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PARLIAMENTARY DEBATES  
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# HOUSE OF LORDS

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<b>Abbreviation</b>	<b>Party/Group</b>
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 5 September 2017

2.30 pm

*Prayers—read by the Lord Bishop of Southwark.*

## Oaths and Affirmations

2.34 pm

*Richard Hubert Gordon, Lord Vaux of Harrowden, made the solemn affirmation, following the by-election under Standing Order 10, and signed an undertaking to abide by the Code of Conduct.*

## Death of a Former Member and Member Announcement

2.35 pm

**The Lord Speaker (Lord Fowler):** My Lords, I regret to inform the House of the deaths of the noble and learned Lord, Lord McCluskey, on 20 July and the noble Lord, Lord Hart of Chilton, on 3 August. On behalf of the House, I extend our condolences to the noble Lords' families and friends.

## Roads: Congestion Question

2.36 pm

*Asked by Baroness Neville-Rolfe*

To ask Her Majesty's Government what plans they have to reduce inconvenience to individuals, and the losses to the economy, caused by pinch-points and congestion on roads.

**The Parliamentary Under-Secretary of State, Department for Transport (Lord Callanan) (Con):** My Lords, the Government are delivering a £23 billion programme of investment in England's roads to improve journeys, reduce congestion and boost economic growth. The Government are also developing plans for future investment and have announced the proposed creation of a major road network that will see a share of the national road fund, funded by vehicle excise duty, given to local authorities to improve their major A-road networks.

**Baroness Neville-Rolfe (Con):** My Lords, I travelled quite extensively in Britain this summer, and I learned at first hand that serious traffic problems are not confined to major roads or big cities like ours: they are all too common right across the country. As King Edward VIII said, "Something must be done". Indeed, a perusal of the Department for Transport's report is not wholly reassuring, showing more interest in the large projects than in these important smaller frustrations. Will the Minister kindly undertake to publish an analysis of such pinch-points, noting the authorities responsible—to which he referred—for putting them right, the plans for tackling them and, most important of all, the forecast completion dates?

**Lord Callanan:** I thank my noble friend for her Question. She makes an important point. She is right to highlight local road congestion and its impact on the economy and productivity. I will discuss her suggestion with my honourable friend Jesse Norman, the Roads Minister, but I will give her a few related facts.

As I said, we are investing record amounts in England's roads. Of the £23 billion that I mentioned, which we are set to spend between 2015 and 2021, £15 billion will be dedicated to the upgrade of our strategic roads and motorways and major A roads, and the rest is to improve our local roads. The spring 2017 Budget announced that the National Productivity Investment Fund will allocate £690 million for local authorities in England for local transport networks from 2018-19 onwards. Some £490 million of that is available for the financial years 2018-19 and 2019-20 and will be allocated through a competition, which has already been launched, for which we have received 145 bids so far. We will announce the winning bids later this year.

**Lord Berkeley (Lab):** My Lords, will the Minister commit to giving the same proportion of investment to the railways to reduce congestion and improve reliability?

**Lord Callanan:** As the noble Lord is aware, we are undertaking the largest programme of investment in railways since the Victorian era, so I am proud of our record of improving the railways. Of course, there is always more to be done, but we are having a pretty good stab at it so far.

**Baroness Randerson (LD):** My Lords, increased congestion has led to a halving of average city traffic speeds. That in turn means increased emissions and a reduction in the efficiency of bus services, which leads to a decline in the number of passengers travelling on them. Will the Minister outline what the Government are doing to assist bus services and to ensure that people are encouraged and enabled to use them?

**Lord Callanan:** The noble Baroness makes an important point. Again, we are investing enormously in expanding the bus network. Many local authorities are dedicating sections of the highway to bus-only networks, funded by grants from the Department for Transport. The bus network is improving massively in many of our great cities and rural areas, and we should be proud of that.

**Lord Rosser (Lab):** My Lords, the Minister has set out how much money is being spent, but in the light of this Question, clearly, it is not having much of an impact. The 2010-15 Government set up a fund for sorting out pinch-points in the road network, and this Question would suggest that it was not particularly successful. Can the Minister say how much money from that fund was spent, how many projects it covered and how many were put forward which were not supported? Has the fund continued, or was it only for a limited time-span? If the latter, why was it brought to an end, rather than continuing with it?

**Lord Callanan:** As I have said, we are spending record sums on local authority networks, including many of the pinch-points the noble Lord has identified. Between 2015 and 2021 we will be spending £1.548 billion on small-scale transport schemes, in addition to all the money I have already outlined that we are spending on major schemes. Of course, I fully accept that there will always be further demands on resources and there are always individual schemes that people can bring forward. It is a competitive bidding process, and we are prepared to receive submissions and bids from local authorities against the latest bidding round and in future bidding rounds. I think that we have a record to be proud of.

**Lord Tebbit (Con):** My Lords, may I offer my noble friend my support, at least, for the proposal to charge utilities and other companies for the rent of the roads while they are digging them up and impairing the traffic flow?

**Lord Callanan:** I thank my noble friend. We have trialled the lane rental scheme that we announced last week in London and Kent, where it has been extremely successful. The scheme has forced utilities to work together and at weekends and in the evenings in an attempt to reduce congestion and the inevitable annoyance caused to motorists. We are consulting on extending the scheme nationwide and if that consultation is positive, we will push ahead with extending it to the rest of the country.

**Baroness Farrington of Ribbleton (Lab):** My Lords, would the Minister care to reply to the question put by my noble friend Lord Rosser? If he is unable to do so now, will he please write to him with a proper answer and put a copy of it in the Library?

**Lord Callanan:** I thought I had replied to the noble Lord, but of course, if the noble Baroness is dissatisfied with my response, I would be happy to look at it again and come up with the exact funding figures. I am sure that our record will stand up to scrutiny, and I am happy to provide further details in a letter and place it in the Library.

**Lord Hughes of Woodside (Lab):** Will the Minister investigate the increase in pollution in London caused by the unending roadworks that are intended to reduce congestion, but end up actually making the congestion worse? Is this a plot to get rid of us altogether?

**Lord Callanan:** I suspect that the noble Lord should refer his question to Transport for London, but as I mentioned in reply to my noble friend Lord Tebbit, we are trying to come up with innovative schemes to reduce the congestion caused by roadworks and utilities. We think that the lane rental scheme will make a major contribution to that, but of course, we are always in the market for other ideas if people have them.

**Baroness Jones of Moulsecoomb (GP):** My Lords, I have got another idea: the quickest way to reduce congestion is actually to reduce traffic, so what about introducing road pricing? It has been on the agenda at

various points, but it seems to fail. There are some very sophisticated schemes whereby the length of a journey, the emissions caused and the time of day can be measured. This would be a very effective way of reducing traffic.

**Lord Callanan:** I am sure it would be—and I think it would be extremely unpopular with motorists. I am aware that various cities in this country and around the world have trialled road pricing schemes, and that several initiatives are being looked at. However, I do not have any further information to give the noble Baroness at the moment.

## **Armed Forces: Serious Crime** *Question*

2.43 pm

*Tabled by Lord Morris of Aberavon*

To ask Her Majesty's Government what assessment they have made of the procedures for trying members of the armed forces for serious crimes such as murder; and whether they intend to consult on possible improvements to those procedures.

**Baroness Smith of Basildon (Lab):** My Lords, with the leave of the House, I beg to ask the Question standing in the name of my noble and learned friend Lord Morris of Aberavon.

**The Minister of State, Ministry of Defence (Earl Howe) (Con):** My Lords, the procedures for trying service personnel for serious offences under the service justice system are reviewed every five years. In preparation for the Armed Forces Bill in 2020, we will review what the services need from the system of justice and whether the current provisions are the most effective means of delivering that. I do not anticipate any external consultation in delivering this, but the Government will consider any representations made.

**Baroness Smith of Basildon:** My Lords, I am grateful to the noble Earl for that Answer, but can I press him on the point on consultation in my noble and learned friend's Question? If the Government are to review, they should do so on the best information possible. Those who have been through the system themselves, or other service men and women and their families, will be in a position to assist the Government to ensure that the best possible procedures are in place. Although he said that he will accept and welcome any information, I ask him to undertake a positive review and consultation process, and to invite those people and the wider public to consult on this issue.

**Earl Howe:** My Lords, the Government's aim is that the service justice system mirrors where possible the provisions of the civilian criminal justice system. Where the maintenance of operational effectiveness across the Armed Forces requires it, there may be differences from that system. Given those principles, we are not so far persuaded that there would be much to gain in

conducting a public consultation about a future system, but that does not preclude any interested parties making representations to the Government on these issues as and when they think it appropriate. We would welcome that.

**Lord Thomas of Gresford (LD):** My Lords, I declare an interest as chairman of the Association of Military Court Advocates. The noble Earl may recall that in February last year, when we debated at Second Reading the Armed Forces Bill, I suggested that the public had lost confidence in the trial by court martial of serious offences of service personnel. I suggested that cases of murder, rape and sexual offences, and of universal jurisdiction—war crimes and so on—should be tried by an ordinary jury in the Crown Court in this country, and that the days of having courts martial in far-flung places are long past.

**Earl Howe:** My Lords, I recall our debates on the Armed Forces Act, as it now is, and I was grateful for the noble Lord's interventions on that occasion. As he knows, there is a protocol in existence between service and civilian prosecutors. It recognises that some cases are more appropriately dealt with in the civilian system and some in the service system. The main principle in deciding who acts is whether the offence has any civilian context, especially a civilian victim. The protocol provides that cases with a civilian context are dealt with by the civilian criminal justice system, but where there is a service context it is important that the services can manage the case in question.

**Lord Maginnis of Drumglass (Ind UU):** My Lords, will the Minister and the department be careful not to confuse this issue with killings in war? We remember the case of Sergeant Blackman, who shot a Taliban fighter and was imprisoned. One who has fought terrorists and knows the deviousness of such people and the fact that they will glory in their own deaths cannot afford to take chances. One hopes that those cases will be viewed somewhat differently from ordinary crimes.

**Earl Howe:** My Lords, I fully take the point made by the noble Lord. I am sure he is thinking of the cases that arose during the Troubles in Northern Ireland. My right honourable friend the Secretary of State for Defence is working with the Secretary of State for Northern Ireland to ensure that the principle that investigations by the police or anyone else in Northern Ireland should be fair, balanced and proportionate is embedded in the implementation of the Stormont House agreement.

**Lord Burnett (LD):** My Lords, the fundamental ethos of a court martial should be that you are tried by your peers. That means that if you are a fighting soldier you are tried by other fighting men and not, may I say, by people who have never even heard a shot fired in anger. My second point is that conviction by a simple majority is grossly unfair. I raised these matters with the noble Earl before and I hope that there will be

an opportunity for them to be considered accurately and fairly to ensure that we do not have miscarriages of justice the like of which we have recently had.

**Earl Howe:** My Lords, the first point made by the noble Lord is well taken and I fully agree with him. On the question of majority verdicts, as he knows, that system has been found fair and lawful in the courts, but I recognise that there are strong differences of opinion about this, which is why we shall be examining that matter, among others, in the run-up to the Armed Forces Bill of 2020.

**Baroness Watkins of Tavistock (CB):** My Lords, can the Minister assure us that this review will make certain that military personnel have the same access to proper mental health assessments before they are tried as do those in normal, everyday practice?

**Earl Howe:** The noble Baroness makes a very good point. The mental health of all those who serve our country bravely is of the utmost importance. For some time now, measures have been in place to increase awareness of operational stress at all levels. For example, anyone in Afghanistan showing signs of stress was offered support, as well as a formal mental health assessment if it was needed, and treatment by a mental health professional. These measures have helped enormously to ensure that the Armed Forces themselves are aware of the help available to them.

## End of Life Care Question

2.51 pm

Asked by **Baroness Walmsley**

To ask Her Majesty's Government how they intend to implement the NICE guideline *End of life care for infants, children and young people with life-limiting conditions: planning and management*.

**The Parliamentary Under-Secretary of State, Department of Health (Lord O'Shaughnessy) (Con):** My Lords, responsibility for implementing the NICE guidelines lies with local NHS commissioners and providers. NHS England has commissioned the charity Together for Short Lives to assess whether local provision follows these guidelines. The results will be shared to help spread best practice and address common challenges. These actions form part of the Government's commitment to ensure that everyone at or approaching the end of life has good-quality, compassionate and joined-up care in a setting of their choice.

**Baroness Walmsley (LD):** I thank the Minister for his reply. The resource impact tool published with this guidance shows that by investing £12.7 million in implementing the guidance, savings of £34.7 million could be made by the NHS in England. What plans do the Government have to emphasise to local commissioners the cost effectiveness of implementing the guidance? Secondly, does the Minister think it is right that adult

[BARONESS WALMSLEY]

hospices in England receive 33% of their funding from statutory sources while children's hospices receive only 22%?

**Lord O'Shaughnessy:** I thank the noble Baroness for raising this very important issue. On the tool and the cost effectiveness, we know how important it is to invest in these services. What we have now is not by any means a perfect service, but we do have the first national framework, NICE guidance and the CQC inspecting the quality of end-of-life care and showing up where there are still issues in provision. That is why we are working with Together for Short Lives and I think that the tool the noble Baroness has highlighted will help make the case to providers in order to do that.

There is significant funding going in from clinical commissioning groups and also what is called a care currency—a way of looking at that spending and making sure that it is being distributed to provide the care that is needed in a way that is predictable for the providers. In addition, another £11 million goes in from NHS England to support it. So there is always more to do but I think we are making good progress.

**Baroness Finlay of Llandaff (CB):** My Lords, I declare my interests, both as having established integrated paediatric palliative care services in Wales and as vice-president of Hospice UK. Does the evaluation that the Government have asked for from Together for Short Lives include evaluation of the experience of the family, including siblings, of the care? Are they able to access what they need when they need it, particularly on a 24/7 basis when the child is at home and crises may arise out of hours, to ensure that unnecessary and inappropriate emergency admissions are not happening because a family does not know what else to call for? Does the family feel supported—there is evidence of better long-term outcomes, both in the bereaved parents and in bereaved children?

**Lord O'Shaughnessy:** The noble Baroness is a true expert on this topic and we had a very good debate on the subject, which she initiated, in March this year. In terms of the experience of care, I will check exactly what the charity is looking at. I know that there is now a measure—a questionnaire—of maternity bereavement which is looking at the experience of care and trying to learn from that, and I will see whether that is more broadly the case in terms of siblings and others, and indeed for non-neonatal child deaths. On 24/7 provision, again, we know that it is not yet universal but a couple of pilots are taking place on 24/7 nursing community care, so we are making some progress on that. Indeed, one of the metrics by which we will measure our success is the number of admissions and the time spent in hospital in the final 30 days of life, which speaks to the point she was making in trying to keep those who are dying out of hospital if that is not where they want to be.

**Lord Howarth of Newport (Lab):** My Lords, does the Minister accept that we live in a society animated by humane values, which is also one of the richest societies in the world, and that there can be no excuse

for the extensive failure to provide appropriate palliative care for children who are terminally ill or bereavement support for their parents that has been reported by the Royal College of Paediatrics and Child Health and the charity Together for Short Lives? Will the Secretary of State, who is accountable for these matters, use the authority of his office to ensure that sufficient services are commissioned and sufficient qualified staff are available so that the NICE guidelines can be implemented fully and consistently across the country?

**Lord O'Shaughnessy:** I agree that there is more to do but progress has been made since the first national framework was published a couple of years ago, building on the work of successive Governments. Staffing is important. There are more early-life nurses than there were seven years ago. More than that, additional training is also going on. This is a really important part of this. Health Education England's mandate now includes end-of-life care training within various care packages. Indeed, through the Nursing and Midwifery Council, midwives are starting to get systematic end-of-life care training. Given that, unfortunately, 40% of these child deaths happen in the neonatal and newborn setting, that is incredibly important. But I take the noble Lord's point.

**The Lord Bishop of Southwark:** My Lords, as the Minister has already intimated, the key to delivery of end-of-life care to children and young people is the work of our children's hospices. Given the 22% figure, will Her Majesty's Government follow the lead of the Scottish Government and agree to work towards funding 50% of children's hospices' charitable costs, to the benefit of the patients concerned, rather than allow the proportion to decrease?

**Lord O'Shaughnessy:** I thank the right reverend Prelate for making that point. In Scotland there are different funding environments. I am aware of the 50% funding commitment from the Scottish Government. We are trying to make sure that CCGs in England not only have the funding they need by increasing NHS funding in real terms but that they understand how to spend it well for end-of-life care, and topping that up where necessary with central funds. So there is a big spending commitment there and with the new accountability framework we have a way of holding those CCGs to account for their performance.

**Lord Hunt of Kings Heath (Lab):** My Lords, the Minister has talked about a new accountability framework but the fact is that the work that has been done so far shows that CCGs are simply not implementing the guidelines. What is the point of NICE guidelines if we cannot be assured that they are going to be implemented? I refer him to the NHS England mandate for 2017-18, which talks about developing a set of measures on end-of-life care against which CCGs will be judged. Can he assure me that the NICE guidelines will be fully part of those measures?

**Lord O'Shaughnessy:** It is important to point out that the NICE guidelines are not mandatory in and of themselves. What matters is that there is high-quality end-of-life care provided at the local level and indeed that CCGs are judged on that care. They can of course

do things differently and that is the point of the system: to trust that clinical judgment. The noble Lord is quite right that end-of-life care is in the mandate—that in itself is a relatively new development. I will come back to him on the specifics that he asked for about the extent to which those metrics will be included in the mandate.

## Korean Peninsula

### Question

2.59 pm

Asked by **Lord Roberts of Llandudno**

To ask Her Majesty's Government what new initiatives they are taking to ease tensions in the Korean Peninsula.

**Baroness Goldie (Con):** My Lords, the United Kingdom is seeking a peaceful resolution to the tensions on the Korean peninsula. We strongly condemn the nuclear test conducted by North Korea on 3 September. It poses an unacceptable threat to the international community. We will continue to work with our international partners to maximise pressure on North Korea's leadership to change direction and stop its destabilising action.

**Lord Roberts of Llandudno (LD):** I thank the Minister for those remarks but does she not agree that Britain's contribution would be far more effective if it was part of a European contribution—from a European community—rather than trying to effect it as an offshore island?

**Baroness Goldie:** In response to the noble Lord, it is helpful to look at such evidence as we have. He will be aware that there has been a sequence of United Nations Security Council resolutions, most recently Resolution 2371, which was unanimously supported and adopted on 5 August. There has been a powerful global response to North Korea and these sanctions appear to be working, which is the important point. There is evidence that there is now a cutting-off of North Korean exports such as coal, iron and certain seafood.

**Noble Lords:** Oh!

**Baroness Goldie:** I notice a whisper of scepticism arising across the Chamber but, going back to facts, the United Nations estimates that it is currently affecting \$1 billion-worth of North Korean exports, which is one-third of its exports.

**Lord Alton of Liverpool (CB):** My Lords, I declare an interest as co-chairman of the All-Party Parliamentary Group for North Korea. While a nuclear-armed rogue state which treats its own people shamelessly is undoubtedly anathema, a catastrophic war would be even worse. Does the Minister agree that, along with containment, deterrence and sanctions, especially incentives to China to turn off the flow of oil and perhaps play a crucial role in convening a Beijing

peace conference, the realistic lesson of the Cold War is that beyond mutually assured destruction was a formidable campaign to systematically encourage change from within? Is the greatest current danger not the law of unintended consequences, whereby a rogue missile or ugly bellicosity could have devastating and lethal consequences for millions of innocent people?

**Baroness Goldie:** I thank the noble Lord for, as ever, his very insightful and forensic question. It is perfectly clear that the global community, as reflected by the United Nations and particularly its Security Council, believes that the correct approach to this is a mixture of diplomatic and economic measures. Going back to what I detected was some scepticism about the effect of the sanctions, perhaps I might quote from what the UK Permanent Representative to the United Nations, Matthew Rycroft, said yesterday. He said that it is clear that these sanctions,

"are having an effect ... Those who doubt this impact need only read the statements coming from the North Korean regime".

The measures to date are having an effect. As the noble Lord is aware, the UK Government are currently in discussion with our global partners as to what further steps we might take, but there is evidence that North Korea is beginning to feel the tourniquet of these sanctions.

**Lord Lansley (Con):** My Lords, I declare an interest as the chair of the UK-Japan 21st Century Group. Following the successful deployment of RAF Typhoons to Japan, will the Government look at further potential deployments of both the RAF and the Royal Navy to show our solidarity with the people of Japan?

**Baroness Goldie:** I say to my noble friend that such options will always be under consideration by any Government but at the moment, as I have indicated, the emphasis has to be on trying to apply diplomatic and economic pressure to North Korea, to persuade it that its actions are unhelpful, illegal and destabilising. Perhaps most importantly, they are certainly not in the best interests of the North Korean people.

**Lord Collins of Highbury (Lab):** My Lords, what is clear about this crisis is that it requires statesmanship and not brinkmanship. To pick up on the point raised by the noble Lord, Lord Roberts, over the weekend Chancellor Merkel and President Macron issued a joint statement on the crisis, condemning particularly the new testing of a hydrogen bomb. It appears that our Prime Minister was omitted from that statement. Can the Minister give us some reason why that was the case? Why are we not focusing on building a stronger case with our European allies on this question?

**Baroness Goldie:** Of course, many of our European allies are members of the United Nations, and therefore part of the global community that is endeavouring to address this issue. It is very alarming, disquieting and disturbing, but we are endeavouring to address it in a manner that will have an effect. As I have indicated, there is now evidence that these measures are having an effect. It is important that all the major powers in

[BARONESS GOLDIE]

the world keep speaking to one another and considering how best we can maximise that pressure on North Korea, particularly within the forum of the United Nations. The Prime Minister was in Japan last week and talked to the Japanese Prime Minister about the issue. The noble Lord will be aware that the Foreign Secretary spoke to the South Korean Foreign Minister on 3 September, and he has had recent discussions with his US, Japanese and Chinese counterparts. Very recently, the Minister of State at the Foreign and Commonwealth Office has summoned the North Korean ambassador to enable us to condemn the missile tests. He has today again summoned the ambassador, in relation to the most recent test.

**Baroness Smith of Newnham (LD):** Are sanctions that affect only the ordinary people of North Korea, who have not chosen to eat grass, in the words of Vladimir Putin, actually effective? What efforts are Her Majesty's Government undertaking to try to ensure that future sanctions target the leader, not the people, of North Korea?

**Baroness Goldie:** The noble Baroness is right to allude to a very natural concern about the plight of the people of North Korea. There is every reason to imagine that their plight is very grave indeed. She will also be aware that North Korea is a regime where it is extremely difficult for foreign powers to engage in dialogue or to intervene. We maintain the presence of our British ambassador in Pyongyang, and he is regularly in conversation. We know that there are human rights abuses in North Korea and we have condemned them unreservedly. Our concern is considerable because there have been appalling human rights situations in North Korea, and I share the noble Baroness's concern. The UK is doing whatever it can through diplomatic channels to exercise influence.

## Myanmar: Rohingya People

### *Private Notice Question*

3.07 pm

*Asked by The Lord Bishop of St Albans*

To ask Her Majesty's Government what it is doing to respond to the crisis facing the Rohingya people in Myanmar.

**The Lord Bishop of St Albans:** My Lords, I beg leave to ask a Question of which I have given private notice.

**Baroness Goldie (Con):** My Lords, Her Majesty's Government are deeply concerned by the situation in Rakhine and the plight of the Rohingya. We immediately raised the situation in the United Nations Security Council on 30 August, where we urged a restrained security response and that all sides de-escalate tensions. Our priority now is ensuring that urgent food and medical assistance can be provided to displaced civilians. Our heads of mission in Rangoon and Dhaka have

been discussing the situation in Rakhine with their respective host Governments, including enabling humanitarian aid to reach where the need is greatest.

**The Lord Bishop of St Albans:** I thank the Minister for her Answer. The United Nations is reporting that 35,000 people have crossed from Myanmar into Bangladesh in the past 24 hours alone. The two UN camps for refugees are now full. What action do Her Majesty's Government plan to take in response to this humanitarian crisis? In particular, what representations are being made to the Myanmar Government concerning the blocking of vital humanitarian aid to certain parts of Rakhine district?

**Baroness Goldie:** I thank the right reverend Prelate for a very important Question. As he will be aware, the UK has long been one of the biggest bilateral development and humanitarian donors to Burma and to Rakhine state. We have provided very significant sums of money in humanitarian assistance, including food and sanitation. We are very concerned by the recent developments. We are monitoring the situation closely through our embassy in Rangoon. We raised the current situation in Rakhine in the United Nations Security Council on 30 August. Our ambassador has lobbied the Burmese Government, and our high commissioner in Dhaka has discussed the situation with the Government of Bangladesh. We also urge the Burmese Government to do everything they can to facilitate the transportation of aid to the communities that most need it.

**Lord Collins of Highbury (Lab):** My Lords, there are two consequences of the situation here. There is of course the impact on Bangladesh, as the right reverend Prelate referred to, but there is also the situation of Rohingya Muslims in Myanmar, which has been ongoing for a long time. Could the noble Baroness explain what actions the Government are taking to put pressure on the Government of Myanmar? I know there are a lot of views about Aung San Suu Kyi, but the people responsible in the Myanmar Government are the ministry of defence and the military. Can she explain what actions we can take and what pressure we can put on those responsible for these actions?

**Baroness Goldie:** I thank the noble Lord, Lord Collins. The United Kingdom Government have been active at diplomatic level. He will be aware of the facts surrounding the regime in Burma: the military remains heavily involved in Burmese politics and in the political institutions, and controls some of the primary ministries. The UK continues to support Burma's ongoing transition from military dictatorship to civilian-led democracy. It is an ongoing process. We have to be respectful of that democratic structure, but we regularly make clear our concerns and indicate our anxieties about some of the developments within Burma.

**Baroness Berridge (Con):** My Lords, yesterday saw nearly a million people take to the streets in Chechnya, so this crisis has the potential to cause instability beyond the region. In response to a Question back in July, my noble friend mentioned that the UK Government



since 2014 have given £8 million to the Bangladeshi Government to help support the Rohingyas who have crossed the border. Could my noble friend outline how much additional money has been given in the last week or so to enable the Bangladeshi Government to support those crossing the border?

**Baroness Goldie:** I do not have information to hand on that specific point, although I have information about the general trend of contributions made by the UK Government. As I said earlier, the UK Government have been one of the largest development and humanitarian donors to Burma and to Rakhine State. Within Bangladesh, we are the largest bilateral donor and are supporting displaced Rohingya refugees and the vulnerable communities that host them. My understanding is that DfID has allocated £20.9 million for responding to humanitarian needs between 2017 and 2022. That is a general indication of the position, but I do not have information on the specific amount of money within the timeframe of a week or a fortnight.

**Baroness Smith of Newnham (LD):** My Lords, the noble Baroness talked earlier about the Minister of State for the Foreign Office bringing in the North Korean ambassador. What have Her Majesty's Government done vis-à-vis the Government of Myanmar? Have there been diplomatic representations, and what actions does the noble Baroness envisage the Government taking to demonstrate our abhorrence at what is happening in Myanmar at present?

**Baroness Goldie:** There has been regular diplomatic activity. I indicated earlier that the UK Government are extremely concerned about developments, and we are concerned. We condemn these attacks on police posts by Rohingya militants and urge the security forces to show restraint and all parties to de-escalate tensions. To respond to some of the questions posed earlier, our immediate priority is how urgent food and medical assistance can be provided to displaced civilians from all communities. That is where we are focusing endeavours, and I hope I have given some indication of how we are trying to assist with meeting that need.

**Lord Alton of Liverpool (CB):** My Lords, during a visit to Burma I was able to visit a village where Buddhists and Muslims had coexisted for many years and where there had been a savage attack on the Muslim community: homes had been burned down and the madrassa had been destroyed. I had the opportunity of raising this, and the treatment of the Rohingya, with Daw Aung San Suu Kyi. She specifically said that one of the problems has been the recognition of the citizenship rights both of those legitimately in Burma and of those who had come there illegitimately. Are we able to help in sorting out the constitutional issues to ensure that those who are entitled to citizenship are given it urgently? Can the Minister also say a word about those Rohingyas who have taken to the seas, many of whom now again face devastating consequences as those little boats are wracked by storms?

**Baroness Goldie:** I thank the noble Lord, Lord Alton, who as usual speaks with authority and knowledge on these matters. He raises a very important point, but I do not have a specific answer as to when an initiative has been undertaken by the UK Government in that respect. The noble Lord makes a positive observation, and I will certainly undertake to investigate that further.

**Baroness Hussein-Ece (LD):** My Lords, I have listened carefully to the Minister's responses. She used the word "condemnation" in a previous answer, and that is the first time I have heard that. Have the Government officially condemned the actions, which are being described as genocide and ethnic cleansing, and the appalling scenes that we are witnessing, on social media and our TV screens, of families and children being driven out in the most horrible circumstances, thousands dying and villages being burnt down? I have heard her say we are sensitive about the transition from military to democracy, but surely there is no excuse for these actions in that transition.

**Baroness Goldie:** I reassure the noble Baroness that, after the violence broke out on 25 August, the UK immediately spoke out. We issued a joint Foreign and Commonwealth Office and DfID statement. We are monitoring the situation through our embassy in Rangoon, and we raised the current situation in Rakhine in the UN Security Council on 30 August. In addition to that, our ambassador has lobbied the Burmese Government, our high commissioner in Dhaka has discussed the situation with the Government of Bangladesh and on 2 September the Foreign Secretary released a statement calling for an end to the violence, so I think the UK is clearly on the record as making obvious to those involved our profound unease at what is going on. We condemn this violence and, along with other partners, are trying to look to ways both to assist Burma and to assist the plight of those who are directly affected.

## **Air Travel Organisers' Licensing Bill** *Second Reading*

3.16 pm

*Moved by Lord Callanan*

That the Bill be now read a second time.

**The Parliamentary Under-Secretary of State, Department for Transport (Lord Callanan) (Con):** My Lords, the UK has one of the most innovative and advanced holiday sectors in the world and one of the biggest markets in Europe. That is something that we should be immensely proud of. The UK has been a leader in this sector, going back some 175 years, when Thomas Cook first had the foresight to offer a one-day excursion on a steam train. I am pleased to say that the UK continues to lead the way. Overall, tourism now contributes close to £121 billion to our economy annually, with outbound tourism contributing around £30 billion. The sector supports millions of jobs and involves

[LORD CALLANAN]

thousands of companies, from small businesses to large multinational brands, both online and on the high street.

Strong consumer protection is vital to underpin confidence in this important sector. As the Minister of State for Transport said in the other place, this is a Government who recognise the value of providing UK businesses with the best possible opportunities to grow. We also recognise the value in ensuring that consumer protections keep pace with the new ways in which people book their holidays. These points ring as true now as when they were made earlier this year. That is why I have introduced to the House the Air Travel Organisers' Licensing Bill, which will ensure that consumer protection for holidaymakers is modernised to match developments in the travel market. I very much hope that the debate we have today will match the very positive discussion in the other place. I would go as far as to say that there was cross-party support for ensuring that consumer protection reflects the changes in the travel sector.

Consumer protection is an important pillar of the holiday sector, due to a number of characteristics of the market. Holidays are frequently booked and paid for many months in advance of travel, and the consumer may often be unaware of the financial stability of their holiday providers.

The impacts from a failure of a travel company can be twofold. Consumers may experience a financial loss from a cancelled holiday or significant difficulties from being stranded abroad.

The ATOL scheme was originally set up in the 1970s to provide protection in such situations. It does this in two ways. First, travel firms that sell flight packages in the UK must hold an ATOL licence, issued by the Civil Aviation Authority. This helps to regulate entry into the market and filter out any companies that are not financially sound. The scheme also acts as a fund to compensate consumers who might be caught up in a failure. ATOL-licensed companies must pay a small levy—currently £2.50—for each person protected by the ATOL scheme. This money is then held in the Air Travel Trust Fund and used by the CAA to ensure that consumers are returned home or refunded when a company fails.

The scheme plays an important role in the UK travel sector, providing peace of mind to more than 20 million people every year. Since the 1990s, it has also been a key way in which the UK has implemented the European package travel directive. Fortunately, failure of travel companies is relatively rare, but it does happen. In the last financial year alone, 19 ATOL holders collapsed. In each of these situations, the Civil Aviation Authority stepped in to deliver protection to consumers through the ATOL scheme.

I am sure that many noble Lords will also be aware of the failure of the Spanish online travel agent, Lowcost Holidays, last summer. When this company failed, it was reported that there were 27,000 customers on holiday and more than 100,000 customers who were yet to travel. Although many of these customers were from the UK, the company did not have ATOL protection as it was regulated under the Spanish regime.

The collapse of companies such as Lowcost Holidays is an important reminder of the need to ensure that consumer protection keeps pace with the way people book their holidays now. While many people still enjoy booking a holiday in their local high-street travel agent, the market has diversified considerably with the growth of the internet and smart technologies. Indeed, a recent ABTA survey estimated that about 75% of UK consumers now book their holidays over the internet.

The growth in online trade means that customers have a much wider choice of providers, including those based overseas. However, it is clear from the Lowcost Holidays situation that not every travel provider is currently covered by the same level of protection, and inconsistencies apply across borders.

That is why the Government and the CAA took initial steps in 2012 to update the ATOL scheme. This introduced the ATOL flight-plus category to bring ATOL protection to the many consumers who book mix-and-match holidays online, in addition to those who buy traditional package holidays on the high street.

We also introduced the ATOL certificate, so that consumers know when they have booked an ATOL-protected holiday and who to contact if their travel provider fails. These interventions have had a positive impact in extending consumer protection, levelling the playing field for businesses and improving clarity for all.

It is important that we continue to build upon these changes, and I am pleased that a similar view is now held across Europe. In particular, a new EU package travel directive was agreed in 2015 to bring similar improvements to consumer protection across the whole of the EU. This will need to be implemented into the UK's package travel regulations by 1 January 2018.

Your Lordships may ask why the Government are implementing these changes, given that we will shortly be leaving the European Union. First, this Government have continually supported the rationale for updating the package travel directive. Secondly, and of equal importance, the UK is of course still a member state of the European Union and continues to honour all of its rights and obligations.

The Bill will benefit businesses and consumers alike. For consumers, it will update the protection of holidays, and for businesses it will ensure that there is a consistent approach across Europe, making it easier for British companies to trade across borders. Broadly speaking, it will mean that the protection offered across Europe will be closer to the protection that we have had here in the UK since 2012. It will also extend the scope of protection to a new concept of linked travel arrangements, which is designed to provide protection for consumers even when they make less formal holiday arrangements—for example, when one trader sells a flight, and they then direct the consumer to another trader to complete the booking of a hotel. These are not pre-arranged packages, but they often compete closely with traditional package deals.

Overall, the new directive has the potential to provide protection to a greater number of UK consumers, whether they purchase from a company established in

the UK or overseas. This will also help to level the playing field for companies, whether they are based in the UK or overseas and whether they operate on the high street or online. The broadened scope will be underpinned by information requirements, so that consumers have better information about their holiday and how they are protected.

This Bill is the first step in updating the UK's regulations to bring the new directive into force by July 2018. The four clauses will enable the ATOL scheme to be aligned with the updated package travel regulations and ensure that UK consumers and businesses can enjoy the benefits from these changes. Combined, the clauses will mean that UK-established companies are able to sell holidays more easily throughout Europe; they will be able to protect these holidays through the ATOL scheme, so they do not need to comply with different schemes in each country. The Bill will also extend the Civil Aviation Authority's powers to request information from businesses, so that they are more able to regulate the scheme and this cross-border activity more effectively.

Finally, the Bill will allow the scheme to be able to adapt more effectively to changes in the travel market. At present, the ATOL scheme is based around a single fund, the Air Travel Trust. While this one-size-fits-all approach has worked well to date, it may not always be the best approach in future. The Bill will provide more flexibility to set up new trust arrangements to respond more effectively to an increasingly diverse pool of risks. But I can be clear that this power will not provide Ministers with a blank cheque. Any regulations brought forward would require extensive consultation and ultimately an affirmative resolution procedure, so that both Houses have an opportunity to scrutinise their content and effect.

Overall, the updates that we are making to the ATOL and package travel regulations will mean consumer protection can extend to a broader range of holidays. It will mean that protection can be provided for traditional and online package holidays, and also looser combinations of travel, which have previously been out of scope.

Of course, we also need to be mindful that the regulatory landscape will need to be able to adapt to future changes in our relationship with the European Union. This measure is entirely in keeping with that principle; it will enable the ATOL scheme to be aligned with the package travel directive in 2018, with minimal impact for UK consumers and businesses. But the ATOL legislation and protection will continue to exist and remain in place as we leave the EU. ATOL is enshrined in an Act of this Parliament, and only this Parliament can change that. As I mentioned previously, the travel sector contributes significantly to the British economy. Implementing the PTD will support British businesses to trade across borders and provide the best deal for our consumers. By extending the scope of ATOL, UK businesses will be able to provide ATOL-protected holidays across the whole of the EU. Consumer protections are a key priority for this Government, and this Bill will further this aim, an aim that transcends the Brexit negotiations. In short, we are legislating now to ensure that we continue to have strong consumer protections in place as we leave the EU.

The UK has always been a leader when it comes to providing protection for holidaymakers, and this Bill will ensure the UK continues to be a leader when we leave the EU. The Bill will provide UK businesses with the opportunity to expand and grow, and provide a framework to ensure that ATOL can remain flexible enough to cope with future trends. But most importantly, it will ensure that the UK's consumer protection for holidays can keep pace with changes in the travel market. I beg to move.

3.29 pm

**Lord Flight (Con):** My Lords, I pay tribute to an extremely clear summary of the positive reasons for ATOL, which my noble friend Lord Callanan has just described. I am not quite sure why a colleague suggested that I should speak in this debate—whether it was because of my surname or because somebody knew that I was one of the first people to benefit from ATOL. Some 43 years ago, I was on a holiday organised by Horizon when it went bust. Luckily, ATOL had come in a couple of years before and dealt with everything extremely well.

My noble friend Lord Callanan made the important point that this is also very sensible commerce. ATOL has been one factor underpinning the UK being a leader in the holiday industry and the changes coming through will strengthen that. There is no need for lengthy debate: there is cross-party support for this practical legislation which is good commercial news. The Bill updates ATOL cover to include online booking and booking involving separate organisations. It extends its scope and meets the requirements of the EU package travel directive. It extends consumer protection beyond the traditional package holidays organised by tour operators to include combinations of flights and accommodation booked at the same time, which, as my noble friend pointed out, are now some 75% of the market.

It is particularly positive that the Bill, combined with the EU directive, should be extremely good news for UK holiday companies within the EU, as they will be offering a much better overall package than any other category of company. The improvements and extensions of ATOL will add to that. The protection provided is compensation for loss of holidays where the airline or air transporter goes bust, and the return of the cost of travel and accommodation if that has been lost. It is clear that ATOL applies only where there is flight transport. It is not entirely clear on the coverage of other items such as hotel accommodation or even taxi transport, but it is implicit that compensation will be made if these have been paid for and lost.

I shall focus on two other aspects of travel insurance where compensation is a difficult issue and needs review. Two recent cases—one personal and one relating to a friend—illustrate my point. I was scheduled to visit Burma, but a back operation had unfortunately not been successful and I had to have another at relatively short notice. The surgeon advised that it was not sensible for me to go. I had taken out travel insurance, but the insurers had a bit of illogical small print which questioned whether I was covered; I continue to fight the case. The provider of the Burma trip

[LORD FLIGHT]

offered no compensation for my having to cancel. Its insurance arrangements did not cover anyone who had to withdraw because the plane was chartered, not a regular service. At present, the compensation arrangements are not operating satisfactorily when people have to cancel a flight or holiday for health reasons.

In the second case, the son of some friends broke a ligament in one leg during school sport. The whole family had to cancel their holiday but they were advised that there was no compensation for loss of the air tickets because they had originally been bought via a charter arrangement, not a regular package.

Therefore, there is a need across the industry for arrangements for protection against having to cancel a flight, whatever the cause, and standard insurance cover might best be automatically provided by the party organising the flight at the time of purchase. In the case of cancellation as a result of illness, again one might look at obliging airlines to refund up to 90% of the cost and potentially to build a specific charge for this extra protection into the cost. As my noble friend Lord Callanan pointed out, the Bill enables the Secretary of State to establish different protection trusts to cover different requirements.

It is interesting that the UK has made constructive use of public sector provision combined with private sector provision in this sort of area, where insurance companies complain that it is very difficult to provide the same cover unless a standard requirement is laid down by government. I can think of two other areas in different contexts where the state organises standard insurance cover. As my noble friend Lord Callanan pointed out, this is an interesting example of where the UK industry should do even better in the EU notwithstanding Brexit as the service we have to offer will be highly competitive vis-à-vis that provided by other countries.

To conclude, this is an important area in commercial and human terms. I trust that the Government will keep under review other aspects of travel insurance such as those I have described, which need better organisation than they currently have.

3.36 pm

**Baroness Randerson (LD):** My Lords, this Bill is uncontroversial in its principles and most of its details. I express my gratitude to the Minister for the briefing that he provided earlier today, which was very helpful.

This is the sort of Bill that in normal political times would pass through this place very swiftly indeed. However, we are not, of course, in normal political times and I fear that the Government are keen to distract us from the big issue with something on which we can all agree. I think that we will agree across party that this is a worthwhile, useful and important updating of current legislation. Any controversy associated with the Bill lies in what it does not contain as these measures started life as part of the Vehicle Technology and Aviation Bill. I regret that this Bill is now so narrow in scope that we cannot talk about other important aspects associated with transport and aviation such as the danger posed by drones and lasers, which

we could have talked about under the other Bill. After all, we have few enough opportunities to discuss transport issues in this House.

We should, of course, also discuss the impact of Brexit on our aviation industry, but this Bill does not provide that opportunity in full either. It is rather ironic that the first piece of legislation discussed in the other place following the general election was this Bill, which is designed to improve our links with the rest of the EU and the single market. This Bill makes it easier for UK holiday companies to attract customers living in other EU countries by allowing companies to operate within UK law rather than have to adopt 28 different sets of regulations. The Government's intention to leave the single market means therefore that a great chunk of this legislation will probably become irrelevant within two years and life will again become difficult for travel companies wanting to trade with the rest of Europe. Package holiday companies face a period of intense uncertainty. What regulations will they have to follow after 2018 when operating abroad? We must remember that this is an industry which, by its nature, plans and books seats and accommodation years in advance. Indeed, many customers book their holidays at least one year in advance, and sometimes two, so the operators have to plan even further in advance. They need to know now what will happen in 2019; yet here we are, well over a year on from the referendum, and the Government are still arguing about the rules of the game, having wasted months on an unnecessary general election and now on internal squabbles.

In fact, this modest little Bill is a parable for the Government's, and our country's, problems with Brexit. The Bill updates the rules on compensation for consumers originally set down, as the Minister said, in the Civil Aviation Act 1982. It is needed because the world has changed since 1982. Vastly more of us travel abroad—20 million holidaymakers per year are protected by ATOL. Most people no longer go into a travel agent, with more than 80% of us buying online. We travel across borders from one country to another almost without noticing—indeed, if you are travelling between the Schengen zone countries there is effectively no border to notice. We buy packages of travel much more flexibly, mixing and matching to suit ourselves. All of this reflects modern life, and any attempt to put the clock back will cause serious dislocation to the travel industry and serious inconvenience to the travelling public. But that is, in fact, what the Government intend to try to do. A decision to leave the single market and to go for hard Brexit means that we are trying to recreate the Britain of yesteryear, trying to reimpose those hard borders and the much more difficult decisions that we had to make in those days.

On the detail of the Bill, the Government rightly wish to ensure that we remain compliant with the updated EU package travel directive. We welcome the mutual recognition incorporated in Clause 1 which extends the scope of ATOL to provide protection to customers in the EEA who have bought package holidays from UK companies. This simplifies regulations for UK businesses and will make it easier for them to gain customers abroad, a fundamental principle of the single market.

Clause 2 allows the Government to create different protection schemes for different types of package holidays, to either extend ATOL or create a new scheme for customers purchasing linked travel arrangements. LTAs simply did not exist in 1982; they are essentially a creation of the internet. We welcome the principle that LTAs will be covered, but we question whether a separate scheme is needed; we fear that it could provide inferior rights and compensation than those provided to purchasers of full packages. We will be exploring this point in Committee.

The travel industry does not seem convinced that a separate scheme is needed, and the Government are hazy about what it should encompass or, indeed, whether it is needed. The Bill simply gives the Government the power to create the scheme, and I want a bit more certainty about this. I am reluctant to give the Government any more powers to do anything of this nature because of the mess they have made of so many of the powers they already have. I fear that a second protection scheme will simply encourage companies to restructure their offer to take the most advantageous position for them. I would welcome assurances from the Minister that the Government have given serious consideration to that point so that companies will not be enabled to play the market in that way to the disadvantage of consumers. After all, consumers do not necessarily know whether they are buying a full package or a linked travel arrangement. People do not speak in those terms when they discuss their summer holidays.

The power of a trust fund lies in the accumulated total which comes from many small individual receipts—in this case, £2.50 per traveller. I fear that it could be undermined if the concept is splintered, as the Government think they might decide to do. I am sure that the Minister will confirm that there have been times in the past when the existing ATOL scheme has been under financial pressure. I fear that splintering it into two different funds could intensify pressure.

By modernising the system and harmonising our rules with the rest of the EU, the Bill will help our aviation sector to flourish. We have the third largest aviation sector in the world and the largest in Europe. After all, 49% of passengers from the UK head to the EU, as do 54% of scheduled flights. Our tourism industry supports half a million jobs, and aviation is in a unique position legally. EU rules mean that any EU airline can operate freely within and between EU countries—a point I have previously raised here on several occasions. The EU has also negotiated other agreements across the world, of which we are part by virtue of our EU membership. The Government need to develop a sense of urgency about all this. The current aviation agreements need replacing before we leave the EU, otherwise, as Michael O'Leary said recently, our aviation industry will simply be grounded. If that happens, of course not only our holidays will be messed up. Hundreds of thousands of tourism and aviation jobs will be at risk, and it will fundamentally undermine our whole trade sector, because 40% of our trade goes by air.

Therefore, the Bill is an important step forward for consumers, as well as for the holiday industry—although people also get linked travel arrangements for business

purposes. However, it is only one part of the massive jigsaw the Government face to keep our aviation sector flying and flourishing in the future.

3.48 pm

**Lord Rosser (Lab):** My Lords, I thank the Minister for his explanation of the purpose and content of the Bill, which we support, although that does not mean that we will have no issues to pursue during the further stages of the Bill. I am not quite sure whether the numerical shortage of Back-Bench speakers is despite or because of who the Front-Bench speakers are.

In a situation where those booking holidays do so many weeks or even months in advance, and often do so by paying up front in a situation where services are frequently provided by third parties, to ensure up-to-date and effective appropriate protection for airline passengers in the event of the bankruptcy of their travel company is an objective with which I am sure all agree.

Indeed, in the light of the problems there have been at times this year at some of our airports as a result of difficulties over, for example, IT systems and the enormous adverse impact that that can have on passengers, one is tempted to feel that maybe the protection offered by statute is not as all-embracing as it might be. The consumer, we are led to believe, is king. I am not sure that air travellers always feel that that is the case.

In his letter to Members of this House in July, the Minister states that this Bill is intended to modernise the Air Travel Organisers' Licensing consumer protection scheme for package holidays that include a flight. The ATOL scheme was introduced in the 1970s for UK holidaymakers flying overseas and, as the Minister said, was most recently updated in 2012. The ATOL scheme is also a crucial means by which UK businesses can meet their obligations to have insolvency protection under EU directives.

As the noble Baroness, Lady Randerson, said, the content of this Bill originally formed part of the Vehicle Technology and Aviation Bill, which met a sticky end as a result of the Prime Minister's sudden desire to hold a snap election. Perhaps the Minister can tell us whether, and when, all the other parts of the Vehicle Technology and Aviation Bill are likely to reappear and whether the impact of drones and laser beams on the safety of aircraft will also then be addressed.

ATOL is a statutory financial protection scheme managed by the Civil Aviation Authority on behalf of the Government and at present applies only to flights with accommodation sold in the United Kingdom. Businesses selling air holiday packages, or flight-only sales by third parties, in the UK are required by law to hold an ATOL licence. Should an ATOL-licensed firm become insolvent, the Civil Aviation Authority can refund protected customers or, if they are already on holiday, ensure that they can get back home. As has already been said, the scheme is funded by contributions made by travel companies into the Air Travel Trust Fund at the rate of £2.50 for each person they book on a holiday. It has been estimated that the ATOL scheme protects over 20 million holidaymakers each year.

[LORD ROSSER]

As we know, in November 2015 the European Union adopted a revised directive on package travel and linked travel arrangements, and member states—which, contrary to the belief of some, still include us—have until 1 January 2018 to implement the directive, which will apply from 1 July 2018. The Government supported the updating of the EU package travel directive as it was consistent with our own ATOL protections and should provide a consistent approach to protection, including in respect of holidays booked online.

The revised directive takes account of the major changes that have occurred over the last 20 years or so in the way that holidays are bought and sold with the growth of the internet and mobile phone technology. In particular, the internet has enabled people to mix and match the components of their holiday in a way that often falls outside the scope of ATOL and the current EU directive. One survey has estimated that about 75% of UK customers now book their holidays over the internet. This has led to a fall in ATOL sales as a share of all leisure flights from over 90% in 1998 to, I believe, around 50% more recently.

One aim of the 2015 EU directive is to bring greater clarity on what constitutes a package holiday, with a further objective being to harmonise protection within the EU. The first clause of the Bill updates ATOL to ensure that it is harmonised with the recent EU directive. Many of the changes will be covered in regulations, but a wider range of operators, including more dynamic package providers which offer a greater choice of destinations, activities and providers and enable people to tailor bespoke packages for themselves, will probably be covered under the changes, bringing protection to many more UK holidaymakers not covered under the existing ATOL provisions.

In addition, the requirement for travel companies to be in line with standards at “place of establishment” instead of at “place of sale” will mean that UK companies can sell more easily across Europe by simply adhering to the widely respected ATOL arrangements and requirements. Existing ATOL legislation applies only when the first leg of a relevant flight booking departs from a UK airport. However, will the Minister say whether this change will also mean that EU-based companies selling in the UK will have to adhere only to an ATOL-equivalent protection laid down in the member state where the business is based, which could have processes and timescales for recompense distinctly different from what many UK consumers would expect under our ATOL arrangements? Some 500,000 passengers could be affected.

The second clause relates to the Air Travel Trust, the legal vehicle used to hold the money to refund consumers under ATOL, giving the Secretary of State power to define separate trust arrangements to reflect different market models. This change is not directly relevant to the EU regulation addressed in the first clause, but is a dormant power that would enable the Government to make wholesale change to the structure and applicability of the ATOL brand, subject only to the affirmative resolution. Will the Minister say what consultation—and with whom—will take place prior to the regulations under this clause being laid by the

Secretary of State, and will a full impact assessment be undertaken? What separate trust arrangements to reflect different market models are the Government contemplating under Clause 2, and why, and will they provide more, less or the same protection as is provided to consumers under the present trust arrangements?

The third clause extends the scope of the powers under which the Civil Aviation Authority is currently able to request information. Specifically, the clause would ensure that the information power would apply to any airlines established in the UK selling relevant holidays in the EEA that are not covered by the Civil Aviation Act 1982.

The last clause, Clause 4, provides for commencement of the provisions of the Bill, with Clause 3 coming into force on whatever day or days the Secretary of State decides by regulations, and the other provisions coming into force on the day on which the Bill receives Royal Assent. The comment has already been made that the travel industry is one that has to plan, and to sell holidays, up to 18 months or more ahead. Much of the detail implementing the Bill will be done through secondary legislation, the content of which at the moment is unclear. What discussions—and with whom—have taken place and are taking place on the detail of the secondary legislation and when is it expected that secondary legislation will appear, assuming that this Bill becomes an Act?

Further, what guarantees can the Government provide that departure from the EU will not result in any of the existing rights and protections for passengers provided for in EU law, including those provided for in this Bill, being weakened or diminished? Finally, what guarantees can the Government offer the airline industry on the operating environment situation following our withdrawal from the EU, bearing in mind that aviation does not even have World Trade Organization rules to fall back on?

We support the aims and objectives of the Bill, but there are a number of points on which more detail is needed from the Government. The purpose of the Bill will be somewhat diminished if our aviation industry is in trouble following withdrawal from the European Union.

3.58 pm

**Lord Callanan:** I thank the small number of noble Lords who contributed to the debate this afternoon. I hope, like the noble Lord, Lord Rosser, that it is because of the quality of the Front-Bench contributions that other noble Lords decided not to contribute, but I suspect it probably has more to do with being the first day back after the Recess. Nevertheless, it is about the quality rather than the quantity of the contributions. It has been a good, brief debate.

The travel market has moved on significantly in the past decade, with changes to the way holidays are offered and sold. The market has diversified with the growth of the internet and smart technologies, as many Members have pointed out. Consumers now have a great many options at their fingertips to buy holidays and to put together their own packages. As the methods for selling holidays modernise, we must also update and modernise the schemes and laws that

protect them. As I said in my opening remarks, this Bill is a vehicle by which the UK will implement the EU package travel directive. It will ensure that informally booked holidays will have protection similar to that for traditional package holidays, regardless of whether they are booked on the high street or online. This Bill complements the steps we took to update the ATOL scheme in 2012 and is required to ensure that consumer protection can keep pace with the changing travel market.

While it is fair to say that the Bill may not be the largest in terms of clauses, not many Bills can bring peace of mind to so many people. The scheme protects more than 20 million people each year by regulating entry into the market and acting as a fund to compensate consumers who might be caught up in a failure. It has provided robust consumer protection for more than 40 years and is held in high esteem by the travel industry and consumers alike. It has been able to do so by evolving over time and adapting to changes in the travel market. The Bill will help to align our regulatory framework with the changes coming in across the EU in 2018. The combined effect of the clauses will help to cut red tape, allowing UK-established companies to sell holidays more easily throughout Europe. They will be able to protect more holidays through the ATOL scheme, removing the need to comply with different schemes in each member state.

I shall move on to some of the question that have been asked. The noble Lord, Lord Rosser, raised the point about the future of consumer protection once the UK leaves the EU. The UK has always led the way in protecting holidaymakers. We remain committed to consumer protection and will continue to do so after Brexit. For example, we established the ATOL scheme two decades before the original package travel directive was agreed across Europe. ATOL is of course enshrined in UK legislation and will remain on the statute book until such time as these Houses decide otherwise, regardless of what happens with Brexit. We also made improvements to the scheme in 2012 which are now being echoed in the new package travel directive that was passed by the EU in 2015. So I think that I can claim some authority here when I say that we have a track record over many years of being at the forefront of consumer protection in this field and that we hope to remain so.

The Bill will extend the Civil Aviation Authority's information powers so that it is more able to regulate the scheme and cross-border activity. It will update the ATOL powers so that they align with the scope of the directive and will provide more flexibility to set up new trust arrangements and so on to respond more effectively to an increasingly diverse pool of risks. The scheme now needs to manage a greater variety of risks and business models, and the update the Bill will make to ATOL will mean that consumer protection can extend to a broader range of holidays. This will mean that protection is provided for traditional and online package holidays as well as for the looser combinations of travel which had previously been out of scope. Of course, we must be mindful that the regulatory landscape will need to be able to adapt to future changes in our relationship with the EU, but we will also retain flexibility in the ATOL regulations to adapt to future changes in

our relationship, thus ensuring that we continue to have strong consumer protections in place as we leave the European Union. These measures will ensure that the scheme remains fit for today's world, a world in which digital technologies are offering increasing opportunities for consumers to select the way they purchase a holiday.

Moving on to some of the other questions that were asked, my noble friend Lord Flight reflected on his Burma experience. I hope that he has now recovered from his back operation and his problems with insurance. It is important to say that the ATOL scheme is not designed to replace holiday insurance and we do not want to give consumers the impression that it should or might do so. People should still take out holiday insurance, ideally before they book their holiday, which for its relatively modest cost provides the considerable protections they will need above and beyond the ATOL scheme. Arrangements for flight-only and for airlines are regulated separately, and I am sorry that my noble friend was not able to take advantage of them with his Burma experiences. I am not sure that there are any package holidays to Burma that would be covered by the ATOL regulations.

In response to the point made by the noble Baroness, Lady Randerson, no distraction is intended from any other worthy causes. She got her points in about Brexit anyway, so maybe she could cut and paste them and repeat them in the Brexit debate later this afternoon and save everyone the trouble of listening to them again, worthy though they were. She also asked about drones and lasers, a point also raised by the noble Lord, Lord Rosser. I announced just before the start of the summer vacation the measures we intend to take on drones. We are currently working on further measures to deal with the scourge of laser pens. I cannot be more specific on a timescale at the moment, but I assure the noble Lord that as soon as we can we can provide precise timings I will do so, but we recognise the threat and have published measures on what we intend to do on drones. We will act as soon as is possible.

The noble Baroness, Lady Randerson, also said she thought there was a degree of irrelevancy about the Bill. I am afraid I do not agree. We need to have protection measures in place. As I said, it will exist long after we leave the EU. We were 20 years in advance of the EU package travel directive and our protections will remain in place afterwards.

The noble Baroness raised so-called regulatory shopping. This is a concern, but we have seen no evidence of it so far. Indeed, the package travel directive in many respects implements what we already have in the UK, so it will make it less likely that companies can move to a lower-regulation environment in the rest of the EU. It will raise guarantee standards in countries such as Spain effectively to what we already have in the United Kingdom, so it will prevent the problems associated with Lowcost Holidays that I mentioned earlier.

The noble Lord, Lord Rosser, and the noble Baroness, Lady Randerson, mentioned the new trust arrangements. They are right to do so. I hope I will be able to reassure them. We have no plans to establish any other trust

[LORD CALLANAN]  
schemes beyond what we already have. Indeed, in response to the noble Baroness's question, we have £175 million in the ATOL scheme, but there have been periods when it has been in deficit. I think I am right in saying that up until 2011 the scheme was in deficit and the Government needed to provide a guarantee for a loan to be taken out to refund failures at that time. Since then, we have had proportionately fewer failures and proportionately more people paying in, so the fund is now in considerable surplus.

We have no plans to change the contribution, but we propose to give ourselves the power to respond innovatively to changes in the market. As I said, we have no plans to do so but it is possible and we would not want to exclude the ability to establish new trust fund arrangements if new and innovative models were to be produced. If we did, we would consult extensively with the scheme providers in the CAA, and with package tour operators, various internet firms, et cetera. Of course, such arrangements would be subject to affirmative resolutions in both Houses.

**Lord Rosser:** To pursue the point on the purpose of Clause 2, the Minister has said the Government have no plans at present, but then goes on to refer to possible changes in the future. Will he give some examples of the changes that might take place that would necessitate using the powers under Clause 2?

**Lord Callanan:** I suppose the short answer to that question is no. If I knew what innovative solutions and changes might come up, we would allow for them now. For example, if a particularly new and what we would consider riskier form of package could be developed, we would maybe want to set up a larger contribution protection than the £2.50 that applies to other schemes. As I said, we will consult extensively with all providers and with the CAA, and the arrangements will be subject to the affirmative resolutions of this House. As I said, these models have not been developed yet, so we do not know what they might be, but we think it prudent to allow for the possibility that they may be developed in the future, even though we have no plans to do so at the moment.

I believe I have responded to all the questions I was asked—somebody will no doubt shout if I have not.

**Lord Rosser:** The Minister may feel he has answered this already, in which case he will obviously say so, but I asked about the secondary legislation, what consultations have already taken place and with whom, and what consultations are currently taking place. I also asked about the production of an impact assessment, because the concern is that there may not be proper consultation or an impact assessment, and we shall have just an affirmative resolution for what are, or could be, quite extensive powers and changes.

**Lord Callanan:** As I said, we can give an undertaking to consult extensively if we propose to do this in the future. I will write to the noble Lord with details of any consultations that have already been carried out; I hope he will consider that an adequate response.

I think I have responded to the points that others put to me and I ask the House to give the Bill a Second Reading.

*Bill read a second time and committed to a Grand Committee.*

## Brexit: UK-Irish Relations

### *Motion to Take Note*

4.12 pm

*Moved by Lord Jay of Ewelme*

That this House takes note of the Report from the European Union Committee *Brexit: UK-Irish relations* (6th Report, Session 2016–17, HL Paper 76).

**Lord Jay of Ewelme (CB):** My Lords, it is a privilege to introduce this debate on the EU Committee's report, *Brexit: UK-Irish relations*, published in December 2016. I do so in place of our chairman the noble Lord, Lord Boswell of Aynho, who, as many noble Lords will know, is convalescing after a period of ill health. The noble Lord, Lord Boswell, did an excellent job in guiding the committee through this extremely important subject and I know he regrets not being able to be with us today. I am sure the whole House will join me in wishing him well.

The committee launched this inquiry a year ago out of a conviction that the impact of Brexit on the island of Ireland, and on north-south and east-west relations, had been largely missing from the Brexit referendum debate and its immediate aftermath—at least on this side of the Irish Sea. As the former Taoiseach, John Bruton, told us,

“The impact on Ireland was virtually ignored”, during the referendum campaign. His words are, I suggest, an indictment of the way the referendum campaign was conducted on both sides. This is particularly regrettable given the long and complex history of UK-Irish relations, our close and unique historical, geographical, economic, social and cultural ties, and the way in which our bilateral relations have been positively transformed in recent years, symbolised by the reciprocal state visits by Her Majesty the Queen and President Higgins in 2011 and 2014.

In undertaking this inquiry, we wanted to report quickly, so as to contribute to the debate over the future shape of post-Brexit UK-EU and UK-Irish relations. We heard evidence from the Secretary of State for Northern Ireland, the then Irish ambassador and from two former Taoisigh, John Bruton and Bertie Ahern. In a two-day visit to Belfast and Dublin, we heard from a cross-section of unionist and nationalist politicians, academics and other key stakeholders. Nevertheless, given the time constraints, we were not able to go into as much detail as we would have liked.

In particular, we did not hear from representatives of the Northern Ireland Executive. This was not for want of trying. The committee invited both the DUP and Sinn Féin to meet us in Belfast, but we did not receive any responses to our invitations. We understand the difficulties the two parties face and were pleased



subsequently to meet representatives of both parties separately here in London. Their contributions, along with invaluable evidence given to us by the noble Lords, Lord Trimble, Lord Alderdice and Lord Hain, have helped inform our follow-up inquiry into Brexit and devolution. That report was published in July, and I hope it will soon be debated in the House.

In our UK-Irish relations report, we outlined the particular implications of Brexit for Ireland, north and south. The economic consequences would be serious, particularly given the extent of cross-border trade and the agri-food sector's reliance on EU funding. We warned of the consequences for the Irish border of potential restrictions to the free movement of goods and people. We pointed to the implications for the common travel area, which, though it long predates either country's membership of the EU, has never had to co-exist with a situation in which one country is inside and the other outside the European Union. We also drew attention to the right of the people of Northern Ireland to Irish—and therefore EU—citizenship. We warned of the potential impact on political stability in Northern Ireland and in particular on the confidence of both communities that their interests and aspirations are being respected. We pointed to the challenge that Brexit presents to the north-south and east-west institutional structure established under the Belfast or Good Friday agreement.

We therefore stressed that the unique position of Ireland, north and south, must be fully taken into account in the Brexit negotiations. We called on all parties to the negotiations to give official recognition to the special, unique nature of UK-Irish relations in their entirety, including the position of Northern Ireland, and the north-south and east-west structure and institutions established under the Belfast agreement.

The committee is therefore glad that both sides in the Brexit negotiations have agreed to give high priority, alongside the negotiation of a withdrawal agreement, to the resolution of issues affecting the island of Ireland, and the reported progress in last week's round of negotiations is encouraging. At the same time, it is important not to underestimate the legal and institutional difficulties of translating recognition of the importance of these issues into a final agreement. The unique nature of UK-Irish relations requires a unique solution, and this will continue to demand flexibility and imagination on all sides.

The report was broadly welcomed upon publication last December, both here and in Dublin, but I acknowledge that concerns were expressed, in particular by elements of the unionist community in Northern Ireland. Some of the comments I saw appeared to respond to media accounts of our report rather than the report itself, so I hope it will help the House if I seek at the outset to put the record straight.

First, we did not argue that Brexit would lead to a renewed outbreak of the Troubles. Indeed, we stressed that it would be irresponsible to overstate the threat to peace posed by Brexit. Instead, the report takes as its starting point that the Belfast or Good Friday agreement established a delicate equilibrium between the unionist and nationalist communities, and that Brexit must not weaken this equilibrium or the commitment and confidence of both communities in the political process.

Against this backdrop, it would be foolish to deny that Brexit has been politically divisive in Northern Ireland. This is underlined by the fact, put to us by Professor Jonathan Tonge of Liverpool University, that almost 90% of nationalists voted to remain, while almost two-thirds of unionists voted to leave. This is one reason why it is so important that the power-sharing institutions are re-established as quickly as possible, to ensure that the voices of all communities in Northern Ireland are heard in the Brexit negotiations.

Nor did we advocate “special status” for Northern Ireland, or that Northern Ireland should remain in the EU, single market or customs union, while the rest of the UK left. As I have said, we called instead for giving,

“official recognition to the special, unique nature of UK-Irish relations in their entirety, including the position of Northern Ireland”—

language that has been echoed not only by the Irish Government and the EU but by the Prime Minister herself in her 29 March letter triggering Article 50.

Finally, we were clear, to quote from the report, that,

“strengthened checks for UK and Irish citizens at the sea boundary between Northern Ireland and Great Britain would be politically divisive and inherently undesirable”.

Maintaining an open Irish land border is essential. Any reimposition of border controls or restriction on the movement of goods would be fraught with danger, but moving the border to the Irish Sea is not a price worth paying.

The Irish Government expressed reservations about one aspect of our report: namely, our call for the UK and Ireland to negotiate a draft bilateral agreement, which would then be agreed by EU partners. We must all respect Ireland's continued commitment to EU membership, and we fully understand the Irish Government's emphasis on the need for unity across the EU 27, and their decision to entrust negotiations on the question of the border to the EU's chief negotiator, Michel Barnier. But the committee continues to believe that the UK and Irish Governments, with full input by the Northern Ireland Executive, are best placed to devise potential solutions to the border question while keeping the EU 27 fully informed and involved at every stage.

Since we produced our report last December, a lot has happened. We have seen the collapse of the Northern Ireland Executive, Assembly elections, the triggering of Article 50, the general election, the Conservative-DUP confidence and supply agreement, the start of Brexit negotiations—including the establishment of a negotiating strand on Ireland—and the appointment of a new Taoiseach, Leo Varadkar, followed by an apparent hardening of the stance in Dublin.

Then, just three weeks ago, the Government published their position paper on Northern Ireland and Ireland. The publication of that paper is welcome; indeed, much of its analysis chimes with that of the committee. This is also true of the letter from the Minister, received this morning. I confess that I have not yet had time to read the Government's response to our report, which was received about an hour ago. It would have been helpful to have had the reply in time to read it before today's debate.

[LORD JAY OF EWELME]

The Government's position paper acknowledges the unique circumstances of Northern Ireland and Ireland, as well as the important north-south and east-west trade and economic links. It stresses the need to uphold the Belfast or Good Friday agreement and the common travel area, to avoid a hard border for goods and to maintain north-south and east-west co-operation. It acknowledges the need to find flexible and imaginative solutions and to uphold the peace process. It calls for the citizenship rights set out in the Belfast agreement to remain in force and for the continuation of PEACE funding to Northern Ireland and the border counties of Ireland.

Yet for all its positive aspirations, the Government's paper is short on detail, not least on the retention of an open border for goods. The Government's proposals remain untested, unprecedented and highly ambitious. The EU has made it clear that there must be "sufficient progress" on resolving these questions before discussions on the UK's future relations with the EU can start. That does not mean resolving every detail. I have some sympathy for the Government's argument that it is impossible to resolve the Irish border question without first agreeing at least the parameters of the UK's future relationship with the EU. In particular, clarity is needed on the UK's relationship with the customs union before the implications for the Irish border can be fully understood.

Yet I can also understand why the Irish Minister for Foreign Affairs and Trade, Simon Coveney, has warned against the UK Government using the issue of the Irish border as a pawn to press the EU into agreeing a broader trade deal. The potential implications of Brexit for Ireland, north and south, are potentially far too serious for game playing, and I hope the Minister will be able to reassure the House that that is not the Government's intention.

Closer UK-Irish relations and stability in Northern Ireland need not, and must not, become collateral damage of Brexit. In an era of blossoming bilateral relationships, after long years of mistrust and misunderstanding, the Government must be sensitive to the implications of their actions for the people and communities of Ireland, north and south. Anything less would diminish the efforts of all those people who have worked so long and so hard for peace across these islands. I look forward to the debate, and beg to move.

4.25 pm

**Lord Trimble (Con):** My Lords, I congratulate the noble Lord on introducing this debate. I join him in sending good wishes to the noble Lord, Lord Boswell, for his recovery. As the noble Lord said, the report was published last December and much of it has been overtaken by events, particularly the publication of the UK paper on Ireland. I was very glad to hear an interview on the radio last week with John Bruton, the former Taoiseach, in which he acknowledged that that paper had gone a very long way in recognising the problems they have, so I shall not try to deal with the whole scope of the report introduced by the noble Lord.

I shall focus first on the proposals in the report for a special status for Northern Ireland, which are set out on page 58 and the following pages. The report contains two boxes describing the Belfast agreement, or the Good Friday agreement, as it is commonly known. They are Box 4 on page 39 and Box 5 on page 48. Both boxes focus on strands 2 and 3 of the agreement, but the important constitutional provisions of the agreement are in strand 1, which is not mentioned in the report. That is particularly unfortunate as some of the proposals in the report can and will be seen by unionists as undermining the guarantees in strand 1 of the agreement.

I shall elaborate on that a little. Paragraph 241 refers to,

"the circumstances on the island of Ireland as a whole",

but constitutionally, that island is not a whole, and its divided existence is guaranteed by strand 1 of the Good Friday agreement. As the noble Lord said, the paragraph goes on to suggest that there should be some form of bilateral agreement between the British and Irish Governments, but there already is such an arrangement in the Good Friday agreement, to which the Northern Ireland parties have access, so what is the point of another if it is not to exclude the Northern Ireland parties from it? That would be a very dangerous way to proceed.

There is more precision in paragraph 262, which sets out a number of bullet points. The sixth bullet point reads:

"Acceptance of the Northern Ireland Executive's right to exercise devolved powers ... about the free movement of EU workers within its jurisdiction".

That is a very interesting concept, a,

"right to exercise devolved powers",

on a particular issue, because devolved powers are necessarily, by definition, of a subordinate nature. When you talk about a right to exercise those powers, you are trying to move the nature of the power away from being devolved in a different direction. That, again, is rather dangerous. The intention of this novel right is clear. If it were implemented, there would be three immigration polities within the British Isles; the Republic of Ireland, Northern Ireland and Great Britain would have different provisions. Northern Ireland would, in this way, be excluded from this aspect of United Kingdom policy. That, again, is something that we would be very concerned about. Your Lordships may feel it is just a matter of impression, but there is a serious issue there.

Paragraph 239 is also interesting. It mentions a debate in the Northern Ireland Assembly on a motion supporting the concept of "special status" for Northern Ireland. The paragraph starts by expressing concern about unionist "sensitivities" but ends by saying:

"The motion was defeated by a single vote, following opposition from the Unionist parties".

We know what that means: it was just a single vote, which means it is virtually agreed and we can press on. That is what some people would want to do, arguing that it is only one vote and that they will change their position. Compare that with the rules for agreement within the inter-party talks, subsequently written into the legislation and observed in practice by the parties of Northern Ireland and by both Governments over

the last 20 years. Those rules for decision-making are quite simple. They are there in a similar but slightly different form in the Act, but as originally set out in the agreement, they involved a majority of unionists, a majority of nationalists, and the agreement of both Governments on strands 2 and 3 and of the British Government alone on strand 1.

Those are the decision-making procedures and to have them just set aside, as it were, as is implicit in the way the report is framed, will simply not be acceptable—not just to unionists but to the other parties in Northern Ireland that have benefited from the procedures that are in the Good Friday agreement and have been implemented in the Executive. I agree with the comments that have been made about the need for the Executive to be reinstated, but we say this again and again and I am afraid it always falls on deaf ears, because Sinn Féin is determined not to do it until it has milked this situation for as much as it possibly can. It is prepared to dig in, so that we might possibly break the record set by Belgium for operating without a Government—but that is by the way. Those are the points I wanted to make about special status. The Government's report is not going down that well, and we should endorse that.

I will just continue with a number of comparatively brief observations. Point 5 in paragraph 262 calls for the creation of a “customs and trade arrangement” in the event of the United Kingdom leaving the EU. Does the Minister agree that “customs and trade arrangement” is, like the single market, an expression of the EU, and that if you are participating in them you have not left the EU? Is it not also the case that if special trading arrangements are offered to one party, under the WTO rules, those arrangements must be available to all trading partners, so that option is not viable?

Does the Minister not also agree that we simply cannot settle these issues until we know, in a fair amount of detail, the trade arrangements that there will be for UK-EU trade? On that matter, do we in principle still support free trade? On Saturday, David Davis was quoted in the newspapers as saying:

“Britain is unlikely to secure anything but a hard customs border with the European Union”.

Is that the Government's position? In any event, what is the point of saying that so early in the proceedings? If the EU insists on tariffs, will we still stick to the undertaking given that there would be no structures to enforce such tariffs on our side of the border? That would be one useful contribution.

I also urge the Minister that we should stop talking and briefing about money. The payment of money from the UK to the EU is one of the strongest cards we have, and it should be held in reserve and not regularly splashed all over the papers, with people seeming to invent the sums. Again, do our interlocutors understand that in a negotiation of this nature, nothing is agreed until everything is agreed?

Finally, I have a personal observation about something that worked very well for me in the negotiations we had. If you are not prepared to walk away, you have no leverage, but you must be prepared for the insults that will follow.

4.34 pm

**Lord Whitty (Lab):** My Lords, I too was a member of the Select Committee and of the group that travelled to Belfast and Dublin as background for this report. I join the noble Lord, Lord Jay, who gave an excellent introduction, in recognising the importance of the contacts that we made there. I also join him in regretting the absence of the noble Lord, Lord Boswell, and echo his good wishes. The noble Lord, Lord Boswell, conducted major negotiations to get us to see everyone that we could in Belfast and Dublin.

Those that we saw from business, civic society and trade unions, as well as the politicians who talked to us, conveyed to us a pretty substantial degree of anxiety about the danger to Northern Ireland in Belfast and to the Republic of mishandling the Brexit arrangements, particularly the question of the border. Border trade is of course the major concern but there is also the question of east-west trade, issues of transport and infrastructure in Northern Ireland and the border regions, the interests of Northern Irish agriculture and some of the health and other social services that are now delivered in part under cross-border arrangement, as well as some concern about the peace process. It was clear to all of us that it would not be in the interests of Northern Ireland, the Republic of Ireland or Great Britain for sudden and drastic changes to be introduced to the border and to the customs and regulatory structure. That brings me to the central theme of what I am saying: all this need not be done at the same time, and maintaining some degree of continuity through a transition period—or a phased implementation period, if that is the phrase you prefer—is going to be important in handling this properly.

Maybe I should depart slightly from my script in response to the points made by the noble Lord, Lord Trimble, because I have some sympathy with the immediate point that the report did not fully reflect the views of Northern Ireland unionist politicians. That was in part because of the failure to discuss with us until very late in the process, and it worried me slightly during the course of the inquiry. I accept that unionist opinion does not want Northern Ireland to be treated under a special status. Having said that, though, without differentiating the constitutional position of Northern Ireland from the rest of the UK, there are issues in Northern Ireland that need to be treated specially—relations between the north and the south, and trade relations with Great Britain—without pre-empting the fundamental broader long-term constitutional position.

I was going to say this later, but there is a responsibility on the main political parties in Northern Ireland in particular to ensure that Northern Ireland's interests are protected but also that they are engaged constructively in this process. That requires a clear voice from a reconstituted devolved Government. Without that, we will fall into the dangers indicated by the noble Lord, Lord Trimble, that decisions will be taken over the heads of the political leadership in Northern Ireland.

The report is pretty substantial. The Government's recent position paper takes things a little further, although I am afraid the letter we have received today has not really taken us much further than that. However, the position in Northern Ireland has not significantly

[LORD WHITTY]

advanced—in fact, it has gone backwards from when we were in Belfast in the conduct of this report. One area that I shall take as an example because I know something about it, which will be differentially impacted and needs a differential solution, is Northern Ireland agriculture. It may well be true that a lot of Ulster farmers actually voted to leave the EU but they are engaged in the CAP, and the fact is that much of Northern Ireland's agriculture and the food industry in Ireland as a whole is interrelated. Livestock and products cross the border, while in many respects manufactured products cross the border several times before they finally go into the distribution chain.

It is therefore important that regulations on food standards, food safety, animal welfare, animal disease, movement of animals, hygiene and phytosanitary regulation is pretty much equivalent across the whole of Ireland. The Irish agricultural and food industry needs to relate more to the European context, albeit that Great Britain will also continue to be a major market for that produce. If the UK as a whole were to depart from the standards that have hitherto been set in Europe, the effect on Irish agriculture as a whole and Northern Irish agriculture in particular would be severe, so we need a mechanism which may require some cohesion between the north and south in Ireland, and which certainly restrains British regulatory authorities from departing too far from European standards in future. That is one example.

Part of the problem today is that, as the noble Lord, Lord Trimble, recognised, the approach to negotiations by all parties has aggravated the problem. The EU insistence that the Northern Ireland border should be part of the “divorce settlement” or withdrawal treaty before anything else is settled is illogical. We cannot have a final, settled position on the Irish border until we know what will ultimately be the trade arrangements between the EU and the UK and the migration arrangements, if any, between Ireland and the UK. That is obvious in relation to trade but is also the case in relation to the movement of people. The common travel area pre-existed the EU in different contexts throughout the troubled Anglo-Irish relationship for the past near-century, it relates to not having substantial border controls for people, and it is nationals of Ireland and the UK who enjoy the rights under it. Those rights to work and to live do not extend to nationals of other EU countries who may or will be residents of the Irish Republic. That means that Ireland may be seen as a back door to the United Kingdom under a more draconian border control system in the UK.

I do not want to be too alarmist about it, but there are anecdotes that suggest such moves are already taking place. You can imagine the reaction of some of the British press and its effect on Anglo-Irish relations if Ireland were seen as a back door and a soft touch to get around the new British immigration controls. So while this is most importantly about trade north-south and east-west, it is also about people. For the interests of all the people to be represented, we need a cohesive approach and engagement by the political parties of Northern Ireland. I regret to say that, so far, neither of the main parties has demonstrably shown that

commitment. The DUP perhaps thinks that it has more interest in influencing the Westminster Government than in establishing an effective Executive in Northern Ireland, and Sinn Fein has resurrected its all-Ireland ambition and perhaps thinks that after the next Irish elections it will have more influence in the Dáil. That is a denial of its primary role, which is to represent the interests of the people of Northern Ireland, to establish a degree of devolved government in Northern Ireland and to help the British, Irish and EU authorities to come up with an effective solution to what is a serious and complex problem.

4.44 pm

**Baroness Suttie (LD):** My Lords, I, too, am grateful for the opportunity to debate this very important and comprehensive report on UK-Irish relations following Brexit. As a member of the EU Select Committee, I pay particular tribute to the staff on the committee, whose workload has increased substantially since the referendum last year, and they have risen admirably to the challenge. I also pay tribute to the EU Select Committee's chair and our acting chair, the noble Lord, Lord Jay. Like other noble Lords, I pass on my gratitude to the noble Lord, Lord Boswell, for all his hard work over the last year, and send him my very best wishes for a speedy recovery.

As the noble Lord, Lord Jay, has said, work on this report on UK-Irish relations began a year ago. Last September, much of the political attention was focused on Scotland and its likely role in the Brexit process, so at the time of drafting the report we were genuinely concerned in the committee that there was insufficient understanding or awareness of the very significant impact that Brexit would have on so many aspects of the economy on the island of Ireland, most particularly in the agri-food sector.

In the course of the inquiry, we heard deep concerns about how to safeguard the long-established freedom of movement of people, services and goods across the border—a border that has become so much more relaxed over the past two decades. Everyone has agreed that there must be no return to a hard border, and all the negative elements that that would entail. Several witnesses expressed genuine concern that there were potential risks to the peace process too, and they were anxious to see no reversal of the commitments set down in the Good Friday/Belfast agreement as a result of Brexit.

A year since work on this report began, it would be fair to say that the issues regarding the island of Ireland are very much at the top of the Brexit agenda. They are well understood by both sets of negotiators. Indeed, Michel Barnier was personally involved with introducing the EU's Northern Ireland PEACE programme to support peace and reconciliation. Demonstrable progress on the Irish border issues is one of the three areas where progress is required before Brexit negotiations can move on to phase 2 regarding our future relations with the European Union.

However, despite the large consensus about the key issues and desirable shared objectives, progress on precisely how those objectives can be achieved in practice has been painfully slow, especially given the

timescale involved and the continuing ticking of the clock. The Government's position paper published three weeks ago repeats many of the issues that the committee report spelled out last December on upholding the Good Friday agreement, safeguarding the common travel area and ensuring that the border is "seamless and frictionless", and this should be strongly welcomed. However, on reading the Government's paper, it seems as if their central proposition is that, if we keep our fingers crossed, nothing will change at all. That seems based on an awful lot of wishful thinking. The UK Government's proposal that we can be both in the customs union while simultaneously maintaining free trade agreements with other states is to misunderstand the EU's wish to preserve the integrity of its customs union and common external tariff, just as the UK will in due course wish to protect its own trading relationships with the rest of the world. I quote my good friend the Irish former President of the European Parliament, Pat Cox, in a recent interview:

"There is a mutual inconsistency between wanting to remain almost in, while at the same time wanting all the privileges of remaining fully out ... what you can't ask is to have your cake and eat it".

While we all wish to avoid a hard border, any difference in the customs and tariff regimes between the UK and the EU would require administrative burdens and some form of physical checks. Even light-touch borders such as Norway and Sweden have a physical frontier. The Government are being overoptimistic in expecting that technological and regulatory solutions can entirely avoid the need for at least some form of targeted checks on the movement of goods. They should also not underestimate the importance of identity in Northern Ireland, and the psychological effect that Brexit has had. As our EU Committee report acknowledges, common EU membership laid the groundwork for the development of the peace process, as the border diminished visibly and psychologically. In particular, it allowed nationalists in Northern Ireland to develop a sense of common identity with fellow EU citizens across the border.

At the meeting of the British-Irish Parliamentary Assembly in Kilkenny in July this year, I was very struck by some of the comments expressed both publicly and privately by some of the Unionist parliamentarians present. Those views were echoed by some Brexit-supporting British Conservatives present at BIPA. They expressed the view that the logical consequence of Brexit was that the Irish would inevitably follow suit and have also to leave the European Union. I find such views deeply out of touch with the reality of modern Ireland.

As the report states so clearly, the Republic of Ireland will be the EU member state most directly affected by the economic consequences of Brexit. However, the economic strength provided through continued membership of the EU should also not be underestimated. As the report says in paragraph 40:

"As an English-speaking member of the Single Market, Ireland may be able to attract increased inward investment post-Brexit".

On an anecdotal level, I have heard that many multinational companies are making inquiries about setting up offices in Dublin.

In conclusion, this EU Select Committee report has played a very important role in raising awareness of the many and highly complex issues facing the island of Ireland after Brexit. This has perhaps been all the more important at a time when there is no Executive in place in Northern Ireland or present to have its voice heard at meetings of the joint ministerial committee which discusses the Brexit negotiations. I hope that in his concluding remarks the Minister may be able to give your Lordships' House an up-to-date briefing on how the Government are ensuring that the views of all political parties will be adequately heard during the continued Brexit negotiations, as this is clearly a matter of such importance to all people in Northern Ireland.

4.51 pm

**The Earl of Kinnoull (CB):** My Lords, it is a pleasure to follow the noble Baroness, Lady Suttie, who spoke with her usual clarity and authority on this most difficult area. I associate myself with her comments on our staff, who have worked so hard in the past year during which we have produced 19 Brexit reports. I also add my good wishes to the noble Lord, Lord Boswell, and wish him a very speedy recovery. He has a bottomless pit of anecdotes which keep us going very well.

I too am a member of the European Union Select Committee. This was the very first inquiry launched after the Brexit vote, and rightly so given the context and history between our two nations. Published as it was on 12 December last year, I note with regret how little progress has been made since then. As has been observed, the government response finally arrived at lunchtime today. An update report would have been thin. It would have recited the sorry tale of the current lack of a Northern Ireland Executive and the fact that the Davis/Barnier negotiating structure has yet to produce anything concrete. More encouragingly, it would have mentioned the UK position paper package of 16 August. I will make two points today. The first concerns people, corresponding to section 2 of the UK position paper, and the second concerns commerce, which corresponds to section 3.

Turning first to people, the position paper package estimates that 110 million personal crossings of the Northern Ireland border take place every year. There is inspiration in the EU local border traffic regulation 2006. This specifically does not apply to either the UK or Ireland, arising as it does out of the Schengen acquis. It does, however, show in a practical way how the EU deals with neighbourly relations and borders with third countries. The regulation regime covers,

"the regular crossing of an external land border by border residents in order to stay in a border area, for example for social, cultural or substantiated economic reasons, or for family reasons, for a period",

and it does not cover,

"access to and exercise of economic activity",

or "customs and taxation matters".

Given that there are 110 million personal border crossings a year, the regulation regime itself would not quite suit the Northern Ireland border, but would do with some tweaking. The principles work well already in other EU and third-country situations. I cite as

[THE EARL OF KINNOULL]

evidence *Ex Borea Lux*, a report into cross-border co-operation on the EU's eastern border, published in November 2012. This careful report details the experience of a number of successful situations where local border traffic agreements have been concluded, particularly between Finland and Russia and Poland and Russia. A similar regime would go a long way to smoothing out the people side of things on the island of Ireland. It would also fit well with paragraph 31 of the position paper, which seeks to find a solution,

“consistent with the European Commission’s Directives”.

Therefore, I ask the Minister whether he will comment on this thinking.

On my second point concerning commerce, I urge the UK and Ireland to work together overtly to make progress on commerce and the like matters in line with our recommendation at paragraph 261. This represents a departure from paragraph 74 of the position paper, which states:

“The UK proposes that it should work intensively with the EU over the coming months to address the issues”.

I—I think with many—fear that this simply will not happen. In any event, and as we argued in our report, I feel that our two nations know best about the totality of the situation and are thus vastly better equipped to design new arrangements that are as,

“seamless and ‘friction-free’ as possible”.

A concern voiced to us in Brussels on one of our committee visits since the Brexit vote was that Ireland might become some sort of gushing conduit for trade in goods that somehow avoided EU duty, tax and regulation. I firmly reject that as being a material concern. I note that at the height of summer there are only seven ferries a week from continental Europe to Ireland, and that this drops to four in the depths of winter. Therefore, I cannot see how a trade in goods would work. Thus bad behaviour of a material nature would be instantly visible. I feel that the problem is reduced, therefore, to whether the UK and Irish commercial counterparties can be trusted to comply with a new reporting regime. In other words, the innovative approach foreseen in paragraphs 50 and 51 of the position paper seems to me to have a high probability of success. Therefore, I am very sorry to disagree mildly with our acting chairman on that point.

Our two countries enjoy strong regulatory, auditing and tax compliance regimes and I fail to see how a material amount of bad behaviour between commercial counterparties could exist. The great thing is that, were I to be wrong, the UK and Ireland, whose Exchequers would presumably suffer, would quickly become aware of this and could—and, I submit, would—work together to sort matters out. In any event I feel that a solution put to the EU 26 by a joint UK and Irish team would carry great moral weight and thus, in the absence of political chicanery, I think would win favour. I ask the Minister to comment on that thinking as well.

4.57 pm

**Lord Howell of Guildford (Con):** My Lords, I was not a member of the Select Committee on European affairs that produced this excellent report but, as the

last surviving member of the 1972 Whitelaw mission and a survivor of the 1973-74 Sunningdale agreement, I thought it might be helpful to your Lordships to bring some reflections and memories into the discussion when, as we all know, memory is such a vital part of Irish politics, and when the Government sometimes frankly seem a little short of memory. As I say, it is an excellent report and was superbly introduced by my noble friend Lord Jay, who I congratulate. It is reinforced and marginally overtaken by the position paper issued by the Government in July.

I shall touch on three issues. First, as regards the unionist community in Northern Ireland, it is worth remembering—as some people clearly do not—that the unionists of the period, in the 1960s and 1970s, in the House of Commons always voted with the Conservatives almost regardless. This was so even though over in Northern Ireland, where we worked as a team, Willie Whitelaw and others were constantly accused of being somewhat anti-unionists and too biased in favour of the minority parties. This was particularly so when it was revealed that we had talked in secret to the Provisional IRA leaders themselves. In fact, the unionist support at Westminster made not the slightest difference to our policy in the Province, and I do not believe that the Commons support by its unionist descendants—that is, today’s DUP, which is a very different thing from the old hard-line DUP all those years ago—makes the slightest difference to our policy now. Anyway, as I understand it, the DUP is just as much against replacing border controls of any kind as are the nationalists and republicans and the south. There may indeed be questions about why Northern Ireland needed an extra £1 billion to carry on with its usual support at Westminster but I refute entirely the suggestion that it need affect the Government’s impartiality or the balance of policy in any conceivable way.

Secondly, I want to say a word about the integrated and ingrained nature of the economies of Great Britain, Northern Ireland and the Republic of Ireland, which I believe is far greater than even the report acknowledges. As the report and the position paper confirm, the preservation of the common travel area for all Irish citizens coming to the UK, and vice versa, together with the full rights it confers, is absolutely vital and central; that we all believe to be so. Even Monsieur Barnier—who has been involved in these affairs in the past, as we have been rightly reminded—appears fully to accept that fact.

What is less realised is that the bulk of the Republic’s goods traffic, via roll-on, roll-off HGV container traffic, actually goes into the EU markets via British ports and British infrastructure, whether first through Northern Ireland ports or direct to England. There is a brilliant paper, which I strongly commend to your Lordships, by Marcus Fysh MP, who puts the percentage of Irish traffic this way through Britain as high as 90%. That figure—which seemed to me when I first read it extremely high—is in fact confirmed by the Irish maritime port authorities and organisations. Even if it is, in practice, becoming less than that, it means that in effect we in Britain are Ireland’s land bridge to the European Union and to northern European distribution centres in France, Belgium, Holland, et cetera.

This makes two things absolutely essential: first, there has to be absolutely no interruption or barrier to any goods moving between Ireland and the United Kingdom, whether across the land border with Northern Ireland or direct to Britain, regardless of whether they are for the British market or onward transit to the continent. Secondly, it becomes essential for the British and Irish Governments to work very closely together in ensuring there is minimum transshipment disruption at either English Channel ports or cargo airports in trade with the European Union. In effect, we and Ireland will have a common trade border with the rest of the EU, and since Ireland, like us, is not a party to Schengen, a common travel border as well. So any change in north-south open border arrangements is totally unnecessary and can be avoided. The increasingly close financial links between Dublin and London cement the situation even further. This means that we have an overriding common interest in ensuring a frictionless UK-EU border with complete customs co-operation, common transit conventions, zero tariffs, VAT netting and all the rest, for free trade to continue between the whole UK-Irish common area and the UK mainland. We obviously should move towards that as quickly as possible and build the customs partnership which the government position paper describes.

My third point concerns north-south co-operation in the island of Ireland. I am very fond of the people of Ulster and have worked and served there with great pleasure and enjoyment. I hope the Province remains a full part of the United Kingdom as long as its people want it to, as is prescribed by law. I also see big opportunities for growing co-operation with the Republic as the modern digitalisation of economic life proceeds and technology opens up completely new possibilities. A common energy market for electricity and gas is one area where integration can go forward, as the government position paper and report suggest, and of course railway network integration is another. I very much hope the work of the British-Irish Intergovernmental Conference and the North/South Ministerial Council continues with new initiatives vigorously, particularly in agriculture, education, environment, tourism and transport. I also hope that the growing interest of the Republic in association with the modern Commonwealth network will help bring the two parts closer together. The Royal Commonwealth Society, in which I declare an interest as president, also has a very lively Dublin branch—one of our liveliest.

We hear so much that is negative in comment about the United Kingdom becoming more divided and separated and the British Isles less united. On the contrary, in this age of total connectivity, I see the long, bloody and sad saga of Irish-British relations finally fading into history. I look forward to a new era in British-Irish relations of increased harmony, co-operation and combined impact on the international scene. I believe that that can be achieved.

5.05 pm

**Lord Hain (Lab):** My Lords, it is not the fault of the Minister, whom I like and admire—he is from Wales, after all—that the important issues raised in this report are no nearer to being addressed now than they were

when it was published a year ago. We are supposed to be engaging in negotiations with the most profound implications for our country since the Second World War, yet we are alarmingly ill prepared.

First, the Chancellor proposed that there should be a transition period up until the next election in 2022, during which time arrangements would stay more or less as they are now: the Labour leadership has now rightly argued that we would remain in the single market and in the customs union. But within days the Chancellor was forced to perform what is colourfully known in sections of the British media as a “reverse ferret”. So we have the International Trade Secretary prodding at the accelerator, the Chancellor grabbing the handbrake and the Prime Minister sitting in the back staring out of the window as the cliff edge gets nearer and nearer.

The Government’s paper on the border between Northern Ireland and the Republic of Ireland and between the UK and the EU is long on good intentions and aspiration but breathtakingly short on practical detail as to how it will actually work after Brexit. It restates that no one wants a return to the hard border of the past and that there should continue to be free movement of people and goods. It calls for “flexible and imaginative solutions” eight times. No wonder this repeated rhetoric has left EU diplomats rolling their eyes.

References to maintaining the integrity of the Good Friday agreement run through it, but the reality is that once the UK leaves the customs union in less than two years, the relationship between Northern Ireland and the Republic of Ireland will fundamentally change. It would seem that the Government’s favoured way to deal with how to square this particular circle is to pretend that the circle does not exist and invite the EU simply to ignore the border on the basis that 80% of north-to-south trade is carried out by, “micro, small and medium sized businesses”.

Since, in the words of the paper, it is not “economically significant international trade”, it can be waved through: all 80% of it. So there will be no border checks and indeed no,

“physical border infrastructure ... for any purpose”.

That means not just no border security posts but no CCTV cameras or number plate recognition equipment—none of the earlier-promised fairy-tale technology replacing customs officers. It is not so much a frictionless border as a telepathic one. Rather like the poor, “smugglers” will always be with us, it would seem. This is less a solution to the problem than pie-in-the-sky fantasy. No wonder that, reacting to the Government’s Irish border paper, the European Union accused the UK of “magical thinking”.

But are not the Government playing a much more ominous game than that? They are in effect saying to the EU, and Ireland in particular, “As part of the divorce settlement you can have the border. Do what you like with it. The Irish border will be your customs union frontier—you deal with it”. If the EU wants to know who or what is coming from outside the customs union into the EU through Northern Ireland, that is up to the EU, Ministers say. If that means a “hard”

[LORD HAIN]  
border, that will be the EU's fault, not ours. That is a very dangerous game to play with the peace process in Northern Ireland.

A hard Brexit will undermine and destabilise the delicate balance of the three strands of the Good Friday agreement: relationships within Northern Ireland, between Belfast and Dublin and between London and Dublin on which the peace settlement is based. But cynically dumping the border problem on Brussels leaves one obvious problem for the advocates of the hardest of Brexits: how to reconcile the demand that we "take control of our borders" while leaving open the one that is closest to us: a back door through the Irish border to illegal, uncontrollable migration and easy jihadi entryism.

The Government invite us to believe that this long, winding and porous external European Union customs frontier—with 300 or so crossing points along its 300-mile length and farms with a foot in each jurisdiction—can be safely left unpoliced. Smugglers, customs fraudsters, people traffickers and terrorists will behave impeccably out of respect for Irish solidarity. Small companies, accounting for 80% of cross-border business, do not matter. Large ones will nobly abide by all the rules and standards required of the single market and voluntarily pay all their tariff duties.

In the much-vaunted new free-trade nirvana that awaits post-Brexit Britain with no Irish border controls, US chicken, New Zealand lamb, Australian beef, Chinese steel and Indian cars can be imported into Belfast, sent a couple of hours down the road to the ports of Dublin or Cork and exported tariff-free to France or Germany. Surely this is nonsense on stilts.

However, my major concern is not simply pious platitudes by Ministers on the border; it is that the border looks like becoming just another bargaining chip in the negotiations with Brussels. But these thorny and intractable issues around the border would not arise if we remained in the customs union, as the Taoiseach has rightly argued. In my view, the only way of resolving the border conundrum is for Northern Ireland to be within the same customs union and single market as the Republic—either Northern Ireland alone or, far more preferably, the whole of the United Kingdom. It is a fact that you can leave the European Union and still stay within the single market and the customs union. That is a fact, despite the Government's dogmatic denials. However, the International Trade Secretary believes that he can find free-trade suitors after the UK's divorce with Europe. Good luck to him and all who sail in him, I say.

But is a bad free-trade deal better than no free-trade deal? Anyone who has read the transcript of President Trump's interview with the *Wall Street Journal* in July will know that he expects chlorinated chicken and hormone-injected beef to be on its way here before the ink is dry on any free-trade deal. If there is no EU deal and we end up trading on WTO terms, the Northern Ireland Meat Exporters Association has said that,

"our export trade will be decimated",

and that it,

"would have immediate and devastating consequences for jobs in farming, processing and the wider rural economy".

If the farmers of Northern Ireland have a problem with that, who speaks for them? For there is still no Executive and the Government continue to wring their hands and dither, as indeed they have done so disturbingly for most of this year.

What if post-Brexit trade deals on whatever terms have an adverse effect on Northern Ireland, Scotland and Wales? The International Trade Secretary's solution is simply to bypass them. We are told that he does not even want representatives from the devolved Administrations to sit on any new board of trade that may be set up.

The proposals set out in the position papers and elsewhere, even as negotiating gambits, are delusional, contradictory and potentially very damaging. They do not address the very real issues that the excellent report of the European Committee has raised. In *Alice in Wonderland*, the White Queen told Alice, "I've believed as many as six impossible things before breakfast". Judging by what the Government are putting before us, she is clearly not alone.

What is proposed is not a Brexit for the United Kingdom nor even for Britain; it is a Brexit for the ideological hard right and we go down that path at our great peril, especially for Northern Ireland and the hard-won peace and democratic process, which, tragically, this Government seem airily casual about and so ignorantly indifferent to.

5.14 pm

**Lord Kilclooney (CB):** My Lords, I congratulate the noble Lord, Lord Jay, on his excellent presentation of the report and join others in extending to the noble Lord, Lord Boswell, wishes for a quick recovery.

The report, unfortunately, is almost history. A lot has happened since December 2016. I am in rather a unique position: I live near the border. But for two years in Brussels, I have lived the rest of my life near the border and have felt the implications of that border between the United Kingdom and the Republic of Ireland. I certainly recall that in the Second World War I used to nip across the border to get nylon stockings for my mother. They were not available in the United Kingdom. I also recall, as I got a little older, the southern Irish Government signing the book of condolence when Hitler died. Those things make an impression in Northern Ireland.

Then, in my teens, I remember the first IRA campaign—the border campaign, which is rarely mentioned now. For four years it went ahead killing Protestants and security forces right along the border. It was not in Northern Ireland but only on the border. That meant that when I went to university I became a very strong supporter of Northern Ireland remaining British and within the United Kingdom. It influenced my life and it influenced thousands throughout Northern Ireland—the majority community.

I then saw, as I got older, a Republic of Ireland where the Catholic Archbishop of Dublin excommunicated Catholics if they dared to go to Trinity College, Dublin. I also saw the other university, UCD, requiring an A-level in Irish to gain entry. That was of course a means of discriminating against



Protestants in Northern Ireland, because they did not learn Irish; we knew what it meant. Then we saw, in the constitution of the Republic of Ireland, the special status of the Roman Catholic Church over and above the Anglican, Presbyterian and other churches in that part of Ireland. I am glad to say that those three problems at Trinity College and UCD and in the constitution have now been changed. Times are moving forward. But it made an impact on the people in Northern Ireland and it should not be forgotten.

Worst of all was the Irish constitution refusing to recognise the existence of Northern Ireland. "Therefore", it was said, "Since it does not exist, we cannot co-operate with you". There was no co-operation in the island of Ireland because the Dublin Government refused to recognise Northern Ireland. Yet again, that has been overcome by the success of the Belfast agreement. Now, Northern Ireland is recognised by the Republic and we co-operate, and thank goodness for that.

Living near the border myself, I was very keen that there should be co-operation between Northern Ireland and the Republic. I became chairman of the Ulster Young Unionist Council. In the early 1960s, I showed some courage and decided that we should have a meeting with Fine Gael in Dublin. The Ulster Unionist Party nearly went bananas and said that if we dared to do that we would be expelled from the Ulster Unionist Party. We went ahead. We went down to Dublin and had our meeting with the central branch of Fine Gael. We had a great meeting supporting co-operation in the island and issued a statement asking for recognition and so forth. I went back to Belfast with no problem. I was not expelled from the Ulster Unionist Party. I looked at the *Irish Times* two weeks later and I discovered that the central branch of Fine Gael had been expelled from the Fine Gael party. I learned a lot about Irish politics after that experience.

At university, I was a keen European and became an active member of the European Youth Campaign. I strongly supported UK membership of the European Economic Community. After that, for 10 years I was a Member of the European Parliament and subsequently spent seven years in the Parliamentary Assembly of the Council of Europe in Strasbourg.

This report has great content, but I regret that it did not have evidence from the main representatives of the unionist community, as the noble Lord, Lord Jay, stated. To me, it is a weakness of the report. I cannot understand why the committee did not ask, for example, the Liberal Democrat Peer, the noble Lord, Lord Alderdice, a former leader of the Alliance Party, or the noble Lord, Lord Empey, a former leader of the Ulster Unionist Party, or the noble Lord, Lord Trimble, a former First Minister of Northern Ireland, for evidence. Yet it went ahead and sought evidence from every possible nationalist it could find, including every living former Taoiseach of southern Ireland. I am sorry to have to say that it was a somewhat biased exercise. As the noble Lord, Lord Jay, acknowledged, that has not gone down well with the majority in Northern Ireland. Opinion was also taken from the very persuasive former Irish ambassador in London, Dan Mulhall. It must be remembered that he is probably the only ambassador at the Court of St James who refused to visit Northern

Ireland even after the Belfast agreement. That is his attitude towards Northern Ireland.

As I have said, this report was not well received by unionist opinion in Northern Ireland. Sinn Fein and the more extreme nationalists suggested that Brexit would lead to a united Ireland or a hard border between Northern Ireland and the Republic. They preferred to ignore the economic challenge to the Republic itself. Fear of Brexit has already meant the closure of five mushroom plants, with the loss of 150 jobs in the Republic. It has meant a fall in Irish beef prices because the meat cannot be exported to Great Britain due to the depreciation of sterling. There have already been demonstrations by farmers in Tullamore about this problem. Thousands of Irish people are now going to Northern Ireland every day to do their daily shopping. This is all happening because of the fear of Brexit. What will it be like when Brexit becomes a reality and not simply a fear, as it is at present?

It was then stated that Brexit would damage the Belfast agreement. That is not so as the EU is hardly even mentioned in the agreement. People are mistaking the EU for the Council of Europe. There is a whole, fairly large chapter in the agreement on human rights, the European Commission of Human Rights and the Council of Europe, but it has nothing to do with the EU. The EU is barely mentioned in the agreement; I was one of the negotiators of that agreement and I know exactly what is in it. Of course the EU has financed cross-border schemes and I am glad to say that recently Her Majesty's Government have confirmed that they will continue to finance such schemes after Brexit.

Then there were campaigns in Dublin for a special status for Northern Ireland. That has now, thank goodness, been overwhelmingly rejected by the European Parliament. People have also said that there should be a new border between Ireland and Great Britain down the Irish Sea. In practice this would mean that UK parliamentarians would have to present their passports to travel from their homes in Northern Ireland to attend their national Parliament at Westminster. Economically it would not make sense as Northern Ireland prefers the single market of the United Kingdom to which its exports are worth £11 billion per year as compared with exports worth £3 billion to the Republic of Ireland. I cannot understand why the noble Lord, Lord Hain, suggested that businessmen in Northern Ireland would be better off having a single market with the Republic, to which only 20% of their exports are sent, rather than a single market with Great Britain, where they send 80%. It is certainly not a message that has been well received by business in Northern Ireland.

Of course, the border between the EU and the UK is an issue. It would not be if the Republic of Ireland left the EU on the same day as the UK; after all, it joined the EEC on the same day. We have the common travel area, already mentioned in this debate, between the United Kingdom and the Republic. Its importance is accepted by the European Union. Monsieur Barnier has said that progress has been made in this respect and that this has been welcomed by the Republic of Ireland and its new Foreign Minister Mr Coveney.

[LORD KILCLOONEY]

There is every reason to expect that movement rights of UK and Irish citizens between the United Kingdom and the Republic of Ireland will be retained through the common travel area.

Then there is trade. Some people are laughing at the suggestions from the Government but I think they are a way ahead. The Government's position paper, *Northern Ireland and Ireland*, is very helpful and is greatly welcomed across Northern Ireland. There will be no restrictions on smaller or medium-sized hauliers. Brexit would have no impact on 80% of the trade between the two states in Ireland. That is very important. I hope there is a positive response to this suggestion by Monsieur Barnier. There would then remain the issue of large hauliers crossing the border. That is a problem I have yet to see the resolution of, but there is good will in London, Dublin and Belfast. I remain hopeful that this problem can also be resolved.

Overall, Brexit is a major challenge to the United Kingdom, the Republic of Ireland and Northern Ireland. I do not expect the Republic of Ireland to exit the European Union, as the nationalism of the heart, rather than the economic sense of the brain, will prevail. But the alternative must be a special status for the Republic of Ireland in the European Union, otherwise Brexit will greatly damage the economy of the Republic in the years ahead. That would be bad news for Northern Ireland as well. We do not want that to happen.

5.26 pm

**Lord Morrow (DUP):** My Lords, I too, like the noble Lord, Lord Kilclooney, live close to the border. In my teenage years I lived a stone's throw from it, but unlike him I will try to keep my eye on the clock and make sure I do not outstay my welcome.

I too congratulate the noble Lord, Lord Jay, on his speech and presentation, but let me say that, from a very young boy, I have been a member of a party that has been Eurosceptic. Believe it or not, even though I am an older person now, I have not really changed my mind that much. We opposed the United Kingdom joining the European Economic Community but respected the national referendum result in 1975. In the intervening years we consistently highlighted the encroachment of the European Union into our national life, contrary to promises when we joined. We fully supported the question of our EU membership being put once again to the British people. More than 17.4 million people voted on 23 June for the United Kingdom to leave the European Union, with a margin of some 1.3 million. It appears at times that that is often forgotten.

The referendum question on the ballot paper was about the United Kingdom's membership of the EU. Northern Ireland is a constituent part of the kingdom. Before the referendum, we made it clear that we would accept the decision and work to get the best deal for Northern Ireland, regardless of the outcome. We believe it is right that, as part of our exit, we leave membership of the single market and the customs union. Future success will be based on trading globally, and we support the pursuance of maximum access to current markets and developing trade links with new ones.

As a party, we will seek to ensure that local businesses have the confidence and capacity to maximise opportunities presented to them by our exit from the EU. Rather than some, seeking to rerun the referendum, we would need to get on with the work to make the period ahead a success, to write our own laws, to secure new trade deals, to control immigration, to deliver policies for farming and fishing shaped to our needs, and to lift the burden of unnecessary bureaucracy.

There are some important principles through which we, from a Northern Ireland perspective, view the exit discussions. First, Brexit means Brexit—at least, so we are told—and that means that the whole of the United Kingdom leaves the EU. We joined the EU together; we voted on Brexit together; we will leave the EU together. I welcome the fact that the noble Lord, Lord Jay, to some extent clarified that point also. Secondly, the economic and social benefits for us in Northern Ireland from the United Kingdom are far more important than our relationship with the EU. Thirdly, any deal should recognise the reality of Northern Ireland's geography and history. Fourthly, we will work to support the best deal for Northern Ireland at home and abroad.

The recently published UK Government paper entitled *Northern Ireland and Ireland - Position Paper* is a constructive step by the Government, but it is not a complete paper, I believe. It is clear that the Government have listened to various voices in Belfast, Dublin, Brussels and London about how the United Kingdom's only EU land border could be managed after we exit the EU. We welcome the commitment to a seamless border and movement of goods between the Republic of Ireland and Northern Ireland. It is also welcome news that the Government will not countenance any new border in the Irish Sea.

As set out in our 2017 Westminster manifesto, we will focus on getting the best deal for Northern Ireland as we exit the European Union. The *Northern Ireland and Ireland - Position Paper* has rightly been welcomed by those who take a sensible approach to the United Kingdom's decision to leave the EU. I draw the House's attention to that paper, in particular to page 13 and paragraph 38. We are pleased that the document reflects many of the positive ideas we have put to the Brexit Secretary and the Prime Minister over the last number of months. The document has plenty of ideas as to how, technically and administratively, the movement of people and goods can be addressed.

We support the continuance of the common travel area. It predates our EU membership and allows seamless movement of people between the two jurisdictions. The Republic of Ireland and the UK have different visa arrangements for people from 13 countries across the world. There is no reason why leaving the EU should present any difficulties on movement of people.

We welcome the proposal in the recent Government paper to exempt small businesses whose trade can be treated as less than economically significant from trading restrictions. Furthermore, the mutual recognition of authorised economic operators, or trusted traders, for larger businesses and the negotiations around a customs partnership, along with many other proposals in the document, show that it is possible to avoid a physical

customs border with the EU. It should be noted that the EU has entered into waiver arrangements for Cyprus, Croatia and Bosnia and, as HMG have pointed out, a precedent has been set.

Since last June, Sinn Fein and others have made a special designated status their big-ticket priority for Brexit. Their plan would see Northern Ireland remain under Brussels control while the rest of the UK leaves. This would prevent Northern Ireland from harnessing new opportunities which flow from Brexit as an integral part of the union. Critically, it would also cut us off from the GB market, by far the most important marketplace for local goods and services from Northern Ireland.

Within the European institutions there is widespread recognition of Northern Ireland's unique position in respect of our land border with the Republic of Ireland. Across the spectrum, there is a willingness to give particular attention to these circumstances in the exit talks that have begun. However, we are clear that any solution agreed must respect that Northern Ireland will be an integral part of an independent United Kingdom.

## Update on the Progress of EU Exit Negotiations

### Statement

5.34 pm

**The Minister of State, Department for Exiting the European Union (Baroness Anelay of St Johns) (Con):** My Lords, with the leave of the House I will now repeat a Statement made by my right honourable friend the Secretary of State for Exiting the European Union. The Statement is as follows.

“Mr Speaker, I will now update the House on the two rounds of negotiations with the EU which took place in July and August. While at times these negotiations have been tough, it is clear that we have made concrete progress on many of the most important issues. I would like to thank all our officials who have been working hard at home, as well as out in Brussels, to make this happen.

Colleagues will have received my letter following the July negotiating round, dated 9 August. I set out the dynamics of that round in some detail. These rounds were not at this stage about establishing jointly agreed legal text. Rather, they were about reaching a detailed understanding of each side's position, understanding where there might be room for compromise and beginning to drill down into technical detail on a number of issues. During both rounds discussions took place on all four areas, including the specific issues relating to the rights of citizens on both sides; Northern Ireland and Ireland; the question of a financial settlement; and a number of technical separation issues. I will speak briefly about each area in turn.

Making progress on citizens' rights has been an area of focus for both negotiation rounds and we took significant steps forward in both July and August. We have published a joint technical paper which sets out our respective positions in more detail, updated following the August round. This underlines the significant

alignment between our positions and also provides clarity on areas where we have not as yet reached agreement. In July we achieved a high degree of convergence on the scope of our proposals on residence and social security; the eligibility criteria for those who will benefit from residence rights under the scope of the withdrawal agreement; and a shared commitment to make the citizens' application process as efficient and streamlined as possible. In August we agreed to protect the rights of frontier workers; to cover future social security contributions for those citizens covered by the withdrawal agreement; to maintain the right of British citizens in the EU 27 to set up and manage a business within their member state of residence, and vice versa; and that we should protect existing healthcare rights and arrangements for EU 27 citizens in the UK and UK nationals in the EU. These are the European Health Insurance—or EHC—arrangements.

These areas of agreement are good news. They may sound technical but they matter enormously to individuals. The agreement on healthcare rights, for example, will mean that British pensioners living in the EU will continue to have their healthcare arrangements protected both where they live and when they travel to another member state, where they will still be able to use an EHC card. On mutual recognition of qualifications, we have made progress in protecting the recognition of qualifications for British citizens resident in the EU 27 and EU 27 citizens in the UK. In fact, each one of these areas of agreement is reciprocal: they will work for Brits in the EU and the EU 27 in the UK. These areas of agreement help provide certainty and clarity for EU 27 citizens in the UK and UK citizens in the EU 27. They will make a tangible difference to these people's lives. I hope everyone recognises the importance of that.

The outcomes of these discussions demonstrate that we have delivered on our commitment to put citizens first and to give them as much certainty as early as possible in this process. Of course, there remain areas of difference which we continue to work on. For example, we will need to have further discussions on the specified cut-off date, on future family reunion and on the broader issue of compliance on enforcement. Progress on these areas will require flexibility and pragmatism from both sides.

During the summer negotiating rounds a number of issues emerged in the EU offer that will need further consideration. For example, the EU does not plan to maintain the existing voting rights for UK nationals living in the EU. We have made it clear that we stand ready to protect the rights of EU nationals living in the UK to stand and vote in municipal elections. Similarly, the EU proposals would not allow UK citizens currently resident in the EU to retain their rights if they move within the EU.

Even in areas where there has been progress, more is needed. While the EU has agreed to recognise the qualifications of UK citizens resident in the EU, and vice versa, we believe this should go further. This recognition must extend to students who are currently studying for a qualification; it must apply to onward movement by UK citizens in the EU; and it should extend more broadly to protect the livelihoods of

[BARONESS ANELAY OF ST JOHNS]

thousands of people which depend on qualifications which will be gained before we exit the EU. In these areas the EU's proposals fall short of ensuring that UK citizens in the EU and EU citizens in the UK can continue to live their lives broadly as they do now.

On separation issues—a very technical area—we have established a number of subgroups. They made progress in a number of specific areas, and drew on papers the UK published ahead of both rounds. I am pleased to say that we are close to agreement on our approach to post-exit privileges and immunities—on which we have published a position paper—which will benefit both the UK and EU to maintain after we leave. We have agreed on our mutual approach to confidentiality requirements on shared information post exit.

With respect to nuclear materials and safeguards, we held discussions on the need to resolve issues around the ownership of special fissile material and the responsibility for radioactive waste and spent fuel held both here and there. We reiterated a strong mutual interest in ensuring that the UK and the Euratom community continue to work closely together in the future as part of a comprehensive new partnership.

With respect to legal cases pending before the Court of Justice of the European Union, the parties discussed and made progress on the cut-off points for cases being defined as 'pending'. There was also progress in discussions concerning the UK's role before the court while these pending cases are being heard.

With respect to judicial co-operation in civil and commercial matters, and ongoing judicial co-operation in criminal matters, we made good progress on the principles of approach and the joint aim of providing legal certainty and avoiding unnecessary disruption to courts, businesses and families.

With respect to goods on the market, both parties reiterated the importance of providing legal certainty to businesses and consumers across the EU and the UK at the point of departure. We held discussions on the principles of an agreement and agreed that further exploration was needed of how these objectives would be achieved. In this area in particular we emphasised that the broader principles outlined in the UK's position paper seek to minimise the type of uncertainty and disruption for business which we are all working to avoid.

We remain committed to making as much progress as possible on those issues that relate solely to our withdrawal, but our discussions this week have exposed yet again that the UK's approach is substantially more flexible and pragmatic than that of the EU, as it avoids unnecessary disruption for businesses and consumers. I have urged the EU to be more imaginative and flexible in its approach to withdrawal on this point.

On Northern Ireland and Ireland, I am pleased to report that there has been significant, concrete progress in this vital area. The negotiation co-ordinators explored a number of issues, including both the Belfast—or Good Friday—agreement and the common travel area. In August, the group also held detailed discussions on the basis of the UK position paper. As both I and Michel Barnier said at last week's press conference,

there is a high degree of convergence on these key issues, and we agreed to work up shared principles on the common travel area. That is quite a major change. We also agreed to carry out further joint technical work on cross-border co-operation under the Belfast agreement. Of course, as I have said all along, the key issues in relation to cross-border economic co-operation and energy will need to form an integral part of discussions on the UK's future relationship with the EU.

Finally, on the financial settlement, we have been clear that the UK and the EU will have financial obligations to each other that will survive our exit from the EU. In July the Commission set out the EU position. We have a duty to our taxpayers to interrogate that position rigorously. That is what we did, line by line. That may have been a shock, but that is what we did. At the August round we set out our analysis of the EU's position. We also had in-depth discussions on the European Investment Bank and other off-budget issues.

It is clear that the two sides have very different legal stances. But as we said in the Article 50 letter, the settlement should be,

'in accordance with the law and in the spirit of the United Kingdom's continuing partnership with the EU'.

Michel Barnier and I agreed that we do not anticipate making incremental progress on the final shape of a financial deal in every round. Generally, we should not underestimate the usefulness of the process so far, but it is also clear that there are still significant differences to be bridged in this sector.

Initial discussions were also held on governance and dispute resolution. These provided an opportunity to build a better shared understanding of the need for a reliable means of enforcing the withdrawal agreement and resolving any disputes that might arise under it.

Alongside the negotiations, we have also published a number of papers which set out our thinking regarding our future deep and special partnership with the EU. These future partnership papers are different from our papers that set out our position for the negotiations over our withdrawal agreement. Our future partnership papers are part of a concerted effort to pragmatically drive the progress we all want to see.

All along, we have argued that talks around our withdrawal cannot be treated in isolation from the future partnership we want. We can only resolve some of these issues with an eye on how the new partnership between us will work in the future. For example, on Northern Ireland it would be helpful to our shared objectives on avoiding a hard border to be able to begin discussions on how future customs arrangements will work. Furthermore, if we agree the comprehensive free trade agreement we are seeking as part of our future partnership, solutions in Northern Ireland are of course easier to deliver.

A second example is financial matters. As we have said, the days of making vast contributions every year to the EU budget will end when we leave. But there may be programmes that the UK wants to consider participating in as part of the new partnership we seek. Naturally, we need to work out which of these we might want to pursue. We need to discuss them as

part of talks on both our withdrawal from the EU and our future as its long-standing friend and closest neighbour.

A third example is wider separation issues. While we are happy to negotiate and make progress on the separation issues, it is our long-term aim that ultimately many of these arrangements will not be necessary. With the clock ticking, it would not be in either of our interests to run aspects of the negotiations twice.

Last week, as we turned our consideration to the next round of talks, my message to the Commission was: let us continue to work together constructively to put people above process. To that end, my team will publish further papers in the coming weeks, continuing to set out our ambition for these negotiations and the new deep and special partnership the UK wants to build with the EU. Ultimately, businesses and citizens on both sides want us to move swiftly on to discussing our future partnership, and we want that to happen after the European Council in October, if possible.

As colleagues know, at the start of these negotiations, both sides agreed that the aim was to make progress on four key areas: citizens' rights; the financial settlement; Northern Ireland and Ireland; and broader separation issues. We have been doing just that. I will not pretend that it is always easy or simple. I have always said that this negotiation would be tough, complex and, at times, confrontational. So it has proved. But we must not lose sight of our overarching aim: to build a deep and special new partnership with our closest neighbours and allies, while also building a truly global Britain that can forge new relationships with fast-growing economies around the world".

5.50 pm

**Baroness Hayter of Kentish Town (Lab):** My Lords, I thank the Minister for repeating the Statement. In fact, I welcome her back from what has been a busy summer for her—but as nothing to what is to come over the next 18 months. While any progress, however limited, with regard to EU citizens is welcome, how much better it would have been if the Government had heeded our call 12 months ago, made clear our commitment to those living here and got down to the details at that stage, rather than recently. The matter needs to be resolved urgently.

More broadly, however, the overall Statement is rather like a piece of lace trying to protect the Government's modesty but with rather more gaps than fabric. The Minister's office kindly sent me the future partnership papers over the summer and at times I wondered whether those rather bland papers—almost non-papers—really represented the true extent of the Government's thinking, or simply the very least they dare get away with without waking the slumbering Rees-Mogg.

Just yesterday, the Irish Foreign Minister said that the Secretary of State's plan for the Irish border, "needs a lot more work", and that,

"unless there is progress on that issue, we are not going to get to phase two".

The mood music from Brussels and across the capitals tells us it is very unlikely that the EU will decide in October that "sufficient progress" has been made to

move on to the all-important talks on our future relationship with the EU—our nearest and largest market. So while David Davis claims he remains optimistic that a seamless trade deal can be struck with the EU, Michel Barnier speaks of "no decisive progress" and says that "frictionless trade" is not possible outside the single market and customs union.

Even the Government are unclear on how trade outside a customs union could be frictionless. They have dropped after just a few weeks their untested blue-sky thinking—it sounded more psychedelic to me—for a track-and-trace system, using technology and trust to replace customs controls. Anyway, we understand that the IT for any new customs checks is not anticipated until January 2019, just two months before our supposed departure date. We all know about government procurement of that size.

Looking beyond the EU, Liam Fox now seems to be saying that he is turning down free trade deals because we do not have the capacity to negotiate them, and that instead we should try to duplicate the EU's trade relations with third countries, with a sort of rollover of existing deals. This cut-and-paste job is, I would have thought, hardly worth the efforts of a Fox negotiator, who is now without his Minister here in the Lords. In January, the Secretary of State claimed to be aiming for,

"a comprehensive free trade agreement and a comprehensive customs agreement that will deliver the exact same benefits as we have".—[*Official Report*, Commons, 24/1/17; col. 169.]

Can the Minister let us have the Government's current thinking on this?

Can the Minister also tell us where we are on a transitional agreement and whether the words she just used about not having to negotiate twice suggest that the transitional agreement will be on the same terms as now? I hope she and her colleagues have finally come to accept that there can be no bespoke transitional arrangement. There will be no time to negotiate that and the sensible thing is to remain in a customs union with the EU and operate single market rules, which are key to our vital industries, while the long-term relationship is agreed and given time to bed in. Can she also tell the House whether the Government will publish the Treasury's analysis, which reportedly shows that the economic benefits of future free trade agreements will be less than the economic costs of leaving the customs union and single market?

Can the Minister also update the House on the involvement of the devolved authorities? The JMC, which brings together Scottish and Welsh Governments and, in theory, the Northern Ireland Government, has not met since February and will not convene again until mid-October. There has been no substantial response to the joint letters of 14 June and 23 June from the relevant Ministers, Mark Drakeford and Mike Russell. Despite the terms of reference for that JMC committee being to seek to agree a UK approach to Article 50 negotiations and to provide oversight of negotiations with the EU, the Government published their summer papers with absolutely no consultation and little advance warning. This means that the Scottish and Welsh Governments have had no opportunity to provide any oversight of the negotiations.

[BARONESS HAYTER OF KENTISH TOWN]

The clock is ticking. Industry, farmers, supermarkets, airlines, road haulage, lawyers and accountants are all coming to me; I am sure they are going to the Government as well. They are all concerned about the lack of clarity and certainty, while consumer representatives are getting virtually no access to Ministers and fear that their interests are being overlooked. It is not just the EU that has to decide whether “sufficient progress” has been made. This House and Parliament must do so, too, and question whether the direction of the Government’s thinking, as well as its speed, is up to the task ahead. I fear that this Statement offers little reassurance.

**Baroness Ludford (LD):** My Lords, I also thank the Minister for repeating the Statement. I am afraid the Government have shown themselves to be insufficiently prepared and, at times, even undisciplined and undignified in throwing insults at Brussels. They have rather squandered the 14 months since the referendum, including an unnecessary court battle to prevent parliamentary accountability and three months on an unnecessary general election.

There have been some steps forward, with the useful publication of the position papers—albeit in recess and given to the media several hours before they were made available to members of the public, including parliamentarians—and the acceptance of a transitional period, although without specifying how long the Government want that to be and with no acceptance of whether it would mean being in the customs union and the single market. Like the noble Baroness, Lady Hayter, I was intrigued by the reference in the Statement to it not being in either of our interests to run aspects of the negotiations twice. The only way I can see that happening, unless the Minister can contradict me, is if we stay in the customs union and single market during the transitional period and in the long term. There has also been some progress on EU citizens and an acceptance of some role for the European Court of Justice. In July, there was an acceptance of financial obligations from commitments made while we are a member state. These acceptances, however, were all inevitable. It would have been better if they had not had to be dragged out of the Government.

There are still, however, several impractical red lines and there have been some rather backward steps. The Home Office has sent letters to a significant number of EU nationals threatening them with immediate deportation, which hardly makes for good mood music for the negotiations, apart from being obviously distressing for those individuals. We have had a repeat from the Prime Minister of the “no deal is better than a bad deal” mantra, which we had hoped had been put to bed. There was an agreement on the sequencing of the talks; now that acceptance is put up in the air again by the Government. We understood that the Government had accepted the principle of the financial liabilities; now all that is also being challenged.

This fickleness and lack of reliability is fomenting some distrust of the Government. It makes it much harder for the EU to agree a linkage between the elements of the Article 50 divorce arrangements and the future relationship. For instance, if the Government

would state the period of transition they seek, the status, in terms of the customs union and the single market, and what continuing contributions they propose to make in respect of that status, that might facilitate an agreement on the liabilities or the existing commitments. If the Government said that they wanted to stay in the customs union and the single market, that would at a stroke resolve many of the worries over Ireland we are in the course of debating this afternoon.

While the Government rather go round in circles, businesses are having to make relocation decisions now, affecting jobs, the pound drops and the economy slows. The Government keep reproaching the EU for not coming up with concrete suggestions for flexible solutions, but if the Government cannot specify what end goal they are seeking, how can we expect Brussels to come up with flexibility to fit what the Government want? It is Catch-22.

It was suggested that the customs solutions put forward in the paper about three weeks ago were innovative, but they were not practical or thought through, and even the Secretary of State called them blue-sky thinking a mere couple of weeks after the paper was published. That hardly gives a good solid basis on which Brussels can engage with those suggestions. If the Government have a strategy, as opposed to a series of delays, reactive statements and outbursts, will they share that strategy with Parliament and the British public? Are we not secondary to an audience of the ideologically obsessed hard Brexiteers in the Tory party’s ranks and outside them who are not happy? I see that Arron Banks is trying to unseat Tory MPs, including Amber Rudd. Perhaps that accounts for the Prime Minister repeating the “no deal” mantra. It is unhelpful and petulant to raise, even as a possibility, a chaotic, “falling off a cliff-edge” Brexit. Will the Government level with Parliament and the public and be honest about the fact that, as we are proposing to leave the EU club, the UK cannot expect to retain the full benefits of club membership? We cannot have our cake while eating it. The fact that they need us as much as we need them is untrue, and we need to compromise. It is up to Britain to set out in detail its preferred destination and how to get there. As one journalist put it:

“The departing ship is watched”—

by the EU—

“with both sadness and concern, but there is no rush to take on its navigation problems”.

Will the Government please tell us their proposed destination and how they are going to navigate?

**Baroness Anelay of St Johns:** The strategy of this Government is clear, straightforward and pragmatic. It is to ensure that we build a deep and special partnership with our closest neighbours and allies which is of benefit to the people of the EU 27 and the UK after we leave. This is the most momentous form of negotiation that I have experienced in my lifetime. It is a privilege to be at the Department for Exiting the European Union and to see the hard work that has been going on to deliver that path towards a successful legal decoupling while still remaining closest friends. Considerable progress has been made. I thank both

noble Baronesses for their contributions and their questions and I will seek to amalgamate my answers to cover them.

The nature of negotiation which has been carried on by this country over centuries has varied from being on the battlefield in Tudor times against some who are now our dearest neighbours, Portugal and Spain, to negotiations, a matter of finding methods of agreement of convergence—not dictating, saying that we will agree to this only, but setting out reasoned proposals. That is work that has been done. There is going to be no delay. The department has been working with other departments across Whitehall to look at the ways in which we can publish our proposals and give options for the negotiations. That is clear in the customs paper, which proposes two options, one a highly streamlined approach which would ensure that the customs arrangement works as well as can be done with modern technology, and the other a new customs partnership with the EU. I heard what the noble Baronesses said about the fact that the Secretary of State has pointed out that there are problems in some of those, because there are always problems in finding new ways to deliver customs agreements, but they are not insuperable. That is why the pace of the negotiations has been deep and fast. Michel Barnier and we have made it clear that we are ready to make even more dates available for negotiations, if that is helpful, because we want to continue to make the progress that has already been achieved.

There is more to be done; that is absolutely right. The noble Baroness, Lady Hayter, referred to the Irish Minister saying that the Northern Ireland paper needs a lot of work. We agree, but we also say that we have made great progress, and Ireland agrees. We have received congratulations from Ireland about the progress that has been made. The summer papers are not vague. They provide a basis for negotiation, not for dictation.

The noble Baroness, Lady Hayter, asked about our position on a transitional agreement and implementation. Our position is set out clearly. From having carried out all the consultation with business—not only those businesses based here but international businesses—and consumers, we appreciate that there could be different lengths of time that different organisations and businesses need to achieve movement to a new relationship with the EU. Therefore, it is only by carrying out our negotiations with the European Union on our future relationship that we can finalise how long that implementation period would be. We have been clear that it will not go beyond the date of the next election.

With regard to the question asked by the noble Baroness, Lady Hayter, about publishing Treasury analysis, I say that it is not usually published. It is for government use, but I have made it clear before that we have carried out analysis of more than 50 sectors, and we will publish the list of what those sectors comprise. We continue to consult business and consumers, and I am very pleased that I am able to be part of that.

With regard to the devolved Administrations, we have throughout made it clear that it is essential that they are engaged at every stage. Whether it is the JMC—the next one is in October—person-to-person

phone calls or visits, as carried out by my honourable friend Robin Walker this summer, they continue. He visited the Crown dependencies as well. It is not a matter of leaving it for meetings; it is a continuing conversation.

Throughout all this process we want to be in a position where, by setting out in our papers the implications of leaving the European Union but maintaining a strong trading relationship, we enable us and the EU 27 to avoid running negotiations twice. The noble Baroness, Lady Ludford, referred to this and asked whether this would mean that we would be staying in the customs union and the single market in the implementation period. That is not the answer to having a transition and implementation period. We are seeking a negotiation to see what that period would look like. It does not mean that we stay in the single market with all the ceding to others the right to make decisions about our destiny.

I believe that the noble Baroness, Lady Ludford, said that we had challenged the principle of financial liabilities. No, we have not. In fact, we have maintained that we accept that there is not only a legal basis for the EU and us having to ensure that there are liabilities that need to be met but also a moral responsibility. My right honourable friend the Secretary of State made that absolutely clear in his press conference last week with Michel Barnier. But we do not hand the keys of the Treasury to the Commission. What we do, on a friendly but rigorous basis, is to work through with it, challenging the legal basis but also beyond that, the calculation of what should be paid and how and when. That, again, is woven into the nature of our future relationship with the European Union.

This has been a hard-working summer for all. I do not believe that Peers simply disappear into the ether and do nothing, and I know that many noble Lords have already read the papers and discussed them. I put on record my particular thanks to the noble Baronesses, Lady Hayter and Lady Ludford, and the Convenor of the Cross Benches, the noble and learned Lord, Lord Hope of Craighead, for agreeing to have conversations with me during the Summer Recess on these matters. It is only by doing that that we can deliver what this country needs.

6.11 pm

**Lord Howell of Guildford (Con):** My Lords, I very strongly welcome this Statement and in particular the stream of position papers that have come out throughout July. We have hardly had time to read all of them, the volume has been so great, but they set out extremely clearly—much more clearly than has been given credit in this House or elsewhere—the aims and objectives of Her Majesty's Government in reaching constructive agreements with the rest of Europe. Would she agree in particular that the concept of customs partnership, which is developed in one of the recent papers, is really a vast improvement on being tied to the outdated customs union, which is a design of the 20th century and hardly fits into the modern pattern of trade at all—but which the Opposition have suddenly decided to cling to, for reasons which I cannot fully understand, although perhaps they can be explained?

[LORD HOWELL OF GUILDFORD]

I know some more position papers are coming, but I would ask for one more in particular which concentrates on the thoughts and contribution that Britain might make to the overall fundamental reform of European co-operation and the modernisation of the whole EU model, which is so obviously needed as the European continent as a whole faces colossal new challenges—notably, migration and refugees but many others as well. We need an entirely new pattern of co-operation to meet the 20th century in Europe, and through our deep and special relationship we can make that contribution. Could we have that set out as well as the other ideas that have already been presented to us?

**Baroness Anelay of St Johns:** My noble friend, as ever, speaks from great experience in these matters. I am very interested in his proposal about a paper looking at further EU reform and the new pattern of co-operation. I recall in our years in opposition together listening to him examining, in a very intellectual way, how we could change the way that the EU worked for the better of all. I am very interested and will certainly take that idea back.

I agree with my noble friend that a customs partnership is better than a customs union because a customs union means that one is not in a position to carry out trade deals. The Department for International Trade is ready, willing and very able to carry out those deals. Earlier on, the noble Baroness, Lady Hayter, seemed to think that it lacked capacity. However, since its formation, DIT has increased to a global workforce of more than 3,200. The trade policy group has quadrupled in size, and in June 2017 the department appointed a new chief trade negotiations adviser with over 25 years of experience. I was a little bit cheeky there, because what I really wanted to do is add to the record my thanks to my noble friend Lord Price. It has been an absolute joy to be able to work with him over the last year and a quarter. I was very keen on his appointment because before that, for one month only, I am pleased to say, I was Trade Minister while also doing the work at the Foreign and Commonwealth Office. He was super.

**Lord Hannay of Chiswick (CB):** My Lords, I thank the noble Baroness for the Statement. It seems to me to show that her right honourable friend in the other place has learned the good old American advertising adage that, when you have a fairly dodgy product, you must accentuate the positive.

I have two questions. First, on the jurisdiction of the European Court of Justice, the paper that the Government have put on the table, which the noble Baroness referred to, is interesting. It is a piece of rather academic research on the possibilities, but does not say a single word about which are the Government's preferences among those options. It invents a rather peculiar concept, which is "indirect jurisdiction", if I understand it rightly, because I assume that the opposite of direct jurisdiction is indirect jurisdiction, which is apparently not so rebarbative as direct jurisdiction. Perhaps she could say something about the Government's preferences among those choices.

Secondly, can the noble Baroness also say a little bit more about the implications of the Government's support for the idea of some transitional period after March 2019 for the budgetary issues which are causing so much trouble now? It strikes me, not being all that arithmetically advanced, that in fact if we stayed among many of the workings of the European Union—not in the European Union—for a transitional period, that might make quite a big difference to the way that the financial issues would be handled. Perhaps she could confirm that that would be so.

**Baroness Anelay of St Johns:** My Lords, with regard to the first question about the Court of Justice of the European Union, we set out options without saying which we were going to come down firmly in favour of because we were putting forward options for discussion on the basis that, as I said earlier, in discussions you scope out where there can be some early agreement and build upon that. The noble Lord is of course right to raise the question about indirect jurisdiction. I would just add that there are areas where the Court of Justice of the European Union will continue to have some indirect jurisdiction after we leave the European Union if there is an agreement, as is currently developing, with regard to pending cases at the court itself. There is already built into the current structure of the withdrawal Bill and the negotiations some room where there would be indirect jurisdiction—but indirect jurisdiction is not something that would change the law in the United Kingdom or direct us how to change the law. Therein lies the difference.

With regard to a transitional period and the matter of budgetary issues, the multiannual financial framework of 2013 applies between 2014 and 2020. Therefore, what we are doing in challenging the paper which was put out by the European Union is to see whether there is a basis for saying that there are duties upon the UK to continue paying beyond 2019—whenever the date of leaving may be—and when there are not. Although I cannot at this stage answer the noble Lord directly, he raises the important issue that we are trying to flesh out in the way that we are not only challenging the basis on which the European Union has said that it has a legal basis for claiming contributions from this country to the EU but also saying that we need to look, during those negotiations, at the liabilities of the EU to the UK.

**Lord Davies of Stamford (Lab):** David Davis was quoted earlier in the House, in the course of the Ireland debate this afternoon, as saying that the best practical outcome to which we could realistically aspire was hard Brexit. Did he say that, or something along those lines? If so, what did he mean by it and is that the position of the Government?

**Baroness Anelay of St Johns:** My Lords, I cannot say that I heard him say that, but I have heard him say time and again, as he did indeed on the Marr show on Sunday, quite simply that he does not go in for talking about "hard" Brexit or "soft" Brexit. Neither do I; we both want a successful one for this country and the EU.



**Lord Kerr of Kinlochard (CB):** My Lords, picking up the Minister's answer to the question from the noble Baroness, Lady Hayter, about the devolved Administrations, I think I heard her say that the JMC (EN), the ministerial committee set up with the devolved Administrations to co-ordinate Brexit positions, will meet next month. Is that true? I see the Minister nodding. Excellent; I am delighted to hear that. Why has it not met since February? Why was none of these 10 papers, these little essays that were sent out in the summer, seen in draft by the devolved Administrations? Why did they not see in draft the only serious negotiating paper that the Government have put forward, the interesting paper on citizens' rights? Why are the Government so determined systematically to break the promises given to the devolved Administrations about close consultation? While she is at it, could the Minister please give us an example of a successful money negotiation where one of the parties refused to put forward any numbers?

**Baroness Anelay of St Johns:** My Lords, the EU has not put forward any numbers. This is a negotiation and, I would like to say, a good-natured one. Clearly there are occasions when people like to take certain positions in the press, but those who are negotiating know each other, work well with each other and want to come to a result that is good for all of us.

With regard to the devolved Administrations, there has been continuous conversation not only between Ministers but between officials, where so much of the detailed technical work can be done. That will continue. As soon as I was appointed, I attended one of the parallel meetings that happen with the devolved Administrations, the general committee that meets about Europe, not about the negotiations. It was a privilege to be able to talk to representatives of Scotland and Wales. It is of course a disappointment that we are not yet able to talk to representatives of Northern Ireland until the Executive issue is resolved.

**Lord Elystan-Morgan (CB):** My Lords, the Minister has given the impression that there is complete amity between Her Majesty's Government and the Welsh Assembly in relation to all aspects of Brexit. The reports emanating from Cardiff seem to differ. Indeed, the impression given by Mr Carwyn Jones, the First Minister for Wales, is that indeed Wales is treated with a lofty disdain in the matter. Those are my words, not his, but I think that is the description that he has clearly given. Who is right in this matter?

**Baroness Anelay of St Johns:** My Lords, no one in this Government would treat any member of the Welsh Government with lofty disdain, and no one has; indeed, the leader of the Welsh Government has not made such an accusation. The devolved Administrations may have a short history in the history of this country but it is a very honourable one. There are matters that are devolved to them that they carry out punctiliously. Sometimes of course the process can be bumpy, as in all political life, and they get taken to task by their voters. We recognise fully the importance of engaging with them, and we will continue to do so.

**Baroness Smith of Newnham (LD):** My Lords, the Minister said, in reading out the Statement from the Secretary of State, that,

"we have been clear that the UK and the EU will have financial obligations to each other that will survive our exit from the EU. In July the Commission set out the EU position. We have a duty to our taxpayers to interrogate that position rigorously. That is what we did, line by line".

The Minister suggested that the European Commission had not brought forward any numbers. What on earth has been discussed line by line? Is this all fantasy?

**Baroness Anelay of St Johns:** The noble Baroness is of course right to pursue the matter of what has been discussed. There was an over three-hour presentation by the UK technical group challenging line by line the treaty basis—the various regulations and directives, all of which were listed in the paper to which Monsieur Barnier referred in last week's press conference, at which I believe I heard him say that the Commission had a link to the legal bases for all on that list. In fact that was not quite accurate; there are two entries in the published list where there is no reference. That is what we are testing; the Commission goes and looks at the exact wording of the treaty, but what we are saying is that one needs to look also at how that is applied to people as well. Still, we are also challenging the legal basis itself.

**Lord Green of Deddington (CB):** My Lords, will the Minister confirm that the EU side is continuing to insist that EU citizens in the UK after Brexit should continue to have the same free-movement rights as they have now, guaranteed by the European Court of Justice? If so, does she recognise that this would put EU citizens in a position of having much better rights with regard to bringing spouses and independent relatives into the UK than British citizens? Do the Government believe that this could remotely be acceptable to the public, or indeed feasible?

**Baroness Anelay of St Johns:** The noble Lord is right in his presumption that the European Commission is currently saying that the EU citizens who remain here should have better rights regarding bringing family members in in future than would be available to British citizens. Again, this is an area where we are looking very carefully at the detail. We have tried to ensure that families who are here at the time of leaving can ensure that they continue to operate as a family. It is a matter of how you define that. That is what our paper was doing earlier this year. I can say to the noble Lord that we are looking carefully at these issues. It is important that, overall, people should be able to get on with their lives. My goodness, they can be so complicated. Our family structures are so different and etiolated these days. It takes a lot of technical detail to be able to discuss how to resolve a way forward for both sides.

**Lord Higgins (Con):** My Lords, may I raise a technical economic, rather than political, point? It is a reality that a pound or a euro today is worth more than a pound or a euro in a year's time. In looking at these complex financial arrangements regarding the exit

[LORD HIGGINS]

payment and so on, we need to agree two things. First, what we are going to use in the negotiations as the base date? Secondly, and importantly, what is the rate of discount—the allowance for the time value of money? Unless we agree on those two points, the figures are going to be very difficult to reconcile.

**Baroness Anelay of St Johns:** My noble friend has made a very valid point, and he certainly has much better experience in these matters than I do. I am aware that the Treasury was well represented at the discussions last week, and I will ensure that his comments are brought to its attention. I am also aware that the paper issued by the European Commission required that any money paid by the UK to the EU should be in euros.

**Lord Campbell of Pittenweem (LD):** My Lords, I cannot avoid the observation that “strong and stable” has now been replaced by “deep and special”. If deep and special is the objective then clearly foreign affairs, defence, security and the exchange of intelligence will be very important components of that relationship. I do not see any reference to those matters within the four corners of the Statement. Are they being discussed, and to what extent?

**Baroness Anelay of St Johns:** My Lords, the noble Lord is absolutely right. I assure him that this is not the sum total; papers will come out in future. Discussions have been held across government about how we will be able to take forward the matter of common defence and security policy in particular. We want to be able to show that not only do we want to continue the co-operation that we have but we want to strengthen and deepen it too. I hope the noble Lord will not have to wait too long to see some better information than I have given in that snapshot.

## Update on Grenfell Response and Building Safety Statement

6.28 pm

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con):** My Lords, with the permission of the House, I would like to repeat the Statement that was made by the Secretary of State in the House of Commons today.

“With permission, Mr Speaker, I would like to make a Statement on the latest progress following the tragic fire at Grenfell Tower 12 weeks ago. Over the summer the Prime Minister, the Housing Minister, the Minister for Policing and the Fire Service and I have been meeting with the people of north Kensington to make sure that their concerns are being listened to and, more importantly, acted upon. As a result, the Grenfell recovery task force has been appointed and started work. The process of removing control of properties from the tenant management organisation

has begun; the remit of the public inquiry has been set; a temporary school has been built; and work is underway on the scaffolding that will surround the tower.

I pay particular tribute to the incredible team recovering and identifying the remains of those who died. They are doing an exceptionally difficult job in the most trying of circumstances. So far, they have identified 57 victims, hopefully bringing some measure of comfort to their loved ones. Obviously we would all like to see this process completed as quickly as possible, but I am sure that honourable Members appreciate the need for both accuracy and dignity as well as speed.

My Statement today will focus on two areas in which the House has previously shown particular interest: rehousing of residents and our building safety programme. However, I will be happy to answer as many questions as I can, not just on those topics but as many areas as I can cover, and my door is always open to anyone who wants to discuss the issues in greater detail.

On rehousing, 150 homes were lost to the fire. A number of households have said that they would like to be rehoused separately. As a result, there are currently 196 households from Grenfell Tower and Grenfell Walk in need of a new home. Everyone who was ready to engage with the process was offered a temporary home within three weeks of the disaster. Sixty-one households have accepted an offer, and 29 have moved in. Some 153 households, including all but two of those which suffered a bereavement, have had a face-to-face meeting with the team responsible for offering a choice of permanent homes, and 164 households have used the online allocation system to look at what permanent accommodation is available, with 127 having expressed an interest in one or more properties. Viewings are continuing this week. So far, 10 households have accepted offers and two have moved in. Twenty-one households that accepted offers on temporary accommodation with housing associations have asked for their tenancies to be made permanent. This is entirely fair, and the Borough of Kensington and Chelsea is working to make it happen.

The number of people who have moved into temporary or permanent homes continues to rise, but I know that the overall total is still low. One reason for the low take-up of temporary home offers is that some residents simply do not want to move twice and would prefer to stay where they are until a permanent home becomes available. Meanwhile, residents who have accepted an offer of a permanent home have been given the opportunity to make choices about furniture and so on before they move in. That obviously takes a little time too.

We are talking about peoples’ homes and lives here, and what matters to us is not ticking boxes but working at a pace that suits the needs and circumstances of individual residents. We do not want to rush anyone. That is why, at the request of residents, the council extended the expressions of interest period for permanent homes. I do not want to see anyone living in emergency accommodation for any longer than necessary, but nor do I want to see families forced to move or make snap decisions simply so that I have better numbers to report at the Dispatch Box.

I turn to testing and building safety. Of course, the issues raised by Grenfell extend well beyond Kensington. Across England there are 173 social housing buildings over 18 metres tall and clad with some form of aluminium composite material, or ACM. In late July, the Building Research Establishment began a series of large-scale fire safety tests on ACM cladding systems, comprising both the visible cladding and the internal insulation. The aim was to establish whether each system, when properly fitted, complied with the relevant Building Regulations guidance, BR 135. Three of the seven cladding systems tested were found to meet the criteria set out in BR 135. The other four fell short of what was required. The cladding systems that passed the test are in use on eight social housing towers. Systems that failed are in use on 165.

The owners of affected buildings have been given detailed advice drawn up by our independent expert advisory panel. This covers steps to ensure the safety of residents including, where necessary, removal of cladding. We have also been holding weekly update calls with local authorities, housing associations and other building owner groups. We have today published further advice that brings together all the results and the views of the expert panel on the implications for building owners. We will shortly be meeting local authorities and housing associations to discuss next steps. This will include the process by which we will ensure remedial work is carried out.

Since June we have made the BRE tests available to all private residential building owners. Although 89 buildings in England have had their cladding tested through those facilities, I continue to urge all private owners of similar blocks to submit samples for testing. I have also asked housing authorities to ensure that the same steps are taken for all private sector residential tower blocks in their areas, and to collect data so that we understand the scale of the issue and track remedial action.

Inspections carried out since the fire have also highlighted other safety issues related to building design. For example, structural engineers studying Southwark's Ledbury estate said that strengthening work may be needed on blocks constructed using the concrete panel system that, in 1968, failed with devastating effect at Ronan Point. They also raised concerns about cracks that appeared cosmetic but could compromise fire safety compartmentation. We have been in contact with Southwark Council and the engineers to discuss the issues, and have engaged the Standing Committee on Structural Safety to advise on their implications. Meanwhile, all local authorities that own similar buildings have been advised to review their designs and check whether any strengthening work was properly carried out.

Separately, the British Board of Agrément has told us that, based on its investigations following incidents in Glasgow, some cladding systems may be designed and installed in such a way that they could fail in strong winds. We are not aware of any injuries caused by this kind of failure. However, we are taking advice from the expert panel and have written to building control bodies to draw their attention to the issues raised.

The wider issues of competence and certification will also be fed into Dame Judith Hackitt's review of building safety, the terms of reference for which were announced last week. Finally, I have also established an industry response group, which will help the sectors required to improve building safety to co-ordinate their efforts.

For all the work being done, nothing can match the strength and determination shown by the people of north Kensington. We saw it in their initial response; we have seen it in the dignity and courage shown by survivors; we saw it in the deeply moving scenes at this year's Notting Hill Carnival. For me, the biggest sign that the people of Kensington will not be beaten was the amazing results achieved by local children in their GCSEs and A-levels. I am thinking particularly of a remarkable young woman named Inês Alves. Just 16 years old, her family lost their home in the fire, but she still received a string of top grades. That included an A in chemistry, despite Inês sitting the examination just hours after fleeing the burning tower. Inês is due to start her A-levels this month. I wish her all the best. Her achievements should be an inspiration to us all. If a teenage schoolgirl who has suffered unimaginable trauma can do something so incredible, we in this House have no excuse for failing to do everything possible to support the victims of Grenfell and to ensure that such a tragedy never happens again. I hope that all honourable Members will join me in doing just that."

6.37 pm

**Lord Kennedy of Southwark (Lab):** My Lords, I make my usual declarations in your Lordships' House as an elected councillor and a vice-president of the Local Government Association. I also thank the noble Lord, Lord Bourne of Aberystwyth, for repeating the Statement made by his right honourable friend the Secretary of State for Communities and Local Government in the other place earlier today, and for circulating the update for Members of your Lordships' House during the Recess.

It is nearly three months since the awful, tragic events on 14 June 2017 at Grenfell Tower. The whole nation was shocked by this terrible fire, and we support the efforts to get to the bottom of what happened, to hold those responsible to account and to do what is needed to make sure that it does not happen again. I pay tribute to the emergency services—the fire brigade, the police, the ambulance service and the NHS. The whole range of public sector workers from local and national government working on the ground also deserve our thanks for the work they have done and continue to do, as do the voluntary sector, the faith communities, the volunteers and the local community, who stepped in when the initial response from Kensington and Chelsea Council was found woefully inadequate and not fit for purpose.

I thank each and every one of them but, as I have said, there is not one group of heroes and another group of public sector workers who have in the past been attacked unfairly. If we look back at some of the comments made by the Foreign Secretary, Boris Johnson, when he was Mayor of London, in respect of firefighters,

[LORD KENNEDY OF SOUTHWARK]

the only words to describe them are “deeply regrettable” and “shameful”, and the time for an apology has surely come.

On rehousing, as addressed in the Statement, I agree with the noble Lord, Lord Bourne, that while the number of people moving into new homes continues to rise, the total is still rising only slowly. I accept that we need to allow residents to make decisions in their own time; we are talking about people’s homes and lives, and people who have been traumatised and lost loved ones. I recall over the recess seeing a number of television news reports that contained interviews with former residents of Grenfell Tower, who are not always happy with how they have been treated in the allocation process. Can the Minister give an absolute assurance and undertaking that no one will be forced to accept a property that they do not deem suitable and that no one is in any way limited in the number of offers that they will be allowed to consider for permanent accommodation?

I move on to the testing and safety of buildings. The information regarding the number of buildings and the forms of aluminium cladding that have failed the testing process is welcome in understanding the seriousness of the problem and how widespread it is. There was nothing in the Statement about the funding of costs for remedial safety works, and I hope the noble Lord can update us when he responds, as the potential cost of this essential safety work could run into millions and millions of pounds, and local authorities will find themselves in extreme difficulties if the Government do not provide funding assistance. The noble Lord also highlighted other safety works and made specific reference to the Ledbury estate in Southwark, a place with which I am very familiar. Can the noble Lord, Lord Bourne, give us further information on timescales for these urgent investigations to be carried out? Equally, it is disturbing to learn that some cladding systems could fail in strong winds. There is the potential for serious injury or loss of life if cladding fails in strong winds and strikes people and property. With the two new revelations today, I hope the noble Lord will agree to keep the House informed of the urgent action that the department is taking, as failure of either the structure or the cladding could have devastating consequences, and the department is fully aware of those serious problems.

Can the noble Lord, Lord Bourne, also tell the House what work is being done to highlight other buildings that could have similar problems with construction or cladding, such as private housing or offices? Although it was not in the Statement, it would be helpful if the Minister could address, in his response or by letter, what the present position is in respect of the distribution of funds to residents that have been raised through public donation or directly from the Government. Again, I recall seeing news reports in the summer where concern was expressed about the time taken to release funds to those in need.

In conclusion, I join the Minister in paying tribute to the survivors of the Grenfell Tower fire and the people of north Kensington, as well as the excellent exam results by Inês Alves and the other children in the area, which are an inspiration to us all.

**Lord Shipley (LD):** My Lords, I remind the House that I am a vice-president of the Local Government Association, and thank the Minister for his update now and during the recess. As the Statement says, there is no excuse for failing to do everything possible to support the victims of Grenfell and ensure that such a tragedy never happens again.

First, I address the issue of supporting the victims. The Statement says that 196 households are in need of a home, 10 households have accepted offers of permanent accommodation and two have moved in. That implies that 194 households have not moved into permanent accommodation. What exercise has the department done on how long it will take to rehouse all those 196 households in need of rehousing in permanent accommodation?

I noticed one sentence in the Statement in which the Minister said that,

“127 have expressed an interest in one or more properties”.

What that does not tell you is how many properties there are to be allocated. It is very important now that those facts are clarified. How many properties has Kensington and Chelsea got for permanent accommodation, and how many are forecast to become available over the next 12 months? It would help to know that.

The context was laid fairly starkly during the recess when we were told that Kensington and Chelsea borough has 1,652 unoccupied properties in the private sector. The Government will have to look at ways in which they can give local authorities greater powers over empty dwelling management orders, because that figure of 1,652, when many residents of Kensington and Chelsea are homeless, seems to me unacceptable. Should we not have increased council tax surcharges on empty homes of at least 200%, or conceivably 300%, and a requirement for all local authorities to have an empty homes management policy for homes that have been empty for more than one year?

I welcome the establishment of the independent review of building regulations. It reflects concerns that have been expressed on a number of occasions in this Chamber and the concerns of many social housing tenants in high-rise blocks. Some of those who have been part of current testing, and others in blocks not part of current testing, are concerned about why their high-rise blocks do not have sprinklers. That issue needs to be addressed, and I am very glad that the independent review of building regulations has been established.

The judge leading the public inquiry, Sir Martin Moore-Bick, has clarified one issue about whether he wishes to look at social housing policy. He suggested to the Prime Minister that he could not do that because he wanted to focus clearly on the issues that have now been defined around the fire itself, what led to it and the response in the aftermath. The Prime Minister’s letter to Sir Martin on 15 August indicates that the Government will carry out a review of social housing policy. I do not think I have misunderstood what is being said, but it would help enormously if the Minister could say a bit more about what is planned. At some point—presumably this autumn—the

Government have to come back with a response to the White Paper, which will presumably reflect the Prime Minister's promise.

I have two other brief questions. First, on the timing of each of the inquiries, we have a public inquiry, an independent review of building regulations, the police investigation and the Government's response to the White Paper. I am not clear how those four different strands are being brought together to avoid different inquiries cutting across each other unnecessarily, and to ensure that the urgent outcomes needed, particularly in relation to this catastrophic failure of building control, are being delivered. Anything that the Minister can say about how that is to be brought together would be helpful.

The noble Lord, Lord Kennedy of Southwark, asked about money. I agree with him, because the Government need to be very clear, very soon, about what they will fund and what they think local authorities will fund. At the end of July it was reported that 82 blocks had used the combination of materials that we are talking about, of which 47 are owned or maintained by local authorities. By implication, 35 are not owned by local authorities—some of them in the private sector, some of them NHS buildings and some of them schools. The issue of who is footing the Bill for essential works really needs to be clarified at an early stage.

As the Statement tells us, 165 blocks have failed the test. I have not understood why the Government use a measure of 18 metres tall. The Statement says:

"Across England there are 173 social housing buildings that are over 18 metres tall and clad with some form of aluminium composite material".

I want to challenge that 18 metres, because I do not understand why the figure is deemed important. We do not want a fire to break out at all, whatever the height of the building. A number of the NHS buildings and schools that have been talked about are not 18 metres high. Some clarity is needed on this issue.

My final point relates to the private sector, because I did not understand the wording of the Statement, which said:

"Since June, we have made the BRE tests available to all private residential building owners".

It does not say whether that refers to high-rise blocks or any private residential building owner. The Statement tells us that,

"89 buildings in England have tested their cladding through those facilities".

How many are there, how many have not been tested and is it only buildings over 18 metres or any kind of private sector accommodation? In that case, the same rules should apply in the public sector.

I echo the comments of the Minister and the noble Lord, Lord Kennedy of Southwark, about the strength of the community in Grenfell, particularly the pupils in the school and all those who have been so seriously affected by what has happened. It is incumbent on all of us to do everything we can to help them as quickly as possible.

**Lord Bourne of Aberystwyth:** My Lords, I thank the noble Lords, Lord Kennedy and Lord Shipley, for their continued support for the general way forward. I am grateful for their thoughts and help on these issues, in the Chamber and elsewhere. It is absolutely right that we face them together. I recognise that there is an overlap in the points raised by the noble Lords. I echo what the noble Lord, Lord Kennedy, said about the terrific work done by our emergency services, by the public sector, the faith sector, the voluntary sector and charities. Yesterday I met the organisation International Students House on another issue and found that it had given some money to a hardship fund for students who lived in the area. That is symptomatic of the public response across the board.

The noble Lord is right to say that we need to look forward. On housing, we are being guided by the principle of need, not speed. The allocation process may seem slow but I can confirm that nobody will be forced into accommodation which they deem unsuitable. It may be that it has been slow because we are determined to carry on with that approach. Both noble Lords raised the question of financial issues relating to remedial safety work. We have encouraged local authorities that face difficulties to come forward. I will write to noble Lords and correct these figures if they are wrong but I think that 27 have indicated some concern and six a concern that we are looking at very seriously.

Across the piece, over £14 million of public sector financial assistance has been committed to emergency payouts, help with housing, building safety and so on. That is in addition to any charitable donations. I am grateful for the point about ensuring that the charitable money is forthcoming, and I will take it away. Obviously, the Government do not interfere with the way in which charities operate but we are facilitating and encouraging a sensible approach: all the money should not come in one rush. I will cover that point in my letter.

Both noble Lords referred to the Ledbury estate in Southwark. Given the locality, I can understand the personal interest of the noble Lord, Lord Kennedy. This issue also affects the London Borough of Lewisham, as the noble Lord is probably aware. I will take this up in a circular letter to noble Lords, but I think there are 12 blocks which we have real concern about, most of which are in London. We are looking at another 30 which we are not so concerned about; they say they have done the strengthening work but we want to double-check that. The bulk of those are in the City of Westminster and are due to come down anyway. The expert advisory committee is also looking at this area of concern and at the issue of cladding coming off and the wind factor. This predates the dreadful Grenfell Tower episode and happened in Scotland, so there is a devolved element and we are working with Scotland to find out what we can. There is an obvious concern throughout the United Kingdom, so we are taking this forward at pace.

In relation to other public sector bodies, this affects education and health only, although that is serious enough. I double-checked that yesterday, but will pick it up in my letter. The cut-off point in the private sector is exactly the same at 18 metres. We have not

[LORD BOURNE OF ABERYSTWYTH] made that obligatory but have written to local authorities encouraging them to check the numbers concerned in their areas. They have powers to enforce action and the Secretary of State has written to them on that issue in the last seven days.

The noble Lord, Lord Shipley, asked about the number of households that have been offered permanent accommodation. It is small but I remind noble Lords that the Statement said that 21 families who are in housing association accommodation on a temporary basis have asked for that to be made permanent, so that is an increase. The noble Lord raised the wider issue of empty dwellings, which was touched on in the White Paper. I know that this is of concern and the point was well made: I will cover it in my letter.

The noble Lord, Lord Shipley, raised the question of the interplay of the different reviews. I thank him for welcoming the Hackitt review, which is due to produce an interim report this autumn and a final one next spring. They will obviously need to liaise in relation to the police inquiry. We are at arm's length from that; it is a matter for the police and the Government will not—for understandable reasons—get directly involved. The inquiries are sensitive to making sure that toes are not trodden on and that matters dovetail. The public inquiry is having a preliminary meeting on 14 September, next week. Sir Martin Moore-Bick has said that he wants to come up with a preliminary report by Easter 2018. The 18 metres issue is contained in planning regulations concerned with fire evacuation timings. It is rather gruesome to think of it in those terms, but there has to be a cut-off point because the danger accelerates as one has higher and higher buildings. It is contained in legislation at the moment but the point is well made and there is no doubt that this will be looked at by both Dame Judith and the public inquiry.

If I have missed anything else I will pick it up in my letter. I thank noble Lords for their continued support.

6.58 pm

**Lord Stunell (LD):** My Lords, I draw the attention of the House to the fact that I was a Minister in the Department for Communities and Local Government from 2010 to 2012. I thank the Minister for the Statement and welcome the reviews which have been announced. I thank him for the way he has communicated with Members of this House about the terrible situation and what has to be done to deal with its aftermath.

I will pick up two or three specific points. The Minister mentioned that tests had been carried out on 89 privately owned buildings. He did not give a breakdown of the results of those tests in the same way that he did with the public sector buildings. Is he able to do that or undertake to provide noble Lords with them to give us some idea of the scope of the problem at a national level, not just in the public sector?

The primary reason that much of this cladding was put on was to improve the energy performance of these buildings; it was not simply decorative or cosmetic. That implies that where this insulation is being taken off for very understandable and proper safety reasons, residents around the country in buildings like these

will be exposed to higher heating bills and less satisfactory living circumstances. We are coming very rapidly to the winter. It is not likely that replacements can be found for this winter. Again, I urge the Minister to consider how we can find a speedy replacement that is satisfactory and restores the thermal insulation value of the homes which have been stripped of this material. Linked to that is a question about the capacity of the industry to mount a major programme of stripping this material and to supply whatever is specified to replace it in time to reduce or mitigate the exposure of tenants and residents living in these blocks to the worsening conditions that they would otherwise suffer.

**Lord Bourne of Aberystwyth:** I thank the noble Lord, Lord Stunell, very much indeed for that very constructive contribution. I should have made it clear that all of the 89 buildings have failed. If I did not do so, I apologise. I do not think that was stated in the Statement. The energy performance point raised by the noble Lord is fair and valid. Obviously, safety, quite rightly, has to have primacy. However, he is right that we want to honour our Paris climate change commitments. We want to make sure that these buildings are as energy efficient and green as possible. We will raise that concern with BEIS, which is the Ministry where climate change rests these days. However, I repeat that safety must have primacy.

**Lord Campbell-Savours (Lab):** My Lords, the Minister referred to a letter that he was sending to local authorities about their responsibilities with regard to the private sector. Can we see a copy of that letter, please?

**Lord Bourne of Aberystwyth:** My Lords, a minor correction: the noble Lord, Lord Campbell-Savours, is right that I referred to a letter but it was sent by the Secretary of State. However, I will endeavour to ensure that either the letter, or the relevant part of it, if it contains other sensitive matters, is circulated. I will seek to include that in the circular letter I am sending round.

**Lord Anderson of Swansea (Lab):** My Lords, as a resident and former councillor in north Kensington, I join the Minister, my noble friend Lord Kennedy and the noble Lord, Lord Shipley, in paying tribute to the resilience and courage of the local community. My question relates to rehousing locally. Do residents have a right to be rehoused locally? What does local mean in this context, recognising that Grenfell Tower is fairly close to the north of the borough, so one should not look only at north Kensington? It is close to other boroughs and north of the Harrow road and clearly there are areas ripe for development north of the canal, so what does local rehousing mean in this context? Is it agreed that families with children in school seem to have a higher right than individuals who may be more mobile?

**Lord Bourne of Aberystwyth:** I thank the noble Lord, Lord Anderson, very much for his usual characteristic, constructive approach in seeking to address this as representatives across the board.

On locality, we have said that we will rehouse affected families from Grenfell Tower and Grenfell Walk in either the borough of Kensington and Chelsea or in an adjoining borough, so we have widened the issue in the way he suggests. However, I come back to the point that families are able to say that a particular home is not suitable. They will no doubt want to take their children's education into consideration. We have also sought to provide a means of concentrating on bereaved families as the first set of families we want to rehouse. However, we are obviously taking into account as many of the factors that the noble Lord raised as possible to make sure that we deal with needs as they arise.

**Lord Whitty (Lab):** My Lords, in an otherwise comprehensive reply to the Front Benches, I did not detect—I am sorry if I missed it—a reply to the point made by the noble Lord, Lord Shipley, about a broader review of social housing, to which the Prime Minister made reference in her July Statement. Can the Minister say more about that?

**Lord Bourne of Aberystwyth:** I thank the noble Lord. I think he is right: I missed it. It was in my notes to cover. I certainly can confirm that Sir Martin Moore-Bick did not seek to make that issue part of the inquiry for the very valid reason that it is only right as regards the tenants, the bereaved families and the people of the estate that we focus pretty much laser-like on the block. However, the Prime Minister has said that we will look at the position in relation to social housing and review it. The Housing Minister wants to look at that and will talk to organisations and tenants about it. As noble Lords can understand, at the moment he is under immense time and emotional pressure in dealing with this issue but it is very much in the in-tray. However, it is slightly separate from the specific issue of Grenfell Tower.

**Baroness Hamwee (LD):** My Lords, I follow the comments made by the noble Lord, Lord Anderson. I do not want this point to be considered a complaint on my part about the correct approach taken by the Government that requests and demands in relation to housing should be satisfied, that people's needs are understood and that there are very special needs in this circumstance. Are the Government or the local authority keeping data on the reasons for rejecting offers of housing, as I think that might feed into further consideration of demands and requirements for social housing? I was struck by the very localised views of a number of the displaced tenants who see their own community as very narrow. They do not want to go over the border to Westminster, even though geographically it is very close, as they feel that it is a very different community.

My second question is about the different issue of the inquiry. There is much strong feeling locally about the need for diversity among those who, as locals see it, are in charge of the inquiry. I heard Sir Martin Moore-Bick make the point very clearly and correctly that there was no panel at the point when he was accused of having a panel which was not representative.

Can the noble Lord tell the House about any progress on the composition of the inquiry, perhaps on a panel or assessors to assist the chair?

**Lord Bourne of Aberystwyth:** I thank the noble Baroness for those two questions. I assume, although I do not know, that the royal borough is retaining data about the reasons for turning down offers. I will certainly raise that with it. That is a constructive suggestion; I am sure that records are being kept. As we know, some common reasons for refusing offers are that people want to move only once rather than twice and fear the trauma associated with moving. One can understand people wanting to take time over this but I will look at that issue because those comments are absolutely right. In relation to the public inquiry and the diversity issue, that is a matter for Sir Martin Moore-Bick, but certainly we are very open to assessors and would go so far as to encourage that. I do not want to steal any thunder from the public inquiry and indeed I do not know what he will have to say about that issue but I am sure that something will be said at the first preliminary meeting on 14 September, a week on Thursday.

**Lord Faulks (Con):** My Lords, like the noble Lord, Lord Anderson, I must declare an interest as a resident of the borough. I have a connection with the council in that my wife is a councillor and was a cabinet member with responsibility for schools at the time of this appalling fire. I welcome what the noble Lord said about rehousing and how immensely complex this process is. He rightly says that this should not be a question of simply getting numbers for the Dispatch Box but making sure that all individuals have their needs satisfactorily addressed. Those needs will be complex and very different. This process is going to be extremely expensive, of course. Perhaps my noble friend can tell the House whether the Government are assisting in any way and in what respect with the extremely significant cost of rehousing.

Secondly, can the Minister confirm that despite the unfortunate criticism of the appointment and the suitability of Sir Martin for discharging the duty, he has the full confidence of the Government? Those who are familiar with his work have every reason to believe that he will perform his job with extreme diligence and reach a satisfactory outcome.

**Lord Bourne of Aberystwyth:** I thank my noble friend, and will perhaps deal with the second question first because it has a more straightforward response. Sir Martin Moore-Bick has the total support of the Government. He is already tackling these issues at pace and we have every reason to suppose that he is the right man for the job. We look forward to the work that he is going to put in on this immensely challenging inquiry.

My noble friend referred to the complex process of rehousing and the costs. Much of this, such as hotel accommodation, will be picked up under the Bellwin formula. As I indicated, the Government are looking at specific requests made by local authorities in relation

[LORD BOURNE OF ABERYSTWYTH]  
to the issue more widely. A lot of the cost for Kensington and Chelsea will be picked up by the Bellwin formula.

I think it is right to say a corner has been turned and progress is being made on what is a horrendous situation. I think people are now understandably looking to the future although, obviously, in very difficult circumstances.

## Korean Peninsula

### *Statement*

7.11 pm

**Baroness Goldie (Con):** My Lords, I would now like to repeat a Statement made in the other place on North Korea:

“Mr Speaker, with your permission, I should like to make a Statement about the situation on the Korean peninsula.

At noon on Sunday, local time, North Korea tested the most powerful nuclear device ever detonated in the history of the regime’s quest for an illegal arsenal. The underground explosion in a testing site only 60 miles from the Chinese border triggered an earthquake measuring up to 6.3 on the Richter scale—10 times more powerful than the tremor created by the last detonation. The regime claimed to have exploded a hydrogen bomb capable of being delivered on an intercontinental ballistic missile. We should treat that claim with scepticism, but the House must be under no illusion that this latest test marks another perilous advance in North Korea’s nuclear ambitions.

In a country blighted by decades of communist economic failure—where, in the 1990s, hundreds of thousands of people died of starvation or were reduced to eating grass and leaves to survive—the regime has squandered its resources on building an illegal armoury of nuclear bombs. The House will wish to join me in condemning a nuclear test that poses a grave threat to the security of every country in east Asia and the wider world. Earlier today, the North Korean ambassador was summoned to the Foreign Office to receive a formal protest.

Honourable Members will recall the steady drumbeat of provocative and dangerous actions by Kim Jong-un’s regime. Last year, North Korea tested two nuclear weapons and launched 24 missiles. So far this year, the regime has fired 18 missiles, including two of intercontinental range; indeed, three tests have taken place since the House rose in July, and on Monday last week a missile flew over Japan, causing sirens to sound on Hokkaido and forcing thousands of people to take cover. The regime has threatened to launch more missiles towards the US Pacific territory of Guam, which is home to 180,000 people and two military bases.

I will commend the dignity and restraint shown by South Korea and Japan, the countries that find themselves in the firing line of Pyongyang’s reckless ambitions. The House will note that North Korea’s brazen defiance has brought universal condemnation. When the United Nations Security Council met in emergency session yesterday, every member—including China and Russia—denounced the latest nuclear test.

Britain has been at the heart of mobilising world opinion with the aim of achieving a diplomatic solution. Last week, I spoke to my Chinese counterpart, Wang Yi, and the Japanese Foreign Minister, Taro Kono. A few hours after the nuclear test on Sunday, I spoke to the South Korean Foreign Minister, Kang Kyung-wha, and I have been in regular contact with Secretary Tillerson of the United States. During her highly successful visit to Tokyo last week, my right honourable friend the Prime Minister made clear our solidarity with Japan as it faces this grave threat.

Just as North Korea has pursued nuclear weapons with single-minded determination, so the international community must show the same resolve in our pursuit of a diplomatic solution. We should not be diverted by arguments that equate the illegal and aggressive actions of Pyongyang with the legitimate and defensive military exercises of South Korea and the United States. North Korea has caused this crisis and the onus rests squarely on Kim Jong-un’s regime to obey international law and meet its obligations to disarm.

All hopes for progress rest on international co-operation, and there are some encouraging signs. On 5 August, the Security Council unanimously adopted Resolution 2371, including the toughest sanctions ever imposed on North Korea, banning exports of coal, seafood, iron ore and lead. If fully enforced, these new measures will cost Pyongyang about \$1 billion—one-third of the country’s total export earnings—reducing the resources available for nuclear weapons. We are now pressing the Security Council to pass a new resolution as swiftly as possible, imposing further sanctions and showing the unity and determination of the international community.

China, which accounts for 90% of North Korea’s overseas trade, has a unique ability to influence the regime, and the House can take heart from the fact that Beijing voted in favour of the latest sanctions resolution and condemned Pyongyang’s actions in the most unsparing terms. North Korea’s nuclear device was not only tested near China’s border, it was also detonated on the day that President Xi Jinping opened a summit in Xiamen with the leaders of Russia, India, Brazil and South Africa. I call on China to use all its leverage to ensure a peaceful solution to this grave crisis.

Kim Jong-un claims to want security and prosperity for North Korea’s people. The only way to achieve this goal would be for North Korea to obey the United Nations and halt its nuclear weapons and ballistic missile programmes, disarming in a complete and verifiable manner. Britain stands alongside our allies in striving to achieve this goal.

I commend this Statement to the House”.

7.18 pm

**Lord Collins of Highbury (Lab):** My Lords, I thank the Minister for repeating the Statement. I join the Government in unreservedly condemning North Korea for the flagrant breaches of international law. I also welcome the Statement’s careful and judicious tone. This crisis can be resolved only through co-ordinated international action, through the de-escalation of tensions and ultimately through negotiations. As I said earlier,



this crisis requires statesmanship not brinkmanship. There can be no military solution to this dispute, and we must guard against the reckless actions or rhetoric from either side which take us in that direction. The reality is that the only sane options in this situation are properly enforcing the new sanctions regime and restarting the six-party talks to seek new and lasting settlement.

In her earlier contribution today the noble Baroness referred to sanctions being a success, which I assume she meant in terms of their implementation. However, according to the United Nations committee responsible for monitoring sanctions on North Korea, just 95 UN member states have submitted their implementation reports on sanctions contained in Resolution 2270, which was adopted in March 2016. Just 80 member states have submitted implementation reports for the sanctions set out in Resolution 2321, adopted in November. How, therefore, do the Government propose to ensure that any new sanctions are implemented quickly and effectively?

The noble Lord, Lord Hague, considered in a press article today whether the strategic goal would eventually shift from preventing North Korea achieving nuclear capability to accepting that that capability exists and seeking in some form to contain it. Can the Minister say whether the Foreign Office has planned and made contingencies for this scenario?

For the US to turn its back on diplomacy at this stage is simply irresponsible, and as its closest ally we must be prepared to say so. While these Benches welcome the Statement today, the real test is what comes next. As I urged the noble Baroness this afternoon, we should join our European allies in building a stronger case for diplomacy and sanctions. I urge the Government to help steer a course towards the only options that work: dialogue, diplomacy and peace.

**Lord Wallace of Saltaire (LD):** My Lords, I will start by taking off from where the noble Lord, Lord Collins, ended. There are references here to standing alongside our allies, to our commitment to international co-operation and to working through the UN Security Council. It mentions three of the other four permanent members of the UN Security Council; France is clearly absent. There is no reference to consultation with our European partners in the entire Statement, and there was no reference to continuing foreign policy co-operation in the earlier Statement on European negotiations. Does this mean that we have in effect already withdrawn from European foreign policy co-operation and that we regard regaining our global status as leaving our European network of co-operation behind? If so, that is deeply unfortunate. It suggests that we are playing at regaining global status and that, broadly stated, we do not understand who our allies are.

I have never been to North Korea, but I have spent time in Seoul and I am conscious of how delicate the border is and how easy it would be to destabilise that region further. There is now a real danger that this situation could begin to slip out of control. We have seen missiles fired over Japan and the drills that that required—the sort of threats from North Korea that are escalating. Clearly, therefore, we have to work with

others, including our European allies—but of course, first and foremost, with China and Russia as the two powers that have the most influence over North Korea—to persuade the North Koreans that there is some advantage in lowering their posture and that the threats which they see as being made to them, which of course help to legitimise their regime, are not as acute as they tell their public they are. Multilateral negotiation has to be the way forward. That means working as closely as we can with China, and we should not deceive ourselves that Britain alone has influence on China; it has to be with all the other permanent members, with our European partners and with other leading states around the world.

**Baroness Goldie:** My Lords, I thank the noble Lords, Lord Collins and Lord Wallace, for their contributions. Their tone was extremely helpful; these measured and reflective thoughts are a constructive contribution to our discussions.

On the points raised by the noble Lord, Lord Collins, I think the first was the important issue of the number of member states complying with the sanctions imposed by the United Nations. That is an important point, because the effectiveness of the sanctions depends on the ability of the member states to apply them and make them bite. He listed the figure of 95 member states that currently comply with them. That is encouraging and positive; obviously, we would like to see that figure increase. Not every United Nations member state has the civil service capability that the larger powers, such as the United Kingdom, may have. The United Kingdom is prepared to provide advice to other UN member states—particularly, perhaps, to some of the African Commonwealth states—to help them to prepare to implement the sanctions and to understand what technical preparations may be necessary to do that.

The noble Lord, Lord Collins, also raised the issue of containment. The difficulty with containment is that it inevitably implies that we first concede that North Korea has a nuclear capability, and we would then have to deal with that by working through a deterrence strategy. The worry is that North Korea is so unpredictable that deterrence norms may not necessarily work as well as they might with other nuclear powers. Certainly, given its track record with other weapons, the apprehension is that there would clearly be a major proliferation risk. That is why it is felt that the strategy currently being embarked upon by the United Kingdom and global partners—which, as I say, is predicated on the forum of the United Nations—is the correct and effective strategy to pursue.

The noble Lord, Lord Collins, raised an interesting issue on foreign policy and whether the United Kingdom is now pursuing some kind of non-EU, but with everyone else, foreign policy. That is not the case. It is clearly evident that there is a close relationship at United Nations level, on the Security Council, of which France is of course a member. The United Kingdom works closely with our United Nations partners, both those on the Security Council and other member states. It is interesting to see just what unanimity of purpose there is, as is manifest by what we have been

[BARONESS GOLDIE]

hearing from the member states of the UN, and in particular, as was made clear in the Statement, by the denunciation of North Korea's position by both China and Russia. It is obvious that this is a global threat presented by North Korea, and it has to be responded to by a global partnership. That is what the United Kingdom is fully signed up to and what it has been trying to co-operate with, and in some cases to lead, at United Nations level. We need to work with others; the noble Lord, Lord Wallace, made that point, and I entirely agree—this is not a time for people doing their own thing. We have North Korea doing its own thing, and there is an urgent need to respond in a collective international manner to that. The final point the noble Lord, Lord Wallace, made was on the need for a multilateral approach; again, I think that it is absolutely right that that is what we must do.

The noble Lord, Lord Collins, was slightly dismissive of my description of the effect of the sanctions earlier on. However, I go back to the evidence, and as the Statement reminded all of us, the sanctions are now biting on over \$1 billion-worth of North Korea's exports, which amounts to one-third of its total exports. That is a significant tourniquet, as I said earlier, on its export trade, which affects its revenue streams to fund this nuclear programme. I also referred earlier to the remarks of the United Kingdom Permanent Representative, Matthew Rycroft. He also made the point in his comments yesterday to the United Nations Security Council that the measures already applied against commodity exports in the financial sector are making it harder and harder for Pyongyang to acquire the hard currency necessary to fund its programmes. I have no doubt whatever that the grip of these sanctions, both those already in place and those that may be contemplated, will have a real effect upon North Korea. The rationale behind that is clear: if we can turn off the money supply that is funding this dangerous and apparently uncontrolled programme, we will go a long way towards addressing the issue.

7.29 pm

**Lord Howell of Guildford (Con):** Obviously Japan and South Korea are most in the front line and most immediately in danger, and our thoughts are very much with them, but does my noble friend agree that after those two the country most threatened by, and most in danger from, any nuclear escalation in the Korean peninsula—although it may not appreciate it—is the People's Republic of China? Is not the reality of the future that the necessary force and pressure on Pyongyang—which, frankly, I think will require more than sanctions and UN resolutions—will come only from the combined and co-operative efforts of Washington, Beijing and Moscow, and possibly Tokyo as well? They alone are in a position to work on North Korea in ways that do not create even more of a disaster and corner Pyongyang into even more violence, instead being somehow able to bring pressure to bear beyond what they are doing already. Does my noble friend accept that, although we and the United Nations may do our very best—all the things that she has described are useful—the real pressure will come only from those four capitals and that we must use our good offices as best we can from this end of the planet

to encourage and interpret, with our skill and tradition, but that basically the power of very strong persuasion will be the only thing that brings Kim Jong-un and his gang of generals to any kind of reality and to any kind of containment and pause?

**Baroness Goldie:** I thank my noble friend for his question. I agree that China is pivotal to this, and that point was reiterated by the Prime Minister in her response to these developments. Importantly, as has become apparent at United Nations level, China and, for example, Russia are very clear about the unacceptable nature of what has happened. I think the adjective used in the Statement was that China was “unsparing” in its comments. My noble friend makes a very good point. Of course China is pivotal, as are Japan, Russia and the United States, but I also go back to what I said to the noble Lord, Lord Wallace of Saltaire. There has to be some kind of cohesive international partnership to try to deal with this, and I think that the United Kingdom plays an important role in that. No one country has a monopoly of influence. China is extremely influential—there is no shadow of a doubt about that—but it is by acting in concert, as the global powers are currently doing, as manifested by the United Nations resolutions, that we stand the best chance of applying a squeeze to the money revenue stream which Kim Jong-un relies on to fund his illegal and apparently uncontrolled nuclear programme. Therefore, I am not totally at variance with my noble friend's important point, but I reiterate that what we do as a country and as a Government has to be in partnership with our global colleagues, and I think we are doing that effectively at United Nations level. It is early days to judge just how much the sanctions are biting but all the evidence is that that bite is there and that it will become even firmer.

**Lord Davies of Stamford (Lab):** My Lords, the Government seem to be working on three assumptions here. One is that the Chinese are unreservedly committed to restraining Kim Jong-un; the second is that sanctions will work; and the third is that this country has, as the noble Baroness has just put it, an important part to play, even without the European Union. I hope all three assumptions are correct but is there not an alternative hypothesis? China's long-term strategic aim is to be the dominant power in Asia—to be once again the “Middle Kingdom” of the Yuan and Ming dynasties. She will achieve that only when the Americans are no longer present on the western rim of the Pacific. The Chinese always regarded that situation as very anomalous. The only way that America can be removed is for the ties between America and her three allies in the region, and other countries in the region, to be gradually attenuated and eroded. Eventually those countries will have to deal with China more or less on China's terms. In that scenario, would not the very best thing that could possibly happen be that the United States be publicly humiliated, shown up as incapable of reacting to threats and unable to defend her allies in the region?

**Baroness Goldie:** A number of points arose in that contribution and I shall try to comment on them. I suppose there will always be differing interpretations

of what motivates individual powers, and no doubt different motives will be ascribed to those individual powers. However, given the enormity of what we face—and by “enormity” I mean that, first, this is unprecedented and, secondly, Kim Jong-un appears particularly obdurate about disregarding international law and the United Nations’ measures—I think it has to be responded to globally. While there may be other politics at play—we live in the real world, and it would be impossible to imagine a real world where other politics and political influences did not come to bear—at the same time, the focus has to be on dealing with what has been happening. It is encouraging that, whatever else may be going on in their different back yards, all the powers that are part of the United Nations initiative and privy to the resolutions, and which support and endorse those resolutions, collectively have a very important role to play. My view is that there is evidence that that partnership is proving successful and having an effect, and it is very important that all the major powers stand together against this situation and do not begin to dissemble among themselves. I do not think that would contribute to the positive direction of wanting to persuade Kim Jong-un that there is merit in stopping what he is doing and merit in trying to do something about his own country and the plight of his people. If we can work in tandem towards that objective, there may be some cause for hope.

**Lord Alton of Liverpool (CB):** My Lords, the judicious mix of containment, deterrence, sanctions and diplomacy was contained in the Statement read to us by the Minister this evening. On the specific point about sanctions, will she confirm that during the first six months of this year there was a 40% increase in trade between China and North Korea, and that, as she indicated, about 90% more trade is done with China? Therefore, in the context of the Security Council meeting next week, what information do we have so far that China will support, for instance, a crucial embargo on oil, which would be the one thing that would make a difference in trade with North Korea, or that a veto might be used? On justice, it is now three years since the United Nations commission of inquiry reported that this was a state without parallel. It recommended that North Korea should be referred to the International Criminal Court. Why has nothing been done to facilitate that recommendation? Does this not always have to run in parallel with all the other actions that we take?

In Questions earlier today, I referred to the lessons of the Cold War. Surely during that period we learned that, once mutually assured destruction was determined between the powers, other things had to be done to reach over the heads of ideologues and dictators. We should never confuse the people of North Korea—a country I have visited on four occasions—with the ideology of the regime. There is a need for the tyranny imposed on the people by that benighted regime to be lifted. Just as we had a Helsinki approach during the Cold War to change the nature of the former Soviet Union, surely we should be doing far more to promote a Helsinki with a Korean face in order to change the nature of that regime so that one day, like South Korea, which has a GDP 20 times greater than that of North Korea, there will be change. After all, it was in

the lifetime of Members of your Lordships’ House that we saw South Korea move from being a brutal military dictatorship to being one of the greatest democracies and thriving economies in the world today.

**Baroness Goldie:** On the specific issue about China’s trade position with North Korea and the attitude of China to sanctions, I can say only that the United Kingdom Government certainly operate at United Nations level in the expectation that member states comply with the sanctions regime. The noble Lord referred to the increase in trade and its raising questions about whether the sanction regime has been complied with. I am sure that that will attract the attention of the other member states in the United Nations; they will no doubt want to ask questions about it.

On the important issue of the United Nations describing North Korea as a “state without parallel” and why there has not been a referral to the International Criminal Court, I may be wrong in my recollection—no doubt the noble Lord will correct me if I am—but my understanding is that North Korea is not actually a party to the statute constituting that court. That makes referral to that court difficult.

**Lord Alton of Liverpool:** It was a Security Council resolution.

**Baroness Goldie:** Forgive me: I misunderstood. I cannot give a specific answer to that point, but I undertake to make inquiries and write to the noble Lord.

The noble Lord made the important point that the people of North Korea should not be confused with the ideology of North Korea. That is a vital point worth repeating. The people of North Korea are a very oppressed people. They seem to live in a very difficult environment. We suspect that they are denied many of the everyday benefits of life that we take for granted. They are a proud and historic people. That is why the international community is anxious to try to find a way to improve the lot of North Korea. I said in my earlier remarks that part of this is addressing a threat to security and part is addressing a destabilising influence. Part of it also has to be about trying to chart a way forward that gives a more optimistic future for the people of North Korea. I think that was an echo of the noble Lord’s final contribution—can we afford ourselves some hope? We can and I hope that we shall, because if we do not the prospect is very bleak. There are examples where, against the odds, change has occurred. If that can be the case in one country, why not in another?

**Lord Ashdown of Norton-sub-Hamdon (LD):** My Lords, I am sure that the Minister is right in saying that unity is crucial in this, so I am bound to say that it is a matter of some sadness if not regret that we have now pushed the policy of sanctions so far that we have now lost China to the international consensus. That is a loss that will be measured in terms of loss of influence on North Korea. It is important at this stage that we face reality. The Minister said that the policy of sanctions has succeeded. Can she name a single shred of evidence

[LORD ASHDOWN OF NORTON-SUB-HAMDON]  
measured in terms of the reduction in North Korean armament processing that would support that conclusion? This policy followed for the last 10 years has not succeeded: it has failed. There is an old saying: “If you go on doing what you’re doing, you will get what you’ve got”. What we have now is a fully nuclear-armed North Korea and a world standing on the very brink of nuclear conflagration.

I am not in favour of removing the military option from the table. Our policy so far, however, has been, “Respond to our threats and then we will talk”. Why do we not talk while keeping the threats on the table? Diplomacy works best if it is backed by a military option. There is no reason why we should not now keep that threat on the table and commence some kind of dialogue. That is what China wants and what the others want too. The options are very grave. I concede that if we follow that policy we would have to admit that the policy we have been following for the past 10 years has failed. But surely it is better for us to admit that a policy has failed when it is manifestly evident that it has than to allow the world to come to the brink of this kind of crisis, which could lead to incalculable destruction.

7.45 pm

**Baroness Goldie:** I disagree that sanctions have failed. It is always difficult to try to prove a negative and prove that something has not failed, but the reaction of North Korea to the sanctions regime has certainly not been positive. North Korea seems to be feeling the effect of the sanctions. That suggests to me that they are having an impact on the economy of North Korea.

The noble Lord talked about a military solution. I respect his view but I am not sure that I entirely agree with it. He takes the view that, unless a military solution is on the table, nothing else will work because the discussions do not have any clout. But we must acknowledge that a military solution would create a very grave situation. It would obviously present a big risk to the people of South Korea. It is difficult to see how that risk could be eliminated. The United Kingdom Government are of the view that we need to pursue a diplomatic, if possible, economic solution to try to change the mindset of Kim Jong-un. Given the extreme risk presented by North Korea, we are not taking any option off the table, but the United Kingdom Government have made it clear—and the noble Lord would accept this—that our focus at the moment is to try to find a diplomatic solution supported by economic measures that have an effect on the North Korean economy.

**Lord Cormack (Con):** My Lords, it is crucial that the United States and the United Kingdom work hand in glove in this desperate crisis. Will my noble friend assure me that the Prime Minister is in regular and personal contact with a President who has shown that he is predisposed to be a little trigger-happy? It is crucial that we avoid a military solution, even though the noble Lord, Lord Ashdown, is right to say that it should be on the table. Can my noble friend tell me that there is regular contact between the Prime Minister and the White House following that interesting visit at the beginning of the year?

**Baroness Goldie:** I should say to my noble friend that I am not privy to the precise communications and arrangements that exist between the Prime Minister and the President of the United States, but I reassure him that there is a high-level diplomatic exchange. There is regular evidence of that—as I indicated in the Statement, the Foreign Secretary is in touch with Secretary Tillerson. I thank my noble friend for his helpful observation that we have to work closely with all our allies. That is axiomatic if we are to make any sense of trying to have a coherent response against North Korea.

I am able to give a quick update from this holograph note that has just been passed to me. It says, “PM spoke to the President today”. There we are—hot off the press to my noble friend.

**Lord Anderson of Swansea (Lab):** My Lords, what is the use of leaving a military option on the table when we know that such an option is wholly unrealistic? As the Minister has said, that is in part because of the proximity of Seoul to the border. Should we not be brutally realistic and accept that that is so? Does not she agree that one of the real problems here is that no one, even the South Koreans as I have heard from several of their leaders, really understands the inner workings of the North Korean regime? We do not know its motives. Are they triggered by some form of self-preservation of the regime? Is there some form of potential blackmail of the US and its allies? This is a fact of life: we do not have any intelligence about what motivates the North Koreans. Given the importance that everyone accepts of pressure from China, can she say whether there is any evidence at all that it is prepared to use the oil weapon?

**Baroness Goldie:** I emphasise that the United Kingdom Government are focusing on a diplomatic solution and, with the collective support of the United Nations member states, to achieve a regime of sanctions which has an economic impact on North Korea so that the revenues making possible the development of its nuclear capability are cut off. It is worth repeating: that is the focus of the United Kingdom Government. We would regard a military solution as a very grave option indeed.

On the role of China, again we have to work in partnership. It is clear that China has shown, particularly in its language at the recent United Nations meeting, how extremely worried it is about this. I think that the country has realised that it has to demonstrate a willingness to play its part not just as a member of the United Nations but also by supporting the sanctions regime.

The final point raised by the noble Lord was that of oil. Again, as I said to the noble Lord, Lord Alton, during the discussions at the United Nations which are to be held imminently, searching questions will be asked and a vigorous exploration made of the options. The United Kingdom believes that there are still sanctions options to pursue, and that is what I think will be the source of a robust discussion at the United Nations.

## Brexit: UK-Irish Relations

### *Motion to Take Note (Continued)*

7.51 pm

**Lord Cope of Berkeley (Con):** My Lords, it is time to resume the debate on the Motion tabled in the name of the noble Lord, Lord Jay. I congratulate the Select Committee on its report, and indeed its early appearance is especially valuable. It has been said by some that for the British Government negotiating Brexit, the Northern Ireland border with its various ramifications is perhaps the most intractable part of the problem. Personally I do not think it should be, although clearly the new customs arrangements could prove to be difficult depending on the agreement on customs partnerships and in particular which products or services turn out to have different customs tariffs once we are outside the EU.

I was involved in Northern Ireland border matters during two periods of my somewhat varied ministerial life. The first was in the Government of the late Baroness Thatcher when I was the Minister of State in the Northern Ireland Office with responsibility for security and finance. That was until 1990. A couple of years later I became the Paymaster-General in Sir John Major's Government with responsibility in the Treasury for customs and excise across the whole of the UK. Meanwhile, on 1 January 1992 while I was doing other things, the Northern Ireland borders stopped, and with the start of the single market the customs posts which had been in place since 1923 were removed. So I had a before and after view of the start of the soft border. By the way, the customs posts had been attacked 484 times between 1969 and 1992, and of course they did not in any case cover the whole border. During the Troubles no one could ever have called the border "frictionless".

There has been some media talk about closing the border again, but anyone who thinks that it can be a closed border does not know the border. Neither President Trump nor even Benjamin Netanyahu could build a wall along it. In any case, our Government, the Northern Irish parties, the Executive when it exists and the Government of the Republic have all ruled out a closed border. So the question is how we will live with it.

I would not like noble Lords to get the impression that the coming of the single market ended the incentives to smuggling. Many of the problems then were connected with security and terrorism, but the incentives for smuggling were also to do with the differences in excise duties on tobacco and fuel, for example, as well as VAT rates and compensation amounts from the common agricultural policy, and for that matter the controls on contraband of one kind or another: weapons, drugs and much more. The security situation is now quite different, but there are still plenty of differences in VAT and the rest which the border authorities on both sides deal with now without the customs posts. Smuggling is of course always with us and the possibility of differential customs tariffs after we leave the EU must be seen in the light of that. We cannot know what divergences there will be at least until we get somewhere in the trade talks.

Both legitimate cross-border shopping and smuggling were and are worthwhile activities for those who engage in them. Many people from the Republic come up to shop in Northern Ireland quite legitimately, as they have for many years, to our traders' and our revenue's benefit, and that will continue. VAT was supposed to have been harmonised throughout the EU, but of course it is not despite all the rules and arguments we have seen. But since that time technology has advanced in customs and excise as it has elsewhere. When I was a Minister we were dealing with the introduction of electronic customs declarations through a programme called CHIEF, which has now been superseded by a new digital system known, for the benefit of the MoD I suppose, as CDS—the Customs Declaration Service. Similarly, the Common Transit Convention which covers the traffic about which my noble friend Lord Howell spoke between the Republic of Ireland and the EU and so on operates well, as does the so-called authorised operators scheme. I believe that these electronic measures and no doubt others to come are dealing with the quite severe problems we have now and will be able to deal with the problems that we are contemplating in the course of this debate.

On the more general position of the talks, I am not in the least surprised that Monsieur Barnier is shouting and banging the table about money. The whopping great hole in the EU budget is getting nearer and so far I have not seen anything in the media about serious discussions among the 27 on how they are going to deal with it. We will fulfil our obligations but they need to discuss what they are going to do to balance their books in the future.

It is of course important that the common travel area should continue, as others have said, but why should it not? The Governments concerned in Dublin, London and Belfast all agree about that, and Brussels should too. I see no reason why it should not, just as it recognised it when we went into the EU in the first place. Similarly, the single electricity market runs well and all concerned want it to continue, so it will.

The British-Irish Council and British-Irish Parliamentary Assembly, which I served on, should both continue. We are fortunate that these bodies from the Belfast agreement and before are up and running, and I agree with the Select Committee's encouragement to UK Ministers to devote more time to these bodies. The ending of the more or less daily procession of Ministers to Brussels will help them to achieve that. We all know that these discussions are serious and complex and that there is a long way to go, but I think that the Northern Ireland border aspects should be some of the easiest to agree in the talks.

7.59 pm

**Lord Dubs (Lab):** My Lords, I thank the noble Lord, Lord Jay, for starting off the debate and the Select Committee for a very helpful and useful report. I join in wishing the noble Lord, Lord Boswell, a speedy recovery.

During the referendum campaign I felt that if there was one single reason to vote for this country to stay in the EU it was Northern Ireland. It seemed that whatever the other arguments were, the difficulties we would be

[LORD DUBS]

faced with if the referendum result turned out as it did would be very challenging and probably very difficult to solve. During the referendum campaign I was asked to speak in Birmingham at a meeting aimed specifically at the Irish community there. I was asked to join John Bruton, the former Taoiseach, and Baroness Williams at that meeting. Sadly, it was the day that Jo Cox was murdered and the meeting was cancelled, but I always thought that the question of Ireland was hardly mentioned during the whole referendum campaign. When people say that we voted and the British people made a decision, I do not think many people were aware of the consequences for Northern Ireland.

I spent some time in Northern Ireland as a Minister in the period up to the Good Friday agreement and the referendum. All I can say is I was certain at the time that the Good Friday agreement happened because of the widespread support for it not just from the American Government and the Irish Government, but from the EU—enormous support that made it possible. I do not think the Good Friday agreement would have happened had we and Ireland not both been in the European Union. That smoothed the passage, improved co-operation and made the whole thing much easier to achieve.

One of my responsibilities in Northern Ireland was agriculture. I remember, both in meetings with Joe Walsh, the Irish Government's Agriculture Minister, and at the European Agriculture Council meetings, that we had enormous support. The first country that supported the United Kingdom was Ireland at those meetings, which were pretty difficult meetings. Joe Walsh was totally supportive, as were the Irish Government, of what we sought to do. Then we had cross-border, cross-community projects, again supported by the EU, which helped a great deal during the peace process.

Turning to the present, I do not want to get into an argument about Mr Barnier except to say this: I do not see it being possible for us to deal with the border in Northern Ireland before we have dealt with all the other matters—that is, trade and other relationships. I do not think one can see them in isolation because they are integral to the whole process. It will not work. On the other hand, I believe we should set our sights on being at least in the customs union. I cannot see any other way of dealing with the border issue in Northern Ireland unless we are members of the customs union. Again, that seems as good an argument for being in the customs union as any, although there are of course others.

I have had a look at the Good Friday agreement—my copy is getting quite worn; I look at it quite often—but there are references to the North/South Ministerial Council, which will be difficult to manage if we are outside the EU and Ireland is in it, because it would be composed of Ministers from both jurisdictions. Where the agreement says, under strand two,

“to use best endeavours to reach agreement on the adoption of common policies”,

that seems not all that easy when the common policies have to transcend the EU border. It also says:

“All Council decisions to be by agreement between the two sides”,

and that,

“the North/South Ministerial Council and the Northern Ireland Assembly are mutually inter-dependent, and that one cannot successfully function without the other”,

all of which suggests there has to be an ongoing close relationship. It will not be too easy to achieve that. It also says that the North/South Ministerial Council is, “to consider the European Union dimension of relevant matters”.

The EU is mentioned in a number of respects in the Good Friday agreement. It was suggested by a Member that it was not, but it certainly is there.

One other quite separate issue is the question of identity. One of the successes of the Good Friday agreement and the whole peace process was to give people in Northern Ireland—certainly nationalists—an ability to have a better sense of identity than they have had up to now. The sense of identity for both communities in Northern Ireland is crucial. Anything that weakens that will be damaging. We know the great co-operation that there is on energy, for example. It is not easy to see how that can be unravelled, nor would we want to unravel it, but we would have to keep going on the basis of having the EU border there.

I note that the Select Committee refers to the British-Irish Parliamentary Assembly, of which I have long been a member, because that will be an ongoing basis for co-operation between politicians from London, Dublin, Edinburgh, Belfast and Cardiff. Again, that is pretty good. Any international body—some of them are talking shops, but I do not believe this one is—that enables one to be on first name terms with politicians of another jurisdiction cannot be other than pretty good.

Although I looked carefully at the Government's document it seems we are in too much of a damage-limitation exercise rather than anything positive. That underlies the whole of their approach to Brexit: to try to make the best of a bad job, rather than for anybody in the Government to suggest that it is a good job. Of course we are all agreed on avoiding a hard border, on maintaining the common travel area and upholding the many principles of the Belfast agreement, but the Government's statement says:

“The UK therefore welcomes the opportunity to discuss how best to deliver these shared objectives”.

That is ideal, but how to do it? That is where we were all along: how best to achieve these objectives. The UK's position paper also says at paragraph 14:

“The UK proposes that the Withdrawal Agreement confirms that the current substantive position is not changed as a result of the UK's withdrawal from the EU and that both parties recognise that it will remain unchanged”.

That is ideal and wonderful, but can we achieve that? If we could that would be a great thing. The Select Committee report also says, crucially:

“It is not a given that the EU will tolerate uncontrolled movement from the UK into the EU”.

I do not know how that stacks up against the Government's document.

I shall make some other very quick comments. First, it is important, as the Select Committee says, that we do not place a disproportionate burden on the Irish authorities to provide solutions to the problems of Brexit. Ministers say, “They can do it”. We have to

share in the approach. The one positive suggestion, which has not been met with the Government's enthusiasm, is at paragraph 261 of the report. It says that the EU institutions and member states should,

"invite the UK and Irish Governments to negotiate a draft bilateral agreement".

Short of being in the customs union, this idea of a draft bilateral agreement seems a pretty good one. Finally, I say this: we spend a lot of our time trying to be logical. I am reluctant to say what I am about to say, but I will say it anyway. Sometimes we want everything to be logical—Mr Barnier more than our side. Sometimes we should not pursue logic to its ultimate. Maybe a slightly less than logical solution, maybe a bit of a fudge, might be the best way forward.

8.07 pm

**Lord Cotter (LD):** My Lords, I follow many speakers, in particular the speaker who has just spoken, with concerns about what we should be doing. I am participating in this debate because of the key issue of Brexit to this country. The key element is undoubtedly the relationship between the UK and Ireland, so long established and much improved in recent years. As much as anything, I want to listen to the many speakers who have specific knowledge on the relationship.

To me, the issue of the border between the south and the north accentuates the whole issue of working co-operatively with people in this world of ours. Why am I concerned about the potential breakdown of relations between Ireland and the UK? It is because it is vital and productive for both nations to keep peace going, but also for me and many others it is that we need to perpetuate co-operation with people so close to us. Trade is important, but so is friendship.

Unlike many noble Lords, I do not have detailed views of the present complications and the complications that could arise, so I am listening and learning, but above all I portray myself as a member of the public who sees no negatives about the present close relationships with our neighbours in Ireland and elsewhere in Europe and in the world. We are seeing peace. I declare a specific interest in the Ireland issue. I have a UK passport but I can also have an Irish passport, thanks to my mother, who was born and brought up in County Tipperary in southern Ireland. The Governments of both countries can and should not find it difficult, as previous speakers have said, to find a way to maintain our beneficial relationship.

8.10 pm

**Lord Bew (CB):** My Lords, I thank my noble friend Lord Jay for his speech introducing this debate today. It was very skilful and very important. I cannot stop myself saying that I am not sure how often we hear David Davis supported in his view, that the border issues cannot be sorted out in absence of the trade issues being sorted out, by my noble friend Lord Jay and the noble Lord, Lord Dubs, in the same debate in the House of Lords. I think that is definitely a first: David Davis is not used to quite that range and quality of support on European issues. What they both said is, by the way, absolutely true. I also add my good wishes for the recovery of the noble Lord, Lord Boswell.

I voted yes in the referendum, even though I was very sympathetic to my English family's arguments for leaving the European Union and thought they had many good arguments. I wanted to stay within the European Union, I was a remainer, simply because I thought it would be very destabilising for the island of Ireland. In fact, Brexit has been indisputably destabilising for the island of Ireland. For Sinn Féin it has been a marvellous thing: the days are long gone, but I am old enough to remember, as I think is the noble Lord, Lord Empey, when the slogan of the previous leader of Sinn Féin, Ruairí Ó Brádaigh, was, "Don't replace the British jack-boot with the EU cheque-book". That principle, for what it is worth, has been entirely lost now in modern Irish politics.

Mind you, I am also old enough to remember when the defining principle for Irish life was, "We are the largest English-speaking Catholic country in the world. We may not be the largest Catholic country, but we are the largest English-speaking Catholic country—that is our mission". Today I discovered that the mission really is, "We are the largest English-speaking country in the European Union". That is another transformation over the generations.

However, it has been a marvellous thing for Sinn Féin, whose vote has gone up, and even the most modern Irish nationalist tends to see Brexit as an irrational act of self-harm by Britain. All over the island, that will be held. What is hidden from that discussion is that it is also a deep, deep threat, especially with the way the European Union is handling it, to the future of the Irish economy. It is therefore a fear as well. I wanted to stress the point that I was a remainer in order to put in context my great unease about the way the European Union is handling the Irish issue at the moment.

Turning to our own paper, the suggestion seems to be perfectly reasonable that the British and Irish Governments should get together and work out an appropriate solution with the European Union. We all know why that is not happening. We all know why so many things are not happening. It is because they do not fit with the framework of European law and are not being supported by the European Union. Here, I also have to say something very important. The great strength of the document that my noble friend Lord Jay introduced today is its insistence on the depth of the British-Irish relationship and how profound it is. That is not understood in Europe. It is therefore creating a consequence in the way they are handling or talking about these issues. Then they are surprised, in the last two weeks, when something that they thought they could use as a stick to twig the British with does not work quite like that; it is a bit more complicated than that. That is because they have not thought about what that relationship really is.

The crucial thing here—let us take a simple figure—is that there are 600,000 Irish citizens living in Britain. The number of Irish citizens living in another European country, one with which it has great associations, France, is fewer than 10,000. This is the crucial place for Ireland. Ireland has all kinds of political reasons not to talk too much about that, but that is the simple reality. If we had said, in the document that has been

[LORD BEW]

much criticised, that the common travel area is something we are not going to defend, the consequences for Ireland would have been disastrous. We received no credit for taking a liberal and decent position on this, but it is worth saying that it was important that we took that position.

We have to be aware of a difficulty here, which is that Ireland is now between a rock and a hard place, in that the European Union is not being particularly sympathetic to many of its real concerns but is being sympathetic about something which is not that important: the border. To be absolutely honest, this matter of individuals and the border will be sorted. I am delighted to discover that some people who regarded smuggling as morally not an easy matter but something you had to live with, when it was for the peace process, now discover that, when it is a consequence of Brexit, it is the worst thing that could ever possibly happen in the world; these moral developments are all part of the rich tapestry of modern life. None the less, the crucial thing is the impact on the full Irish economy. If I see another television report of a farmer saying, “Here’s my farm, here’s my bit of land; this is in the UK and that bit is in the Republic”, I am going to be ill. Television reporters love it because it is a dramatic image, a simple image, but the real issue is what is happening to the Irish economy as a consequence of Brexit.

Increasingly, by the way, Irish commentators say, “We are talking far too much about the border; let us face up to the real issue”. The real issue is the agri-food industry, which is mentioned in the Lords report. Since the report came out, three major authorities in Dublin—the Central Bank of Ireland, the much-respected Economic and Social Research Institute and the Irish Department of Finance—have all said there will be a major contraction in that sector if there is anything approaching a hard Brexit. It will be particularly hard also on Irish SMEs, which are locked into the UK. It is as simple as that. They are talking about 40,000 job losses. This is the real Ireland. This is the heart of Irish society we are talking about here.

The Irish Government are taking a gamble on their foreign direct investment sector. They are going to gamble that the European Union is never going to deliver on what it is trying to do. We have seen a €9 billion fine already, on one particular tax deal, coming from the European Union. They are going to gamble that Mr Trump, who was talking last month about getting thousands of jobs back from Ireland, is not going to deliver on that either. That may well be true. They might win both gambles. They need to be lucky, but they have a good chance. They have made a decision that foreign direct investment is the sector. It has created 13,000 jobs in recent months. There are some problems, such as big pharma firms. Ireland is the main exporter into the US of pharmaceutical products—made by American firms in Ireland and reimported. This is what Mr Trump says he does not like and some of these firms are holding back. But by and large, the decision is made, and it is a decision which makes Dublin even more the city-state that it is

becoming. That is the modern Ireland, against a more traditional Ireland where the social life of much of Ireland is.

No wonder the Irish Government resent us for forcing this decision upon them, but we should not treat statements from them, which are frequently cries of pain, as if they are always considered statesmanlike compared with the absurdities of our own Ministers; nor the way they talk about their relationship with the European Union, where they are in a very difficult position—they want to stay in but have to go along with what the European Union says about these matters. For example, Mr Flanagan, the Foreign Minister, said recently that Ireland is part of the EU family and the British are our colleagues. But by any definition of family, any definition of DNA, we are the family; by any definition at all—including that we quarrel, including that there is money involved. We are up against the deep texture of our relationship with Ireland and a European Union which does not quite understand it; it does not understand why the Irish Chief Whip is now saying that Ireland will need extra support from Europe if there is a hard Brexit. Its view is that it wants to get more money out of Ireland to replace the British money.

These are the sorts of things we should be talking about, not a farmer’s bit of land one side of the border or the other. These are the real difficulties that we now face. If the European Union strategy pushes us into a hard Brexit—if there is no civilised compromise—the consequences for Ireland and then for the European Union will be very unpleasant indeed.

8.19 pm

**Lord Empey (UUP):** My Lords, it is a great privilege to follow the noble Lord, Lord Bew, and his very relevant reality check on what we are currently facing. The noble Lord, Lord Jay, presented the committee’s report. I am glad it was done. It is important that people look at these things. Sadly, as was said—I think the noble Lord, Lord Dubs, made the point—in the run-up to the referendum nobody was drilling down into the minutiae of this. That has been demonstrated over the past 14 or 15 months in the consequences we have seen.

I serve on the British-Irish Parliamentary Assembly’s Committee C, which is looking at the agri-food sector. Of course, the agri-food sector has a very effective lobby, but the people in the Republic who are really concerned are those who provide services. There are far more people employed in services nowadays. The way things are going is actually creating a major threat to what we believe to be rural Ireland. Some 40% of all Ireland’s food and drink ends up in the United Kingdom. We are talking about huge sums of money and vast numbers of people employed. Let us be under no illusion: the drop in the currency alone and the fact that a lot of the companies’ insurance has run out are having a profound impact on the economy of the Republic, and it is only scratching the surface at the moment.

He is not in his place but the noble Lord, Lord Hain, made some comments—particularly outside the Chamber but certainly inside it today—advocating



that we in Northern Ireland remain in the customs union and the single market. We cannot contemplate the partition of the United Kingdom, which is what in effect that means. What we need is a deal between the United Kingdom and, if possible, the whole EU but, if not, at least with the Republic, where we would have a customs union between these islands. That is the way ahead.

During the gap in the debate for the Statements, I attended a function downstairs run by transport organisations. They make the point that 90% of the Republic's hard exports to the European Union travel through the United Kingdom to get there. If anybody is dependent on the full impact of us leaving the EU, it is the Irish Republic. These are staggering figures. I had no idea it was on that scale. The current policy of the European Union negotiators is to separate out these three issues: Ireland, the so-called divorce settlement, and the rights of EU citizens. I do not dispute that these are key issues but you cannot isolate the future trading relationship from them. I take the view that it is far more effective to look at how we meld and keep our two economies together. That is more important than some ideologically or politically driven Brussels-led determination to ensure that we get a beating in these negotiations, which would be a very short-sighted position.

**Lord Adonis (Lab):** If the noble Lord will forgive me, I thought I heard him say that an option might be for us to have a customs union with the Republic of Ireland, even if we could not negotiate new customs arrangements with the European Union. Is that not a complete impossibility?

**Lord Empey:** It depends on whether—we come back to the term “special status”—the European Union is very flexible. I want to see a successful negotiation between the United Kingdom and the European Union, but it will always be particularly difficult on the island of Ireland.

We have to keep this in perspective. The amount of goods travelling north to south is, in European terms, comparatively modest. It is about 15% of Northern Ireland's trade. The trade coming to Great Britain is 60%, and among the rest of the world mainland Europe has only 8%. So our main trading concern is with the rest of the United Kingdom and to have any kind of interruption or border in that would make absolutely no sense. We would be inflicting an economic wound on ourselves.

I turn to a couple of other points that have been made. First, many people spoke about the Good Friday agreement or Belfast agreement. The noble Lord, Lord Trimble, was kind enough to give me responsibility in that regard, along with the noble Lord, Lord Kilclooney. We were all part of it and, perhaps because they both had duties here at Westminster and I did not, I probably spent virtually every day of those two years in the negotiations. The role played by the European Union in them was very modest. In fact, it was rarely mentioned except when it came to the conclusion. Then we looked for help from the European Union, which was forthcoming—and very generous it was. European Union expenditure is still there and, although it is

probably reaching its penultimate phase, we nevertheless have to keep it in perspective. Even at its peak, when we were an Objective 1 region and had ERDF and so on, it accounted for only 3.5% of the total public expenditure in Northern Ireland at its maximum. It is a lot less now.

The second point is more psychological, because it was accepted that we were both parts of the European Union. Everybody understood that and it was never debated on a line-by-line basis. Your Lordships should remember one other thing: that neither of the two principal parties which are now not leading the Executive were present for the strand 1 negotiations. The DUP was outside—calling the rest of us Lundies and traitors—and, while Sinn Féin was inside, ideologically it refused to participate in strand 1 negotiations and produced no papers. Sinn Féin did not ask us for an Irish language Act then. It just sat there and did nothing, while the DUP was not there. So they have not got into their heads the essence of what we were trying to do: to create a partnership-led Government, where both main traditions walked up the aisle together to send out a signal that we had embarked upon that partnership. That has not happened.

While I disagree with the noble Lord, Lord Hain, on some of his earlier points today, I agree with him on this: our voice on the Brexit debate is stilled. I am aware of no coherent process for getting our views in there and I would like the Minister to address this in his wind-up. How will our views be injected into the negotiations? How will we have any sense of where they are going? Does anybody really understand the minutiae? I doubt it. The noble Lord, Lord Hain, is absolutely right that our voices are stilled at this crucial time. Given that the Northern Ireland Executive does not exist and that our total contribution from Stormont has been one two-page letter last August—that was the only contribution the Executive have made to the Brexit debate—then, at one of the most momentous times in our history, we are out to lunch. That is a criticism on all of us. It is outrageous and cannot be justified.

I know that the Minister's colleague, his right honourable friend the Secretary of State, is doing his best, but we are now up against people who have different and bigger agendas. The Government have to find a formula so that the views of our business, our trade unions and our professionals—the people making money and creating jobs—are injected into this debate. That, in my opinion, is the yawning gap that we face right now.

8.30 pm

**Baroness Armstrong of Hill Top (Lab):** My Lords, I enter the debate with some trepidation given the contributions from people who have much greater experience of direct negotiations and of life in Northern Ireland. However, I am a member of the EU Committee and fully participated in this inquiry. I add my thanks to the staff for their hard work and for the support they gave members. I appreciated being able to work with the noble Lord, Lord Boswell, who I hope will be back with us after the Recess, and with the noble Lord, Lord Jay, whose knowledge and perspective I found incredibly useful. I appreciated his speech today.

[BARONESS ARMSTRONG OF HILL TOP]

I came out of every meeting of this inquiry thinking, “Crikey! I never thought of that before. How are we going to get hold of that? How are the Government going to deal with that?”. This is one of the real issues around Brexit. I do not believe that anybody faced up to its complexities during the referendum campaign, and we are now living with the incredible consequences. I do not think any of us expected them, and I certainly do not think that we were ready for the level of work and detail that will need to be gone through in order to achieve the sort of outcome that everybody here today and Ministers want. None of us will get any of those outcomes without a lot more detailed work.

I am disappointed that we are having this debate so long after we produced the report. I am horrified that the Government did not produce their response until an hour before this debate started, as the noble Lord, Lord Jay, said. I have not seen it yet. That gives me no confidence about the capacity of the Government to deliver on the negotiations. It makes me think that they are not ready. Why on earth did we trigger Article 50 so early when we were not ready to respond on the issue that the Government have said is one of the most important to sort out early in the negotiations?

I echo other noble Lords about how the Government will meet their ambitions. In the evidence heard in Dublin and Belfast and here in Westminster, we were all struck by those who lived and worked on either side of the border. The noble Lord, Lord Bew, has mentioned this, which was almost a relief to me because I wondered whether I dared talk about the border when he tells me it is not important. I hope that when he reads my speech he will understand why I decided to continue to talk about it. People talked about the number of times they cross the border on any day of the week and on every day of the week. Those in the food and agricultural trades talked, for example, about cattle reared on one side of the border, slaughtered on the other side, taken back for butchering and then sold on the other side of the border or to the other side of the British isles. They said how complex all that was and asked what on earth was going to happen. They talked about the movement and production of milk, and I realised how much milk on the mainland comes from the north, or at least is in the north at some stage. The cows are all over the place. But it was not just the movement of cattle or even the movement of people, but also public services. In some border areas, the main hospital or health centre is across the border and the ambulances cross the border without ever being stopped. People were worried about public services where they had been developed across borders.

If the border does not matter, that is fine, but my anxiety is that the Government are making the right sort of noises about their ambition. The letter from the Minister today and the report that was produced two or three weeks ago give us the right sense of where they want to get to but there was no confidence from the people we talked to that the IT solutions were going to be ready, or feasible for what might be necessary. Whether you talk about the border or the common travel area, at the end of the day, we are talking about where the border with the European

Union is going to be. Are we really going to negotiate a border that does not matter with the European Union? At the moment, the only physical border after Brexit will be the one between the north and south of Ireland. Our ambition may well be that it is frictionless, that nobody notices it and that we are able to do what we are doing now, but that comes back to the fact that this will be our only physical border with the EU once we have left. How are the Government going to reconcile that with their overall ambitions? I do not have a clue how they are approaching that. I know that the approach that it should be done by Ireland was not well received in Ireland. We have to think that one through, and the Government need to let us know where they are going.

Northern Ireland, the Republic of Ireland and the EU all want to see the peace process moving forward. But we have had indications today from speakers from all sides in the north of Ireland, and from the others, of just how difficult that will be without Brexit, let alone with it. I hope that the Government are looking at this much more clearly than we have heard so far today.

Wherever people are coming from and whatever position they are in, the problem will be in the detail. The problem with the papers and the rhetoric from the Government is that it appears that we are saying that we do want to have our cake and eat it. I believe that by sounding like that with the European Union, we are actually undermining our acceptance of the integrity of the European Union and where it is coming from. It does not want to fracture even more, and therefore has to pay attention to its integrity in the way we go forward. That means that we have to negotiate with a lot more humility.

8.39 pm

**Lord Hannay of Chiswick (CB):** My Lords, it is good that the House is debating this important but often overlooked and marginalised issue of the consequences for the whole island of Ireland of last year’s referendum vote and the Article 50 negotiations now under way. It is good, too, that we are doing so on the basis of yet another careful, judicious and evidence-based report from your Lordships’ EU Select Committee, and of the excellent introduction to that report by my noble friend Lord Jay of Ewelme. The report shows something of the extraordinary fecklessness demonstrated by the supporters of leaving the EU when they have not very often addressed the possible risks and dimensions of winning that vote. Now we are facing those risks and neither they, the supporters of leaving, nor the Government seem yet to have any very convincing answers to these questions.

It is as well to begin with one salient fact: when they voted in the referendum last June, the people of Northern Ireland voted by a substantial majority that their future would be best assured by remaining in the EU. That fact cannot be gainsaid or belittled, nor should it be. What we are discussing now is, in the judgment of that majority, a damage limitation exercise, and those who so incessantly call for the referendum outcome to be respected here should respect that fact too. The party in the north that now supports the Government needs to recognise that it was in a minority in that vote.

I would like to touch on two issues that come up less often than those of the border for goods and services and the free movement of people—indeed, they have not come up at all—the future of the network of the EU justice and home affairs legislation, and the situation that might arise with regard to EU membership should the people of Northern Ireland decide at some point in the future by a majority, as provided for in the Belfast agreement, to join the state of Ireland. First, there really should be no doubt about the critical role that the EU's justice and home affairs legislation has played in recent years in depoliticising law enforcement across the whole island of Ireland. That was the conclusion to which the then Home Secretary—now the Prime Minister—came at the time of our opt-in/opt-out negotiations in 2013-14 on justice and home affairs. We need some clarity from the Government about how they plan to sustain that joint co-operation after we have left. If we left without a deal, we would simply go in this instance over a cliff edge—no WTO, no plan B, just plain thin air. I would like to hear from the Minister about that because there is not a word about it in the paper produced by the Government, and not one of the speakers in today's debate has yet referred to it.

Secondly, there are the implications should the people of Northern Ireland ever vote freely and fairly for unification. Some seem to believe that this was some kind of clever plot by the Irish Government when they made reference to that in the EU guidelines. It is not, actually; if you look at it carefully, it is simply to recall the precedent set when the people of East Germany voted to join the Federal Republic of Germany without giving any rise to the need for new accession negotiations, as would be the case if Scotland voted for independence, on which it is quite clear that there would need to be accession negotiations. The inclusion of that in the guidelines merely repeats the precedent that was created in the case of East Germany.

The free movement of people is going to take a lot of effort by the Government and the EU, which broadly subscribe to avoiding the imposition of new controls between the two parts of Ireland. Frankly, it is not going to be enough to simply recite “common travel area” endlessly as if that were some kind of magic potion. The hard fact is that the common travel area has never so far, throughout its existence, operated when part of the island continued to apply the EU treaty provisions on freedom of movement while the other did not. We need to know now not just that the common travel area is to be sustained but how that is to be done in the new circumstances. Perhaps the Minister could say something on that because, again, the desire to do that is in the Government's paper but there is nothing on how to do it.

Trade in goods and services is another area where the desire to avoid the reimposition of border controls will not in itself be enough. How is it actually to be done, by whom and where? Why have the Government simply discarded, even before Brexit negotiations began, the two simplest means of avoiding any border control—namely, staying in either the single market or the customs union? Why did they decide that without

thinking about the problems that it would cause in Ireland? Now they are going around trying to patch them all up.

On those two points—free movement, and trade in goods and services—the Government's recent paper is full of admirable aspirations, which I share, but short, if not bereft, of detail on how to get from here to there. Not surprisingly, the passages on trade have caused plenty of sucking of teeth by the EU side, which is most at risk if the Government's magic ideas turn out to be impracticable. There has been less criticism of the passages on freedom of movement. That is understandable because it is we who are at risk—or at any rate the Government, who wish to impose strict controls on immigration to this country—if the approach in the paper is applied.

I hope that your Lordships' EU Select Committee will subject the ideas in the most recent paper to some careful scrutiny and that the Government will be forthcoming on the practicalities of how their ideas are to be given effect, in case they are to be agreed in Brussels.

That leaves us with one final point. The improvement in Anglo-Irish relations in recent years has been outstanding and brings huge credit to all the parties concerned—the British Government, the Irish Government and the parties in Northern Ireland. They deserve that credit. We must not put it at risk in the difficult negotiations that lie ahead. We will be far more likely to succeed in that if we stop treating the problems being caused to both parts of the island as if they were collateral damage, which are simply bad luck because we took a decision to leave the European Union and they just have to lump it—to grin and bear it. If that is the attitude that we take, nothing but trouble lies ahead.

8.48 pm

**Lord Carlile of Berriew (Non-Afl):** My Lords, it is always a pleasure to follow my noble friend Lord Hannay, and I agree with everything that he said with such force. Like other noble Lords, I thank my noble friend Lord Jay for the perfect clarity with which he introduced the debate and join the felicitations to the noble Lord, Lord Boswell.

Because of the delay between the report and this debate, it has now become part of a process, but it is an important part of it because it is evidence-based and contains solid analysis. Another part of that process is the letter that we received from the Minister. It reached my inbox at 3.09pm this afternoon. I think that your Lordships are entitled to be more than mildly irritated by the fact that that letter arrived then, when there were months or certainly weeks in which it could have been delivered, and when we have known that this debate was taking place for quite a long time. But I have now read it, and would like to raise a particular point with the Minister about bullet point 6—and, frankly, I would like an answer from him tonight, not at 3.09pm before the next 4 pm debate.

Bullet point 6 refers to a “time-limited interim period” that is linked to implementation arrangement and allows for a “smooth transition”. I invite the Minister to unpack that very dense sentence. What are

[LORD CARLILE OF BERRIEW]

the implementation arrangements that he expects? Would he tell us and define what they are? How does he expect that smooth transition to be negotiated? Is there any evidence of negotiation of a smooth transition, and does that sentence really make transition and destination an unintended synonym? What destination does he predict is realistically achievable—or, as appears to be the case with a lot of the current phase of negotiations over Brexit, does he simply not know?

I want to speak about my experience of Northern Ireland and Ireland. I was the Independent Reviewer of Terrorism Legislation for an indecently long time—from 2001 to 2011. Subsequently, I continued to visit Northern Ireland very frequently in some non-statutory roles that I carried out. I had the opportunity to meet all the political parties on a fairly frequent basis; sometimes they spoke to me and sometimes they decided not to speak to me, but on the whole they were very co-operative and I learned a great deal about their mindsets. On one occasion, I went to South Armagh not long after it had been described as “bandit country” with the elected Sinn Féin Member for the relevant constituency, and I saw with him the extraordinary developments that had taken place—the fact that there was an active and representative democracy taking place in an area where, if I had gone there on my own 10 years before, I would almost certainly have been shot at.

I believe that Northern Ireland has become a good place to live and run a business, a very good place to educate your children—it has an outstanding education system—as well as a good place to have social housing. The government funding made available to Northern Ireland has been substantial. At least two, and maybe more, Secretaries of State in this House contributed to those developments, to their great credit.

I am terrified of the possibility that what has been achieved in Northern Ireland will in any way be lost. I refer briefly in particular to three of the conclusions of the report that we are debating. The one at paragraph 142 says:

“Political stability in Northern Ireland depends on the confidence of both communities that their interests are being respected”.

That is said with particular reference to the land and sea borders. The report concludes at paragraph 152:

“Brexit has profound implications for the current high levels of crossborder police and security cooperation between the UK and Irish authorities”,

and at paragraph 183 states:

“The peace process is supported by a majority of people from across the communities, and it would be irresponsible to overstate the threat posed by Brexit”.

Nevertheless, Brexit is already proving politically divisive and all sides must remain vigilant to ensure that the momentum behind the peace process is maintained. I regard those three principles—from my viewpoint, as somebody who has been concerned with counterterrorism and observing the effectiveness of the peace process—as absolutely non-negotiable and crucial.

This brings me to the role of Parliament. I thought Keir Starmer spoke very cogently on behalf of the Labour Party last week when he said that we must respect the outcome of the referendum, and I do. However, I also agree with him that Parliament continues

to have a role. We cannot hand over to Government a discretion to do what they like. Equally, if the negotiation does not reach a conclusion, or reaches a bad one, that is not a trigger for a new referendum—that would be irresponsible. It is the trigger for this House, and Members elected to the other place, to say, “I am sorry. This will not do and we are not going to allow it to continue”. One of the key issues in that exercise of parliamentary responsibility in due course is what has happened in Ireland, particularly in relation to the peace process in Northern Ireland and the continuity of the beneficial developments there. We surely have to resolve this quickly. This is one of the most obvious questions, with the most obvious answers, of anything in the Brexit negotiations. If we and the European Union cannot sort this one out quickly, what hope is there of resolving any questions?

8.56 pm

**Lord Suri (Con):** My Lords, I am glad that the issue of the Irish border is now a central part of the Brexit negotiations. The initial debate before the referendum skimmed over so many of the complex and emotional issues of the Irish border. Northern Ireland ought to have been a central part of the debate: it was not. However, we are where we are, and the best deal has to be made to create the least disruption to Northern Irish people and businesses.

One issue I am particularly concerned about is the appearance of the border between the Republic and the UK after Brexit. The Republic of Ireland and the UK have, of course, had an uncommon relationship in terms of freedom of movement of people, since Irish independence, but those rights have been strengthened, underpinned, and locked in by a raft of European Union legislation. Post Brexit, the UK and the Republic will have to convince the EU that such a privileged status is deserved and needs to be maintained. The report brings up EU concerns that,

“entry into the Republic of Ireland from the UK would not become a back door to entry into the EU”.

Some give and take will be inevitable, but realism will be required from both sides. The border is 500 miles long, highly permeable, and has a large number of routes that were previously used to smuggle people and goods. Our European Union membership negated the need for such routes, but it is plain economics that raising the barriers to entry will create a meaningful incentive. More money in the hands of smugglers, especially those hostile to the current state of the island of Ireland, is a worrying prospect.

Furthermore, as the PSNI and the Centre for Cross Border Studies put forward in the report, border checkpoints are the most tangible and egregious of the additions to the border post Brexit. They will likely become easy targets for terrorists, and while much of the anger of the Troubles has lessened, this has been because of the EU and a common regime, not despite it. I understand the Government’s position to be that checkpoints are not encouraged, but has the Minister made preparations for the introduction of such checkpoints, and done risk assessments? A great deal has been talked about technical solutions and wondrous IT solving many of these issues. I have seen many Governments struggle and slip with enormous IT projects

like this. That is not to pour cold water on anything said today, but is a note of caution. We will need to see more from the Government about the solutions they have to make that border frictionless.

As a final note, I am saddened that there is no operating Legislative Assembly. Stormont deserves to be heard more loudly in this debate, and while the leaders of the Northern Irish parties have expressed their views, there need to be debates, Motions and Statements issued from a functioning Parliament to carry legitimacy. I will not blame one side or the other, but I express my hope that the impending trade-offs to come from Brexit will focus minds and push both parties into making a deal to bring Stormont back into working order.

9 pm

**Lord Adonis:** My Lords, the contribution to the debate of most concern so far was the speech of the noble Lord, Lord Bew, a distinguished historian, who said that Brexit has already been deeply destabilising in the Republic of Ireland, particularly with regard to its economy, and that it is likely to become a lot more so as it advances.

The Government's position paper on Ireland makes all kinds of assertions that everything is going to be okay, but the stark reality is that unless the relationship between the UK and the European Union basically does not change so there is no serious disruption to UK-EU trade, the assertions are essentially magical thinking and the only issue is how much harm Brexit does to Northern Ireland and the Republic of Ireland and their relations with Great Britain.

In his opening speech, the noble Lord, Lord Jay, said, with the discretion which distinguishes a diplomat of his eminence, that his committee had not meant to hint that there was a comparison between the threat of Brexit to Northern Ireland and the threat of a breakdown of the Good Friday agreement. We all hope and pray that he is right, but the truth is that since we do not know what form Brexit is going to take, we do not know what the impact might be and how serious the consequences for the political stability of Ireland, north and south.

At any rate, it is impossible to overstate the moral and political responsibility which Her Majesty's Government have to ensure that the impact of Brexit on Ireland is minimised. In the Good Friday agreement, Britain formally declares that it,

"will pursue broad policies for sustained economic growth and stability in Northern Ireland and for promoting social inclusion".

It also promises,

"a new regional development strategy for Northern Ireland ... tackling the problems of a divided society and social cohesion in urban, rural and border areas, protecting and enhancing the environment ... strengthening the physical infrastructure of the region, developing the advantages and resources of rural areas and rejuvenating major urban centres".

These are solemn commitments made by the British state to the people of Northern Ireland, yet they will be affected, and may be undermined, if Brexit takes the form of a hard border and restraints on trade.

In terms of the magical thinking which has seized the Government, I emphasise two points. First, customs duties and controls will not be frictionless and of little

account simply because the Government declare that that will be the case. I am not aware of any border in the world where customs controls are magically frictionless and it all takes place in the internet cloud, and Ireland does not show any sign of being a pioneer in that respect.

The noble Lord, Lord Cope, said that it would be all okay because we have managed with differential rates of VAT in the past. The difference in the standard rate of VAT between the Republic of Ireland and the United Kingdom is the difference between 23% and 20%, so I do not think that takes us very far if we are going to go off a cliff edge in terms of customs duties and trade barriers between Britain and the European Union. Of far more concern, given his eminence and his closeness to these discussions, was the contribution of the noble Lord, Lord Empey, who seemed to suggest that everything would be fine if the trade talks between Britain and the European Union completely collapsed because we could, with even more magical thinking, have a customs union between Britain and Ireland. That is the one option which is absolutely not on the table if the Republic of Ireland is going to remain within the European Union. I have not yet noticed any sign that they are going to follow us in heading for the departure lounge.

The second point of importance—here I am entirely with the noble Lord, Lord Hannay of Chiswick—is that intoning the three words "common travel area" at the beginning of every sentence, and airily pointing out that everything has been all right in the past, misses the point that Britain and Ireland's visa and associated policies have been identical for the last 45 years and were largely the same for the previous 50 years after the independence of the Republic of Ireland in 1922 and the creation of Northern Ireland.

Because I am speaking late in the debate I have had the advantage of being able to read the Government's letter to us on how everything is going to be basically fine after Brexit. I can describe it only as pure waffle. There is nothing in there of substance. How it manages to continue for eight pages is a diplomatic triumph, given the lack of content. To give just one example among many, under the heading,

"Impact on the peace process and on north-south and east-west relations",

we read the sentence:

"The Secretary of State for Exiting the European Union's first visit to another EU Member State was to Dublin in September last year. Through the annual meeting of UK Permanent Secretaries and Irish Secretary Generals, we remain committed to continuing our strong cooperation".

Let us hope that these meetings take place almost daily if they are capable of producing any concrete results. But in my experience of the affairs of the world, it is not meetings that make a difference, it is the actual substance of policy, and on that we have had no reassurance whatever.

When Gladstone introduced his Home Rule Bill in 1886, he told the House of Commons:

"I believe we have reached one of those crises in the history of nations, where the path of boldness is the path, and the only path, of safety".—[*Official Report*, Commons, 10/5/1886; col. 602].

[LORD ADONIS]

It was a tragedy that Parliament in the 1880s and 1890s rejected Gladstone's bold path which could have avoided so much of the terrorism and horror of the 20th century. However, we did take the path of boldness in the Good Friday agreement, and I entirely echo the words of the noble Lord, Lord Hannay, that this is one of the high points in statecraft within the United Kingdom. Ireland is much the better for it, and I believe that the path of safety today is not to endanger this by a hard Brexit which puts the prosperity and security of Ireland in the lap of the gods.

9.07 pm

**Baroness O'Loan (CB):** My Lords, this is a very difficult debate for the people of Northern Ireland. It is difficult because we voted by 55% against Brexit, and all the indicators are that Northern Ireland is going to be the part of the UK which will be most adversely affected by Brexit.

We know that the issues with which our negotiators must struggle are many and varied, but the real question tonight is the land border between the UK and Ireland. I do not think many people in England and Wales realise that it actually is a real problem, and we are in debt to the European Union Committee for producing the paper which we are debating today.

The reality is that Brexit, and the terms upon which we Brexit, are not in the hands of the UK, or the people of Ireland, or the people of Northern Ireland. They are in the hands of our Government and the 27 EU nations.

One of the biggest challenges, I think, is to find a way to maintain the best possible relationships with Ireland, because the Brexit negotiations are going to lead to difficult situations in which Ireland and the UK will seek to protect their own national security, economy and culture, while trying to honour their obligations under the Good Friday agreement and work out an acceptable solution to Brexit. We will need those institutions—the British-Irish Council, the intergovernmental conference, the parliamentary assembly—and we will need the British-Irish Joint Ministerial Committee on EU Negotiations. It is a special case; it needs a unique solution.

The EU Committee recognised that because of the Brexit problem, Ireland faces many challenges not of its own making and that the responsibility for finding solutions lies with the British Government and with the European Union. However, there must be a recognition here and on the European side of the reality of the problems. These are political negotiations, and the right of politicians rests on the trust and confidence of the people. Where confidence has evaporated, as we have seen in many recent elections, there can be unexpected electoral results.

I draw your Lordships' attention to something that is simple but which may be important. There are 650 MPs in the other place, and our website says that there are about 800 Members of your Lordships' House. There is a problem as we embark on the passage of the European Union (Withdrawal) Bill and as we engage in negotiations with Europe. Of the 650 MPs, Sinn Fein has seven seats. The SDLP, for so

long the voice of constitutional nationalism in the other place, no longer has a single seat. Sinn Fein is abstentionist. Its MPs do not take their seats, participate in debates, or engage with the issues in the Chamber or in committee. They will not do so. The result is that the voice of constitutional nationalists who live in Northern Ireland has been silenced in the other place. It will not be heard as these vitally important debates go on. There is no one to speak on behalf of the constitutional nationalist people, and that is a major problem.

It is a worse problem because there is no one to speak on behalf of anyone in our devolved Assembly. Stormont is no longer—we are facing direct rule. Who will government be able to engage with during the Brexit negotiations, in the absence of a Northern Ireland Executive mandated to speak on behalf of the people of Northern Ireland? No one. That has been a problem for a number of years now, as many noble Lords will know from sitting on committees here and seeking to take evidence from the Northern Ireland Executive. They could not agree a common voice, so there was no response, as the noble Lord, Lord Jay, said. It has been thus for a number of years.

Therefore, if there is nobody from Northern Ireland in the Commons, living with the problems there, facing the difficulties of Brexit as it affects Northern Ireland, who articulates the voice of those who are not represented by Protestantism as opposed to Catholicism, what is the case in your Lordships' House? Of the Northern Ireland Peers, I am the only one who is Catholic. All the others are Protestant or something else. We do not represent anyone, as Members of the other place do, but it is an unfortunate reality that I am the only Catholic living in Northern Ireland who has the right to speak in this place or the other place. Does it matter that the voice of constitutional nationalism is not heard? Does it matter that we have no Assembly? We are in limbo.

Unionist voters will tell you that they voted DUP because they would take on Sinn Fein. SDLP voters will tell you that they voted for Sinn Fein because they would take on the DUP. But it is not working. Among many people in Northern Ireland there is a sense of a democratic deficit. There are many causes of the deficit, but how is government going to deal with it? What message does it send about the rights of Catholics, non-unionists or nationalists, and what are the risks attaching to that deficit in all its manifestations?

The fight against terrorism and organised crime is critical to the economic stability of Europe. Many think that our problem is solved. I am afraid that it is not. The PSNI statistics for the year ending March 2017 tell us that last year there were five security-related deaths, 61 shooting incidents, 29 bombing incidents, 66 paramilitary-style assaults and 28 paramilitary-style shootings, and 75 kilos of explosives and 2,635 rounds of ammunition were recovered.

We do not have an Assembly and we do not have true peace. A generation is growing up who have no experience of the Troubles as we knew them. They are less likely to be drawn into violence, but economically we are not in a good state, and it was in the marginalised and deprived communities that terrorism, both loyalist and republican, had its roots.

At this time of unpredictable, difficult-to-counter global terrorism, it is essential in the interests of all 28 states that we maintain co-operation on EU databases on crime, the European arrest warrant, exchange of information, Eurojust judicial cooperation, European investigations, and so on, because those processes facilitate fighting crimes such as human trafficking, drugs, black market economies and international terrorism.

Brexit could affect our fragile peace process. We need, even at this time, to remember those who were injured, maimed and bereaved in Northern Ireland but also those who live here—those who still bear the scars of the Troubles after the bombs and attacks in Birmingham, Warrington, Manchester and so on. We should remember and provide for those people but we are not doing so—I met a group of them last night.

The politicians could deal with these legacy issues—we know how to do it—and the Government could hand over the money that they have committed to it, but they have not done so. Just today, the Lord Chief Justice has expressed his frustration yet again that he cannot conduct many of the inquests of those who were murdered in the Troubles.

For many in Northern Ireland, Ireland is and was the “Free State”—that tells you how they regarded Northern Ireland. Those issues of a people divided are part of our history but they are also part of our present. We were fractured in many ways. Our common EU membership and the courage of many people enabled peace—visibly and psychologically our divisions became less. The border disappeared, and the EU was a big part of that. Northern Ireland will have a problem with immigration unless there is a mechanism by which immigration is allowed across the borders from European states and which will facilitate not least the 30,000 cross-border workers and the 7% of employees from the EEA. Sixty per cent of our agricultural income derives from Europe. There are so many things that need to be done to protect us.

We need a soft border. No one has yet identified technology capable of maintaining an accurate record of the cross-border movement of goods without physical checks. The other day I heard a man on the radio say, “Are they going to get all the sheep out of the lorry and count them and then put them back in again? That’s what they used to do”.

If we withdraw from the single market and we do not negotiate some form of agreement with the EU or a bilateral UK-Irish agreement, all the evidence is that we will have to have some form of border or customs checks on parts of the 300-mile border between Northern Ireland and Ireland. They were not effective in the past; there is nothing to suggest that they would be effective in the future; and they would be very damaging.

The situation in Northern Ireland is very difficult at the moment. The problems of our internal divisions and our inability to govern ourselves using devolved powers are crippling our health service, our education and other infrastructures, we have an ongoing terrorism situation and confidence in our constitutional process has been eroded. The Brexit negotiations cannot result in the predicted economic difficulties as a consequence of something for which the people of Northern Ireland did not vote. Nor should they result in further constitutional instability. There is too much at risk here.

9.17 pm

**Lord Lexden (Con):** My Lords, very inadequately I follow the wise and sobering remarks of the noble Baroness, Lady O’Loan.

The fine report, which is the subject of this debate, stresses the crucial point that nowhere else in the EU are the implications of Brexit so profound as in Ireland, north and south. Nevertheless, the report continues, these profound implications,

“are often overlooked on the British side of the Irish Sea”.

Indeed, they were almost entirely overlooked during the unsatisfactory and unhappy referendum campaign last year, as the noble Lord, Lord Jay, pointed out in his memorable introduction.

What is needed when grave issues that have been neglected in English political life suddenly come to the fore, as has happened as regards Brexit’s Irish crisis since the referendum? The first requirement is surely a full, authoritative and detailed account of the issues. That is what our European Union Committee provided in its report published at the end of last year. The report marshals an immense amount of information as the basis for judicious and measured observations about the principal ways in which Brexit will affect Ireland, north and south, from the economic sphere to the peace process. This is a document of enduring worth against which we can test the progress of those involved in trying to solve Brexit’s Irish crisis.

The debate today will at last provide us with an opportunity of hearing the Government’s response—we are all hoping that it will be substantial—to this powerful report, following the production of a letter this morning. Is it not regrettable that substantial intervals so often occur between the presentation of reports and the reaction of the Government to them? Greater ministerial and official engagement with the reports of the committees of this House would serve the Executive and Parliament well. The arrival of a letter shortly before the start of the debate on a report published nine months ago is frankly insulting. It is no wonder that the noble Baroness, Lady Armstrong of Hill Top—a member of the committee—and the noble Lord, Lord Carlile, are so annoyed.

I was struck by the manner in which the noble Lord, Lord Jay, highlighted one of the report’s central recommendations, to which the noble Lord, Lord Dubs, also referred. The best way of resolving the many contentious issues, the report suggests,

“would be for the EU institutions and Member States to invite the UK and Irish Governments to negotiate a draft bilateral agreement, involving and incorporating the views and interests of the Northern Ireland Executive”.

The noble Lord, Lord Jay, told us that there were difficulties attached to this recommendation, but there are difficulties attached to almost every side of this matter. Perhaps the Minister could indicate the Government’s view of this recommendation when he comes to reply to the debate.

Whatever form consultations may take, we are all united across this House in believing that the two sovereign Governments must work closely and constructively together if the issues identified in the committee’s report are to be resolved. We would surely

[LORD LEXDEN]

all endorse the hope expressed by the leading Irish historian, Professor Roy Foster, that,

“the closeness of Anglo-Irish relations highlighted by the remarkable royal and presidential visits a few years ago will remain”.

Events over the summer were far from reassuring. Some harsh comments were delivered by Irish Ministers. But there may perhaps now be a better prospect of sustained Anglo-Irish understanding following the recent publication of the Government’s position paper. The paper underlines the Government’s determination to find a solution to the crucial issue of the border in a manner that is acceptable on every side. The immense difficulty of this has been highlighted again and again in this debate. Some of the ideas in the paper may be fanciful or impractical, but their wide range and ingenuity ought to increase confidence in our Government’s commitment to meeting the greatest challenge that they face in the Irish context.

One of the central contributors to a successful resolution of Brexit’s Irish crisis has been off the field since the start of the year. The European Union Committee’s report concludes the section on the Northern Ireland Executive with a firm statement about the latter’s weighty responsibilities: its members,

“need to ensure, as Brexit negotiations begin, that Northern Ireland’s interests are effectively communicated to the UK Government, the Irish Government, to the EU and to other Member States”.

That is a tall order for the ramshackle coalition of political incompatibles embodied in the Executive, but they cannot even attempt it if they are not in existence. In July, the Government signalled the likelihood of a breakthrough in the interminable talks to try and find a way of restoring the Executive; by the very next day, the likely breakthrough had disappeared.

It would be surprising if the Government did not shortly make a further effort—surely their final effort pulling out all the stops, using all possible resources—to bring about the return of devolved government. They will hope for success, but must plan for the possibility of failure and the construction of some alternative means of ensuring that Northern Ireland’s interests are effectively represented throughout the long Brexit negotiations. Ultimately, it is the Government’s task to ensure that the needs of Northern Ireland—its business community and its position within the union—are all properly safeguarded. In the absence of devolution, the role of Parliament becomes of the greatest significance.

There are some who would be content if the United Kingdom left the EU without an agreement. There are some who would apparently welcome it. Our duty to our fellow countrymen and women in Ulster and our responsibilities to our nearest neighbours and friends in the Irish Republic surely compel us to reject such a dishonourable course.

9.25 pm

**Lord Davies of Stamford (Lab):** My Lords, I can state my views on this subject fairly rapidly. To me the whole thing is a sad nightmare. What we are doing is destroying and throwing away a great human achievement, in this case an economic institution, that of the single market. We are setting at possible risk—I put it no

more highly than that, and in saying these words, I simply summarise my impression of what has been said by 15 or 20 speakers in the debate—a delicately and carefully balanced negotiated deal in the Belfast agreement. We are also depriving ourselves in the case of Ireland by leaving the European Union of hundreds of opportunities in the course of any year for collaboration with Irish officials and politicians, for working together and finding a common ground for solving problems within the context that we are completely equal because we are both equal members of the European Union. If we take those three things together, it would be quite surprising if there were not some nasty consequences. All of this, as far as I can see, is for absolutely nothing at all. I look around 360 degrees and I cannot see a single gain or benefit that we will derive from this destruction, and that is very sad.

Does this paper before us from the Government help or hinder? I cannot say that I find it a very impressive production. I rather dislike its tone and I find the content distinctly weak, jejune and rather muddled. I will mention the tone first. I was quite shocked because I thought that it was distinctly arrogant. There is not the slightest trace in this document, from beginning to end, of any sense of recognition or sensitivity towards, let alone any form of apology for, the disruption that we are causing our neighbours. I say that because it is true. No one here in the House of Lords is going to disagree with my view, but it does not sound like that in the document at all. We have decided on the Brexit project and this document is saying to the Irish, “Right, this is a new ball game now, and you have got to move. You have to move quickly too, because we are impatient and we cannot wait around. By the way, no action is not an option, so get on with it”. That is how I read this document and that is exactly how it is drafted. It seems to me that the Brexit department needs to take on some people with a background in diplomacy. Perhaps they can make a bid for a few good ambassadors. It might help the department in packaging what is anyway the pretty unpalatable material that it produces.

As for the substance, which I suppose is more important still, it seems that the department officials had not looked at it for more than two afternoons. They start by saying that, given that 80% of the cross-border trade in Ireland is carried out by small traders, that is all right and they can continue to trade as they do now. But what will happen with the remaining 20%? You might say, “If it is all right for 80%, why not take a risk and let the entire 100% carry on with the present regime?”. After all, we are taking risks with immigration into the common travel area. In the future, if you ask a Romanian, a Pole, a Frenchman or a German who is living in this country how long he or she has been here, they will not be able to verify the answer because they will say, “I came through Ireland”. If we are taking some risks in that area, why not take some risks in the area of trade?

But what the Government are suggesting is a quite different proposal for the 20% of businesses that do not qualify for the small traders’ exemption—I think they call it the authorised economic operators scheme. It is clear that there are a lot of potential problems with it, none of which it looks like the Government



have identified because, if they had done so, I suppose they would have mentioned them. The idea is that if a country is exporting to the United Kingdom and the resulting exports are going on to the Republic of Ireland or elsewhere in the EU, or the other way around, the exporter will pay at the first frontier he comes to, whether it is the UK or the single market frontier, the duty rate which is the maximum duty as between the EU and the UK. If their product carries a duty of 0% for the UK but 10% in the EU and it is landed initially in Ireland it then pays 10%, but it is going to the UK so it does not need to pay 10% but 0%. Then, when the goods have been shipped into the UK, there is a rebate of the duty that has been paid at the frontier.

That raises all kinds of problems. First, there is the administrative cost of doing that. Secondly, how do you follow through those goods? What kind of document is required? You can hardly wait for an invoice to be met. You do not have bills of lading in contexts of that kind with land borders. You certainly do not get a stamp at the land border because there is not a land border, according to this paper. That is left completely open. It is unclear how that will happen. What is more, if you are a country that has done a deal either with the EU or the UK to have zero-tariff access to what they think is your country and they then find that it is not zero-tariff access any more—that you have to pay a 10% tariff, even though you are not due to pay it, then you get it refunded but you might not get it refunded if various risks arise—then the whole deal you originally signed in your free trade agreement has been retrospectively changed. Quite legitimately, you would complain and demand compensation under the WTO rules and so forth and invalidate that particular kind of agreement. There is an enormous number of problems about this, none of which has been gone into in this paper at all. One reads it without any sense whatever that the people who have written it have really dealt with this matter thoroughly and seriously, which they ought to have done.

The other thing is that it seems the Government do not understand what the single market is that we are destroying. What they have in this paper is a picture in which there is a variety of different regimes and different types of people. It is immensely complicated. The whole market is fragmented. You might be a small trader. You presumably have to go through some bureaucratic process to prove that you are a small trader, or a bigger trader, or a trusted trader. What about the new business? What about the guy who is not registered? How long does it take to get registered? Why should we impose some penalty on new businesses, or just on ordinary individuals who decide they want to ship goods from one side to another? Since you have said that all the other procedures that have been developed will obviate the need for a border, what happens to those who are not part of the special deals? Where do they stop? Where do they get policed? Where do they get checked, or do they not get checked at all? Since the paper says there will not be any physical border, where and how are these people monitored and checked? What they have done is to go through the border without paying any duty. None of this is gone into at all.

It seems to me that, if we are to have useful debates on these papers, it is important for us to be quite frank about what we see as their shortcomings. Maybe that will help the Government to get them right for next time round when they bring them to the attention of the Irish—our potential partners in any special arrangement—or in the negotiations that go on in Brussels. Even though I am sure some people have not enjoyed my remarks, they may nevertheless find them useful in due time.

9.33 pm

**Lord Kerr of Kinlochard (CB):** My Lords, I want to make two points, or rather two pleas: a plea for realism on the issue of the border and a plea for greater political engagement to save the Good Friday agreement. The border is well covered in the excellent report from the European Union Committee. The most amazing thing about the report, which is exactly nine months old, is that it has not dated at all. It has not been overtaken in any way by events. It says at paragraph 85:

“Despite ministerial recognition of the substantial implications Brexit could have for cross-border economic activity on the island of Ireland, there is still significant uncertainty over how the UK plans to mitigate these effects”.

That is still precisely true, as the noble Lord, Lord Hain, pointed out.

Having read both the little reader’s digest essays published in August—we cannot call them “negotiating documents” because there was nothing in them for a negotiator to get his teeth into, but they are nice little aspirational essays—I can say they both bear on this debate and they still do not give us any idea of the UK Government’s concrete proposals. There are not any concrete proposals.

The impression given is that it is time that Brussels came up with some helpful suggestions here, and we occasionally suggest options, or avenues that might be pursued, and then if they do not go terribly well, we can always say, “Oh, that was just blue-sky thinking”, and put them back in our pocket again. This is not the basis for a negotiation. An honourable exception is the paper on citizens’ rights, which was a much more substantive paper and provided the basis for a real negotiation. It looks to me as if there is a real negotiation going on on citizens’ rights and I would expect sufficient progress by October on that dossier, but I cannot see it on this dossier, on the basis of the documents that we have put forward. The trouble is that the 27 do not think that it is for them to put forward solutions. They think that we created this Brexit problem, we are *demandeurs* for a solution, so we had better come up with some. And they are still waiting.

Another, greater difficulty on the border issue is that we are actually, in practical terms, between a rock and a hard place. This is not so much on controls on people. If we want to change our immigration policy, if we want to make it more employment related, if we want to say, “Well, let’s not worry so much about the frontier”, we can do that. The non-UK, non-Irish EU citizen may pop across to Dublin, pop up to Belfast, pop across, and we could turn a blind eye to that if we want to. That is not the problem: on controls on people it is really for us to say what we think we need,

[LORD KERR OF KINLOCHARD]

but on controls on goods it is absolutely not for us to say. When the inner-Irish border becomes the frontier of the customs union, it will be the duty of the Irish Government. They will hate it, but it will be their duty to apply the rules that apply at all the external frontiers of the European Union.

Two-thirds of the member states of the European Union have the duty of controlling a part of the external frontier of the European Union. Many of them, too, have a region just across the frontier, just outside, with which they have very close ties—a region in the neighbouring country—but they nevertheless have to apply the rules that they have all agreed: rules of origin, customs checks, sanitary checks, health checks, environmental checks, all the procedure at the border. Do not blame the Commission. It is the member states that have agreed this and if there is to be any change in respect of Ireland, it is going to be very hard to persuade these people that they should not have a change too. So it seems to me to be an unlikely way to proceed.

It is also the case that technology is not going to save us. I am sure the EU Committee's report is correct when it says, at paragraph 105:

“The experience at other EU borders shows that ... while the burden and visibility of customs checks can be minimised, they cannot be eliminated entirely. Nor, while electronic solutions and cross-border cooperation are helpful as far as they go, is the technology currently available to maintain an accurate record of cross-border movement of goods without physical checks at the border”.

The Swedes are the world leaders at this kind of technology and they say that that is correct. For their border with Norway, which is the border of the customs union, they do have to conduct spot checks, which means that the border has to be manned, and X proportion of the trucks have to be stopped and investigated—I do not know what X is. The report is not coming up with a judgment, it is a fact, and magical thinking will not magic it away. It probably means that some of these 300 roads will have to be blocked. It certainly means that the roads that stay open across the frontier will have to have some sort of control. It will not be our control, unless we want one, it will be the European Union's control which the Irish will have to operate. All of us saying, “This is going to hurt Ireland”—that is true, of course it is going to hurt Ireland—is not going to save Ireland. Ireland is going to be required to do it because Ireland will be manning the external frontier.

I understand the Government's difficulty in admitting this. If you are in partnership with the DUP—a party that wants out of the single market, wants out of the customs union and absolutely does not want a hard border—you have a problem. The combination is an impossible one and that will become clear, even to the DUP, at some stage. I do not know what will happen then. I am not surprised the DUP wants an impossible combination because it was what it was told by the then Secretary of State for Northern Ireland was going to happen. Ms Theresa Villiers promised that there would be absolutely no change at the border after Brexit. I am not surprised that some in Northern Ireland thought that might be true. It cannot be true.

I recall when the noble Lord, Lord Lawson—who is not in his place, sadly—then leading the leave campaign, had the intellectual honesty to slap down Ms Villiers. She replied that he was improperly briefed. He was not improperly briefed. It is the case that if we leave the customs union there will have to be some kind of hard border. What is puzzling is that although Ms Villiers left the Government, the Government seem to be still singing the Villiers song, not the Lawson song.

Of course, I understand why the unionist community—the noble Lord, Lord Trimble, made the point eloquently, as did the noble Lord, Lord Empey—absolutely rejects the slightly less implausible alternative of a special regime for Northern Ireland, with checks on movement to and from the rest of the United Kingdom. That is unacceptable. I am afraid I do not think that the solution proposed by the noble Lord, Lord Empey, that Ireland should leave the EU's customs union in order to have a customs union with us, is legally feasible, and I do not think it is or is likely to become the policy of the Government in Dublin, although I am sure they will be grateful for the suggestion.

If one rules out the impossible, the unacceptable and the fanciful, the choice for the United Kingdom is really quite simple: either we are in customs union with the EU or we are not. That is the choice. If we are in, the border can be reasonably frictionless. If we are out, I am sorry, it cannot. We have to be realistic about that and fudging the choice by talking of association with the customs union only excites suspicion in Brussels. How comprehensive, binding or long-lasting would such an association be—could it be, given Dr Fox's remit and Mrs May's rhetoric? In Brussels it sounds like cherry-picking, free riding—having the cake and eating it. It also sounds, including to me, WTO non-compliant because unless EU concessions to us covered substantially all trade, which Dr Fox would hate because it would cramp his style, or the EU offered the same deal to all its other trading partners, which obviously it would not do, the WTO would not have it. It would have to be one or the other.

I cannot see the EU buying any of this anyway, even if we put it forward a lot more concretely, convincingly and committedly than in our little August note, and even if we could persuade Mr Varadkar to act as its advocate in the European Council. I have seen no evidence that we have even tried to convince Mr Varadkar. We do not appear to be talking to Mr Varadkar very much. Yesterday his Foreign Minister dismissed the paper on the border issue as unrealistic. Dr Varadkar gave his own view on the issue when he visited the Canadian-American border. His interests are the same as ours—he does not want a hard border either—but his policy deductions seem a bit more realistic. We and Northern Ireland need to listen to him, because the European Council will. At the moment when the European Council takes its decision on this, we will not be in the room but he will. At the moment when people ask, “Are we making sufficient progress on the Irish question?”, he will be the man who speaks first. If he says, “Yes, I think so”, then the odds are that they will agree but if he says, “Actually, we're not getting anywhere on the frontier because we've had no serious proposals from the Brits”, that is it—we are stuck.

This brings me to what I want to say about the Good Friday agreement.

**Viscount Younger of Leckie (Con):** My Lords, bearing in mind the late hour I wonder whether the noble Lord might conclude his remarks.

**Lord Kerr of Kinlochard:** I realised the hour was late. Nevertheless, I would like to say something quite serious about the Good Friday agreement.

I am alarmed. Although the Government's policy on Brexit and Ireland is no clearer than it was when the Select Committee's report was published, the situation has worsened in at least three ways. First, the strand one institutions are, as we know, in abeyance. I say to the noble Lord, Lord Howell, whom I am glad to see in his place, that whatever the reality is—and I do not know—the perception matters, and many in Northern Ireland will think it is more difficult for the Government to play the role of honest broker, cracking the present impasse, now that they have a political alliance at Westminster with the DUP. That may not be the case but it will be the perception of some. It is more difficult for the Government to appear to the nationalist community to be impartial. I put it no higher than that.

The second development was in the point so movingly put by the noble Baroness, Lady O'Loan.

**Viscount Younger of Leckie:** My Lords, the noble Lord should consider concluding his remarks pretty rapidly, as he is on 14 minutes. The guide time for speeches is eight minutes and the hour is late. I hope that the noble Lord will agree to that.

**Lord Kerr of Kinlochard:** I will bow to the House if it feels I should say no more. I want to make two more points but if the House thinks that I should not make them, I will sit down. Shall I carry on?

**Baroness O'Loan:** Yes.

**Lord McAvoy (Lab):** Sit down.

**Lord Kerr of Kinlochard:** Thank you.

Secondly, on the point made by the noble Baroness, Lady O'Loan, where is the voice of moderate constitutional nationalism now to be heard? Where is the voice of the majority of Northern Ireland, who voted to remain? With Stormont closed and the Assembly shut down, and nobody in the House of Commons—of course the root of the problem there is in Sinn Féin not taking its seats—this is a serious problem.

Thirdly, the strand two and strand three institutions seem to be mothballed. The North/South Ministerial Council, which brings Dublin in, has not met this calendar year; nor has the British-Irish Council, to which the noble Lord, Lord Cope, referred. It met three times last year but has not met this year at all. Lack of dialogue is very damaging. The peace process came about because successive Prime Ministers got extensively involved. I watched that happen from my perch in Brussels and then in Washington. I have yet to see a sign of the British Prime Minister's engagement with the Taoiseach and directly with the parties.

**Viscount Younger of Leckie:** My Lords, I apologise for having to get up a third time but I invite the noble Lord to conclude his remarks immediately. I hope that it is the mood of the House that he should do so.

**Lord Kerr of Kinlochard:** I shall say three sentences. What we need from the Government today is a clear policy which delivers a soft frontier across the island of Ireland, and that means a customs union. What we need to make sure that we do not let the peace process wither on the vine and the Good Friday agreement fall into complete abeyance is active, high-level UK Government political engagement, including with the Taoiseach, to protect the interests of the north and the interests we all share in active co-operation on a basis of equality across the Irish Sea.

9.50 pm

**Baroness Ludford (LD):** My Lords, I join other noble Lords in thanking the noble Lord, Lord Jay, for leading this important debate and in wishing the noble Lord, Lord Boswell, a speedy recovery. Like many people in Britain, I have a part-Irish heritage. I have not yet pursued an application for an Irish passport, to which I believe my mother's birth in Dublin in principle entitles me, but I have not ruled it out. Therefore, even for me, let alone for people in Ireland and Northern Ireland, there is a personal dimension to the sundering of our common membership of the EU. That common membership reflected at a political level the cultural and personal family links that we in these islands enjoy.

The Government's position paper rightly says that issues of identity go to the heart of divisions in Northern Ireland but, as the report points out, the loss of EU membership undermines the sense of an all-Ireland identity. It also undermines the enjoyment of multiple identities by many British and/or Irish and/or European people that many of us have been enabled to hold. As the noble Lord, Lord Bew, said, Brexit is indisputably disruptive for the island of Ireland. Indeed, it is arguably the most disruptive consequence of Brexit and, as other noble Lords have observed, it was shockingly neglected in the referendum. As the noble Lord, Lord Hannay, said, we are at best engaged in a damage limitation exercise. The advantage of shared EU engagement has been to allow a certain blurring of identities and allegiances in the supportive framework of a bigger European whole. It undoubtedly facilitated the Good Friday agreement, as the noble Lord, Lord Dubs, said, and it helped to achieve that delicate equilibrium, in the words of the noble Lord, Lord Jay. The noble Baroness, Lady O'Loan, spoke movingly of the achievement of peace and of the continuing divisions in Northern Ireland.

When I first went to work in Brussels 40 years ago this month as a stagiere in the jargon—an intern—I had a lot of Irish friends, and there was sometimes a slightly chippy, although cheerful, attitude to Brits. The ensuing decades have enabled the relationship to relax and mature so that, as the outgoing Irish ambassador Dan Mulhall said, it is the best ever. I was puzzled by the confirmation by the noble Lord, Lord Kilclooney, of something that my noble friend Lady Suttie mentioned:

[BARONESS LUDFORD]

that some people are seriously suggesting that Ireland should follow the UK in exiting the EU. I find that really quite arrogant as well as totally unrealistic. The Republic of Ireland no longer clings to the UK's coat-tails, and the idea suggested by the noble Lord, Lord Empey, of a customs union between the UK and Ireland suffers from the same delusion that Ireland wants to sever itself from the EU. As the noble Baroness, Lady Armstrong, said, the UK does itself no favours by failing to recognise and respect the integrity of the EU.

There are many cart-and-horse problems on the movement of people and goods. For instance, the Government want an agreement on protecting and upholding the common travel area to be concluded at an early stage, while wider questions on the future operation of UK border and immigration controls on EEA nationals can be addressed only as part of the future relationship, and indeed once UK immigration policy, on which the *Guardian* appears to have obtained a leaked document today, is settled—so which comes first, the cart or the horse? As the noble Lord, Lord Kerr, said, that issue is probably more soluble than the movement of goods.

The Government want to avoid a hard border, as we all do, but their dogmatic insistence on ruling out the customs union and the single market in the long term means that proposals that could charitably be described as innovative, less charitably as fantasy or pie in the sky, and by the Secretary of State himself—as we have had occasion to observe already today—as “blue-sky thinking” show no practical reality. As the noble Lord, Lord Hain, said, they were “breathhtakingly short” on detail. My noble friend Lady Suttie said there is a lot of “wishful thinking” and “crossed” fingers. We are no more enlightened, nine months after the report, on the concrete solution on the free movement of goods outside the customs union and the single market.

The Government expect, in regard to goods,

“waivers from security and safety declarations, and ensuring there is no requirement for product standards checks or intellectual property rights checks at the border”.

I have not worked out how that is meant to work outside a single market. The Government propose regulatory equivalence in the agri-food area and cite the Swiss example. But my understanding is that Switzerland simply adopts and applies the EU sanitary and phytosanitary regime. That would mean, presumably, having to keep up with it as it evolves, not statically adopting it on day one. Is that what the Government intend to do?

As the noble Lord, Lord Hannay, stressed, continued access to justice and home affairs co-operation, such as through the EU databases—the SIS II database particularly—and the ability to make use of the European arrest warrant, is vital to avoid undermining the fight against terrorism and crime. How will the Government avoid going back to government decisions as opposed to judicial decisions on extradition, which caused so many problems in the past? I think everyone has been glad it is judges who decide these things—it takes a lot of heat out of the situation. How are we going to manage in that area?

To conclude, all speakers in this debate—I am no exception—want to avoid rolling the clock back in Ireland. But the Government have so far not adequately supplied answers to how that can be done, certainly outside the customs union and the single market.

9.57 pm

**Lord Murphy of Torfaen (Lab):** My Lords, it has been a long evening, but an interesting one. Much accumulated wisdom has shone through the various individual contributions to this important debate on the excellent report which the Select Committee produced. Like other noble Lords, I send my best wishes to the noble Lord, Lord Boswell, for a speedy and quick recovery.

The noble Lord, Lord Jay, in opening the debate with a very good speech, my noble friends Lord Dubs and Lady Armstrong, and others all said that it was a great mistake that the business of Northern Ireland and of Ireland did not feature in the referendum campaign and debates. Would it have made a difference? I doubt it, certainly not in my area, where, unfortunately from my point of view, the constituents I used to represent voted to leave the EU. Nevertheless, it would have been wholesome had there been a proper debate which would have covered the issues which we are covering tonight.

I also have to agree with a number of noble Lords—including the noble Lords, Lord Carlile and Lexden, and again my noble friend Lady Armstrong—about the response which the committee had from the Government a few hours ago. It has taken nine months to produce this paper. To be perfectly honest, they would have been better off not producing it. If this took nine months, God only knows what is going to happen with the negotiation with the European Union generally, because frankly it is an empty and vacuous paper. I suppose in my ministerial lifetime I probably produced a few of these, but it is not really very good. Its intentions are okay, the observations are okay, but like the position papers, there are no solutions in there—nothing about possible options and solutions to the issues that we have been describing today. I am not suggesting for one second that there are easy solutions to any of the problems that we have discussed for the last five hours, but nevertheless to produce this so late really does the Government no good at all.

However, we are told, and the Minister will tell us later, that there has been some progress with regard to citizens' rights and the common travel area, and that is to be welcomed. The paper of course recognises the importance of Ireland to everyone concerned—the EU, the Republic and the UK. The noble Lord, Lord Bew, certainly acknowledged that the implications of Brexit for the Republic of Ireland are in themselves unique. No other country is going to be affected by Brexit more than the Republic. Trade between our two countries—over €1 billion a week between the two economies, with about half a million jobs involved—will inevitably be affected dramatically. The noble Lord, Lord Howell, made a very important point about goods from Ireland travelling through the UK, which again is something that I have not seen mentioned in many of these debates and discussions. The noble Lord,

Lord Bew, remarked that the effect upon the economy of the Republic could perhaps be the most significant result of Brexit.

Inevitably, the Good Friday agreement has been touched upon on a number of occasions over the last few hours. I believe that the agreement was tied up with our membership of Europe. George Mitchell, who, as your Lordships know, chaired the all-party talks, said only a few months ago that our joint EU membership with the Republic of Ireland was an important factor in the success of the agreement. The noble Lord, Lord Kilclooney was a significant figure in those talks. He is a committed European, and has been all his life. I recall that in May 1997 a contact in the *Belfast Telegraph* congratulated me on being made the first European Minister for Northern Ireland.

It is so important to understand that it is not necessarily the wording in the Good Friday agreement that is significant. The agreement between the two Governments said that they wished,

“to develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union”.

The fact that we were part of the same club, the same institution, meant that all the barriers between the two countries that had been there for 50 or 60 years disappeared, because we were meeting all the time as members of the EU. In part of this excellent report, the outgoing ambassador from Ireland indicated that there were maybe 25 meetings a day in Brussels in which British and Irish Ministers and officials interchanged all the time. From a human point of view, that has meant over the last 20 or 30 years that it has made a difference to the relations between ourselves and Ireland. That is why, in all three strands of the Good Friday agreement, there is reference to Europe. It is not that technical reference that matters, though; it is the fact that we were all members of the same institution. In fact, just after the new Assembly was established in 1998, as some noble Lords will remember, the entire Assembly went to Brussels to talk to European parliamentarians and Commissioners about the importance of Europe in Northern Ireland.

The border has been mentioned by, for example, my noble friends Lord Hain and Lord Dubs. From listening to the noble Lord, Lord Kerr, it seems pretty impossible to solve this one. We could make it easier—there are technological solutions that could doubtless be used, although having read them I personally find them very baffling—but that would not solve the problem. The only real way in which the problem can be solved is, obviously, for us to be in the same customs union. That is the only way in which it could work. I do not think any of us in this Chamber, or indeed in Britain and Ireland, want a return to the border that we all witnessed, particularly during the Troubles, but I just do not see any easy way out of this.

The report also emphasised the unique nature of the relationship between Britain, Ireland and Northern Ireland as it concerns Brexit. That uniqueness needs to be addressed. The noble Lord, Lord Trimble, addressed it at the beginning of the debate. The Irish Government are nervous about bilateral agreements between the British and Irish Governments. I can understand that,

because of the position they are in within the European Union, but it is unique. There is nowhere else on the whole continent of Europe where the situation of Ireland is replicated. Nowhere has had a peace process such as this. Fifty-six per cent of the population of Northern Ireland voted to remain, more than those who voted to leave in the rest of the United Kingdom. They will be ignored, despite the fact that the principle of consent is written into the Good Friday agreement.

It seems to me that the two Governments, which are, after all, the joint guarantors of the Good Friday agreement, have to work together in a special way. I know that to many unionists, the idea of special status is anathema, and I do not argue for that; I argue for special arrangements to be made. The Good Friday agreement was in any event a special arrangement, different from devolution in Wales and in Scotland. It was a special arrangement, so why can we not have a special arrangement between the British and Irish Governments within the structure of the European Union negotiations, to deal with these difficult issues? Perhaps we cannot, but it is something that we should consider.

Of course, none of this can happen properly unless the Northern Irish parties are engaged—it is a waste of time. Throughout this debate, many Members of the House referred to the fact that we are without an Executive. The noble Baroness, Lady O’Loan, referred to the fact that there is now no nationalist voice in the House of Commons. When I was a Member of that place for 30 years, there always was; there is no more. Some of the solutions to the issues of Brexit lie in the institutions which have developed in the past 20 years. The British-Irish Council has not met recently. There is the joint ministerial committee, which involves all the different Ministers from the different devolved Administrations. There is not a single Northern Ireland voice on any of those bodies. The British-Irish Intergovernmental Conference needs to be revitalised, and there is of course the British-Irish Parliamentary Assembly, an excellent institution which I once chaired, but ultimately, if these bodies do not have on them proper representatives of the Northern Ireland Executive and Assembly, we cannot properly hear the voice of the people of Northern Ireland. That is a distinct tragedy.

It is now up to the Government not simply to negotiate with the European Union about what happens in Ireland and Northern Ireland but to negotiate with the political parties in Northern Ireland to get a solution to the problems there which mean that we have no Executive. I understand that the Secretary of State has begun further talks in Belfast. Unless those talks are successful, it seems to me that the situation with regard to Brexit in Northern Ireland and the Republic of Ireland will worsen. Although those other issues which the political parties are dealing with in Northern Ireland—those of the past and of the Irish language—are very important, it seems to me that the issue of Brexit should dominate discussion politically in Northern Ireland at the moment. It is up to the Government, the Secretary of State, the Minister and the Prime Minister to go across the Irish Sea—as previous Prime Ministers have done—to ensure that these negotiations are successful, because the key to

[LORD MURPHY OF TORFAEN]

the success of Brexit in Ireland and Northern Ireland and to the future prosperity and stability of Northern Ireland lies in those negotiations in Belfast.

10.09 pm

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con):** My Lords, in addition to the best wishes expressed by other noble Lords, I wish the noble Lord, Lord Boswell, a very speedy recovery and return. We very much miss his wisdom and good humour. Like the noble Baroness, Lady Armstrong, I hope that he will be back very shortly.

I thank the noble Lord, Lord Jay, very much indeed for his presentation of the case expressed in a very thoughtful paper. I apologise to him and to others who have expressed very reasonable chastisement, including the noble Lords, Lord Murphy and Lord Carlile, the noble Baroness, Lady Armstrong, and my noble friend Lord Lexden. Part of the delay can be explained by the very difficult political situation—elections and so on—but that does not excuse it. I totally accept that and apologise on behalf of the Government.

I set out the Government's commitment to maintaining and strengthening the unique relationship between the United Kingdom and Ireland, which has been expressed by so many Peers in this debate. We are indissolubly tied by centuries of history, geography and trade—and, as many noble Lords have said, familial ties. The present very close relationship is something that the Government welcome, cherish and want to nurture. I did not recognise one or two descriptions of poor relations with the Irish Taoiseach, Leo Varadkar. That is not recognised by the Government; the Prime Minister has a very good working relationship with him, and they met very early after his appointment. I think that his first meeting with a leader from another member state was with the Prime Minister, and she has been very clear that she wants to see the relationship between the United Kingdom and Ireland deepen and strengthen after the United Kingdom leaves the European Union. Furthermore, the Secretary of State for Northern Ireland maintains a regular dialogue with the Irish Government, and particularly with the Minister for Foreign Affairs, Simon Coveney, as well as with Frances Fitzgerald, the deputy Prime Minister and the Minister for Justice and Equality. Of course, discussions are held at official level as well. There is a very warm relationship, and we share many objectives in this area. In particular, there is really not a cigarette paper between us on the desire for a frictionless, seamless, invisible border, which we have at the moment.

I turn to express some general thoughts about the Government's approach and the recent position paper on the Northern Ireland and Ireland situation, published on 16 August, to which many noble Lords have referred—some even in a complimentary way, expressing agreement with the objectives and four key priorities that we set out in the papers, upholding the Belfast agreement in all its parts. In that context, I welcome and acknowledge with thanks the massive role played by the noble Lord, Lord Hain—I thank him for his kind comments—and the noble Lord, Lord Murphy, in relation to their

ability to bring parties together in Northern Ireland in a lasting way. That has been tremendously important and remains very much valued in Northern Ireland.

We want to ensure protection for citizenship rights established under the Belfast agreement. Like the Government in Ireland, we stand resolutely behind the Belfast agreement in all its respects, without question. We want to maintain the common travel area and associated rights, and to avoid a hard border for the movement of goods. We want to preserve north-south and east-west co-operation, including on energy. I hope to say something on that later, if I have time.

That is the bedrock of where we are in relation to the Belfast agreement and it is central to ongoing good UK/Irish relations. This was referred to by many noble Lords during the debate, including my noble friend Lord Suri and the noble Lords, Lord Davies, Lord Carlile, Lord Hannay, Lord Cotter and Lord Dubs. I associate myself with some points made by the noble Lord, Lord Dubs, and the noble Baroness, Lady O'Loan, about dispensing with logic and looking at what can be done in a unique situation. The noble Lord, Lord Jay, also referred to the need for flexibility and imagination in bringing this to a happy conclusion. I make no apology for repeating that our constructive relationship with Ireland, also referred to by my noble friend Lord Lexden, is central to how we feel.

Many noble Lords who have particular experience of this, including the noble Lords, Lord Murphy, Lord Hain and Lord Whitty, spoke of our responsibility to get the political parties in Northern Ireland—which share the responsibility—back in a working Assembly. I agree that this has to be central. All possibilities as to how we can help to bring that about are looked at by the Government on a regular, daily basis. As the noble Lord, Lord Murphy, has said, the Secretary of State is at the moment heavily involved in seeking to bring together the parties in Northern Ireland. They must look to their responsibilities on this key issue, which is more lasting than some of the others which seem to be holding up progress. Getting all the political parties, not just the two major ones, involved is of overwhelming importance and is central to what we seek to do. My noble friends Lord Trimble and Lord Empey and the noble Lord, Lord Dubs, also referred to the intricate nature of these discussions and the importance attaching to them.

One or two noble Lords, perhaps including the noble Lord, Lord Murphy, referred to the progress made on citizenship rights. Noble Lords may be unaware that even Michel Barnier, who is not normally associated with loosely using the word “progress”, is on the record as saying that the Brexit discussions on the Northern Ireland/Ireland situation have been fruitful. It was always recognised that the discussion on customs arrangements would take longer. There are clearly more involved areas here and intricate discussions need to be gone into. That will take time, but we should not lose sight of the fact that all the parties involved—the other 27 EU member states; Ireland; the UK Government; and the political parties in Northern Ireland, which I regret do not currently have the voice that we need them to have—share the same goal. There is no material difference in what we want and that is a pretty good starting point to have. I agree

with the noble Earl, Lord Kinnoull, that we have a pragmatic approach here which is likely to succeed. We have a shared interest with Ireland and Northern Ireland. My noble friend Lord Howell made the point that 90% of goods going to Europe go through England and Wales. We have perhaps not acknowledged the role of Wales and we should: an awful lot goes through Holyhead and Fishguard. That is significant and important and will not be lost on the remaining member states of the EU. There is work to be done there and a positive, pragmatic approach, which the noble Lord, Lord Kilclooney, touched on, is important.

Many noble Lords referred to the importance of preserving the frictionless, invisible border that we have at the moment. The noble Lords, Lord Morrow and Lord Kilclooney, referred to the fact that they live very close to it, so they speak with great personal experience. Two things were brought home to me some years ago after the Belfast agreement when I was staying with friends in Enniskillen that influenced my approach to this issue, and I think this is shared by other government Ministers. One was when I said to the person with whom I was staying in Enniskillen, as we were going into a pub there—I probably put my foot straight in it—“Is this a Protestant pub or a Catholic pub?”. She turned to me, her eyes filled with tears and she said, “It doesn’t matter anymore”. That is what all of us seek to preserve in Northern Ireland. The other point that was brought home to me on the same visit was when we were going south from Enniskillen into County Cavan and I asked, “Have we crossed the border yet?”. She said, “I don’t know. We will only know when we get to a petrol filling station and see whether the prices are in euros or sterling”. That is something we have to preserve. It certainly influences my approach and, I think, that of the Government as we know just how important this is.

I do not seek to minimise the fact, and neither do the Government, that there is a lot more to be done on this issue. Nobody is saying that we are home and dry on it. We are not remotely home and dry on it, but we have made progress and that is not a bad position to be in.

I certainly have loads to learn in this role, but this point came home to me again in the summer when I was in Clogher, which for the uninitiated is a village in County Tyrone which has a massively important agricultural show in the summer. People come to the show from across the border, which almost does not exist, as well as from the local community. When you speak to them, you do not know initially whether they are from the south or the north. They say, “It is vital that we maintain the present position whereby people can come here from across the whole of Ireland”. I think that the noble Lord, Lord Bew, mentioned the importance of the agri-food sector. The noble Lords, Lord Empey and Lord Whitty, talked about how agriculture is central to this sector. The Government are very conscious that there are discussions to be had to ensure that we get this right and preserve the position as near as possible to how it is now. That is certainly not without challenges.

I will ensure that this very good debate is sent to the DExEU Ministers so that they can pick up the extremely effective points that have been made. That is important. I will write to noble Lords, picking up points that have

been made during the debate. Some specific issues were addressed to me which I will pick up in the circular letter. I will take away the points made by the noble Lords, Lord Hannay and Lord Carlile, so that they get a more meaningful response than I am able to give from the Dispatch Box this evening.

The overriding point to which I come back was made by the noble Lord, Lord Dubs—namely, that we need to set high ambitions. Logic does not necessarily determine this. It did not necessarily determine the success of the Belfast agreement. We need to be ambitious and seek to do what may now seem close to impossible. We need to ensure that we do two things. I can understand the very strong feelings of many noble Lords about Brexit—I campaigned strongly to remain, so I know where they are coming from on that—but we have to move this on and decide how we cope with the fact that we are coming out of the EU. How do we square the circle on this and seek to preserve, as closely as we possibly can, the border as it is now with all the ramifications that has for excellent north-south relations? Those relations have improved immeasurably in our lifetimes but certainly in the last 10 and 20 years: indeed, they are scarcely recognisable. We need to ensure that the economies of both the north and the south are protected as well as that of the rest of the UK. That is something—which, as I say, is a really good starting point—that all parties want to preserve.

If it has not come across that this is really central to the Government, let me restate that, as the Prime Minister early on did make it clear, this is central to what the Government want: not just to protect Northern Ireland and the United Kingdom, though that is important, but to protect southern Ireland. She recognised then that there was a particular interest in protecting Ireland, and we do owe responsibilities to our nearest neighbours and close allies, so that is something that is also desirable. The Irish border is not a pawn—I think that word was used, perhaps in the context of a question. It is vital to us; it is a prime priority. We do need to seek a bespoke deal of the sort that the noble Lord, Lord Dubs was hinting at, with flare, flexibility and imagination, as was touched on by the noble Lord, Lord Jay of Ewelme, in his excellent introduction.

I thank noble Lords for their participation in what, I think, has been a very good debate, not without emotion, which I fully understand. I undertake to write to pick up the points that I have not been able to cover in any detail in this response. I assure noble Lords that this debate, which has been an excellent one, will be passed to DExEU Ministers for their consideration.

**Lord Empey:** If my noble friend is writing to noble Lords, will he give an assurance that he will address the issue of who speaks for Northern Ireland, and what input there is going to be as we go through the Brexit negotiations? This is a matter which I raised, as did the noble Lord, Lord Hain, and a number of other noble Lords. Who is going to feed in that response, and will the Minister undertake to address that?

**Lord Bourne of Aberystwyth:** I am grateful to my noble friend for that. Without going through all the things that I have not touched on, and giving separate details of what I will set out in the letter, that is an important point and I recognised that he made it. In

[LORD BOURNE OF ABERYSTWYTH]  
short, the Prime Minister and the Secretary of State, in the vacuum that exists with the absence of an Assembly and power-sharing Executive, will be doing that. That does not detract from the fact that we are working hard to make sure that the power-sharing Executive are brought back as soon as possible. In the meantime, work is being done at official level and at ministerial level from the Westminster Government.

*10.27 pm*

**Lord Jay of Ewelme (CB):** My Lords, I too am grateful to all those who spoke in the debate, whatever their point of view, and to the Minister for his thoughtful reply.

We have heard some powerful and, indeed, moving speeches this afternoon. The debate has shown clearly the complexity, the sensitivity and the importance of the negotiations before us. I am sure your Lordships' European Union Committee will wish to continue to focus on the implications for Ireland, north and south, as the negotiations continue, drawing on the wisdom of all those, including in this House, with real expertise and knowledge.

*Motion agreed.*

*House adjourned at 10.28 pm.*