter entirely. This is a perfectly sensible discussion to have, and I totally support the idea that there has to be real and meaningful engagement between the Government and the devolved Administrations. I have sat on the JMC, and there are all the players on it that we need—provided that they are prepared to work with each other. Sadly, the evidence is that they have not done so.

I hope that the Prime Minister persists, and however she has to do it—through informal mechanisms, or whatever—I would be 100% in favour of that. However, I come back to the point that we are talking about a Bill to trigger Article 50. The idea of handing things over to devolved Administrations that are hostile to the very concept and expecting them to go along with it is totally unrealistic. I therefore oppose the amendments.

Baroness Ludford: My Lords, I want to add the support of my Front Bench for the amendment and the words written by my noble friend Lady Randerson. Not only do I personally not come from Scotland, Wales or Northern Ireland, but I am a Londoner, and I want to make it clear that it is not just the people represented by the devolved Administrations who care about diversity and plurality in this nation. Frankly, none of us, even Londoners, can be at ease if the union does not work properly.

In discussions on the Bill I have heard a lot of people say that they agree with the substance of what is being proposed, but that it must not appear in the Bill. I think it is about time to put some things in the Bill. The noble Earl, Lord Kinnoull, said something on this subject. Amendment 21 is only about arrangements for consultation and how views are to be taken into account; it is about mechanics. So some of his criticism was not quite justified.

The Earl of Kinnoull: I was referring to subsection (1) of the proposed new clause, where it says that the arrangements “have been agreed”. The word “agreement” surely means agreement.

Baroness Ludford: It is agreeing on arrangements. It does not mean that you agree on the outcome. It is agreeing arrangements for consultation and how views will be taken into account. It does not specify that everyone will agree on the final outcome. All I wanted to do was put down a marker. You do not have to be from a devolved region or nation to support this amendment. Even a dastardly Londoner can do so.

Lord Keen of Elie: I thank noble Lords who have contributed to this part of the debate. The lateness of the hour does not reflect the importance of the issues being considered. I recognise the power of feeling in the House with regard to the issues being debated and the amendments that have been proposed, and acknowledge the interest that various Members have in maintaining and promoting each of the constituent parts of the United Kingdom, including London, and the contributions they have made.

As the Prime Minister has said, it is more important than ever that we face the future together, united by what makes us strong: the bonds that unite us. The Government are determined to ensure that the interests of all parts of the United Kingdom are fully taken into account in our negotiations with the European Union. We recognise the importance of engaging closely with the devolved Administrations as we embark upon the forthcoming negotiations with the European Union, and we welcome the input of the Scottish and Welsh Governments and the Northern Ireland Executive. As the Prime Minister has said, consideration of the proposals of the devolved Administrations is an ongoing process. Work will need to be intensified ahead of triggering Article 50 and continued at the same pace thereafter.

We have to remind ourselves that it was a United Kingdom referendum and the United Kingdom that voted to leave the European Union. The legal and constitutional responsibility for the United Kingdom’s relationship with the EU lies with the United Kingdom Government and Parliament. We have been clear that no part of the United Kingdom can have a veto over that process. As the noble Lord, Lord Empey, observed, aspects of these amendments could ultimately constitute an exercise of veto by the legislature in one of the devolved areas.

Lord Wigley: We have heard that there are problems in Northern Ireland and, perhaps, an unwillingness to accept some of the attitudes taken by the Government in Scotland. However, the Government have an agreed White Paper from Wales. Will the Minister—and, perhaps, his colleague the noble Lord, Lord Bridges—undertake to study this very carefully indeed to see whether there is a basis here for policy which is not just acceptable in Wales but may also be relevant in other parts of the United Kingdom as a positive way forward.

Lord Keen of Elie: My Lords, I can absolutely assure the noble Lord that we are taking into consideration not only the White Paper from Wales but the submissions prepared by the Scottish Government. All these matters have been taken into consideration in the context of our negotiating position following the triggering of Article 50. All the proposals outlined in these papers will be the subject of keen scrutiny by the Government. What we are considering today is a Bill to implement the referendum result and respect the judgment of the Supreme Court. We are not engaged in considering a vehicle for determining the terms or shape of the broader negotiations that will follow the triggering of Article 50. As has been said on many occasions, that will be a hugely important milestone for the United

Kingdom but it is only a milestone, not a cut-off point. It is not the end of the process—it is merely the beginning.

Since the referendum result there has been regular and ongoing political engagement. I noticed that the Prime Minister's very first visit following the referendum result was to Edinburgh, quickly followed by Cardiff and Belfast. I remind the House that the principles which underpin relations between the United Kingdom Government and the devolved Administrations are set out in a memorandum of understanding. There is the joint ministerial committee which should operate—I say should—by consensus, because as the noble Lord, Lord Empey, and the noble Earl have observed, it is not always possible to achieve consensus, but these bodies have that aim.

At the plenary session of the joint ministerial committee in October last year, the four Governments agreed to create a Joint Ministerial Committee on EU Negotiations, chaired by the Secretary of State for Exiting the EU. Under that structure, Ministers and officials from the UK Government and the devolved Administrations have engaged closely in the process of considering our exit from the European Union. That committee has been meeting monthly and a wide range of matters has been discussed on each Government's requirements for the future relationship with the EU, and the future relationship between the devolved Administrations and this Government.

Over the autumn, we also undertook important work with the devolved Administrations to fully appreciate their priorities and interests. In that context we have taken account of the publication that the noble Lord referred to—namely, the White Paper from the devolved Administration in Wales, and the Brexit papers published by the Scottish Government—which was submitted to us for consideration in the context of that process.

Outside the formal processes that I have described, we have also engaged extensively with stakeholders in England, Scotland, Wales and Northern Ireland to try to ensure that the interests of all these areas are reflected in our negotiations with the European Union. Ministers have regularly visited the devolved constituent nations of the United Kingdom on numerous occasions for the purposes of those discussions. They have met with a whole variety of stakeholders from SMEs to multinational companies. We have met with MSPs as well. We have tried to engage right across the areas of interest that will be touched upon by our departure from the EU.

A point that was alluded to by a number of noble Lords was how the devolved Administrations will be engaged in determining where repatriated powers should sit in the future. It is a matter of interest to all of us. We must work carefully to ensure that, as powers are repatriated from Brussels back to Britain, the right powers are returned to the United Kingdom Parliament, and the right powers are returned to the devolved Administrations—whether in Scotland, Wales or Northern Ireland.

This will be a matter for further discussion. The Prime Minister has been clear that no decisions currently taken by the devolved Administrations will be taken from them. That is not the end point, but the starting point for this form of negotiation, and we appreciate

and understand the importance of addressing how we deal with the repatriation of the *acquis* in due course. It is important to have these debates, but it is equally important not to tie the Government's hands as they approach the forthcoming negotiations. In these circumstances, I invite the noble Baroness to withdraw her amendment.

Baroness Hayter of Kentish Town: I thank the noble and learned Lord for his response. My only response is to the noble Earl, Lord Kinnoull, where I agree with the noble Baroness, Lady Ludford. The only agreement was about the way to talk and that wording is the JMC's terms of reference at the moment. The Minister said the Government are trying to engage—I say let us try a little harder. The lack of pre-information, before the White Paper, caused a slight frisson, but maybe that is well behind us. I hope that we are marching forward on slightly firmer ground. On that basis, I beg leave to withdraw the amendment.

Amendment 21 withdrawn.

Amendments 22 and 23 not moved.

Amendment 24

Moved by Lord Lea of Crondall

24: After Clause 1, insert the following new Clause—

“Report on co-operation with European technical agencies

- (1) Before exercising the power under section 1(1), the Prime Minister must publish a report detailing the United Kingdom's intended approach, during negotiations under the process set out in Article 50 of the Treaty on European Union, to ensuring the United Kingdom's continued co-operation and participation with the work of the European technical agencies listed in subsection (2).
- (2) The agencies are—
 - (a) Agency for the Cooperation of Energy Regulators (ACER),
 - (b) Office of the Body of European Regulators for Electronic Communications (BEREC Office),
 - (c) Community Plant Variety Office (CPVO),
 - (d) European Border and Coast Guard Agency (Frontex),
 - (e) European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA),
 - (f) European Asylum Support Office (EASO),
 - (g) European Aviation Safety Agency (EASA),
 - (h) European Banking Authority (EBA),
 - (i) European Centre for Disease Prevention and Control (ECDC),
 - (j) European Chemicals Agency (ECHA),
 - (k) European Environment Agency (EEA),
 - (l) European Fisheries Control Agency (EFCA),
 - (m) European Insurance and Occupational Pensions Authority (EIOPA),
 - (n) European Maritime Safety Agency (EMSA),
 - (o) European Medicines Agency (EMA),
 - (p) European Monitoring Centre for Drugs and Drug Addiction (EMCDDA),
 - (q) European Union Agency for Network and Information Security (ENISA),
 - (r) European Police Office (Europol),
 - (s) European Union Agency for Railways (ERA),

- (t) European Securities and Markets Authority (ESMA),
- (u) European Union Intellectual Property Office (EUIPO), and
- (v) the (European Atomic Energy Community Treaty) EURATOM agencies.”

Lord Lea of Crondall: My Lords, this is a Cinderella amendment—it seems to have been difficult to find the right place for it. This is an interesting list of bodies. It reminds us that Europe, the economy and society have lots of bodies that are in a grey area between public bodies, industrial bodies, research bodies and so on, yet they are very important in making the economy work. There are shades of Euratom as the people associated with all these bodies are increasingly saying, “Where is the template for our future relations?”.

I remind noble Lords that this amendment calls for a report on co-operation with the technical agencies. It contains the words:

“Before exercising the power under section 1(1)”,

so that it can be debated under this Bill. But in practical terms one is looking for the Government to focus on all these bodies. They have something in common. They are all technical bodies and agencies of the European Union of a decentralised character, but it is fair to say that in some way or another UK co-operation on all these subject areas will not cease as soon as Article 50 is triggered.

In the internet age, one sees a privation in our new arrangements, whether in relation to Amazon or Apple or whatever, so here we have what looks like a rather sheep-and-goats sort of list—but all the bodies need to be the subject of some analysis. My noble friend Lord Berkeley, who has very kindly put his name to this amendment, will add a couple of points based particularly on his expertise on railways.

We are looking for some sort of commitment from the Government to think of a process by which there can be a Green Paper on, or some sort of analysis of, the role of these bodies and the options for continuing our involvement with the substance of what they discuss. I do not think that the Government want to give out the message that we are walking away from them with enthusiasm. It is a question of how we can co-operate with them and whether, in some respects, it is necessary to walk away from them at all.

I go back to the beginning. There are lots of arrangements in society where people learn from each other through benchmarking, but in all these various industries and bodies it is not always necessary to rely on public funds to do the work. This is all speculative but we now have the opportunity to say that within a certain timescale—by the summer, for example—there will be a paper of some sort and the Government will then commit to having discussions with people, perhaps beginning with parliamentarians, to see how best this sort of interface can work. With that request I beg to move.

Midnight

Lord Berkeley (Lab): My Lords, I shall be as quick as I possibly can in supporting my noble friend's amendment. As my noble friend said, this a disparate

group of agencies with different structures. Many of them do not even need funding, but they are necessary for the ongoing business that I hope the UK will continue to do. As chairman of the Rail Freight Group, I attended a meeting today with Brexit Ministers and transport Ministers to talk about how Brexit would affect the rail sector. It was very interesting and very nice of the industry to invite us. They were seeking our advice and our concerns so that they could formulate their policy.

This amendment asks for a report before Article 50 is triggered. It will not happen because they are still looking for ideas—but at least they are asking us. I will give a couple of examples of our concerns. I had three. The first was about what happens at frontiers. Most of our freight these days comes across the Channel from Dover or through the Channel Tunnel and 80% of the drivers are non-British citizens. Will they all have to fill in this 84-page document that we heard about earlier? I hope not—but this is something that has to be recognised.

Secondly, if customs procedures are so long and complicated—I understand that if the port of Dover and the Channel Tunnel were closed for a day, the traffic jam would extend beyond Stansted Airport, which would be a bit of a blockage on the motorway—this, too, must be recognised.

Thirdly, the European Railway Agency sets standards and enforces them. I have worked very hard over the years to make sure the agency does its job properly, because it helps our industry quite dramatically. It means that there is one standard for railways across Europe and, as some noble Lords will know, the railways across Europe are incredibly old-fashioned. It was only recently that they managed to standardise the red lights on the back of trains. Otherwise, when a train got to a frontier, the driver had to walk from the front to the back and change the light—which is ridiculous in this day and age.

The European Railway Agency has stopped all that. We recently had some rail wagons that were manufactured and designed in this country and the company wanted to operate them in France. The French regulators said that they could not come because they did not comply with their regulations—which were probably created especially to keep out other people's equipment. That kind of thing still goes on until the European Railway Agency gets involved—so if we want to export our equipment to other member states, we will somehow have to remain involved.

I hope we can continue to do so. An awful lot of jobs will be at risk if we do not—in the railways and other sectors. I am sure that a way can be found of doing it—not necessarily in the way that the Minister talked about in the earlier debate on Euratom, but I hope it will happen. I hope that at some point in the summer, as my noble friend said, we will have a report from the Government on their plan for what they intend to do. The industry at our meeting today told us that they needed to plan ahead and needed information. We need to find out what we should do in the future to make sure that we can preserve our jobs here and preserve our export opportunities. I hope that the Minister can give us some comfort on this. I am sure

he did not mean to make a derogatory remark on Monday about the Community Plant Variety Office. I do not know anything about that, but some of these other agencies are extremely important for the future of trade with the rest of Europe, however that will be achieved.

Lord Stoneham of Droxford (LD): My Lords, very briefly at this late hour, I want to say how grateful we are to the noble Lord, Lord Lea, for raising the list that he has produced for us. On behalf of these Benches, I would say that this emphasises the complexity of what the Government are entering into. We would, of course, like to know exactly how the Government will respond, and I look forward to hearing what the Minister has to say.

Lord Bridges of Headley: Good morning, my Lords. I am grateful for the opportunity to speak to this amendment again, as I did on Monday night.

Let me start by saying that these agencies are important and I was not wishing in any shape or form to be derogatory about any agency. The Government dispute the suggestion that we have to wait before triggering Article 50 to publish a report on all these agencies, but I think that the noble Lord made that point in his own words.

The list, as the noble Lord, Lord Lea, pointed out, covers a range of different policy areas: aviation, fisheries, justice and home affairs, banking and customs. Our approach to a lot of these policy areas was, of course, covered in the White Paper. There is a lot of analysis going on.

Lord Berkeley: The White Paper has only seven lines addressed to agencies.

Lord Bridges of Headley: I entirely concede that point. Forgive me: I have obviously not expressed myself well at this early hour of the morning. What I am saying is that those agencies touch on different areas of policy.

I entirely understand the noble Lord's wish for greater clarity and his need to scrutinise our proposals. As I have said before at this Dispatch Box, and I will go on saying it, when we can provide further information we will.

Consequent to that, the noble Lord rightly says that industry and the sectors look for more certainty. I am very aware of that. I, too, have had excellent meetings with, for example, the freight industry, with those involved in ports and so on. We are fully aware of that. It is in our interests, it is in their interests and it is in Parliament's interests to provide as much detail as we can when we can. I am very sorry to say that I am not now going to be committing to do so at a certain juncture or in a certain format, but I can assure the noble Lord that we are analysing all these points and we will keep the House fully up to date.

I have very little further to add to this. Given the range of policy areas that this touches on, I could talk for a long time—but I do not think that noble Lords would want me to—about banking, about the chemicals agency or such things. Now is not the time for me to do that, so I ask the noble Lord to withdraw his amendment.

Lord Lea of Crondall: I thank the noble Lord, but I hope that he will reflect on one point. It is not the case that there is legal clarity at the moment about the legal status of some of these bodies and about what is consequential and what is not consequential on our leaving the European Union. That is the *de minimis* requirement, surely, of HMG in responding to this. There seems to be an extreme reluctance to do what would be normal in any parliamentary Select Committee—just examining the facts on all these bodies, how they are affected and what we are going to do as a model to inform our people in the negotiation.

I am not suggesting that the noble Lord should speak again in the next five seconds, but I conclude by saying that I think there is some work to be done in government with a view to a publication before very long. I beg leave to withdraw the amendment.

Amendment 24 withdrawn.

Amendments 25 to 44 not moved.

Clause 2 agreed.

House resumed.

Bill reported with an amendment.

House adjourned at 12.10 am.

Grand Committee

Wednesday 1 March 2017

Technical and Further Education Bill *Committee (3rd Day)*

3.45 pm

Relevant document: 16th Report from the Delegated Powers Committee

The Deputy Chairman of Committees (Lord Faulkner of Worcester) (Lab): Welcome, my Lords, to the third day of Grand Committee on the Technical and Further Education Bill. I should announce at the start that in the very likely event of there being a Division in the Chamber while we are sitting, the Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Clauses 7 to 12 agreed.

Clause 13: Overview of Chapter

Amendment 36A not moved.

Clause 13 agreed.

Clause 14: Objective of education administration

Amendment 37

Moved by Lord Stevenson of Balmacara

37: Clause 14, page 7, line 38, at end insert—

“() minimise the risk to a local community of a long-term loss of technical and further education provision.”

Lord Stevenson of Balmacara (Lab): My Lords, it is a pleasure to appear in the Committee. I have been present on various occasions during the first two sittings, but I have not been able to find an issue on which I wanted to speak; therefore I come with my powder dry.

We have no argument of substance on this part of the Bill, because we understand what is happening. It is essentially a good housekeeping measure, rather than a threat to any existing or future institutions. It arises from two sources. First, there is a proper and appropriate sense of wanting to ensure that in any default situation, such as liquidation or insolvency, a process is in place and all the major players know what happens and how. It also comes from a wider consideration of how public services are procured and delivered.

In the good old days, as some might say—I say it in heavy quotes—public provision of such services as further education, but including utilities more generally, would always have the underlying assumption that the Government of the day would carry any debts incurred. Of course, that does not happen under privatisation—there is no particular reason why it should—but the responsibility for continuing work that is in the public interest still has to be resolved. That is why, over the past 25 to 30 years, there has been a growth in special regimes for insolvency. They are not unusual. They are broadly all of the same pattern. That is unsurprising as they come from one cutting shop: the Insolvency Service. They carry a common approach: they are instituted to ensure that, where it is appropriate and

necessary, it is possible to intervene in the ordinary processes of insolvency or voluntary liquidation to the extent to which it is thought proper that the purposes for which the service exists are maintained, to ensure that those who are relying on it or have made it part of their lives in good faith are not let down by any cost-cutting arrangement.

Having said all that, we have tabled some probing amendments, to which I hope that we will get good responses on the record. Nothing will be unexpected—much of it came up in the other place—but we have learned a bit more about how the system operates, so there may be a slightly sharper focus.

I move Amendment 37 and speak to Amendments 38 and 39. This first group focuses on the education administrator, who is the person to be appointed by the court—the courts can act only on the request of the Secretary of State in England or Wales, depending on which territory they are in—and, if appointed, has responsibilities which will be set out both in the Bill and the broader range of insolvency legislation alluded to in the primary legislation; I expect that regulations to follow will fill in any gaps. We are not at variance with the Government in proposing that the system applies, although there will be things that we want to probe later.

The purpose of these three amendments, taken together, is on the question of whether we have got the right person to do this work. We have not seen many colleges go into liquidation or insolvency, which is a good thing. We were reassured in another place—so we do not expect it—that nothing in the Bill should be read as taken to imply that the Government have in mind a raft of closures. On the other hand it is fair to ask the Minister, when he comes to respond, to help us a little about what the context is for this.

The figures provided by the Minister for Apprenticeships and Skills in the other place were slightly obscure. He said that,

“80% of colleges are either good or outstanding”,

and that some,

“59% of institutions are in good financial health and 52% are operating with a surplus”.—[*Official Report*, Commons, 14/11/16; col. 80.]

One can of course read that the other way round: you could say that 48% are not operating with a surplus and that a situation may therefore arise which we are not fully apprised of. The Minister might wish to comment on that. I do not necessarily see that as an issue and, if he wishes to take time to write to us, we would be happy with that.

The context is also a little more complex, in the sense that we are well aware that there is a more general decline in further education. The ongoing work of the area reviews may or may not lead to closure as a result of mergers. Mergers cannot be imposed on the system but if the system wanted to do that and if a particular college was weaker, we may find this issue in front of us in a relatively short time. The procedures therefore obviously need to be right but, if the Minister could say a little more in that context about his perception from the centre of whether a number of closures will arise from the area reviews, that would obviously be interesting. We do not know

[LORD STEVENSON OF BALMACARA]

of any and are aware that work is going on but some sense of that, if not the actual detailed numbers, would be helpful.

In the other place, the Minister was pressed a little about the context of what I have been saying. He came out with a nice rubric when he said that Part 2 of the Bill was,

“about protection, insurance, prudence and caution”.—[*Official Report*, Commons, Technical and Further Education Bill Committee, 29/11/16; col. 166.]

He was not picked up about that list of words. It does not quite have the ring of an aphorism about it but it is an interesting list. Would the Minister like to reflect on whether that is his reading of the situation? I take it slightly differently: I think this is a prudent, sensible and cautionary approach, as I do not see any red lights arising from it and gleaming in the dark that would cause us to have difficulty, and that the issues are appropriate. Those are the general questions.

On the questions raised by the amendments, Amendment 37 questions whether we are right in assuming that, at present, the Bill tends to focus the attention in relation to colleges and their continuation on a systemic approach. That was slightly picked up by the area reviews as well, in looking at the holistic approach to an area, although from the bottom up—in other words, from the locality—FE colleges are often seen as important bulwarks of local community activity. Particularly in rural areas and areas of lower density, they can provide a centre not just of education and training but for other activities, so there is a wider context for this. Amendment 37 asks that the education administration system, particularly the education administrator, should, in addition to the list in the Bill, take in the need to,

“minimise the risk to a local community of a long-term loss of technical and further education provision”.

That will be an important issue for many areas and I will be interested to see the response.

Amendment 38 would give more detail than is currently in the Bill about the consultations, discussions and debates that must take place before the education administrator takes forward the proposals that may come to it. We will obviously come to a wider view about this in the next group. This would include the “quality of education provided”, the capacity of other bodies or institutions and,

“the infrastructure of the local area”—

again, the reference is to local rather than national issues. An issue that came up strongly in discussions in the other place was of how students, many of whom will be relatively young, will function if they have to add a significant transport arrangement to their other education requirements. How exactly does that fit in with some of the overarching issues we will come on to, in relation to the balance between maintaining a provision in a place and the need to provide local services and community support in that area, as opposed to the needs of the students in terms of the qualifications they are trying to obtain, which might be better dealt with in another college, perhaps a couple of hours’ travel away? One can see the impact that would have in terms of community, and on the individual. A slightly

more detailed list, as in Amendment 38, may be overprescriptive but the intention is to make sure that wider consideration than a simple binary question—open or shut—should face the education administrator.

Thirdly, on Amendment 39, the question is of who should be consulted. There is obviously an expectation, and comforting words were given in the other place when this issue was discussed. However, we have tabled an amendment that specifies that the students in particular—they are often omitted in these considerations—should be consulted, and that staff and recognised unions at the body concerned should also be included.

Lord Storey (LD): Given that insolvency is a major part of the Bill, many of us were concerned that there might be something hidden that we did not appreciate or understand, which is perhaps unusual. I thank the civil servants. I hate that term. They are civil; they should not be servants. My noble friend Lady Garden and I met them yesterday to talk about insolvency, and I came away very reassured. Actually, I almost did an about-turn and felt that further education was protected in many respects.

The amendments are right. I do not foresee FE colleges becoming insolvent, because the new measures protect them in a more robust way than currently. During the area reviews, there has been a safety blanket. When they are finished and the new regime comes into place, it will be a much better landscape for FE to operate in. Having said that, in the 0.001% where something happens, it is right to point out that students need to be considered, as do the community and the staff. That is particularly so in rural areas. If a college goes in a rural area, the loss of it and its courses can be devastating to its students.

I will go along with it but I am never quite sure about “consultation”. Of course one can consult. If in the new landscape a college is on the road to insolvency, presumably we would pick that up pretty early on. It would not be a case of its suddenly being insolvent—“By the way, we’re closing down and we’d better consult students and staff”. We would see the process happening gradually. Any well-managed system would of course consult those bodies. When I see “consultation”, I always ask how we will consult. Is it a tick-box exercise, or a letter to everybody? When we have done the consultation what do we do with that information, or is it just, “It looks good so we’ll say it”? I understand the thought behind the amendment, however.

These amendments are okay. I am just beginning to understand the Government’s desire—I am pleased about it—that, under the new combined authorities regime, combined authorities will be involved in the adult education part of further education. I do not yet understand how that happens in practice as well as principle. I have been involved in a couple of emails about that, but I would like to understand it before Report. Having said that, I am happy with the amendments and I guess we will support them.

4 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, I am grateful to the noble Lords, Lord Watson and Lord

Hunt, for these three amendments, to the noble Lord, Lord Stevenson, for his remarks supporting them and to the noble Lord, Lord Storey, for his comments.

These amendments relate to assessing the impact of the proposed insolvency regime on further education colleges. Before I deal with individual amendments, I shall respond to some of the general points made by the noble Lord, Lord Stevenson, and if I do not cover them all I will certainly write to him. Following the area reviews, all colleges should be on a sound financial footing for the longer term. That is part of the reason behind the area reviews. These measures will not come into force until after the recommendations of the area reviews have been implemented. There will be no closures as a result of the reviews. Colleges are working together to remove overcapacity in their area and to better align their offer to local employers' needs. Some colleges may merge as a result, but there will be no insolvencies as a direct result of the reviews.

I believe that Amendment 37 is intended to ensure that the special objective offers protection not only to existing students of an insolvent college but to those of the future. In that regard, noble Lords and I share common ground. Indeed, that is the purpose of our programme of area reviews. We are working with colleges, local authorities and other local stakeholders to ensure that FE bodies are put on a strong and resilient footing. This is the best way to safeguard the interests of all students. Delivering strong, sustainable colleges that can provide young people now and in the future with the opportunity to pursue courses right for them will offer them the opportunity to achieve their full potential.

In the unlikely event that an FE body were to become insolvent, our first priority would, rightly, be to the existing students, whose studies are likely to be directly affected. That is the purpose of the special objective. While we cannot know how the education administrator will propose to achieve the special objective in every insolvency, as that will clearly depend on the circumstances of each case, it seems likely that the preferred solution would be to find an alternative provider to take over provision at the insolvent body's campus. That would almost certainly prove least disruptive for the students involved. However, that may not be possible or the right outcome. It might ultimately be better for existing and future students to attend other colleges where they may have access to a greater choice of course, better facilities and the like.

I recognise noble Lords' concern that moving to a different provider might mean travelling greater distances, with a consequent increase in travel costs. While many students would be willing to travel to access the right provision—a point the FE commissioner made when he gave evidence to the Committee in the other place—there will be those for whom this would be a challenge. Colleges are already able to provide financial support to help eligible students with their travel costs, and this will extend to students transferring in from an insolvent college. In addition, the education administrator may be able to make provision for such costs where it is for the purpose of pursuing the special objective.

There is the possibility that a college that is the only FE provider in the wider area may become insolvent; for example, in a rural area such as Devon or Cornwall.

Were that to happen, I assure noble Lords that the Government could not and would not ignore their wider responsibility to students in the area. No Government would leave an area without any FE provision. However, this is a matter for the Government of the day to consider, not the education administrator.

I shall now respond to Amendment 38. Clause 14 sets out the fundamental principle underpinning the special administration regime we are introducing in the Bill. In the unlikely—I must emphasise “unlikely”—event that an FE body becomes insolvent, we are acting to ensure that disruption to students' studies is avoided or minimised as far as possible. That is the purpose of the special objective set out in subsection (1). Pursuit of that objective will govern all the actions of the education administrator. It will be for the education administrator to decide how the special objective can best be achieved. Whether it is one of the solutions suggested in subsection (2), a combination of them or something different will depend on the special circumstances of the college or FE body. Only by considering these issues will the education administrator be in a position to come to a view on the most appropriate approach. As we all know, something that might be right in one situation will not necessarily be right in another, so, in a way, I agree with Amendment 38. Noble Lords are right that there are a number of assessments that the education administrator should carry out before taking any action to achieve the special objective, including assessments of the capacity of other bodies or institutions to undertake any additional functions or provide education to additional students.

Noble Lords are right, too, that there should be discussion with those most directly affected by the decisions to be taken—the students, the staff and their unions. Where I think we differ is that I do not believe such assessments or discussions need to be prescribed in legislation. As my colleague the Minister for Apprenticeships and Skills said when this matter was debated in the other place:

“It is inconceivable that they,”

by which he meant the education administrator,

“would draw up proposals for achieving the special objective without having had discussions with a wide range of stakeholders, such as the Further Education Commissioner, student bodies and others, and without considering a wide range of pertinent issues”.—[*Official Report*, Commons, 9/1/17; col. 113.]

I wholeheartedly share this view. As the Minister made clear in the other place—and I do here today—it is our clear expectation that the education administrator will engage fully with those who have the knowledge and experience to aid them in developing their proposals: the commissioner, staff and students, local authorities and other providers.

When we refer to avoiding or minimising disruption to student studies, this is not just about keeping students' timetables unchanged or ensuring that they remain at the same campus—although, in reality, this might well be the case. It is also about ensuring that where it is necessary to transfer students, factors such as those identified by noble Lords are taken into consideration. In developing their proposals, the education administrator will be expected to consider the quality of the alternative

[LORD NASH]

provision, as well as the impact of travel distances if students need to complete their studies at another location.

Of course, some trade-off or compromise between the different factors might be necessary, but this will be for the education administrator to address in the particular circumstances. If students find themselves having to travel to another location, I recognise that they may incur additional travel costs. Where this is the case they may be eligible, as I have said, for the 16-to-19 bursary fund, or the education administrator may consider setting up a specific scheme for them paid for by from any funding provided by the Secretary of State or Welsh Ministers.

I turn now to Amendment 39. In developing the special administration regime we have been concerned to ensure that the process should take no longer than necessary. Concerns have previously been expressed, including during debate in the other place, about the time a special administration might take. I share these concerns. However speedily the special administration is concluded, it will be too long for those involved. Staff, students and creditors will want certainty about what will happen to them at the earliest opportunity. Amendment 39, which seeks to require the education administrator to consult students, staff and the trade unions of the FE body before making any decisions on how to achieve the special objective, would inevitably lengthen the process but would be unlikely in reality to have any real benefit to the education administrator. Indeed, it may fetter his or her discretion to find the best way of achieving the special objective to the disadvantage of all concerned.

We are not disputing that the issues raised by noble Lords are important. They are. But, as I hope I have made clear, they cannot help but constitute a major element of the education administrator's considerations in developing his or her proposals and there is therefore no need to legislate in this case. I hope the noble Lord will feel reassured enough by my explanations to withdraw the amendment.

Lord Stevenson of Balmacara: My Lords, I thank the noble Lord, Lord Storey, for his support for these amendments and his comments about what we are trying to achieve with them. I think that those were picked up by the Minister, and I thank him too for taking the time to go through some of the issues and recognise that they had a bearing on this, should insolvency happen. The fact that these words are now on the record is a very good thing.

We particularly recognise that where provision has to be provided at a distance under special measures, travel will become a material issue. Confirmation again that costs could be considered within that is very important. We accept that it would be wrong to tie the hands of the education administrator if, by having a list in the Bill, damage was done to how he or she approaches his or her work. I do not think that that was the intention, but I recognise the danger. The issues were engaged with by the Minister and were recorded in *Hansard*, which will be sufficient to ensure that these points are not ignored at the appropriate time.

We might want to come back to the question of how and on what basis the comparison between the provision made in one institution that might have to close and another will be done in practice, but that comes under the next group of amendments. For the moment, I beg leave to withdraw the amendment.

Amendment 37 withdrawn.

Amendments 38 and 39 not moved.

Clause 14 agreed.

Clause 15: Education administration order

Amendment 40

Moved by Lord Stevenson of Balmacara

40: Clause 15, page 8, line 11, at end insert “, and has relevant experience and knowledge of the further education sector.”

Lord Stevenson of Balmacara: My Lords, the amendments in this group are rather unfortunately grouped together, as there are two issues. I will take them in a slightly odd order to bring out the points. I hope that will make it easier to engage when the debate starts.

Amendment 40 is again about the education administrator. The point that we ended the last group on is the question of whether that person would have sufficient relevance, experience and knowledge of the further education sector. Those persons who have responsibility for doing insolvencies and wind-ups are usually accountants, who are the butt of staple jokes about vision, intelligence and depth of understanding. Of course, I am an accountant, so I can say all these things. On the other hand, it is fair to say that the judgments that the person responsible for a special education administration system are going to have to make will rather stretch that stereotyped approach, because effectively that person will take over the responsibilities of running an FE college with thousands of students and making decisions that will affect thousands of lives on a longer-term basis.

There are some big issues here. Given the fact that I know one or two insolvency practitioners, it would be a stretch to expect that group to be expanded in a short enough time to include people with experience. In the unlikely event that we have a rash of these insolvencies, experience will surely be increased and the problem will solve itself. But there is a gap here: No particular solutions come to mind, but the question will continue through our discussions today about how the expertise necessary to make some of those judgments will be gained.

Other amendments in this group, particularly Amendment 44, suggest that it may be necessary to make sure, in regulations if not in the Bill, that the person appointed as the education administrator has access without bar or hindrance—certainly no barrier should be put in place—to receiving the sort of advice that will be required to make the decisions that they will need to make in running an FE college. The proposal in Amendment 44 that the,

“education administrator may, in performing ... functions ... request information, advice or guidance from practitioners with an understanding of education”,

is meant in a permissive and encouraging way, rather than as a statutory duty. Nevertheless, the point is well made, and I look forward to hearing what the Minister says.

The meat of this group is in Amendments 42, 43 and 46A. That last amendment is a late addition, because I realised in preparing for the Committee that we could not get to the point without an additional amendment. I apologise for the late tabling of it. The scheme that we are talking about can come into existence only when the Secretary of State decides that it will do so, and only with the permission of the court, so there are already two steps in the process for a college that is going into insolvency, for which there will be checks, balances, discussions and debates, and some context will be provided. I am sure that that is an appropriate and effective way of going forward. But with the appointment of the education administrator comes the next stage in the process; that person will take over the responsibilities previously held by the owners of the operation and will have to deal day to day with the problems of running the college as they go forward.

I would be interested to know whether any work has been done for the Government on roughly what proportion of the insolvencies or liquidations it is expected will go into special administration as opposed to the normal routes, because the law already provides for companies that operate many activities, one of which would be education, to go insolvent or become bankrupt. There is a process under which that operates. We would not expect it to operate in many cases because it is a fairly brutal process.

4.15 pm

We, in your Lordships' House, have discussed insolvency on a number of occasions in recent years. I think there have been three Bills in which the law has been moved forward. There are also three striking things. The UK is way apart from many other territories in which the primacy of the creditor stands against any other purposes. In other words, there is an underlying thinking behind any insolvency or bankruptcy. I am sorry if I sound as if I am lecturing; I should not be lecturing to a group as astute as your Lordships. It is interesting that there is an assumption behind the way in which we process an insolvency that the creditors will be paid back 100% of what they have lent. Of course, creditors come in all shapes and sizes. They range from those in bank lending through to those who have provided goods on credit and are waiting to get paid.

The working assumption is that creditors should always be repaid. I find this strange because, in a practical sense, in any insolvency or bankruptcy arrangement—whether personal or corporate—the creditors' immediate assumption is that they are not going to get 100%. Yet, the law sets out to try to provide that 100%. The deal is usually brokered between 100% on one side and about 10%, which is usually the working estimate, certainly after taking away the substantial fees that are paid to insolvency practitioners. I will not make further comment about that. The amounts of money are relatively trivial.

I am not saying that this would necessarily be applied here but if we go down the routes of traditional corporate insolvency, voluntary arrangement or the other ways in which this can happen, we will find

the question of creditors looming large whether or not the body concerned is charitable. The rights and responsibilities of the person appointed to be the administrator of an ordinary commercial or personal bankruptcy or liquidation are, of course, charged with the responsibilities of a creditor.

Our Amendment 46A draws attention to this. I should be interested to hear further from the Minister on this point. Clearly, in a special administration, the idea is to restrain the creditors. That seems a good idea but credit comes with strings. If you restrict the ability of an institution to receive credit because the perception is that it may not be able to be pursued if it goes bankrupt, the flow of credit may well dry up. Will this not affect the way in which suppliers, the banks and others operate in relation to FE colleges? Even the smallest college will have a small amount of credit at any one time. The larger ones will almost certainly be raising funds openly on the market to do good things, approved by their governing bodies. However, it will depress their ability to raise funding—and possibly even make it difficult to get supplies—if this scheme becomes better known or happens more often, and if word gets out to people that should you supply goods or credit to an FE college, it would be dodgy if it goes down. There is an issue here.

The wider question is: how on earth are people to operate in a situation where the first steps taken towards bankruptcy will signal widely to all concerned that an institution is to be placed behind a wall? This may be for good public purposes and for the benefits which we have talked about, and with which we absolutely agree. But during the time that the educational administrator is operating under special measures, there will be no payment made to creditors. I am not against this. It is the right thing to do but I worry that the pressure will be on the person appointed as the educational administrator. This person will instinctively, and by training, have much more concern for creditors than others with more experience of FE who may take on this job, but who will be under great difficulty.

It must be right to make sure that the special measures which are to be part of the operation are documented in a way which gives them the best support and the greatest amount of encouragement. This amendment is to ensure that the special scheme has the teeth it needs to fight off the creditors, that the students at the FE college and the local community which benefits from it are not frightened off and that decisions are not reached in the wrong way. I beg to move.

Baroness Garden of Frognal (LD): My Lords, I support these amendments. It probably is important that any education administrator should be familiar with further education because it is a very distinct type of education. I have a question that I would like the Minister to clarify. Clause 22(4), which it is now proposed to delete, indicates that the administrator must,

“carry out his or her functions in a way that achieves the best result for ... the company's creditors as a whole”,

yet Clause 14 says that the primary,

“objective of an education administration is to ... avoid or minimise disruption to the studies of the ... students”.

[BARONESS GARDEN OF FROGNAL]

There seems to be a slight contradiction here regarding whether the education administrator is going to put students or creditors first. I accept what the noble Lord, Lord Stevenson, said, that perhaps the problem is with creditors: if they feel they are going to be last in line to get paid back, that might make more problems for colleges in getting funding. Can the Minister perhaps clarify the apparent contradiction between those two clauses?

Baroness Cohen of Pimlico (Lab): I generally support the amendments. I started from a very particular consideration: I wondered whether I would be prepared to be an education administration person, because I think I am qualified to be so. The first thing I would want to know is where my financial backing was. The first thing I would ask for would be a guarantee that I would not end up personally liable, as under normal insolvency law I would be. I would need a back-up. The problem here, as with all public sector bodies—I have been through this before when we were thinking about what to do about a failing nationalised industry—is that if the Government are the guarantor or provider of last resort, the creditors will be perfectly happy but I am not quite certain how the education administrator gets out of it. I do not think I would be prepared to be an education administrator without an underwriting behind me. Mere appointment by a court would not do it for me. Have the Government thought about this bit?

Baroness Buscombe (Con): My Lords, I am grateful to the noble Lords who have put their names to this group of amendments. I shall begin with Amendments 40 and 44. I realise that the noble Lord, Lord Stevenson, also referenced Amendment 46A, regarding creditors. I will get to that but if he and other noble Lords could bear with me, it would be rather easier if I could do this sequentially.

On Amendments 40 and 44, then, as is the case with other special administration regimes, Clause 15 provides that the person to be appointed as the education administrator must be someone who is qualified to act as an insolvency practitioner in relation to the FE body. This is the only criterion that must be satisfied for appointment as an education administrator.

Amendment 40, however, would require the person appointed as the education administrator to have relevant experience and knowledge of the further education sector, as noble Lords have said, in addition to being qualified to act as an insolvency practitioner. Saving the blushes of the noble Lord, Lord Stevenson, he is a very good example of accountants who have a breadth of perspective—indeed, I should declare an interest as I am married to an accountant who has a fantastic breadth of perspective—so we should not underestimate their ability to address different sectors with the same amount of expertise.

While such experience may be desirable, it is certainly not essential. Noble Lords familiar with the company insolvency regime will know that insolvency practitioners are often appointed to administer companies in sectors where they have little or no experience. That does not prevent them carrying out their duties successfully; it is their ability to understand and apply the different

options available to them in the insolvency toolkit that is of most importance, not a detailed knowledge of the sector or the company. It is no different in an education administration.

In his evidence to the Committee in another place Mr Stephen Harris, an experienced insolvency practitioner with Ernst & Young, said that:

“From an insolvency practitioner’s perspective, it is worth standing back and recognising that insolvency practitioners are not train drivers, or people who spend their life in the railway or the London Underground, when it comes to a special administration regime, nor are they specialist property developers. They come to each situation afresh. One comforting thing that insolvency practitioners bring is recognising when they need to keep in place the existing management structure in a corporate sense, or the workforce in a pastoral sense, recognising that those people have skills and qualifications that they as an office holder do not necessarily have, and also”—

this is key—in bringing,

“outside specialist help to continuing the duties of education administrator should the need arise. That is ... part and parcel of any trading insolvency regime”.—[*Official Report*, Commons, Technical and Further Education Bill Committee, 22/11/16; col. 46.]

Lord Stevenson of Balmacara: What has just been said is true and I understand exactly where the Minister is coming from but, in a sense, she is talking about traditional creditor-led insolvency. That is not what we are talking about. As I am an accountant with a broad vision, I can extend to make the point that we are talking about replacing a board of governors, with expertise from all around the table, a senior management team, heads of departments, lecturers, a whole panoply of technical and support workers and everything else with one person, and that person is not doing the day job. The day job is getting the creditors into a room and banging their heads together until they settle for 10% or about that level, and then going away. This is about running an institution, perhaps for a long period and on a very complicated basis. It is not quite the same.

Baroness Buscombe: I accept the point, but I re-emphasise therefore the importance of that person bringing in outside expertise to support them in the process. I also ought to make the practical point that we would be hard pressed to find many insolvency practitioners who had this expertise as a matter of course. Maybe there are one or two, but I do not know how many.

Mr Harris rightly made the point that the education administrator is similar to all the other special administrator roles, and I share his view. It is not necessary for the education administrator to have direct experience and knowledge of the education sector, but I expect—indeed, I am sure that we all expect—the education administrator to avail themselves of the advice and guidance of those around them. I am being a little repetitive, but this is an important point. I mean not only the management team and staff of the insolvent college but the governors, the further education commissioner, the local authorities and others. Indeed, I cannot conceive of a situation where an education administrator would act in isolation, developing their proposals for meeting the special objective and protecting students without first discussing them with a wide range of stakeholders.

Amendment 44 provides that the education administrator should be able to request information, advice and guidance from those with an understanding of education in performing their functions for the purposes of achieving the special objective. I wholly agree with the purpose of this amendment. Of course it will be important for the education administrator to take advice from experts in the sector in carrying out their functions. As I said, this is precisely how we expect the education administrator to operate. The leadership team in the further education body will be in place to provide support on the day-to-day running of the college and to provide information to assist the education administrator in their task of achieving the special objective, if possible. So too will the further education and sixth-form commissioners and their teams, as well as the officials in the Minister's department. The education administrator will of course be free to seek advice from any other source that they may consider. We therefore believe that there is no need to provide in the Bill for something which the education administrator is free—and encouraged—to do.

I would make the point, as I often do in situations like this, that we want to be careful not to be too prescriptive in primary legislation, particularly when the Bill, as I said on Monday, really sets out a framework for how these processes should be managed. We do not want to be too prescriptive up front. I want to respond to a number of issues but I shall leave them until I have finished replying to this group of amendments, to be clear that I can cover everything that noble Lords have asked of me.

4.30 pm

In order to consider Amendments 42 and 43, we must look not only at Clause 22 but back to Clause 14. These clauses together create the special administration regime for the further education sector. As I hope I have made clear in all that I have said so far about this part of the Bill, our absolute priority in introducing the special administration regime is to ensure, as far as possible, the protection of students' studies in the unlikely event that their institution becomes insolvent. That is clearly the purpose of Clause 14. I say straightaway in answer to the noble Baroness, Lady Garden, who asked whether the students or the creditors have priority, that the students have priority.

Clause 22 makes it equally clear that the education administrator must carry out their functions for the purposes of achieving the special objective, if possible. All other considerations in Clause 22—for example, in relation to creditors—are subject to pursuing that primary purpose, whereby the students take priority. There is no confusion or conflict here about the order of priority. I am afraid we say that Amendment 42 would add nothing to what is already enshrined in the Bill and would therefore serve no practical purpose. There is no need to qualify the statement made in the clause when it is the purpose. The education administrator must carry out their functions for the purpose of achieving the objective of the education administration, as set out clearly in Clause 14.

On Amendment 43, we are clear about what we are asking the education administrator to do: to carry out their functions so as to achieve the objective of avoiding

or minimising disruption to the studies of the body's students. However, the special objective is exactly that: an objective, which does not and cannot guarantee a particular outcome. We are not providing a guarantee to every student on an individual basis. That would not be in the interests of either taxpayers or creditors. It is important to recognise that there may be some circumstances in which the objective cannot be achieved because of the particular circumstances of a college. The term "if possible" recognises that there can be no guarantee that the special objective can be achieved and that it is not a guarantee for every student.

The structure of having a statutory objective for a special administration is common to all special administration regimes, which operate on the same basis. The statutory objective is not a guarantee of continued service provision but provides an overarching aim that takes priority over creditors' interests, which are themselves protected by having an orderly process in the event of the insolvency of a public service provider. Without that protection, it is unlikely that any insolvency practitioner would accept the appointment as education administrator. No administrator would personally accept the risk that it might prove impossible in a particular case to achieve the special objective. Without an insolvency practitioner there can be no special administration regime and, ultimately, no mechanism to protect the students' studies. The key to all this is protecting the students' studies.

I hope the Committee is persuaded that the Bill as drafted ensures that the protection of students is the primary purpose in accordance with which the education administrator must carry out their functions, and that the noble Baroness will therefore agree to withdraw this amendment.

Baroness Garden of Frognal: I am still slightly confused about how what the Minister says is squared with Clause 22(5) which says that the education administrator must,

"carry out his or her functions in a way that achieves the best result for—

(a) the company's creditors as a whole",

That does not seem consistent with what she is saying about the emphasis on the students.

Baroness Buscombe: I did actually reference this while the noble Baroness was talking to a colleague. There is no contradiction. As I said about five minutes ago, the creditors' objective is secondary and subject to the special objective of protecting students' studies. Only when it is consistent with the special objective does the education administrator have regard to creditors' needs. This reflects normal insolvency procedure. It is right that the education administrator has regard to creditors' needs. I hope this is helpful.

Baroness Cohen of Pimlico: May I have another go at this point? In the days when I was a civil servant, a bust company would arrive on the doorstep of the Minister. Since it was in the Industry Act that we had the power, and indeed a duty, to preserve jobs, the administrator would usually ask us, "How far do you want to go? I can keep this company going for another five weeks, while we look for a buyer, but I want an underwrite. My client, the bank, is not interested. It is going to close this company". There is the same

[BARONESS COHEN OF PIMLICO]

problem here. Who authorises the administrator to go on putting the students' interests first and to what end? The legislation is clear: the administrator puts the students' interests first and tries to get a satisfactory answer. After two months, it becomes clear that nobody wants these students, nor this institution. I would not start out as the administrator without having a pretty clear view of what I had to do, when I was asked to stop and to whom I should go back and say, "This one is not going to work. May I now go back and satisfy the creditors?". The process is worrying me. The words are all right, but I do not understand the process. I am sure we would all prefer not to have the process tested in practice, as it were, and have it come unglued there.

Baroness Buscombe: I am clutching a response to the noble Baroness's earlier question which is on point. Clauses 26 and 28 allow the Secretary of State to provide the education administrator with indemnities or guarantees where that is necessary or appropriate. The education administrator will be able to apply to be discharged from office when they believe that they have achieved the special objective.

It may also help if I move on to Amendment 46A which specifically references creditors. Although we share common ground in our commitment to ensuring that if a further education body were to become insolvent, students would be placed at the heart of the subsequent administration process through the special objective, we do not share common ground here.

Clause 5 applies existing company insolvency law to further education colleges. The long-standing insolvency regime ensures that the interests of creditors are protected when a company becomes insolvent. Without such protection, lenders would rightly change their lending behaviours, such as by imposing higher interest rates and lending lower amounts. Other businesses would also become more cautious in trading with companies they perceived to be at risk of failing. This would ultimately paralyse growth. The same is true of the further education sector. So, while we are all agreed that there is a need to protect students' studies—and that is the purpose of the special administration regime—there is also a need to have regard to the interests of creditors.

Through the special administration regime, we are rightly placing the protection of students' studies ahead of the interests of creditors. However, as I said, this does not mean that the interests of creditors can, or should, be ignored. That would undoubtedly damage the further education sector, and I am sure that colleges themselves would be opposed to such action.

Subsections (4) and (5) make clear, therefore, that where the education administrator has a choice between courses of action that equally meet the special objective and protect students, they must follow the approach which achieves the best result for creditors and, where the college is run by a company, the company's members. This delivers both protection for student studies and the reassurance that creditors, particularly lenders, need to ensure that the further education sector continues to be able to grow and improve to meet the needs of young people.

I want to respond to questions about the banks. Gareth Jones of Santander said:

"Overall, from our perspective, we are still very supportive of the sector—still looking to grow our exposure to the sector and grow our lending book. On the Bill and the proposed insolvency regime, we are actually supportive of the clarity that they provide"—[*Official Report*, Commons, Technical and Further Education Bill Committee, 22/11/16; col. 38.]

I was asked whether we are afraid that commercial debt will dry up for colleges as banks reassess their risk profiles, which is a critical point. The answer is no. Banks make lending decisions based on many considerations, and of course we expect them to reassess the risk profile of the sector now that exceptional financial support will no longer be available, but we expect them to continue to lend, particularly in light of the good work being done through the area review to build financially stable and resilient colleges. If this means a careful assessment of an individual college, its business plan and management, that is a good thing.

I hope that I have been able to answer all noble Lords' questions on this group of amendments. If not, I will be happy to write to noble Lords but, on the basis of what I have been able to say this afternoon, I hope that the noble Lord will feel able to withdraw his amendment.

Lord Stevenson of Balmacara: I thank those who have spoken in the debate for their questions, which are at the heart of the issues we raised. As I said at the beginning, this is a group in two parts. The questions about the individual appointed were well answered by the Minister; I am happy on that. There is a big task here. While it is true that the Bill says that the education administrator would be appointed only if they have the capacity to do the work, experience may well be lacking. We may be in difficulty there. On the other hand, I also made the point that we are talking about a specialist area in which there may be some growth in expertise that will allow us to get through that.

The noble Baroness, Lady Garden, and my noble friend Lady Cohen made points about how we balance the issues in the special administration system between the ongoing requirements of the students, the priority given them in the Bill and the rather odd words that appear in Clause 22. They which relate to a subset, not all of the groups in FE—I take that point—but they nevertheless imply, on a casual reading, that creditors will not be significantly disadvantaged in the long run because the function of the administration is to be carried out in a way that achieves the best results for the company's creditors as a whole and, subject to that, the company's members: its shareholders or shareholder equivalents.

I do not think there is an answer to this across the table. It might be sensible to have a meeting. The noble Lord, Lord Storey, said that he had a good briefing from officials; I did not have that chance. Perhaps if I could have a relatively short meeting on some of the technical issues here. That might be helpful in trying to tease this out. I do not think we are far apart on this. It is difficult. A bit of reassurance is required and, if the experience of the noble Lord, Lord Storey, is anything to go by, that might be helpful. In the interim, I beg leave to withdraw the amendment.

Amendment 40 withdrawn.

Clause 15 agreed.

Clauses 16 and 17 agreed.

Clause 18: Powers of the court on hearing an application

Amendment 41

Moved by Lord Stevenson of Balmacara

41: Clause 18, page 9, line 15, at end insert—

“() suspend the Office for Students’ protection action for students.”

Lord Stevenson of Balmacara: This should be relatively quick. Clause 18 contains a list of measures to be taken under the power of the court on hearing an initial application—presumably for the purposes of clearing the ground so that the individual who is appointed educational administrator has a narrower process. The list under subsection (2) includes restricting the power of the education body and clarifies that where the education body has a different corporate form, it can also be intervened on to make the work required of the special administrator easier. We thought that the list in Clause 18 (2) was a bit narrow. This probing amendment is to explore that, and I look forward to hearing the Minister on this point.

4.45 pm

Other issues may counterpose on the activities of those who are in further education colleges. It is not impossible that the Office for Students, which is soon to be established, may have made an order in relation to, for instance, access and protection in relation to a course that a student is taking. Would that be part of the order? I look forward to hearing from the Minister on that point. I beg to move.

Lord Nash: My Lords, we have seen from our recent scrutiny of the Higher Education and Research Bill that it includes provisions to ensure that those undertaking higher education courses are able to continue their learning and are protected if their provider is unable to deliver their course—perhaps, but not solely as a result of it exiting the market; the noble Lord, Lord Stevenson, referred to that. Under these proposals the Office for Students will have the flexibility to require any provider on the register to have a student protection plan in place through conditions attached to its registration. We expect that the OfS will require all approved fee-capped providers, including FE colleges, if they are higher education providers, to have plans in place. In those FE colleges with students studying HE courses, the FE students will have the benefit of being protected by the special objective in the event of the college becoming insolvent and the body being placed in education administration. Measures within the provider’s student protection plan may also be relevant and could be brought into play.

I understand that noble Lords are concerned that FE colleges offering such provision will be subject to both regimes and that this will add to the cost of running HE provision. Whether to require FE bodies to have student protection plans in place will be a

matter for the Office for Students to decide. However, I agree that where an FE body is insolvent and in special administration, it would make little sense for the education administrator to be required to implement the SPP at the same time as implementing the proposals to achieve the special objective, if possible, as those proposals will extend to the very students covered by the student protection plan.

Where the Secretary of State or Welsh Ministers have decided to place an FE college in special administration, the special objective should take precedence over SPPs. In seeking to achieve the special objective, the education administrator must avoid or minimise disruption to the studies of students of the FE body as a whole, regardless of the course they are studying. There may be circumstances in which the education administrator may find it helpful to refer to the measures within the plan to inform the proposals for a particular student or groups of students, but a student protection plan might impede the education administrator’s discretion about the best way to achieve the special objective. Where this is the case, the provisions of the Bill already allow the court to make an interim order that would suspend existing student protection plans where it considers that necessary or appropriate. I hope that I have been able to reassure the noble Lord that the proposed amendment is unnecessary and that he will withdraw it.

Lord Stevenson of Balmacara: I thank the Minister for his response. I am glad we agree on this. I thought for a moment he was going to give me a concession, which would have been unexpected for a very broad probing amendment. He did not, but he did say that there is a power in Bill. I have been unable to find it, so if he could write to me about that, I would be grateful. I beg leave to withdraw the amendment.

Amendment 41 withdrawn.

Clause 18 agreed.

Clauses 19 to 21 agreed.

Clause 22: General functions of education administrator

Amendments 42 to 46A not moved.

Clause 22 agreed.

Clause 23 agreed.

Schedule 2: Education administration: transfer schemes

Amendment 47

Moved by Lord Stevenson of Balmacara

47: Schedule 2, page 30, line 39, at end insert—

“3A The education administrator may not transfer assets of any further education body to a for-profit private company where he or she considers that more than half of the funding of the acquisition of the asset came from public funds.”

Lord Stevenson of Balmacara: My Lords, I was hoping to have a short breather while we discussed other important matters, but unfortunately that has not happened. We move on to Amendment 47, which refers back to some of the issues that we have been dealing with regarding process, particularly what happens to assets. Clearly much of the work of the special administration scheme will be the ability to bring forward and, if necessary, sell—in other words, dispose of—assets that would otherwise not be there that could be used to repay the creditors, and I suppose might in part be used to maintain the operation of the college that is under liquidation.

To stand back a little from the issue, the interesting thing is that much of what we are trying to achieve in this special educational administration is more akin to the Chapter 11 processes in American bankruptcy law than to those here. We have the same basic elements: a court-driven procedure, the protection measure in place in order to make sure that the institution is kept as a going concern, and a commitment that is well expressed in terms of the special purposes of the education administrator to take it through. The question is whether or not that follows through all the way.

The amendment is probing, but it builds on one or two issues regarding which we want to get responses from the Minister on the record. In the first place, it would be helpful if we clarified that, as has been explained by the Ministers in their responses, this is unlikely to be a regular occurrence and will not be precipitated by the Bill, but it might happen and therefore we should walk through it and understand it. If we have a situation where a college is going insolvent, either the system can then operate on existing measures or the Secretary of State can apply for and obtain an order to establish the special administration, and then we are into the process that we have talked about at length and do not need to go back to.

However, it may arise that funds coming into the college to maintain it as a going concern are difficult to sustain. There may be changes in government policy or other changes in external funding that mean that it will not remain a going concern. So we are talking about maintaining the services and facilities for the students for as long as possible but in the certain knowledge that the institution is going to close down. At that point, I am sure it will be in the mind of the special administrator that some assets could be sold so that money could be obtained. Depending on the rules laid down for them, it would probably be rather difficult for that person not to engage with that possibility. However much we may wish to have the assets and the buildings maintained in case there is an uplift and the funds come back, the cruel reality of the situation will probably kick in and mean that the assets will be sold.

If the institution were a charity, as many of these bodies are, the question would not arise because, under charity law, charitable bodies holding assets are not allowed to dispose of them to third parties—in fact there is a prohibition that they must dispose of them to charities of similar nature and purpose so that the charitable purpose under which they were originally established may be maintained. I would be grateful if the Minister could confirm that that is the Government's

understanding of the issue. Where special systems or incorporation arrangements are in place, I assume that that will also apply, but charitable status is the main area here, so we are talking about a relatively small group of places where the natural process would be perhaps to squeeze the college down to a smaller area and get rid of buildings, equipment and so on.

The problem then arises that funding was almost certainly originally provided from local authorities but, since then, certainly from central government, so there is an investment issue about whether the funding that has been provided should not be better retained in the sector, even if it cannot be retained within the existing body as a going concern. So the amendment poses this question: in the relatively unlikely event of this happening where the college is not a charity, what happens to freeheld assets that could be disposed of where those assets were originally funded from the public purse? Is there not at least a moral obligation to ensure that they are retained within the sector? I beg to move.

Lord Storey: I have always been concerned when public money has been used to purchase a facility—let us say that it has been used to purchase an FE college and that FE college then sells off land, for example a playing field. That playing field may often have a dual use: perhaps the local community uses it for activities, for example, which is good for the FE college and for the local community. So when it sells it off, public money is being lost to that community.

As we said under the first group of amendments, the likelihood of insolvency is remote. With this amendment, I get the point that public money bought the facilities but, presumably, you could have local authorities—I have seen it quite often—saying, “We’ll have the facilities”, but then selling them off to the private sector to get that money in for other things for the community. Is that the point that the noble Lord is making?

Lord Stevenson of Balmacara: No, it is not actually—although that is a scary prospect. In my scenario, we are in a liquidation situation in which decisions have been reached that the college is going to decline, because it cannot be made secure. It has been superseded by the court order now in the hands of the special administrator, and a decision has to be made about what happens to the residue. That may take time, but at the end of the day there will be a blank wall and the car will hit it. At that point, what happens to those assets? It is not that they could not be sold for benefit—the noble Lord's point about land is absolutely right. I think it is pretty unlikely, but there could be land associated with FE colleges that, if sold, could realise development potential which could pay off all the creditors, and that could be seen to be a good thing. But if that money was originally provided for the education—not for a charity, because that is protected—what is the right way to go forward?

Lord Storey: In that case, there is merit in considering the amendment.

Baroness Cohen of Pimlico: I support what I think the amendment is about. There is a worrying set of complications, in my mind. Someone has provided the

money to keep the FE college going while the special administrator decides that actually it cannot be kept going. Where does the person who provided the money rank among the creditors? We are talking about selling assets at the end of this. For a start, the bank might have a charge on those assets, in which case I guess that is the answer, but somebody has put money in to keep the business going. I have done this on behalf of the Department of Industry—we took back the money that we had put in to keep it going. What is the order of batting in relation to the local authority, or whoever it is, who put the money in to keep the institution going, and the rest of the creditors?

Lord Nash: My Lords, I start by saying that I recognise that the amendment is driven by noble Lords' good intentions. They are concerned that assets that have been paid for largely by money from the taxpayer should not then find their way into the private sector at an undervalue, when they can then be sold and used to make a profit at the taxpayer's expense. I recognise and share those concerns. FE colleges are statutory corporations with significant freedoms to deal with their own assets, but the key check on those freedoms is that any such dealing must be in the interests of the colleges' charitable education—as the noble Lord, Lord Stevenson, said, the basis on which they have their charitable status.

5 pm

There are, of course, no restrictions on who solvent colleges can transfer property to unless the property has a covenant on it or a specified interest. Any transfer would need to achieve full value for the college. For example, where the governors of a college sold a building to a private for-profit company, they would have to consider their duties to the college as a charity, which are to achieve fair and full value. The sale proceeds would then, like all assets of the college, have to be used for the education purpose for which the college is established. I remind noble Lords that we are talking only about a situation where a college has failed financially and is insolvent—I hope this is an extreme case—and the Secretary of State has decided that there should be a special administration regime to protect students and provide an orderly process for creditors.

The special administration regime demands that the education administrator must seek to achieve the special objective of avoiding or minimising disruption to the studies of existing students of that college and, as far as it is consistent with the special objective, the best result for creditors, as we have already discussed. If the best way to achieve that and maximise the proceeds of sale for the furtherance of the special objective involves a sale of the college's assets to a private for-profit company then that should not be ruled out. Indeed, it is likely that in a college insolvency, a buyer might well be from the private sector, and to rule them out of the equation might well result in a lower price being achieved for the asset and consequently less money to further the special objective. It might even mean the difference between some students completing or not completing their courses. For creditors of the college, it might mean that the outcome for them is worse than it needs to be. As I said, obviously the duty will be to achieve full and fair value, not sell at an undervalue.

I spoke—albeit briefly—at Second Reading about the safeguards we are putting in place in the event that the education administrator considers it appropriate to make a scheme to transfer property rights and liabilities of an insolvent body, and I spoke about the quadruple lock. I will expand on the detail of those safeguards. First, unlike solvent operational colleges which may wish to transfer property, if the education administrator decides to make a transfer, he or she is restricted in who they can transfer the assets to. These bodies are prescribed in secondary legislation made under Sections 27B(1) and 33B(1) of the Further and Higher Education Act. They are public sector bodies with educational functions, such as local authorities, colleges and similar public-funded education bodies. In addition, transfers can be made to private companies but, if that is the case, the company must be established for purposes that include the provision of education facilities or services of any description.

Secondly, just as with any other action of the education administrator, any transfer scheme must be for the purposes of achieving a special objective. There must therefore be an educational purpose to the transfer scheme. Thirdly, creditors have a general right of challenge should they consider that the education administrator is not working to fulfil the subsidiary objective of achieving the best result for creditors as a whole, so far as it is consistent with the special objective. Creditors would rightly complain if assets were needlessly transferred on the cheap and, of course, any sale proceeds will be used directly or indirectly for educational purposes. The proceeds may be used to pay for continuing teaching of students so as to achieve the special objective, or to pay other costs of achieving the special objective as well, subject to the objective to pay creditors. Finally, the Secretary of State or Welsh Ministers must approve the proposed transfer scheme. That approval will necessarily include consideration of whether the transfer is for the purpose of achieving the special objective.

To answer the point made by the noble Baroness, Lady Cohen of Pimlico, if the Secretary of State has put funding in, she can decide on a case-by-case basis whether to make funding available for an education administration on the basis of a grant or a loan, and whether any loan should be prioritised in repayment over other creditors or subordinated to be repaid when other creditors, secured and unsecured, have been paid, if remaining funds allow.

I hope that these protections make clear to noble Lords that this is not about the transfer of publicly funded assets to the private sector on the cheap or by way of windfall. It is rightly about putting in place an orderly process for dealing with the assets of an insolvent FE body so as to achieve the special objective of protecting students and the secondary objective of protecting creditors in the event of insolvency.

Lord Stevenson of Balmacara: My Lords, I thank the Minister for his helpful comments. I suspect that the most assured protection would be for the body concerned to be a charitable body. This would give total protection to the resources in the institution because it is not possible to make such a transfer under charitable law. That is not the situation if there are special measures. It is sufficiently clear that the

[LORD STEVENSON OF BALMACARA]
primary purposes trump others—in so far as it is possible that the assets should be kept and used for further education. In these circumstances, I beg leave to withdraw the amendment.

Amendment 47 withdrawn.

Schedule 2 agreed.

Clause 24 agreed.

***Schedule 3: Conduct of education administration:
statutory corporations***

Amendment 48

Moved by Lord Nash

48: Schedule 3, page 34, line 34, after “authority,” insert—

“() to the director of children’s services at the local authority or combined authority in whose area the relevant institution is based, and to any other director of children’s services that the education administrator thinks appropriate,”

Lord Nash: My Lords, I want to explain Amendments 48 to 55, which we have tabled to Schedules 3 and 4. These reflect the commitment that my colleague, the Minister of State for Apprenticeships and Skills, gave in the other place to ensure that the needs of care leavers are provided for in the event that the FE body they attend enters educational administration. We agree that students who are care leavers and have already experienced uncertainty and disruption in their lives may well need additional support to help and reassure them during what may feel like uncertain times. Of course, it is entirely possible that, in the event of insolvency, the insolvent college will be taken over by another provider and students will be able to remain on the same campus, studying many of the same subjects. If this is not possible and students need to be transferred to other providers and possibly other courses, we want to ensure that care leavers can get the advice and guidance that they need, particularly if this encourages them to remain in further education. Having got care leavers into education—which is sometimes not easy—it is important to make sure that we retain them there.

There was debate in the other place as to whether there should be a requirement placed on the education administrator to take particular account of the needs of care leavers in much the same way as Clause 22(3) requires them to take account of the needs of students with special educational needs. As the Minister for Apprenticeships and Skills explained, the needs of care leavers are more pastoral and would, therefore, be better met by the personal advisor appointed by the local authority to support them. He committed the Government to ensuring that guidance to local authorities on their corporate parenting responsibilities would include advice to personal advisers in the event of a college insolvency affecting a young person for whom they were responsible. This amendment supports the delivery of this commitment. It ensures that support and advice is available to those who need it, by adding the director of children’s services in local authorities—or in combined authorities where relevant—to the list of those to whom the education administrator is required to send a copy of the proposals for dealing with the

insolvent college. In this way, the local authority will receive formal notification of what is happening and can trigger the necessary action by personal advisers. I hope that noble Lords will agree to accept these amendments. I beg to move.

Baroness Garden of Frognal: My Lords, I warmly welcome these amendments. I am sure that if the noble Earl, Lord Listowel, were in his place, he would be particularly pleased to see that these were included. It is reassuring to find the director of children’s services being included in the Bill.

Amendment 48 agreed.

Amendments 49 to 51

Moved by Lord Nash

49: Schedule 3, page 34, line 44, at end insert—

“() to any director of children’s services to whom the statement of proposals was sent under paragraph 49,”

50: Schedule 3, page 39, line 38, at end insert—

““combined authority” means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009;”,

““director of children’s services” means—

(a) in respect of a local authority, a person appointed under section 18 of the Children Act 2004;

(b) in respect of a combined authority, a person appointed to discharge functions corresponding to those of a person appointed under section 18 of the Children Act 2004;”,

51: Schedule 3, page 40, line 12, at end insert—

““local authority” has the meaning given in section 65 of the Children Act 2004;”,

Amendments 49 to 51 agreed.

Schedule 3, as amended, agreed.

***Schedule 4: Conduct of education administration:
companies***

Amendments 52 to 55

Moved by Baroness Buscombe

52: Schedule 4, page 42, line 28, after “authority,” insert—

“() to the director of children’s services at the local authority or combined authority in whose area the relevant institution is based, and to any other director of children’s services that the education administrator thinks appropriate,”

53: Schedule 4, page 42, line 38, at end insert—

“() to any director of children’s services to whom the statement of proposals was sent under paragraph 49,”

54: Schedule 4, page 47, line 33, at end insert—

““combined authority” means an authority established under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009;”,

““director of children’s services” means—

(a) in respect of a local authority, a person appointed under section 18 of the Children Act 2004;

(b) in respect of a combined authority, a person appointed to discharge functions corresponding to those of a person appointed under section 18 of the Children Act 2004;”,

55: Schedule 4, page 47, line 45, at end insert—

“““local authority” has the meaning given in section 65 of the Children Act 2004;””

Amendments 52 to 55 agreed.

Schedule 4, as amended, agreed.

Clauses 25 to 27 agreed.

Clause 28: Guarantees where education administration order is made

Amendment 56

Moved by Lord Watson of Invergowrie

56: Clause 28, page 13, line 2, at end insert—

“() Sums guaranteed under subsection (1) shall include statutory pension obligations payable to staff employed by a further education body subject to an education administration order.”

Lord Watson of Invergowrie (Lab): My Lords, Amendment 56 would ensure that staff employed by an FE college continued to accrue statutory teachers' pension scheme and local government pension scheme pension obligations during an education administration. The first of those is self-explanatory, and FE colleges are legally obliged to offer either that or LGPS membership to their staff. The latter is the scheme for the large number of so-called support staff, from learning support assistants, caretakers and catering staff to administrators, cleaners and IT technicians. It would be completely unacceptable if, as a result of an insolvency, staff pension rights or their potential pension rights were to be adversely affected.

When this amendment was considered on Report in another place, the Minister, Mr Halfon, said:

“As with any administration, once the administrator has adopted the employment contracts of the staff they decide to keep on, they are personally liable for the costs of those individuals, such as their salary and their pension contributions. They would take on the appointment only if they were confident that sufficient funds were available to meet the costs. Some pension contributions will continue to be made and benefits accrue”.—[*Official Report*, Commons, 9/1/17; col. 115.]

Although that sounds like a firm commitment, it has not assuaged those with staff directly involved in colleges—namely, the Association of Colleges and the University and College Union. If that is what the Government understand the position to be, I suggest they can have no objection to placing it in the Bill. The Minister in the other place did not provide a reason why that could not be undertaken, and I hope the Minister today will state the case one way or the other.

There are wider issues regarding pensions relating to the Bill. There is concern within the FE sector that the insolvency regime outlined in the Bill is already discouraging partnership and investment by making banks hesitant to lend to colleges. Some colleges are facing issues with proposed mergers arising from area reviews because of difficulties with bank lending linked to local government pension scheme liabilities, which now have to be shown on colleges' balance sheets.

The area reviews under way are aimed at rationalising the FE sector. That process has been more problematic than it might have been, but at least no colleges have been closed thus far. A number have been merged and often that has worked well, with both partners approaching the future with greater confidence. However, that has not always been the case. For various reasons some projected mergers have not been completed, and one such example is currently the subject of some controversy. Other than to say that they are based in the same city, I will not identify the colleges because that might serve to exacerbate an already difficult situation, but the major stumbling block in that case is the pension scheme, more so at one college than the other. The local LGPS has changed the colleges' deficit repayment terms from a 22-year plan with no interest to a 10-year plan with an interest rate of 4.3%. As a result, banks are refusing to advance the necessary funds to allow the mergers to go ahead. Essentially the increasing potential for colleges to become insolvent and the proposals within the Bill mean that colleges are now being viewed as high-risk employers, making both pension schemes and banks look on them less favourably and undermining area review outcomes where these have otherwise been agreed.

I have already mentioned the two schemes that apply. When incorporation began some 25 years ago and colleges were removed from local authority control, part of the deal was that by regulation they were obliged to offer one of the schemes as appropriate to existing staff. For new staff, colleges have often held contracts of employment with a wholly owned subsidiary company that may or may not be part of either the teachers' pay pension scheme or the local government pension scheme—more often, for obvious reasons, it has been “may not”. So, provided that a college keeps paying for current staff, pension costs in respect of new staff will slowly be reduced as they are put on significantly worse pension schemes.

The college area review process has caused problems because often the local fund of the local government pension scheme requires the scheme's debts to be met by the new entity. This becomes more complicated where mergers cross local authority borders, involving different strands of the LGPS. Differing LGPS regions have significantly different policies on past service deficits, and impose differing contribution rates. They might even insist upon any deficits being paid off in full.

An example of this has been brought to my attention by Sandwell College in West Bromwich. The West Midlands local government pension fund has notified all colleges in its region that, because of its interpretation of the Bill, it intends to increase the risk banding of all colleges. Sandwell College has been rated financially outstanding by both the DfE and the SFA and, in the area review, the further education commissioner decided that it should remain a viable independent institution. Despite all that, the West Midlands pension fund still believes that, because of the insolvency regime that forms the bulk of the Bill, Sandwell College is now at high risk, when it is palpably is not.

5.15 pm

The impact of this illogical decision is that the college's deficit reduction pension contributions will rise from the current annual level of £430,000 to £1 million next

[LORD WATSON OF INVERGOWRIE]

year and £1.3 million the following year. Another West Midlands institution, the City of Wolverhampton College, also has a major issue with its pension costs, but that is far from the only region of England where such problems are arising.

All too often when noble Lords propose amendments to Bills, the Minister responsible will knock them down citing unintended consequences. The Minister will surely not claim that the scenario that I have just outlined is an intended consequence of the Bill, so I ask what he intends to do about it. How bizarre it would be for an insolvency regime designed to act as a safety net for situations which the Minister has told us he envisages arising extremely rarely to itself increase colleges' costs and perhaps, in extreme cases, help to push them towards insolvency.

I appreciate that the Minister cannot give a detailed response to these issues today—I do not expect that—but I trust that he will acknowledge that the problem exists and that the Bill is impacting in advance of Royal Assent. I invite him to write to me with his understanding of the issues, setting out what, if anything, he feels able to do to assist colleges caught up in them through no fault of their own. On the basis of what he says, we shall consider whether to revisit this topic at Report. I beg to move.

Lord Storey: My Lords, I support this important amendment. As we said at the beginning and keep underlining, the insolvency regime is highly unlikely to happen, but that does not mean that we cannot give comfort to staff working in further education, particularly at a time when all the changes, area reviews and, indeed, the Bill have created uncertainty when they need certainty. As we have heard, often through no fault of their own, they could be in a poorer financial place. When we have just heard that BHS staff are to get their full pension entitlements, would it not be nice if the Minister would agree the amendment?

Baroness Cohen of Pimlico: I raise another worry that has come to me, which is the reverse. If a public or private company is in danger of takeover, one very good way to prevent that is to introduce a poison pill. The quick way to do it is usually through a very generous pension scheme, or a pay-off scheme for your senior staff. If I were a threatened institution, I might be tempted to consider either of those. It is a hard life, but do we have any means of dealing with threatened institutions which introduce financial measures which will make it much more difficult if they need to be closed or otherwise dealt with?

Baroness Buscombe: I thank all noble Lords who have taken part in this important debate and will do my very best to reply and, I hope, reassure—notwithstanding that I think that noble Lords accept that some of the important issues raised go beyond the scope of the amendment.

I recognise the well-intentioned purpose of the amendment, which is to ensure that those staff employed by a further education body in education administration continue to accrue their pension entitlements. I hope to reassure the Committee that pension rights will be

protected in the unlikely event that the further education body becomes insolvent and is placed in education administration.

In developing the special administration regime, the Committee will see that we have sought to mirror many of the provisions that exist in the ordinary administration regime that applies in the event of a company insolvency. As noble Lords will know, in an ordinary company administration, the administrator has 14 days to decide whether to adopt staff contracts. Those who continue to be employed by the company will continue to be paid in accordance with the contract, including payment by the company of any pension contributions that fall due. These payments are an expense of the administration and continue until the staff are transferred to a new employer, if the business is sold to a new owner, as is often the case, or until their contract is terminated. We propose to adopt similar provisions for an education administration.

We have been clear that, for the education administration to be successful—for the special objective to be achieved—it will be necessary for the Government to provide funding to achieve the special objective: for example, to allow the college to continue to operate while the education administrator prepares his proposals for the college's future. The Bill provides at Clause 25 powers for the Secretary of State or Welsh Ministers to provide that funding, where necessary, whether through loans or grants. In addition, the Secretary of State or Welsh Ministers may choose, where they consider it appropriate, to give indemnities under Clause 26, or guarantees under Clause 28, during the education administration.

Any funding provided under Clause 25 can be used to meet the cost of the education administration, including ongoing staff salaries and associated contributions, such as employer pension contributions. For as long as pension contributions are being made in accordance with staff contracts, pension entitlements will continue to accrue. The education administration changes nothing in this regard. However, once contributions cease, so too will the accrual of benefits. This would happen where staff were made redundant during the education administration. As with any employer pension scheme, once an individual's employment ends they can no longer continue to pay into that scheme, but that does not mean that the benefits individuals have accrued in the scheme at that point are lost. Although they can no longer be added to, the benefits accrued will remain in the scheme and increase, as provided for by the terms of the scheme. Individuals will be able to access these benefits as and when the terms permit.

I believe that the way in which the regime will operate in practice means that the amendment is unnecessary. The Secretary of State may not provide a guarantee during an education administration, whereas it is almost inevitable that the Secretary of State or Welsh Ministers will provide funding through a loan or grant during an education administration. This funding will enable the continued operation of the further education body, and this in turn will mean that pension contributions continue to be made for all staff, whether teachers, caretakers, cleaners or support staff. I hope that that gives some reassurance.

I turn to some of the wider issues raised by the noble Lord, Lord Watson, and the noble Baroness, Lady Cohen. Further education colleges report that they are seeing a marked increase in the risks attached to their LGPS pension deficits. The question is: what are we going to do to counteract that? Further education bodies underwent the triennial revaluation of their LGPS pension deficit positions last year, and are still in the process of receiving and reviewing their results. We are aware of the outcome of a few, but not the majority, of the positions of colleges across England. The picture we have is mixed, with some coming out with results better than anticipated, and a minority even seeing their deficit repayment cost reduced for the forthcoming period. Others are seeing their costs increased. In some cases, that may be because they did not increase substantially in the previous revaluation period. There is residual adjustment being made in this period.

The assessment of repayment obligations is a function of many factors, including fund performance, the size of the deficit and fund managers' overall analysis of the financial position of the relevant college. Reports from colleges received so far suggest that in only a few cases has a pension fund's assessment of the risk of further education insolvency specifically contributed to revaluations with significantly increased repayment costs. Further education bodies have freedoms and flexibilities in law to be financially and operationally independent of government and are therefore classified by the ONS as private sector. Pension revaluations are a matter for negotiation between individual FE colleges and their pension fund, and final revaluations are normally based on a variety of factors as assessed by actuaries.

The noble Lord, Lord Watson, mentioned Sandwell, and I shall reference that and West Midlands. Only two of the 91 LGPS pension funds expressed in response to our consultation that the special objective in the insolvency regime was inappropriately formulated, one—which was actually West Midlands—suggesting that creditor protection should be placed on a par with learner protection and the other suggesting that creditor protection should be prioritised over learners. The others that responded to the consultation supported the premise of learner protection or were silent on the point.

As was set out in our response to the consultation, it is right that learner protection is prioritised and that approach is widely supported, even by other creditors. That is the point of the special objective. A few pension funds also questioned not limiting the length of the time for a SAR. We are clear that this is so as to not constrain the education administrator. In reality, an education administration may well last a similar length of time to an ordinary administration. Ordinary company administrations often last at least 12 months and then are often extended for a further 12 months or so, so an education administration lasting this length of time would not be unusual for insolvency proceedings. Several pension funds, as well as other creditors, sought greater certainty on how a SAR would be funded, and the Government responded by providing additional flexibility in the funding power set out in the Bill, removing the requirement that loans from government be made on a basis of priority to other creditors. So

the Government can choose, in each individual case, to pay for the costs of the SAR up front by a loan and to not require that loan to be repaid unless any funds remained after other creditors had been paid out, meaning that the assets normally available to creditors remain available to creditors in the usual priority. This will be a matter to be decided case by case, but it does not appear that all pension funds have taken this change from the stricter position in normal insolvency into account in their assessment of the risk.

With regard to the wider issues, which go beyond the scope of the amendment, I hope that I have been able to reassure noble Lords. If there are issues outstanding, I shall write to noble Lords and place a copy in the Library for the benefit of all. On that basis, I hope that the noble Lord withdraws his amendment.

Lord Watson of Invergowrie: I thank the noble Baroness for that comprehensive response. On the first part of the response relating to the amendment, to a significant extent she repeated the words of Mr Halfon in another place but, equally, she repeated his failure to give a reason why this should not be in the Bill. She said that the Government propose to adopt similar provisions—

Baroness Buscombe: I may not be able to reassure the noble Lord, but we simply do not feel that it is necessary to have this in the Bill.

Lord Watson of Invergowrie: Yes, but that is not giving a reason. The proposal is very important, and it fits in with the provisions in Clauses 25 to 28. No harm can be done in having it in the Bill; if it gives reassurance to those working within the sector, I would suggest that, in the absence of any reason not to do it, that should be sufficient reason for it to be included.

I accept that the other points that I raised were beyond the scope of the amendment, and I thank the Minister for indulging me in her response. I praise the perspicacity of the officials sitting behind her, who obviously had an answer pretty much prepared, without knowing that I was going to raise these issues. Maybe it just came off the top of their heads—but either way it was impressive and very detailed.

I will want to take some time to consider what the Minister said. There may well be a case for seeking a report from the Government Actuary on funds that have acted strangely because, if I heard her correctly, she said that two out of 91 funds have suggested that they foresee problems as a result of the provisions of the Bill. I had not realised that it was that narrow. There is still the potential for other funds to adopt a similar position. Perhaps they are holding fire until the Bill becomes law. Can the matter be referred to the Government Actuary for a report on the potential outcome as well as the actual outcomes? At the moment, it seems that problems are being created for some colleges. If they are mainly in the West Midlands, so be it, but the point is that it could happen elsewhere. Will she look at that possibility? On the basis of what she has said to me, we will decide whether to revisit this issue. I beg leave to withdraw the amendment.

Amendment 56 withdrawn.

Clause 28 agreed.

5.30 pm

*Clauses 29 to 36 agreed.***Clause 37: Disqualification of officers***Amendment 57**Moved by Lord Stevenson of Balmacara*

57: Clause 37, page 18, line 14, at end insert—

“() The Secretary of State must ensure that the list of disqualified officers is made publicly available.”

Lord Stevenson of Balmacara: I shall, rather sensibly, be brief because I am trying to amend a clause that I think will be deleted in the next group, so there is not much point in me trying to argue persuasively the merit of my case, although I certainly could. Since the point arises again in relation to the new Clause 37, if it is approved by the Committee, we may as well just cover it.

I do not think we are far apart on this. The question is more one of being clear about what is asked for and how it will be made available. The issue raised by the amendment is that where people are disqualified from holding office in the further education sector, there is a risk if their names are not made available because they could pop up in other colleges and might be subject to the same concerns. A list, which is quite common in other areas of insolvency, should be made available. It is not mentioned in the Bill or the new clause. When the Minister speaks, I may be advised that this will be dealt with in regulations. If so, I would be very happy at that stage to concede that this point is not required. I beg to move.

Lord Nash: I intend to go into the detail, which the noble Lord, Lord Stevenson, referred to, of the application of the Company Directors Disqualification Act 1986 to FE bodies when I speak to the amendment that I have tabled to amend Clause 37 by replacing it with a revised version. As we continue to refer to that Act, in this and the subsequent amendment, I propose that we use its acronym, the CDDA.

For consideration now is Amendment 57, which was tabled by the noble Lords, Lord Watson and Lord Hunt, which specifically provides that the Secretary of State must ensure that the list of disqualified officers is made publicly available. This amendment refers explicitly to disqualified officers, which we take to mean members—that is, governors—of an FE body who have been disqualified by the court having been found liable of wrongful or fraudulent trading under the Insolvency Act 1986, as applied to FE bodies that are statutory corporations by Clause 5, or of similar offences. Under Clause 5, the provisions in the Insolvency Act 1986 relating to wrongful and fraudulent trading will apply to governors and other individuals who run FE bodies in the same way as those provisions apply to directors of, and others involved in the running of, companies.

I understand noble Lords' concerns and recognise the intent behind this amendment that a publicly searchable list of disqualified individuals should be maintained, so that it is apparent who should not be appointed as a governor of other FE bodies. However, there is already provision in the CDDA for a register of disqualification orders, which is to be open to inspection,

to be kept by the Secretary of State. Therefore Clause 37, both as currently drafted and as we intend to amend it, already provides for the well-intended purpose that noble Lords are seeking to achieve. On this basis, I hope that the noble Lord will withdraw the amendment.

Lord Stevenson of Balmacara: I thank the Minister for his comments, which I fully accept. I beg leave to withdraw the amendment.

*Amendment 57 withdrawn.**Amendment 58**Moved by Lord Nash*

58: Clause 37, leave out Clause 37 and insert the following new Clause—

“Disqualification of officers

In the Company Directors Disqualification Act 1986, after section 22F insert—

“22G Application of Act to further education bodies

(1) This Act applies to further education bodies as it applies to companies.

(2) Accordingly, in this Act—

(a) references to a company are to be read as including references to a further education body;

(b) references to a director or an officer of a company are to be read as including references to a member of a further education body;

(c) any reference to the Insolvency Act 1986 is to be read as including a reference to that Act as it applies to further education bodies.

(3) As they apply in relation to further education bodies, the provisions of this Act have effect with the following modifications—

(a) in section 2(1), the reference to striking off is to be read as including a reference to dissolution;

(b) sections 9A to 9E are to be disregarded;

(c) references to any of sections 9A to 9E are to be disregarded.

(4) In this section—

“further education body” means—

(a) a further education corporation, or

(b) a sixth form college corporation;

“further education corporation” means a body corporate that—

(a) is established under section 15 or 16 of the Further and Higher Education Act 1992, or

(b) has become a further education corporation by virtue of section 33D or 47 of that Act;

“sixth form college corporation” means a body corporate—

(a) designated as a sixth form college corporation under section 33A or 33B of the Further and Higher Education Act 1992, or

(b) established under section 33C of that Act.”

Lord Nash: My Lords, the amendments we have tabled are to replace the original Clause 37 with a new version, with the intention of fully applying, rather than replicating, the CDDA to FE bodies in England and Wales. Amendment 65 to Clause 43 adds an additional clause—Clause 5, in so far as it relates to Section 426 of the Insolvency Act—to the parts of the Bill which extend to all parts of the UK.

The amendment to Clause 37 removes the delegated power to replicate the CDDA and instead applies that Act in full to FE bodies in England and Wales. This allows the court to disqualify any governors whom it finds liable to wrongdoing, not only from being governors but also from being company directors. In so doing, it fully prevents them from being able to repeat, in a different way, the mistakes they have made potentially at the expense of another FE body. This was not possible with the original drafting of the clause, which allowed us to replicate the CDDA but not fully apply it. The amendment closes a potential loophole in the legislation and more fully protects learners at FE bodies from the actions of any governor who chose to act recklessly.

Wrongful and fraudulent trading are important elements of the corporate insolvency regime, which protects creditors against wrongful conduct by directors. We are looking to achieve the same protection in our own regime for creditors of FE bodies. The responsibilities we propose for those bodies' governors are very similar to their existing responsibilities as charity trustees. Part of that protection is the deterrent effect enshrined in and created by the CDDA regime, which goes hand in hand with the corporate insolvency regime and has done so for the past 30 years. The Charity Commission is wholly supportive of the approach we are taking and sees it as in line with the approach taken for the trustees of charitable companies and charitable incorporated organisations.

The amendment to Clause 43 provides that the provisions of the Bill which extend in their application to all the different parts of the UK include Clause 5, in so far as it relates to Section 426 of the Insolvency Act. Let me be clear: this does not mean that the FE insolvency regime would apply to FE bodies incorporated in Scotland and Northern Ireland. It would apply, as set out in Clauses 5 and 6 when read together with the definitions in Clause 3, only to those FE bodies in England and Wales established under the Further and Higher Education Act 1992.

The amendment would provide that Section 426 of the Insolvency Act extends to the whole of the UK, which would ensure co-operation between the courts of the different parts of the UK. This means that courts in different jurisdictions might be asked to co-operate on a particular case, for example over the enforcement of a charge where assets are located in a different part of the UK to the location of the insolvent FE body; or, in the case of governor disqualification, preventing a governor disqualified in England or Wales becoming a governor in another part of the UK. In view of what I have said, I hope noble Lords will agree to accept the amendments to Clauses 37 and 43.

Amendment 58 agreed.

Clause 37, as amended, agreed.

Clause 38: Information for Secretary of State about further education

Amendment 59

Moved by Baroness Garden of Frognal

59: Clause 38, page 19, line 4, at end insert—

“(2A) Information given under subsections (1) and (2) may include, but is not limited to, information related to—

- (a) the quality of further education courses provided;
- (b) the diversity of persons entering further education with regard to gender and ethnicity; and
- (c) the geographical location of the home of persons relative to the further education body that they attend.”

Baroness Garden of Frognal: My Lords, Clause 38 is about information reported to the Secretary of State about further education. We are proposing to add these additional lines because of concerns that any changes to the further education sector should be monitored. This is to ensure that the changes are not having an adverse impact either on the quality of courses provided or on people accessing further education. We need to ensure that no groups are particularly adversely impacted.

In 2015, the *Independent* reported on concerns that a, “crisis in education funding could see the closure of as many as four in ten sixth-form and further education colleges, according to a new financial analysis”.

In 2014, Sixth Form Colleges Association research showed that the quality of courses was clearly under threat. Its key findings were that over two-thirds of colleges have had to drop courses this year as a result of budget cuts, 15% more than the previous year, and over one-third have dropped sought-after modern language courses. Modern languages will be even more important if we are to continue to communicate with our near neighbours post-Brexit, as well as keeping up trade and good relationships with countries further afield.

More than one-fifth of colleges have apparently lost courses in science, technology, engineering and maths. We are all aware of the shortage of STEM skills. What folly it would be to lose any provision in these subjects. Almost all the colleges in the research, 95%, say they have had to reduce staffing levels; more than two-thirds are teaching students in larger classes; and almost three-quarters say they have had to reduce or remove extracurricular activities such as sport and music. This situation is not healthy for the country, nor for individuals. The amendment would ensure that we were not walking blindly into an irretrievable position, with the loss of valuable educational provision.

I have also added my name to Amendment 62, tabled by the noble Earl, Lord Liverpool, who spoke on this point at Second Reading. There is so much in the Bill about insolvency that we are in danger of losing sight of the institute. Amendment 62 suggests that the institute should promote soft skills. Particularly for disadvantaged young people but actually for any number of other young people, soft skills are important in getting access to jobs and future opportunities. Surely this could profitably be part of the institute's role. I beg to move Amendment 59.

The Earl of Liverpool (Con): My Lords, I am grateful to the noble Baroness, Lady Garden of Frognal, for referring to my amendment and adding her name to it. She is quite right that I referred to this point at Second Reading. I also referred to the House of Lords report entitled *Youth Unemployment in the EU: A Scarred Generation?*, prepared by the EU Committee's Sub-Committee B. My noble friend Lady Buscombe recently

[THE EARL OF LIVERPOOL]

reminded me that for a time, we both served on that committee. As I believe she will respond to this group of amendments on behalf of the Government, I very much look forward to hearing what she has to say.

I make no apology for going back to that sub-committee report because I want to pray in aid paragraph 91 on page 41, which makes the case for my amendment. I should like to read the relevant paragraph, headed “Skills”, into the record:

“Employers suggested that one of the key issues in the area of unemployment was that young people did not have the basic skills to take the available jobs. Marks and Spencer said, ‘we are seeing ... school leavers lacking basic employability skills, such as communication, self-esteem, confidence’. It said that this created a vicious circle where young people were unable to get jobs due to their lack of skills, which then further damaged their confidence. WORKing for YOUTH said that ‘employers tell us in no uncertain terms that it is the soft skills—the communicative skills, the social skills—that they find most lacking by the time people leave school to come to them’”.

I am sure I am not alone in finding that many of my friends in commerce and industry fully endorse this point.

I do not wish to criticise the youth of today, who in some respects are better qualified than ever before, but it is this area of soft skills—or a lack of them—which can let them down when attending job interviews. It is not their fault; since the advent of smart phones, tablets, Facebook and many other apps and games, the young have become almost addicted to looking at their screens and not interacting with others face to face. Indeed, I read an article in a national newspaper at the weekend saying that young people spend an average of five hours a day looking at their screens, so it is little wonder that some communicative and interpersonal skills are to be found wanting.

Surely, the main purpose of this legislation is to seek to provide the youth of today and tomorrow with the broadest set of skills possible to prepare them for full-time employment. This is a golden opportunity to write this amendment or something similar into the Bill. I look forward to hearing what my noble friend the Minister and other noble Lords have to say.

5.45 pm

Lord Stevenson of Balmacara: My Lords, we have an amendment in this group. I support the amendments proposed by the noble Baroness, Lady Garden, and the noble Earl, Lord Liverpool. They make a very good case for additional words in the Bill to reflect what is surely implied in much of what we have been discussing: the ability of this sector to turn out people with not only technical and apprenticeship skills but wider abilities in the pursuit of jobs and the support of UK plc.

Our amendment is based on an assumption that if all this information is going to be collected then it must be used for something and not simply stay in files in the department. It should be used to support the technical and FE sectors and make sure that people are aware of what work is being done there. The quality being provided and assured by this Bill will make a difference to what people might do and which careers they are going to have. One of the great complaints we hear is that so little is done to try to encourage people

towards this sector where good and rewarding courses are on offer, out of which good and rewarding careers can be built. If that is not known, people will not apply, and we will perpetuate the problems we have had in the past. I look forward to hearing what the Minister has to say about these issues. We support the other two amendments in this group.

Baroness Buscombe: Amendment 59 is proposed by the noble Baroness, Lady Garden, and the noble Lord, Lord Storey. It is important that we have a comprehensive analysis of how the further education system is operating in England, including which learners are studying which courses. I agree with noble Lords that analysis of the quality—that is a word I do not think we have used this evening but which we used a lot in Monday in Committee on this Bill—of further education provision and information about learners, including diversity and their geographic circumstances, are important.

However, we believe that this amendment is not necessary. The clause already enables the Secretary of State to require such information if she chooses to do so. The clause rightly gives discretion to the Secretary of State about what information to require from provider organisations. That is the approach in the current legislation we are amending through this clause that underpins a national data system that is working well. The way we gather information is not broken and we are not trying to fix it. We already have the ability to require the information specified in this amendment and already do so. The purpose of this clause is simply to ensure that we can continue to perform a robust and comprehensive analysis of the operation of the further education system in England after responsibility for some aspects of it are transferred to certain combined authorities as part of the wider devolution deals the Government have agreed.

On Amendment 60, I entirely agree with the sentiments of the new clause that would require the Government to have regard to four important aspects of technical and further education. However, I do not believe that the amendment is necessary because they are all things already provided for in the legislation. The duty to, “promote and support the technical and further education sectors”, is at the very heart of the recommendations made by the noble Lord, Lord Sainsbury, in his review. In the skills plan we announced that we would streamline the technical education system by introducing a common framework of routes underpinned by occupational maps. New qualifications will be introduced that are driven by the needs of particular occupations and based on standards designed by employers and other relevant stakeholders. Many of the reforms will be taken forward by the Institute for Apprenticeships and Technical Education under amendments made in the Enterprise Act 2016 after Royal Assent which will come into effect from April this year. The reformed technical education system will be reliant on a strong network of colleges and other providers.

The Government’s area review process has supported a restructuring of the post-16 education and training sector and helped to create more financial stable and efficient providers as well as improved collaboration across the different types of institution. We have announced £170 million of capital funding for the

institutes of technology to make sure that we have sufficient provision targeted at delivering high-quality technical education at higher skills levels that is tailored around the needs of local employers.

With regard to the duty to ensure high-quality apprenticeship programmes, the duty in paragraph (b) of the proposed clause is not necessary. The Government have already made a public commitment to ensure high-quality apprenticeship programmes. We will discharge this duty in a number of ways. The Government have accepted the recommendations of the Richard and Sainsbury reviews that will help ensure that the apprenticeships offered are of a high standard. As noble Lords are aware, the Institute for Apprenticeships and Technical Education—on course to be launched in April—will be an independent body, led by employers and others, which will assure the quality of apprenticeship standards and plans in England. Our apprenticeship reforms have introduced a higher bar through the end-point assessment. The holistic assessment of apprentices will give employers confidence that their apprentices are job-ready by requiring them to demonstrate full competence in their occupation in order to pass their end-point assessment.

The Government's responsibility to ensure high-quality apprenticeships also extends to training. We are working closely with Ofsted, which has a statutory responsibility to inspect the apprenticeships that we fund. We have also created a new register of apprenticeship training providers, with an emphasis on quality. Those with an inadequate Ofsted rating are not eligible to apply. The Skills Funding Agency also ensures the quality of apprenticeship training through its minimum standards and intervention regime.

In paragraph 10 of our draft strategic guidance for the institute, we have made it clear that,

"we would expect the Institute to support employers to develop ambitious plans for good quality standards, not least in sectors where we have evidence of skills gaps and that are priorities for the industrial strategy".

We have also made it clear that:

"Supporting greater social mobility is also a clear Government priority. Apprenticeships can play a key role in helping to deliver this, through ensuring that people from all backgrounds are able to progress".

The next duty is to support the financial stability and good governance of further education bodies. Strong financial management and effective governing bodies are important priorities recognised across the college sector. Many governing bodies have made significant progress in ensuring that they have the relevant finance skills and expertise. A survey of governing bodies, carried out by the Association of Colleges in 2015, found that among independent governors, 17% had a professional background in finance, which was second only to those with a background in education. We know that some colleges still find it difficult to recruit governors with a financial background. This is why the Government are funding the newly launched inspiring governance service to help colleges, as well as schools, find people with the right skills to join their governing bodies. The Government are also supporting the Education and Training Foundation in developing a training programme for governors with an existing finance role.

Where colleges fail in their financial management through poor financial performance or control there is an intervention system in place which can include referral to the further education commissioner. The commissioner will assess the college and make specific recommendations for strengthening the governing body. The further education commissioner has set out lessons for strengthening governance in colleges through his termly letters to the sector.

Finally, the duty to support good-quality careers advice is contained in the proposed new clause. The Government are committed to ensuring that everyone has the appropriate advice and guidance to climb the ladder of opportunity and make the most of their talents. That is why we confirmed in the *Building our Industrial Strategy* Green Paper our intention to publish a comprehensive careers strategy for all ages later this year. The strategy will set out our plans to expand the quality and quantity of careers advice. We will make it easier for people to access the support they need to find a fulfilling route that is right for them, whether that is an academic or technical route or an apprenticeship.

I hope we can all agree that we share the same objectives and that I have provided sufficient reassurance about the steps that the Government are already taking to support these objectives. I therefore hope that noble Lords will not feel inclined to move Amendment 60.

I move to Amendment 62 in the name of my noble friend Lord Liverpool and the noble Baroness, Lady Garden. As set out in the *Post-16 Skills Plan*, the Government's ambition is to ensure that we have young people and adults with the skills, knowledge and behaviours that better equip them for employment in the 21st century. The effect of this amendment will be to prescribe that those skills, knowledge and behaviours include soft skills. I fully understand why my noble friend has put forward this amendment, and I agree that these skills are of paramount importance. The Government are committed to ensuring that everyone has the appropriate advice to climb the ladder of opportunity and make the most of their talents, but that will not happen without these soft skills. I fully understand why my noble friend has put forward these skills, but I am not convinced that placing an express duty on the institute is the most effective way to address them.

One of the fundamental principles of the new technical education reforms will be that employers, supported by education experts, will set the standards required for specific occupations to allow them to shape the content to give students the skills, knowledge and behaviours that employers require. It will be up to employers and relevant stakeholders to determine which soft skills are required for each occupation. That said, I recognise that soft skills will be important to ensure that individuals gain the key employability and occupational skills to get them ready for the workplace, and we are already putting in place measures to encourage this. For example, the Government continue to support schools to offer a broad and balanced curriculum.

We expect all schools to offer their pupils a rigorous curriculum that is supported by activities to develop the soft skills that prepare them for success in modern Britain. For example, extracurricular activities offered

[BARONESS BUSCOMBE]

by many schools help pupils develop various soft skills such as resilience, leadership, teamwork, and social and emotional skills before they leave school at the age of 16. In 2015-16, the Government invested £5 million in character education to fund grants to organisations and schools to test new approaches and to expand existing programmes, new activity to build the evidence base and the first round of character awards to celebrate those schools and organisations leading the way in developing soft skills in young people. In addition, these core employability skills could be developed through a high-quality, substantial work placement which every 16 to 19 year-old student will undertake as part of the new technical education courses.

I take on board what my noble friend has said in referring to the report, which he and I contributed to, by that EU Sub-Committee which talked about the real importance of those basic skills. One of the key words that my noble friend used was “confidence”. Confidence, communication and self-esteem are absolutely fundamental. You can have all the skills in the world, whether they are academic, technical, or whatever, but if you do not have the ability to communicate and present and accept that as an employee you will often be the first contact with that company—your employer—then it is very difficult for you to climb that ladder of opportunity.

In view of this, we will reflect on current approaches and determine what more we can do to support schools and colleges in this area. I hope that the noble Baroness will feel reassured enough to withdraw her amendment.

6 pm

Baroness Garden of Frognal: I thank the Minister for her detailed reply and the noble Earl, Lord Liverpool, and the noble Lord, Lord Stevenson, for their contributions to this debate. I think it will be important when the institute gets under way to ensure that we monitor the effect it is having on further education. Indeed, I also support the aims of Amendment 60.

We really look forward to the long-awaited careers strategy and hope that it is closely followed by careers advice, because a strategy on its own is not a lot of use unless there is something coming hard behind it. I say to the noble Earl, Lord Liverpool, that we will just have to keep trying to find ways to encourage soft skills. I noted the Minister’s words about how important they are and that the Government have them in mind. With that, I beg leave to withdraw.

Amendment 59 withdrawn.

Clause 38 agreed.

Amendments 60 to 62 not moved.

Amendment 63

Moved by Baroness Garden of Frognal

63: After Clause 38, insert the following new Clause—
“Refund of VAT to further education bodies

(1) This section applies where—

(a) VAT is chargeable on—

(i) the supply of goods or services to a further education body,

(ii) the acquisition of any goods from another member State by a further education body, or

(iii) the importation of any goods from a place outside the member States by a further education body, and

(b) the supply, acquisition or importation is not for the purposes of any business carried on by the further education body.

(2) The Commissioners shall, on a claim made by a further education body at such time and in such form and manner as the Commissioners may determine, refund to that body the amount of VAT so chargeable.

(3) Subject to subsection (4), the claim must be made before the end of the period of 4 years beginning with the day on which the supply is made or the acquisition or importation takes place.

(4) If the Commissioners so determine, the claim period is such shorter period beginning with that day as the Commissioners may determine.

(5) Subsection (6) applies where goods or services supplied to, or acquired or imported by, a further education body cannot be conveniently distinguished from goods or services supplied to, or acquired or imported by, it for the purpose of a business carried on by that body.

(6) The amount to be refunded under this section is the amount that remains after deducting from the whole of the VAT chargeable on any supply to, or acquisition or importation by, the further education body such proportion of that VAT as appears to the Commissioners to be attributable to the carrying on of the business.

(7) References in this section to VAT do not include any VAT which, by virtue of an order under section 25(7), is excluded from credit under section 25.

(8) In this section—

(a) references to the further education body are to the further education body acting in that capacity, and

(b) “Further education body” has the same meaning as in the Technical and Further Education Act 2017 (see section 3 of that Act).”

Baroness Garden of Frognal: My Lords, this is a probing amendment because I am well aware that issues of VAT are somewhat outside the scope of the Department for Education. However, it is an issue that keeps recurring and it does no harm to raise it again occasionally. The purpose is to equalise the arrangement for VAT refunds between schools and colleges. Currently, colleges, schools and academies are all required to pay VAT on their purchases but schools are subsequently reimbursed for these costs. The Sixth Form Colleges Association argues that:

“The Government’s historic defence for the absence of a VAT refund scheme for ... Colleges has been that the VAT costs of ... Colleges are taken into account as part of their up-front funding allocation. But with the introduction of the new 16-19 funding formula, all 16-19 providers (including school and academy sixth forms, free schools and ... Colleges) are now funded in the same way, using the same methodology. We welcome the steps that have been taken to equalise the funding arrangements ... Yet schools, academies and free schools continue to benefit from a mechanism to recover their VAT costs, while ... Colleges do not”.

A recent survey indicated that the average college pays some £300,000 a year in VAT. This is obviously a significant amount being taken away from the front-line education of students in a way that is not comparable in schools and academies. Apparently, it would cost around £31 million each year to refund the VAT costs of colleges—but perhaps I should not have mentioned that.

The parliamentary Library briefing on the funding of 16-19 education indicates some key points. In 2010, the Government made a commitment to “fairer post-16 funding”—closing the funding gap between 16-19 education in schools and that in colleges. This was set out in a White Paper called *The Importance of Teaching*. However, the Government do not seem to have followed this up. There was a ray of hope in an Answer given by David Cameron when he was Prime Minister to a Question from Ian Swales who was then the Liberal Democrat MP for Redcar—those happy days. He asked why colleges had to pay VAT while schools and academies did not. The Prime Minister replied that he would look carefully at what had been raised, particularly in respect of free school meals for sixth form colleges and for secondary schools. He added that it was very welcome that children in infant schools would not have to pay for school meals. He then said:

“I will look carefully at his point about VAT”.—[*Official Report*, Commons, 9/10/13; col. 158.]

However, looking carefully did not seem to mean that much happened afterwards.

This seems to be an anomaly which could and should be rectified. It would bring considerable benefit to the education of young people and adults in further education bodies, be they sixth form colleges or further education colleges. I raise it again just to see whether there is a more positive response from the Minister. I beg to move.

Lord Stevenson of Balmacara: My Lords, I support the amendment; it is a probing amendment in a complex area. Of course the matter is not in the hands of the Minister who is due to respond to it, because it is a matter that is jealously guarded by the Chancellor of the Exchequer, who after all is responsible for tax receipts. In my experience, the issue is very complicated, not least because of history and practice. There may be a strand of European ideology built into this as well, which may reach a conclusion in a couple of years’ time—or not, as the case may be.

The basic principles of the VAT system are very straightforward: a trading operation has to trade with the full weight of VAT on it, and expenditure on it is recouped against subsequent users and from those who purchase the goods and services provided. Those things that are not deemed to be trading do not attract VAT, but equally they cannot be redeemed against the VAT that has been incurred in the purchase and preparation of them.

As the noble Baroness, Lady Garden, said, those bodies exposed to the full weight of VAT on their non-trading activities suffer a 20% penalty for the work that they are doing, and that is money that could be properly reinvested. That is a sound case and I am sure it has exercised Ministers before. I look forward to hearing the response.

Lord Nash: I thank noble Lords for this amendment, which calls for a change in tax policy. It seeks to allow FE colleges to claim refunds of VAT incurred on their non-business expenditure. As noble Lords have acknowledged, tax policy is a matter for the Chancellor and the Treasury. Any tax changes are considered by

the Chancellor in the normal way and announced in the context of his Budget judgment, as he will be doing next week.

I understand this call for additional funds from the Treasury for FE, but there are clear implications when thinking about such a change. It is estimated that it would cost the Exchequer about £145 million per year. That cost would have to be covered somewhere in the economy—for example, reducing public expenditure on other government priorities. In addition, the VAT treatment of FE colleges is no different from many other public bodies.

However, in view of all that the noble Baroness said about the previous Prime Minister’s comments about looking carefully at the matter, I will go back to see what further I can say by way of explanation for the status quo. I hope that in view of my comments, she will feel able to withdraw her amendment.

Baroness Garden of Frognal: I am grateful to the Minister for his careful looking and I thank the noble Lord, Lord Stevenson, for his support for the amendment. I beg leave to withdraw the amendment.

Amendment 63 withdrawn.

Amendment 64

Moved by Lord Hunt of Kings Heath

64: Before Clause 39, insert the following new Clause—
“Constitution of further education corporations

- (1) Section 20 of the Further and Higher Education Act 1992 is amended as follows.
- (2) After subsection (4) insert—
“(5) An instrument must provide for the role of the Clerk to include providing advice to the corporation with regard to matters including—
(a) the operation of its powers,
(b) the conduct of its business,
(c) matters of governance practice, and
(d) general procedural matters.””

Lord Hunt of Kings Heath (Lab): My Lords, I remind the House of my interest in that my wife is a consultant at the Education and Training Foundation.

The very fact that we have been debating insolvency measures in the Bill underpins the responsibility of the boards of FE institutions. I know that the noble Baroness, Lady Buscombe, referred to the issue of financial competence and the initiatives being taken on governance, which are welcome. We should certainly pay tribute to the public-spirited citizens who undertake these roles, which have become ever more onerous in the past few years.

The noble Lord, Lord Nash, will know that my main experience is in the National Health Service. Between 2011 and 2014, I chaired the board of an NHS foundation trust. In many ways, the way that FE colleges and NHS foundation trusts have developed is similar. They are very similar institutions: they both provide a public service and are almost entirely dependent on public funding, although the routes by which it reaches the institutions are a little different, but increasingly

[LORD HUNT OF KINGS HEATH]

they have to stand on their own two feet and, if you like, the buck stops with the board. That is very different from the way that FE used to be, with institutions that were owned by the local authority. It is the same for NHS foundation trusts.

However, there is a difference in governance. In the NHS there is essentially a two-tier structure. As chairman of the board of directors, I was appointed by the governing body, which was elected by the members of the foundation trust—in my case, 100,000 of them—who were essentially patients, members of the community and staff. As chairman of the board of directors, I had regularly to account to the governors in public meetings every other month and meet them individually as well, as did the chief executive—whose appointment had to be ratified by the governing body—the executive directors and the other non-executive directors. I and the non-executive directors had a term of office that was subject to reappointment, but only at the pleasure of the governing body.

We also had a senior independent director, a non-executive director to whom any member of the board could go if they were concerned about anything to do with the running of the board, the performance of the chairman or indeed the performance of the chief executive. When outside regulators came to review the performance of the organisation, they would be able to talk directly to the senior independent director. In addition, we had a highly qualified and experienced company secretary who was charged with ensuring that the trust acted within the law and exercised good governance, and acted as an adviser to the chairman on difficult issues, including the performance of the chief executive and the executive directors. This was not an issue in my case but if, for instance, I as chairman had decided along with my non-executive colleagues that we wished to remove the chief executive, it is to the company secretary that we would have gone, and he would have advised us on the way to do it. He would have done so without informing the chief executive, except where due process would at some point be required.

Looking at governance in further education, I just do not get the sense that there is that robustness. In too many colleges, the members of the governing body tend to be self-perpetuating—it was interesting to hear from the noble Baroness, Lady Buscombe, about financial literacy among those governors—the principals often play too much of a role in deciding who the members of the governing body will be, and the board's members are of course accountable to no one but themselves and do not meet in public. So there is very little transparency about the performance of the boards of FE institutions, and there has to be some suspicion that, at least at some colleges, they do not exercise challenge and scrutiny as much as they should.

This therefore makes the role of the clerk to the governing body very important. However, there is a problem, to which I referred at Second Reading. The Minister will know that one of the reasons we are having these insolvency provisions is that some institutions have got themselves into trouble financially. We also know that in some cases that is because principals

have decided to undertake ventures that, if they were subject to proper scrutiny, I do not think they would have been allowed to. There is an instance in Birmingham where basically a principal was going on foreign adventures—there was a fashion in FE for colleges to try to open up and do deals abroad—without the kind of expertise and scrutiny that we are talking about, and almost all those adventures ended up in trouble. There is evidence that the college's board of governors did not exercise due scrutiny and diligence when it came to those issues.

There was a paper by the former Learning and Skills Improvement Service identifying a number of issues with governance. It stated that in FE there can be too much polite consensus to avoid conflict, with insufficient challenge, a business focus at the expense of core educational performance, a taking on of big risks but not managing them, with the clerk being undervalued in being able to stimulate and facilitate good governance. This is where I come to the role of the clerk. These days, I do not think the word “clerk” aptly describes what needs to be done. Unfortunately, some principals seem to have mistaken the role of clerk for that of secretary, and that is a big problem. At national level, I have no argument at all with the Minister's department, the FE commissioner or Ofsted, all of which have on a number of occasions given their support to professionally qualified clerks at a high level.

On the ground, there is a suspicion that that has not always been reflected. There is some evidence that, when clerks leave, it is not unusual to see the role offered at a lesser salary with lesser hours and for it to be offered internally, to an administrator. Unbelievably, there have been reports of examples of the principal's secretary being asked to undertake that role. That is completely unacceptable, and I am surprised that the national regulators have not ruled on that. It reflects the fact that governing bodies are poor and simply do not challenge principals when they make decisions that are totally unacceptable, such as that one.

6.15 pm

At the end of the day, clerks have to be able professionally to advise the board on difficult issues, and they have to have the strength to stand their ground when the going gets tough and ensure that boards act within the law. There can be occasions when principals want to do something which clerks know that the board ought not to do—but the clerks have to feel that if they stand their ground the system will come and support them. All too often, the evidence is that clerks who stand their ground in the end lose their job, because essentially the principal is able to restructure them out or get rid of them.

I know that this is very much down to the governance rules that are set, the way in which regulators review governance and the lead that the department can give. There is some legislation already, but it might help the position of clerks if we put something in the Bill that would get home to the governing bodies that they need to have clerks who are qualified, who can give them impartial advice and whose position is protected, if they need to act when they believe that the principal is taking the college down the wrong route.

Of course, this is a way in which to discuss governance. The Minister made sympathetic comments on initiatives that are being taken. It particularly relates back to ensuring that good quality governors are appointed, and I applaud the Government's efforts in this. But somehow a stronger governance structure has to be built to make sure that these institutions are well governed in what has become a very difficult climate. None of us should underestimate the difficult climate in which FE colleges have to operate. I want to make sure that they have the strongest possible governance. I beg to move.

Lord Storey: My Lords, I support the amendment. The noble Lord, Lord Hunt, has spoken wise words. In local government, the quality of officers advising elected members is hugely important—the independence of those officers and their ability to challenge and scrutinise with neither fear nor favour. In further education, we are talking about multimillion pound budgets. You have only to flick through the pages of the further education press to see some of the horrendous accounts of what has gone on in the past. I do not want to go into those lurid details; I shall leave it to people to have a look at them if they so desire.

What that suggests to me is that the governing body of those institutes has to be of the best possible calibre; it cannot be a friend of a friend, not wanting to offend the principal. It is often difficult to attract calibre governors, so the role of the clerk cannot be some sort of part-time lesser role; they have to be people who are confident in themselves. Those three words—“scrutiny, challenge, transparency”—are really important. This is the tail-end of Committee, but to get the Bill right is important. The points that the noble Lord, Lord Hunt, has made are also important. I hope that between now and Report we can look at this in a little more detail, because it is crucial.

Baroness Cohen of Pimlico: I support the amendment. I am new to the business of voluntary governorship in state-funded institutions. I have been fortunate for most of my working life to have been in organisations that had admirable company secretaries, who had the equally difficult task of standing up to chairmen and chief executives—but these were well-trained, qualified and well-paid people. The problem in all education is, of course, that anything that is not a teacher reads like an unmerited overhead.

I am not quite certain what I should propose as a remedy, but this point is key. Many of the messes that schools and further education institutions get into have to do with governance, and that has to do with a clerk who is not actually qualified and probably not properly paid.

Lord Stevenson of Balmacara: I hesitate to speak because I can see that a Division is pending and it would be nice for us to be able to finish at just the right point, but I realised when my noble friend was speaking that I was that clerk. In an earlier career, I was the clerk of an FE college. The spectre of the buccaneering principals who were around in FE at that time came crowding back, and I felt I ought to share that with the Committee. The problem was that these institutions

were very often the creatures of the local authority that owned and fronted them, and there were pressures at play. The principal wanted to be the person who was the main conduit to the local authority and would not brook any interference. Absent the principal, the company secretary, who was indeed a demon of great skill and ability to maintain her position in the structure, took over and ran the place very adequately. But with the growth of corporate structures and, now, the whole question of how that must be used to mature and operate organisations of some scale and scope, I would have thought there must be a way of ensuring that, when corporate structures such as companies are established, there has to be a company secretary, and that company secretary must fulfil at least the minimum standards required of those who operate in the private sector. So there may be a way forward.

I agree entirely with what my noble friend said: the pressure to keep those who are academics—and who should be academics—away from trying to do things that they are patently unable to do, just because they happen to occupy the position of principal or vice-principal, has been an enduring theme with those who have worked in the education sector at FE and HE level. It is only recently that appropriately qualified and suitably remunerated members of that profession have been operating in the way that they should. I support the amendment.

Lord Nash: My Lords, I recognise the very important role played by clerks as expert advisers to governing bodies of further education institutions, and I pay tribute to the contribution by clerks and governing bodies up and down the country. As the responsibilities of those bodies increase, we must also support the development of the capability and professionalism among clerks. As the Minister responsible for governors in schools, I can completely see the importance of this matter. That is why we support the Education and Training Foundation in the delivery of a new professional development programme for clerks to be rolled out this year. Sector representative bodies also deliver a range of activities to support clerks, including a very active clerks' network and best-practice materials. The ETF is also supporting the increased professionalism of clerks through the improving clerk to company secretary programme to take account in changing college structures and clerks' responsibilities, whereby clerks can attain company secretary qualifications. We are supporting chairs of boards of governors through the national leaders of governance programme, where experienced chairs mentor others who need support.

There is a well-established statutory requirement for the instrument of an FE institution to make provision for there to be a clerk, and for provision for the responsibilities of that role to be set out in the instrument. That is set out in Schedule 4 to the Further and Higher Education Act 1992. This means that the importance of the clerk's role, which I know is recognised by members of this House, is also reflected in law.

While further statutory prescription in relation to duties and responsibilities of the clerk may appear attractive, I do not believe that it is the right approach in this case. I will elaborate. The amendment proposes a few high-level matters relating to advice that clerks

[LORD NASH]

should provide and, as proposed, overlooks certain features that would reasonably be expected to be an important part of any clerk's role. These include, for example, independence from the senior management team at the institution and a duty to take appropriate action if the board, the chair or one of the committees appears to be at risk of acting outside their powers or to be proposing actions that may be unlawful.

The 1992 Act sets up high-level requirements for the instrument and articles, including a requirement for there to be a clerk and for the clerk's responsibilities to be set out in the instrument. Since 2011, colleges have not required the consent of the Secretary of State to amend their instruments. The detailed content of the instrument, including the details of the responsibilities of the clerk, now largely rests with the governing body of the FE corporation rather than with Ministers.

In my view, the existing balance between the requirements set out in legislation and the responsibilities of the governing body is the right one. We should be very careful about removing from colleges the necessary flexibility that enables governing bodies to adapt and tailor their governance arrangements to fit the circumstances of their institution. That is particularly important in a sector as varied as further education. It is obviously important to guard against the possibility that greater prescription has the unintended effect of undermining the responsibility and thus the accountability of governing bodies. The careful balance set out in the current legislation in relation to matters of governance, including in respect of the role of the clerk, remains important going forward.

Principals do not appoint board members. Governors are appointed to the board by the board itself. A good principal will have a strong interest in having a capable body. When there is a material pre-existing relationship between the principal and a member of the board, it should be declared as part of the appointment process.

The Association of Colleges' model job description states that the clerk should be independent of the senior management team and should provide unbiased advice.

We do not think this amendment would add materially to the conduct of clerking or to governing bodies of FE colleges. We believe clerking is generally working well, and the quality of clerking has undoubtedly improved significantly in recent years. However, as I have spent part of the last four years attempting, I think with some success, to raise the importance and effectiveness of governance in schools, and in view of what noble Lords have said, I will go back and investigate their concerns and see what more we might be able to do in this regard, because it is important. Legislation may be a very blunt instrument, but I will go back to look at it further.

Lord Hunt of Kings Heath: I am very grateful to the Minister. I beg leave to withdraw the amendment.

Amendment 64 withdrawn.

Clauses 39 to 42 agreed.

Clause 43: Extent

Amendment 65

Moved by Lord Nash

65: Clause 43, page 20, line 4, leave out "extends" and insert "and section 5 so far as it relates to section 426 of the Insolvency Act 1986 extend"

Amendment 65 agreed.

Clause 43, as amended, agreed.

Clauses 44 and 45 agreed.

Committee adjourned at 6.28 pm.