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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 18 July 2017

2.30 pm

Prayers—read by the Lord Bishop of Newcastle.

Oaths and Affirmations

2.36 pm

Lord Filkin and Earl Baldwin of Bewdley took the oath, and signed an undertaking to abide by the Code of Conduct.

Sexual Offences Act 1967

Question

2.37 pm

Asked by Lord Lexden

To ask Her Majesty's Government whether they are planning to mark the 50th anniversary of the Sexual Offences Act 1967.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, we have a whole programme of events during July to celebrate both Pride and the 50th anniversary of the partial decriminalisation of homosexuality. Ministers will be holding events with stakeholders throughout the month and departments will be flying the rainbow flag above their offices. We will also be releasing videos to celebrate the progress we have made over the past 50 years and demonstrate our support for Pride.

Lord Lexden (Con): I thank my noble friend for her Answer, which underlines the importance of this anniversary. Does she agree that although an immense amount has been achieved over the period of 50 years since 1967, there is more still to do, most notably, perhaps, the extension of same-sex marriage to Northern Ireland, where, as opinion polls consistently show, widespread support exists for it? Perhaps it would be appropriate today also to salute the memory of the late Lord Arran, who campaigned so tenaciously from the Liberal Benches for his reform legislation, which completed its passage through this House on 21 July 1967. He had a second Bill on the protection of badgers, which did not pass. Asked why his first Bill succeeded and the second failed, he replied cheerily, and a little irreverently, "Well, you see there aren't many badgers in the House of Lords".

Baroness Williams of Trafford: My Lords, there are not many badgers in the House of Lords but one might see the odd mouse. My noble friend makes a very valid point. Northern Ireland might peer south to southern Ireland, which has just elected its first gay Taoiseach, Leo Varadkar, the son of an Indian Immigrant. That is progress indeed. I join my noble friend in paying tribute to the late Lord Arran. Civil partnerships have been legal in Northern Ireland since 2004, but we

encourage it to introduce equal marriage. There are currently two challenges to bans on same-sex marriage in Northern Ireland. Ultimately, it is a devolved matter but we continue to encourage it.

Lord Cashman (Lab): My Lords, I join with the words of my noble ally Lord Lexden. In continuing the process of righting wrongs, will the Government exercise the power contained in Section 166 of the Policing and Crime Act 2017 and, in so doing, add to the list of homosexual-related offences for which a living person can obtain disregards and pardons, most notably the grounds of solicitation by men and importuning and public order offences? That indeed would be a cause for great celebration.

Baroness Williams of Trafford: I also pay tribute to the noble Lord, Lord Cashman, for the work that he did with me through the passage of that legislation. It was a very proud day indeed when the House of Lords made those things possible, although the other place may have received the accolades. The noble Lord is absolutely right that we need to look at other offences. However, it is also important that our consideration of them is robust as we do not want to create unintended consequences: that is, disregards for offences which would still be offences. There was a slight interruption with the general election although officials had started to engage with Stonewall. They have consulted the document that Professor Johnson kindly provided and they are again arranging meetings with Stonewall. I hope to update the noble Lord and the House in due course.

Baroness Barker (LD): My Lords, a "bona" question, if I may be so bold. Over the last 50 years, those who sought equality for LGBT and trans citizens—they are still waiting—often had to take their cases to the European courts, and those cases were fought vociferously by both Labour and Conservative Governments. Will the Minister say whether the rights and principles of the European Charter of Fundamental Rights will be incorporated into a British Bill of Rights, or will future campaigners for equality have to work without that level of international protection?

Baroness Williams of Trafford: My Lords, what that looks like will be the subject of our consideration in exiting the EU. However, the UK is recognised as the global leader on LGBT rights, and we are very proud of that. We will continue to build on that which we have built up—the noble Baroness can have no doubts about that.

Lord Collins of Highbury (Lab): My Lords, the progress we have made in this country is a welcome result of the 1967 Act. But a sad legacy of the criminalisation of homosexuality is of course that it is still illegal in many Commonwealth countries. Will the Minister assure the House that when we come to the Commonwealth Heads of Government Meeting, not only will the FCO and DfID work together to include everyone by supporting movements for decriminalisation, but this will be a cross-Westminster effort to ensure that we push this well up the agenda?

Baroness Williams of Trafford: The noble Lord is right to raise that point. First, I commend the Church for the work it is doing—I know that the most reverend Primate and other prelates are already doing work on this and will continue to do it. However, as the noble Lord will know, the former Prime Minister raised this matter at the Malta CHOGM in 2015, and we are already well on with thinking about how, when we host that in 2018, we can build on the progress made in 2015. We have called on certain Commonwealth countries, of which there are quite a few, to review any laws they have which criminalise LGBT people.

Lord Patel of Bradford (Lab): While I echo the sentiments expressed about Commonwealth countries, can I bring the Minister back to the UK? Will she say what the Government are doing with respect to transgender people in our prisons, where there has been a serious spate of suicides because of the way they are treated?

Baroness Williams of Trafford: The noble Lord is right to raise that. Certainly, in immigration detention transgender people are recognised as people at risk, and putting them in detention is avoided wherever possible. It is absolutely right that everybody in prison is treated properly, and the Government continue to look at this.

Southern Africa: Trading Relationships

Question

2.44 pm

Asked by **Lord St John of Bletso**

To ask Her Majesty's Government what steps they are taking to promote trading relationships with Southern African countries.

Baroness Sugg (Con): My Lords, the Department for International Trade has a dedicated trade team working across southern Africa to provide support to British firms looking to do business in the region, building on total trade with the UK of £12 billion in 2015. The department works with partners across the region to strengthen our trading relationships. Indeed, my noble friend Lord Price, the Minister of State for Trade Policy, is travelling to South Africa and Namibia this week for discussions with Ministers.

Lord St John of Bletso (CB): My Lords, I am grateful to the noble Baroness for her reply, and I warmly welcome her to her Front-Bench position as a Minister. With her long interest in international affairs, she is certainly well qualified for the role. Given the creation last year of the African free trade zone, with 26 countries representing in excess of 620 million people, can the Minister elaborate on the steps being taken to consolidate and develop the Commonwealth network in southern Africa? To what degree are Her Majesty's Government synchronising trade with aid?

Baroness Sugg: I thank the noble Lord for his gracious welcome. I know that his Question stems from a long-standing interest and expertise in Africa. We welcome all initiatives to integrate African trade. At the G20 last month, the Prime Minister unveiled a package of new measures to boost trade with Africa and ensure that our aid spending benefits trade, ranging from help to integrate into global financial markets to working with the World Bank to nearly double the capacity of the Dar-es-Salaam port. The CDC Act, which your Lordships passed earlier this year, enables the UK to invest more in Africa to build on the 500,000 jobs that it helped to create there in 2016.

Baroness Hooper (Con): My Lords, to what extent have our embassies and high commissions been equipped to deal with the proposed new trade relationships?

Baroness Sugg: The Department for International Trade is working with all embassies and high commissions. We have nearly 1,500 staff overseas and they are working closely with Governments to ensure that our trade spend is absolutely aligned with our aid.

Lord Oates (LD): My Lords, I too welcome the Minister to the Dispatch Box. When did the Government last hold meetings at ministerial level with the current chair of the Southern African Development Community in South Africa, and when did officials of the Department for International Trade last hold discussions with their SADC counterparts on this issue?

Baroness Sugg: I thank the noble Lord for his welcome. As I mentioned before, my noble friend the Minister of State for Trade Policy is in South Africa and Namibia this week. He will meet the SADC secretariat as well as Trade Ministers across the region. In addition to those talks, at the Commonwealth Trade Ministers' meeting in March he met SADC counterparts, and there continue to be ongoing meetings with officials.

Lord Collins of Highbury (Lab): Plenty of opportunities will arise from Brexit to develop our relationships with Africa. However, there will also be substantial threats, including the development within the EU of EPAs, which of course have a huge development side to them, and we will not be able to influence those. Can the noble Baroness assure us that in future talks on Brexit these issues will be embraced by the Department for International Development and by other departments with an interest in development as well as in trade?

Baroness Sugg: I thank the noble Lord for his question. I read with interest the Africa APPG report, which raised many of these issues. We have been a long-standing supporter of EPAs and will continue to be so. They put our trading relationship with Africa on a more equitable, mature and business-like footing. As we leave the EU, we will, first, ensure continuity with our trading partners. In the longer term, we will have the opportunity to negotiate new trade deals, and we will look to strengthen our trading relationships with developing countries in the future.

Lord Popat (Con): My Lords, I too welcome my noble friend to the Dispatch Box for the first time. Does she agree that a vital part of our trading arsenal is visits by Ministers and delegations to the continent of Africa? We see many visits to Asia but very few, if any, to Africa. Quite often, these visits are to do with DfID—in other words, they are to do with aid, not trade. Can she encourage more Cabinet Ministers to lead from the front and start visiting Africa?

Baroness Sugg: I agree with my noble friend, who speaks from his experience as the Prime Minister's envoy to Uganda and Rwanda. Ministerial visits and delegations of course lead to improved relations and progress on commercial trade deals. I have already mentioned that my noble friend the Minister of State for Trade Policy and Rory Stewart, the Minister for Africa, were in the region last week attending the Great Lakes trade summit. The Chancellor visited South Africa last year, but there are opportunities to do more, and I will pass on my noble friend's request.

Baroness Royall of Blaisdon (Lab): My Lords, I too welcome the Minister. Are the sustainable development goals at the core of all discussions on increased trade with Africa and the rest of the Commonwealth? I very much hope that they are.

Baroness Sugg: I reassure the noble Baroness that the sustainable development goals are always at the core of all our discussions.

Lord Cormack (Con): Does my noble friend agree that if my noble friend Lord Popat's suggestion were followed, and Cabinet Ministers did this productive work, there would be less chance of them falling out round the Cabinet table at home?

Baroness Sugg: As always, we absolutely encourage visits across all our trading partners, and I am sure that they will continue to do so.

Nigeria Question

2.51 pm

Asked by **Baroness Cox**

To ask Her Majesty's Government what is their assessment of recent developments in the Northern and Central Belt States in Nigeria.

Baroness Goldie (Con): My Lords, we are deeply concerned by recurrent clashes involving pastoralists such as herdsmen and local farmers over land, farming rights, grazing routes and access to water. These conflicts, which are exacerbated by climate change and population growth, cause immense suffering to both the pastoralists and farming communities in central and northern Nigeria. We welcome President Buhari's commitment to ending these attacks and call on all parties to find a peaceful solution to the causes of these incidents.

Baroness Cox (CB): My Lords, I welcome the Minister's sympathetic reply, because I have visited villages where Fulani have killed Christians and destroyed their homes—I witnessed their suffering. Is she aware of a new and disturbing development of severe threats by radical northern youth groups, who have ordered the predominantly Christian Igbo tribe to leave all parts of northern and eastern Nigeria or face dire consequences? Will Her Majesty's Government ask the Government of Nigeria what measures they are taking to fulfil more effectively their duty to protect all religious and ethnic minorities in Nigeria?

Baroness Goldie: I thank the noble Baroness for her question, which I know is rooted in a deep knowledge of the area and the problems that exist there. The call by the northern youth groups for the predominantly Christian Igbo to leave has been taken very seriously by the Nigerian Government. Acting Nigerian President, President Osinbajo, has held exhaustive and wide-ranging consultations with stakeholders across the country—not just in the affected north but also in the south-east. National discussions have now moved on to the broader issue of restructuring Nigeria. As a result, tension around the initial statement by the northern youth groups has decreased significantly in the past few weeks, with the group itself moving towards rescinding the Osinbajo call for the Igbo tribe to leave. However, to our knowledge, it has not gone quite as far as that yet. The British high commission in Abuja will continue to monitor the situation carefully.

Baroness Northover (LD): My Lords, the Minister noted that climate change is contributing to the conflict in this region. Does she agree that long-term development is needed here, and might it be worth pointing out to the American President that tackling climate change helps promote global stability?

Baroness Goldie: I thank the noble Baroness for her question. We are all aware of the term "desertification"—a very long word for the drying up of ground in territories in Nigeria—and, certainly, that seems to be attributable to climate change. Across the globe, major powers recognise that there is an issue, and the United Kingdom is doing everything it can to contribute to both the recognition of climate change and its alleviation. I am sure that that will have a beneficial effect across areas of the world, including Nigeria.

Lord Anderson of Swansea (Lab): My Lords, the United Nations predicts that, by the year 2050, the population of Nigeria will more than double, to 411 million, making it the third most populous country in the world. Is this increase not bound to lead to further internal conflict and again to mass emigration? I congratulate the Government on what they have done in co-hosting the recent family planning summit in London, but will they deplore the position of the Trump Administration in withdrawing substantial funds from their family planning programmes?

Baroness Goldie: I thank the noble Lord, Lord Anderson, for his question. Obviously, my responsibility and that of my colleagues is for the position of the United Kingdom Government, which have a positive

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 record in relation to Nigeria. The estimates of population are extremely difficult to quantify, and reliable data are almost impossible to obtain. However, I have no doubt whatever that there is a significant population in Nigeria—it is thought to be the largest African country—and the noble Lord is right to allude to the possible consequences of population increase not being matched with education. The United Kingdom Government, both through our Nigeria Stability and Reconciliation Programme and through our significant humanitarian aid, are making a positive contribution to try to address and alleviate these challenges.

The Archbishop of Canterbury: My Lords, does the Minister agree that there needs to be work both at grass roots and at the highest level? Many of the signs we are seeing in Nigeria at the moment—particularly the threats against the Igbo, which are happily diminishing—bring back to mind the terrible events immediately prior to the outbreak of war in 1967? What work are the British Government doing with partners locally, through their exceptionally gifted high commission and DfID staff, to work with grass-roots organisations, including religious organisations, which are capable of reaching the local leaders at the most vulnerable level?

Baroness Goldie: I thank the most reverend Primate for his pertinent and important question. In relation to humanitarian aid, certainly the United Kingdom Government last year managed to donate £81.8 million, which provided food assistance, treatment for severe malnutrition to more than 39,000 children and access to clean water and sanitation to more than 135,000 people. This year, the Government will increase that support to £100 million, again to reach the most vulnerable people in north-east Nigeria. In addition to that, we are also providing £30 million of aid to help those affected by the crisis in Chad, Niger and Cameroon. The most reverend Primate raised an important question about religious belief. This Government are firmly committed to promoting and protecting the right to freedom of religion or belief around the world. In Nigeria, that right to freedom of religion is protected by the constitution. However, Boko Haram seeks to undermine this right by attacking Nigerians of all faiths and has caused immense suffering in both Christian and Muslim communities in Nigeria and neighbouring countries. The United Kingdom Government do everything they can to support the Nigerian Government in adhering to the terms of their constitution and in implementing and respecting, in a practical sense, that essential freedom of religion and belief.

Lord Collins of Highbury (Lab): My Lords, the Minister has referred to the 2014 programme and the Nigeria Stability and Reconciliation Programme, and last year the Government reported that £39 million had been spent on it. Picking up on the most reverend Primate's point, certainly there has been expenditure on local groups, but have the Government prioritised the implementation of the 2014 programme and using that fund on a much broader basis?

Baroness Goldie: I have explained how the humanitarian aid is being deployed. The Nigeria Stability and Reconciliation Programme has brought together important programmes to help reduce conflicts and build bridges between communities. It has certainly brought together religious, traditional and community leaders, NGOs, police, security services and civil society to discuss and act on conflict issues. That is positive progress. The noble Lord will be aware that the programme also funds a number of peace clubs in various states, including Kano and Kaduna. That is a positive contribution.

Baroness Berridge (Con): My Lords, some of those affected by the conflict in the north of Nigeria are in fact the friends and relatives of British citizens, with hundreds of thousands of them within the British Nigerian diaspora. As well as meeting with Ministers in Nigeria and working through the high commission, could the Foreign and Commonwealth Office reach out specifically to that diaspora in order to hear their views about what is going on in the north of the country and how it is affecting their families?

Baroness Goldie: I thank my noble friend for raising the issue, and she makes a good point. There are already good channels of communication through the embassy and our diplomatic connections, but I am sure that this is an issue to which our diplomatic presence will pay close attention. It is a very positive suggestion.

Schools: Recruitment and Retention

Question

3 pm

Asked by *Lord Addington*

To ask Her Majesty's Government, in the light of the recommendations on pay made by the School Teachers' Review Body, what action they will take to increase teacher recruitment and retention.

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, teaching is and remains an attractive graduate profession. Despite the dramatic improvement in the economy, more teachers are in our schools than ever before, over 15,000 more than in 2010. However, we are not complacent, which is why we continue to invest, including more than £200 million this year, in attracting the brightest and the best into teaching and on tackling the areas that cause teachers to leave the profession, in particular that of workload.

Lord Addington (LD): My Lords, I thank the Minister for his Answer. Figures I have obtained show that between 2010 and 2015 we trained 117,000 teachers and that we have lost 27,000 of them. Does the Minister think that this is due primarily to workload or to pay?

Lord Nash: It is quite clear that teacher retention rates have remained pretty stable over the past 20 years. We live in a world where people do move between jobs a lot, but there is no evidence to suggest that teacher retention has declined in recent years. Moreover, we are doing a great deal of work with teachers, including running an active programme in order to reduce workload.

Baroness Sharples (Con): My Lords, is not the great increase in the number of pupils with English as a second language making life very difficult for teachers?

Lord Nash: As we have discussed before, there is no doubt that initially pupils who either do not speak English or have poor English do make life difficult for teachers, but the evidence is clear that those pupils, once they can speak the language—which many of them do relatively quickly—can be, to put it bluntly, much more aspirational. As we now all know, although we spend a lot of time compiling statistics on what we call English as additional language pupils, it is in fact white working-class pupils who are falling behind dramatically in our schools. That is why we are making such a substantial investment in coastal towns, former mining villages and other such communities to improve education.

Lord Knight of Weymouth (Lab): My Lords, I refer the House to my interests relating to teacher recruitment through my work at TES Global. The Minister says that he is not complacent. When I look at the statistics for teacher retention and take out retirement because the number of those retiring has been reducing, I can see that the number leaving the service prematurely has been increasingly significantly every year since 2012. The figure rose from 28,630 in that year to 39,980 in 2016. To repeat the question: is this because of workload pressure or because of pay?

Lord Nash: I know that the noble Lord is very experienced in this area, but he has picked one particular statistic. The fact is that returners to education employment have increased by 8% since 2011 and, as noble Lords will know, this year our recruitment programme has run substantially ahead of last year. We have again recruited 100% of primary teachers and 89%, as opposed to 82%, of secondary teachers.

The Earl of Listowel (CB): My Lords, will the Minister consider reviewing the system of continuing professional development for teachers with a view to streamlining and strengthening it? Only last week I heard from the leader of a multi-academy trust that he thought that there are too many providers in this area and it is not working efficiently. Does the Minister agree that consistently excellent levels of continuing professional development could have a significant impact on the retention of teachers?

Lord Nash: The noble Earl makes an extremely good point. I think that we are all aware that continuous professional development for teachers is vital. Their initial training may be brief, for nine months, and I think that it is accepted by all in the profession—I have had discussions with the unions as well—that professional development should take place throughout a teacher's career, particularly in their first three or five years. We know that overseas—for instance, in Shanghai—the programme takes five years. We are seeing many multi-academy trusts developing much more sophisticated continuous professional development for their teachers.

Lord Watson of Invergowrie (Lab): My Lords, despite the Minister saying that he is not complacent, I think that noble Lords will agree with me that his answers suggest that he and his department remain in denial about the crisis in teacher retention and recruitment. Just eight months ago, the department confirmed that almost one-third of teachers who joined the profession in 2011 had left it within five years. My noble friend Lord Knight asked a few moments ago whether the cause was workload or pay. In fact, it is a combination of both, particularly below-inflation pay increases. On that specific question, can the Minister reveal to noble Lords whether teachers and teachers' assistants are among those public servants that the Chancellor of the Exchequer seems to regard as "overpaid"?

Lord Nash: One reason why it has become difficult to recruit teachers is the strength in the economy. The best way to recruit more teachers might be to have a Labour Government, who would wreck the economy and therefore dramatically improve unemployment rates and increase our chances of employing teachers. We live in a highly competitive economy. In many parts of the country, we have full employment. Difficulty in recruitment is not exclusive to teaching or to this country. However, we are not complacent; we are investing a great deal of time in a more regional approach to teacher recruitment and in changing our approaches to advertising and marketing, with schools working together in different regions on a much more sophisticated approach to recruitment.

Lord Lexden (Con): Are the Government continuing to improve the arrangements under which teachers are initially trained?

Lord Nash: Yes. As I think my noble friend knows, we have substantially increased the proportion of teachers trained in schools—it has now risen to 56% of initial teacher training. As I said in answer to the noble Earl, Lord Listowel, we are continuing to look at improving initial teacher training.

Saudi Arabia: Executions

Private Notice Question

3.07 pm

Asked by Lord Dholakia

To ask Her Majesty's Government what representations they have made to the Government of Saudi Arabia about the imminent execution of fourteen people, including two juveniles.

Lord Dholakia (LD): My Lords, I beg leave to ask a Question of which I have given private notice and declare my interest as a member of the All-Party Parliamentary Group on the Abolition of the Death Penalty.

Baroness Goldie (Con): My Lords, the UK's opposition to the death penalty is clear: we condemn its use in all circumstances and in all countries. It is particularly

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abhorrent when applied to minor crimes and to juveniles in disregard of the minimum standards set out in the EU guidelines on the death penalty of 2008, the International Covenant on Civil and Political Rights and the Arab Charter on Human Rights. Saudi Arabia remains a Foreign and Commonwealth Office human rights priority country, in part due to its use of the death penalty, and it is aware of our position.

Lord Dholakia: My Lords, I thank the Minister for that Answer. She will accept that the UK is an important defender of human rights and the rule of law across the world. Given our close relationship with Saudi Arabia, can she explain what the Government are doing to stop these executions? There is a precedent; David Cameron as Prime Minister personally intervened to stop the execution of three juveniles in 2015. What is our Prime Minister doing now?

Baroness Goldie: I can confirm to the noble Lord that we are urgently seeking clarification of the position from the highest levels of Saudi leadership, reiterating our profound concerns about these reports. My right honourable friend Alistair Burt, the Minister for the Middle East and North Africa, was in contact yesterday with the Saudi ambassador, Prince Mohammed bin Nawaf Al Saud, and raised these concerns.

Lord Collins of Highbury (Lab): My Lords, 10 days ago the Foreign Secretary visited every regional capital. Of course, he met the Saudi Crown Prince Mohammad bin Salman. I think we all share the horror at these potential executions, particularly of juveniles, but we must not forget that in the week the Foreign Secretary visited Saudi Arabia eight people were beheaded on one day. When will this Government decide that it is time to publicly condemn these abuses of human rights? Our silence is deafening.

Baroness Goldie: I beg to differ with the interpretation of the noble Lord, Lord Collins. The United Kingdom's insistent and consistent upholding of human rights is acknowledged and respected. We have been both consistent and insistent in our condemnation of the use of the death penalty in all countries that still use it, including Saudi Arabia. Our position is very clear, is known internationally and it is known domestically within the United Kingdom. We have profound concerns and we raise them. We exhort Saudi Arabia to have respect for human rights and for the organisations to which I referred that state clear views on the issue of the death penalty.

Lord Singh of Wimbledon (CB): My Lords, why are the Government so quiet about trade with Saudi Arabia? Why do we export billions of pounds-worth of arms to Saudi Arabia when it is probably the greatest abuser of human rights in the world, against not only neighbouring countries but also its own people, including juveniles?

Baroness Goldie: My Lords, in diplomatic affairs a balance must always be struck. Those Members of the Chamber who have found themselves in government here and in other Administrations acknowledge that difficult balance. Saudi Arabia is an important ally of

the United Kingdom. It is in our interest to support Saudi Arabia in its efforts to tackle regional challenges and create more stability. That helps to keep us safe both at home and abroad. We should not forget that intelligence we received in the past from Saudi Arabia has potentially saved hundreds of lives in the UK. Saudi Arabia is an important ally. That does not gag or inhibit us from expressing our strongly held views about abuses of human rights or deployment of the death penalty.

Lord Judd (Lab): My Lords, the noble Baroness said that one of the Government's objectives is to have Saudi Arabia in alliance in order to promote stability in the region. The threat to stability is extremism. The ultimate battle against extremism is one of hearts and minds. How can this sordid, uncivilised behaviour possibly help in the battle for hearts and minds? Is it not time for us to reassess the balance in our policy towards Saudi Arabia?

Baroness Goldie: I thank the noble Lord for his question. He clearly feels passionately about the issue—as do many. As I said earlier, the difficult issue is always to preserve balance in the conduct of international affairs and diplomatic relations. We condemn the use of the death penalty. We condemn the abuse of human rights. We have made our views clear and continue to make them clear to Saudi Arabia. There are other areas where we think it is better for the United Kingdom to engage with Saudi Arabia and have dialogue. As I said earlier in response to the noble Lord on the Cross Benches, in that way we not only perform a service to the United Kingdom but also preserve an arena of influence in order that we may try to convey to Saudi Arabia the sort of emotions and sentiments expressed this afternoon in the Chamber. Saudi Arabia will understand the potency of these feelings.

Lord Wallace of Tankerness (LD): My Lords, I refer to my entry in the register of interests in relation to Reprieve, the anti-death penalty charity. In a recent speech to the Gulf Cooperation Council, the Prime Minister spoke about the rules-based order. Would the Minister accept that Saudi Arabia's use of torture to extract false confessions and execution of juvenile offenders—if it were to do so—would put it outside the rules-based order? Given the Prime Minister's recent speech, will the Minister convey to her that this House thinks that she should follow the example of her predecessor, David Cameron, and make an intervention at prime ministerial level?

Baroness Goldie: As the noble and learned Lord, Lord Wallace, will be aware, the United Kingdom Government utterly condemn torture. Again, we have been clear and articulate in saying that. The Prime Minister discussed human rights during her visit to Saudi Arabia in April this year. As I indicated in my response to the initial Question, the right honourable Alistair Burt, the Minister in this area, has made clear directly to the Saudi Arabian ambassador our profound concerns about these recent reports and has represented our profound anxiety about the possibility of the use

of the death penalty. We continue to make these representations in the most robust and clamant way that we can.

Lord Cormack (Con): My Lords, in supporting the very balanced and judicious answers that my noble friend has given, should we not have a thought to what the implosion of Saudi Arabia would mean for world peace and stability? We have only to take the example of Syria and Iraq to be conscious of that.

Baroness Goldie: I thank my noble friend for a very helpful observation. Saudi Arabia is indeed in a position to influence, to assist with stability in the Gulf area and to help in the fight against Daesh. Saudi Arabia itself has been the victim of attacks by Daesh. As Saudi Arabia is an important ally of the United Kingdom, it is right that we do not hesitate to condemn when we feel that wrong things are happening. The use of the death penalty is wrong; we make that clear. Abuse of human rights is wrong; we make that clear. Equally, as my noble friend has indicated, it is very important that we maintain these communication channels.

The Earl of Listowel (CB): My Lords, as the trustee of a mental health charity for young people—the Brent Centre for Young People—I welcome the strong concern the Minister has expressed about juveniles being executed. I ask her to speak to her colleagues about looking at the treatment of young people in this country. We have the lowest age of criminal responsibility among our European peers. I ask her to ask her colleagues to support the Private Member's Bill of the noble Lord, Lord Dholakia, to raise the age of criminal responsibility. Those who look at issues around children's rights continually raise concerns about the low age of criminal responsibility in this country.

Baroness Goldie: I thank the noble Earl for his question. It is perhaps a little wide of the area that we are currently discussing, but I am sure that my noble friend Lady Williams will have paid close attention to his remarks.

The Archbishop of Canterbury: My Lords, as the noble Lord said a few moments ago, we have heard some very balanced and judicious answers, with considerable condemnation and very clear statements. However, surely the depth of our relationship with Saudi Arabia in trade and finance, and the presence of many Saudi Arabians in this country—the long-standing way in which we have been together through war and peace—would indicate that we have the options for significantly more leverage than mere condemnation. I wonder what other measures the Government are taking which involve action as well as condemnation, particularly over this question.

Baroness Goldie: I thank the most reverend Primate for his question. There always has to be a mix of representation of view and opinion and certainly condemnation of activity, where, in the opinion of the United Kingdom Government, that condemnation is justified. Saudi Arabia is aware of our concerns. We have continued to represent these concerns at all levels, as I said earlier to the noble and learned Lord, Lord Wallace, in the most robust and clamant way we can.

At the end of the day, Saudi Arabia is a sovereign state and it is not possible for us to interfere with either its judicial system or its constitutional approach to these matters—but we can make clear, as we do, our profound disapproval of and opposition to abuses of human rights and the deployment of the death penalty.

Carbon Emission Reductions Bill [HL]

First Reading

3.19 pm

A Bill to amend the target for reducing net carbon emissions in the United Kingdom to 100% by 2050.

The Bill was introduced by Baroness Featherstone, read a first time and ordered to be printed.

Automatic Electoral Registration Bill [HL]

First Reading

3.19 pm

A Bill to impose certain duties upon Her Majesty's Government to ensure the accuracy, completeness and utility of electoral registers; to make provision for the sharing of data for the purposes of electoral registration; and for connected purposes.

The Bill was introduced by Baroness McDonagh, read a first time and ordered to be printed.

Arrangement of Business

Announcement of Recess Dates

3.20 pm

Lord Taylor of Holbeach (Con): My Lords, a couple of weeks ago I confirmed the dates of the conference Recess. Now might be a convenient point for me to inform the House of the proposed sitting dates for the remainder of the year, including sitting Fridays. In the customary fashion, a copy of these dates will be available in the Printed Paper Office and they will be included in tomorrow's edition of *Forthcoming Business*.

We will, as normal, have a short half-term adjournment in November. We will rise at the conclusion of business on Tuesday 7 November and return on Monday 13 November. We will adjourn for the Christmas break at the conclusion of business on Thursday 21 December and return on Monday 8 January. I can also let Members know that we intend for the House to sit on the following Fridays: 27 October, 24 November, 8 December and 15 December. We have already announced that the House is to sit on 8 September. As I am unlikely to address the House again beforehand, may I wish all Members a happy summer Recess?

Lord Shutt of Greetland (LD): My Lords, it is very helpful that the noble Lord has given us this information. I have done a little research and those of your Lordships with grandchildren may just notice that they know where they stand in terms of sitting days and recesses

[LORD SHUTT OF GREETLAND]
 until July 2019. Now that we have a two-year Parliament, might I put it to the noble Lord that he should have fraternity with his right honourable friend in the Commons and come forward with a longer timespan, so that your Lordships may plan a bit more than they are able to at present?

Lord Taylor of Holbeach: I note what the noble Lord has said. It is quite unusual to be able to go as far as we have today. If the noble Lord had researched this, he would discover that these recess dates coincide exactly with those of the House of Commons. We are trying to integrate the functioning of both Houses. There is a limit to how far ahead we can go and I have to emphasise to all noble Lords that these dates are subject to the usual passage of business.

Free Childcare Hours Statement

3.23 pm

The Parliamentary Under-Secretary of State, Department for Education (Lord Nash) (Con): My Lords, with the leave of the House I will now repeat a Statement made in the other place earlier today by my honourable friend the Minister of State for Children and Families.

“Thank you very much, Mr Speaker, and I thank you for allowing this Urgent Question, as it gives me the opportunity to highlight this Government’s determination to invest a record amount in childcare, supporting early education and helping parents financially. Our support will total £6 billion per annum by 2020.

My department is committed to ensuring that all three and four year-olds have access to free early education. All parents, regardless of income and employment status, are entitled to 15 hours of free early education for their three and four year-olds, and for those parents who work we are providing access to an additional 15 hours of free childcare from 2017. Parents who want to take up 30 hours of free childcare can apply through the digital childcare services. They can access the application via the Childcare Choices website, which provides information on all the Government’s childcare offers. The application process takes about 20 minutes. I have recently had a walk-through of the service myself; it is straightforward and the format will be very familiar to parents who have used other government digital services.

The childcare service is a complex IT system, which checks parents’ eligibility in real time by interfacing with the other government IT systems. The vast majority of parents will receive an instant eligibility response. However, there will be a delay for some parents whose eligibility is not immediately clear, for example some self-employed people. The service has also experienced technical issues, which has meant that it has been unavailable to parents on a small number of occasions. HMRC, which developed the service, has been working hard to resolve these issues and as a result the customer experience has improved.

The application has been open to parents of under-fours since 21 April and today my Treasury colleagues will make a Written Ministerial Statement informing the House that the service has been further rolled out to parents of under-fives. Parents whose application is successful receive a 30-hours eligibility code to take to their provider to claim their childcare place. As of today, more than 145,000 codes have been generated from successful applications. This is an increase of almost 5,000 codes since Friday 14 July and an increase of almost 25,000 since Friday 7 July. Increasing numbers of parents are successfully applying. It is great news that so many families will benefit from 30 hours in September because, as we have seen from our early implementer and early rollout areas, this support can make a real positive difference to the lives of hard-working families”.

3.26 pm

Lord Watson of Invergowrie (Lab): My Lords, the Government apparently rushed out their revised implementation strategy for the scheme yesterday, less than two months before families are anticipating taking up their additional hours. The pledge that the extra hours would be free seems to be evaporating because it was announced yesterday that providers would be allowed to charge parents for extras on top of those 30 hours. What will happen to those families for whom affording those extras is not possible?

When the then Prime Minister touted the free childcare pledge in the 2015 election campaign, he promised to double the 15 hours available to nearly 1 million children. It was then reduced to 600,000 children, and it has since been admitted that fewer than 400,000 children will be eligible. Will the Minister tell noble Lords the Government’s latest estimate for the figure and how many families are getting the 38 hours that his party originally promised to all?

We know from our newspapers today that there was some kind of IT failure in the system yesterday. Treasury Ministers admitted in response to my colleague in another place Angela Rayner:

“It is not possible to provide a definitive number of applications not completed due to technical issues”.

What is the Minister’s estimate of just how many parents suffered those technical issues? What guarantees can he give to parents that those technical issues will be smoothed out in good time for the system to come into operation as intended?

Lord Nash: I think this is good news. There are some very moving stories around the country and a lot of happy parents emerging from our early implementers. There are examples of couples who are both factory workers who were previously working shifts that did not coincide now managing to coincide those shifts. In answer to the specific points made by the noble Lord, Lord Watson, he is quite right that providers can charge parents for meals, consumables, such as nappies and sun cream, and additional activities, such as trips or yoga, but parents must not be required to pay any fee as a condition of taking up a free entitlement place. We have done a great deal since 2010 for disadvantaged families. In addition to the pupil premium we have 15 hours of free childcare for disadvantaged two year-olds, tax-free childcare and many other offers.

I am not the most computer-literate person on this planet, but I had officials take me through the process earlier today and I could not see any step in it that was unnecessary. It takes about 20 minutes, and the steps seem absolutely necessary to make sure that the system is secure and that only those who are truly eligible are qualifying.

Baroness Greder (LD): My Lords, what advice does the Minister have for the following two parents, who are not isolated examples? One parent applied a month ago and received a message that she would get an email “shortly” as to how to apply, but has since received nothing. The other spent an hour on the phone in May and was told that she would be called back—again, nothing. I stress that these are not isolated examples. Perhaps each of them should be assigned an official to walk through it with them. My interest is already declared as a governor for the wonderful Heathbrook primary school. How do I as a governor, along with senior managers, plan in these circumstances for ratios and decent skill levels, given that the scheme appears to be in the hands of people who, frankly, I would not allow to run a certain event in a brewery?

Lord Nash: As I said, the early implementers, which have already been tested with 4,000 parents, seem to be going extremely well. I take the noble Baroness’s point about particular examples and would be very happy for her to share those details with me further so that I can penetrate this to see if there is anything systemic here and if we can help these particular parents.

The Earl of Listowel (CB): My Lords, are there any particular obstacles to accessing the free childcare hours for families living in temporary accommodation? Do they have difficulty getting information about what is on offer? As the Minister knows, 100,000 children are currently in temporary accommodation, 40% of whose families are in employment so many of them will be eligible. Will the Minister write to me on this point if he cannot elucidate now?

Lord Nash: I cannot see any reason why the fact that they are in temporary accommodation should be a barrier. We have tried very hard to advertise the service and of course they can go to any local provider to talk to them about it, but I will write to the noble Earl about this.

Baroness Pincock (LD): My Lords, could the Minister give us some more information about the availability of the new 15-hour free places from September? Reports from the Pre-school Learning Alliance in April this year suggest that just 44% of providers were planning to use the 30 hours because they could not afford to provide them at the rates that the Government were offering, and around the same time the National Audit Office said of the implementation that there was a risk that the new entitlement would have a negative impact on the further success of the free entitlement.

Lord Nash: As the noble Baroness knows, we did a great deal of work in our review on ensuring that the pay for this was adequate. Indeed, that has been borne out by a number of independent parties. Some 145,000 people have now received a code. They then have to go

to the provider and the provider has to come back to us to verify; 32% of them have done so already, which is well in advance of the September date—if they start in September. As I say, all the indications are that there will be adequate provision.

Baroness Farrington of Ribbleton (Lab): My Lords, will the Minister, who often repeats his acclaim for high-quality education, encourage his colleagues in the Government to stop using “childcare” as an alternative expression for “nursery and early childhood education”? It is not the same. The experience is that good-quality nursery education provides a much better start for young children, particularly those from difficult backgrounds. Will he please encourage people not to use the term coterminously? Referring back to an earlier question about teachers, would he please accept that experience in Lancashire shows that employing bilingual young people to work with children as nursery nurses and teachers helps those for whom English is not their first language or mother tongue? It gives children a better start in their lives in education.

Lord Nash: I entirely agree with the noble Baroness. The evidence is clear: although we have had a dramatic increase in the quality of early years provision—it has risen from 69% to 93% rated good or outstanding by Ofsted since 2010—those attached to schools are the best. That is why we have been encouraging primary schools to open nurseries, and we will continue to do so through our free school process. She makes a very good point about bilingual nursery staff. Through our recruitment drive for teachers, we are working with the Spanish Government to recruit teachers from Spain. We are looking at whether we can work with France and Germany, and I will certainly take her point back to the teams.

Lord Lexden (Con): How are primary schools responding to the Government’s encouragement to open more nurseries?

Lord Nash: Generally, well. It was only a few rounds ago that we allowed primary free school applications to include nurseries, and a considerable proportion of them have now come with nurseries. As I said, that is something that we are keen to encourage: any opening of primary schools should come with nurseries attached.

Brexit: Trade in Goods (EUC Report)

Motion to Take Note

3.36 pm

Moved by Baroness Verma

That this House takes note of the Report from the European Union Committee *Brexit: trade in goods* (16th Report, Session 2016–17, HL Paper 129).

Baroness Verma (Con): My Lords, I am grateful for the opportunity to debate this report this afternoon. As chair of the EU External Affairs Sub-Committee,

[BARONESS VERMA]

I extend my thanks to the members of the committee for their important contribution to the report and take this opportunity to thank the secretariat to the committee, Eva George, Julia Ewert and Lauren Harvey, for their assistance with the inquiry and the preparation of the report. I also thank our specialist adviser, Holger Hestermeyer, for his contribution and insight.

It is usual in such debates for speakers to reflect on the Government's response to the report in question, so I take this opportunity to express my deep disappointment and genuine concern that no response has yet been provided by the Government, four months after the report was published. While the past few months have certainly been eventful, and I know that my noble friend has not been in her current role for long, there is still no justification for such a long delay. Just as it is the role of Select Committees to scrutinise and hold the Government to account, it is the Government's responsibility to reflect on and engage with committees on their findings. I look forward to hearing from my noble friend in her response. I know that she will take our concerns about a timely response very seriously, and will press for a timely response to reports of this House's expert committees.

Goods make up the bulk of the UK's trade. In 2015, they accounted for about 60% of all UK exports to the EU and almost 77% of our total imports from the EU. Trade in goods between the two is worth almost £357 billion each year, so minimising disruption resulting from Brexit will be crucial to the UK's prosperity.

We should also keep in mind that the manufacturing and primary commodities sectors are significant employers across the UK, being particularly important to the Midlands, Wales, north-east Yorkshire and the Humber, and the north-west. The goods sector also supports jobs in the services industry—from retailing to maintenance and servicing. The Government must secure a trade arrangement with the EU which recognises this interlinkage and secures suitable terms for both goods and services. In this regard, I commend the findings of the EU Committee's report *Brexit: Trade in Non-financial Services*, prepared by the Internal Market Sub-Committee in parallel to our report on goods.

Our inquiry considered six large and economically significant sectors—the pharmaceuticals and chemicals industries, capital goods and machinery, food and beverages, oil and petroleum, automotive, and aerospace and defence—and the potential impact of changes to the conditions under which the sectors trade with the EU.

We began from the starting point that the Government are seeking to agree a free trade agreement with the EU after Brexit, as set out in the Prime Minister's speech at Lancaster House. If agreed and implemented by May 2019, a free trade agreement could avoid the much talked-of cliff edge of moving to trade under WTO rules. Looking at it initially, trade in goods appears to be quite straightforward as part of the negotiations. Tariffs that would be levied in the absence of a preferential trade arrangement were of concern to all sectors we considered. They would be particularly significant in certain sectors, such as food and beverages. As many businesses are part of complex EU supply

chains, there is a risk that tariffs would be levied more than once as parts move between the UK and the EU 27, rendering even relatively low tariffs a significant new cost to firms. But that is the easiest part—tariffs could conceivably be addressed in a very comprehensive free trade agreement between the UK and the EU.

That brings us to one of the major concerns that the manufacturing sector has—that it does not need to be shielded only from new tariff barriers; we have found that non-tariff barriers, such as labelling requirements, rules of origin, sanitary measures and pre-shipment inspections, can pose significant or even greater barriers to trade. Rules of origin, which determine where a product and its components are produced, would apply under WTO rules or a free trade agreement, which could impose significant administrative burdens on companies. Some UK companies, often reliant on EU supply chains, may well be unable to comply with local content requirements. That is a particular concern for the important automotive industry. Can the Minister inform the House what actions the Government plan to take to protect UK-EU trade from the impact of the imposition of rules of origin? Maintaining common or closely aligned regulatory standards is also very important. Could the Minister comment on whether the Government are willing to make a legal commitment to maintain a high level of regulatory alignment with the EU 27 in the longer term, to safeguard our valuable trade relationship?

There is no doubt that the UK has benefited from participation in a number of EU agencies. We considered the European Medicines Agency and the European Aviation Safety Agency—participation highly valued by the pharmaceutical and aviation industries respectively. Could the Minister comment on how the Government intend to engage with those bodies after Brexit?

Exiting the EU's customs union will also result in the introduction of a customs border between the UK and the EU 27. We were concerned that this would lead to significant administrative costs for businesses and the state. Just last week, the National Audit Office warned that the UK's new customs declarations service, the CDS, may not be fully functional by the time we leave the EU. This was an issue that we highlighted in the report. I was very concerned to see from the NAO's report that no changes have yet been made to the scope of the CDS programme in relation to our exit from the EU. Could the Minister comment on the resourcing of HMRC to manage the administration of customs processes between the UK and the EU and progress with CDS?

When we published this report, we were concerned that it would not be possible for the Government to resolve these many complex, thorny and critical issues in time for implementation in May 2019. We noted in March that uncertainty was already having a damaging effect on business confidence. At the start of this month, the manufacturers' organisation, EEF, which gave evidence to our inquiry, warned that UK businesses would reach a tipping point next year over whether to continue to invest and manufacture in the UK.

That brings me to an essential conclusion of our report, and a common theme of the EU Committee's many reports on Brexit—namely, the vital importance

of putting in place a transitional arrangement. To date, the Government have maintained that agreeing and implementing a new trade arrangement with the EU will be possible within the period of Article 50. It has been said that an implementation period will therefore be needed, but transitional arrangements to bridge the gap between leaving and the implementation of a new trade arrangement will not. In his appearance before the EU Committee last week, the Secretary of State for Exiting the European Union again said that “transition arrangements” was shorthand for an implementation phase. Our concern is that it may not be possible to agree a new trade agreement before we leave, necessitating provisions to bridge the gap between membership of the EU and our new relationship. I invite the Minister to state, for the record, whether the Government are now willing to consider a separate transitional agreement, such as ongoing membership of the customs union or an EEA-type arrangement for the immediate period after Brexit.

Transitional arrangements are an issue for our trade not only with the EU. Through our membership, we also have trade agreements with countries from Switzerland and Norway to South Korea and Egypt which are of considerable value to the UK. It has just been agreed that the EU-Canada free trade agreement will provisionally be applied from 21 September, and negotiations with Japan are coming to a close. It is therefore critical that the Government make every effort to secure the UK’s access to existing preferential arrangements for a transitional period until such time as we can negotiate new bilateral arrangements.

I know that the Minister will say that the Government are already speaking informally to a number of countries, but this debate can hardly be more important or timely, as negotiations begin in earnest to determine our future relationship with significant trade partners. How is the Government’s engagement with businesses across the country going? In response to their concerns, will the Government seriously seek, as a matter of urgency, transitional arrangements to protect our vital trade with the EU 27 and beyond? Finally, can we be reassured that both resources and expertise are sufficiently available to support us all through what we know will be challenging and uncharted waters?

3.47 pm

Lord Livingston of Parkhead (Con): My Lords, I commend my noble friend Lady Verma for tabling this debate and for the very thoughtful report emanating from her and the committee. This has to be taken in conjunction with some of the earlier reports to which she referred, such as the EU Committee’s report on the options for trade. Looking at individual sectors was a very practical way of identifying the real issues relating to Brexit. These issues could, of course, be resolved in many ways—by staying in the customs union or the single market—but I do not believe that is what we voted for. It is very difficult to reconcile being a rule taker with that vote. I have sat around many EU tables and the UK had a great influence. Once we have exited the EU we will not have that influence and we must take the rules as given to us. The Norwegians, who are in the single market, make this point. I heard

a senior Norwegian Minister refer to this as “government by fax machine”. That is probably not an option for us.

On the other hand, as this report highlights, it is entirely wrong to say: “This is all very easy; you do not need trade agreements; you can rely on the WTO”. After the South Korean trade agreement, which the report mentions, we saw trade almost double and the UK ended up with a trade surplus with that country. Many noble Lords may refer today to the fact that we do not have trade agreements with the US. That is true, but so many business models in the UK, particularly in the fields mentioned in the report such as automotive and aerospace, have highly complex supply chains that were set up around the single market. We are not starting with a clean sheet of paper; we are having to untangle a lot of problems. When we are very closely joined with the EU it is not appropriate just to say that we can rely on doing things as we do with other countries.

I have been involved in trade deals and know that you can have either a quick one, a good one or a comprehensive one but you cannot have all three. The UK needs to focus on the last two of these: good and comprehensive. We have a complex, service-led economy—we must remember how important services are to us—and quick timing is not in our favour. First, we cannot negotiate now, as the report makes clear, because of our commitments to the EU. Secondly, until we understand the nature of our relationship with the EU and, indeed, the WTO, we cannot have negotiations. We cannot start talking to Australia about the food industry until we understand whether we have certain quotas under the WTO or, indeed, with the EU. Normal negotiation timescales are long. While the EU is not the quickest organisation in the world, there was good reason why the agreement with Canada took five or six years—namely, because it is deeply complex and covers areas such as standards and rules of origin but also immigration. I remember that when I negotiated with the Canadian Trade Minister, immigration was one of the last points to be concluded. These negotiations are deeply complex. In addition, the UK will be trying to negotiate multiple agreements at the same time. The US and the EU have far greater trade resources than we have but they would not take on multiple agreements at the same time—they might do a few—and I think that is going to make this process very difficult.

As anyone who is used to negotiating will know, negotiating agreements when you are in a rush and your counterpart is not tends to end up with not the best outcome. That is a problem. Timing is not our friend. The noble Baroness referred to the cliff edge and I think all of us fear that. She asked for assurances regarding a transitional agreement. I absolutely support that. If we are to exit the EU in two years, which it looks as if we will, while we cannot necessarily stay in the single market and the customs union over the long term, there is a period during which it is appropriate for us to look to do so. Yes, that will mean that we have to put in money, but I think we are going to have to do that anyway. Yes, it will mean submitting to the ECJ for a period, and yes it will mean staying open to free movement, but perhaps two or three years would

[LORD LIVINGSTON OF PARKHEAD]
make a big difference. We should use that period not just to put in place agreements with other countries but also to establish the administrative procedures that government and businesses will need. When government finally decides what it is going to do, business cannot do it overnight. I think there is a failure to understand that. We should focus so that businesses can plan. We should first make agreements with the EU but then focus on replicating existing agreements that the EU already has. South Korea has been mentioned, and measures with Canada and Japan will be in place. These will be very important and I hope that we can take large parts of them and move them over.

As regards some of the talk about doing trade agreements with the US, India and China, such agreements would be commendable. However, in the case of the US, I think there is a failure to recognise the problems of dealing with difficult areas such as the Jones Act, the buy American policy and, indeed, the current President of the US. None of these will make it easy to do a trade deal. India and China do not start from a globalisation position. They are big markets but they will not start from the same place regarding free movement of goods and, indeed, services. To achieve all this we may have to make some of our red lines a little dotted. We have challenges and we may have to compromise.

I speak to your Lordships' House not just as an ex-Trade Minister but also as a businessman who has sold and imported around the world. The uncertainty that businesses are feeling today is increasingly problematic. The question I hear businessmen being asked repeatedly is: what are you going to do? Most businesses will say in a quiet moment, "It rather depends on what the outcome of the negotiations is": that is, we cannot plan without knowing what we are planning for. In such an environment, that means that investment in the UK is being deferred. It does not mean that factories are being shut down yet but investment is being deferred although one cannot see that at the moment. It also means that inward investment decisions in the UK are being held back. Shortly—it will not take too long—companies will have to start to make contingency plans. We have already seen the first few of them. We recently saw the announcement from Citibank, and easyJet announced that it would set up in Austria. These are very small movements of people today, but they represent perhaps the start of a trend that we would not welcome. In addition, the other side of that is people deciding not to invest in the UK from outside the UK—and the UK was the number one country for inward investment from around the world in the whole EU.

Many people were misled about the ease of Brexit, but we are where we are. In that environment, now is the time to stop platitudes. To have our cake and eat it is just not available; the cake shop shuts in two years' time—or about 18 months, now—and we have to recognise that. As a country we need to buy some time to avoid the cliff edge, and show some realism. We also have to explain to people the sorts of choices we have to make between the economy, employment, investment and, perhaps, some of the other things, such as free

movement and being subject to supranational bodies, which may or may not be the ECJ. This report, which looks at what it means sector by sector, is a practical way in which to start talking to people about what Brexit really means and about how the UK can adapt to its new world.

3.56 pm

Lord Hain (Lab): My Lords, I commend the noble Lord on a fascinating speech with a lot of detail; the practical approach of a former business leader is valuable in this context. The seemingly cavalier way in which the Government are approaching this terribly important historic enterprise is a big contrast with the noble Lord's contribution—although I disagree with him on one fundamental point, which I will come to. I also welcome the report, which is packed with immense detail, from the impact of new IT systems on the customs union to the sector-by-sector analysis, the implications of which are, frankly, alarming, as the noble Baroness, Lady Verma, spelled out in her able speech. I particularly noted the point she made about less well-off areas, such as Wales, for example, which I represented—as did my noble friend Lord Wigley—and still live in. I am worried about the impact of Brexit on Wales—particularly the hard Brexit that we seem to be cantering towards.

Prioritising jobs and the economy in Brexit negotiations means prioritising trade, which in turn means staying in both the single market and the customs union—which the Trades Union Congress, the CBI, and, overwhelmingly, the business community also want. It is the largest, richest market in the world, with over 500 million people, and it is worth £11 trillion—fully a quarter of global GDP. It accounts for half the UK's trade, and a surplus in services of £17 billion—and we are about to walk away from it. Over the 10 years or so that it will take to adjust to the shock of exiting the European Union, including its single market, the economy will end up 6% smaller in 2030 than it would otherwise have been if we had stayed, according to the Treasury's analysis. That is a massive hit on jobs and prosperity.

When the country voted by a narrow margin to leave the European Union, the single market was not on the ballot paper. I know that it was not, because it did not come up on the doorstep—and I knocked on hundreds of doors, especially in the south Wales valleys. We can both leave the European Union if we really have to and stay in the single market and the customs union. On that point, I disagree with the noble Lord, Lord Livingston of Parkhead. He mentioned Norway; if you talk to Norwegian politicians and leaders, they are trying to persuade their own country to go into the full European Union, where they could sit on the Council of Ministers and in general be the rule-makers rather than the rule-takers, as he described it.

However, the truth is that Norway has significant influence behind the scenes on particular regulations and directives as applied to the single market. Being such a significant trading partner with the European Union and such an important economy in every respect—below the mega economies of the global economic system—we would also have enormous influence informally. Of course it would be better to be on the

Council of Ministers—but, if we have to settle for second best, we can do so and have considerable influence in the examination of draft regulations and directives, and so on.

Frankly, leaving the single market would be a total nightmare. It would need to be followed by subsequent trade agreements, and not only with the remaining 30 European Union and European Economic Area member states. There would have to be new agreements under World Trade Organization rules with around 52 “third countries” outside the EU with which we currently have trade deals through European Union negotiators and the single market. We would have to renegotiate all our relationships with those 52 third countries as well.

On the European customs union, the European Union Committee report explains:

“To our knowledge, no precedent exists for an agreement outside a customs union that entirely eliminates the need for customs checks and the additional burden of associated administration and costs”.

Do we really want that? I see the noble Lords on the DUP Benches. They, like me, are alarmed at the prospect of a hard border in Northern Ireland, yet that would happen if we were outside the customs union. I have not seen a solution to that problem.

Why on earth do we imagine that outside the single market and the customs union we would get a better deal, let alone the same terms as we have now? This is moonshine. It is far better to stay in from a position of strength and, at the very least, negotiate a new deal before we leave the single market and the customs union. We will be in a much weaker position after we leave them.

As has been said, these new trade agreements will take many years to negotiate. Canada’s with the EU took up to seven years and covered only manufactured goods. Such a deal would be no good for the United Kingdom because we are an 80% service economy. Free trade agreements do not cover many services because of the complexity involved. Existing single market legislation covers things such as the authorisation mechanisms and systems for granting licences to provide services, systems of mutual recognition of licensing arrangements, commitment to common monitoring for observing standards, and a dispute resolution mechanism.

Unless we stay in the single market, any newly negotiated UK access agreement—which is what the Government seem to be talking about—would have to be ratified by all remaining 27 member states across more than 35 parliaments, including regional ones such as that of Wallonia in Belgium, which tried to hold up ratification of the Canadian deal. The removal of non-tariff barriers with the EU—especially when it comes to standards of goods and services—would be tough to negotiate because they are numerous, complex and subject to frequent updating through amendments, as the report has outlined. EU standards for cars alone cover thousands of pages of EU legislation. These are complex matters.

The interim period between leaving and finalising free trade deals could last for years, with UK companies then facing trade barriers such as customs duties,

customs procedures, country-of-origin checks at borders, quotas and other quantitative restrictions, as well as other non-tariff barriers, including standards for goods and services.

The European Union’s “passport of regulatory equivalency”, which EU institutions currently grant to UK banks and other financial institutions, will no longer apply if we leave the single market. That will be a huge threat to a sector estimated to provide 11% of Treasury revenues and 10% of GDP. As we know, new announcements, almost daily, show that leading banks are making decisions to move jobs to rival financial centres such as Frankfurt, Dublin, Amsterdam, New York or Paris. President Macron is openly recruiting new institutions, persuading them to relocate from the City to France. Furthermore, single market rules come with the social, environmental and health and safety standards, and the workers’ and consumers’ rights, which we all take for granted. Hard-right Brexiteers see an opportunity to water down this so-called red tape, which they find an anathema.

Although it is not central to the report, I will touch on something that is relevant to my argument for staying in the single market. Does the single market mean uncontrolled European Union migration? No, it does not. The right to free movement of labour has never been unconditional. For example, Belgium imposes restrictions by returning to their EU country of origin each year thousands of migrants who do not have jobs. Britain can and should ensure that EU nationals come here to work under the same conditions.

I note that the noble Baroness, Lady Anelay, did not answer my recent Question, in which I quoted the article from the directive concerned, on the precise point that we are allowed to return EU nationals who are not in work, as other countries, including Belgium, do. I sought through Written Questions—an Answer was published today by the Minister concerned—to find out how many EU nationals we have returned under that EU legislation. I have been told that the answer is not available because it would come at disproportionate cost. As a former Minister, I know that that is usually an excuse for not giving you the information that you want.

As the *Guardian* columnist Martin Kettle put it, the trouble is:

“The negotiations with Europe are an increasingly embarrassing mess too. In Brussels, Michel Barnier leads an organised, rational team of negotiators whose professionalism is a credit to the system. Meanwhile in London, amateurs, ideologues and chancers rule. No one can really say what the Brexit policy is”.

There is probably now a cross-party parliamentary majority to remain in the single market and the customs union—certainly for a multi-year transitional deal, as indeed the European Union Committee report urges and the noble Baroness, Lady Verma, referred to. Will the Minister specifically distinguish between an implementation phase and a transitional deal? A transitional deal means staying where you are until you have something that you are willing to agree, however many years that takes. As I understand it, an implementation phase means settling everything in principle and then, having left the EU, the single market, the customs union and all the rest of it, agreeing the period of implementation and the detail

[LORD HAIN]
around that. If my understanding is correct, the implementation phase would be disastrous, because we would have burned all our boats in the meantime.

Such a transitional deal as I think is necessary to remain in the single market and the customs union could even become permanent, as people and businesses become aware of the dire consequences of Brexit for Britain's trade, and for their jobs and prosperity. I fear that we are instead being led as a people, as if by First World War generals, over the top without any idea of what we are facing. Certainly, calamity beckons.

4.08 pm

Baroness Smith of Newnham (LD): My Lords, I thank the noble Baroness, Lady Verma, for bringing this report before us and I thank the committee for producing yet another excellent report. Increasingly, there seems to be a cottage industry in reports from your Lordships' House, particularly from the EU Select Committee. While the other place is still trying to create its Select Committees after the general election, there is plenty of opportunity for work to be done at this end.

I think that this is the third time within a week that one Member of your Lordships' House or another has pointed out that Her Majesty's Government have failed to give a response to the report being debated. That is clearly unfortunate, given that a general election was called so that we could tackle the Brexit question. Despite that, many questions remain unanswered.

In many ways, the words of the noble Baroness, Lady Verma, could have been said from the Liberal Democrat Benches. The issues that have been raised by the committee's report and the noble Baroness are extremely important. For once, from these Benches, I do not propose to rehearse the same arguments that we have raised over the past year, 18 months or seemingly longer. Listening to the debate yesterday on the free movement of people, I thought that we were perhaps getting to the point of Groundhog Day. I began to explore groundhogs and whether there was a trade in them, but it appears not—with the exception of Members of your Lordships' House and the UK media, who seem to have spent more time since the referendum last year discussing what we think we mean by Brexit, what Brexit means for the United Kingdom and whether it means leaving the single market, the customs union or both.

While, in many ways, we on these Benches agree with the points made by the noble Lord, Lord Hain, about the importance for the United Kingdom of remaining in the single market and the customs union, to avoid quite as much repetition as we are in danger of having this afternoon I will raise a number of questions for the Minister. She is fairly new in post in this role, but it is perhaps not so very different from the role that she had in the Foreign and Commonwealth Office when she was responding to questions ahead of the referendum. The questions have not changed, because the Government still do not appear to have many answers.

Brexit means leaving the European Union. That is clear—it has always been clear—but what has not been clear, as the noble Lord, Lord Hain, pointed out,

is whether that means leaving the single market or the customs union. The nature of the departure and, more importantly, the nature of the UK's subsequent relationship with the EU 27 remained an unknown throughout the referendum last year. It essentially remained an unknown until the Prime Minister's Lancaster House speech almost exactly six months ago. At that point, the Prime Minister made clear what she intended by Brexit, which was to leave the single market and the customs union, although ideally with some kind of undefined and unprecedented customs agreement. If the Minister can explain what the customs agreement the Prime Minister is thinking about would mean in practice, that would be most welcome.

Clearly the reason why the Prime Minister thinks that the UK should leave the customs union is that the trade deals that countries are lining up to negotiate with us will be free flowing as soon as we leave. Whether they are available, and whether it would not be better for the UK to negotiate free trade agreements in parallel to those already negotiated by the EU, remains an open question. However, there is at least a logic behind the Prime Minister's suggestion.

The reason for leaving the single market seems to be down to a narrow understanding of the reasons why the United Kingdom voted to leave the EU—namely, the view that the vast majority of those voting to leave did so for reasons associated with immigration and EU free movement. It is not at all clear that that is why many people voted to leave. There were myriad explanations of why the 52% voted to leave. However, if you take the view, as the Prime Minister seems to have done, that leaving the single market is essential, that means getting rid not only of free movement of people but of free movement of services, goods and capital. These are things that in the past the United Kingdom has seen as beneficial. After all, the idea of the 1992 programme completing the internal market—outlined in a paper by then commissioner Lord Cockfield at the behest of Margaret Thatcher—was to create a level playing field. It was not only about getting rid of tariffs but about getting rid of non-tariff barriers.

The noble Lord, Lord Lawson—unfortunately, he is not in his place today—frequently opines that the single market does not matter anymore and that we have moved beyond it. I can hear muttering along the lines of, "What is she talking about?". The noble Lord, Lord Lawson, has frequently suggested that the internal market perhaps does not matter in the way that it used to and that the global market is what is important. However, in walking away from the European Union and its single market, the United Kingdom is proposing to walk away from a trading relationship that takes away non-tariff barriers. The tariff barriers are the least of our problems. We could crash out in the way that certain Brexiteers have talked about and say, "It's not a problem. We can trade on WTO terms", but, as we have heard, just trading on WTO terms is not as simple as it sounds. We would have to negotiate the schedules with other member states, because currently those schedules are for the EU 28. They are not identified country by country for the EU. There is already a difficulty in seeking to trade simply on WTO terms.

WTO tariffs deal only with tariffs. Having tariff-free trade is clearly desirable, but WTO terms will not in themselves give us tariff-free trade in all sectors. Beyond that, there are the non-tariff barriers about mutual recognition and questions around the rules of origin, which, as full a member of the European Union, we do not have to think about because they are part of our everyday decision-making. If the great repeal Bill—or, as it now is, the European Union (Withdrawal) Bill, the first section of which will repeal the European Communities Act 1972—sets in stone the regulations and directives that are in place on the day we leave, that will temporarily ensure that the United Kingdom meets the requirements of the European Union, but the EU's *acquis* is a changing corpus of legislation. As every day passes after we have left the EU, unless we manage to negotiate an arrangement that is something akin to membership of the single market, the EU will be changing its rules and its standards and the UK will be running to catch up.

It may be that Members of your Lordships' House and Her Majesty's Government do not think that that matters. They may think that we will have our own rulebook in such a way that it will not affect trade, but it will. Unless the United Kingdom is able to negotiate an arrangement whereby we have a place at the table in a form that is akin to but different from the Norwegian model in the European Economic Area, there is no possibility of the UK not being seriously disadvantaged by crashing out of the European Union without a deal. WTO terms will not resolve that. However, even with a free trade agreement, it is difficult to see how we are going to be in a position where we are not materially damaged by leaving the single market and not having access to the negotiating table. That is because the Norwegian model is not the same. The Norwegians do not have a seat at the table; they have to respond.

The questions that I would like to ask the Minister concern the assessment that the Government have made of the impact of the United Kingdom crashing out of the EU without a deal. What assessment have they made of the ability to create the wide-ranging free trade agreement that the Prime Minister has said that she wants? What assessment have they made of the time that it will take to create such an agreement? Free trade agreements are notorious for taking years to complete. Unless a miracle happens, we have less than two years before we leave the European Union. There has been a lot of discussion about transitional arrangements, which may or may not be the same as implementation. With the exception of the Secretary of State for DExEU, most people do not think that a transitional arrangement and an implementation period are the same. Have Her Majesty's Government given any thought to a transitional arrangement and, if not, why not? Finally, Monsieur Barnier, the EU negotiator, has pointed out that he can hear a clock ticking. We have less than two years to create the withdrawal agreement. Without a transitional arrangement, do the Government think that they will be able to build an effective, long-term relationship with the European Union, or are we going to be on the outside, desperately trying to find a way back to the negotiating table to get a sub-optimal deal?

4.19 pm

The Earl of Sandwich (CB): My Lords, I am grateful to the noble Baroness, Lady Verma, and am delighted to rejoin, just for a moment, the committee of which I was a member until two years ago. The work of the various EU committees, mentioned by the noble Baroness, Lady Smith, has been critical during the past year in forming our judgment of the effects of Brexit, real and imagined, and I pay tribute to all the clerks and researchers as well as the members who have made this possible.

The noble Baroness, Lady Verma, spoke of “uncharted waters”. I am not a Brexit enthusiast, as the Minister knows—far from it—but, like her, I have had to bite the bullet and address the political realities. In my case, I anticipate that, since the EU has been so important to us, the UK under David Davis will continue to argue, paradoxically, for many of the same trading arrangements as we have already made with the EU to continue and that will prove very costly. It cannot be said strongly enough that half the people may have voted to leave, but even that half did not vote in the knowledge of the actual terms to be agreed. The metaphor for Brexit, at least in my mind, is the new “*Britannia*”, the ship of state, sailing energetically in a westerly direction to escape the rocks of Europe and then, perhaps too late, unable to navigate through the Atlantic winds and currents and finding her passage barred, she is slowly blown back on the shores where she began her journey.

I intend to concentrate on the consequences for developing countries. I have spoken previously about the possible effects of our withdrawal on the least developed countries, notably those described as the ACP group, the African, Caribbean and Pacific countries which originally came under the Lomé and Cotonou conventions. I have no particular interest to declare, but I first came to this subject when I joined the staff of Christian Aid in the early 1970s. If I could not understand any of the issues, which were always complicated—as we are discovering every day—I would go across to the Overseas Development Institute and consult its experts, including one Vince Cable, who I remember knew everything about the textile trade at that time. I still consult the ODI, especially its very thorough report on trade after Brexit, which I commend to others.

There is a strong public interest in trade in goods from the developing world, not least because of the success of the fair trade movement. Last week, a number of MPs, mainly young and female, signed up to the APPG for Fair Trade, reflecting a growing interest in international development and, specifically, the role of trade in raising the standard of living in the poorest communities.

I am happy to repeat the slogan of the Fairtrade Foundation, an organisation that had its roots in the aid agencies that are all now household names. The claim is that,

“you have the power to change the world every day”,

and I believe it. The story of cocoa and chocolate from Ghana, for example, is now widely known through the growing interest of leading supermarkets which have signed on to fair trade because it means additional

[THE EARL OF SANDWICH]
 business. Traidcraft claims that its producers receive more than one-third of the value of sales in the UK and I believe that to be an accurate claim. Brexit must not interfere with these arrangements. They directly benefit the poor and fulfil many of the sustainable development goals. What about our own Government's new trade policy, if we know what it is? Will they uphold international standards and make fair trade a condition of their new trading agreements with developing countries? Can this Conservative Government, if they still support the concept of fair trade, ensure that UK businesses pay fair prices, uphold human rights and ensure environmental responsibility when buying from developing countries? I was encouraged by the press release of 24 June, which I have in my hand, from DfID, which quoted Dr Liam Fox as saying:

"Free and fair trade has been the greatest liberator of the world's poor".

That is a very good start. HMG reassure aid agencies that everything will be fine: the poorest will still benefit from the "Everything but Arms" agreement and the concessions that came through the ACP agreement with the EU I already mentioned.

The press release also says that we drink 34.9 billion cups of African tea. These are the sort of figures that the Government are now working on. That came as a bit of surprise. Africa has definitely got into the Government's sights. The Government fully intend to continue to offer economic partnership agreements—or something very like them—to developing countries. However, many countries, particularly in Africa, had to submit unwillingly to these EPAs and the regional deals, which do not always work in their favour. There are also middle-income countries that need to sign EPAs to retain their preferential status. For example, exports to the EU account for 57% of the Seychelles' exports, 47% of Cameroon's and 42% of Cote d'Ivoire's. The concern is that through tariff elimination young industries in these countries could be exposed to greater competition from European markets. The effects on revenue have been estimated at anything from 8% in the case of Tanzania and Rwanda to 50% in the case of Madagascar.

Much of the Brexit talk these days is of the Commonwealth as an alternative free trade route. We will hear from the noble Lord, Lord Howell, in a moment. Of course, such a route will favour the stronger members such as Canada, Australia and possibly India but these days it seems unlikely that the Commonwealth can offer anything better than the EU to African countries. If we lose all access to the EU, we will have to set up our own new arrangements with the ACP countries through the WTO, building on various versions of the generalised scheme of preferences. All these countries need reassurance and the Minister will not be able today to predict the outcome of negotiations. The Government will need to think of something to tell other countries. As this report makes clear, the UK will not be able to sign new free-trade agreements with third countries until we have left the EU and we will not, it seems, have access to existing EU free-trade agreements with third countries. Furthermore, negotiating all these individual bilateral agreements during what is now called the implementation phase and assessing

whether the terms will be preferential or not will take many months if not years, as the noble Lord, Lord Livingston, clearly demonstrated.

There is little in what I have said that departs from official government policy, which largely reflects DfID's own experience of trade—in which DfID is a major player. However, overseas development assistance now passes through many other departments, which must be convinced by such things as fair trade and better terms for poor countries. The Commonwealth Development Corporation, which is now a major ally of DfID, and the private sector cannot be the only answer. DfID will have to tread very carefully during Brexit through these uncertain waters. The Minister cannot look over Britannia's horizon any more than we can, yet when it comes to developing countries, I hope she will at least tell us her own intentions and her wishes for her Government.

4.29 pm

Lord Howell of Guildford (Con): My Lords, I congratulate my noble friend Lady Verma and her team on what is in many ways a profound and eye-opening report. It brings home the staggering complexity of modern trade flows. One listens to the debate raging about whether we should be in or out of the customs union, or in or out of the single market. I sometimes feel we should take a lesson from the electron particle, which, as scientifically minded Members of your Lordships' House well know, can be in two separate places identically at the same time. It may be, as we analyse exactly what the trade flows are, that some of that is within reach. A little unhelpfully, my speech will be about services, not goods. By services I mean the whole range of provision of service: knowledge, products, data flows and information flows; and not just financial services but services of every conceivable kind—managerial, consultancy and design services—which are a bigger range even than financial services.

The really interesting thing about the report is that it is one of the first I have read in many years which understands that the service sectors are completely intertwined and combined with the manufacturing sector. I know that on the surface 39% of our total service exports go to the EU and 49% of our total goods exports, which is 43% of the total. But box 1 in the report indicates that 37% of so-called goods, as defined, reflect service-sector values. We are dealing here with a world that the statisticians have left us completely muddled in, with the division between goods and services being totally out of date in the digital age. We are an 81% service economy: that is where 81% of our GDP comes from and we are extremely good at it.

Actually, in the digital age all finished products are also largely services. This has been so for the past 20 years. Some 15 to 20 years ago I wrote a book in which I argued that we should change the word from "manufacturing", meaning made by hand, to "mentafactoring" because every single finished product—the humble screwdriver or even a box of matches—has in it a very large service and knowledge product content. Indeed, if you think about the promotion of sales, the organisation of the labour force, the actual production,

the aftersales and the design—every element of every single product you can think of has a huge service element in it. I defy anybody to tell me of a product that is not largely embedded with services.

There is a fascinating bit in the report which brings home what I am saying very vividly. We all know the automotive industry would face troubles if it had to face a lot of tariffs in its constant criss-cross flow of components with continental Europe, as would the Airbus wing-makers in north Wales, as we have heard. But when you start unravelling that situation, you find that of the 815,000 people employed by the automotive industry, only 169,000 are physically in automotive production at all; the rest is entirely services: finance, promotion, advertising, aftersales, connections with retailers—the whole business. That is a good example of how, if those 646,000 people cannot operate properly, that is the end of the automotive industry. There has to be a total union between the two.

Your Lordships may ask: why is he going on about services when surely this is about finished products in containers and container ships sailing from Felixstowe? It is important because the world of services is growing very quickly. Indeed, McKinsey tells us that with digitisation, it overtakes goods in terms of global generated value. It is not a world that is too concerned about tariffs. It has other problems. Non-tariffs, licensing, regulation, standards and a thousand other things, which the noble Lord, Lord Hain, mentioned, are the problems for the service industry. If we look in an absolutely cold-eyed and clear way at our success or failure in our 40 years in the European Union, it has not been a great success for services at all. Professional services throughout Europe are confronted by endless local and national roadblocks—endless difficulties—and the idea of a single market with services flowing freely here, there and everywhere is an illusion. It never existed in that way and does not exist today.

Furthermore, we are on the brink of a further huge development in the service sector through digital fabrication, which is already booming and will bring the whole business of data transmission and data flows right to the centre of international commerce and trade.

This is a world in which being in or out of the single market, or of the customs union, is not really the key thing. The key thing is to find trusted friends in areas where services can be marketed and exchanged, and where there is as much common background and willingness to trade as one can possibly design. The noble Earl, Lord Sandwich, mentioned the Commonwealth and it so happens that the DNA of common language is the ideal fertiliser for the expansion of trade and services. That, frankly, is where we will have to look very much more, whether we like it or not, for the markets in which to trade our gigantic service qualities and differences.

I am not for one moment saying that tariffs or goods are things that can be brushed aside. It would obviously be nice if we could get a free trade agreement with zero tariffs; if we do not, there will certainly be disruption to the endless flow of items and components that criss-cross the channel, as we have all heard described. But even in the worst case, if we do not

succeed in getting a zero-tariff agreement, there are simplified customs procedures. The report describes the “Authorised Economic Operator” scheme, which is an interesting way of regular exporters finding that they can operate without the usual delays, hassles and form filling of customs. EU tariffs are anyway remarkably low; they are at zero for 25% of all product lines. So this problem cannot be brushed away completely but it is mitigated by the fact that goods trades have escape routes—ways around the awful prospect of long truck queues, customs delays and all the other horrors that would come with an elaborate tariff wall between us and the European Union.

The truth is that services and the booming area of data transmission were never going to be affected hugely by the EU single market. There never was a single market for services in that sense. The task now is to develop new markets for services, especially in countries using English as a working language and areas where there is vast connectivity, as in the Commonwealth. We have a professional services linkage system there, of a kind that never gets reported on but is vast. To get there, we need not just to go around trying to find free trade area agreements but to use our soft power in entirely new ways to promote myriad services.

I will take one final moment on the EEA type of transition. To me, it is a no-brainer that the transition—of course there has to be one, whatever it is called—should be through an EEA-type agreement, in line with the EEA agreement articles of 2007, to which the noble Lord, Lord Owen, drew our attention the other day. It is obvious that that is the transition area where we will be able to develop certain of the freedoms we want. It is quite untrue to say that it precludes limitations on immigration or FTA deals. It does not; if your Lordships examine the articles, there is plenty of room for intervention by national Governments or border controls, as the noble Lord, Lord Hain, rightly indicated. They are not just for emergencies but when, in the words of the articles, intervention serves a precise public purpose, as ours will certainly do. The idea that one is imprisoned by not failing to move in line with the popular will, and away from the European Union, is false. In the EEA-type scene, we are dealing with far more flexibility than has been acknowledged by lawyers, experts and others so far.

The truth is that Britain is a gigantic generator of knowledge, creative ideas and information resources. It is becoming more and more so and, in or out of the European Union, we will stand or fall by marketing these services to the world.

4.40 pm

Baroness Quin (Lab): My Lords, I add my congratulations to the noble Baroness, Lady Verma, and the committee on this report. I join the noble Earl, Lord Sandwich, in having good memories of having served on the committee fairly recently.

As the noble Baroness pointed out, the report was published some time ago. In some ways it is frustrating that it has not been debated before now, but it is very timely, given its subject and given that we are at the beginning of formal negotiations with the EU. This report,

[BARONESS QUIN]

together with the other reports on Brexit from this House, shows compellingly how much we benefit from being a member of the European single market and how vital that trading relationship between the UK and the EU is going to continue to be for the future. This is a reality which both remainers and leavers have to come to terms with.

The report highlights the difficulties and challenges that Brexit poses and the possible consequences of Brexit on jobs, living standards and the influence Britain can have in the European and international contexts. This report makes many important points and asks important questions to which, so far, no very clear replies have been forthcoming. The report refers to industries, such as the automotive and aerospace industries, which are part of an integrated European Union supply chain and lists the ways in which UK industries that are part of that supply chain may face increased costs and economic disruption from Brexit.

The report also clearly and correctly states that the manufacturing and primary commodities sectors are important employers in particular regions of the UK. I note that a number of speakers in the debate today are, like me, from the north-east of England, a region which has had a good export record in recent years but whose trade is more heavily dependent on the European market than that of most other parts of the UK. The *Newcastle Journal* carried out polling during the election campaign. When asked about specific Conservative Government policies only 16.6% of people polled said they backed Conservative plans to leave the EU single market, despite the region having voted overall for Brexit.

There is also concern arising out of the current, very welcome, moves to finalise a free trade agreement between the European Union and Japan, but if the UK leaves the European Union with only WTO rules to fall back on we could end up with a region such as the north-east, which has the tremendously important and successful Nissan car industry, having to face obstacles that cars coming direct from Japan would not have to face. This is causing concern and will continue to do so unless somehow it is resolved in the negotiations that are taking place.

I listened with interest to the comments made by the noble Lord, Lord Howell, about services and the importance of the English language. It is a very important point, but it is verging on the tragic that we are leaving the EU at a time when English is clearly so widely used across the whole European Union. That is an asset that we are turning our back on in the process that we seem to be embarking on at present.

I want to make one point very strongly to the Minister. I know it is a point that was very important to her predecessor, to whom I pay tribute for the open way in which he dealt with Members of this House, which I am sure she will replicate. We need an assurance on how much consultation there will be and on who will be consulted throughout this process. Obviously the devolved Administrations have to be very closely involved from the outset, but all localities and areas of the UK and virtually all industries and local authorities will be affected by Brexit, and I hope that the Government

will give us some idea at the end of this debate about the systematic consultation that will take place. People very much need that reassurance at present.

I note that when talking about Britain's future trade post Brexit, the Government, including the noble Baroness, refer to the fact that the strongest-growing markets at the moment are outside the EU. Mention is made of the Far East in particular. When that argument is made, though, it often creates the false impression that there is a choice between being in the EU and its single market or being outside and trading with markets elsewhere. I am sure the Minister will concede that a country does not need to be outside the EU or the single market to trade with emerging and growing markets across the world, as can be clearly seen from the fact that Germany, from within the EU, exports about four times as much to China as we do. That proves the point, and indeed France too exports more to China than us at present.

As we know, trade takes place in an extremely competitive environment. Even if UK industry faces only modest tariffs or extra customs costs, it may find that that is enough to lose business on a large scale, so we have to be very careful about the arrangements we make in our negotiations with the EU. Also, we are talking not just about the competitiveness of trade. The report makes it very clear that, within the EU, UK industry benefits from collaboration and from funding in lots of joint endeavours with other European countries. The report rightly asks whether that essential co-operation will continue post Brexit.

For all the reasons that I have given, I believe the Government will have to envisage some kind of arrangement for the UK along the lines of the European Economic Area or EFTA. I note with interest the differing views from the noble Lord, Lord Livingston, on the one hand and my noble friend Lord Hain on the other. I must say I incline to my noble friend's view that we need to maintain those key benefits of being in the single market and the customs union.

I believe the Government have no mandate for breaking the links with the single market and the customs union. The election result did not endorse their approach, nor did it, as the Prime Minister wanted, strengthen the Government's hand with regard to Parliament, including your Lordships' House. In the election, Labour, the Liberal Democrats, the SNP, Plaid Cymru and other parties all stressed the importance of the single market to the UK.

The referendum result itself did not include a specific commitment to leaving the single market; again, I agree with my noble friend Lord Hain on that. In any case, if the country is to come together after a narrow victory in the referendum for leave—52% compared to 48%—it has to be recognised that that close margin means that those who did not want to leave the EU should have some of their concerns addressed, in terms of achieving a continuing close relationship with our EU partners. Indeed, the referendum result in different parts of the UK—remain won handsomely in Scotland and Northern Ireland, not to mention in Gibraltar, where there was an overwhelming remain result—means that to keep our union together, compromise, not confrontation, over maintaining our

links with Europe should be the order of the day. I hope the Government will take the report to heart, along with all the other excellent reports that have been provided by this House.

4.49 pm

Lord Inglewood (Con): My Lords, the speeches that we have already heard today point to the timeliness and excellence of the committee's report. Before going further into my comments, I should declare an interest as president of the British Art Market Federation, which, because London is one of three global hubs in the art market, is involved in moving goods around Europe.

In the referendum, I was one of those who voted remain. One of my principal reasons for doing so was the fact that I wanted us to stay in the single market. It seems strange to me that, until about a year ago, the establishment of the single market was generally accepted as perhaps the UK's and the Conservative Party's greatest contribution to the EU. It was the crown jewel of our European policy, as I argued on the hustings. I believed that then, and I believe it now. It is an extraordinary achievement. While it was Jacques Delors who was leading the European Commission at the time, we should not forget that it was two British Conservative Commissioners, also Members of your Lordships' House, who brought it into being: Lord Cockfield and Lord Brittan.

By any measure, it was a most extraordinary and complicated legal, political, economic and administrative construct and achievement, tying together separate marketplaces under a shared rule-making and rule enforcement procedure in which everyone participated. Furthermore, those marketplaces were set in the framework of very different legal procedures and administrative systems and traditions. And it worked—albeit with a little difficulty sometimes, it worked. When I see what is happening now, all I can do is echo Kipling and sigh,

“all our pomp of yesterday
Is one with Nineveh and Tyre”.

One characteristic of the report that has already been mentioned is that it focuses on the largest sectors of the economy, but it is important that we do not forget SMEs, which equally benefit from the single market. I recall a constituency case which involved a very small business exporting penknives to the continent and found that it was being thwarted. The effect of the creation of the single market was to transfer part of what I might describe as our abroad market into what I might describe as our home market. That has been of great benefit to our country's economy, because economies of scale have generated wealth, jobs and taxes and, of course, commerce is not a zero-sum game.

In my relatively limited business experience, one thing that has been emphasised to me most frequently is the importance of looking after one's home market. Leaving the single market throws much of our national home market away and goes directly against that proposition. The implications of that have been touched on by the noble Lord, Lord Hain. It is argued that we shall be free to make our own rules and strike our own deals—as will the other member states, as they will according to their internal and external policies. Of course,

that is true. The question that matters to me is whether they will be better deals. No one knows, but we must be hard-headed in thinking about it.

I have a number of concerns. First, I am very anxious about the impact of non-tariff barriers. I know from the work that I did 20 years ago—I spent 10 years on the Legal Affairs Committee of the European Parliament working on the detail of the single market—how such things can be and are used to frustrate trade. Then we must think about the time and money spent on customs formalities. Equally, are we certain that our businesses will be engaged in fair trade and fair competition? We all know myriad ways that help can be given to our businesses' competitors. In practice, if we are outside the single market rules, it will be a great deal harder to do much about it.

The Government tell me that there are plenty of opportunities to do business around the world. We know that: there are now. No country that we would like to negotiate with is likely to say no at this stage—it would be crazy. Secondly, are the countries which are to be our benefactors in this way likely, in our circumstances, to give us a big advantage over the rest of the European Union—which is, after all, a much bigger market? Thirdly, can and will they deliver? If the President of the United States promises some wonderful trade deal, he has the small hurdle of getting it through Congress. Fourthly, is what actually emerges going to help us? I recall a neighbour of mine who voted Brexit in order to make money by selling his beef cattle to Australia. I suspect that he is likely to be disappointed.

Businessmen conduct business because they see a deal with a turn for them at the end of it. Generally, by the time a politician points something out, it is too late. Business is in front, and we in politics are normally behind. Of course, in this country we are good entrepreneurs and enterprising—but so, of course, are businessmen from other countries. It is worth noting, as the noble Baroness, Lady Quin, said, and as I say without any satisfaction, that both France and Germany seem to be trading rather more successfully with China than we are.

Then of course we are told that we should be able to adopt more flexible business practices than our European competitors, and it is probably true that we could in this country adopt Hong Kong-style ways of doing business—but I do not want us to do that and, far more importantly, nor do the Government. Much of what critics of our employment and labour relations laws have decried has in fact been introduced by the UK Government behind a smoke-screen of Brussels to hide what they were up to.

Then we are told that, in a world of networks, “Belt and Road” proximity does not matter. In some cases that may be right, for low-value and low-quantity goods, but in other cases it certainly does, and having confidence in things such as dispute resolution procedures, the integrity of business partners and appropriate systems of dealing with issues when after-sales problems arise, certainly all matter.

Then we are told that we will be able to support our businesses with money not being paid into the EU budget. Speaking for myself, I do not think that the

[LORD INGLEWOOD]

principle of contributing to the EU budget as we have been doing is inherently objectionable, since the structure of our manufacturing economy is especially suited to gaining advantage from other countries by virtue of single market membership. Furthermore, if we find that our national turnover reduces by leaving, VAT take will reduce, since it is a turnover tax. It would not surprise me at all if the tax gain from being in the single market equated to most, if not all, of the contributions that we have been making.

As we move towards the promised land post Brexit, I can see no reason in theory why membership of the single market should not be part of any final settlement that emerges. After all, Brexit means Brexit—neither more nor less; the eurozone is the eurozone and the single market the single market. My fear is that, if we leave the single market and reach the promised land, we will find that there is not a great deal of milk and honey when we get there.

4.57 pm

Baroness Armstrong of Hill Top (Lab): My Lords, I want to pay tribute to the chair, the noble Baroness, Lady Verma, and the staff who support the committee. We enjoyed the inquiry, although it was a bit scary—and the more we did, the more scary it became. I regret that the Government have not managed yet to respond, as the noble Baroness, Lady Verma, said, because that adds to the feeling that they are overwhelmed by the task that faces us. I am afraid that that feeling goes far beyond members of our committee and Members of this House; it is there among stakeholders, too. As others have said, decisions have been made among businesses that are already going to affect trade and job opportunities in this country.

It looks as if the EU has a strategic plan. In fact, it prepared for a Brexit decision. The British Government did not—and I wish that I had confidence that they have been able to develop a clear strategic plan, with all the detail that is necessary to go behind any good strategic plan. It really looks as if government is lurching from tactical position to tactical position, with no strategic framework that the rest of us can discern.

I do not think that it is an accident that there are three Members from the north-east here today, and noble Lords will hear from all three of us within about half an hour. I am followed by the noble Lord, Lord Shipley, and of course was preceded by my noble friend Lady Quin. I want to be careful to not just say what they will say or have said or what I have said in previous debates. However, the region does have the highest proportion of its GDP in exports to the EU and a very high proportion of its economy is involved in trade with it. The importance of manufacturing to the north-east is absolutely clear but, as the noble Lord, Lord Howell, said, anyone—and particularly the automotive industry—thinking about manufacturing can see just how intertwined it is with services. The relationship is complex; it is not easily divided or separated. Nor is it easy to separate the chain of activity that goes way beyond one country, let alone one city.

The city of Sunderland, in which Nissan is located, and South Tyneside council, which is very near to its plant, have been working together to develop what they call an international advanced manufacturing park on the outskirts of the current Nissan plant, which would enable other manufacturers allied to high-value automotive manufacturing to locate there and develop new business activity. One of the ambitions is for much more of the whole car to be built in Sunderland but even with that the issue of country of origin does not go away. During the preparation of this report and our previous one it became evident just how important that is for free trade. It is important even if we are not in the single market, and I will come to that point later.

Country of origin will be an issue, whatever the nature of our trade, as will the availability of skilled labour and equivalence in our regulatory regime—something that we all hate to go on about, but which is very important. Along with that equivalence needs to go an agreed mediation system. Are we going to be ready with all of that in 18 months? I suspect not. The Government have said that they do not want a sector-by-sector trade deal but a comprehensive free trade one. The view of the International Trade Secretary seems to be that we can prosper with trade outside the EU and, indeed, outside the countries that have a trade deal with it, which would demand another route too. At its best, it will be extremely difficult to get to equivalent levels of trade with countries other than the EU bloc and those it already has trade deals with. It is also going against the reality that we will still be part of Europe even when we have left the EU, for all sorts of reasons that I do not have to explain to a Foreign Office Minister. We have to be on good terms with our neighbours in Europe.

The blasé view that it is all going to be straightforward and that if the EU makes it difficult we can move beyond it will be disastrous for the north-east. People in the region need the Government to be fully active now in consultation with local authorities, businesses and other stakeholders in the region, in preparation for the negotiations on trade. They need the Government to be clear about the transition agreement and I agree with what other noble Lords have said on that. They also need the Government to get on with taking decisions on the industrial strategy now. If the regions are to prepare for life outside the European Union, they need to develop the infrastructure and other things that they need to survive. That means that the Government have to get on with their industrial strategy so that at least there is clarity around the money that will be received in places that have to construct an alternative way forward. The key cities have produced a response which reminds us and the Government that devolving resources and decisions is critical if we are to have a growing and more-balanced economy that brings more balance and equity to our country.

The response from Sunderland and South Tyneside to the Green Paper on the industrial strategy concentrates on the international advanced manufacturing park. They see that as critical to their determination to grow the economy and develop sustainable, quality jobs. The Government must get on with responding to the Green Paper responses and begin to take decisions.

They also need to ensure that they work with businesses, further education colleges and local authorities to up the game on skills development. As I said in a previous debate, the north-east still has a skills gap, largely because young people are still leaving the region. That means that our skills training and support is simply not good enough and we are not keeping them in the region. Virtually no attention was paid to that point during the election campaign but it was raised again and again in the evidence submitted to the committee. I hope that this debate helps the Government to make the decision to give regions such as the north-east confidence and support in meeting their ambition to grow their economies and at least retain their existing businesses.

In my previous speech I made it clear that I support our membership of the single market and the customs union. I support what others have said about that today. I have heard nothing from the Government that persuades me that they have anything like an acceptable alternative which will give certainty to business and enable regions such as the north-east to trade effectively with the European Union.

The report makes it clear that huge challenges face the country in relation to its trade following Brexit. It is the Government's task to turn those challenges into opportunities. That will not happen by pretending that this will all be easy and straightforward. We will only begin to get anywhere near that if the Government engage much more seriously with people here and in the regions, people in business and the public, and negotiate in a much more open and confident way than we have seen to date. I have a lot of respect for the Minister and know that she will not try to put us off in the way that I am afraid I felt was the case when the Secretary of State appeared before the Select Committee last week. This is an issue on which we need clarity and decisions from the Government; otherwise, the future for regions such as the north-east is very bleak indeed.

5.09 pm

Lord Shipley (LD): My Lords, I thank the noble Baroness, Lady Verma, for introducing the report. It was published in March and it has not been replied to, but it has lost none of its relevance. I agree with the comments made by the noble Baronesses, Lady Quin and Lady Armstrong of Hill Top, about the north-east of England, its economy and its export dependency on the European Union and what needs to be done to protect the region's interests, and in particular its jobs.

Crucially, this report gives ample evidence that a hard Brexit would be damaging to the UK economy with our departure from the single market and the customs union. In January, the Prime Minister announced that we would exit the single market and the customs union and seek a free trade agreement. It was the wrong decision. The result of the referendum did not point to any specific status with the EU—it was a decision to leave the EU, but with no clear destination in mind. So the Government are seeking a free trade agreement with the EU, but that cannot be a replacement for what we have now, since we already have free trade with the other 27 members of the EU. If there is no

free trade agreement, we will still have to adopt World Trade Organization rules, which will mean that tariffs will apply, such as 10% on cars. Further, as the report makes clear, both a free trade agreement and following WTO rules would require non-tariff barriers to come into effect such as the rules of origin, of which we heard quite a bit earlier in this afternoon's debate. However, those rules of origin would require evidence of substantial local content, and there will be a serious negative impact on those sectors which have an integrated European supply chain.

I will say something further about the impact of Brexit on the automotive and chemical industries, both of which were identified by the committee as important—particularly, of course, to the economy of the north-east of England. Paragraph 60 reminds us that:

“International businesses are not structured neatly along sectoral lines or national boundaries”,

and paragraph 61 reminds us that:

“The manufacturing and primary commodities sectors are important employers, particularly in regions outside the South East of England. Ensuring that these industries do not face additional barriers to trade with the EU and beyond will be essential to drive growth across the whole country, as envisaged in the Government's Green Paper, *Building our Industrial Strategy*”.

Two issues arise. Some regions are more exposed than others to leaving the single market. Has there been a regional impact assessment of leaving the single market? If not, on what basis was it decided by the Prime Minister that we should leave and not attempt to negotiate staying in the single market? Secondly, do the Government understand that supply chains are international? Paragraph 111 of the report says that the Society of Motor Manufacturers and Traders, “provided the following summary of the automotive supply chain”, which is worth quoting:

“One part can, as part of an integrated supply-chain, travel across the Channel multiple times before the final vehicle is completed. If a tariff is applied to parts, whole vehicles and furthermore customs duties and significant compliance costs for inward and outward processing, this could ultimately make UK automotive companies, and their operations unviable”.

That word “unviable” becomes critical.

In January, at Davos, the chairman and chief executive of Nissan said that when the Brexit “package” was made available, Nissan—which accounts for some 28,000 jobs across the north-east of England, directly and indirectly through the supply chain—would, “have to re-evaluate the situation”,

and ask the question,

“is the competitiveness of your plant preserved or not?”.

That is the key question. Therefore, does the Minister agree that we have to keep tariff-free access to the single market and the customs union to ensure that we are competitive?

Let us take a look at the chemical industry, which is very strong on Teesside. We note at paragraph 87 of the report that:

“Mr Steve Elliott, Chief Executive Officer, Chemical Industries Association ... said that tariff-free access to the Single Market was ‘the key priority’. The chemicals sector ‘faces essentially three tariff levels: 0%, 5% or 6.5%’. The volume of cross-border trade made these potentially significant: ‘some 75% of our chemical imports come from the European Union’, and 60% of the UK's

[LORD SHIPLEY]

exports went to the EU. This meant that tariffs would apply to ‘both the import ... of a raw material ... and the export, so there is a potential double whammy if you sit at the 6.5% end’. The CIA concluded that the imposition of tariffs ‘would have a significant impact on the competitiveness of the UK to continue to deliver into EU markets’.”

Therefore, I repeat the question that I asked a moment ago: have the Government assessed the impacts of Brexit by region and by sector? The committee has done a very good job but we have not heard a response from the Government.

One hundred and seventy thousand UK businesses trade with the rest of the EU, and they are able to trade within the single market using fully computerised systems and without going through customs controls. It is reported that the UK will face 350 million customs declarations a year—effectively 1 million a day. The bureaucracy sounds endless. We need to stay in the customs union, and that is particularly vital for those depending on just-in-time delivery systems.

Much has been said about a free trade agreement, and in my view a lot of it is overoptimistic. I was very struck by paragraph 293 of the committee’s report, which says:

“When asked about the feasibility of negotiating the UK’s withdrawal and the new trading relationship within two years, Lord Bridges of Headley ... Parliamentary Under-Secretary of State, Department for Exiting the EU ..., said the Government was seeking to negotiate ‘an agreement that covers both ... within the two years’. Thanks to the UK’s ‘unique position because of the way in which our laws and regulations are so entwined with one another ... we see it being technically possible to do this’.”

It is reported that the Minister of State, the noble Lord, Lord Price, agreed with that,

“arguing that there was ‘certainly no reason why an FTA could not be negotiated within that timeframe’.”

Therefore, I ask the Minister: is that still the Government’s position as there are only 18 months to go? I just draw the House’s attention to the fact that the Canada/EU trade agreement took 10 years.

While we are on the subject of free trade agreements, will the Government publish the Treasury paper—described as an internal paper—which says that a hard Brexit would be far more costly than any potential gains from new trade agreements? I ask the Minister whether that unpublished paper will be put into the public domain.

We have heard quite a bit about the need for a transitional agreement. The committee’s previous report, *Brexit: The Options for Trade*, concluded that a transitional arrangement would be essential, and that is undeniable. I agree entirely with the noble Baroness, Lady Verma, on that point—I recall her saying that that would be necessary.

I think that we are now moving into very dangerous waters. We must aim for an EEA-style agreement. The noble Lord, Lord Livingston of Parkhead, helped us by reminding us that many overseas and UK investors are suspending investment until they know what the position with Brexit will be. This is very bad for growth and jobs, and all the indicators of economic difficulty are now there. Also, as we hear with great regularity, other countries are waiting to take investment and jobs out of the UK. Will the Minister tell us what

this uncertainty does for the future of UK jobs, particularly in those parts of the country that are very dependent on exporting to the EU?

Finally, the Government said that they wanted frictionless trade—we all want frictionless trade—but without, it appears, thinking through how that would be delivered. Monsieur Barnier has made it clear that frictionless trade is impossible to achieve outside the single market. We cannot have both outcomes: be outside the single market and have frictionless trade. I have concluded that our national interest is to stay inside the single market, and by that I mean that we need to stay inside the customs union—I have heard a number of speakers this afternoon say exactly the same thing. This is fundamental to the economic prosperity of our country and, in particular, to that of regions like mine.

5.21 pm

Lord Marland (Con): My Lords, I start by declaring my interest as chairman of the Commonwealth Enterprise and Investment Council and my business activities as in the register. I too compliment the committee and my noble friend Lady Verma on this report: it is a concise observation on the current trading of goods with the European Union. The report suggests that the EU has finally been able to land, after the most tortuous process, 36 preferential trade deals. It concedes that these are not free trade deals, and indeed some have been described as general systems of preferences that have been agreed with African, Caribbean and Pacific countries, many of which are members of the Commonwealth—of which more later. Happily, the report also tells us that 73% of all goods traded are not with the European Union—the prophets of doom around us need to take that into context.

The committee indicates that there may be significant delays for our Government and Secretary of State in reaching free trade agreements shortly after leaving the EU with the 15 countries that have been identified. How very worrying, some might think, including my noble friend Lord Livingston of Parkhead. But I have long been of the view that FTAs are a current erroneous obsession, and I am totally opposed to my noble friend when he says that they are important. Our largest single-country trading partner is the United States. We have never had a trade agreement with the USA, or, for that matter, with many other countries, and it would be incredibly difficult to achieve one. So I have a lot of faith in the ability of British business to trade. Of course, a trade deal is necessary only when the rules of engagement with the trading party are not consistent or are subject to abuse. We have long traded throughout the world on this basis. The noble Lord, Lord Howell, makes the incredibly valuable point that, with the technology upon us, trade will take place in a totally different landscape.

As an aside, 15 trade deals—which is what the Government think they want—is a very modest ambition. If they are determined to develop that ambition, I hope they will look outside government, which they seem slightly incapable of doing, and invite others to support them in this endeavour.

Whereas this report is long on evidence, it is regrettably and not unsurprisingly short on solutions. It seems to me that this is representative of the paradox that the

country is in. We know we are leaving the European Union, but the Government have not prepared themselves adequately—indeed, they were encouraged not to plan for it at all before the Brexit referendum. The current state of our politics, to put it mildly, demonstrates that business cannot rely on government for leadership.

I was brought up with the simple tenet that the country and people do better when government does least. If ever there was a moment in our time when this exists, it is now. Government for those in business is a burden. It taxes us, it legislates us, and it puts hurdles in the way of our business prospering. It is therefore no surprise—I agree with the noble Lord, Lord Livingston—that business has become cautious with its exports and that its first priority is to plan for “what if” scenarios.

At this point I pay a compliment to the Government—I do not want to be an onslaught against my own Government—because they have done a number of good things to promote trade. They have increased the export guarantee fund and made it more flexible; reduced corporation tax to the lowest in the G20; and made the process of starting a business more competitive than in any other country in the G20. However, as the statistics show, 60% of our SMEs are still not exporting—and therein lies a major problem, Brexit or no Brexit.

We therefore have to free business. This would not be to the detriment of sound business practices because investing in people and in development requires carrying the workforce with you, as any sound business should do. And as Ministers and all of us will agree, a fair distribution of profits among the workforce, not irresponsible salary generation, is very important. However, it is business that will develop trade. Therefore, government needs to overhaul its regulations and review the sometimes ridiculous gold-plating and the regulations that have been imposed from Europe to make the UK less competitive. I say that with first-hand knowledge of the insurance business, where we had to deal with endless regulations brought from Europe to make us less competitive in the United Kingdom. Government also needs to ease the opening of banking arrangements, which continue to be baffling and a tortuous process, and reform the tax system so that it no longer has the current overcomplicated layers of tax. It needs to introduce a faster-responding legal system that allows disputes to be resolved quickly, thereby underlining the importance of the rule of law and Britain’s role in the world as the fairest legal system. Government agencies’ help for companies to find a route to markets and how to get into countries is absolutely vital.

Manufacturing is slowly returning to this country because we have become competitive again. However, we need to turbocharge this by bringing together industry groupings in enterprise zones. What has happened to them? Why are we not starting them again? Over the years they have proven to be successful not only in generating business but in regenerating areas of the country which badly need it.

As a Conservative I regret to say this, but the Government are way off the pace. Their political processes are stuck in a time warp of excess paper, ponderous decision-making and a total lack of energy. Rarely do we hear from Ministers and quangos that

represent businesses about the phenomenal opportunities that exist for exporting and for this country. We also need joined-up thinking between the FCO, DfID and DIT to ensure that our excellent programme of aid has dividends for the British workforce, but not exclusively. However, there are recognised projects such as the well-known airport in the Caribbean that is about to be built, and to which the UK has given a great deal of aid, and guess who is doing the contracting work? The Chinese.

As chair of the Commonwealth organisation focused on trade, I am bound to say that the Commonwealth—which contains 52 countries and one-third of the world’s population, of which Her Majesty the Queen is Head of State, and which is proven to be 19% more competitive to trade into—is a complete open goal for the UK Government. Yet the reluctance to show real leadership is, I am afraid, a concern. We hope the Commonwealth summit to be held next April will give the UK an opportunity to show its leadership on the world stage, but it must seize that opportunity. As an aside, I should say that the formation of a Commonwealth unit under the Cabinet Office for this event is a welcome move.

As we know, not only is the Middle East one of our biggest investors in this country, it is also one of our biggest importers. I am delighted to see that the noble Baroness, Lady Symons of Vernham Dean, is serving on this committee. She has deep knowledge of the Arab world. Why have the Government been so reluctant to stand up to their friends and be a force of interlocution in this complicated part of the world? We have to enhance relationships rather than diminish them at this critical time.

As a former Prime Minister’s trade envoy, I know at first hand that we have many outstanding relationships. Why have the Government been so reluctant to strengthen our country trade envoys, whose work has paid great dividends because it is a cross-party, continuing arrangement in many markets? Many of our trade envoys have seen two ambassadors and two UKTI officials while they have been the consistent force in-country. As we know, in business the continuity of relationships and the personal touch are incredibly important. The FCO needs to revamp its attitude to post.

But let us not end on a good old moan. The opportunities for the United Kingdom are phenomenal and we have the building blocks in place. We have an education system that we may criticise, but the outside world is deeply envious of it. We have four of the top 10 universities in the world and we have educated countless foreign students, all of whom remain loyal and well disposed towards us. We are world leaders in so many areas that it would take too long to list them. We are an innovative, practical nation, a country whose people like to work. We have the right workforce, and here all credit to the unions which I worked with when in government because they understand our need to be competitive. They have changed their rules to support us. We have the rule of law and we have control of our currency. My message to my noble friend the Minister is this: tell your colleagues to lift up their spirits and release some, but not all, of the shackles on businesses in order to help them export.

5.32 pm

Lord Bilimoria (CB): My Lords, 22 February 2016, a date that many people forget, was when the referendum was announced. Normally when a business or a country goes in for a big change, it is caused by a burning platform: things are really bad or not going well. But at that time we as a country were flying. Our Foreign Secretary is very fond of cake: well, we were eating our cake and having it as well. Sovereignty was a big issue where the wretched referendum was concerned, but we had full sovereignty. We are not in the euro but we are at the top table in Europe. We are not in Schengen. We measure our roads in miles and we pour our petrol in litres. I pour Cobra beer in pints when I choose to and I sell it in litres on supermarket shelves when I choose to. When I challenge people on EU laws because they say, “I want to take back control and leave”, I ask them to name one law that affects them on a day-to-day basis. Most people cannot name even one because the laws that affect them on a day-to-day basis are made by us here in Parliament.

People confuse the European Court of Justice with the European Court of Human Rights. We wrote the European Court of Human Rights and we will continue to be subject to the court, but people do not understand that. Then they say, “Oh, look at the billions that we put into the EU every year”. A pie chart of our annual government expenditure of £800 billion a year would show a thin line with an arrow pointing to it to indicate the 1% of our annual expenditure that goes into the EU. I would pay that 1% just for the peace that we have on the continent.

Yesterday we had a debate on the impact on immigration of Brexit. What would we do without the 3 million people who are working over here? We should be grateful to them because without them we would have labour shortages. We have a 4.5% unemployment rate, one of the lowest in living memory. Is it low-skilled labour? That is nonsense. It is labour that is high-skilled and low-skilled, right across the board.

Since 22 February last year the country has been deeply divided. We as a country had the fastest-growing western economy in the world, but today we are growing more slowly than Europe. Our savings rate is really low. We have a Government who are leaderless with a leader with no credibility. The will of the people as expressed on 23 June is shackling this country, this Parliament and our parliamentarians. The vote was to leave, but to leave on what terms? No one wants to leave if we are going to be worse off as a country, as an economy, as businesses and as individual citizens. A Survation poll taken on 18 June 2017, just 10 days after the election, showed that 53% of people want a say on the final deal, and that well over two-thirds do not want a hard Brexit.

I turn to Emmanuel Macron. Luckily the populist bubble seems to be in the past. We had Trump and the referendum, but we did not have it in Austria or Holland and we now have Emmanuel Macron in France. Moreover, we are not going to get it in Germany. We have also heard former Prime Minister Tony Blair say that, according to him, European leaders are willing to consider reforming Europe to adapt to what we are looking for. I firmly believe that, when it comes to the

free movement of people, there needs to be reform in Europe. That will be to everyone’s benefit because Schengen works from the tourism and business point of view, but not from the point of view of the migration crisis or the need for security.

I am a lone voice in this country but I will keep saying this: why do the Government not bring back exit checks at our borders? I challenge the Minister on that. We should have visible, physical exit checks and then we would have control over our borders. In every other country that I fly in and out of on a regular basis, whether it is Europe or South Africa or India or the United States, my passport is scanned on the way in and again on the way out. You then have control over immigration. From the security point of view it is negligent not to do it—and we need to give people more faith where immigration is concerned.

What will the future be? Brexit is the most important decision this country has faced—but, quite frankly, the future is worrying. First, we know that it is a Conservative Party issue. It was UKIP that drove Brexit, but where is UKIP today? Also, unfortunately there is no clarity at the moment from the Labour Party as to where it would stand once the issues are boiled down. The worst thing about all this is obvious, but I have to say it. For the past year and over the months ahead, what are we talking about in Parliament? Brexit. What we are not talking about are the issues that really matter to this country and which we need to be getting on with. Indeed, we are being left behind already. What hurts me most is that Britain was at the top table of the world. We are not a superpower but a global power: the G7, the G8, a permanent seat at the Security Council, the G20, a member of NATO, but no longer at the top table of the EU. We have lost our global standing and right now we are actually the laughing stock of Europe and the world.

I congratulate the noble Baroness, Lady Verma, and her committee on the report. It states right up front:

“Brexit will fundamentally change the UK’s conditions of trade with the other 27 EU Member States, and with over 60 countries with which the EU has preferential trade agreements”.

It sets out the reality:

“Goods make up the bulk of the UK’s global trade, and accounted for around 60% of all UK exports to the EU, and almost 77% of total UK imports from the EU”.

Yet the Prime Minister set out her intention for the UK to leave the single market and the customs union in her famous Lancaster House speech of 17 January. The report clearly states that,

“in the absence of a FTA with the EU after Brexit, tariffs would apply”.

When you have tariffs, you get WTO rules. That means 10% on cars, 200% on some agricultural products, and great damage in areas where we are integrated into the EU supply chain. Indeed, we have heard the noble Baroness herself say that,

“tariffs could be levied multiple times in the production process”.

Then there is the big issue of non-tariff barriers such as rules of origin.

What about the wonderful EU agencies that the UK participates in, some of which are based over here? I cite the European Medicines Agency and the European

Aviation Safety Agency. The UK's proposed relationship with the EU outside the customs union and the single market will also result in a customs border. That means customs procedures and delays, increased administration and red tape, red tape, red tape. Wow—more red tape. That is a nightmare for business; we see red when we hear about red tape.

The timetable for withdrawal is so tight. First, the Prime Minister was in a hurry to get the notice under Article 50 submitted by March. Why? Because she wanted to get out by 2019 so that she would have a clear run to the 2020 elections. Then she called a snap election which ate into that two-year period when the clock was already ticking. Now we are waiting for the German elections and the clock is still ticking. Concluding an EU FTA agreement in that time is dreamland. And then there is talk of transitional agreements.

The EU member states combined were the single largest trading partner of the UK, accounting for 47% of our exports and 54% of our imports. There are also important trade agreements with third countries that we benefit from, such as the one with the Republic of Korea that has been referred to. They are the FTAs that we have through the EU, with up to 60 countries, which we will no longer enjoy if we leave the European Union.

I chair the Manufacturing Commission—we are a proud manufacturing country. Along with Molson Coors, my joint venture partners, we manufacture Cobra beer in Burton-on-Trent. Manufacturing was 30% of GDP in the 1970s, at the time that we joined the European Union. Today it is 10%—but it is still very high-value manufacturing. The report states that our manufacturing export intensity rose from 30% in 1991 to 47% in 2011. I am boasting here—please forgive me—but Cobra has won 94 gold medals since 2001 and this year was the only beer in the world to win the judges' trophy. It is manufactured in Burton-on-Trent in Britain. It is British manufacturing at its best—British manufacturing that employs 2.7 million people in the UK; British manufacturing that supports jobs in the services sector.

The noble Lord, Lord Marland, referred to our world-class universities, the best in the world along with those of the United States of America. UUK illustrates this with an example: we are less than 1% of the world's population, yet the UK produces 16% of the world's most highly cited articles. The UK also ranks first in the world by field-weighted citation impact. What is the danger of leaving the EU? It is not just losing the funding that our universities rely on—the Government can say, "We'll give you that funding"—but, more important and more worrying, it is losing the collaborations that exist. I saw this when I went to India with Jo Johnson, the Universities Minister, as chancellor of the University of Birmingham and wearing my hat as chair of the advisory board of the Cambridge Judge Business School. In India, we demonstrated the collaboration between the University of the Punjab and the University of Birmingham. Our field-weighted impact result is about 1.8; that of the University of the Punjab is 1.3; combined, it is 5.3. When we research with Harvard, which has a field-weighted average of 2.3, the combined result is 5.4. That is the power of collaborative research; that is what we would possibly be losing.

The noble Lord, Lord Howell, spoke about services being 80% of our economy. We are already a great trading nation; we always have been. Trade makes up 65% of our GDP. Then the Government will have to make a trade-off between their desire to determine UK laws and regulations and the extent to which an FTA with the EU can operate to two separate regulatory standards. As the report points out, that is another problem. The report then states that leaving the customs union would result in costly administrative requirements and customs procedures—burdens for companies—and further states:

"Administering UK-EU tariffs and non-tariff barriers—in the absence of a common regulatory system—would also significantly increase the work of HMRC".

What about HMRC? How will it cope with this?

We are going to lose out on a huge amount. The 60 countries with which the EU already has free trade agreements account for about 17% of our exports. If we add the 50% of our trade accounted for within the EU and the 17% with those other countries, we see that two-thirds of our trade globally is tied up with being in the EU. Wake up—this is really serious. Leaving will be a huge problem.

And then our great International Trade Secretary, Liam Fox, goes to India and says, "I'm going to open up a free trade deal with India". I have shared a platform with the Indian high commissioner, a seasoned diplomat, who says that we are welcome to do a free trade deal with India—"Please, do come along, but also remember that a free trade deal with India also means looking at movement of people". It is not just goods and tariffs; it is services, it is movement of people and it is students. By the way, how many bilateral free trade deals does India, the largest democracy in the world with 1.25 billion people, have in the whole world? Nine—and not one is with a western country. How many free trade deals does the biggest economy in the world, the United States, have? It has 20.

This is not easy; this is not a joke. This will take a huge effort; it is not the panacea. The noble Lord, Lord Inglewood, said very sensibly that business is invariably ahead of government. Unfortunately, for a whole year, the Prime Minister did not listen to business. Now she is trying to do that. It is not just the CBI; it is not just the British Chambers of Commerce; it is not just the FSB. We need individual business leaders—FTSE 100, FTSE 250, FTSE 350 and SMEs—to speak out individually and have the guts to say to government and to the country, "This is madness, because it is business that creates the jobs that pay the taxes that pay for our public services that we all benefit from".

EasyJet is already saying that it is going to set up a new European base. A report from the Centre for London think tank said that up to 70,000 finance jobs could be lost—Paris and Frankfurt are just waiting. And then the biggest free trade deal in the world, the EU-Japan deal, has just been concluded after four years of negotiation. Here is the reality. A headline in the *Independent* states:

"Brexit: German business warns May its priority is to protect single market, not a good trade deal with the UK".

[LORD BILIMORIA]

Here is the other thing. We hear it said: “Oh, Europe’s going to be desperate to do deals with us, because the German car makers will make sure of it”, but the article states:

“Carmakers in Germany were expected to lobby their government for a free trade deal to help them sell into the British market, but they say protecting the single market is more important”.

That is the reality. The *Financial Times* says that short-term transition deals will not work and gives reasons for that.

It is said that this situation is about respecting democracy. We are being shackled because of the will of the people—52% versus 48%—that was expressed a year ago. The reality is that in a normal democratic election, if the Government have not performed, five years later the public can throw them out. Here, this is permanent. Keynes said:

“When the facts change, I change my mind”.

If we really respect the will of the people, we will allow them to make a decision once they have the full facts. That is respecting democracy; that is the will of the people. By that time, the people will see that the Brexit emperor has no clothes—and then it will not be “Brexit means Brexit” but “Remain means remain”, because people will realise that, for the benefit of this country, its economy, its business and its citizens, it will make sense not to leave the European Union.

5.47 pm

Lord Horam (Con): My Lords, there is great logic in what the noble Lord has just said about the future and the possibility of a second referendum. I agree with him that there is an absolutely logical case for that.

As a member of the sub-committee which produced this report, I first agree with my noble friend Lady Verma on what an excellent job the staff did in bringing together a huge amount of information and shepherding it into a sensible and rational arrangement which we, and I hope others, could understand. When it comes to writing reports of this kind, I am always reminded of the story of Henry Kissinger, when he asked his assistant to provide a report. The assistant turned up with a report and Kissinger said, “I think it needs a bit of tweaking here and there. Come back in a week”. So the assistant came back in a week and Kissinger said, “I know your talent for writing reports. I think you could do better. Come back in a week”. The guy came back for a third time and, before Henry Kissinger could say anything, he said, “Look, Secretary of State, I’ve shot my bolt. This is it. I can’t do any more”. “Okay,” said Henry, “I’ll read it now”. Fortunately, we were not in that position in our committee, because they got their first draft pretty well spot on and we were able to agree on the bones of the report.

From beneath the positive cornucopia of information in this report, we went away with two themes, which we had also outlined in the first report in December. The first is that transitional arrangements are essential. I think that there is broad agreement on all sides of the committee, on all sides of the House and in all shades of opinion that some sort of transitional arrangements are necessary. Even across the channel, there has been such an understanding, in Brussels as well as here. This is not going to be done in the remaining 20 months, whatever one likes to call it.

Secondly, in addition to transitional arrangements you need arrangements that are disruptive as little as possible. If you are to have those, I suggest you must at least stay in the customs union. Now, we heard a number of arguments in the debate today about whether you should also stay in the single market. The two are quite distinct and not necessarily linked. I am afraid that I agree with my noble friend Lord Livingston that there are some political realities about staying in the single market as well as the customs union. However, let us at least stay in the customs union because that would deal with the just-in-time supply chains that are common in aerospace and automotive industries, and deal with the problem of the Irish border.

That is clearly what the Chancellor of the Exchequer is gunning for. In today’s *Financial Times* he is quoted as saying that we shall need at least two years in addition to the nearly two years that we have under the Article 50 arrangements. We are talking of about four years, possibly, for a transitional arrangement. That seems sensible. I understand that Mr Barnier has said something along similar lines. Three to four years is the sort of period that we need for sensible arrangements. That is supported by this EU committee, reporting twice on the subject of trade. I understand that it is supported by the *Evening Standard* today. The Home Secretary has said that we need at least a period of time inside the customs union. Obviously, it is supported by the Engineering Employers’ Federation, the CBI and other business organisations.

The argument against that put by Liam Fox and others is that it will not allow us to make our own free trade agreements with other countries. However, as my noble friend Lord Livingston pointed out, you cannot do these things in four years. If we have an interim arrangement to stay in the customs union for four years, very few FTAs would be finalised in that period, even though legally we cannot do that anyway. Even the provisional work would not be completed inside four years on any FTA, together with the fact that we are doing multiple FTAs all at once. The sheer impracticality is mind-boggling. I do not think that to remain in a customs union really puts out of court any serious agreement we would have with any other country outside the European Union.

We can also overrate the value of free trade agreements with other countries. I speak with some experience here. Notice that I do not use the word “expert”. Experts are somewhat devalued these days; ideological purity seems to triumph over experts. I speak with some experience because a company I founded many years ago, before I became a Member of Parliament, is fortunately now thriving and we export 92% of our services. The noble Lord, Lord Bilimoria, boasts about exports and I will boast a little bit. Opening up new markets in what are inevitably distant lands—Chile, China or whatever—is hard work; servicing them is even harder. It is not a question of getting on the Eurostar to Brussels or going on a plane to Spain. If you are going to Chile or China, you must have people on the spot with offices. It is costly and all the rest of it. It is not easy to do all this trade or make free trade agreements with other countries that are distant and small by comparison with the trade arrangements we already have.

Also, these countries extract a price. Look at what Aramco is now asking for to have its business listed on the London exchange. They all demand a price and want their pound of flesh. It amused me during the referendum campaign to see the slogan, “Bring back control”. If you weaken the economy, you make it more difficult to have control over it. You lessen the control you have if you are in the position of a demandeur. You are less in control of your affairs than if you are in a strong position—as we were inside the European Union. As Mr Carney once put it, we are more dependent on the kindness of strangers—and we will continue to be if we have the debts that I fear we will have as well as the position outside the European Union. I do not want to get too far into these deep waters. All I am saying is that the sort of free trade agreements we can have with the rest of the world that we do not have at the moment are not a substitute for the markets we have now. They are valuable, yes, but they are not a substitute.

The Government must make their mind up about remaining a member of the customs union. They should announce that soon. As has been said during this debate, while we rely on these platitudes, as we have done for so long, investment drops away and companies make worst-case assumptions: easyJet thinks about going to Austria, Barclays thinks about going to Ireland, et cetera. Again, this point has been made but I fear that Governments invariably leave it until too late. If you look at that admirable book by King and Crewe, *The Blunders of Our Governments*, you will find endless episodes of Governments, for internal reasons, simply taking too long to make decisions. Of course, the private sector must pick up the pieces.

In addition to that, we need not only to have a clear view but also to sell it to the European Union. The right approach is to go to the EU, come October or whenever we start the trade negotiations, and say, “Why can’t we keep what we have? Let’s not build up barriers between us where we don’t have them at the moment. That is ridiculous. We’d be the laughing stock of the world if we do that. Let’s keep what we have. Of course, further down the line we will want to raise issues such as free movement of labour and maybe the role of the European Court of Justice—but that is further down the line. Let’s begin with working on what we have in common and what we can keep”. That positive approach will produce better results. I do not know any more than anybody else in this House what the reaction of the European Union will be or what Mr Barnier will say to all this. We do not know at this stage. None the less, on the understanding of proper negotiations, a positive, co-operative approach must be the sensible way through.

Finally, I believe that there is a way through these difficulties. It is necessary for the Government to be more realistic and flexible, and to listen to business and sensible centre-ground opinion. That opinion has been admirably expressed in the two reports and in today’s debate.

5.57 pm

Lord Davies of Stamford (Lab): My Lords, it is a pleasure to follow the noble Lord, Lord Horam. He and I have taken part in more debates over more years

in both Houses of Parliament than we probably choose to count. I particularly agree with what he said about control and sovereignty, and the problems we have brought on ourselves through this Brexit project that have reduced our capacity to control or influence our environment. They have reduced our sovereignty, not in any way increased it.

It is fairly clear now that the whole Brexit project is ploughing a trail of destruction through the British economy. We are in the very early days and most of our fellow citizens have not really noticed what is going on. Almost every day there is a sad and worrying indication of some strategic loss in the country’s interests and long-term economic assets. The other day we heard the announcement that the European Medicines Agency would be lost. That is 1,000 people, many of them highly paid and skilled pharmacologists and doctors, and more than 10,000 people who come over here to visit them, talk to them and take part in conferences arranged by them. Beyond that, there are people—I cannot calculate the number but it is quite significant—in this country as representatives of international pharmaceutical companies that made their European headquarters here precisely because the EMA is located here. You would think that was a major loss but I have not heard a word from the Government about it. There has not been a word of concern or regret, or any suggestion that they might try to mitigate the damage going on.

With the European Banking Authority there is exactly the same story. Again, a few days ago we heard the news that easyJet is setting up a headquarters in Austria and managing part of its airline from there. Future job creation will be in Vienna rather than in London. Are the Government worried about that? Not in the least, so far as I can see. Perhaps the Government’s attitude is, “It can go to blazes—it’s nothing to do with us”.

Significantly, there is more of a row in the press about the threat of our no longer being a member of Euratom, with real problems created for the NHS, in both diagnosis and the treatment of patients, and for our nuclear industry. For once, the Government responded. Mr Damian Green said that the accounts were scaremongering. He accused leading scientists—including my noble friend Lord Winston, who made a distinguished speech on the subject in this Chamber not long ago—of not knowing what they were talking about, and of saying there was something very troubling going on when there was nothing troubling going on at all. Apparently, the Royal College of Radiologists was scaremongering, according to the First Secretary of State. This is a Government who have not even bothered to respond to the report before us. Serious things are in the report and the Government have no answer to them. Of course, that can only further depress potential investors in this country, because not only do they see the problems, the issues and the anxieties that are expressed but on the Government’s side there is complete and utter silence—either silence or, frankly, comments that can hardly be expected of intelligent and responsible people.

Obviously, this is a deeply worrying situation for the whole country and it is against that background that I read the report. It is a very good report and I

[LORD DAVIES OF STAMFORD] agree with what everybody has said—I think the noble Lord, Lord Horam, described it as a cornucopia of information on this matter. But I thought when I began to read it, “At least it won’t be as bad as some aspects of this story. This will not be quite as depressing because it is about goods. There is a better chance of us getting a reasonable deal on goods in the context of a free trade agreement with our European partners than there is with services”.

I think there is very little chance that we shall get passporting rights in financial services; I would be amazed if we did. I cannot see why we would for a moment. It seems to me that the continentals would be very ill-advised to do so, not least because we have learned from the Lehman Brothers crisis how vital regulation and supervision are in maintaining financial stability. You really do not want people practising financial services in your country or in your market who are not directly under your supervision, where you can decide that a director of a bank is not a suitable person and remove him; or where, in a crisis, you can give instructions to institutions as to how to behave and they do not have the opportunity to object or say, “I am sorry, we have to go to an arbitration tribunal. We cannot obey your instructions directly”. So I would be very surprised if the continentals allowed us to have banking passporting rights.

If we were allowed banking passporting rights, presumably the Swiss would have to be allowed them. The only reason the Swiss have located their wholesale banking operations in the City of London is because we are in the EU and they are not, and they get banking passporting rights by having those operations in London. It would be very odd indeed if, when we have left the EU, the Swiss could come to London and have passporting rights but could not enjoy them in Zurich or Geneva. That is not going to happen so clearly if the continentals gave those rights to us they would have to give them to the Swiss. I do not think they will give them to the Swiss so they will not give them to us. If they gave them to the Swiss, they would have to give them to the Japanese. If they gave them to the Japanese, they would have to give them to the Chinese.

We all know that any Chinese-owned company, whether a bank or a trading company of any kind, is ultimately taking orders from the Government in Beijing, whatever the theoretical allegiance of that business to the regulators in a particular country. Politically, it would be quite impossible to argue that there should be discrimination against China on those grounds, so the continentals would have to give those rights to China. I do not think they will do anything of the kind.

The position on services is really rather grim. I thought the position on goods might be a little better but then what did I read? I read on page 29 of this excellent report:

“All our witnesses said that the imposition of tariffs on trade with the EU would be deleterious to businesses in their sectors”.

There are few phrases more likely to make a parliamentarian stop in his or her tracks than “all our witnesses”. How often do we get all witnesses in any of our inquiries, or all participants in any debate, for that matter, or all people you happen to interrogate

on a particular subject saying the same thing? But there it is. The Government have not responded to it. Presumably the Government are embarrassed by it and do not have an answer to it but there it is: “all our witnesses” feel that.

The report says on page 4:

“In the absence of a FTA with the EU after Brexit, tariffs would apply. These would incur additional costs for many UK businesses ... Non-tariff barriers—such as rules of origin—would be more difficult to resolve. The Government’s stated intention to leave the Single Market and the EU customs union would mean that additional non-tariff barriers would apply to all the sectors considered in this report ... We conclude that compliance with rules of origin requirements would introduce a significant additional administrative burden, with a particularly negative impact on sectors with a highly integrated EU supply chain”.

The report is absolutely unambiguous and clear. This debate has gone on for several hours. Of course, we have heard people trying to defend the Government in different ways but we have not heard any attempts to address those criticisms. Are we going to hear the Minister address those criticisms? Will she tell us that everything is actually all right? Will she say that these criticisms are misconceived? They are not misconceived; we are heading for a real crisis, with open eyes and doing absolutely nothing about it. I cannot think of a greater measure of irresponsibility. I also think it extraordinary that some of the people responsible for this like to talk about themselves as patriotic. I do not believe there is anybody in the world who wills us anything like as much harm as we are imposing on ourselves by the policies we are currently adopting.

It really is time Parliament did its job, which is to warn the public of perceived dangers before it is too late. It is enormously important that we do not allow ourselves, because of some misconceived party loyalty or a feeling that we do not want to depress people and have to make upbeat, complacent speeches—we heard an excellent example of an upbeat, complacent speech from the noble Lord who chairs the Commonwealth trade commission—to be seduced by these temptations to not speak the truth as we see it. To speak the truth as we see it requires us, I am afraid, to use some pretty blunt language. I have been using some pretty blunt language. I just hope that I have convinced the Minister that she really cannot avoid responding to these matters in this debate. We do not want just a bland summing-up at the end. Precisely because the Government have not given us a written response, we need an oral response to the very real concerns that have been raised by this excellent report.

6.06 pm

Lord Leigh of Hurley (Con): My Lords, I congratulate my noble friend Lady Verma and her committee colleagues on this report. I have spoken in many a debate in this Chamber about the importance of trade. Indeed, I have debated the noble Lord, Lord Davies, in the past. I hope I will be consistently more optimistic than he felt able to be on this matter. The wider Brexit debate has been dominated by trade, often with the focus on financial and other types of services of which we are a strong exporter. So it is important, as has been said, to turn our attention to the trade in goods, which the report analyses, not least because goods make up 56% of our trade, although only 20% of our gross domestic product.

It is reassuring to see the level of detail in the sub-committee report, which shows how this House can lead the way in examining in depth issues critical to our daily life and business. While the report modestly claims in paragraph 10 that it is made for this debate, it is for a far wider audience and will, I hope, be considered long after the debate given the many important points that the Government should, and no doubt will, heed. For example, many noble Lords, be they Brexiteers like me or remainers, can support the need for a transition period, which I first raised in my response to the Queen's Speech a few weeks ago. It is as important in goods as it is elsewhere. Such a period would allow us to bridge the gap between our current arrangement with the EU and the eventual free trade agreement that is surely in the interests of both parties. I am happy to put on record that I support the Chancellor on this wholeheartedly.

To date I have focused my remarks in this Chamber on services—in particular, financial services—rather than goods, but the report makes the excellent point that there is a blurring of the two as many manufacturers make their real money in post-sales services, as was mentioned by my noble friend Lord Howell of Guildford. However, I would caution against some of the tone of the report, at least in emphasis if not the sum of its content. For example, the report opens with the statement:

“Brexit will fundamentally change the UK's conditions of trade with the other 27 EU Member States”.

Yes and no, but this sweeping statement misses a fundamental point: whether in goods or services, maintaining the status quo, which is one of free trade, should be our starting point. On customs, our current standards are identical to all others in the member states. Witnesses will have stated the nub of the truth: tariffs are not helpful or welcome. We can change them once we have left, should we wish, but why would we not tread carefully at the beginning? This means a liberal interpretation of country of origin rules as well as non-tariff barriers such as regulation.

On the WTO, when we move to establish our own schedules, most agree that we can simply adopt the current EU ones as our own, giving us an arrangement closer to the status quo than many assume. On striking that elusive free trade deal, however, as mentioned by my noble friend Lord Horam, we start from an unusual position: that of being able only to add to tariff barriers. It is usually a question of navigating an existing, complex array that needs to be unpicked. That is why I remain optimistic about maintaining access to a functioning market in goods—and, for the record, services—as well as ultimately pursuing and achieving a free trade agreement. Unlike some in other political parties, I believe that we could and should keep our important ties.

The only cause for pessimism is the approach taken to date by the EU Commissioners. These people are unelected arbiters for hundreds of millions of people. Their approach to the generous offer by the UK Government in respect of the 3 million EU citizens living here and the 1 million UK citizens living in the EU indicates to me that they will not be driven by a pragmatic, problem-solving determination to make things happen, but rather will seek to score political points to protect their own view of the world. This is a

real threat to serious, productive negotiations and I urge the real principals in this matter—namely, the relevant heads of state—to instruct these agents to act in the best interests of all EU citizens hereon in.

We also need to consider the nature and dynamic of our trade in goods with the EU. What stood out in the oral evidence to the International Trade Committee in the other place on its report *UK Trade Options Beyond 2019* was the witness statement of Professor Patrick Minford. It stood out most obviously because, unlike nearly all the witnesses to the present report, he at least represented a declared Brexit perspective as chair of what was then Economists for Brexit. More than that, he made trenchant criticism of the EU as a trade actor—that is, how corporatist it tends to be and therefore how protectionist, an approach that makes it difficult for small players, or even international companies, to compete. In that oral evidence it was said that the EU simply has a higher standard in product regulation. Be that as it may, and I am sceptical, it gives little or no credence to the idea that consumers and the market are better arbiters of quality and can vote with their feet. This is one of the problems with the EU and departing from this approach is a key advantage for the UK.

I make one plea following my discussions with employers in the agricultural part of the food and drinks sector, a sector the committee chose to dissect. Paragraph 50 touches on this. I was surprised to read that only some 20% of workers in the sector are non-UK EU nationals, although it is not clear whether this is the rate for seasonal migrants. Like many Brexiteers I recognise the need for, and welcome, migrant workers who come to this country to work at proper wage levels. The agricultural industry is worried that the 2019 harvest, for which plans are being made now, will need certainty of labour. I would welcome it if the Minister announced that this issue will receive early attention. Similarly, it is undoubtedly important that we invest in the necessary infrastructure to support HMRC and our customs officers, to enable them to meet the new burdens that await. However, I also stress at this point that our systems are perhaps better than people think. For example, 99% of customs documents for non-EU trade are submitted electronically.

This brings me to my final point. As we push for a more liberal trade agenda, not least in our new-found membership of the WTO as an individual country, we can do so with the fastest-growing nations on earth—of which the EU, I am afraid, contains very few. I could not agree more with the report's stress on the need to make sure that our embassies, consulates and high commissions are properly staffed with economic and trade experts to take advantage of our new-found freedom, outside the customs union, to have free trade with India, China, Japan, Brazil, South Korea, Israel and, in particular, the USA. These are rapidly growing nations and, for our own prosperity, it is vital that we seize the opportunities that free trade presents for us to share in it. In advocating a transitional period, it is also vital that this is for a finite time and crucial that during it, we are allowed to negotiate these free trade agreements in earnest and ensure adoption of the Authorised Economic Operator—AEO—scheme. It seems bizarre that we are currently not allowed even to

[LORD LEIGH OF HURLEY]
 enter negotiations. I hope this will change during the transitional period. Free trade is ultimately what will make us successful. It is a long-term strategy, of course, but one we should not lose sight of among the weeds of the Brexit negotiations.

6.15 pm

Lord Stirrup (CB): My Lords, as a member of the committee which conducted this inquiry, I, too, congratulate the noble Baroness, Lady Verma, on chairing it so ably and introducing the report so persuasively. I also add my thanks to the team that supported us so well.

During our evidence sessions I was struck, although not surprised, that the overwhelming majority of those who gave evidence wished for no change to the current trading arrangements. Almost without exception, they saw Brexit as making their life much more difficult. I start with this point not to bemoan the result of last year's referendum and the triggering of Article 50 but to stress the challenge that the Government face if they are not only to get, as they desire, the best possible trade deal from the EU but to ensure that the best possible deal is in fact one that allows British businesses to operate in a way that minimises the inevitable disruption and additional costs.

All too often, the Government have given us reassuring words about the nature of the post-Brexit environment. Whether one believes them or not, this report clearly demonstrates that a satisfactory arrangement will only be made possible, if at all, by a great deal of careful planning, hard work and skilful negotiation. Rumours about the current political climate do not fill me with confidence in this regard.

The report points out that, although the UK economy is dominated by the services sector, goods continue to represent the largest share of our trade, amounting to some 56% of the total in 2015, with nearly half of our exports going to EU countries. Furthermore, goods and services are frequently bundled, and, as the noble Lord, Lord Howell of Guildford, so eloquently explained, it is often difficult to separate the two in trading terms. But far from diminishing the importance of goods, this overlap with services increases it. Rolls-Royce makes much of its profit from servicing, not making, jet engines, but it would not service them if it did not make them. So this issue is crucial to our future prosperity and we need to treat it as such; we cannot afford to approach it with insouciant overconfidence.

The report looks in some detail at the question of tariffs. It is clear that changes in this area would have an uneven impact, depending on the particular sector that one is considering. Increased tariffs would, though, have a serious and very significant effect on, *inter alia*, the UK automotive industry and the food and beverages sector. All this suggests that substituting World Trade Organization terms for the current arrangements would severely damage our economy, at least in the short term. Even more problematic, though, is the question of non-tariff barriers. As other noble Lords have noted, businesses operate with highly integrated cross-border supply chains. By and large, few producers warehouse items these days. Deliveries are made direct to production lines—just in time supply, as it is known. Any interruption to this process would drive up costs

significantly and lower competitiveness, particularly for small and medium-sized enterprises. This means that delays at international borders for duty payment, checks on compliance with rules of origin and so on would have a severe impact on the UK economy. Establishing arrangements that ease or eliminate the necessity for such delays will be complex but crucial.

Even if such negotiations are successfully concluded, there will inevitably be an increase in the degree of cross-border and customs administration required. This will mean more resources and improved processes. The Government are introducing the new customs declaration services IT system, which should help in that regard—but it comes with a couple of important caveats. The first, which has also been noted by the National Audit Office, is that government has an inglorious history when it comes to the handling and introduction of large IT projects. One has to wonder whether—and, if so, why—the customs declaration system will be any different in this regard. The second is that customs procedures exist on both sides of a border. As a retired Belgian civil servant wrote to me, “Our system may indeed turn out to be wonderful, but in all too many instances the ones on the other side are not”. This is an area that requires a great deal of further thought.

It is of course true that highly integrated supply chains work in both directions, and that cross-border disruptions would affect businesses across the EU, not just here in the UK. This should create a powerful incentive for us and our European partners to work together to solve the problems. The trouble is that such a rational approach relies on good will, even tempers, common sense and a lack of overriding domestic political priorities on both sides—a tall order, I would suggest. It is also true that businesses rely upon some international supply chains which lie outside the EU and that we have systems and processes to deal with these. But Brexit will dramatically increase the volume of such transactions; the status quo will simply not be able to cope.

All told, then, the questions around non-tariff barriers are very difficult. How do we handle rules of origin? What is the best approach to regulatory standards and their oversight? How do we maintain the integrity of pan-EU supply chains? What additional resources will be required? What recruiting and training of extra staff will be necessary?

Considering all this alongside the challenge of tariff barriers and throwing in the matters of cross-border availability of skills and third-party trade agreements, neither of which I have touched on today but both of which are of great importance, I draw two broad conclusions. The first is that the chances of everything being concluded before the expiry of the two-year Article 50 notice period are as close to zero as makes no difference. Yet businesses are making investment decisions regarding that period now. It is therefore crucial that we have certainty about what happens after the two years are up, and that we have it very soon.

The need for a transitional arrangement, perhaps a temporary continuation of the status quo ante, seems to me so self-evident that I cannot understand why the Government have resisted it for so long. During an

evidence session for this report, a government witness practically tied himself in knots trying to avoid using the words “transitional arrangements” while grudgingly acknowledging that something of that sort may be required—something that might be called “phased implementation”, which is apparently completely different from “transitional arrangements”.

Even if the Government were to judge that there is at least some chance of reaching a final trade agreement within the two-year limit, no sensible business is going to bet its future on such an unlikely outcome. Unless the question of the arrangements under which we will trade at the start of year three is settled unequivocally and quickly, businesses will have to assume that we will be left with World Trade Organization rules at best and plan accordingly. This is therefore a pressing matter, requiring “action this day”.

My second conclusion is that the breadth and complexity of the issues involved, the challenging nature of the negotiating environment and the urgency of the situation demand a serious, skilful, committed, well-resourced and highly professional approach at all levels, from top to bottom. Maybe we have that, but the evidence suggests not. Indeed, the fact that the Government either could not or would not respond to this report indicates otherwise—as does the resignation of the Minister’s predecessor.

I say this more in sorrow than in anger. I am not one of those who believe that the Government’s life should be “made hell” over the EU repeal bill and the subsequent legislation, as some have threatened with relish. Whatever my personal views about Brexit, it is in nobody’s interests for the process to founder, and I should like to be supportive of the Government in this extremely difficult endeavour. But if I am to be so, I must be persuaded that our efforts are serious, coherent and cohesive. So to the Minister I say, with all respect, that it is time for the Government to demonstrate to the nation that Brexit is being conducted not just with vision but with grip, attention to detail and political and technical skill. She will perhaps tell me that this is happening; I would reply that neither I nor, I suspect, the nation is convinced. It is past time that we were.

6.25 pm

Baroness Byford (Con): My Lords, I congratulate the committee, which was ably chaired by my noble friend Lady Verma, on its excellent report *Brexit: Trade in Goods*. The committee considered the UK’s conditions of trade with the 27 EU member states and more than 60 countries with which the EU has preferential trade agreements. The report focused on six major manufacturing and primary commodity sectors. Some noble Lords have raised issues for northern areas, but today I will keep my remarks to one of those sectors, the food and beverages industry. At this point, I remind the House of my farming and other interests set out in the register.

Food and drink manufacturers add £28.2 billion to our GDP. They generate more than £20 billion in exports. Some 400,000 people earn their living in food and drink manufacturing in some 6,800 firms. The farm-to-fork industry is worth £110 billion to the UK and employs more than 4 million people. In some ways, although people say it is a small industry, it is

one of the biggest manufacturing industries. From the many recommendations within the report, I wish to focus this afternoon on three areas: first, tariffs; secondly, labour; and, thirdly, trade and regulations.

At paragraph 128, the report calls on the Government to give particular consideration to the implication of tariffs for the UK agricultural sector. Here, I stress the important effect that they may well have on Ireland. Higher tariffs on imports would raise the cost of food to consumers, whereas lower tariffs would reduce it but might undermine the domestic agricultural sector’s competitiveness. This point was raised recently by three university professors in their report on food matters. Professor Lang said:

“UK food security and sustainability are now at stake. A food system which has an estimated three to five days of stocks cannot just walk away from the EU, which provides us with 31 per cent of our food”.

We face great challenges, but Defra has made it clear that it is determined to benefit from tariff-free trade for our goods which is as frictionless as possible. When the Minister responds, perhaps she may be able to give us more information. This will indeed be a challenge. In its evidence, set out in paragraph 96, the AHDB identified that EU tariffs in the agricultural sector,

“differ significantly by product, being as high as 87% for frozen beef down to 3.8% on whole, fresh sweet potatoes”.

It is a very complex area.

Secondly, on the issue of labour, paragraph 34 of the report records agriculture as employing some 476,000 people. Of these, around 115,000 are regular employees, 67,000 are seasonal, casual or gang workers and 294,000 are farmers, business partners and directors. Of those 115,000 regular employees, 20% are EU nationals. On the issue of immigration, paragraph 4 of the summary states:

“The ability to recruit staff from the EU-27, and move staff to and from the EU-27 ... is essential”,

and should continue. The report claims that the Government’s Brexit policy should allow for this. Will the Minister comment on this?

In future, we could well attract workers worldwide from outside the EU. The question then arises: will that be subject to their having a definite job to come to in this country, whether that be for casual or skilled workers? Often we focus on casual workers, but this country needs skilled workers too. This issue is key to the future of horticulture and agriculture. Professor Lang told the committee that we,

“would not get any fresh ... vegetables or fruit if it were not for migrant labour ... There would be no food manufacturing”.

That was clearly a definite overstatement, but his comments highlight the dependency of the sector on casual seasonal workers. What discussions are taking place, and has any progress been made?

In paragraph 182 of the report, the committee welcomes the Government’s decision to preserve existing EU regulations in domestic law. The report states, in paragraph 184, that two separate regulatory standards for the domestic and EU markets would be costly for UK businesses. In addition to this, and from a purely farming perspective, the whole question of welfare standards for livestock and of the need to protect animal and plant disease from being imported is essential.

[BARONESS BYFORD]

The labelling of imported goods, stating the country of origin, will help, but clearly there will need to be stronger checking once we leave the EU.

The report gives us the opportunity to look forward to developing new trade agreements worldwide. These past 40 years have given us the opportunity to develop special trade arrangements with our European neighbours. Hopefully, that trade will continue in future and indeed grow, but we also need exports to other countries. We are a country that over the years has always traded. If I might turn the clock back some 50 years, my father-in-law started as the youngest son of a farmer whose farm could not support one extra man on the farm, so he went and learned a trade in a sock business in Leicester. It started with two men and two machines in one shop but ended up employing 2,000 people, exporting 50% of all the socks they produced. I share this with you because his biggest bonus was when he was awarded the Queen's award for industry for his exports, particularly to the United States.

I believe there is a great future out there, but we have some practical issues, which I have tried to highlight today, particularly affecting the food and farming manufacturing industries—and those two are interlinked. Other noble Lords have spoken of the close work between services and the goods that we make and sell. That is crucial, but our particular section of the industry has some bigger questions to be answered than perhaps some of the other manufacturing industries. I look forward to moving things forward. We are where we are, and we need to push ahead. It would certainly help business in these uncertain times to have a clearer steer from the Government.

6.33 pm

Lord Triesman (Lab): My Lords, I start by drawing attention to my interests as declared in the register, which are principally in merchant banking. I suppose that rather over two-thirds of my work is structuring trade agreements and commercial agreements between businesses in this country and other countries. It is a niche in merchant banking that is to do with international trade much more than domestic trade. I make that point because inevitably it colours some of the things that I want to say today.

I join everyone else in thanking the noble Baroness, Lady Verma, for the way in which she chaired this committee, as well as the staff, who deserve profound thanks for an extremely detailed and complex piece of work, conducted frictionlessly—I think that is one of the occasions when I can use the word safely. I also thank my colleagues on the committee because I felt it was an extraordinary adult education class, with a huge amount learned in every session of it. I deeply appreciate that.

What I want to say next is not really a criticism of what some Conservative politicians and Peers have contributed to the debate; it is straightforwardly a criticism of the Government. I share the regret that there has not been a response. I suspect that another date will be needed to debate whatever response there is, because I cannot imagine that it will be uncontroversial or that we will not want to pay attention to it if it ever materialises. However, I have come to the conclusion,

because of a batch of evidence, that it is not being withheld from us out of some spirit of malice or unhelpfulness; rather, nothing is being said because the Government really do not have anything to say. That was evident from the Ministers who were good enough to provide us with their time. They certainly cannot be faulted for having stayed on message; that is something I was never particularly good at but, my goodness, they were extremely good at it. They said that Brexit—well, your Lordships know what they said. They said the same things time and again and said them with a certain panache, and added more or less nothing to our knowledge.

However, Ministers produced a set of excuses for why nothing was going to be said. The first was, “We don't reveal our bargaining hand, but later in the process we may”. As someone who has spent his life negotiating, I do not accept that. Generally, as you get deeper into a negotiation, it becomes more complex. As you get closer to the detail, and the difficulty in striking the final deal is what is in the front of your mind, that is when you do not talk about it—that is when it is hardest to talk about it. At the beginning, you could say what the architecture is of the objectives that you are seeking. So I did not accept that that was an excuse. I also did not accept that we should not worry because it will all be all right in the end, which did not seem to be the most compelling argument I had ever heard either. As I have said, I draw the conclusion from all that that they did not actually have a huge amount to say.

I fear that the approach that is being taken infantilises us, at both ends of this building. It treats us as though we were a group of children who could not take a mature discussion of mature difficulties—the sort of discussion that we all of us probably in one sense look forward to. It often sounds almost like an appeal to the Tooth Fairy: “It will all turn out all right. Something will turn up and deal with the issues”.

I make that point because I want to address the idea that for the most part we did not speak to people who were in favour of Brexit; on the contrary, to claim that would be a travesty. The officials and others who assisted in the inquiry made sure that there was a very wide spectrum, so I hope there is no imputation that there was an attempt to screen out different voices; that was far from the case. In general, though, as the noble Lord, Lord Horam, was saying, there has been a certain lack of listening to the kinds of arguments that demonstrate the complexities. Although I do not mean to put words in anyone's mouth, the noble Lord, Lord Livingston, made essentially the same point: that we have not really listened very carefully to the counterparties in the whole of this process. As the noble Lord said, we are in a rush and they are not, and that is the worst negotiating position that you can ever find yourself in. I am quite sure that he avoided it at BT as far as he was humanly able.

Those who have done the job of trying to negotiate, not only in business, as many of us have, but also in government, negotiating major international deals, will know just how hard it is. I remember, in the period before the state visit of President Lula, the work that had to be done to try to pull together at least a

minimum number of agreements that could be signed off with a flourish on that occasion. I will confess to the House that it took me about three years to get a cultural agreement to allow musicians to move freely between Brazil and Britain, which you would not think of as being the most complicated thing you would ever have to do in your life—not least because when the Brazilian negotiators came over they included Gilberto Gil, who sang pretty much through all the negotiations. It was none the less an extremely difficult job. We never really got to the end of the ethanol negotiations, and on services and education, we were miles apart after years of work. The Doha process was taking us more or less nowhere. I do not predict that we would never have arrived at a conclusion, but I am under no illusion about how difficult it is.

So I am not up for any fanciful claims about what can be done. I am not up for any alternative facts about how everyone else will respond to us, because it does not accord with any of my experience in business or international relations, and we have to be real. We have to be real about who is capable of conducting negotiations. I have met many people in business and in trade unions who are very good negotiators; commercial lawyers are often extremely good negotiators; but I have met only a handful of politicians who can do the job, and they are not among the best and most natural negotiators whom I have met in my professional life.

Where is the capable force that will do the job illustrated by the report? Where are the people and how will they be found to do a job of this complexity in this short time? The great advantage of taking part in an inquiry of this kind is that you get to grips with a lot of detail. It is important to remember that the detail was provided by the witnesses—not by us but by the people who came to speak to us. They provided information which I think the Government would be unwise not to read through carefully, understand and talk to them about rather better.

It is unfair to pick on any particular witness for excellence, but Mike Hawes from the automotive industry was a very good example. His discussion of the character of the value chain and border crossings—which has implications in a different industry for Northern Ireland, which is worth reading off from what he had to say—was essentially about automotive assembly. It raises critical questions in a world in which the smoothness of the supply chain is critical to business and building more warehousing to use as a buffer, as he described it, is not a practical solution.

We did not take particular evidence on this, but I know that many here will be familiar with the difficulties that Airbus is already experiencing in working out how it will move massively complicated parts of aircraft from north Wales and Lancashire to the continent. I do not say this as a harbinger of doom, but it will surely at some stage say, “This is not the best way to do it”, and start making it close to where it will assemble it. It would be foolish not to take that step.

Noble Lords will see that the report reaches some obvious conclusions: almost everything is unknown; almost everything that affects investment decisions will continue to remain unknown; and the timetable is very problematic, as many noble Lords have said—it is not

that it is short, it is a strangulation. I cannot see how anybody can make a deal work to do all the things expected of it. Incidentally and paradoxically—a point made by several noble Lords—when people are taking investment decisions, they need a long run-in, particularly for significant decisions about large sums of money. They need to be taking them now. The more high-tech we are, the more we are interested in those businesses, the more that that is a problem. As the Israeli entrepreneurs said, the lifetime of products of leading-edge, high-tech businesses is between two-and-a-quarter and two-and-a-half years before they are superseded. If decisions are not being made about such investment today, the products will not be there when the two years are up. If they are made much later, they will not be there for several years beyond that, and we will not be competitors in those markets. I suppose one ought also to say that sterling is on a giddy ride; that does not help to create a sense of stability.

I know that the noble Lords, Lord Inglewood and Lord Bilimoria, have been making essentially the same sort of argument, but my final point is that if we are to be global, we will have to think global. We will have to change our mindset and think in a very different way. In doing that, we should not beguile ourselves with things which will not turn out to be accurate. I have heard the arguments about how the digital world is transforming everything. I have also noted from what the automotive industry said that we will have not just to read labels but to look inside the packaging. We will have to make checks, even if it is of samples, to ensure that the things as labelled or electronically tagged are what is inside. There were electronic labels on hamburgers which turned out to be little to do with beef and a great deal to do with horse and pork. They were labelled and electronically readable, but what was in the package was not what it said on the outside. These things will be complicated. When we consider the Northern Ireland food industry and the movement backwards and forwards across that border, we can see what the complexities will be.

I understand the point about value chains and the integration between services and production of goods. There are great benefits in that spread in the digital world, but this is not an unproblematic development. It is a development of technology which has allowed for far more efficient crime and untrackable currencies, facilitated criminal-scale child abuse and can close and hold to ransom businesses—and the NHS and Parliament less than a month ago. It may very well be that people want to intervene in that digital space to protect themselves rather better, certainly before it is allowed to distort the outcome of the election to the presidency of the United States

6.46 pm

Lord Howard of Rising (Con): My Lords, I congratulate my noble friend Lady Verma and the committee on such a comprehensive and useful report containing much valuable information. I declare an interest as chairman of a Midlands manufacturing business and in farming.

Rightly, the report focuses on the impact on British businesses as Britain leaves the EU, but what must also be borne in mind is that the same problems exist for

[LORD HOWARD OF RISING]

EU businesses. Indeed, their problems are worse because, as the report makes clear, the gain to the EU on trade with Britain is £90 billion a year. As such, it is even more important for the EU to have a sensible agreement with Great Britain than it is for us. European bureaucrats might throw tantrums and wish to be vindictive but, ultimately, politicians are responsible to their electorate and elected representatives will not wish to suffer the consequences of damaging their economies.

Clearly, it was right for the committee to call the witnesses that it did, and it is to be congratulated on calling so many able people, but reading the report I was from time to time reminded of the comment of the late Marquis of Salisbury, who wrote in 1877:

“No lesson seems to be so deeply inculcated by the experience of life as that you should never trust experts. If you believe doctors, nothing is wholesome: if you believe the theologians, nothing is innocent: if you believe the soldiers, nothing is safe. They all require their strong wine diluted by a very large admixture of insipid common sense”.

To use a more modern saying, people talk their own book, and it would have been peculiar if, when giving evidence, spokesmen for an industry did not make those points which benefit their sector.

Anyone listening to the debate this afternoon would think that leaving the European Union would create a most terrible financial disaster. Yes, there are complications, but when listening to the defeatist tales of woe noble Lords should remember that in connection with the European Union it was ever thus. Noble Lords will recall the many prophecies of doom made before the referendum, which in the event were shown to be mistaken, from the Bank of England, the Treasury, American bankers and our old friend the CBI, whose record of forecasting makes Mystic Meg look like the prophet Elijah. It has gone from advocating price controls to Sir Terence Beckett, director-general in September 1980, saying:

“We have got to take the gloves off and have a bare knuckle fight”,

with the Thatcher Government. The CBI’s record of getting things wrong is outstanding.

Your Lordships may also recall the many predictions from all quarters that the only way forward was for Britain to join the single currency and that it would be a disaster if we did not. Then there was the amendment introduced by John Major to the debate on the Bill to join the ERM, saying that the,

“Exchange Rate Mechanism membership will reinforce the Government’s counter-inflationary strategy and help to strengthen the framework for a sustained improvement in economic performance. Sterling’s entry into the exchange rate mechanism is undoubtedly an important economic event and, moreover, an event which has long had the general support of the House, industry, commerce, the City and most, although inevitably not all, economic commentators”.—[*Official Report*, Commons, 23/10/1990; col. 195.]

When we joined the ERM, the Stock Exchange rose and interest rates fell—all to end in ignominy.

I could produce endless other examples—and it is quite fun looking them up—but I do not wish to waste more of your Lordships’ time. The point for your Lordships to bear in mind is that the abundant forecasts of disaster by the great and good if we did not join this or that European project were almost without exception

completely wrong, in general more from stupidity than wickedness. As I said earlier, there will inevitably be difficulties, but they should be seen in the context of the profit of £90 billion a year that the European Union makes when trading with Great Britain. It is in all our interests, theirs and ours, to come to agreement on trade, but more to the EU’s benefit than Great Britain’s.

Some of the dangers if we do not come to an agreement are exaggerated. Not having tariff-free access to European markets is not the end of the world. On the whole, if European Union tariffs are imposed, they will amount to rather less than the benefit from the exchange rate movement since the referendum. There are some heavier tariffs, such as agriculture, but I imagine that British families will be happier to get food cheaper when Britain is free to buy food in world markets. Overall, the average tariff is not excessive. Tariffs and not being in the single market do not prevent the rest of the world trading perfectly satisfactorily with the European Union. Britain already trades under World Trade Organization rules with over 100 countries, and it trades very successfully with no trade deals with many countries; indeed, we have no trade agreement with the US, which is our largest single-country trading partner.

The report has done an excellent job in highlighting the difficulties we face, but they are not insuperable, and noble Lords should bear in mind not only how the record of forecasting doom and gloom has been so very wrong but that some of the arguments in the report are from vested interests.

One other thing to remember is that, however long is the period for negotiating our exit—two years or 20 years—a deal will be completed only in the last few weeks and days, as the time for haggling runs out and negotiators are forced to make compromises. It is pointless to extend the period of negotiations.

6.54 pm

Lord Teverson (LD): My Lords, first, I should like take up some of the points made by the noble Lord, Lord Leigh of Hurley. He seemed to get it slightly back to front. First, I think he suggested that the Commission was vindictive—that it had decided how it would negotiate and it was about time that the Heads of State or Government put them right. It works like this, and it has worked amazingly efficiently on their side, to our detriment: Governments got together in the Council of Ministers and decided a very precise negotiation remit for the Commission, which then gave it to Michel Barnier to deliver, which he did very effectively.

I was privileged to lead a delegation of this House to meet Mr Barnier in the Berlaymont building in Brussels last week, and he made it very clear that the EU wanted a deal, as we have just heard from the noble Lord, Lord Howard of Rising. It absolutely wants to do a deal, and its concern is that we are not capable of delivering the agreement that it wants to make within the negotiating period—hence Michel Barnier’s comment about the ticking clock. The EU is very aware of the time. As the noble Lord, Lord Howard, said, they understand that a deal, whatever it is, will be done only towards the end, because it has to be ratified by member states and the European Parliament

as well. The picture that we saw in the newspapers and social media of the meeting between our Secretary of State and Mr Barnier, in which they have their papers and look ready to go and the British side does not, was very unfair—but it summed up very well not just the actual situation but how the rest of the world and the EU perceive that negotiation.

That, however, is not really what I wanted to speak about. I wanted to talk about little and large. Small business is not focused on hugely in the report, although I do not criticise it in any way for that, because there is much reference to it. I declare that I am a director of a company called KCS Print, which is defined as a small company in the print industry. It employs about 30 people and has a turnover of between £3 million and £4 million; it is based in Cornwall, and its main growth area has been the European Union through the single market, in the Netherlands and the Republic of Ireland. Frankly, it looks at Brexit as a major brake on its business. Is that business able just to fly out to China or the United States and spend a lot of time in those places? No, it has a tight and very effective management team but does not have the time or ability to do that. It is easier—this is not unreasonable—to fly to Schiphol or Dublin and do business. I agree with the noble Lord, Lord Howard, that the tariffs are not the problem; the non-tariff barriers are the big issue here—the VAT system, customs checks, rules of origin and the whole area around standards and regulations, which are not a problem now because we have a single market.

It surprises me how united the Federation of Small Businesses is, given that its membership is fairly diverse. It is united on our need to stay as near as we can to the single market, certainly in terms of a transitional arrangement. Even small businesses have supply chains. Yes, we can be more competitive through our prices, through the devaluation of the pound into Europe, but 70% of the market for KCS Print is still in the UK, and it has suffered significantly from the increase in costs of its supply and its raw materials, most of which come from southern Europe. So it is not all win in that area, either.

A number of people have mentioned the automotive industry, and I want to say a little about that with regard to larger businesses. In the south-west, where I come from, we have an automotive industry as well. Even more importantly, we have an aerospace industry—but in Swindon we have Honda, which employs some 3,500 people and produces 140,000 units, or cars, each year. It, too, is centred in Japan which is very concerned, as the Japanese Government have shown, about the effects of Brexit. It is not just about rules of origin; it is also about the whole area of divergence of standards.

Going back to the Barnier meeting, he told us that the trade negotiation between the Commission and the United Kingdom is the exact opposite—a mirror—of the sort they normally do. Most trade negotiations undertaken by the EU are about converging standards: bringing them together to make non-tariff issues melt away and make sure that trade works. The UK will have complete convergence on day one, but the risk all the way through is to convergence thereafter. The way to avoid divergence is to apply European standards to UK ones. This means that we actually lose control

rather than take it. Are we going to keep safety and type approvals, emissions standards and end-of-life vehicles the same for the automotive industry? Most importantly, will the British Vehicle Certification Agency be able to issue EU-type approvals post-Brexit? If not, that is a key barrier to the automotive industry, beyond the supply chain.

On the timetable, I am absolutely sure, as other Members have said, that the broad, comprehensive, free trade agreement that the Government quite rightly want cannot be made within the timescale. Mr Barnier pointed out something that we all know but do not necessarily think about. The comprehensive agreement that we want is, in European terms, a mixed agreement, just as the Korean and Canadian agreements are. It has to be broad and cover more than just goods. It has to cover services and all sorts of other areas that modern, broader trade agreements deal with. The problem with those agreements, and the one that we want, is that they have all the benefits but must be approved not just by the European Union—the European Parliament and the institutions—but by all member states. That is even more impossible within the timescale that we have.

If we are going ahead with Brexit—and we are—we need, as other noble Lords have said, an interim transitional agreement, preferably with us as part of the single market and customs union. If we do not do that, we will come to the cliff edge. That is something we cannot afford, whether we are small businesses, importers, large businesses or parts of international supply chains. I remember well that, when I chaired our agricultural inquiry, the chairman of the Tenant Farmers Association almost interrupted me at the end of the session because he was desperate to say, “There is no worse deal than no deal”. We have to make sure that we have those transitional arrangements. I congratulate the noble Baroness, Lady Verma, on her excellent report. Most of all, it is a reality check and I hope the Government will treat it as such.

7.04 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I add my thanks and congratulations to the noble Baroness, Lady Verma. I share her regret at the absence of any response to a report which is key to the future of our economy. As we have heard, the EU is our nearest and biggest trading partner, taking nearly half our exports. How we trade with it after Brexit will determine our economic well-being. We do not necessarily have to agree with the *FT*'s rather apocalyptic vision of 29 March 2019, with drivers at St Malo having to pay VAT and import duties, and—should the truck be carrying lamb—suddenly finding it can only be taken into France via a registered border inspection post. But we do have to recognise that, as a third country, outside the customs union and without an agreement, we would see customs duties, quotas, border checks, non-tariff barriers and perhaps unsafe toys and unhealthy food—and import duties would make consumer goods cost more here, on top of price increases already happening because of the falling pound.

Even enthusiastic Brexiteers who claim that we can replace lost EU trade through trade deals with faraway countries acknowledge the hit we will take, by first seeking to replace existing EU trade before building

[BARONESS HAYTER OF KENTISH TOWN]

up additional orders. It is with fingers crossed that they hope a knight in shining armour—Donald Trump or Malcolm Turnbull perhaps—will ride to our rescue. Saner commentators admit that, as noble Lords have said, any deals will take time. Indeed, the Australian Prime Minister, although happy to see a post-Brexit trade deal, said that this would come only after one with the EU.

So the Government must start being realistic and put childish dreams to one side. An unpublished Treasury paper concluded that the costs of a hard Brexit would far outweigh any potential gains from Liam Fox's free trade strategy. It said that it is "idle thinking" to imagine that two dozen bilateral agreements could compensate for the loss of trade with the EU and with the agreements covering a further 11% of our exports with the 60 countries already mentioned, such as Korea, Mexico, South Africa, Turkey and—in the future—Japan and Canada. When Donald Trump supposedly offered the UK a "very, very big", "very powerful" trade deal "very, very quickly", such a deal, even if it could be drafted fast, is simply not his to enact—as the noble Lord, Lord Inglewood, reminded us. It has to go through the Senate, which is even more protectionist than President Trump.

As we have heard, trade deals take years to negotiate and then come on stream. They are cold-hearted affairs. They are not about favours to foreign friends; they are about gaining market access for domestic producers. Since the UK has a trade surplus with the US, any deal will be about the UK making concessions to the US, not the other way round. Big countries, such as the US, China and the EU, have more cards than small ones in such deals. I am afraid that Britain is a small country—as the CIA put it, "slightly smaller than Oregon". As the noble Lord, Lord Horam, described, even after a deal is signed, it takes time and hard work for exporters to develop new markets on the other side of the world. Whatever happens there, we will always need strong trade ties with our closest market, the EU. So the Government's priority should be to safeguard these ties, especially given the Maltese Prime Minister's warning that any deal must be "inferior to membership".

We have been warned about the lack of trade negotiating skills in the UK, since it is nearly 50 years since we have had to use them—added to which, the world has never seen a trade deal like the one we will need. Every other deal is about reducing barriers to trade, whether they are duties, quotas or other things, but this will be about increasing barriers. How prepared are the Government? The *FT* describes a "sense of disarray" while Brussels is briefing about us "dithering chaotically". Michel Barnier said:

"I don't hear whistling, just the clock ticking"—

but I am hearing whistling from the Government. They are whistling in the belief that all will just turn out right, that things do not need hard work, or the compromising referred to by the noble Lord, Lord Livingston, or working with our partners and stakeholders. But trade is too important to be left to the whims of badly briefed negotiators, continuing along the lines of Lancaster House despite the election outcome, while Ministers fight among themselves, their attention

fixed more on extreme Eurosceptics—whether on their Back Benches or in the tabloids—than on the country's interests.

By contrast, business knows the risks involved, with industries hard hit if there is no comprehensive UK-EU FTA similar to the single market and customs union. Along the lines of the Nissan example given by my noble friend Lady Armstrong, if you look at the Ford Fiesta, there is a potential 2.7% tariff on engine components imported from the EU, a 4.5% tariff on the 65,000 UK-made engines exported to the EU, and a 10% tariff on the 120,000 finished Fiesta cars reimported for sale here. When will the Government tell us the full details of whatever deal is done with Nissan?

I will take another sector that has been mentioned—namely, pharmaceuticals. This is a world-leading exporter that uses multiple imports and exports to and from the UK before a final medicine is completed. This industry is key to our economy, with life sciences notching up a turnover of £60 billion, with a £3 billion trade surplus. No wonder it wants a new free trade and customs agreement with the EU that takes into account its specific needs, which Ministers need to understand.

Other sectors are demanding to be heard, not least the creative industries, which contribute some 8% of GDP—more than the arms trade, although of course they kill nobody—with that 8% likely to grow substantially over the next decade. This high-skill, technological and creative sector needs to recruit talent, exploit IP, attract inward investment and trade freely if it is to continue to support so much of our wealth creation.

A different issue faces the chemicals industry, where exports and imports from heavy industrial chemicals to ingredients in toothpaste and shampoo could cease if we fall outside the EU's REACH regulations. Meanwhile, we have heard already about agricultural import duties on the 70% of our imports coming from the EU, which could see food prices rise while harming the £20 billion-worth of exports, making our UK farming less competitive.

I need hardly explain to the House how crucial transport is to trade. Airlines, ports, shipping companies, hauliers and railways need to know at least a year ahead what regulatory regime they will face in March 2019. In fact, airlines need to agree schedules by this autumn. They cannot wait any longer as they need regulatory certainty. But where is the Brexit plan for transport? This is just one area where the calls for transitional arrangements are siren, and should have been on David Davis's agenda last weekend—had he taken any papers with him, or indeed spent more than 30 minutes in Brussels.

It is not simply that we are a long way from agreement, when the EU 27 have been preparing for 12 months and already know what they want and how to achieve it. As Professor Alasdair Smith of the UK Trade Policy Observatory stressed, a UK-EU FTA cannot be negotiated in 21 months, even once it has been started—and that cannot happen until progress is made on the withdrawal items. As he said, a two-year completion timetable would not be ambitious or challenging, simply "completely impossible". The EU has never completed one in under five years—"dreamland", I think the noble Lord, Lord Bilimoria, called such an ambition.

Our prosperity depends on trade, but the Government are listening to neither business nor consumers. Such meetings as have taken place laid bare the lack of preparation within government. The big “summit” at the Foreign Secretary’s retreat led to no concrete policy announcements, while, despite the Chancellor, the Business Secretary and the Brexit Secretary supposedly being committed to fortnightly meetings with a smaller group of business leaders, these have yet to happen. Meanwhile, there have been no meetings at all with consumer representatives, leading the three largest consumer groups to write to the Prime Minister on 22 March, “calling for a cross-Government high-level working group focused solely on securing the best possible deal for UK consumers”. Sadly, the PM’s reply omitted any positive response to this.

It is clear from the debate today and even from Brexiteers such as the noble Lord, Lord Leigh, that a transition period is essential, and the knowledge that it will be there is needed now, before contingency plans, especially as regards relocation, are implemented. We cannot live in a fantasy world which imagines that a substantive free trade agreement needing only some phased implementation can be reached by March 2019. There will be no agreement by then, let alone the customs procedures and new ways of working needed to accommodate delays to supply chains, not least in food and drink, where the current efficient supply chains enable almost a third of supermarket food to be imported from the EU and be on the shelves within two days. Meanwhile, our ports lack the facilities or staff to cope with new customs inspections, duties, VAT collection and assessment of conformity of goods with regulations, foretelling movement grinding to a halt as vehicles wait to be processed by customs authorities, as suggested by the noble and gallant Lord, Lord Stirrup.

Many questions have been put to the Minister today, but the most urgent of these is surely about a transitional agreement—that there will be one high on the Government’s agenda and that they will give certainty on that sooner rather than later. Too much depends on it for us to sit around waiting. It is time to hear about that now. I look forward particularly to the Minister’s answer on that but also on all the other questions that have been posed to her.

7.17 pm

The Minister of State, Department for Exiting the European Union (Baroness Anelay of St Johns) (Con): My Lords, it is indeed a privilege to respond to the debate today on the Select Committee’s report, *Brexit: Trade in Goods*, and to put on record my appreciation for the work of the External Affairs Sub-Committee. I commend my noble friend Lady Verma on her expert chairing of the committee.

The report provides us with a detailed, instructive and expert analysis of the key opportunities and issues concerning trade in goods which arise from the United Kingdom’s exit from the EU. I am keenly aware of the value which the Select Committee’s experience brings to the work of this Government and we value the rigour of its scrutiny. The committee notes that:

“Minimising disruption to trade between the UK and the EU-27 after Brexit is crucial to the UK’s future prosperity”.

That objective is at the heart of our negotiations to leave the EU.

My predecessor, my noble friend Lord Bridges, appeared before the committee, as did my noble friend Lord Price from the Department for International Trade. As was referred to earlier, the Secretary of State for Exiting the European Union gave evidence to the EU Committee last week, where he restated his commitment for our department to be transparent in our dealings with Parliament. Therefore, I understand the frustrations expressed by some noble Lords today, who said that a response to this report should be before the House. Of course, as a Minister, I would prefer to present that to the House but *purdah* is a serious matter; it is not an excuse. It goes to the heart of what happens in government and governance as a general election is called. I feel frustrated that I have not been able to present the result of our discussions but they have been ongoing. I have seen a draft response and give a commitment to the House to get that draft into final form as soon as is humanly possible, because that is the right thing to do. I appreciate that it is not only my department that has been in this position—the House heard similar reasons being given yesterday. It is not satisfactory but it is the real world.

We have made it clear that we will pursue a deep and special partnership with the EU which encompasses both economic and security co-operation. That includes caring not only about business and its success but about consumers. If they do not feel secure, businesses do not succeed either. The noble Baroness, Lady Hayter, was absolutely right to draw attention to the importance of consumers.

As part of our partnership, we will pursue a bold and ambitious free trade agreement that is of greater scope and ambition than any such existing agreement. We want the UK to have the greatest possible tariff-free and barrier-free trade in goods and services with our European neighbours and for that cross-border trade to be as frictionless as possible. We realise—and the committee is right to point out—that there are different ways of creating friction, and we are trying to reduce as many of those as possible.

I will now address some of the main issues raised today as they relate to the committee’s excellent report. As the report rightly points out, the EU is an important trading partner in goods for the UK. However, this is a relationship from which both parties benefit. It sometimes seems to have escaped the media’s attention that the EU benefits, as do we. This is not just a one-sided negotiation. The EU is the UK’s largest export market, but the UK is also the largest goods export market for the EU 27 taken as a whole.

The UK is a major export market for important sectors of the EU economy, including in manufactured and other goods, as noble Lords have said, such as automotives, energy, food and drink, chemicals, pharmaceuticals and agriculture. These sectors employ millions of people across Europe. It is therefore in the interests of both the EU and the UK for our deeply integrated trade and economic relationship to be maintained after we leave the EU.

The discussions that started last month have been and continue to be constructive. A little bit of fun has been made in the press about the fact that my right

[BARONESS ANELAY OF ST JOHNS]

honourable friend the Secretary of State was in Brussels for perhaps less time than usual, and how that may matter—but no: it can be usual in G20 and G7 discussions, where there is the same brief period at the beginning. I will not say that he is the Terminator, but just watch him—he will be back.

My noble friend Lady Verma and other noble Lords were absolutely right to raise the importance of what progress we have made in consulting business. There has been more of a public aspect to this; 10 days ago we held an event at Chevening, when 30 or 35 leaders of a range of businesses, including automotives, were there to give us the benefit of their wisdom—and, my goodness me, they did. It was a superb event, very constructive and very much something from which we have learned, and we can now build on that. In addition, before I got to the department, my colleagues had carried out over 250 engagements with people across business. That is just my department—it is happening in other departments, too. We intend to continue that with round tables and a variety of ways of engaging with people so that their time is well used when we listen and learn from them.

I was asked about the research and analysis we have been doing. Parliament of course agreed that we should not publish anything that would undermine the Government's ability to negotiate the best deal for Britain. However, with respect to the fact that we have been looking in detail at more than 50 sectors, as well as areas of cross-cutting regulations and looking at the economy, I can confirm that we will shortly publish that list of the sectors that have been examined.

Thinking of the noble Baroness, Lady Smith of Newnham, I say that we are also carrying out a programme of rigorous and extensive analytical work to inform our understanding of how exiting the EU will affect the UK's domestic policies and framework. Of course, it is not standard practice to provide an ongoing commentary on internal analytical work. However, as she will see as we publish position papers and carry out negotiations, we will be as transparent as we can be. We have also undertaken—and will fulfil the undertaking—to provide Parliament with information as soon as it reaches the European Parliament. In other words, we will not let the European Parliament get there first while we lag behind.

Of course, noble Lords were right to talk about non-tariff barriers to trade, which was a vital part of this report. I found it particularly practical in the analysis carried out by the committee. Whether on regulatory standards or regulatory co-operation, clearly I agree with the committee's report, which notes that non-tariff barriers can pose as significant or even greater a barrier as tariffs, to trade in goods. We are therefore clear that we of course want to see zero tariffs on trade in goods as far as is possible and to minimise the regulatory and market access barriers for both goods and services, and we recognise the importance of minimising non-tariff barriers to trade.

There are existing precedents for how this can be done. For example, on non-tariff barriers, many countries have authorised economic operator schemes—I know that the committee took evidence on this—which means

that exporters with supply chains that are demonstrably secure are subject to fewer and less stringent checks at the border. That is just one existing precedent. Clearly, as noble Lords will have realised during the debate, the exact form of our customs arrangement with the EU is subject to our negotiation.

My noble friend Lady Verma talked in particular about regulatory co-operation. We are certainly advancing with our plans to put forward our ideas on how we can have a bespoke deal with the EU on regulatory co-operation, which would indeed include mechanisms for dispute resolution.

To go more broadly, there were concerns about timing and about how we could perhaps fail to get on with the work of making agreements with third parties outside the European Union. We will stick absolutely to the rules of membership of the EU. We gave that undertaking—we will keep it. But in complying with our EU law obligations, including the duty of sincere co-operation, we can still do much that is technical and preparatory in discussions with others. That is what the DIT has been doing. It has had a number of trade working groups or discussions, including, for example, with the Gulf Cooperation Council and with Korea.

My noble friend Lady Verma quite rightly asked whether we are convinced that the resources and the expertise are enough at DExEU and the DIT to be able to carry this business forward. My noble friend Lady Sugg answered questions on the DIT at Question Time earlier today. She explained that at the DIT nearly 1,500 highly qualified members of its staff are now overseas. They are based in 109 countries, they deliver on highly ambitious targets for export investment, and they are building up on that expertise.

In considering, too, the impact of leaving the European Union on the UK as a whole, I listened very carefully indeed to the noble Baronesses, Lady Quin and Lady Armstrong of Hill Top, who made the crucial point that we have to focus not only on the devolved Administrations but on the regions. So much has been said that was, rightly, concerned about what role the devolved Administrations will play. However, it is just as crucial that we look at all the manufacturing industries around our country—we have a proud history there and have gone through some difficult challenges. That is being done—it is already taking place—but we will focus more on it this summer. For example, the Minister in the other place, my honourable friend Steve Baker, will in particular be doing that this summer, and his priority is in fact the north-east.

It is right that the industrial strategy we pursue should improve living standards for all, not just for some. On a different issue, although it is important for the living standards of those who work in our industries, my noble friends Lord Leigh of Hurley and Lady Byford both raised the importance of the availability of overseas workers for agriculture. I try to avoid using the term “migrant workers” because I appreciate that it can be offensive to our friends and colleagues across Europe. This morning I had a very helpful conversation with the new Romanian Minister for Europe about this very issue. I reassured him about how seriously we

take the contribution by workers from overseas to all our industries here, and I particularly mentioned seasonal workers.

I do not have time to go into great detail now but I can say that just last month, on 28 June, the Minister in this House, my noble friend Lord Gardiner, answered questions about foreign workers in agriculture and made it clear that we are having formal discussions on that subject. These matters have been discussed by the Secretary of State and Minister of State in Defra and key stakeholders over recent weeks. My noble friend said that the Government will commission advice from the Migration Advisory Committee and that, working with business and communities, we will develop a future migration system that works for all and meets the labour market in this sector. I am very much reminded that we had agreements with Romania on seasonal working before we entered the European Union. We can make these things work with good will, and we have good will.

I was asked by the noble Baroness, Lady Hayter, in particular, to make the period of implementation a priority when considering how to frame our negotiations. She was right to ask that, as were other noble Lords around the House who raised it. I mention, for example, my noble friends Lady Verma, Lord Livingston and Lord Horam, the noble Lord, Lord Hain, and the noble Baroness, Lady Smith of Newnham. Others also raised it but those noble Lords particularly focused on it. We could talk about semantics and about what we mean by “transition” or “implementation”. When I was at Chevening listening to the business leaders, I realised that they too applied different meanings to the same words. Therefore, as a rather practical person, in my breakout group with them I wanted to find out what it meant for their businesses and how they could best operate. We can learn from that, and certainly we will consider what an implementation agreement might look like.

We have been clear about the timing. We are more optimistic than some in this House, more determined than perhaps some in this House realise, and even more energetic than some might hope we are. We are clear that we want to reach an agreement about our future partnership by the time the two-year Article 50 process has concluded. That is what you should do when going into a negotiation. You should go in with drive and determination, and you do that because it is the right thing to do.

As many noble Lords have said, we start from a unique position—that of close regulatory alignment, trust in the institutions, and a spirit of co-operation that stretches back decades. As I reached a milestone just yesterday, I thought about how much of my life in politics had been taken up in discussing our relationship with the European Union, and much of it has been very positive. I even arranged for a partnership with the CDU in one part of Germany. Therefore, I have seen it from the inside and I know that it can work. However, when I arranged that partnership we were not in the EU, so partnership can work even when you are not in the EU.

We are confident that we can reach an agreement in the period set out in the treaty but we believe that, from that moment on, a phased period of implementation—in which the UK, the EU institutions and member states

prepare for the new relationship that will exist between us—will be in our mutual interest. That is what it is about: it is about getting a nexus around that mutual interest. An implementation period will help investors, businesses and citizens in both the UK and the EU to adjust to the new arrangements in a smooth and orderly way, and it will help to minimise any unnecessary disruption. It is in nobody’s interests for there to be disruption in Europe or here. We are all looking for a constructive response.

I know that some think that the implementation period might mean some kind of membership of the EEA. At this stage, I simply say that the reason we fall out of the EEA structurally is that, when we leave the European Union, we have to fall outside the geographic scope of that agreement. The geographic scope of the EEA agreement is the EU and a number of other countries which have joined up separately. We came into scope because it was part of the EU; we did not enter it separately. However, I have listened to what noble Lords have said. We are trying to achieve the same thing: we want to find an implementation period and interim agreements from the negotiations that will help this country to succeed and achieve prosperity for all.

I was specifically asked by my noble friend Lady Verma about progress on the new customs system. We are undertaking an extensive consultation to understand the needs of service users to ensure that the new system and linked processes are built in accordance with users’ needs. I reassure my noble friend that for the migration phase HMRC is planning for the two systems to operate in tandem at the border. That will provide extra contingency, if it is ever needed, to ensure that the UK has a robust border declarations service. HMRC is clear that CDS is on track for delivery by January 2019.

Perhaps I may refer briefly to the point made by the noble Earl, Lord Sandwich, about the impact on the least developed countries. He quoted my right honourable friend Liam Fox at the Department for International Trade, who is supported in his objective across government. Priti Patel, the Secretary of State at DfID, made it clear that building a more prosperous world and supporting our long-term economic security is firmly in our interests. She said:

“Helping developing countries harness the formidable power of trade means we are not only creating trading partners of the future for UK businesses, but supporting jobs at home too”.

It is the right thing to do.

This has been a wide-ranging and important debate. I look forward to others of this nature as we progress through the negotiating period. I am particularly grateful to my noble friend Lord Howell of Guildford for reminding us that in the modern world we have to see interconnectivity not just in business but worldwide. He was right about business: goods and services are intertwined, and we remember that as we plan for our future.

7.37 pm

Baroness Verma: My Lords, I take this opportunity to thank all noble Lords for their fantastic contributions and I thank my noble friend the Minister for her response. I would like to pick up two or three points very quickly due to the time constraints.

[BARONESS VERMA]

My noble friend said that this has been a wide-ranging debate. I urge her to read *Hansard* tomorrow and to draw some conclusions. There were two or three key areas that noble Lords across the House concentrated on, and we hope that the Government will take them very seriously. We as a committee want to be sure that we are assisting the Government in posing the questions that need to be asked.

I understand that my noble friend has been in post for only a month. However, we had the referendum last year, and for a year there has been engagement between Ministers and businesses. I am pretty certain that Ministers and businesses have been saying exactly the same things to each other—that is, businesses have been asking for security and certainty in the transitional arrangements, and the Government have been saying very clearly that they do not want to show their hand for the purposes of the negotiation.

I put on the record my thanks to the members of my committee for their hard work on the report. I hope that the Government look at the recommendations and conclusions, which have been cited across the House today. We want to make sure that, if we are to have a Brexit, it is a successful Brexit.

Motion agreed.

Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2017

Motion to Approve

7.40 pm

Moved by Lord Bourne of Aberystwyth

That the draft Order laid before the House on 22 June be approved.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con): My Lords, under this order, trials without a jury can take place in Northern Ireland for a further two years from 1 August 2017. Without this order, the current provisions will lapse on 31 July 2017. Although this is the fifth such extension of these provisions, I hope to leave noble Lords in no doubt as to the continued necessity of such provisions for another two years.

Noble Lords will be aware of the lethal threat posed by terrorists in Northern Ireland. Dissident republican terrorist groups continue to plan and mount attacks with the principal aim of killing or maiming those who serve the public in all communities so bravely. Police officers, prison officers and members of the Armed Forces are the main focus of these attacks, but the terrorists' continued use of explosive devices and other weaponry continues to cause death and injury. Individuals linked to paramilitary organisations also continue to undermine peace and the rule of law in Northern Ireland through the use of violence and intimidation in both republican and loyalist communities.

I assure noble Lords that the Government wish to end the exceptional system of non-jury trials as soon as it is no longer necessary. But this should happen only when the circumstances allow, otherwise we risk allowing violence and intimidation to undermine the criminal justice process in Northern Ireland. Regrettably, although many attacks have been disrupted, the security situation today remains much the same as it was in 2015. The threat from terrorism in Northern Ireland is assessed to be severe. This year alone, four national security attacks have occurred in Northern Ireland, including the wounding of a police officer serving his community. It would be remiss of the Government to dispose of these provisions now given this threat and the impact it may have on the delivery of criminal justice in Northern Ireland, or simply because there are those who think we have had these provisions for long enough.

In the past two years, attacks by dissident republicans and loyalist paramilitaries have put countless innocent lives in danger. Noble Lords will recall the despicable incident on the Crumlin Road in Belfast in January this year, where two police officers who were serving their community came under attack from dissident republicans, leaving one officer badly injured. The forecourt of a busy filling station was sprayed with automatic gunfire, demonstrating the utter disregard these groups show for human life and the harm that they pose to ordinary members of the public. Sadly, this was not an isolated incident: there were four confirmed national security attacks in 2016, and there have been four so far this year, underlining the persistence of the threat we face.

The presence of dissident republicans and paramilitaries in Northern Ireland means that violence and intimidation remain a concern for the wider community. Figures released by the Police Service of Northern Ireland show that there has been an increased number of security-related deaths over the past three years, as well as an increasing trend in the number of paramilitary-style assaults since 2012-13. Threats towards police and public bodies also demonstrate the continued attempts at the intimidation of individuals and communities in Northern Ireland. In 2016-17, there were 137 arrests and 19 charges related to terrorism. Many attacks have been thwarted and disrupted, which is evidence that the work of the PSNI and its partners is having an impact, though the security situation remains serious.

Non-jury trial provisions are available in exceptional circumstances in Northern Ireland where a risk to the administration of justice is suspected; for example, jury tampering, whereby intimidation, violence or the threat of violence against members of a jury could result in a perverse conviction or acquittal. The Director of Public Prosecutions may issue a certificate that allows a non-jury trial to be held in relation to any trial on indictment of a defendant, and anyone tried with that defendant, if it meets a defined test which falls within one of the following four conditions: first, the defendant is, or is an associate of, a member of a proscribed organisation, or has at any time been a member of an organisation when it was a proscribed organisation, whose activities are connected with the affairs of Northern Ireland; secondly, the offence was

committed on behalf of a proscribed organisation, or that a proscribed organisation was involved with or assisted in the carrying out of the offence; thirdly, an attempt was made to prejudice the investigation or prosecution by, or on behalf of, a proscribed organisation, or that a proscribed organisation was otherwise involved with or assisted in that attempt; or fourthly, the offence was committed, to any extent—directly or indirectly—as a result of, in connection with or in response to religious or political hostility. A case that falls within one of the four conditions will not automatically be tried without a jury, because the DPP must also be satisfied there is a risk that the administration of justice might be impaired if a jury trial were to be held.

Let me be clear: this is not a Diplock court system. There is a clear distinction between this system and the pre-2007 Diplock court arrangements. The Diplock system saw a presumption that all scheduled offences were tried by a judge alone. Today in Northern Ireland there is a clear presumption that a jury trial will take place in all cases—the presumption is reversed.

In line with commitments previously made in Parliament in 2015, prior to the July 2017 expiry date the Secretary of State held a full public consultation on whether or not non-jury trial provisions should be extended. The consultation concluded in February this year, and received a total of 10 responses from a range of interested individuals and groups in Northern Ireland. The Secretary of State has also received relevant briefings from security officials in order to understand the underlying threat picture in Northern Ireland. In the light of all the evidence and views before him, the Secretary of State has decided to renew non-jury trial provisions for a further two years and to keep them under regular independent review. As an extra and new measure of assurance, the independent reviewer of the Justice and Security (Northern Ireland) Act 2007 will review the non-jury trial system as part of his annual review cycle, the results of which will be made available to the public in his published report.

We must recognise that Northern Ireland is a unique situation, and the non-jury trial provisions in the 2007 Act continue to be an important factor in supporting the effective delivery of the criminal justice process in a very small number of criminal cases. Certain jury trials in Northern Ireland would not be safe from disruption by those involved in paramilitary activity, many of whom make their presence known in Northern Ireland's close-knit communities, or indeed in the public galleries of the courtrooms.

So far in 2017, the DPP has issued just four certificates for non-jury trials. During 2016, 19 certificates were issued and one was refused. The DPP acts with independence, exercising his discretion in deciding whether to issue a certificate. Noble Lords will also be interested to know that in 2016, just 0.7% of all Crown Court cases in Northern Ireland were conducted without a jury. The figure so far in 2017 is 0.5%. These figures reflect the small but consistent need for non-jury trial provisions.

Noble Lords can rest assured that the Secretary of State has not taken the decision to seek to renew the non-jury trial system lightly. We strongly believe, however, that the system is, on balance, a proportionate and

necessary measure in the light of the unique risks facing the criminal justice process in Northern Ireland. The Government's move to keep the provisions under annual independent review establishes a further safeguard, which I am sure noble Lords will welcome, thus ensuring the system remains fair and effective so that we keep it in place for only as long as is necessary and appropriate. I commend the order to the House.

Lord McAvoy (Lab): My Lords, I thank the Minister for his clear exposition of what is involved in this order. I am sure the House knows exactly what is at stake. I reiterate at the outset that this is reluctant legislation. We do not want to have to renew it, and neither do the Government. We welcome their assurance that they wish to end this exceptional system in Northern Ireland as soon as it is no longer necessary.

Your Lordships' House is familiar with the security situation in Northern Ireland. It has been a little over a year since the death of Prison Officer Adrian Ismay after he was injured in a dissident republican bomb attack in Belfast. As the Minister said, in January this year two serving police officers were attacked in a public place with automatic gunfire. Dissident republicans and violent members of paramilitary groups seek to maim, kill and intimidate communities and with it disrupt peace and the rule of law in Northern Ireland. We pay tribute to those police officers, prison officers and members of the Armed Forces who serve the communities and are the main focus of these attacks. These threats affect all communities and, recklessly and without care, put the wider public at risk.

We are assured that decisions on the use of these provisions are taken with appropriate vigilance, with only a very small number of cases having these precautions applied to them. I understand that so far this year they make up 0.5% of Crown Court cases in Northern Ireland; last year, there were 19 relevant cases. I warmly welcome the commitment that the independent reviewer of the 2007 Act will be asked to review the non-jury trial provisions as part of the annual review cycle. This is a positive move which increases oversight of these exceptional measures.

The order unfortunately remains necessary due to the particular realities of the security situation and criminal justice in Northern Ireland. A huge amount of progress has been made, but we have further to travel. It is incredibly important, and remains our hope, that a full, devolved and inclusive Government will be returned in Northern Ireland as soon as possible. Today, for the reasons given, we have no hesitation in supporting the time-limited extension of this order.

Lord Alderdice (LD): My Lords, I, too, thank the Minister for presenting in a clear and concise way the implications of the order.

I accept that, unfortunately, it is necessary to bring this order back for another two years. Indeed, only yesterday, his right honourable friend in the other place, the Secretary of State for Northern Ireland, said in a Written Statement that the report of his honour, Brian Barker QC, the independent reviewer of national security arrangements, confirmed that,

“Dissident republican groupings remain interested and involved in criminality ... Loyalist paramilitaries claim political allegiance,

[LORD ALDERDICE]

although the motivation of many is crime and control through intimidation and violence”.—[*Official Report*, Commons, 17/7/17; col. 23WS.]

So this is not the same situation as people being involved in criminality and gangsterism on this side of the water, and we acknowledge that.

However, what is the intention of the Government, not only with this order but with the issues indicated in the report of the independent reviewer, who states:

“The deficiencies in the administration of criminal justice and the limited progress in case management are all too obvious ... Tightening the criminal justice system by streamlining criminal justice processes and faster committal proceedings would increase public confidence”?—[*Official Report*, Commons, 17/7/17; col. 23WS.]

Will the Minister let us know what the Government intend to do to follow this up?

This leads me to a wider question. In April of this incoming year, we are coming up to the 20th anniversary of the Good Friday agreement, and we are still talking not about criminality and gangsters—they will always be with us—but about paramilitary organisations. That is why there is a need for this order and that is why there is a threat. But let us analyse this for just a minute. We must recognise that, as the last sitting of the Northern Ireland Assembly—which was the first sitting after the Assembly elections—was in early March of this year, there is clearly going to be no Northern Ireland Assembly now into the summer. It will be at the earliest in September and, realistically, much later, before there is a Northern Ireland Assembly. Therefore, the only opportunity to scrutinise what is going on is on this side of the water. Indeed, there will be no possibility to ask any of these questions until September time, so another six months will have passed.

We had all hoped that, after the Good Friday agreement, things would move reasonably quickly; they did not. From 2004 to 2011, I served on the Independent Monitoring Commission, whose job was to address the activities of the paramilitaries, the very people that we are trying to address in this order. At the end of that time, there had been a real improvement in the situation. However, by December 2015 it was necessary for me and two colleagues—John McBurney and Monica McWilliams—to return to the question, having been appointed by the First Minister, the Deputy First Minister and the Minister of Justice, to produce a strategy for the disbanding of the paramilitaries that are the cause of us having to bring this order forward.

We were asked to produce a strategy and we produced the report by the end of May 2016. It was approved and the First Minister, the Deputy First Minister and the Minister of Justice committed themselves to action on 19 July 2016—almost exactly 12 months ago—and the British Government and the Northern Ireland Executive each committed themselves to £25 million over the following five years to address it. There was to be an Independent Reporting Commission. When the legislation went through this House—the Minister will not remember because he did not have this portfolio—I said that I did not believe that reporting once a year was enough; the Independent Monitoring Commission should produce reports twice a year. The Government said no, once a year, but it could be more often.

The Independent Reporting Commission was not appointed until December 2016, six months after the report went through and the Northern Ireland Executive had accepted it. So, as it reports only once a year, it will be at least December 2017 before we have any report. That is 18 months on from things being put into place and yet the Minister finds himself having to bring forward legislation to address not ordinary organised crime but the paramilitary organisations. Are the Government satisfied that the report that was produced on disbanding the paramilitaries is being acted upon?

There was to be a cross-departmental implementation board. Is that board meeting? We do not know. The Northern Ireland Assembly is not in a position to ask the question, so we have little alternative but to ask the question here. As the UK Government directly are putting in £25 million over the next five years—and, indirectly of course, the whole of the £50 million—there is a real interest in this House and in this debate in getting a response from the Minister as to whether the activities that ensure the requirement for this order are being addressed as we set out to do. Although the First Minister, the Deputy First Minister and the Minister of Justice at the time said, “Oh yes, there will be this implementation board and, in addition to that, the Independent Reporting Commission”, we have seen nothing from any of that.

We are being asked, quite rightly, to renew this order because of paramilitary activity and yet complete radio silence seems to have descended since the report on the strategy for disbanding was presented last June and agreed by the Northern Ireland Executive last July. Can the Minister help us to address this question?

Finally, when the IMC was disbanded—I know some noble Lords do not agree with me but, in my view, as a member of the commission, it was the right thing to do at the time—the Secretary of State for Northern Ireland undertook that every six months he or she would give a report on the activities of paramilitaries and the other issues which the IMC had reported on. Given the absence of reports for some time, the absence of anything from the Independent Reporting Commission and the absence of a Northern Ireland Assembly that can address that, can the Minister indicate whether it will be possible for us not simply to piggyback on the occasional order that comes through here but that we can properly address these questions when we return in the autumn? If the Assembly is not addressing the questions, some of us from Northern Ireland have to try to do so and make sure that something is happening, because departmental civil servants are supposed to be meeting and processing this, spending the money and, it is hoped, making some kind of impact.

I hope that the Minister realises that I am taking the opportunity of this order to speak because, frankly, there will be no other chance for us to address these questions. I think that they are serious enough. We saw last week that many of the bonfires were perfectly satisfactory cultural celebrations but there were some—such as the one close to Sandy Row—where it was clear that paramilitary organisations were out directing operations and there was a real danger not just to property but to lives, including those of children. What he has said is absolutely right: there are real

issues here, and if there is a real need, there must be some real accountability and scrutiny. I would therefore ask the Minister if he is prepared to address this again after the summer break, if it is the case that there is no Northern Ireland Assembly to do it.

8 pm

Viscount Bridgeman (Con): My Lords, together with the noble Lord, Lord Bew, and the noble Baroness, Lady Blood, who was recently in her place, I have just returned today from a meeting with the British-Irish Parliamentary Assembly. Our colleagues both in Northern Ireland and in the Republic expressed their serious concerns about the rise of paramilitaries—in particular the IRA, but of course it is not the only paramilitary group. I would just say that, collectively, that body has some pretty high intelligence about the activities and the danger posed by the serious rise of these paramilitary groups. In that case, I support these measures, with all the safeguards that Her Majesty's Government are putting in place.

Lord Browne of Belmont (DUP): My Lords, I am pleased to support the order which the Minister has announced. I wish an extension such as the one before us was not necessary. None of us wants to have trials without a jury in place, but given the distinct and exceptional circumstances in Northern Ireland, especially in light of the latest intelligence reports indicating that New IRA is regarded as the most dangerous dissident republican group operating since the 1994 ceasefire, this practical and pragmatic decision to renew the provision for non-jury trials for a further two years is to be welcomed. The integrity of the justice system is paramount and must continue to be upheld and protected. The non-jury provisions therefore continue to be a necessary function in supporting the effective delivery of the criminal justice process in certain cases, and sadly it is a reality that the justice system in Northern Ireland simply cannot do without these provisions at this time.

While reflecting on this order, I feel that it is wholly appropriate to pay tribute to all the brave men and women who have served and continue to serve and administer the rule of law, order and justice in what are difficult and challenging circumstances.

Finally, does the Minister agree that the single best way to deliver a brighter and more peaceful future for all in Northern Ireland is by having in place a strong and stable locally elected Assembly? I and my party remain optimistic and hopeful that devolved governance at Stormont can be re-established as soon as practically possible. We see no barriers to forming workable institutions. The onus is on all the parties involved to get together and in a mature manner work out a practical way forward to end the current impasse. I hope that the day will come when all will fully support the security forces and respect the rule of law, and therefore there will be no need for further orders.

Lord Bew (CB): My Lords, I thank the Minister for introducing this extension order, and I fully but reluctantly support it. I am grateful to him for describing so fairly and accurately the security situation that exists in Northern Ireland now.

There is a problem in that the language that the Minister used, which was entirely justified, was actually sharper than we might have expected at this point in the proceedings; that is, 19 years since the Good Friday agreement. My hope is not so much that the Government are keeping this legislation under review and will be able to dispense with it in any reasonable short order, but that the next time the Minister comes to this House, he will at least be able to talk about the security situation in a more relaxed way than quite rightly he has done today.

I have one coda to add. I am probably slightly more optimistic than the noble Lord, Lord Alderdice, about the return of devolution in the autumn. If it does return, the questions that he has raised in this debate are very important, and I can think of no reason why Her Majesty's Government would not remind a new power-sharing Executive, when they are put into place this autumn, of the importance of these issues.

Lord Morrow (DUP): My Lords, I, too, commend the Minister for his clarity on this issue. I would like to state clearly that, as far as my party, the DUP, is concerned, we have consistently argued that in any case where there is a significant risk of jury intimidation or a risk of perverse verdicts, it should be heard by a non-jury trial. Equally, offences motivated or aggravated by sectarianism, and crimes involving paramilitary and serious organised crime, including quasi-paramilitary organisations, should also be heard by a judge alone.

There is no doubt that, over the past 30 years and in extremely difficult circumstances, the Diplock court system served Northern Ireland quite well. It helped prevent jury intimidation and avoided perverse verdicts. I hasten to add that it may also have saved lives. Much of the credit must go to the judges who operated the system. They are to be commended and I do so wholeheartedly this evening.

This may be an imperfect way of administering justice, but it is the most satisfactory in the circumstances that prevail in Northern Ireland. My colleagues and I support the Government's order. We also look forward to the hasty return of the Northern Ireland Assembly. I wish also to clarify to the House that my party, with the biggest mandate in Northern Ireland, is ready to return to the Assembly tomorrow—without any preconditions, without any ifs, ands or buts. We cannot see any reason why the Northern Ireland Assembly is not up and functioning and delivering for the people of Northern Ireland.

Lord Bourne of Aberystwyth: My Lords, I thank noble Lords who have participated in the debate on this statutory instrument and thank them for their universal but reluctant support for it—I think that the noble Lord, Lord McAvoy, summed it up both responsibly and correctly when he talked of the reluctance with which the decision was taken, but said that it was a very necessary decision. I also thank him for the bipartisan approach that has characterised the approach of government and opposition parties on the important issues that confront Northern Ireland. As I have indicated, it is a small number of cases that confront us where a non-jury trial is necessary—it is currently 0.5% of cases—but in my view it is nevertheless the correct approach.

[LORD BOURNE OF ABERYSTWYTH]

I also thank other noble Lords—the noble Lords, Lord Alderdice, Lord Browne of Belmont, Lord Bew and Lord Morrow, and my noble friend Lord Bridgeman—for their support. Perhaps I may deal first with points that have been made across the piece on the return of the power-sharing Executive and then return to some specific issues quite correctly raised by the noble Lord, Lord Alderdice, and echoed by others.

The return of the power-sharing Executive is absolutely necessary. I find that everybody seems to want it to happen, everyone is willing it to happen, but the two principal parties have not yet gone the final mile necessary. This may be due to a lack of personal chemistry among the leaders. We have seen in the past how the chemistry that has existed between the leaders of the two largest parties has helped them go that extra mile—we saw it with the “Chuckle Brothers” in the early days and then with Peter Robinson—but we have not yet seen it with the “Chuckle Sisters”. I hope that there will be some reflection over the summer and that we will be able to go that extra mile to get to where we need to be. I thank noble Lords for their support in that connection.

I also thank noble Lords for acknowledging that we are doing this reluctantly and keeping it under review. David Seymour, who is doing the independent review of the legislation, will incorporate this into the report so that we are able as soon as possible to end this practice, which I think we all accept is necessary but undesirable.

I thank the noble Lord, Lord Alderdice, once again for his support. He raised a couple of specific issues. The first was the deficiencies of the criminal justice system and the need to increase public confidence. We will respond to that report in due course, but I recognise the need that he reflected there. The second issue that the noble Lord raised, quite correctly, was the importance of confronting paramilitary activity. The noble Lord is aware more than most of the need to tackle that. I thank him for the role that he has played in producing the invaluable report on the way forward.

Noble Lords will be aware—as the noble Lord indicated—that the Executive agreed an action plan for tackling paramilitary activity, criminality and organised crime in July last year. Since the publication of the action plan, work has been progressing to implement those commitments. To date, £9.1 million has been allocated across more than 15 projects, including the establishment of a paramilitaries task force led by the PSNI, which will have support from the NCA and HMRC, to tackle the criminality linked to paramilitaries. I can assure the House that the current situation, with the absence of an Executive at Stormont, has therefore not completely halted this important work; progress continues to be made to push it forward. As the noble Lord will be aware, the fresh start agreement has led to the creation of the Independent Reporting Commission, which will report on progress towards ending paramilitary activity.

That said, there are of course limitations to what can be progressed in the absence of Ministers, in this area as in so many others, and certain issues, including any legislative changes, will not be able to be moved

forward until Ministers are in place to take such decisions. That is one more important reason why we need that power-sharing Executive to move things forward in Northern Ireland.

Of course, we will keep matters under review—let us see how they progress over the summer—but it is clear that some important measures will need to be taken if we do not reach a situation where we have a return to a power-sharing Executive. This is just one more of those. So I undertake to keep the House informed as to how we are progressing things should we be in the unhappy position of not having a power-sharing Executive when we come back after the conference season. In the meantime, I again thank noble Lords for their support of this statutory instrument and commend it to the House.

Motion agreed.

Damages (Personal Injury) Order 2017

Motion to Regret

8.13 pm

Moved by Lord Hodgson of Astley Abbotts

That this House regrets that the Damages (Personal Injury) Order 2017 makes a substantial change to the Ogden rate, the first change since 2001, just before the completion of a further consultation on how to set that rate more effectively in the future (SI 2017/206).

Relevant document: 29th Report from the Secondary Legislation Scrutiny Committee, Session 2016–17

Lord Hodgson of Astley Abbotts (Con): My Lords, the regret Motion I have tabled may appear dry, complicated and technical. It is technical and complicated but it is not dry. It will have practical, everyday consequences for every taxpayer, for everybody who has an insurance policy, especially if they drive a motor car, and for every person who receives a long-term award of damages following an accident.

The setting of the discount rate to be applied to lump-sum damage awards is a critical decision. On the one hand, the situation cannot be allowed where, because the discount rate has been set too high, someone who suffers a catastrophic injury, maybe as the result of a road accident or an NHS operation going awry, finds that the lump sum runs out too soon. On the other hand, setting the rate too low means that the accident victim is overcompensated, which has a knock-on effect on motor and other insurance premiums, and on the overall operating costs of the NHS.

While the power for the Lord Chancellor to set the discount rate is to be found in the Damages Act 1996, the process by which the rate is set is based on case law, in particular on the 1998 House of Lords judgment in *Wells v Wells*, which reached two important conclusions. First, any lump sum awarded should neither overcompensate nor undercompensate the unfortunate victim. Who could possibly disagree with that conclusion? Secondly, the legal judgment was that the appropriate benchmark for setting the discount rate should be the yield on index-linked government stocks—that is, index-linked gilts or ILGs. I understand that the court concluded that the sums paid in compensation should

be invested only in what the court saw as risk-free assets. The court appeared to anticipate that 100% of every amount paid in compensation would or should be invested in index-linked gilts. In such circumstances, it is not surprising that the conclusion was drawn that the benchmark for setting the discount rate should be that on index-linked gilts.

That second conclusion, 20 years on from the *Wells v Wells* judgment, is a good deal more controversial than the first, for the following reasons. First, the supply of index-linked gilts is limited. They offer particular attractions to those insurance companies and other financial institutions that seek perfect risk-matching. As a consequence, index-linked gilts tend to be fully priced—some may say overpriced—and arithmetically, as a result, the running yields are driven down. Many index-linked gilts are today traded above par so that a capital loss on redemption is inevitable. Further, if portfolio theory teaches us one thing, it is that diversification is the best way to offset risk. Any proposal that suggests investing in only one asset class needs to be approached with care. It is the all-your-eggs-in-one-basket belief. A more conventional approach might suggest, in addition to index-linked and other gilts, investing in some prime corporate bonds and some blue chip UK or overseas equities.

This rate setting is such a sensitive issue that successive Governments have shied away from changing the rate. Until earlier this year, the discount rate was set at 2.5% and had not been changed since 2001. That is patently unfair. The shape of the yield curve has altered dramatically as a result of the 2008 financial crisis and interest rates remain at historic lows. I am afraid that, as a result of the failure by successive Governments to address this issue, victims may prove to have been undercompensated in recent years.

Then suddenly, essentially out of nowhere, in February the then Lord Chancellor took action. And my goodness, it was draconian. At a stroke, she changed the discount rate from plus 2.5% to minus 0.75%. What is the effect of this rather arcane statement? A simple example may help clarity. Let us assume that you are a 25-year-old young man who has, sadly, been catastrophically injured in a motorcycle accident. The court must consider what sum is needed to look after you for the rest of your life—that is, probably more than 40 years. If the court concluded that on the old rate a sum of £2 million was sufficient, under the new rate that sum would arithmetically need to be £7.3 million. That is an increase of more than £5 million, or more than triple the original sum. Of course, the award assumes that interest rates will stay at the present low—historically, very low—level for the rest of your life. If they begin to rise, you will have been overcompensated at the expense of the taxpayer and other insured people.

Specifically, the Lord Chancellor's decision had a direct and substantial effect on the public finances. Box 4.2 in the spring Budget policy costings paper indicates that as a result of this decision, the Chancellor of the Exchequer will have to find an additional £1.2 billion every year for the next five years as a guard against future claims. On page 35 of the same report, the suggestion is that the Lord Chancellor's decision will result in an increase of 0.1% on CPI, or 0.2% on RPI.

The *Times* of 28 February this year, while pointing out the importance of not undercompensating victims, said:

“But basing the so-called Ogden formula on just three years' history of index-linked gilts is crazy, as insurers point out. No accident victim in their right mind would invest their entire lump sum in inflation-protected gilts in this era of superlax monetary policy. One-third now opt for 'periodic payment orders', which guarantee a return of at least zero in real terms. Most others invest in a mix that includes higher yielding corporate bonds and equities”.

It went on to say:

“Either way, assuming that the best a prudent investor can achieve is a long-run real return of -0.75 per cent displays an Eeyorish level of pessimism. If this is really the government's official thinking on likely future investment returns then its policies to encourage pension saving amount to mis-selling on a gigantic scale”.

More recently, on 24 June, the same paper highlighted that drivers now face a rate of increase in the cost of their motor insurance that is five times that of inflation. Not all of the increase can be attributed to the change in the discount rate but its impact will be felt particularly by younger drivers, those under 25, who have seen an increase of 13.1%, and—this may be of more interest to Members of your Lordships' House—to older drivers, those over 50, who have seen an increase of 17.9%. Of course, this rate of increase will continue as reinsurance contracts run off—they last for only 12 months before they have to be renewed, and will have to be replaced at the higher rate.

I suspect—perhaps I should say I hope—that the Lord Chancellor did not understand or was not properly briefed or advised on the likely full impact of her decision. Certainly, having made this dramatic decision on Monday 27 February, which led to a storm of controversy, she then announced that there would be a further consultation. As my regret Motion makes clear, this appears to be putting the cart before the horse. I understand that the consultation is now closed and the MoJ has to report back by 3 August.

A regret Motion is probably not the place to discuss a remedy in detail but perhaps three brief conclusions can be drawn. First, it is critical that accident victims are properly compensated but in future the discount rate needs to be renewed more frequently to minimise the risk of overcompensation or undercompensation. This will also avoid the massive jerks on the tiller which have so disconcerted the insurance industry this year. Secondly, any new system should recognise that an assumption that all the compensation sums will be invested in the same asset class fails to account for the different circumstances of the various injured parties, so that the *Wells v Wells* conclusion that investments should be ILGs only is no longer appropriate. Thirdly and finally, those parties that are very risk-averse should place increased reliance on periodic payment orders as a better means of offering security to the injured party while avoiding overcompensation or undercompensation.

While tonight the House cannot discuss any remedies in detail, there is a need for action quickly to right the costly inequities of the present system. Following the recent consultation, the Government now have a wealth of information at their disposal. They also have a legislative vehicle on the stocks in the shape of the civil

[LORD HODGSON OF ASTLEY ABBOTTS]
liability Bill announced in the Queen's Speech. When the Lord Chancellor herself said, as she did on 7 March, that,

"the system needs to be reformed, because I do not think it is right that a discount rate is set on an ad hoc basis by the Lord Chancellor"—[*Official Report*, Commons, 7/3/17; col. 657]—we can surely all agree that action is needed, and quickly. When he comes to reply, I hope that my noble and learned friend will be able to reassure me and the House that the Government recognise the significance of this issue and intend to take remedial action shortly. I beg to move.

Lord Beecham (Lab): My Lords, the noble Lord has done the House a service in raising this issue. I should refer to my interests as an unpaid consultant in my old firm of solicitors, which specialises in personal injury claims.

The changes effected by the order we are debating have been a long time in the making. As the Explanatory Memorandum to the order makes clear, the procedure was prescribed in the Damages Act 1996, which vested in the Lord Chancellor the power to prescribe a discount rate which the courts must consider—though not necessarily apply—when determining compensation in personal injury cases in the form of a lump sum. Until that time, the rate had been determined by the courts.

This is only the second occasion since 1996 when a change has been made. As we have heard, the rate has been reduced from 2.5% to minus 0.75%. The purpose of the order is to reflect in relation to awards of lump-sum damages in cases of significant monetary loss—for example, long-term loss of earnings or the cost of round-the-clock care—the average yield of index-linked gilts, as the noble Lord, Lord Hodgson, explained. Thus the damages awarded will reflect a rate of return which is designed to ensure that the claimant does not make a profit from the compensation but is adequately provided for.

In 2010 the then Lord Chancellor, Kenneth Clarke, initiated the process of a review and a consultation was launched in 2012 that was inconclusive. It was followed in 2015 by the report of an expert panel commissioned by Chris Grayling. A further 16 months elapsed before Mr Grayling's successor but one consulted the Treasury and the Government Actuary, and the relevant order was finally made. Over time it became apparent that the 2.5% discount did not reflect the realities of a changing investment market, such that the compensation could run out or the injured party have to invest in higher-risk products.

Needless to say, the insurance industry has opposed the changes and claims that they will lead to higher premiums. This is par for the course for an industry that in recent years has done so much to increase its profits, not least by persuading the Government to effect changes in the realm of personal injury claims while making little, if any, reduction in premiums. APIL, the Association of Personal Injury Lawyers, reports that Admiral Insurance stated that motor insurance profits after the change would still be of the order of £336 million. APIL commended the statement in the Government's consultation that they could be influenced by the effect of the change in the rate on defendants.

Another organisation, Hastings, said that the reduction, "is not expected to have a material impact on the Group's financial outlook for 2017"—

so that is one insurer not apparently overconcerned at the change. Even more illuminating is the figure which Thompsons Solicitors calculated as the saving to motor insurers during the last 10 years of the 2.5% rate—a staggering £30 billion. There is little or no evidence that this has been reflected in reduced insurance premiums.

Given the nature of the claims in question, where long-term losses of income can occur alongside a need for special care, home or vehicle adaptations and the like, periodical payment orders—rather than one-off lump-sum payments—may well feature increasingly in the award of damages or the terms of settlement of claims. The noble Lord alluded to that desirable move.

8.30 pm

APIL illustrates this by a member firm's account of a case where a nine year-old child sustains severe injuries and has a life expectancy of 70 years. The parents are already in their 40s and are anxious to ensure appropriate accommodation and care after they cease to be able to provide it. APIL congratulates the Government on their commitment to ensuring that adequate compensation will be provided in such cases, and I take what might be regarded as a rare opportunity for me of joining them in so doing.

However, the Law Society takes a more cautious stance on periodical payment orders, suggesting that claimants should be given a choice between them and lump-sum orders and that the availability of a periodical payment order should not affect the discount rate or assume a greater propensity to take a greater investment risk. I wonder whether there should be provision for a greater mix of lump sums and periodical payment orders in the cases we are considering, as the noble Lord effectively suggested.

There appear to be divergent views about who should determine the discount rate: the Lord Chancellor, favoured by Thompsons, or a panel of experts chaired by the Government Actuary, favoured by the Law Society. I lean towards the latter, given the changed role of the Lord Chancellor, which is no longer a position necessarily held by a lawyer and is, no doubt, subject to pressure, conscious or otherwise, in relation to public expenditure, not to mention the slow pace of the parliamentary process in terms of secondary legislation.

The Law Society also calls for the 100% compensation right to be maintained and to be involved in any change of methodology, subject to that requirement. Like the noble Lord, it suggests that the rate should be reviewed every five years, with the possibility of what it describes as an "out-of-cycle review" in the event of major changes in circumstances. Perhaps the Minister will respond to that suggestion.

In general, I support the order as laid. My speech would have ended here, but for the curious incident of the consultation in the springtime. A month after making the order which is the subject of this debate, the Government, in the person of the previous Lord Chancellor, launched a new consultation on the discount

rate, to which the noble Lord referred, with a four-week period for responses. The then Lord Chancellor stated that she wanted,

“to make sure that the way in which the discount rate is set remains fit for purpose”.

One might have thought that, nearly seven years after Kenneth Clarke initiated the process which led to the order we are debating, that matter might already have been taken into account.

Instead, the latest consultation explicitly raises as issues basic questions which one might be forgiven for believing would have been taken into account before tabling the order: namely: what principles should guide how the rate is set, how often it should be set and who should set it. It also identifies the question of whether sufficient use is being made of periodical payment orders. In her Written Statement promising a review of the order, the then Lord Chancellor explicitly recognised, “the impacts this decision will have on the insurance industry”, with which the Chancellor would discuss the situation.

There was no mention of the needs of those who, by definition, also have an interest: namely, people who have sustained significant injuries by virtue of the negligence and/or breach of statutory duty of the companies comprising the insurance industry’s policyholders. Instead this latest consultation contains 36 questions covering the whole field, from whether the law on setting the discount rate is defective to whether there is any evidence that the Government have,

“not considered it as part of their equality analysis, and if so to supply the evidence and describe the effect of such evidence on the proposals”.

The Secondary Legislation Committee, in its 29th report of the previous Session, expressed its concern and disappointment,

“that a policy the insurance industry tells us will have financial impacts on most of the drivers in this country was not accompanied by an Impact Assessment setting out the Government’s calculations”.

Accordingly, it drew the order,

“to the special attention of the House on the ground that it gives rise to issues of public policy likely to be of interest to the House”.

Clearly it is a grave mistake for the Government not to have provided that financial impact statement.

The Committee wrote to the then Lord Chancellor seeking, *inter alia*, clarification as to,

“why, if the discount rate has remained unaltered since 2001, a new rate is being set now before the further consultation”.

It asked, quite reasonably:

“Would it not cause less disruption to the insurance industry and the public to conclude the proposed discussions before setting a new rate?”.

The response stated, somewhat bizarrely, that,

“the change in the discount rate is not itself regulatory in nature. I am, as Lord Chancellor, providing (nonbinding) guidance to the Courts on how they calculate awards of damages in personal injury claims, not providing guidance to businesses on carrying out their activities”.

The committee replied:

“This seems to us too narrow a view of the change being made: first, because any change made by Statutory Instrument must of its nature be ‘regulatory’; second, because this change will have broad consequences and we expect the supporting

documentation to legislation to identify and acknowledge them even if the Government decide to continue with the policy change nonetheless”.

I hope the Minister will be able to assure us that, after the current consultation, there will be a properly costed impact assessment.

Whichever side one takes on the merits of the actual decision—now of course subject to this further consultation *ex post facto*—the exchange exposes a lamentable failure on the Government’s part to make use of the secondary legislation process in a reasonable and competent manner. Given the approaching tidal wave of such powers under Brexit, it is a disturbing illustration of the Government’s failure to apply due process. I hope it can be corrected here, but at the moment I have to say that the Opposition could not support the noble Lord’s Motion. However, he is absolutely right to canvass some of the issues that the Government have to address, and which I hope will receive a rather fuller and better-explained response than on the previous attempt to correct a situation that has been left standing for far too long.

Baroness Kramer (LD): My Lords, I congratulate the noble Lord, Lord Hodgson, and thank him for bringing forward his regret Motion on this order. So much of the detail has been described to the House that I am not going to repeat it, but there can be almost no one who looks at a discount rate of minus 0.75%, even for a risk-free investment, who does not come to the conclusion that the number is simply preposterous. For the Government to implement a result that is preposterous seems to me entirely inappropriate, not just for this Government but for any.

For many years I was a banker. There were times when it was necessary to price instruments, and I would turn to one of the junior bankers who worked with me and ask them to go away, go through the analysis and come forward with a conclusion. You would find one or two who were wedded to a particular formula that had been brought to their attention at some point during their training, and were absolutely certain that by applying the formula they would come to an appropriate result, even though when one looked at the result it was completely inappropriate for the situation and the purpose. That is what we have here: an allegiance to a formula—which was probably the wrong formula from the day that it was brought in but is certainly an inappropriate formula today—that the Government are insisting on applying simply because it is the existing formula. Frankly, I can think of no worse way in which to manage any aspect of finance in this economy.

The Government may take the view that the impact of making a preposterous and inappropriate decision does not matter very much. I think that it does, as I think does most of this House. Of course it is crucial that anyone who has been severely injured and is awarded damages over a long period should not be undercompensated, but there is no rationale either for overcompensation. If I understand correctly, this does not change the award; it is with the translation of the award into a lump sum that the discount rate comes into play.

[BARONESS KRAMER]

The impact on insurance premiums matters. I admit that I am less concerned about the profits of insurance companies than about the impact of rising insurance premiums on many of the people who have to take out insurance. The noble Lord, Lord Hodgson, referred to young people who are now having to pay significantly more for motor insurance. It has been proposed that the price could be as much as an additional £1,000 a year, a very significant sum. We have already seen a significant rise in insurance premiums, partly due to changes in the Government's tax regime. I point out to the noble Lord that if you are a young person living in a rural community you may have no choice but to drive if you want to have a job and go to school, as we have cut back on rural bus services, so there is an ongoing impact that is quite significant.

There is also very little discussion of the impact on various different departments. I think that the MoD suffers badly from this change in the discount rate, although I have no idea what the figure is. Presumably the National Health Service is impacted significantly as well. All that rolls back on the taxpayer, so there are real implications of getting the discount rate wrong.

I do not understand why the Government persist in applying a formula that they know is entirely inappropriate and comes up with a preposterous result, particularly when they have almost completed a consultation, with a review to follow which, we hope, will mean that they go back to the drawing board in a matter of weeks to try to right this set of wrongs.

I would become very angry with a junior banker who blindly applied a completely inappropriate formula. When it is a Government blindly applying a completely inappropriate formula, it begins to be unforgivable.

Lord Faulks (Con): My Lords, I congratulate my noble friend Lord Hodgson on bringing these matters to the attention of the House. I ought to preface my few comments by declaring an interest: I am a practising barrister and much of my practice is concerned with the application of the discount rate in calculating damages. Some of my clients will benefit from this and others will not, but I hope to be able to stand back to make a few general comments about the appropriateness—or, I fear, the lack of it—of the proposed changes.

As several noble Lords have pointed out, this came about in rather unusual circumstances. The noble Baroness, Lady Kramer, is quite right: it is adherence to a formula which is inappropriate. There may be some internal mathematical integrity about the exercise, but it bears little relation to the proper approach to the assessment of damages. We approach them on the basis that there should be full compensation, and nothing that I say should derogate from that—we think that claimants ought to be properly compensated—but how do we assess what the compensation should be?

It has always been said that by giving a claimant a lump sum, the one thing you are certain about is that the damages will be inappropriate. Either the sum will be too much, because the claimant dies earlier than expected, or it will not be enough. Either way, that is undesirable. That is one reason why judges often said

that it would be much better for there to be periodical payments. From about 1996, periodical payments became part of the picture. With great respect, I rather disagree with the noble Lord, Lord Beecham, who seemed rather to distance himself from the advantages of periodical payments. Perhaps he did not—he was referring to the Law Society's dislike of the overreliance on periodical payments.

If we are to approach the assessment of compensation on the basis that claimants should not be taking too much by way of risk, surely periodical payments offer a significant advantage. For example, the largest head of damage is often the future cost of care for a badly damaged claimant. Most claimants nowadays will seek periodical payments. Sometimes the cost may be £100,000 or even £200,000 for a long life, and life expectation has been increasing, particularly for brain-damaged babies and others severely affected. Periodical payments provide security, but if claimants are now to say, "No, I would prefer to have a lump sum", they are, as it were, saying, "I do not want the security provided by periodical payments". What then is the sense of awarding damages on the basis that they are an entirely risk-free investor? That simply does not make any sense.

The noble Lord, Lord Beecham, referred to the often somewhat unedifying disputes that exist between claimants' lawyers on the one hand and insurers on the other. I distance myself from that and concentrate on the position of the NHS. The noble Baroness, Lady Kramer, referred to the MoD. The NHS will feel the effects of this measure very considerably. Speaking to a colleague of mine, a schedule of damages was priced before the discount rate operation at £9 million. It is now £23.5 million. Very often a standard brain-damaged baby case might have been on a lump sum calculation £10 million; it is now going to be £30 million. That is partly because life expectation of those claimants has vastly increased, but it is a result of the discount rate alteration.

8.45 pm

As has rightly been pointed out, it seems unusual to make the change and then, as it were, almost in the same breath to announce that the change may not have been a very good idea. I quote two comments from the former Lord Chancellor. On 28 February, she said:

"It is important that going forward, personal injury discount rates are set at a level that is fair to both claimants and consumers. The Government will progress urgently with a consultation on the framework for setting future rates and bring forward any necessary legislation at an early stage".

Then on 7 March, she said that,

"the Lord Chancellor must only consider the impact on the victim. I do not think the procedure works in the right way, which is why I will shortly bring forward a consultation on a better way to set the discount rate".—[*Official Report, Commons, 7/3/17; col. 657.*]

So there is a better way, but not a way that she took.

We are now in a position that is profoundly unsatisfactory. What should the Government do? My noble friend Lord Hodgson rightly points to the legislative opportunity that lies with the civil liability Bill. I agree with the noble Lord, Lord Beecham, that there is a significant advantage in having a panel approaching the question of a proper discount rate, rather than leaving the matter to the Lord Chancellor, for the very

reasons that he gives. But I suggest that the approach to the proper measure of damages, looking to the future, should not be on the basis of an entirely risk-free approach—it should be on the basis of a cautious investor, or something of that sort. The situation that we now have is not fair to defendants; it is going to fall on those who have to pay increased premiums—often young and elderly motorists—and the NHS and government departments, and the NHS needs all the money that it can get. I join my noble friend in expressing my regret.

Lord Hunt of Wirral (Con): My Lords, in declaring my interests, as set out in the register, I join my noble friend Lord Faulks in very much supporting the points made by my noble friend Lord Hodgson of Astley Abbotts, and congratulate him on giving us this opportunity to reflect on the present situation and to look to Ministers expeditiously to resolve this problem. Noble Lords will know that I wear a number of hats in debates in this House, but I speak today as a common lawyer—that is to say, a lawyer who works within the common law. I have had the privilege to practise as a common lawyer since 1968. The assessment of damages for personal injuries has always been a function of the common law. To lapse momentarily into Latin, the founding concept that I was always taught of the law of damages is *restitutio in integrum*—restoring the claimant as nearly as possible to the financial position in which he or she would have been had the damage or injury not occurred.

For a seriously injured individual, it may be thought next to impossible to put a price on how that is to be delivered, so the law of damages has developed a series of principles designed to deliver a fair outcome—fair, of course, to the injured claimant, but fair also to the person paying those damages. The civil law of damages in this context is never punitive, only compensatory, and we must remember that. The principle is that of full compensation, which is to say neither undercompensation nor overcompensation. It is also known as the 100% compensation principle, which exists to ensure that the claimant, the injured party, is compensated fairly by the person paying the damages.

If there is undercompensation, then the claimant is not fairly compensated. Equally, it is not fair to the defendant if the claimant is overcompensated. As has been said in this evening's debate, the payment may be made by the Government on behalf of the National Health Service or by an insurer, but it is ultimately funded by insurance premiums or taxes paid by everyone. If the claimant is overcompensated, then he or she is placed in a better financial position than if the injury had not occurred, and the defendant is paying something over and above the amount that is proper and fair compensation.

The discount rate is a vital part of the process of assessing how much compensation is fair. In this respect, it is just like any other component of the sophisticated methods by which lawyers and the courts assess as accurately as possible what a claimant's losses are and will be for the future. The discount rate is simply a device by which a claimant receiving a lump sum for damages has that sum adjusted to reflect the fact that losses for a period of future years are being paid fully

in advance. If that rate, which is set by the Lord Chancellor, is too low, then the claimant will be overcompensated. If it is too high, they will be undercompensated. It is vital that the discount rate should be set at a rate which allows the vital principle of 100% compensation to be achieved: no less, no more. That is not a controversial principle. Indeed, the principle is central to the proper function of the common law.

I was heartened to learn that the Economic Secretary to the Treasury, Stephen Barclay, speaking at a conference on 27 June, stated that the Government intend to keep true to the 100% compensation principle and will put the statutory process for setting the rate,

“on the firmest possible footing in future, so we have a better and fairer system for claimants and defendants”.

In essence this is a question of fairness for everyone involved. When does the Minister expect to publish the Government's official response to the consultation earlier this year, which I am confident will fully embody the words of his colleague, the Economic Secretary to the Treasury?

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I thank my noble friend Lord Hodgson for tabling the Motion on this important topic. I welcome the valuable contributions that he and other noble Lords have made.

As has been observed, the discount rate to be taken into account by the court in determining the rate of return to be expected from the investment of a lump sum award of damages for future pecuniary loss caused by a personal injury is set for England and Wales by the Lord Chancellor under Section 1 of the Damages Act 1996. This is colloquially referred to sometimes as the Ogden rate as in practice it is applied through the actuarial tables published by the working group originally set up by the late Sir Michael Ogden.

As noble Lords have observed, the rate plays a key role in underpinning one of the core principles governing the law of damages. Claimants who have suffered injury as a result of another person's negligence must be compensated fully for their loss, and should be placed—as far as is possible in financial terms—in the position that they would have been in but for the injury. This is known as the principle of full compensation or the 100% rule. Under this principle, the aim of an award of damages is therefore to compensate claimants fully, but not to overcompensate them or undercompensate them.

To fulfil that aim, where damages are awarded for future pecuniary loss—such as future loss of earnings or the care costs that are going to be incurred—in the form of a lump sum, the award is, and must be, adjusted to take account of the benefit to the claimant of being able to invest the money before the loss or expense in respect of which it is awarded has actually occurred. The discount rate is the factor applied to the award to make this adjustment so that it represents the expected rate of return. The court, of course, has a power to apply a different rate but, as my noble friend Lord Hodgson noted, it has almost always applied the prescribed rate in these circumstances.

The Damages Act 1996 does not specify when the rate should be reviewed. However, the Lord Chancellor is under a continuing duty to ensure that it is not set at

[LORD KEEN OF ELIE]

an inappropriate level. The rate was set in 2001 on a certain basis. Thereafter, there was consultation on the legal framework for setting the rate. Indeed, in 2013, a consultation was carried through but reached no consensus as to any changes or proposed changes to the legal framework for setting the discount rate. So, as at 2013, the coalition Government, of whom the noble Baroness, Lady Kramer, was a member, took no steps to deal with what she referred to as a preposterous state of affairs. Indeed, it was not at that time a preposterous state of affairs.

In 2015, an expert panel advised with regard to the matter of the rate. But in all these circumstances, when it came to 2016 and the beginning of 2017, the then Lord Chancellor had an existing duty to address the adequacy or otherwise of the discount rate. That was her legal obligation. In the light of that duty, she announced on 27 February this year that the rate should be changed from 2.5% to minus 0.75% with effect from 20 March 2017. I note that the Scottish Government made the same change to the discount rate about a week later on 28 March 2017. The then Lord Chancellor also undertook to review the framework under which the rate is set to ensure that it should remain fit for purpose in the future. The consultation paper she promised was published on 30 March. It sought views on a range of issues, including what principles should guide how the rate is set; whether the existing methodology is appropriate for the future; whether the power to set the rate should remain with the Lord Chancellor or move elsewhere, possibly to an expert panel; whether more frequent reviews would improve predictability and certainty for all parties—a point raised by a number of noble Lords—and whether further steps should be taken to encourage the use of periodical payments orders instead of lump sums, a point touched on by the noble Lord, Lord Beecham.

Underlying the consultation was the wish of the Government to make sure that the way the rate is set is put on the firmest possible footing in future, so that we have a better and fairer system for claimants and defendants, and, in so doing, keeping true to the 100% principle—namely, that claimants are paid no more but no less than they should be. The consultation closed on 11 May and the Ministry of Justice is currently analysing the 135 responses received, which, as might be anticipated, reflect a broad range of opinion as much as they reflect a broad range of interests. This requires considerable care and thoroughness, as many of the responses are highly complex and contain detailed technical information on investment returns and investor behaviour, something the noble Baroness, Lady Kramer, pointed out could be quite diverse and divergent in particular circumstances.

It is not for me to anticipate the outcome of the consideration of the consultation, but I seek to assure my noble friend and other noble Lords who have spoken in the debate that an announcement of the Government's conclusions will be made at the earliest possible opportunity. Of course, the interests of all parties concerned will be considered, and there will be an impact assessment.

My noble friend's Motion is, however, directed at the change of rate rather than the outcome of the consultation. His argument is that the then Lord Chancellor should not have set the rate at a time when she had decided that a further consultation exercise was to take place on how the rate should be set in the future. I venture that this argument is not well founded. As I have explained, the Lord Chancellor is under a continuing duty to ensure that the rate is set at an appropriate level. This means that once the then Lord Chancellor reached her decision on what the appropriate rate should be, she was legally obliged to put that decision into effect. The option of delaying setting the rate until the outcome of the planned consultation was known was simply not available to her.

My noble friend's regret that the then Lord Chancellor carried out her duty is therefore, I respectfully suggest, misplaced. The then Lord Chancellor acted correctly both in changing the rate and in initiating a consultation on whether there is a better or fairer way for it to be set in future. Had the Lord Chancellor adopted the approach proposed by my noble friend and delayed a change in the rate until a consultation—and no doubt any consequent change in the law—had been complete, she would have knowingly maintained an inappropriate rate for what might have been a considerable period of time. That would have been in breach of her legal obligation with respect to the setting of the rate.

Consequently, the approach taken by the Lord Chancellor was correct in law. In these circumstances therefore, the Government cannot support my noble friend's Motion, and I hope that he will feel able to withdraw it in light of the explanation I have sought to give on behalf of the Government.

Lord Hodgson of Astley Abbotts: My Lords, the hour is late so I will be brief. I thank all noble Lords who have spoken in support of this regret Motion: the noble Baroness, Lady Kramer, for her forthright support; I think I got half or maybe two-thirds of a loaf—I am not quite sure but I will settle for half—out of the noble Lord, Lord Beecham; and I thank my noble friends Lord Faulks and Lord Hunt for their support. They speak from a position of a great deal more expertise than I will ever have.

Of course awards need to be fair, and I do not argue at all with the first arm of the *Wells v Wells* judgment, that it must not undercompensate or overcompensate; it must be fair. As my noble friend Lord Faulks mentioned, there was this sensation around that this is an attempt by insurance companies to boost their profits. If we leave that aside, over the next five years there will be £6 billion less in the National Health Service, which would have been used for looking after patients and carrying out the essential work that the NHS does, as a result of this decision and as provided for in the recent budget development.

I appreciated my noble and learned friend's teaching on recent developments as regards the setting of the discount rate. His defence of the then Lord Chancellor was stout in the extreme. It is extraordinary that in 2017 the then Lord Chancellor suddenly felt that she had a duty when her predecessors in all the years since 2001 apparently thought that they did not. However,

he made a good fist of quite a tricky brief—although I know that, as an expert barrister, he will be long used to and practised in that.

I am pleased to hear that there have been 135 responses to the consultation and that the Government are analysing them. I thought I got a slight Nelsonian wink that we might expect some developments in this

area. I hope very much that that assumption is correct, as we have to deal with this running sore. However, we can take it no further this evening, and I beg leave to withdraw my Motion.

Motion withdrawn.

House adjourned at 9.04 pm.

