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PARLIAMENTARY DEBATES
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HOUSE OF LORDS
OFFICIAL REPORT

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

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

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

House of Lords

Tuesday 12 September 2017

2.30 pm

Prayers—read by the Lord Bishop of Birmingham.

Oaths and Affirmations

2.36 pm

Lord Kalms took the oath, and signed an undertaking to abide by the Code of Conduct.

Domestic Violence: Victims

Question

2.36 pm

Asked by ***Baroness Donaghy***

To ask Her Majesty's Government what measures they are taking to ensure that victims of domestic violence have access to safe and secure accommodation in both the short and long term.

The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con): My Lords, we have secured £100 million in the spending review for tackling violence against women and girls, to support victims of domestic abuse; £20 million was our 2016 to 2018 funding for accommodation-based support and service reform. We funded 76 projects, creating more bed spaces in safe accommodation. We fund routes to support to help victims access refuges, and we published priorities for domestic abuse services in November 2016 to set out what effective local service commissioning looks like.

Baroness Donaghy (Lab): I thank the Minister for his reply, but the Government are relying on cash-strapped local authorities to commission refuge services. Commissioning practices have led to 17% of specialist refuges in England being closed, and one in four referrals being turned away. That is probably the tip of the iceberg. Women's Aid says that the local housing allowance cap on housing benefit would force 67% of refuges to close. Does the Minister accept that the Government are failing in their duty to adopt a strategic approach to domestic violence?

Lord Bourne of Aberystwyth: No, my Lords. The noble Baroness will not be surprised to hear that I do not accept that. I am meeting Katie Ghose, the chief executive of Women's Aid, this afternoon, and I look forward to that meeting. We very much value working with our partners. As I have indicated, we are putting in more money—but it is not just about money. As the noble Baroness will know, we will shortly bring forward domestic abuse legislation, which will look at some of the deep-seated issues.

Baroness Gardner of Parkes (Con): Is the Minister aware of the sort of situation in which people are suffering? For example, I am dealing at the moment with the case of someone who has been threatened by her landlord—an illegal landlord—that if she is not out by Friday he will take action. This is all because she called in the police when some of her stuff was stolen; that had been going on for years while she lived there. But when someone phones the police, they say, "This is a civil matter and nothing to do with the police". Is it not time there was some particular central thing, rather than just the local authority list, which this woman was on for four years and was then told that anyone who had not been on the list for five years would be taken off it? This happened in Camden, which I think has good policies otherwise. What is the answer about the police, and the fact that they will not get involved when these dangerous situations arise?

Lord Bourne of Aberystwyth: My Lords, I am not aware of the particular situation the noble Baroness is referring to, but I know that we work closely with the police. They are a much-valued partner in relation to this. As I said, legislation will be forthcoming. We shall consult in the autumn on the principles of that legislation, and I think that it will be ground-breaking.

Lord Laming (CB): Does the Minister agree that when young children are in families in which there is domestic violence, it has a marked impact on their well-being? Will he ensure that when the police are called to a household where there is domestic violence and where children are involved, the children will be properly protected and reference will be made to the children's services?

Lord Bourne of Aberystwyth: My Lords, the noble Lord makes a very important point about the particular situation where children witness domestic abuse. This is something that will be very much referenced in the consultation, and we will be looking at, for example, possibly having more stringent penalties when children are subjected to the sort of situation referred to by the noble Lord. I will take the specific situation he referred to back because it is a very valuable point.

Baroness Barker (LD): My Lords, the domestic violence disclosure scheme was rolled out in 2014, and the first bit of evidence suggests that different police forces have been implementing it in very different ways. What are the Government doing to ensure that there is more consistency across all police forces in using that scheme?

Lord Bourne of Aberystwyth: The noble Baroness raises an interesting point about consistency, and she is absolutely right: we need to see consistency, although perhaps not uniformity. There will be certain situations that demand a different response. Again, that is something that we will be looking at in the consultation being carried out this autumn on the principles of the legislation.

Baroness Corston (Lab): My Lords, if what the noble Lord said in response to my noble friend Lady Donaghy is right, why did women's refuges, when surveyed, say that their biggest problem was the uncertainty around future funding cuts and present funding cuts? Can the Minister explain?

Lord Bourne of Aberystwyth: My Lords, I have spoken to many refuges and many providers of services in relation to domestic abuse. Any government department is always under pressure to spend more money, but this is far from being the only issue. I have seen some excellent refuges—very recently in Derbyshire and Hampshire. I have seen some excellent services and have discussed this issue, for example, recently in Liverpool. Of course it is an issue; government departments are always under pressure to spend more money. But this is far from being the only issue—or even the primary one.

Baroness Eaton (Con): My Lords, most of the comments so far have been about women's refuges. I wonder whether my noble friend can comment on some of the work being done where the perpetrator is removed and the home of the victim is made safe so that the children and the victim can continue with a more normal life than being removed to a refuge.

Lord Bourne of Aberystwyth: My Lords, my noble friend is absolutely right. Far from being the only response to domestic abuse in the shape of refuges, there are many other ways of tackling the issue of domestic abuse, and it is what is appropriate in a particular situation. We look at sanctuary schemes, for example, and outreach support for people who are still at home. There are diverse responses according to the different situations that we face.

Baroness Butler-Sloss (CB): My Lords, I hope that the Minister is aware that refuges are needed for men as well as women. A minority of men are at risk, and it is extremely difficult for them to find anywhere to go if they have to leave home. There is also a need for victims of forced marriage, many of whom are underage. They also are not really looked after at the moment.

Lord Bourne of Aberystwyth: My Lords, I thank the noble and learned Baroness for that point. She is right, of course; a significant minority of men are subjected to domestic violence and organisations support them, too. It is important that that message gets across—and that is something I shall mention to Katie Ghose this afternoon. The noble and learned Baroness also mentioned forced marriages. There are particular issues in the BME community and, again, we try to confront that. We have support from particular organisations that deal with BME domestic abuse: for example, Imkaan, and on my recent Liverpool visit I met Tracey Gore of the Steve Biko domestic abuse service—so we are over that as well.

Lord Foulkes of Cumnock (Lab): My noble friend Lady Donaghy tabled this Question two weeks ago. When did the Minister's office conveniently fix up for him to meet the chief executive of Women's Aid this afternoon?

Lord Bourne of Aberystwyth: My Lords, I have great respect for the noble Lord, but he will be disappointed to know that it has been in the calendar for far longer than that. I am sorry to have to tell him that. An earlier meeting was postponed because I could not make it. It was put back in the diary immediately to have the meeting today. I am very grateful for the question the noble Lord has just asked.

Mental and Physical Health: Insurance

Question

2.44 pm

Asked by ***Lord Blunkett***

To ask Her Majesty's Government what steps they are taking to ensure that mental and physical health conditions in the health insurance market are treated equally.

Lord Blunkett (Lab): My Lords, in asking this Question, I draw attention to the fact that I have a personal interest.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, it is for private health insurers to decide the cover they offer for different types of conditions. However, the Government are determined that insurers treat customers fairly. Under the requirements set out by the Financial Conduct Authority, consumers should be widely protected, including in the health insurance market. Furthermore, where a condition is classed as a disability, equalities legislation places specific obligations on insurers to prevent unlawful discrimination.

Lord Blunkett: My Lords, I am grateful to the Minister. This is a Question not about private health provision for individuals but about cover for primary care professionals indisposed by illness or accident, where alternative staffing is required. Does he agree that it is totally unacceptable for a policy to be enunciated or, as in this case, unilaterally altered so that requirements for the practice entail, where stress or mental health is concerned, a psychiatrist and/or a consultant psychologist to be engaged within the first eight weeks in relation to cover? It is not only impractical but impossible to fulfil such a requirement, it is totally against normal clinical practice, and it clearly engages discrimination against those suffering from stress or mental ill health. Will the Minister consider asking the brokers' association to issue a code of guidance so that insurers of this kind are not taken on in the future?

Lord Bates: I am very grateful to the noble Lord for his characteristic courtesy in giving me advance notice of the context of the Question he raised today. Although the situation he describes would obviously cause concern, I remind him, as I said, that the Financial Conduct Authority—the regulator of the insurance brokers and potentially of the insurance company—has certain duties under the FCA rules, but also under equalities legislation, to behave in an appropriate way in these matters. Where there are complaints, there is a route to take the matter up not only with the FCA—and I encourage the noble Lord to make these facts available to it—but with the financial ombudsman.

Baroness Meacher (CB): My Lords, some 20% of GPs suffer from depression at some time during their careers, yet GPs rarely take time off work because of course they know that their colleagues have to cover for them; there just does not seem to be any provision. Does the Minister accept that the growing number of GPs who are retiring early, or who are cutting the number of sessions they work, could be greatly eased if doctors' mental as well as physical ill health were properly dealt with? Despite the comments that he has already made, I ask him to take this very seriously in view of the incredible crisis in general practice because of the diminishing numbers of GP hours being worked.

Lord Bates: While we recognise the great service and the demands placed on GPs and their practices in this regard, most people who seek support, particularly for mental health issues, are not necessarily going through private healthcare providers but seeking it through the NHS and through GPs themselves. That is why it is important to put on record that the funding going into mental health services within the NHS is at record levels—it is now at £11.6 billion—and we have the *Five Year Forward View for Mental Health*, under which that figure will grow year on year. That is not to be at all complacent; we are very mindful and cognisant of those important strains and how they are responded to.

Lord Davies of Oldham (Lab): My Lords, I am just back from Bhutan, a constitutional monarchy that has been in existence for only nine years and needs some help with the development of democracy. However, the noble Lord, Lord Layard, went there a few years ago after his book *Happiness* and the king welcomed him on the basis that this was part of the constitution of Bhutan—one of their key issues is increasing support in the area of mental health. I hope that the Minister will convince us all that the Government give similar priority to mental health in this advanced country.

Lord Bates: First, welcome back. It is good to see the noble Lord in his place. I do not know how long he was away in Bhutan, but there has been quite a bit of movement in this area in recent years. The Health and Social Care Act, led through this House by the noble Earl, Lord Howe, played an important role. It introduced parity and this was a significant advance. The serious discussion in the media now about mental health issues—particularly among young people—and how we respond to them, and the resources which are moving into this, bode well. As to whether we will match the constitution of Bhutan, I can say that parity of esteem is now in the constitution of the NHS.

Baroness Jolly (LD): My Lords, is there any evidence that insurers are dealing with treatment for mental health differently from that for physical health? How many instances have there been, say over the last three years, of complaints about parity to the Financial Ombudsman Service and what were the outcomes?

Lord Bates: I do not have those specific figures to hand. The data on such experiences would be obtained through the Financial Conduct Authority. The Question asked by the noble Lord, Lord Blunkett, shows the importance of raising awareness of insurers' responsibility to treat their clients equally, as set out under the Equality Act 2010. If people do not feel they have been treated fairly, they should seek redress.

Gaming Machines

Question

2.51 pm

Asked by ***Lord Clement-Jones***

To ask Her Majesty's Government what progress they have made with their *Review of Gaming Machines and Social Responsibility Measures.*

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): My Lords, the review generated a lot of interest from the general public, as well as from a variety of interest groups, local authorities, trade bodies and industry. As the Minister for Sport and Civil Society made clear in the other place before the Recess, any announcement will not be made until October at the earliest.

Lord Clement-Jones (LD): My Lords, that is not an unexpected reply. Does the Minister accept that the NatCen report published last month provides clear evidence that 43% of FOBT users are either problem or at-risk gamblers? In that light, does he accept that it is high time that the Government end their internal debate, override the Treasury objections and act to reduce the committed stake and slow the speed of play on these dangerous machines without any further delay?

Lord Ashton of Hyde: My Lords, the noble Lord has misunderstood several things. First, the Chancellor has said publicly that he fully supports the work of the DCMS to ensure that the UK's gambling regime continues to balance the needs of vulnerable people, consumers who gamble responsibly and those who work in this sector. Of the 2.38 million who are at risk, 1.4 million are at low risk, and I completely understand the noble Lord's point about 430,000 problem gamblers being 430,000 too many. That is exactly why we are having the review, which we hope will be published soon. We will then be able to do something about it, depending on what the options are.

Lord Hughes of Woodside (Lab): In his Answer, the Minister referred to October. October of which year?

Lord Ashton of Hyde: Actually, I said not before October, and I meant 2017.

Baroness Walmsley (LD): My Lords, younger gamblers, aged 18 to 24, have a greater propensity to develop problem gambling and mental health issues. They do it mostly online, which is very quick and easy. What will the Government do to reduce the volume of gambling advertising, particularly at sporting events? In many cases, the tone of this advertising is very clearly aimed at young people.

Lord Ashton of Hyde: That is a valid point. Although there is a watershed protecting young children, it does not apply to live sporting events. Advertising—as well as other social responsibility issues—is included in the review, which will be published soon.

Baroness Manzoor (Con): My Lords, one has only to walk down the high street in some of the very poor areas in our cities to find that every other shop appears to be a gambling place. Will the Minister look at planning laws as part of the review, to ensure that some of these gambling shops, or casinos or whatever they are, can be limited in number?

Lord Ashton of Hyde: I am pleased to say that the review includes in its scope the numbers and locations of gaming machines within shops. But this is not a review of planning law—that was not included

Lord Collins of Highbury (Lab): My Lords, the fact is that this review is long overdue. The Minister has reassured the House on previous occasions about when it will be published. In the meantime, thousands of people suffering from problem gambling are left vulnerable. The Government need to act, and act promptly, on this matter. There must be a holistic approach. It is not just FOBTs, although they are a great problem, but the issue of how easy it is now to bet, particularly online. With mobile phones you can be anywhere in the world and bet a fortune. The Government must act.

Lord Ashton of Hyde: That is exactly why, within the review, the issues of social responsibility and advertising are covered, including online gambling. We agree that there are issues to be dealt with. That is why we have the review and why it will be published. But there must be an evidence-based approach. There will be a consultation to make sure that, for example, action cannot be subject to judicial review.

Lord Kirkhope of Harrogate (Con): My Lords, I speak as a former Home Office Minister responsible for these matters. In this area of gambling in particular and its effects on society, does my noble friend not agree that, however well he may be performing these responsibilities in his department, it might be a good idea for the Government to transfer them back to the Home Office, where proper regulation can be applied?

Lord Ashton of Hyde: I had not considered that issue, I must admit, but I do not think it is for me to comment.

Lord West of Spithead (Lab): My Lords, talking of gaming machines and games of chance, Lady Emma Hamilton enjoyed games of chance and 224 years ago yesterday she met Nelson—an affair of the heart. On Nelson's heart was engraved "lack of frigates". He had some 284 of them. Today, the Government are committed to maintaining only 19 escorts. Does the Minister think we should have a somewhat better aspiration, or it may be engraved on all our hearts?

Lord Ashton of Hyde: I am afraid I had not thought about that.

Lord Smith of Hindhead (Con): My Lords, will the Minister update the House about what the Government are doing to make online gambling safer for consumers, particularly in relation to operators based outside of the UK with British customers?

Lord Ashton of Hyde: Online gambling was brought under the regulatory regime in 2014. One of the main ways of dealing with this is to approach the payment providers. If an unlicensed gambling operator is not obeying the regulations, they will be prevented from operating with the payment providers. There is not much point in them operating if they cannot get paid.

Universities: Vice-Chancellors' Pay

Question

2.59 pm

Asked by ***Lord Storey***

To ask Her Majesty's Government whether they plan to bring forward proposals to cap university vice-chancellors' pay.

Viscount Younger of Leckie (Con): Universities are autonomous institutions and the Government have no wish to set a cap on vice-chancellors' pay. However, given the investment in our world-class higher education system by students and taxpayers, value for money must be of the utmost priority. Exceptional pay should be justified by exceptional performance, and that is why the Minister for Universities has announced that the Office for Students will act to ensure transparency and justification of senior staff pay.

Lord Storey (LD): I am grateful for the Minister's reply. The 2017 survey of vice-chancellors' pay showed the top eight vice-chancellors earing over £400,000. Similarly, the salaries of chief executives of multi-academy trusts can be counted in hundreds of thousands of pounds. Only today, an education report from the OECD says that teachers are worse off today than they were in 2005. Paraphrasing what the Prime Minister said—that industry fat cats were the unacceptable face of capitalism—does the Minister not consider that some vice-chancellors are the unacceptable face of education?

Viscount Younger of Leckie: There is a mood in the country, and there has been a lot of interest in the press, about vice-chancellors' pay. That is an obvious point to make. However, as a result of the work that we did on the Higher Education and Research Bill, particularly in this House, we are empowering the new Office for Students to act to ensure value for money in focusing on senior staff pay. This is happening in a number of ways. We are introducing a new condition of registration, requiring the governing bodies of approved fee cap providers to publish key figures so that in future the number of staff paid more than £100,000 per year will be published, broken down into pay bands of £5,000. Also, the names of staff paid more than

£150,000 per year, along with the justification for those salaries, will be produced by the OfS, and I think that that is a good step.

Lord Hunt of Kings Heath (Lab): My Lords, is the noble Viscount confident that that will be effective? My understanding is that just a handful of current vice-chancellors earn less than the £150,000 threshold that he has referred to. Can he confirm that the Government have had a similar scheme in operation for civil servants, whereby Her Majesty's Treasury has to give approval to any salary above a £150,000 threshold? The figures published by the Government in December 2016 show hundreds of civil servants earning above the threshold. Can the Minister really be certain that the measures announced will be effective?

Viscount Younger of Leckie: We believe that it is absolutely the right course to take. I say again that universities need to be good stewards of their resources: they need to manage in a responsible manner, there needs to be strong leadership, and it is important that vice-chancellors' pay is restrained. I understand that the average salary for 2015-16 was £234,000. Of course, the salary depends on the size of the institution and the responsibilities. At the end of the day, what counts is whether the pay is right for the responsibilities of the role and the size of the institution. That is one thing that has to be focused on by providers and universities.

Lord Cormack (Con): My Lords, if universities are indeed autonomous—we have in this country some of the finest in the world and we should be proud—surely we should be publishing not naming-and-shaming lists but, rather, lists of those to whom the whole community owes something for the excellence they demonstrate. I put it to my noble friend that it is not the job of government to meddle in these things.

Viscount Younger of Leckie: We do not believe that we are meddling; we are setting down a framework of how we are encouraging universities to operate. As this House will know, the Office for Students is being given extra remits to be able to set the framework to be sure that universities look at how they operate and how they manage a prudent operation.

Lord Morgan (Lab): My Lords, I speak as a former vice-chancellor. Is it not lamentable that many vice-chancellors use as their defence a kind of cult of personality, with themselves as global superstars? This is at a time when the pay of the average university lecturer has been very poor, to the point that many of them have difficulties with professional mobility and housing, and when the unit of resource per student is going down and many lecturers have been made redundant. Should we not collectively, irrespective of party in this House, condemn this kind of approach and remind our vice-chancellors that universities are a team effort and that they depend on morale and the inculcation of values in which everyone can believe?

Viscount Younger of Leckie: The noble Lord makes a number of good points. It is not just the level of the vice-chancellor's remuneration that is important—it is that of senior staff as well. It is important that the vice-chancellor's salary does not vastly exceed that of other staff. The noble Lord alluded to that. I go back to the responsibilities involved. For example, the University of Manchester's annual income for 2015-16 was £987 million. It runs more than 1,000 degree programmes. There are nearly 40,000 students and 12,000 staff. There are considerable responsibilities involved. I do not want to defend vice-chancellors, but our aim is to put enough pressure on these institutions to ensure that their house is in order—just as with a private company.

Baroness Garden of Frognal (LD): My Lords, I do not wish to disparage our great universities; they are a source of great pride to the nation. What is the Government's view on the pension packages of some vice-chancellors? Some of them have very large lump sums and very generous pension payments, as well as additional salary supplements—all presumably paid for out of public funds. Are the Government concerned about this in any way?

Viscount Younger of Leckie: There was a Question in the House the other day about pension schemes, particularly looking at concerns about the deficit. I hope that I addressed those concerns. We have to look at the package as a whole. We are focussing on vice-chancellors' pay, but the package includes a pension scheme. I am not going to comment as to whether it is generous or not, but it is a final salary scheme. It is important for universities to take account of the whole package for vice-chancellors, including not just the pension but perhaps also the housing that they are in. This has been in the press as well.

Finance Committee

Membership Motion

3.06 pm

Moved by ***The Senior Deputy Speaker***

That Lord Colgrain be appointed a member of the Select Committee in place of Lord Leigh of Hurley, resigned.

Motion agreed.

Update on Proposed Fox-Sky Merger Process

Statement

3.07 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House, I shall repeat a Statement made in the other place by my right honourable friend the Secretary of State for the Department for Digital, Culture, Media and Sport. The Statement is as follows:

[LORD KEEN OF ELIE]

"Mr Speaker, I am here to give an update on the proposed merger between 21st Century Fox and Sky plc, and my decision whether or not to refer the transaction for a full six-month investigation by the Competition and Markets Authority.

I should first remind the House that in my quasi-judicial role, I must come to a decision on the basis of relevant evidence, act independently in a process that is fair and impartial, and take my decision as promptly as is reasonably practicable. I am committed to transparency and openness in this process and have been clear that my decisions can only be influenced by fact, not opinions, and by the evidence, not who shouts the loudest.

Turning first to the question of media plurality, I can confirm that none of the representations received has persuaded me to change my position. Accordingly, I can confirm my intention to make a referral on the media plurality ground to the CMA.

Turning now to commitment to broadcasting standards, over the summer my officials reviewed the almost 43,000 representations received. A significant majority were campaign-inspired, arguing against the merger going ahead, but generally without providing new or further evidence or commenting on Ofcom's approach.

Overall, around 30 of the 43,000 representations were substantive, raising potentially new evidence or commenting on Ofcom's approach. Almost all were related to the question of commitment to broadcasting standards. In light of these representations I asked Ofcom to provide further advice, and I put on record my gratitude for Ofcom's efforts in responding to the questions raised.

I am today publishing the exchanges between my department and Ofcom. In these I sought clarification on the threshold Ofcom applied to its consideration of the commitment to broadcasting standards ground; the consideration made of broadcasting compliance; and the consideration made of corporate governance issues. I also asked Ofcom to consider whether any of the new, substantive representations I received affected its assessment.

I have taken careful account of all relevant representations and Ofcom's advice and, as required by the legislation, have today written to the parties to inform them that I am now minded to refer the merger to the CMA on the grounds of genuine commitment to broadcasting standards.

I will now set out the technical reasons for this decision. Questions were raised about the threshold for referral. The legal threshold for a reference to the CMA is low. I have the power to make a reference if I believe there is a risk—which is not purely fanciful—that the merger might operate against the specified public interests.

In its original report, Ofcom stated that,

"we consider that there are no broadcasting standards concerns that may justify a reference".

At the time Ofcom appeared to be unequivocal. Following the additional representations, Ofcom has further clarified that,

"while we consider there are non-fanciful concerns, we do not consider that these are such as may justify a reference in relation to the broadcast standards public interest consideration".

The existence of non-fanciful concerns means that, as a matter of law, the threshold for a reference on the broadcasting standards ground is met. In light of all representations and Ofcom's additional advice, I believe these are sufficient to warrant the exercise of my discretion to refer.

The first concern was raised in Ofcom's public interest report: that Fox did not have adequate compliance procedures in place for the broadcast of Fox News in the UK and only took action to improve its approach to compliance after Ofcom expressed concerns. Ofcom has now confirmed it considers this to raise non-fanciful concerns but which are not sufficiently serious to warrant referral. I consider that these non-fanciful concerns do warrant further consideration. The fact that Fox belatedly established such procedures does not ease my concerns, nor does Fox's compliance history.

Ofcom was reassured by the existence of the compliance regime which provides licensees with an incentive to comply. However, it is clear to me that Parliament intended the scrutiny of whether an acquiring party has a "genuine commitment" to attaining broadcasting standards objectives to happen before a merger takes place.

Third parties also raised concerns about what they termed the "Foxification" of Fox-owned news outlets internationally. On the evidence before me I am not able to conclude that this raises non-fanciful concerns. However, I consider it important that entities which adopt controversial or partisan approaches to news and current affairs in other jurisdictions should, at the same time, have a genuine commitment to broadcasting standards here. These are matters the CMA may wish to consider in the event of a referral.

Turning to the question of corporate governance failures, Ofcom states in its latest correspondence that these raise non-fanciful concerns in respect of the broadcasting standards ground. However, it again concludes that these concerns do not warrant a reference. I agree that corporate governance issues at Fox raise non-fanciful concerns, but in my view it would be appropriate for these concerns to be considered further by the CMA.

I agree with the view that, in this context, my proper concern is whether Fox will have a genuine commitment to attaining broadcasting standards objectives. However, I am not confident that weaknesses in Fox's corporate governance arrangements are incapable of affecting compliance in the broadcasting standards context. I have outstanding non-fanciful concerns about these matters and I am of the view that they should be further considered by the CMA.

Before I come to a final decision I am required, under the Enterprise Act 2002, to allow the parties to make representations on my proposed decision, and this is the reason my decision at this stage remains a "minded to" one. I have given the parties 10 working days to respond. Following receipt of any representations

from the parties, I will aim to come to my final decision in relation to both grounds as promptly as I can.

I would remind the House that should I decide to refer, on one or both grounds, the merger will be subject to a full and detailed investigation by the CMA over a six-month period. Such a referral does not signal the outcome of that investigation. Given the quasi-judicial nature of this matter, my decision cannot be guided by the parliamentary timetable. If I come to my decision during recess I will write, as I have previously, and return to this House at the earliest possible opportunity to provide an update. I commend this Statement to the House".

My Lords, that concludes the Statement.

Lord Collins of Highbury (Lab): My Lords, I welcome the Statement that the Secretary of State is minded to refer the bid to the CMA on broadcasting standards grounds as well as those of media plurality. In its first report, Ofcom said there were no broadcasting standards concerned that may justify a reference. It has now admitted that there are "non-fanciful" concerns. On that basis, the Secretary of State had to refer the bid, she has done so, and we on these Benches certainly welcome that.

The Murdochs have a long history of regulatory non-compliance and corporate governance failure, at both 21st Century Fox and News Corporation. Just last week, News Group settled in 17 cases relating to allegations of criminality at the *Sun*, ensuring that James Murdoch will not have to appear in court later this year.

The Secretary of State has done her job and now, as the noble and learned Lord, Lord Keen, said, the CMA must do its job. However, we need to be assured that it will be a comprehensive look at the corporate governance issues. The Secretary of State has said—and the noble and learned Lord repeated this—that the issue is a matter of evidence. One way to gather that properly, and to inform the CMA, would be to commence the second part of the Leveson inquiry. I hope the noble and learned Lord will be able to reassure the House on that matter.

When previous Statements have been made to the House on this issue, I have sought reassurance from the noble and learned Lord in relation to data. How data are mined, used and abused in terms of media plurality is particularly an issue in relation to Fox News. I would be grateful if the noble and learned Lord could repeat what he said to us before—that the issues of,

"data-scraping or data accumulation … are matters that the Competition and Markets Authority will take into account in arriving at any decision".—[*Official Report*, 20/7/17; col. 1749.]

I hope the noble and learned Lord can reassure us on that.

Lord McNally (LD): My Lords, like the noble Lord, Lord Collins, I welcome this Statement and I am grateful to the Minister and the Secretary of State for the thorough way that she has kept those of us interested briefed as she has come to these decisions. I also welcome the revised advice from Ofcom. I was part of the committee that created Ofcom and have always been proud of the way it has developed as a regulator. I have to say that its first advice on these matters came close to being equivalent to what the Premiership seems to think of as fit and proper to run a football club. The revised advice gives some credibility back to Ofcom in these matters, and it should be grateful to the Secretary of State.

I am a little worried about the sudden appearance of the term, "non-fanciful". I am not sure that the Minister, with his long and distinguished legal career, would be able to tell me how "non-fanciful" is weighed in matters of judgment. As the noble Lord, Lord Collins, asked, would worries about data mining and abuse of data be dismissed as "fanciful"? When we bandy terms such as non-fanciful about, we should remember that most of the accusations made about News International in the past 10 years were initially dismissed as fanciful—as being made up by enemies of the Murdochs—but then turned out to be true. I am not so sure that "fanciful" and "non-fanciful" should be used in the work ahead.

In taking its decisions, the review should look at the threat to the UK media industry. Our media in all their aspects are among the least protected of national media from predatory attack. As the value of the pound falls, there is good reason for being careful about the message that we send out about our determination to defend the integrity of our media.

I associate myself also with the call made by the noble Lord, Lord Collins, for the second part of Leveson to go ahead.

As a Fox subscriber, I was interested to learn that Sky thought that Fox News was so little to the taste of the British viewer that it has taken it off its platform, whereas it has left on it the Iranian and Russian news channels.

Lord Keen of Elie: My Lords, I begin by responding to the point raised by the noble Lord, Lord McNally, on what is "fanciful" or not, because it goes to the heart of the decision-making process addressed by the Secretary of State. It is a term with a legal basis that is linked to the statutory test for a phase 2 referral in public interest cases. I mention in passing the Court of Appeal decision in the case of the Office of Fair Trading v IBA Health. I shall not elaborate on the dicta in that decision, save to mention that there is a legal basis.

The Secretary of State must believe that the merger operates, or may be expected to operate, against the public interest. In her coming to her view that the evidence meets the test of "non-fanciful", it should be noticed that that is a relatively low threshold. It is not necessary that the Secretary of State should be satisfied on the balance of probabilities or beyond reasonable doubt; the belief must be reasonably and objectively justified by the facts. In other words, there must be an evidential basis for the Secretary of State's concern, but the concern itself does not need to be proven. That is essentially the approach that underpins the Secretary of State's decision-making process here.

On broadcasting standards, I emphasise to the noble Lord, Lord Collins, that we are dealing at this stage with the Secretary of State's "minded to" decision. It

[Lord Keen of Elie]
is not a final decision. There is now a 10-day process, pursuant to Section 104 of the Act, whereby the parties can respond and make submissions before any final decision is arrived at.

As regards evidence and data in the context of media plurality, it is premature for me to elaborate on what has already been said on these matters because a final decision has not been made on the second ground of broadcasting standards. If and when such a decision is made, there will in any event be a reference to the CMA, and it will be for the CMA to discharge its statutory functions. It would not be appropriate for me at this stage to anticipate how the CMA should go about its own statutory task. That would be to intrude into its territory. With all due respect, I hope the noble Lord accepts that it would not be appropriate for us to tread on that lawn, as it were.

On the question of Leveson 2, we have clearly progressed a long way since the first part of the Leveson inquiry was set up over six years ago. We have witnessed the completion of three detailed police investigations, extensive reforms to practices involving the police and some significant changes to press regulation. We have put this matter out for consultation and are considering the responses to it. We will publish a response in due course.

3.26 pm

Lord Soley (Lab): Leveson 2 is very important to many of us, but I ask the noble and learned Lord, Lord Keen, to be clear about public interest broadcasting. Fanciful journalism has troubled me for many years; good journalism checks its sources and stories, and at a time when the press is in decline and the popular culture of Facebook and so on is rising, it becomes more important for us to have a reliable source of news. We get that in public service broadcasting. That must be our first priority, and I ask the noble and learned Lord to do everything in his power to protect and enhance that.

Lord Keen of Elie: We are determined to deal with the difficult issue of fake news, as it is sometimes termed, and to maintain broadcasting standards, particularly in news. I would not suggest that those standards are maintained only in public broadcasting; those standards are generally maintained. I accept we must be vigilant because of the dangers that have emanated from the development of false news, not only in immediate broadcasting, but online as well.

Lord Puttnam (Lab): I welcome this Statement. I ask the noble and learned Lord, Lord Keen, to convey the thanks of many people in this House for what I consider to be one of the most principled Statements I have ever heard in the 20 years I have been here. This is a very difficult issue. It could not have been easy for the Secretary of State and, irrespective of the outcome of the CMA inquiry, I think she has done herself and the prospect of a proper democracy in this country a great favour.

Lord Keen of Elie: I am obliged to the noble Lord, Lord Puttnam, for his observations. That message will be conveyed to the Secretary of State. I would add only this: no final decision has yet been made by the Secretary of State on broadcasting standards. We must bear that in mind.

Lord Inglewood (Con): My Lords, will my noble and learned friend confirm that, with the facts as they are in front of this Secretary of State, it is not open to her—and would not be open to anybody else who might be Secretary of State—to have come to any different conclusion from the one that has been reached?

Lord Keen of Elie: The Secretary of State is exercising her independent judgment on the basis of the evidence placed before her.

Baroness Jay of Paddington (Lab): There is a very important sentence in the Statement, which says:

"I consider it important that entities which adopt controversial or partisan approaches to news and current affairs in other jurisdictions should, at the same time, have a genuine commitment to broadcasting standards here".

While recognising that this is a "minded to" Statement, and following the questions of my noble friend Lord Soley, what kind of standards test would the Government expect the CMA to ask for with respect to that undertaking?

Lord Keen of Elie: I am obliged to the observations of the noble Baroness, Lady Jay. Again, it would not be appropriate for me at this time to intrude on the CMA's territory and the manner in which it will approach its determination of broadcasting standards, in the event that that matter is referred to the CMA, following the Secretary of State's "minded to" decision. As the statement made clear, a broadcaster's conduct without the United Kingdom may raise questions as to the standards it is apparently willing to adhere to if and when it comes to broadcast within the United Kingdom.

UK and EU Relations

Motion to Take Note

3.30 pm

Moved by ***Baroness Anelay of St Johns***

That this House takes note of the position papers and future partnership papers published by Her Majesty's Government on the United Kingdom's future relationship with the European Union.

The Minister of State, Department for Exiting the European Union (Baroness Anelay of St Johns) (Con): My Lords, the Motion standing in my name asks the House to take note of the papers published by Her Majesty's Government during the summer on the UK's position in the negotiating rounds and our future relationship with the European Union. These papers were developed to support the UK's negotiating position and delivered transparency to Parliament and the public as we enter into our discussions with the EU.

Over the summer, we published seven position papers unpacking a range of withdrawal issues, and six future partnership papers that set out the Government's vision for the future partnership with the EU. It is on these 13 papers that I will focus my attention and that of the House today. However, note that these papers are in addition to five technical notes on key negotiation issues and two White Papers.

These papers reflect the Government's constructive engagement with external parties and the extensive work undertaken across government since the referendum just over a year ago. As my right honourable friend the Secretary of State for Exiting the European Union and I outlined last week in the Statement, it is fair to say that we have seen concrete progress. I use this opportunity to outline how the approach set out in each position paper published to date helped secure that progress. My focus today, and my hope and expectation, is for this to be the beginning of an opportunity for Peers to feed back their views to the Government on the papers, and this being a continuing conversation—one in which I listen rather than speak. I know I will speak today but I would like to listen more.

First, on the paper on safeguarding the position of EU citizens in the UK and of UK nationals in the EU, our June policy paper set out our position on EU citizens' rights in some detail. It is already clear that there is much common ground between the UK and EU positions and we are confident that we can reach agreement on this important issue early in negotiations. Indeed, we have achieved a great deal so far. As the joint technical paper we first published in July demonstrates, there is significant common ground between the EU's and the UK's respective positions, including on matters relating to immigration and residence, social security, healthcare and the mutual recognition of qualifications. I hope that those seeking more information on this issue will review these technical notes, which provide a detailed analysis of the work carried out so far. Looking ahead, we made concrete progress in preparing the ground for the September negotiations, where we expect to move closer to a reciprocal deal. However, as I set out last week, in a number of areas the UK's position goes further than that of the EU as we seek to provide swift reassurance to the 4 million EU and UK citizens concerned.

Turning to privileges and immunities, we set out our position in July on the framework of privileges and immunities that allows for the smooth conduct of relations between the EU and the UK. Following the August round, I am pleased to say that we are close to agreement on our approach to post-exit privileges and immunities.

Also in July, we set out the key principles for our future co-operation on nuclear materials and safeguards. This includes ensuring a smooth transition to a UK nuclear safeguards regime, collaboration on research and development, minimising barriers to civil nuclear trade and providing clarity and certainty. As part of our orderly withdrawal, and to provide certainty to industry and reassurance to all, the UK welcomes early discussion on issues relating to nuclear safeguards arrangements and nuclear materials in the UK. I appreciate that there was much interest in this House and debate on that matter just before we rose in July. In the August round of negotiations, we reiterated a strong mutual interest in ensuring that the UK and Euratom community continue to work closely together in the future as part of a comprehensive new partnership.

July also saw the publication of our position paper, *Ongoing Union Judicial and Administrative Proceedings*, which sets out how the UK will seek to ensure a smooth and orderly transition to a position where the CJEU no longer has jurisdiction in this country. In the August round, the UK and the EU 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 whilst these pending cases are being heard.

At the time of withdrawal, administrative procedures will also be undertaken under EU regulations which concern businesses and individuals in the UK, and reaching agreement on the best approach for these is part of securing a smooth and orderly withdrawal from the EU.

I know that the position paper we published in August on Northern Ireland and Ireland was a matter of much interest in this House. Our paper outlines the UK's position on how to address the unique circumstances of Northern Ireland and Ireland. As the Prime Minister made clear in her Article 50 letter, preserving the unique relationship between the UK and Ireland and protecting the peace process in Northern Ireland is an absolute priority for the United Kingdom. The paper directly addresses separation issues to inform the current negotiations, but it also proposes high-level principles and criteria which are inextricably linked to the future relationship between the UK and the EU, and highlights the importance of moving to discussions on the future relationship as quickly as possible. In August, the negotiation co-ordinators had detailed discussions on the basis of this paper. We believe there is a high degree of convergence on key issues, and we agreed to work up shared principles on the common travel area. We also carried out further technical work on cross-border co-operation under the Belfast, otherwise known as the Good Friday, agreement.

We are also seeking a strong regime to protect the confidentiality of information and access to official documents produced or exchanged while the UK was a member state. Our position paper on this was published on 21 August. It shows that we are getting on with negotiations by directly responding to the EU's paper, *Issues relating to the Functioning of the Union Institutions, Agencies and Bodies.* In the August round, we agreed general principles on a mutual approach to professional confidentiality and access to official documents exchanged or obtained prior to exit.

I appreciate that there has been not only interest in but reports by this House on continuity in the availability of goods for the EU and the UK. Our position paper was published in August. Moving to continuity in the availability of goods for the EU and the UK is vital. Ultimately, we want a deep and special partnership which allows the freest and most frictionless possible trade in goods. Our paper on this subject builds on a range of precedents for removing barriers to trade,

[Baroness Anelay of St Johns]
together with the options set out for customs. In the negotiations we emphasised that the principles outlined in this paper seek to minimise uncertainty and disruption for business and consumers in the UK and the EU. However, our intention is that many of these issues will become irrelevant as we quickly move on to secure agreement about a deep and special partnership that includes free and frictionless trade in goods. For this reason, the UK sees this negotiation on the status of goods on the market before and after our withdrawal as an opportunity to provide certainty, but also recognise our common regulatory systems and ambition for co-operation in the future.

Looking to the future, we have, alongside negotiations, also published a number of papers over the summer which set out our thinking on our future partnership with the EU. These papers are different from our position papers, which relate specifically to negotiations on the withdrawal agreement itself. They offer pragmatic and innovative solutions to issues related to our withdrawal, as well as the future deep and special partnership we want with the European Union. From the start, we have argued that talks around our withdrawal cannot in practice be treated in isolation from the future partnership we wish to achieve.

The future partnership papers do not aim to dictate a single approach but rather to set out considered options for us to work on in partnership with the EU. One such paper was published on 15 August with regard to future customs arrangements, setting out our objectives and our proposals to achieve them. In assessing the options for the UK's future outside the EU customs union, the Government will be guided by what delivers the greatest economic advantage to the UK and by three strategic objectives: ensuring that UK-EU trade is as frictionless as possible; avoiding a hard border between Ireland and Northern Ireland; and establishing an independent international trade policy.

Over the last year, the Government have conducted detailed and extensive work on all the options for a future customs relationship with the EU. Our paper sets out the two approaches that most commonly meet our objectives. Under either option, it will take time for the UK and our European neighbours to put the new system in place, and for businesses to adapt to new arrangements. The Government therefore wish to explore with the EU a model for an interim implementation period. The Commission published its own paper on customs last week, but that paper is focused narrowly on separation issues that would apply in a context where no agreement at all had been reached. We are more positive and forward-looking in the way we are approaching the matter. It is imperative that both sides consider our future arrangements together to ensure that there is as little disruption as possible to UK and European businesses, service providers and consumers.

The paper that we published on civil judicial co-operation in late August makes it clear that it is in the interests of the UK and the EU that there continues to be an effective framework for resolving cross-border legal disputes after we leave. This is to provide confidence and certainty, and minimise delay and expense for families, businesses and individuals, ensuring they can continue to settle cross-border disputes efficiently and effectively in the future. For businesses engaged in international trade, it is crucial to have confidence in, and respect for, choices made about which country's courts will hear a case in the event of a dispute, and which country's law will apply to resolve that dispute.

Our paper on enforcement and dispute resolution, published at the end of August, reinforces the Government's message that after our withdrawal we will take back control of our laws and bring an end to the direct jurisdiction of the Court of Justice of the European Union in the United Kingdom. This paper states that it is in the interests of both parties that the rights and obligations agreed upon between us can be relied upon and enforced by individuals and businesses, and that where disputes arise between the UK and the EU on the application or interpretation of these obligations we can resolve them efficiently and effectively. We are clear that we do not consider that the Court of Justice of the EU should have direct jurisdiction for any of the UK-EU agreements that comprise the deep and special partnership. This is entirely in line with the many precedents which demonstrate that it is normal for the EU to reach agreements with third countries that provide for a close co-operative relationship, without the CJEU having direct jurisdiction over those third countries.

I turn to a matter of current issue, and certainly of great interest, under the presidency of the Council by Estonia: data protection. Our paper outlines the United Kingdom's position on ensuring the continued protection and exchange of personal data between the UK and the EU. The UK recognises the need for, and indeed is one of the leading drivers of, high data protection standards across the globe. In an ever more connected world, we cannot expect data flows to remain confined within national borders. Individuals should have confidence that their personal data are being appropriately protected. After leaving the EU, the UK will continue to play a leading global role in the development and promotion of appropriate data protection standards and cross-border data flows. It is essential that we agree a UK-EU relationship on data that maintains the free flow of personal data between the UK and the EU and offers sufficient stability and confidence for businesses, public authorities and individuals.

More recently—last week—our paper on science and innovation explored how the UK can continue to collaborate with European partners on major science, research and technology initiatives. The UK has a long history of collaborating with European partners on ground-breaking research, from the development of a new clinical trials approach for the Ebola vaccine to cleaner energy and space exploration. This Government want the UK to maintain its world-leading position on science and innovation. We have four of the world's top 10 universities, a world-class intellectual property regime and more Nobel laureates than any country apart from the US. As part of the new, deep and special relationship, the UK will seek an ambitious science and innovation agreement with the EU that ensures that the valuable research links between us can continue to grow.

Today our most recent paper was published, which sets out our vision for future UK-EU co-operation on foreign policy, defence, security and development. In doing so, it reinforces the Prime Minister's message that the UK will continue to play a leading role as a global foreign policy and security actor. With challenges to our common security becoming more serious, our response cannot be to co-operate with one another less, but to work together more. This approach reflects our shared history, the practical benefits of our co-operation and the UK's ongoing genuine commitment to the promotion of European interests and values across the world. The UK will also continue to use its partnerships and substantial international development budget to increase the impact of global development or to tackle country-specific problems. Noble Lords should have no doubt as to the commitment of this country to the security of Europe as a whole. The closing paragraph of today's report makes clear our unconditional support for that.

Our future partnership papers describe a vision that will inform the current negotiations on separation issues where they relate to questions that can be settled only in light of the future partnership. Indeed, the early rounds of the negotiations have already demonstrated that many withdrawal questions and future partnership issues are inextricably linked. As the negotiations proceed in the autumn, the case for a more detailed discussion on that future partnership grows in importance. The position papers and those on the future partnership, taken together, provide the essential path towards building a new relationship to promote our shared interests and values—a relationship that will enable the continued success of all the peoples of the UK and the European Union, our closest neighbours and friends. I beg to move.

3.48 pm

Baroness Smith of Basildon (Lab): My Lords, I begin by thanking the Government for ensuring that we had some time for today's debate. The Government are responsible for the business of your Lordships' House, so we appreciate the efforts of the Chief Whip and the noble Baroness to engage the House. I have to say, I am not entirely sure that I agree with her when she said last week that the Government were being generous in allowing time for this debate but I think that we are agreed it is essential.

With the talks and the negotiations well under way, it is clear that these position papers are really important documents. It would not normally be acceptable to publish so many key papers when Parliament is in recess, but we understand the time constraints. But it really is not satisfactory that today's debate has to cover so many different issues across those papers. I listened carefully to the noble Baroness refer to the 13 papers and five technical documents, and with the best will in the world, she obviously would not go into detail on all of them. Our debate today may be a little disjointed as colleagues wish to talk about different papers and different issues.

I welcomed our brief conversation earlier about the better sharing of information and improving the opportunities for effective engagement, and the comments that the noble Baroness made about ensuring that she listens to what is said. However, our concerns about that lack of engagement have been reinforced by the EU withdrawal Bill. That will come to your Lordships' House in due course, but the very serious anxieties about engagement and the sovereignty of Parliament have been clearly set out by my colleagues in the other place. The Bill perpetuates the notion that the Government see Parliament as an irritant to which they occasionally need to pay homage and that Parliament is interested only in tying the Government's hands in negotiations.

We have had little reporting back from the rounds of negotiations from the Secretary of State, and the Lords European Union Committee is continuing to find it difficult to get him to appear. The noble Baroness knows that your Lordships' House has been the primary body in Parliament to scrutinise EU legislation, and many noble Lords have significant expertise that could be, and will be, helpful to the Government. Let us be clear that it is only through discussion and scrutiny that we can get the best out of these negotiations. The Secretary of State should therefore view our committees and your Lordships' House as useful resources, and not things to be endured when he has the time.

We on these Benches appreciate that this is a difficult process but we are concerned about the slow rate of progress in the negotiations so far. By now, we would expect there to be emerging consensus on key issues, allowing formal agreements to be reached when we embark on the final round of phase 1 talks in October. Clearly it is not straightforward in some areas, not least Northern Ireland, but I know I speak for many in your Lordships' House when I say it feels like we are failing to make substantial progress.

We welcome the fact that there are issues where both parties are moving towards an agreement and accept the need for both sides to reach a detailed understanding of the other's position. But just how long do the Government expect this exploratory phase to last? The clock is ticking, and we need to move quickly to detailed negotiation and then to agreement. We seem a long way from that, other than on a small number of important but second-order issues. I hope that when the noble Baroness responds, something can be said about the very real worries that the Government's position in negotiations is being hampered by that irrational doggedness in rejecting a European court that would arbitrate in disputes between the EU and UK.

Divorces are never easy, especially after a long marriage and when both parties want to remain on friendly terms afterwards, and especially when there are children involved. It was inevitable that as the referendum reduced a complex issue to a simple yes or no on the ballot paper, the arguments were similarly reduced. It was soon accepted that the £350 million a week for the NHS just was not going to happen. But it was easy to understand as a slogan—certainly much easier than extolling the virtues of regulatory alignment, nuclear safety, trade agreements and policy, for example. But promises that Brexit would be easy and straightforward were far more deceptive.

Let us look at some examples. Michael Gove boldly declared:

> "The day after we vote … we hold all the cards and we can choose the path we want".

[Baroness Smith of Basildon]

Boris Johnson, assured us all that,

"there will continue to be free trade, and access to the single market".

Liam Fox, now the International Trade Secretary, told us that a deal with the EU would be,

"one of the easiest in human history".

Even David Davis told us:

"Be under no doubt: we can do deals with our trading partners, and we can do them quickly".

If only. I really wish this were so: I wish they had got it right and I wish that was the position.

Unfortunately, Ministers now need to understand that we do not hold all the cards. Brave utterances about what we want are misleading, and they look foolish when they change their minds so often. The Foreign Secretary, having told the EU to "go whistle" if it wanted the UK to pay a divorce bill, within weeks had to eat his words and confirm that the UK will indeed meet its financial obligations. Pretending that such complex negotiations are easy is doomed to failure—and none of us wants to even contemplate that. The Prime Minister's mantra that no deal is better than a bad deal is irresponsible and dangerous. Neither outcome would be acceptable, and neither outcome is what Ministers promised us.

A good deal for the UK has to be worked out. We need wise negotiators, and understanding and compromises on both sides. Michel Barnier has praised the hard work and dedication of the UK negotiating team, and I join him in that. Our negotiators are doing a difficult job under difficult circumstances, and in some cases are operating without any clear direction. This is complex and complicated. That is why we welcome the publication of these papers—and we looked forward to them.

However, part of the problem is that the position papers were late in coming forward, and in some cases they were pretty flimsy on detail. For the Secretary of State to describe the track and trace proposal in the Government's customs paper as "blue sky thinking" was as embarrassing as it was puzzling. It really is a bit late now to throw ideas up into the air and see where they fall. It is crunch time; talks are happening; the sand is flowing through the timer. Our negotiators, hard-working as they are, need clear positions to present to their counterparts.

I have some sympathy with the Secretary of State, considering the pressures of the forthcoming negotiation rounds—which is why he should seize on our support for a transitional period. With just 18 months to go, the notion that we can negotiate a bespoke transitional deal that takes us out of the single market and customs union, and then continue to negotiate a final long-term arrangement, and have all the other trade agreements in place, without falling off the cliff edge, is more suited to Peter Pan's never-never land than the UK.

It is an even more unrealistic proposition if, as expected, phase 1 talks are not closed in October, resulting in the all-important phase 2 talks being pushed back. The transitional deal within the single market and customs union has widespread support from across politics and business, because it is practical common sense. Businesses are making decisions on investments and jobs now. Some will be forced to implement contingency plans if they do not get answers in the very near future. It is therefore significant that the CBI—not a remain campaigner—has said that,

"Remaining in the single market until a free trade agreement is in force is the simplest way to secure continuity for business operations".

I am grateful to the CBI for its briefing and for the examples it gives us of the impact of having no transitional deal, or one outside the single market and customs union, on small and medium-sized businesses. A comprehensive transitional arrangement is needed because businesses will be making those investment and relocation decisions in the coming months.

Following the transitional agreement, negotiations should continue from where we are now. For the Government to rule out certain options from the start is to go into negotiations with one arm tied behind our back. It may be an ideological position, but it is not a rational one when trying to get the best possible deal for the UK.

Let us look at the papers that have been published so far. It is impossible to deal with all the issues in the papers published to today's one on foreign policy, defence and development, in the time available. But such debates can be helpful to the Government given the expertise and experience of noble Lords. I have a few general comments and, I hope, a suggestion for the way forward that the Minister can take on board.

When the Government published their paper on EU nationals on 26 June, it was as if they were starting again from the beginning rather than responding to the paper that the EU had published on 29 May. Your Lordships' House offered the opportunity to resolve this issue early on, but although the Government promised that it was a priority, little progress has been made, and such a sensitive issue clearly impacts on wider negotiations. It is affecting EU citizens living here and UK citizens living in the EU, and in a number of ways it is already affecting businesses, services and individuals in the UK. The position paper did not really take us any further forward. Progress in areas such as healthcare and pensions is welcome, but a number of questions remain.

One of the most complicated issues in the negotiations, and certainly the most sensitive, is that of Northern Ireland and the Irish border. My noble friend Lord McAvoy, as well as my noble friends Lord Murphy and Lord Hain, as former Secretaries of State, have consistently and continually raised this issue in a constructive way. We welcome the commitment of both the Government and the EU to address very complicated questions. However, the EU has been clear that the onus of presenting proposals on the future of the border is on the UK. This will require the Government to move beyond blue sky thinking in areas, such as customs, and put a concrete and workable proposal on the table.

The publication of position papers and the withdrawal Bill has once again highlighted the Government's difficulties regarding devolved Administrations. It is essential that Ministers fully and effectively engage with them and recognise the constitutional, practical and moral necessity of doing so. There remain a

number of outstanding issues that must be resolved, and we will all be looking closely at the debates in the other place on the withdrawal Bill around this issue.

It is essential that the Prime Minister earns the respect and understanding of those who hold influence in the process or are most affected by the referendum result. It was reported that the Prime Minister declined an invitation from the President of the European Parliament to attend a full public session, instead opting for a behind-closed-doors meeting with a select few. Back in January, the Prime Minister declined an invitation from the Irish Parliament—an invitation that was also extended to, and accepted by, Michel Barnier. We all understand the difficulties, but it is the responsibility of the Prime Minister to ensure that our negotiations are against a backdrop of co-operation, and rejecting such invitations cannot be at all helpful. If the noble Baroness and her colleagues are able to enlighten us as to why, that would be extremely helpful.

Looking and planning ahead, whenever your Lordships' House has debated, expressed an opinion, or passed an amendment on this issue, it has brought howls of protest—and worse—from some of the most ardent Brexiteers. We are clear about our constitutional role and responsibilities. You could say that we know our place and know our limitations. We also know that this House is always mindful of the constitutional role of Parliament as a whole, including the primacy of the House of Commons, which is different from the primacy of the Executive. There will be opportunities for your Lordships' House to discuss the withdrawal Bill later, and I hope that the Government will reflect on this as the Brexit debates progress.

Our Constitution Committee has expressed its "considerable regret" that the Bill has been drafted as it is, leaving many fundamental constitutional questions—as it says—"unanswered". For a referendum fought on the principle of parliamentary sovereignty, I know that many in your Lordships' House are bewildered by the scale of the power grab being attempted by Ministers. Throughout the history of the 20th century, no Bill has ever sought such powers before—not even during wars or civil emergencies. Again, we will follow the debates in the other place with great interest before the Bill comes before your Lordships' House.

In conclusion, we welcome the publication of the Government's papers over recent months, but it still feels that we lack a clear strategy. For all the talk of a deep and special partnership with the EU, or of building a truly global Britain, we have not yet seen that clear road map that will take us there—a road map that does not send us hurtling over the cliff edge, but guarantees the full engagement of the devolved Administrations, outlines how relevant organisations, including employers' organisations and trade unions, will be formally involved, and commits to interim arrangements that offer genuine certainty to businesses, consumers and workers alike.

It would be helpful if the noble Baroness and the Chief Whip could consider how future papers, such as these—indeed, perhaps these as well—will be treated. Where possible, it seems only right that Parliament be given an opportunity to debate their content, whether in response to a formal ministerial Statement or in a proper debate, as we do with EU Committee reports.

Your Lordships' House is here to help. Debates on such issues will be an important contribution to the negotiations that Ministers will have, and I hope that the experience of this House will be welcomed. I hope that Ministers will accept that and choose to avail themselves of all the expertise and knowledge that Parliament has to offer.

4.04 pm

Lord Newby (LD): My Lords, I am grateful to the Government for making time for this debate. Over the summer they issued a swathe of documents about our future relationship with the EU and it is important that your Lordships' House has the chance to discuss them in a timely fashion. Today's debate gives us such a chance to take stock: of the documents themselves; of the negotiations as a whole; and of the Government's preparations for Brexit more generally.

The Secretary of State for Brexit described the Government's position as one of "constructive ambiguity". He is half right—the Government's position is one of almost total ambiguity. But he is also half wrong—there is nothing constructive in the Government's approach because, being largely vacuous, it simply does not form a basis for detailed negotiations. As a result, it is producing a mixture of frustration and annoyance in Brussels, which can only augur badly for the deal which the Government might eventually negotiate.

I will not comment on all the papers which the Government have published, but I would like to mention two. The first is the recently published *Collaboration on Science and Innovation.* The Government acknowledge that, given the importance of science, innovation and related sectors, it is vital that links with the EU are maintained. The question, of course, is: how is this to be done? The paper completely fails to answer it. The response of many in the scientific community is exemplified by an email I received from a former senior Commission official in this field. He said:

"I just read the UK government Future Partnership Paper on Collaboration on Science and Innovation, and I am completely disgusted. It summarizes all the wonderful EU science and technology projects and current UK participation, many of which I organized and supervised at the Commission, and of which I am infinitely proud. There is not a single concrete proposal for continuation, not one. All it says in each area is that the UK would like to talk about collaboration and would welcome suggestions. Oh yes, it also mentions that free movement of people is ending, but smart and well paid people are still welcome. Post-doctoral positions, the foundation of research, are not well paid. It also says that the UK will fund EU science projects in the UK, but only until the UK leaves. How very generous! If anything was needed to tell all EU scientists to leave the UK now, this was it".

The second paper on which I wish to comment is that on customs, an issue of fundamental importance to trading companies and to the economy more generally. The paper opens with a series of motherhood-and-apple-pie statements such as "We want to make trade work for everybody"—as if anybody could hold an alternative view. It then puts forward two options as to how we might move forward. One is described as "a new customs partnership", which would involve the UK,

"mirroring the EU's requirements for imports from the rest of the world where their final destination is the EU".

[Lord Newby]

This approach was so complicated and ill thought-out that David Davis, in a speech in the US at the end of August, said that the Government had dropped the idea—that is, one of the Government's two possible proposals for building a new customs relationship with the EU jettisoned as useless only a fortnight after it was first proposed. This leaves standing only what the Government call a "highly streamlined customs arrangement". The specific elements in this proposal largely consist of continuing existing practices wherever possible and adopting new technology to speed passage through the ports and avoid physical checks. Incidentally, there is no indication whatever of what this new technology might be. But, as far as I am aware, there is no arrangement anywhere in the world where there are no physical checks of any kind on goods passing across a border where different tariffs are applied by the two contiguous countries. Even if we have a free trade agreement with the EU, this will be the case post Brexit, for either the EU will negotiate trade agreements which have lower tariffs than at present, from which we are excluded, or—if Liam Fox is correct—we will be doing the same in reverse. In practice, both are possible. In any event, there will be a customs border and the need for some kind of capacity for physical checks.

Our economy, from the automotive to the fresh food sectors, depends on just-in-time deliveries. These will no longer be guaranteed, particularly because the lack of spare land at a number of our most important ports means that any sort of physical check is bound to lead to severe delays. Just as worrying, the Government have not even begun to come up with a proposal to avoid a hard border in Ireland.

The clear failure of the Government to make credible proposals in the areas which I have mentioned is replicated across the piece. Up to now, the consequences of this almost complete drift on the part of the Government have been largely reputational, but companies and individuals are making their plans and unless, by the end of the year, realistic proposals are made and significant progress is made in the negotiations—of which there is so far no sign—they will start voting with their feet, and our economy and society will suffer.

In these circumstances, what should the role of Parliament be? The Government's approach, in both the withdrawal Bill and the negotiations more generally, is basically to say that we should trust Ministers to get it right, with as little scrutiny as they can get away with. However, my Lords, we do not trust them to get it right. As far as the negotiations are concerned, a monthly statement by the Brexit Secretary is inadequate. Statements do not allow for in-depth probing. The Secretary of State said that he would attend your Lordships EU Committee each month; he now says "quarterly". He should return to his original stance, or at the very least—and I mean no disrespect to the noble Baroness—the noble Baroness, Lady Anelay, should fulfil his original commitment.

On the withdrawal Bill, concerns about the extent of ministerial powers have been widely aired, but the conclusion of your Lordships' Select Committee on the Constitution seems particularly chilling. In paragraph 44 of its report of 7 September it says:

> "The number range and overlapping nature of the broad delegated powers would create what is in effect an unprecedented and extraordinary portmanteau of effectively unlimited powers upon which the Government could draw. They would fundamentally challenge the constitutional balance of powers between Parliament and Government and would represent a significant—and unacceptable—transfer of legal competence".

These concerns are widely shared, most notably of course in the Commons itself. In last Thursday's debate in the Commons, the Brexit Secretary hinted that he might be prepared to make concessions but, as is typical for him, no firm proposals followed. Can the Minister give us any further indication of what the Secretary of State had in mind?

However, even if the Bill is amended in respect of powers, there remains the practical challenge of giving satisfactory scrutiny to the thousand or so statutory instruments which the Government say Parliament is going to need to pass over a nine-month period from next Easter. The Hansard Society, in its recent report *Taking Back Control for Brexit and Beyond*, points out that the Commons does not normally give SIs detailed consideration. In the case of SIs resulting from the withdrawal Bill, it seems likely that this attitude might change, in which case current procedures for dealing with them are inadequate. It is obviously for the Commons to decide how it wishes to conduct its business, but the Government must have a view. Have the Government read the Hansard Society report, with its core suggestion of a sifting process in the Commons, and do they have a view on such a change? As far as your Lordships' House is concerned, dealing with SIs would be made much easier if they were published in draft form. What is the Government's policy on publishing withdrawal Bill SIs in draft and, if they indeed plan to do so, when will we see their first offerings?

The Government's approach to the Brexit negotiations has so far been shambolic. Given that the leading players in the process are unlikely to change, so too is the approach. In these circumstances, the role of Parliament becomes more important than ever.

In advance of today's debate, the Government expressed extreme indignation at the tabling of a divisible Motion. But if the Government continue to treat Parliament with, at times, near disdain, they can hardly be surprised if they provoke a hostile response. It is not too late for the Government to change this approach—and I welcome the comments of the noble Baroness in her opening speech—but, as with the negotiations themselves, the clock is ticking.

4.15 pm

Lord Jay of Ewelme (CB): My Lords, the negotiations on leaving the European Union are the most important and complex undertaken by any British Government since the Second World War. The role of Parliament in scrutinising the key elements of those negotiations is essential. I therefore thank the Government for scheduling this debate, and I welcome the Minister's commitment to future debates. However, as the noble Baroness, Lady Smith, has said, more detailed scrutiny by parliamentary committees is also essential—at least by the European Union Committee of your Lordships' House, which I chair at the moment, in the absence of

the noble Lord, Lord Boswell. That committee and its sub-committees have produced over 20 Brexit-related reports since the referendum, with more to come.

The committee agrees very much with Mr Davis' comments in his latest letter of 8 September—as part of a rather lengthy correspondence with the committee—that,

"allowing for sufficient scrutiny in these negotiations is crucial".

However, the committee does not agree with the second half of that sentence:

"but rigidity of providing for Committee appearances at fixed intervals may run counter to the flexibility needed to ensure those negotiations are conducted successfully".

The committee wants to be constructive. It also wants to discharge responsibility to your Lordships' House. We hope we can find a way for the Secretary of State—or, when he is unavailable, other Ministers, including the noble Baroness, or senior officials—to appear before us regularly as these crucial, complex negotiations proceed.

I do not for a moment underestimate the weight of the negotiating schedule on the shoulders of Ministers and senior officials. The subjects are extraordinarily complex and touch upon almost every aspect of national life. It therefore seems entirely sensible for the Government to accept the need for a transitional period after we leave the EU formally in 18 months' time. How long that transition period should be and what form it should take remain for negotiation.

The realistic alternative, it is increasingly clear, is that we simply leave after two years—either because we decide to walk away, or because we have not completed the negotiations on time and the clock stops. Against that background, the EU Committee is about to start an inquiry on the implications of walking away and on the nature of the transition period. These are issues which deserve careful analysis.

My own view is that walking away is an uncertain option because, the following day, we would have to walk back again to talk in our own interest about co-operation—on foreign policy, security, counter-terrorism, cybersecurity, police co-operation and other subjects, too. This seems to be the implication of the Government's latest position paper, published today, on foreign policy, defence and development, which I welcome. I particularly welcome the reaffirmation of the conclusion of the NATO Warsaw summit, that:

"A stronger NATO and a stronger EU are mutually reinforcing".

Indeed, I welcome more generally the position papers and future partnership papers produced by the Government over recent weeks. Some of them have real substance, but others have a Cheshire Cat-ish quality about them: the more you look at the arguments in them, the more they seem to disappear before your eyes.

Finally, I want to focus on Ireland. We had a good debate about Ireland last Tuesday. The following day, the Commission's negotiating paper was published. We now seem to be in a position in which both sides recognise the importance of the Irish dimension of Brexit, particularly in respect of the border, and I greatly welcome that. However, the British Government have put forward a solution which is widely seen as impractical, and the Commission has produced a paper which does not put forward solutions at all but says—surely correctly—that,

"flexible and imaginative solutions will be required".

I listened carefully to what the Minister said in introducing today's debate but I should be grateful if, in summing up, she could tell us what happens next in what is one of the most important, seemingly intractable aspects of the negotiations.

4.21 pm

The Lord Bishop of Birmingham: My Lords, I am grateful for the debate and for the papers. It may help noble Lords to rest their ears for a moment if I say that my concluding remarks will be very similar to those of the noble Lord who has just spoken. It may also help your Lordships to know that—in confession terms, if I take the lead—I have not read all the papers in detail. None the less, I would have liked those sorts of details much earlier, I would have liked them to be debated and scrutinised, and I would have liked them to achieve a little more consensus as we get into the timetable of these negotiations.

Before and after the referendum, we were treated to the lazy slogans "Brexit means Brexit" and "No deal is better than a bad deal". I am hopeful and expectant that those moments are over and that now, with these papers and other details, we are getting down to some serious work. We realise that this is no easy task, and I was very grateful that the noble Baroness opposite, the Leader of the Labour Party here, said, "We are here to help". That is certainly the view from these Benches for very obvious reasons—for the national good, but also for a successful outcome.

Although we have the papers, I am honestly still at a loss to know what the end game is. We heard speeches from the Prime Minister at the party conference last year and at Lancaster House setting out a clear understanding of neither the direction of travel nor the future relationship between Britain and the EU. The vote in the other place last night—or was it early this morning?—was really about process and took me little further into the content of the negotiations. Unless we know what the Government have in mind when they say they want a "deep and special partnership" with the EU—the words used by the Minister today—the House and the public will know little about how the papers fit with that overall strategic objective.

As someone who has spent a lot of time negotiating both in my previous life in the oil industry and, now, in creating relationships between the Church, the state and China, which I do regularly for the archbishop, I know how important it is for negotiators—I am glad to hear them complimented today—to have a very clear understanding of where we want to get to as we go into the nitty-gritty and detail of the papers before us. I am looking forward to hearing from the noble Baroness more detail about the integration of the ideas into an overall strategic objective that can be negotiated harshly and quietly but realistically. The piecemeal ideas that we have here, whether on defence, science, immigration or many of the other topics mentioned in the list of papers today, can lead to uncertainty and confusion and contribute to increased anxiety and entrenched positions.

[The Lord Bishop of Birmingham]

In conclusion, perhaps I might be allowed to take a bigger view of our own processes and political life. Politics is tough and often ruthless. On the whole, we do it very well in this country and have done for many centuries. I hope that we continue to raise our game collectively, both here and in the other place, in how we debate and decide on Brexit, so that we do not do any more damage to the special and precious political processes that we have inherited and for which we are responsible. The way we disagree on such an important, generational issue as this—and disagree we will—needs to be with grace and compassion, both for the integrity of our political processes and, let us not forget, for a reliable and successful outcome for the wider population of the country, but especially for the weak and vulnerable whom we are here to serve.

4.26 pm

Baroness Neville-Rolfe (Con): My Lords, I congratulate my noble friend Lady Anelay of St Johns. In my view she has the hardest job in our House.

I am a new member of the EU Select Committee. I should perhaps declare an interest as a previous Commercial Secretary to the Treasury and as the UK Minister on the Competitiveness Council from 2014-16, preparing vigorously for the UK presidency which never happened. My whole career has involved negotiating in Brussels as a civil servant, business executive, chairman of the European retailers' organisation and then as a Minister. I have experienced good and bad times and dealt with serious matters, but none more serious than those facing us today.

Given my love of European culture, I was a natural remainer. On referendum night, I was on a plane with the German Minister, returning from a digital summit in Mexico. We went to bed with Nigel Farage admitting defeat and woke up to Cameron's resignation. It was a difficult night for both of us.

I have always disliked referenda, but the then European Union Referendum Bill was not opposed by any major party and was passed with massive majorities. Those concerned with its passing have to live with the consequences. Certainly, if we were to go against a clear instruction from the electorate—as senior but discredited figures are now advocating—our body politic would degenerate in ways we cannot now see clearly. So we have to make Brexit a success.

So far the process has not been impressive. I am not clear why we agreed to discuss divorce before our future relationship with the EU. My reading of Article 50 would support our refusal to do so. It says,

"the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union".

So, to my mind, it is misguided both for the Commission to have refused to discuss future trade alongside withdrawal and for the UK to have accepted that refusal.

I also worry about the documents that have been produced on both sides. I have looked at those on customs and on data protection. The UK Government and the EU seem poles apart, suggesting that our negotiators are barely engaged. The UK papers try, rightly, to look forward but are written largely in isolation. As the noble Lord, Lord Newby, said, our proposals for frictionless trade across the Irish border have attracted major EU criticism. It is regrettable that we do not seem to have the knack of taking account of where the EU is coming from—a skill we were famous for in the Council of Ministers when we worked on policy together. The EU documents are even worse because they deal only with withdrawal and do not try to look forward to a new partnership at all. It would be good to have explanatory memoranda from the Government on these proposals.

So how do we move forward? First, we need to accept a significant exit payment to the EU over a number of years. It is painful, but it is dwarfed by the business disruption that a cliff edge would bring. But—and it is a big but—the payments must be dependent on a future agreement covering all aspects. Not a penny should be paid in advance and, in the Commission's own words,

"nothing is agreed until everything is agreed".

Secondly, both sides must agree to treat existing immigrants of the EU 27 and the UK well, as the case may be. However, for the future, post-2019, we must bring in a much greater degree of control and the leaked Home Office document could represent a real start. We need a guest workers' scheme to help farming and a few other industries, with or without EU agreement, and we need continued access for the talented to secure the future of our financial, tech, research and international businesses.

However, we also have to recognise that the EU has failed to construct a proper border for third countries, especially across the Mediterranean. Indeed, Brexit was in large part the logical consequence of a succession of unfortunate drivers of immigration—the wars in the Middle East, social breakdown in North Africa, Chancellor Merkel's encouragement of asylum seekers and the failure of our own referendum negotiators in 2016 to find a creative solution on the movement of people.

Thirdly, we need a transition period to ease the strain of adjustment on both sides, on issues ranging from financial services and border controls, to Euratom, telecoms, contracts and intellectual property. Two years transition should be enough but the direction of travel for each sector should be set out by 2019. Transition cannot become an elastic article 50.

Finally, we should agree on the outline of trade arrangements with our European partners and be ready to move into active third country agreements from 1 April 2019.

Those with an expertise in European matters want to help the Government in the biggest change since the war, as the noble Lord, Lord Jay, has said. The EU Committee is also seeking to maintain relationships with Parliaments and countries beyond narrow party politics, as well as with the Commission with Michel Barnier making us welcome in July. This can pay long-term dividends.

There are some hopeful signs amid the gloom, The French seem to be rethinking on the sequence of discussions since it became apparent that Frankfurt

could do much better than Paris in financial services if London was to take a big hit. We can also have a more constructive conversation once the German election is behind us.

Of course there is some risk of a cliff edge in the Brexit negotiations, which we must prepare for and be prepared to accept if the other side is totally unreasonable. However, this is not where we want to be. We want to develop new partnerships with our European neighbours, new machinery for collaboration and dispute resolution, new and refreshed fora for the exchange of ideas, free trade and the tackling of common problems.

The Brexit process is hard and often depressing but we can move to a more prosperous Britain after these turbulent times. However, a significant injection of energy and realism into these negotiations is needed soon from both sides.

4.32 pm

Lord Liddle (Lab): My Lords, on Brexit it is time for the Government to start facing realities. The divorce negotiations in Brussels have effectively reached deadlock. None of our negotiating partners expects the European Council to agree to widen their scope in October, and few expect any real progress by December. Those who expect a triumphant Angela Merkel to rescue the British coals from the fire are living in the fantasy land that the British Government have inhabited since last June's Brexit vote.

The Government are still behaving as though we can leave the EU and continue to enjoy all the benefits of membership. Although the position papers the Government have produced are to be welcomed, what marks them out is an absence of specifics and a refusal to face up to hard choices. That is why we are facing the abyss of a no deal. The consequences of walking away without an agreement would be horrendous. It would cause the biggest political crisis any British Government have faced since 1940.

My view is that the only way for Britain to avoid this looming crisis is to accept a transition based on our continuing membership of the single market and the customs union. I am glad that my own party is now clearly moving to support that. Indeed, I go further: the full membership of the single market and customs union could be viable—although, I accept, not ideal—as a long-term arrangement.

The obstacle to a sensible transition is the refusal of the Government to make tough choices. Take the question of the customs union: if Britain is outside the EU customs union, we have to accept the reality of a customs border being imposed where there is none now. Without that, there cannot be the necessary checks to ensure goods comply with rules of origin, product standards, phytosanitary standards for agriculture, health and safety requirements or differential tariffs. These necessary realities cannot be magicked away by talking about smart technological solutions; they can be mitigated but not removed.

A customs border is an inevitability, given that the declared purpose of the Government in leaving the customs union is to pursue an independent trade policy. The purpose of such independence must be to negotiate different and easier terms of access for overseas products to our markets in return for greater access to theirs than the EU itself has negotiated. However, if we negotiate independent trade deals that open up our markets to overseas goods and agriculture with lower standards than the EU's, then of course the EU is going to insist on tough border checks to prevent these goods being transferred for sale in EU markets. The spectre of Donald Trump and his chlorinated chickens comes to mind.

This may seem narrow and technical, but for the EU it is not, and it certainly is not for the Irish. If Britain chooses to leave the customs union, it is effectively imposing the necessity of checks on the UK-Irish border, much though the Government may protest that is not what they want. The reinstatement of a hard border in Ireland would be, in these circumstances, the Government's political choice as, at present, it seems that satisfying Liam Fox in securing his independent trade policy counts far more than securing Northern Irish peace.

This refusal to accept reality is even starker when it comes to the single market. The European Union (Withdrawal) Bill incorporates the EU acquis into British law, but what happens then? The Commons debate rightly focused on the Bill's unacceptable Henry VIII powers for Ministers to change EU rules at will, but from the perspective of our EU partners this means that from day one of the Bill's enactment there is no guarantee that EU rules and standards will continue to be maintained: the floor of social and labour standards; the health and safety and environmental rules; the protections for consumers; the control of state aid; and, increasingly, corporate tax regimes. For a common set of rules is the only way in their view—and they are right—to ensure fair competition and the avoidance of a regulatory race to the bottom.

There is, therefore, an unresolved tension between the unimpeded market access the Government seek to the single market, and the regulatory sovereignty they insist Brexit implies. Brussels will insist that full access to the single market requires full adherence to the EU rulebook. How could it be otherwise without undermining what lies at the foundation of the European construction?

I recognise of course that, on Brexit, Britain would become the single market's rule takers not rule-makers. But, frankly, the EU's imperfect rules for a regulated market capitalism are a far happier prospect, and more in accord with my values, than the Brexiteers' vision of an offshore, deregulated tax haven Britain, conquering new markets across the seas, led by such buccaneers as David Davis, Liam Fox and Boris Johnson. Is it really the case that sacrificing our home market, which is the EU single market, is worth paying the price for this unquantified vision of a Thatcherite nirvana?

Of course, I voted to remain and I do not think that we should be leaving the EU.

Noble Lords: Really?

Lord Liddle: I accept that public opinion is still some way off recognising that the Brexit game simply is not worth the candle, but as the misrepresentations of the leave campaign become daily more apparent, as the contradictions and tough choices of Brexit can no

[Lord Liddle]
longer be hid from sight, as no Minister has been able to present a realistic vision of what a "global Britain" would actually be like and what they mean, and as the chaos in the Cabinet in framing any kind of credible policy becomes the funniest end-of-the-pier show in town—were it not so tragic, given what it means for our own country—I live in hope that public opinion might change. My strong belief is that we pro-Europeans should continue to fight for that.

4.41 pm

Viscount Trenchard (Con): My Lords, I, too, thank my noble friend the Minister for introducing this debate today. I have read—well, at least skim read—the position papers and future partnership papers published by the Government explaining where we stand on several aspects of our negotiations. While many of the papers are lacking in detail, they clearly show the Government's sincere intention to build a mutually beneficial deep and special partnership with the European Union after our withdrawal. Does the Minister agree that the Government could perhaps show more enthusiasm and explain more clearly their vision for the UK post Brexit?

As for the exit bill, we should surely include those sums which we should properly continue to pay for our membership of Horizon 2020, the Erasmus exchange programme and others. In addition, there is a strong argument that we should continue to pay our share towards projects in the current spending round which are already approved. It seems clear that we should not be expected to agree our leaving bill with the EU without at the same time agreeing at least the broader outlines of our future relationship. As recognised by my noble friend Lady Neville-Rolfe, the noble Lord, Lord Kerr of Kinlochard, apparently understood the logic of that linkage in his sensible drafting of Article 50. The Irish Taoiseach has also said that it is common sense that the future of the Northern Irish border cannot be settled until the shape of our post-Brexit trading relationship with the EU emerges.

Can the Minister say any more about future customs arrangements beyond what is written in the partnership paper and what she said in her opening speech? The Government have put forward two options: a highly streamlined customs arrangement and a new customs partnership with the EU. Which of the two is favoured by the Government and which would provide the UK with the greater freedom to pursue its independent trade policy objectives?

Can the Minister also say any more about the transition or implementation period during which it is intended that trade with the EU 27 should continue on the same basis as now? Does she agree that temporary membership of the customs union, EEA and even EFTA would all inhibit our ability to engage in discussions with third countries with which we may be able to agree very beneficial trade deals when we are free to do so? Third countries cannot seriously engage in negotiations unless they know where the UK will be in two years. Therefore, it is important that there should not be measures in the transition which take the opportunities for the UK after Brexit off the table. It is important that, during the interim period, the UK should be seen as sufficiently in control of its regulatory choices that it can be a proper partner capable of agreeing and implementing measures on technical barriers to trade and services regulation.

Among such countries is Japan, to which the Prime Minister recently made a successful visit. The Japanese are happy that the Government recognise the special nature of our partnership with that country, which accounts for over £40 billion of accumulated foreign direct investment and whose companies directly employ over 140,000 people in this country. In a recent conversation, the CEO of one of the largest Japanese investors in the UK told me that he wanted to be sure that the UK could quickly implement a free trade agreement post-Brexit with Japan. So I do not think it is only Germany, France and other EU exporters that are asking their Governments to ask European Commission negotiators not to pursue their political objectives ahead of a mutually beneficial free trade agreement. Third-country Governments such as Japan's also have good reasons to do the same thing, so I believe it is likely that the EU will decide to show more flexibility than it has done so far. It does not make any sense for the EU to continue to pursue a punishment deal, which, as my right honourable friend the Chancellor said on "The Andrew Marr Show", would be even worse than no deal.

I regret the intention of the noble Baroness, Lady Smith, to divide the House this evening. It is clear that the Labour Party's position on Brexit has changed from what it was at the time of the general election, and is now more closely aligned with the views of Sir Keir Starmer than those of Jeremy Corbyn.

I attended the launch of a useful report by the International Regulatory Strategy Group, which is supported by TheCityUK and the City of London Corporation. The report is entitled '*The Great Repeal Bill': Domesticating EU Law*. I agree with the report's recommendation that the Government should not use the repeal Bill to make policy changes, but it is clear that the Government's intention is to take technical powers under the Bill to ensure that EU law works after transposition into English law.

In another place, there has been much talk of Henry VIII powers, but those who object to the repeal Bill should recognise that it cancels at a stroke the application of the acquis—a massive collection of Henry VIII powers taken, sometimes by stealth, from Parliament over the years—and that its object is to restore powers to the other place and your Lordships' House.

Baroness Goldie (Con): My Lords, may I respectfully remind everyone that the advisory time limit for Back-Benchers is five minutes? We were doing rather well, but there has been a bit of a straggle off the path. I invite your Lordships' co-operation for the sake of the subsequent speakers, who will be waiting patiently over a considerable period of time if we begin to stray significantly from the five-minute allocation.

4.47 pm

Lord Wallace of Saltaire (LD): My Lords, it is now 15 months since the referendum, and 18 months until the Government's deadline of March 2019. We are

almost half way there, in terms of the passage of time, but the Government are lagging a long way behind that in terms of clarifying, either to the EU or to the British people, what sort of relationship we wish to have with the EU after we leave.

Three vacuous, but no more understandable, phrases appear throughout these papers, as a sort of leitmotif: "Brexit means Brexit"; "deep and special", as in "a new, deep and special partnership"; "flexible and imaginative"; and "seamless and frictionless". Like "strong and stable", these empty soundbites are clearly intended to give the impression that they mean something, without actually explaining anything.

The referendum campaign was about the principles of leaving or staying in the EU; but in trade negotiations, the devil is in the detail. It is detail about the future relationship between the UK and the EU that this House will want to hear from the Government, in area after area, as the Government stumble toward the March 2019 deadline. Detail—as the noble Viscount, Lord Trenchard, said—is largely missing from these papers. There are strong hints in these papers of how far the Government have moved from their initial hard line. I noted references to new arrangements—in civil justice, for example—which would,

"mirror closely the current EU system",

or, in future customs arrangements,

"a new customs partnership that would involve the UK mirroring the EU's requirements for imports from the rest of the world."

The Minister might like to tell us how much mirroring of the EU's rules and regulations the Government propose to maintain after we leave. Is it likely to become a permanent mirroring with the UK following EU rules and regulations from the outside without a voice in their formulation, as with Switzerland and Norway?

The science paper states that,

"given the UK's unique relationship with European science and innovation, the UK would like to explore forging a more ambitious and close partnership with the EU than any yet agreed between the EU and a non-EU country".

That is an extremely deep and very special relationship, almost associate membership, and I am sure not what Nigel Farage or the *Daily Mail*—or even John Redwood MP or the noble Lord, Lord Forsyth—think the will of the people demanded. Why are we leaving if that is what we seek instead? It goes on to refer to Norway's participation in EU science programmes as the model we should follow. However, I thought David Davis and others had ruled out the Norwegian model. Perhaps the Minister can enlighten us on that.

I welcomed last night's news that there would be a position paper on foreign policy, defence and development. Last February's White Paper was vague and imprecise in this field but today's paper only repeats what it said. It focuses on how much the UK has valued EU co-operation but not on how we will manage to continue that co-operation after we leave. It correctly reminds us how much our Government—most of all, the Conservative Government after 1979 under Mrs Thatcher and the noble Lord, Lord Carrington—led in developing the structures of foreign policy co-operation. It tells us that we participate in all 15 current common defence policy missions and have,

"successfully commanded the EU's Operation ATALANTA off the Horn of Africa",

for several years.

Some 17 of the 21 pages set out all that we have achieved within the EU over the last 40 years, including in meeting the challenges of global migration, in space policy and in cybersecurity. Only in the last four pages does it gingerly suggest how we might maintain such collaboration after we leave:

"Our future relationship and cooperation could take a range of forms",

it brightly suggests,

"including by mirroring participation by other third countries contributing to European security".

That is the Norwegian model again. It goes on to say:

"This future partnership should be unprecedented in its breadth",

and include secondment of personnel, mutual provision of consular services, exchange of classified intelligence, industrial co-operation including in space programmes and,

"a continued contribution to CSDP missions and operations".

The science paper already told us that the UK "has been instrumental" in defining the future work plans of the European Defence Research Programme in the next multi-annual financial framework, which is expected to invest €500 million a year in industry and academia from participating countries. There follows a cry of "Help", thinly disguised in official language:

"The UK would welcome dialogue with the EU and its Member States on the future of this programme and terms for non-EU involvement, noting that Norway will have third-party association in this preparatory phase".

I understand that as saying that we would like to stay in this but do not know how to do so.

In today's *Times*, the Foreign Secretary assures us that in terms of foreign and security policy,

"our departure from the European Union will change nothing".

Yes, and pigs will fly and cakes will miraculously remain intact when eaten. We cannot leave without excluding ourselves from the many multilateral meetings, structures and integrated staffs that hold this all together. We will be absent when decisions are taken. Perhaps the Minister would say a little on whether the foreign policy paper gives us a subtle series of messages that there is an awful lot of European collaboration that we really do not want to leave now we have at last thought about it in detail.

4.54 pm

Lord Howell of Guildford (Con): My Lords, unlike the previous speaker, I warmly welcome this stream of partnership and position papers, which I believe reflect rather well on our Civil Service and its creative resources and energies.

I shall confine my comments in my five minutes to one point and plea. The worst and silliest advice ever given to a Prime Minister throughout this whole saga was to avoid seeking fundamental changes in the way the European Union works. That was the advice given by officials close to David Cameron and by think tanks such as the Centre for European Reform. They all said that deep reform is not on and that it should be avoided. They advised sticking to a shopping list of

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British demands, which is of course what Mr Cameron did, against his earlier judgment and inclination, with absolutely disastrous results. Far from avoiding the fundamental principles of the European Union, we as a major regional power and networker should have opened them up in close alliance with the majority of European peoples who see the overwhelming need for new models of European co-operation. That is where all good Europeans should be turning their efforts.

All along, what is happening to the whole European Union has been the real story, which too many people have avoided. It faces entirely new challenges from unprecedented migrant movements larger than anything in history, from a totally transformed world trade pattern and from the new phase of global digitalisation and networking, which is changing the entire conditions of international relations and trade. That is the point that so many columnists, and the BBC in particular, have completely failed to grasp.

This brings me to my plea: we need one more position paper to add to all that we have had, including the one today. I would like to see this position paper majoring on the following points. First, it should address the whole of Europe's crying need for new immigration strategies, of which our own wish for stronger border controls is only one aspect. The theoretical principle of free movement of persons, introduced at Maastricht, which is said to be so fundamental, has in reality long since collapsed as country after country adopts border restrictions and job regulations for immigrants, such as France itself and all of the Visegrad countries.

Secondly, there is the need for the old EU economic model to be replaced with arrangements which respond to the powerful decentralising and localising pull of the digital age in all areas, as well as the need to bring a new philosophy not just to trade and industry but to security and all aspects of regional co-operation including energy—although, of course, on quite different lines to the present bankrupt EU energy policy.

Thirdly, there is the need for Europe, which is a fast-shrinking part of the global trade order, to revise its trading provisions fundamentally in the new globalisation phase, and adopt new platforms and blockchain technologies which invalidate the old protectionism and the old customs union concept to which our friends opposite, the Labour Party and others, still cling. That makes them prisoners of the past, one and all.

Fourthly, there is the question of how to reverse out of the blind cul-de-sac of the chronically sick euro system which demands an unattainable, undesirable and unnecessary degree of budgetary tax and political centralisation, and prepare for the fintech age of crypto and virtual currencies and the demise of cash which lies just ahead.

Today there are good Europeans looking forward and vested-interest Europeans clinging to the old hierarchy. A weak, outdated and fractious continental Europe has always been of immense damage and danger to Britain. We just cannot isolate ourselves from it; that way lies disaster. Rather than trying to walk away from what will be a lopsided Europe overdominated by a reluctant Germany, we should be committing our considerable intellectual and diplomatic resources and our huge experience to the design of a more modern European model and the pathway towards it. That would include the deep defence partnership which the latest position paper talks about, and very welcome it is. That is one example of many on how closer co-operation in Europe can be achieved outside the rigid confines of the old EU treaties.

Long before Brexit, we should have been doing this anyway. We should have been afraid of neither treaty change nor allegations that we are somehow heretics challenging the sacred European principles. We are neither. We are, or should be, realists who want, and always have wanted, our region to be stable and to prosper—and continue to be so—in utterly changed conditions. It is a different world from the one in which the EU was conceived 60 years ago. We can argue endlessly about exit payments, land borders, citizen status and transition times—where, in my view, it seems a no-brainer that there should be an EEA-type holding pattern. These can all be resolved in due course, as we move to a sensible customs partnership. But the real issue is what is happening in Europe in this age of upheaval and disorder, and how we work hand in glove with our partners in the face of the colossal new challenges. That is the missing frame to our overall approach and we need now to set it out with boldness and foresight. Can we please have another paper on that?

5 pm

Lord Whitty (Lab): My Lords, the timetable spelt out by the noble Lord, Lord Wallace, is even tighter than he says. The reality is that on the present timetable there are 12 months between now and when, to allow for ratification across Europe, we have to agree. I therefore hoped that the position papers from both the EU and the UK would clarify the progress that had been made on these negotiations. I am afraid that I came away—in so far as I managed to read them—feeling that the two sides were operating in parallel universes. They were not congruent or engaging. I came to the conclusion that the solidity needed in negotiations has not actually started. The latest word across the wires is that the next stage of those negotiations may indeed have been postponed.

In my youth, I took a professional interest in the skill of negotiation, in which certain unwritten rules are pretty universal. The first of those is: be clear about your optimum objective. The second is: do not prematurely disclose your bottom line. The Government have breached both those rules pretty spectacularly. They are not clear what form the future partnership is likely to have. They may use all sorts of aspirational adjectives to describe it but the reality is that they have not been clear. These papers describe, for the most part, second-order issues but do not relate them to how the partnership which our Government intend to achieve will look, particularly in relation to trade. On the other hand, the Government have been overkeen on spelling out our red lines—on migration and on having no role whatever for the ECJ. I expect that they may well, in the end, have to compromise on these issues.

Rule 3 is: understand where your counterparts are coming from and be clear about their relative strength. Rule 4 is: identify their bottom lines. Despite the access to diplomatic and political contacts which the Government have throughout Europe, there seems to be no very effective assessment of where Europe is coming from in the negotiations or of how the European institutions and the 27 member states are approaching them. These papers do not give a single clue as to the Government's assessment of the EU position, nor is it self-evident in them what the Government consider the EU's red lines to be. The most self-evident of the EU red lines, one which could guarantee the agreement of both contributing net payers and late receivers within the 27, is on settling the budget. Unless we face up to that early, the rest of it is not likely to be delivered at all.

Rule 5 is: settle what can be settled early on. This applies even if, theologically, nothing is agreed until everything is agreed. It is always useful to have some bits of agreement in your pocket. The EU and UK negotiators appear to be misjudging this, particularly in relation to Ireland, which can only be concluded once we know what the general trade and migration arrangements will be.

Rule 6 is: identify key outstanding areas of difference. Rule 7 is: keep as many options open as possible. The first of those is the only one on which the Government have clearly set out the different positions and compared them to citizens' rights. I wish that they would do that more generally.

Rule 8 is: do not believe your own propaganda—not during the referendum, nor indeed since, not the pronouncements by the Foreign Secretary or the Brexit-supporting press. It will not help at all. Rule 9 is: yes, you can threaten to walk away, but only seriously contemplate it if you know where you are going. As yet, we do not have a clear idea what those who advocate, or are prepared to contemplate, no deal mean by it—we need to know. If I were back in the days when I was assessing role-playing negotiators, I probably would have given Messrs Davis and Barnier roughly a C-plus—the plus for resilience and good humour.

I also have rule 10, which is: be prepared to take advice. At the moment, it appears from the discussions with business leaders that they all fear that the Government are not taking their advice. There is also the key issue for us of whether the Government are prepared to take advice from Parliament, and in particular this House. I very much endorse what the noble Lord, Lord Jay, said about getting on a proper keel the relationship and the rapport back between Ministers and your Lordships' EU Select Committee. We have 12 months to get this right, a key part both for the negotiations and the legislation—in whatever form it comes to us from the Commons. If the Government, this House and the Select Committees are at odds, we will not manage this well.

5.06 pm

Lord Blencathra (Con): My Lords, I warmly welcome and congratulate the Government on the excellent position papers that they have produced setting out our aims but, quite rightly, not our strategy. I cannot for the life of me understand the wisdom or logic of the Official Opposition's Motion, which is on the Order Paper for debate later today, calling on the Government to publish their strategy for the negotiations, thus revealing all our key negotiating positions and red lines. What sort of foolishness is that?

When Churchill gave his first speech to the Commons as Prime Minister in May 1940, he said:

> "You ask, what is our policy? … It is to wage war, by sea, land and air, with all our might … You ask, what is our aim? … It is victory … victory, however long and hard the road may be".—[*Official Report*, Commons, 13/5/1940; col. 1502.]

Did he then go on to set out his strategy? Did he go on to say, "First, we will take on Rommel in North Africa, then we will land in Sicily and drive up through Italy and, hopefully, some time in 1944 we will land in Normandy"? Of course not. A strategy revealed is no longer a strategy but a concession. That is what the Opposition and some other noble Lords are asking for in that Motion.

So what is our policy? It is to leave the EU with the best deal possible. What are our aims? They are the 12 aims set out in the White Paper. I have heard no one suggest that those aims are inadequate or wrong. It would be madness for the Government to publish in detail the strategy on how they plan to achieve the aims. We see the monstrous try-on by Mr Barnier, suggesting that the UK should pay anything from €50 billion to €100 billion and asking if we would kindly make him an offer. I am sure he would love to see a UK strategy paper setting out what our bottom line might be and what we would be prepared to settle for.

I want to see a deal done with the EU that meets our aims of the White Paper. But that deal has to have us out of the single market, the customs union and the EU court, because that is what the British people voted for. Let us have no more of the myth perpetrated by some remainers that those things were not on the ballot paper and the public did not vote for them. Oh yes they did vote for them—it is insulting to say that the electorate did not know what they voted for. The authoritative report recently published by NatCen Social Research—not one of my usual reading papers—makes it clear, as did the Vote Leave analysis, that voters were principally motivated by sovereignty issues and that the Government's dire warnings of economic Armageddon or being poorer were not as important to them.

I hope that we get a deal but I suggest to my noble friend that we must seriously prepare for a no-deal scenario and prepare a position paper on that, because it is looking increasingly likely that the EU will remain intransigent in its desire to punish Britain. I welcome what I heard from the noble Lord, Lord Jay, that his EU Committee will look at a no-deal scenario paper as well. I hope my noble friend, in addition to all her other reading, has read the article by Yanis Varoufakis in the Sunday press and the leaked memo by Jeremy Browne, a former Lib Dem MP and Foreign Office Minister and, currently, a City envoy. There is no reason to disbelieve them, and all the evidence points to the fact that the EU intends not to give a single inch in so-called negotiations, expecting that at some point

[LORD BLENCATHRA]
the UK will panic and surrender. That is a very good tactic for them—if it works—and we must not play into their hands by showing signs of panic.

Mr Varoufakis wrote:

"That Michel Barnier and his team have a mandate to wreck any mutually advantageous deal there is little doubt. The key term is 'sequencing'. The message to London is clear: you give us everything we are asking for, unconditionally. Then and only then will we hear what you want. This is what one demands if one seeks to ruin a negotiation in advance".

Did we not see that in Barnier's attitude to his divorce bill demand? When UK officials spent three hours going through his monetary demands line by line, questioning the legality of it, he was apparently outraged that we dared to question it instead of plucking an offer of billions of euros out of thin air. We have also seen how they rubbished our position papers. Mr Varoufakis also said that the EU's "media cheerleaders", meanwhile,

"would work feverishly towards demeaning London's proposals, denigrating its negotiators and reversing the truth in ways that Joseph Goebbels would have been proud of".

No one has challenged that view. Then he says:

"Right on cue came the leaks that followed the dinner that the prime minister hosted for Jean-Claude Juncker … their explicit purpose being to belittle their host. Then came the editorials by the usual suspects … deploring the 'lack of preparation' by the British—using … Brussels's favourite put-down that 'they have not done their homework'".

The latest, of course, is the slur by Juncker that my right honourable friend David Davis is lazy and lacking in stability—all that abuse gleefully reported by the BBC and some of our media as if it had the force of divine writ. I congratulate my right honourable friend the Secretary of State on the way he is conducting the negotiations and on not indulging in the sort of vile abuse which the EU is heaping on him.

We must prepare for a no-deal scenario, I am afraid, because as Jeremy Browne reveals in his memo, according to the *Sunday Telegraph*:

"Brussels shows no interest in finding 'long-term solutions' to Brexit and could ignore the interests of European Union business".

In the memorandum, Browne says:

"The restricted mandate means little energy is expended on the imaginative search for long-term solutions. People can look most contented when they have declared a problem to be intractable".

He notes:

"Such a virtue is made of intransigence and ensuring that Britain learns lessons from the EU".

He also writes:

"It is the received wisdom that all that is required is for Britain to come to terms with the inevitable and yield accordingly".

It is clear that the EU tactics are to refuse to negotiate on issues of substance and to wear down UK negotiators until we capitulate and promise them huge unjustified sums of money, so that we are then in no position to strike any sort of deal on market access.

Much as we would all like a good deal, so must stay at the negotiating table—of course we do not walk away—and take on the chin all the intransigence and abuse from our so-called partners, we must now plan and prepare for the possibility of a no-deal scenario.

5.13 pm

Baroness Kramer (LD): My Lords, as I listen to the noble Lord, Lord Blencathra, I begin to understand why so little progress is being made. From the perspective of the Brexiteers, this is a war scenario, whereas I thought that we were trying to negotiate a long-term partnership. Indeed, I thought we were the people who had decided to leave the EU and so initiated and required this whole process of negotiation, and therefore it was us who were going to establish how we thought the relationship should be structured in the future. But clearly that is not the Brexiteer view, and I thank the noble Lord, Lord Blencathra, for making clear why David Davis is, frankly, proceeding so slowly and inadequately in this negotiation.

I want to focus on financial services, an industry which underpins this country. It contributes 7% of GDP, £76 billion in annual taxes and 2 million jobs across the UK, a third of it or so arising from clients or activity in the 27. To quote Catherine McGuinness, policy chairman of the City of London Corporation, this week,

"the sector is approaching a precipice … The sector needs clarity on immigration policies, agreement now on transitional arrangements and a clearer idea of how it can continue to trade post-Brexit".

That lack of clarity in this crucial arena is becoming a critical problem.

Your Lordships will have read today that Chubb, the US insurer, has just announced that it will move its European headquarters from London to Paris; it has been in London since 1930. That is the 16th major insurer to announce its move to one of the 27—including Lloyd's of London.

I have great concerns about the small and medium-sized players in the industry. The big companies are making provision; they have adopted a "save ourselves" policy, because they are tired of lack of clarity from the Government. The small companies, however, lack the resources to make such contingency plans, but they are critical to the ecosystem of financial services in our country, and for their sake alone the Government need much clearer communication.

There is something that the Government could help us with, and I hope we shall get some response from the Minister on the subject. The only one of the papers that seems to have any application to the financial services industry—even that is only a slight application—is the interesting paper on enforcement and dispute resolution. I hope the Minister will produce more papers focusing on that critical area. In February the Government were enchanted by the idea of an enhanced equivalence arrangement with the EU for financial services. It would be unique: long-term equivalence agreements would be underpinned by a dispute resolution mechanism.

The word on the street is that the idea has now been abandoned. Perhaps the Minister could tell us more about the status of enhanced equivalence as a potential strategy. It was supposed to replace the parts of MiFID, including passporting, that currently permit cross-EU business in financial services. We understand that the industry has expressed fears that such a framework would be a recipe for almost permanent dispute, and that it is very dissatisfied with the proposals for dispute

resolution that the Government have trialled in trial balloons. Is that accurate? Can the Government confirm today that some key firms have been telling them that in any equivalence arrangement they need to be free to opt to select the European regulator as the regulator for their non-domestic UK activity, as the only way to keep the current pattern of business that underpins so much of the industry?

Is it also accurate to say that various regulators across the globe have now entered the fray, and that to retain London's regional and global roles, the Government are now considering the creation of a sort of international college of regulators—European, US and Asian—which, together with the UK regulator, would have joint supervision and monitoring roles as well as providing dispute resolution across a wide range of financial services? Is that the interpretation that the industry should put on the paragraph in the paper that I described a moment ago, which discusses a joint committee structure as a mechanism for monitoring, supervision and dispute resolution? In such a case what would be the role of the UK regulator, when sterling is such a small part of the market, and how would such a college of regulators relate to British institutions—for example, Parliament? I should make it clear that I do not oppose the idea; I just want to understand how it would work, as would the industry.

There are also critical issues involving clearing. Can the Government update us, as the European Central Bank has now taken powers from the European Parliament to remove euro-denominated clearing from third-party countries—essentially at will, and salami slice by salami slice—which is creating a great deal of uncertainty and difficulty, particularly for client securing here in the UK?

On immigration, I want to make a couple of very quick comments. In the leaked paper there was no discussion of entrepreneurs, who are critical to the development of the financial services industry in this country. Critical, too, are not just high skills and low skills, but mid-level skills such as coding. Among all those players, almost nobody is interested in coming to this country unless their spouses and partners can also be given work permits—an issue that is never addressed. I am afraid that workers in this industry, so much in demand across Europe, even with the kind of reasonable provisions that the Government may be considering, will often hesitate to bring their skills to the UK because here they face restrictions, whereas they will have great opportunities in 27 other countries with no restrictions whatever.

5.20 pm

Lord Wigley (PC): My Lords, in five minutes, it is impossible to give attention to all 12 documents published by the Government this summer, which are lumped together for this rather disparate debate. It was unacceptable for many of those, containing important information, to be published when Parliament was not sitting. If the diktats of the Brexit timeframe made this inevitable, Parliament should have forgone part of the Summer Recess to hold the Government answerable before negotiations were reopened in Brussels. Given the backlog we now face, it is ludicrous that Parliament should adjourn on Thursday for politicians to swan around at party conferences, when vital discussions are being held regarding Brexit.

I shall address the position paper concerning Ireland, if I may. This dimension is vital to Wales in terms of trade, the free movement of people and the future of mutual programmes such as Interreg. I accept that there is considerable agreement between the Governments of Ireland and the UK—on the Good Friday agreement itself, on the peace process, on the common travel area and on east-west support, although there is no mention of continued Interreg funding. There is also substantial agreement on the movement of people. It even seems that the Government have guaranteed that Britain would not expect the Irish Government to monitor the entry into Ireland of EU citizens trying to enter Britain via Ireland.

The tricky area revolves around the issue of no return to the hard borders of the past. There is some dispute over whether there ever were real hard borders, and the wording of,

"aiming to avoid any physical border infrastructure in the United Kingdom or Ireland, for any purpose",

seems at odds with the apparent intention of the UK to have cameras monitoring everyone who crosses the border. Equally, inventing some tracker arrangements on EU foods seems undesirable and unworkable. If the principle is no physical border, that has to mean what it says.

It is clear that getting an acceptable solution for both the north and the Republic is fundamental for negotiations with the EU, as it is one of its three sticking points. It is not just a question of getting a frictionless border between the two parts of Ireland, but of getting equally frictionless movement of goods, services and people in the two parts of Ireland with all parts of Britain. I am concerned about maintaining the unfettered movement of goods and people between the Irish Republic and Wales, where the ports of Holyhead, Fishguard and Swansea could be severely affected, as could Stranraer and Liverpool. Forty per cent of the exports that Ireland sends by truck are sent via the UK. If the Brexit outcome is to significantly hamper these channels of communication, it would have a serious effect on both sides of the Irish Sea.

Michel Barnier has made it clear that the EU would not tolerate the UK using its links with Ireland as a back door to circumvent the trade consequences of a hard Brexit. The UK Government are between a rock and a hard place: they either accept that we remain in a single market, or negotiate single market access, as proposed in the Welsh White Paper. That means accepting a lesser control over EU citizens coming to work in Britain. The alternative is to face some fracturing of the links between Ireland and Britain and inevitably, the disruption of the current free movement between the north and south of Ireland. The Government cannot have it both ways.

This issue was highlighted by the Irish Foreign Secretary, Simon Coveney, on Saturday. He called for the closest possible relationship between the UK and the EU, for an orderly exit and for a substantial transition period, stating that the transition period must,

[LORD WIGLEY]

"maintain the status quo in terms of membership of the Customs Union and Single Market".

He stressed the need to protect the "the all-island economy", reminding his audience that a third of Northern Ireland's exports travel south. He warned that,

"maintaining the integrity of the EU's single market on the one hand, and implementing the ideas on a customs relationship that the UK put forward last month, seem to be mutually exclusive".

He believes that streamlined customs arrangements are unlikely to be streamlined enough for businesses whose margins are tight, and that a customs partnership—again, I quote,

"will simply not be feasible if it is undercut by the UK making trade deals with countries that don't share our standards or systems".

However, he added:

"There is an obvious solution … that is for the UK to remain in an extended Customs Union and Single Market, or some version of that concept, taking advantage of the new and comprehensive trade deals the EU is reaching with countries like Canada and Japan".

He concluded with the words:

"I find it difficult to accept that while the options available to the UK are now being discussed, debated and negotiated, that the potential option of staying in a customs union would be taken off the table, before negotiations on trade have even commenced with the EU".

He warned that,

"shutting off avenues such as remaining in a customs union, without agreed deliverable and credible alternative pathways, narrows future options in a dangerous way".

The Irish Foreign Secretary's words must be taken to heart by the UK Government, who I fear are now in hock to the Democratic Unionists in the north, with all their anti-EU and anti-Dublin baggage. The August position paper is holed beneath the waterline in this most critical area of trade relations. The Government have to get real, and get real quickly. Otherwise, in undermining Ireland to keep the Tory party intact, they will pay a price that most assuredly will come back to haunt them.

5.26 pm

The Earl of Caithness (Con): My Lords, I am grateful for this debate and particularly for the Government allowing time in which to hold it. I thank the Government not only for their position papers—they have published another today—but for their fact sheets on the strategically correct European Union (Withdrawal) Bill. Although some of its detail might need to be corrected, the principle of what the Bill sets out must be right. We must have a fully functioning and sensible statute book that reflects current law when we exit the EU.

I also appreciate the time that Ministers and their staff are giving to Parliament and its committees. I believe that what they are doing and have done is more than any other Government in the EU would do for their parliament. I say to the noble Lord, Lord Jay, given his huge experience in the Foreign Office, that it is right that there should be security, but we could reach a point where demanding too much of ministerial and senior government staff might be to the detriment of the UK and its negotiating position. It is a delicate balance that the noble Lord, in his new post, will have to tread.

Whichever Government were in power, they would have a hugely difficult job in implementing the decision of the British people to exit the EU, particularly in the timescale laid down. The noble Baroness, Lady Kramer, said she thought that the negotiation was for a better future and a new relationship for both the EU and the UK. I hope that is exactly what the negotiation will be and that it will lead to a more prosperous EU and a more prosperous UK. From the UK point of view, Brexit is the most important question and piece of government business before us; the noble Lord, Lord Jay, said exactly the same thing. It is receiving full government attention. However, if one looks at it from the EU point of view, Brexit is not the most important issue on the table. The EU has other, more important issues. David Cameron, when he was Prime Minister, found exactly the same thing when he went to negotiate with the EU. It must be equally frustrating for our Ministers today to find that the EU is more focused on other matters than it is on Brexit.

The inflexibility of Monsieur Barnier, with his team, is reminiscent of how he behaved as a commissioner. I remember sitting on the House's financial committee looking at some of his proposals. I give one example: MiFID II. It is about to come into force, but a lot of it is extremely bad for business and for investors. I fear that he is adopting the same attitude in his discussions with the EU Governments. It is wilfully obstructive to rule out discussion on the future relationship between the EU and the UK when the exit terms depend so much on what the terms of that are. No wonder so much frustration is shown in the House today. What else can the UK do, when the EU will not even talk? My noble friend Lord Blencathra was absolutely right that we must not reveal our strategy.

It is also important that the background mood has changed. When we held our referendum, disillusion with the EU was at its highest. Things have clearly changed and the pendulum has swung: France has elected a federalist president in Mr Macron. The EU is changing, but not in the way my noble friend Lord Howell of Guildford wants. President Juncker is about to set forth his proposals for the future of the EU. It is going to be more federalist and integrated, to an extent that would be objectionable to us in the UK. It is going to take the EU in a very different direction. It is interesting to note that, on financial matters, the USA is already heading in a dramatically opposite direction from that of the EU.

The Government need maximum flexibility and support in these negotiations in the months ahead. The position papers have revealed the distinction between the UK's culture of common law and practicality and the mainland European civil, prescriptive rules. I hope that the EU will show a bit more imagination and flexibility. We try to read something in the press, but it is so often distorted and has false news, led by some rather nasty briefing. Can my noble friend tell us a little bit more about the detail of the negotiations which are going on, and the progress that has been made? In particular, what has been the EU reaction to the UK's proposal that there should be rolling, week-by-week meetings, to resolve issues—particularly the amount of the exit bill? That seems an eminently sensible way forward and I hope the EU will take it.

These are very difficult times. As the noble Lord, Lord Whitty, said, we have a year in which to finalise these agreements. All we can hope for is that something sensible will come out of it. We wish the Government well in their negotiations.

5.32 pm

Lord Adonis (Lab): My Lords, the most striking Brexit fact that I have learned is that trucks going to and from the European Union through Dover take two minutes to process, while trucks from outside the EU take 20. How long do the Government hope it will take for trucks to and from the present EU states to be processed from April 2019?

The difference between two and 20 minutes at Dover graphically illustrates the challenge we face with Brexit, as does the debate we had on Ireland last week, when the Minister, the noble Lord, Lord Bourne, was reduced to telling us about pubs he had visited in Enniskillen because he was unable to address the two fundamental concerns of the debate. The first was how the Northern Irish border is going to become the external border of the EU and yet customs checks are going, in 18 months' time, to be magically frictionless and electronic—presumably as frictionless and electronic as they currently are at Dover. The second was how the common travel area would continue once the UK and Ireland have different visa and immigration rules. Even diverting down the highways and byways of Enniskillen, Lord Bourne could not keep going for 20 minutes in explaining how the Government's magical thinking will ensure that everything will be fine on 1 April 2019.

The other papers we are discussing today fit into two categories. There are those that claim that everything will be fine because nothing will change; and those that claim that everything will be fine because everything will change. The common thread in both is magical thinking. In the paper on future customs arrangements, we are encouraged to think that everything will be fine because of an entity which at present is a figment of the ministerial imagination, namely, "highly streamlined customs arrangements". The Government say they will seek to maintain a series of facilitations that are part of the existing customs union: the waiver for the requirement to submit entry and exit summary declarations, continued membership of the common transit convention, and mutual recognition of authorised economic operators. Let us hope that this is possible. However, the revealing part of the position paper is what is not being kept: countless other measures which facilitate frictionless trade and form the existing customs union. We keep coming back to this: if we mean to protect the status quo in trade, why do we not simply maintain the status quo and remain in the customs union and the single market?

This theme recurs in the paper on the exchange and protection of personal data, where our domestic data protection rules, at the time of our exit, will be aligned with the EU data protection framework. The Government's paper states:

"The UK's data protection law fully implements the EU framework",

for once the Data Protection Bill has passed, both the general data protection regulation and the data protection directive will be part of UK law. To maintain the free flow of personal data, the Government suggest that our relationship should be built upon the adequacy model. However, this requires routine validation by the European Court of Justice, so how is this going to work when we are outside that court? And how is this compatible with the Government's aim of playing a leading global role in the development of data protection standards?

In the paper dealing with cross-border civil judicial co-operation, the Government similarly state that the,

"optimum outcome for both sides will be an agreement reflecting our close existing relationship".

To do so, the Government are, once again, proposing to incorporate EU law wholesale into domestic law: Rome I and II. EU law is clear: if an international agreement contains provisions which are, in substance, identical to EU law, the European Court of Justice can be the only body which has jurisdiction to give definite interpretations of those provisions. Yet the one thing the Government seem determined to change at all costs is the role—any role—for that court once we have left the European Union.

All the alternatives to the European Court of Justice set out in the paper come with disadvantages highlighted by the Government themselves. A reporting or monitoring clause, or a joint committee, do not possess sufficient legal authority for they are not binding, and the arbitration model has not been tested in non-economic areas of agreement. It is important to note that the reason the Canadian deal and the EU-Singapore free trade agreement are not subject to the European Court of Justice is precisely because they do not wish to co-operate as closely as we would wish to in the construction of a common trading area.

Sharing data as closely as possible, frictionless and free trade, subscribing to the European Court of Justice in certain cases—the Government are investing huge political capital trying to construct a policy infrastructure which, even if it were successful, would never be as good as the status quo. But the price of failure is immense.

5.38 pm

Viscount Eccles (Con): My Lords, we need the Government to bring us up to date with a wider view than these papers. The Lancaster House speech needs its second edition. For the EU it is all about tactics. Does Brussels want a special partnership? It does not look like it. Who is trying to go where? Shadow boxing comes to mind.

I voted remain, because there was enough trouble in the world already. Nobody needed us to create any more. Mr Cameron had been to Europe wanting to remain. Greeted by the short-sighted, he was not seen as wanting anything of substance. What did we need? I suppose it was an opening up of European Union rules, recognising that we are not federalists, and seeing this English-speaking island as a honey pot with sterling as its currency—a two-speed Europe, if you like.

Our trouble now is that accepting the referendum result seems to mean, for example, that we can "take back control", as leave supporters insist. But we cannot go backwards; things have moved on. What does "control" mean in a world where Facebook has 2 billion

[Viscount Eccles]
users? Does it mean only ceasing to appear before the European Court? Or is it a credible border control plan? Does anybody believe immigration should be brought down to tens of thousands? That would certainly need a lot of people to leave.

As for the rhetoric of trade agreements, I have never found that selling things depended on agreements; rather, it depended on whether one had the things available that others wanted to buy. People can usually find a way of buying what they want. Right now, I hope that the Prime Minister, who has not been much mentioned this afternoon, as she remembers the leave campaign, also remembers Burke and knows she is not a delegate.

All this is not the heart of the matter. We are a member of a faulted institution and, as my noble friend Lord Howell said, an institution which has lost its original imperative—the prevention of another war which might well have started in Europe. So the institution changed and became intent on becoming an economic power bloc, expanding to a union of 19, 28 or maybe even more European states. This creation within the world order and its nation states was never a good idea. Indeed, as Willie Whitelaw assured Margaret Thatcher, it was never—and I would say now, never is—going to happen. Instead, trouble has mounted with time. First the euro itself and the intervention in Greece—classic problems of a common currency without fiscal and monetary union; then the steady rejection of subsidiarity, yielding little since 2008 other than unrest; and then the migrants with the desperate ways in which they come.

All this gives Brussels good reason to worry. Is it possible, or likely, that the project will fail one day? So the negotiator gets his negative brief, confidence and good will are in short supply, and both sides are living on illusion. How can it come out well?

Right now, we would do well to remember what would have persuaded us to remain if it has been on offer to Mr Cameron: a thoughtful version of the special partnership. The Prime Minister should provide it. We and the 27 need to see a bigger, bolder picture. Who knows what might happen then?

5.43 pm

Lord Teverson (LD): My Lords, I got some information from one of the EU 27 embassies today that Brexit negotiations are to be postponed for at least one week. I would be interested to hear from the Minister why that is, whether it is for one week and what that means for the negotiations. My noble friend Lord Wallace also mentioned the security and defence paper, which came out today. Having in the past chaired the EU Sub-Committee on External Affairs, what struck me about the paper was that it is far more constructive about co-operation than we ever are as members of the European Union. This is somewhat ironic; I am sure the EU will go on to produce its own defence HQ and all those things that we so long resisted not to detract from NATO. These are interesting times.

As the Minister might have guessed, I want to talk briefly about Euratom. Perhaps I may say some positive things. I welcome the fact that the Government appear to be giving this some priority. It is mentioned in the science and research future partnership paper and two technical papers have been produced on Euratom, so we have some progress.

However, like many other Members of the House, when I looked through most of the papers coming from the Government—the same is true to a degree of the Commission papers as well—they seemed to me no more than A-level or undergraduate standard at the most in terms of their analysis and the way they went through the headings. All the detail one was looking for to get a clue about the way forward was missing.

I remind Members of the House of all the things that have to be sorted out about Euratom. There is the small issue of a safeguarding regime, which Euratom fulfils at the moment; without this we cannot trade nuclear fissile materials, whether they are medical or nuclear-powered to keep our lights on, or related to nuclear waste processing. We cannot do anything in that area until we have the International Atomic Energy Agency's tick as a safeguarding authority.

We also need a number of nuclear co-operation agreements with our main trading partners, whether they are providing nuclear material to help us develop our nuclear fleet or to keep our existing fleet going. Then there are those important agreements with the United States, Australia and some of the central Asian countries; they all need to be negotiated. As for our research, which I will come back to, there are, not least, JET, ITER and the future of our contracts with other countries to consider, to make sure that trade can continue, let alone our ownership of fissile materials. Who owns and takes responsibility for them?

There are so many of these issues still to be tackled and I would be interested to hear from the Minister how they are proceeding. Returning to the Government's paper, I welcome the high-level principles it contains in terms of strategy, but what are the Government's high-level principles? The principles set out in the paper include ensuring a smooth transition to the UK nuclear safeguards regime. I agree with that; it becomes necessary because of our removal from Euratom. We did not need one before, and it will be an additional cost.

Providing certainty and clarity to the industry is another principle. As the industry sees our withdrawal from Euratom, it will certainly need that detail. Regarding collaboration on nuclear research, it is interesting to see in the paper, in relation to JET— which is hosted at Culham in Oxfordshire and is an important part of our work—that the Government say that if the JET extension is agreed by the Commission,

"the UK will underwrite its share of JET contract costs after it leaves the EU".

That takes us up to 2020. It does not seem a generous offer. It is just saying, "We'll continue doing what we do if you pay for all the rest". I am not sure this sets out a positive view. Also, the Government are asking for the minimising of barriers to nuclear trade for industry, ensuring the mobility of nuclear-skilled workers and collaborating on areas of wider interest.

I agree with that list, but what is the easiest solution? It is to stay in Euratom, which is something we could have done but decided not to. I accept that that is where we are, but I ask the Minister whether we could look for an associate membership of Euratom. I think that would be a way forward, albeit second best.

Hurricane Irma

Statement

5.48 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, I shall now repeat a Statement made in the other place earlier today by my right honourable friend Sir Alan Duncan:

"At last Thursday's Statement I undertook to update the House as appropriate—and thank you, Mr Speaker, for the opportunity to do so now. My right honourable friend the Foreign Secretary is on his way to the Caribbean to see for himself our stricken overseas territories and further drive the extensive relief efforts that are under way.

The thoughts of this House and the whole country are with those who are suffering the ravages of one of the most powerful Atlantic hurricanes ever recorded. It followed Hurricane Harvey and was set to be followed by Hurricane Jose. Over half a million British nationals—either residents or tourists—have been in the path of Hurricane Irma, which has caused devastation across an area spanning well over 1,000 miles. The overall death toll, in the circumstances, is low, but unfortunately five people died in the British Virgin Islands and four in Anguilla. At this critical moment, our principal focus is on the 80,000 British citizens who inhabit our overseas territories of Anguilla, the Turks and Caicos Islands and the British Virgin Islands.

Commonwealth realms in the Caribbean have also suffered, including Antigua and Barbuda and the Bahamas, as well as other islands such as St Martin and Cuba. We have around 70 British nationals requiring assistance on St Martin and are working with United States, German and Dutch authorities to facilitate the potential departure of the most vulnerable via commercial means today.

To prepare for the hurricane season, the Government acted two months ago by dispatching RFA "Mounts Bay" to the Caribbean in July. DfID humanitarian advisers were also deployed to the region ahead of the hurricane to co-ordinate the response effort. This 16,000-tonne landing ship from the Royal Fleet Auxiliary is one of the most capable vessels at our disposal. Before she left the UK in June, the ship was preloaded with UK aid disaster relief supplies, facilities for producing clean water and a range of hydraulic vehicles and equipment. In addition to the normal crew, the Government ensured that a special disaster relief team, consisting of 40 Royal Marines and Army personnel, was on board.

This pre-positioning of one of our most versatile national assets, along with an extra complement of highly skilled personnel, allowed the relief effort to begin immediately after the hurricane had passed. By Friday night, the team from RFA "Mounts Bay" had managed to restore power supplies at Anguilla's hospital, rebuild the emergency operations centre, clear the runway and make the island's airport serviceable. The ship then repositioned to the British Virgin Islands, where its experts were able to reopen the airport.

Meanwhile, in the UK the Government dispatched two RAF transport aircraft on Friday, carrying 52 personnel and UK aid emergency supplies. On Saturday, another two aircraft left for the region to deliver a Puma transport helicopter and ancillary supplies. This steady tempo of relief flights has been sustained. Yesterday it included a Voyager and a C17, and I can assure the House that this will continue for as long as required.

Already 40 tonnes of UK aid have arrived, including over 2,500 shelter kits and 2,300 solar lanterns. Nine tonnes of food and water are being procured locally today for onward delivery, and thousands more shelter kits and buckets will be on the way from the UK shortly. HMS "Ocean" is being loaded with 200 pallets of DfID aid and 60 pallets of emergency relief stores today. Five thousand hygiene kits, 10,000 buckets and 504,000 Aquatabs, all DfID funded, are going on to the vessel. As I speak, 997 British military personnel are in the Caribbean. RFA "Mounts Bay" arrived in Anguilla again yesterday at dusk as 47 police officers arrived in the British Virgin Islands to assist the local constabulary.

We should all acknowledge and thank the first responders of the overseas territories' own Governments, who have shown leadership from the start and who are being reinforced by personnel from the UK. Many people, military and civilian, have shown fantastic professionalism and courage in their response to this disaster, and I hope I speak for the whole House in saying a resounding and heartfelt thank you to them all.

This initial effort will soon be reinforced by the flagship of the Royal Navy, HMS "Ocean". The Government have ordered our biggest warship in service to leave her NATO task in the Mediterranean and steam westwards with all speed. HMS "Ocean" loaded supplies in Gibraltar yesterday and will be active in the Caribbean in about 10 days. Within 24 hours of the hurricane striking, my right honourable friend the Prime Minister announced, last Thursday, a £32-million fund for those who have suffered. But in the first desperate stages it is not about money; it is about just getting on with it.

The Foreign Office crisis centre has been operating around the clock since last Wednesday, co-ordinating with DfID and MoD colleagues. It has taken nearly 2,500 calls since then and is handling 2,251 consular cases. The Government have convened daily meetings of our COBRA crisis committee.

Over the weekend, my right honourable friend the Foreign Secretary spoke to the governors of Anguilla and the British Virgin Islands, along with Governor Rick Scott of Florida, where Irma has since made landfall over the weekend. I have spoken to the US Assistant Secretary of State for Europe about the US Virgin Islands in respect of logistics support for the British Virgin Islands. As well as those affected across the Caribbean, some 420,000 British citizens are in Florida, either as residents or visitors, and UK officials are providing every possible help. My right honourable friend the Foreign Secretary spoke to our ambassador in Washington and to our consul-general in Miami, who has deployed teams in Florida's major airports to offer support and issue emergency travel documents to those who need them.

[LORD AHMAD OF WIMBLEDON]

The House will note that Irma has now weakened to a tropical storm, which is moving north-west into Georgia. On Friday, I spoke to the Prime Minister of Antigua and Barbuda. The hurricane inflicted some of its worst blows upon Barbuda, and a DfID team has been deployed on the island to assess the situation and make recommendations. Put starkly, the infrastructure of Barbuda no longer exists. I assured the Prime Minister of our support.

On Saturday, my right honourable friend the Foreign Secretary spoke to the Prime Minister of Barbados to thank him for his country's superb support, acting as a staging post for other UK efforts across the Caribbean.

We should all be humble in the face of the power of nature. Whatever relief we are able to provide will not be enough for many who have lost so much. But hundreds of dedicated British public servants are doing their utmost to help and they will not relent in their efforts. I commend this Statement to the House".

5.56 pm

Lord Collins of Highbury (Lab): My Lords, once again I express our deepest sympathies to the people whose lives and livelihoods have been lost to the devastation caused by Hurricane Irma. I join the Minister in paying tribute to all British personnel who are playing such a critical part in leading the relief effort.

I also welcome the Government's approach in keeping Parliament informed of the UK's response to the hurricane. In this House last week, we had a debate in Grand Committee in which the noble Lord, Lord Bates, was able to give us an immediate update on what the Government were doing. This was followed on Friday by a PNQ, to which the noble Earl, Lord Courtown, responded.

Whoever replies to this matter, what is clear is the requirement for a fully co-ordinated response from the key government departments, particularly the FCO, DfID and the MoD. Of course, the reports that we have received have made reference to emergency meetings of COBRA, one chaired by the Defence Secretary last week and one chaired by the Prime Minister on Friday. I would be grateful if the Minister could indicate just how COBRA has improved co-ordination and our response time to this devastating hurricane.

I know how hard Ministers and civil servants have been working over the last week to respond. Today's Statement, like last week's, details all the actions that we have taken. However, we have also heard criticism, including from my noble friend Lady Amos, who felt that the response had been too slow. There has been criticism not just from this side of the House but, indeed, from the respective chairs of the Foreign Affairs and International Development Select Committees. I appreciate that the Minister has responded to Members of the other place, particularly on the prioritisation process for British citizens who need or want to be evacuated. I know that many Members of Parliament have raised that. However, the key issue is what the Government are doing in the meantime to guarantee their safety, shelter and security.

We heard about the emergency situation in the British Virgin Islands following a prison break-out and about the Marines going in to restore order, but what support is being offered to the overseas territories to help their Governments re-establish some basic command and control systems to maintain law and order, particularly where it is threatening to break down, and to put in place emergency plans to stop the causes of preventable, waterborne diseases before they begin to spread? The priority must be addressing people's needs in these affected areas.

Climate change is making these types of hurricanes more intense and more frequent. We urgently need a long-term plan for the overseas territories that is built around resilience and sustainability. There is value in cross-learning and development between islands. I would be grateful if the Minister could confirm that this issue will be a priority for the joint ministerial council and the Overseas Territories Consultative Committee so that lessons are learned, ensuring that we are better prepared in future. There is no doubt that sharing best practice in these committees could deliver vital, important results.

We need to guarantee that there will be a sustained commitment to reconstruction. It is not just about this week; it is about a longer term future and building sustainability in the long term.

Baroness Northover (LD): My Lords, I thank the Minister for repeating this Statement. From these Benches, we also express our sympathy to those whose lives have been so devastated by the hurricane. I commend the efforts of those who are assisting. As the Minister said, more than half a million British nationals have been affected.

Clearly, this is an area which is prone to hurricanes but this hurricane was, as he said, one of the most powerful ever recorded. That said, there were clear warning signs. For some time it was tracked across the Atlantic and its very severe risks were known. It is, therefore, puzzling as to why we were so tardy in our response, compared to the Dutch, the French, the Americans and other national Governments. It is also surprising that, initially, our offer of assistance was so limited and it is still at a level which does not seem commensurate with the damage caused. Perhaps the Minister could comment on this. There are varying reports of what RFA "Mounts Bay" was able to achieve. HMS "Ocean" will take more than a week to come from the Mediterranean.

At the request of the right honourable Andrew Mitchell, in around 2012 my noble friend Lord Ashdown headed a commission to look at how we should deal with such disasters and the pre-planning required. After that, we led the world in this regard. So what happened here? As a former DfID Minister, I am really puzzled at the tardy reaction. It is concerning, too, to hear of possible turf wars between DfID and the MoD over what might happen and, of key significance, where funds would be channelled. I know that that can happen, and I realise that the MoD is under financial pressure. Clearly, security was—and is—required. What plans have been made in that regard, and what plans are there for rebuilding homes, schools and hospitals? Are we sure

that adequate food, water and shelter are now there? Why did it take so long for COBRA to be put in place?

I found myself wondering if Brexit had been deflecting Ministers from all their other responsibilities. What happens when we leave the EU and are no longer able to support the ACP countries in which we have a particular, historical interest? I hope that this does not augur poorly.

I realise that we do not yet know whether this hurricane was so strong because of climate change, but the warmer sea suggests that that may have been a factor. In the light of this, will the Government reiterate their commitment to combating climate change—and have they conveyed this to the Americans?

Lord Ahmad of Wimbledon: My Lords, I thank the noble Lord, Lord Collins and the noble Baroness, Lady Northover, for showing support for the Government's position and expressing solidarity with all the people across the region. I will take some of the key issues raised in turn.

First, on the issue of co-ordination across Whitehall, I am pleased to report that we are working in a co-ordinated fashion—and not just in COBRA. I am accompanied on the Front Bench today by my noble friend Lord Bates. We are working hand in glove with the Ministry of Defence, DfID and the FCO to ensure a co-ordinated response. I think that our response was demonstrable during the course of the Statement; the noble Lord, Lord Collins acknowledged this. I will come specifically to the issue of the response when I deal with the points raised by the noble Baroness.

The noble Lord, Lord Collins, asked how COBRA's response has been aligned. COBRA has been meeting every day. It is not just my right honourable friend the Prime Minister who has chaired COBRA; my right honourable friend the Secretary of State for Defence and my right honourable friend the Foreign Secretary have also done so. I can assure noble Lords that, although I was out of the country, as the Minister responsible for the overseas territories I was in direct communication with the governor of the British Virgin Islands as the hurricane hit. There was not just practical support, as shown by the facts and figures I have presented, but also pastoral support. Sometimes, in such a situation, you need a voice on the other end of the phone who can highlight some of the challenges. That direct contact has enabled us to provide focused assistance, both in terms of development, with food and water and, on the BVI, with the security situation. That was very much first hand; personnel from both the military and the police have been deployed directly. We are working with the respective overseas territories' Governments, as well as with our governors, who are on location, to ensure focused and prioritised assistance in whatever fields are highlighted.

The noble Lord, Lord Collins, also talked of the importance of addressing climate change. Through my responsibilities as Minister for the Commonwealth, I was recently—indeed as this crisis started—visiting a series of Pacific island countries. Nothing resonated more strongly with those particular islands about what was happening across the way in the Caribbean than the long-term planning issues around climate change and how to address it. I can assure the noble Lord that discussions were already under way prior to this event but, of course, natural disasters such as this also help to focus greater attention on the priorities that he listed.

I take issue with the noble Baroness, Lady Northover, about the response of the British Government. She mentioned reports which I would say are perhaps more media-based. I have already indicated how quickly my right honourable friend responded. The noble Baroness shakes her head, but it is just not the case. She mentioned the French—we are helping the French. HMS "Ocean" is helping to take French assistance. We are helping the Dutch. We want to put the record straight—that is actually happening. This is not about saying, "Oh, look at us and what we are doing"—this is the level of co-operation that we are seeing across the Caribbean.

I assure noble Lords that this is not a time for posturing; this is about facts on the ground. We are in direct contact with all the authorities to ensure that aid and assistance and, indeed, the security situation, which the noble Baroness and the noble Lord raised, are addressed head on. The fact is that we are providing assistance to our colleagues from across Europe. This is not an issue about Europe more broadly, and let us not turn it into one. Wherever assistance is needed, countries come together at the time of need. I would also particularly acknowledge the Prime Ministers and Governments of Barbados and the Cayman Islands, who have provided valuable assistance to the region. So, there is a co-ordinated response—not just across Whitehall, but across all areas, irrespective of where the territories are or where the Governments lie.

The noble Lord, Lord Collins, talked about the communication with Parliament. As I speak, my noble friend Sir Alan Duncan is holding a briefing with MPs. The noble Lord mentioned specific, consular cases, which are being addressed head on. We are making arrangements for anyone who wishes to leave the islands—be they the overseas territories or the wider region. Arrangements are being put in place and we are co-ordinating these efforts. My noble friend Lord Bates and I will be hosting a briefing for Peers on Thursday, immediately after Questions, again to bring noble Lords across the House up to date as to the efforts that are being made.

On a personal front, I can assure noble Lords that I have been talking directly to Premiers and governors. Most recently, on Saturday, I had a constructive conversation with the Prime Minister of the Bahamas about ensuring that we prioritise the needs not only of our overseas territories—where, rightly, the focus has been—but the needs on the ground of the wider Caribbean as well.

As to the assistance we can provide—be it through the sea, through the air or through personnel—I have indicated the first priorities. In both the BVI and Anguilla it was about getting the airports functional, and that has happened. As I have said, my right honourable friend the Foreign Secretary will be arriving in the region shortly and will visit the overseas territories to get a direct assessment of their longer-term needs.

I assure noble Lords, again, that, whether it is from the Ministry of Defence, DfID or the FCO, this response is co-ordinated and reflects the priorities as

[Lord Ahmad of Wimbledon]
we see them. It also reflect the priorities as seen by our governors on the ground in the territories and countries as they are made known to us.

I commend the efforts of all personnel involved and the voluntary services on the ground. They were prepared, and that is why we had a vessel loaded and ready to go. The noble Baroness shakes her head, but it arrived there the next day. You would not send it in the middle of a hurricane. It went to both overseas territories directly.

Having worked with the noble Baroness over a long period of time, I hope that along with the noble Lord, Lord Collins, we will work together in a co-ordinated fashion. I will, of course, continue to update the whole House regularly but, equally, whatever particular information the noble Baroness and noble Lord may need or questions they may have, I will be willing to answer accordingly.

6.11 pm

Lord West of Spithead (Lab): My Lords, I thank the Minister for his response. I am proud of what the men and women of the Armed Forces are doing but we are being economical with the actuality of far-sightedness and deploying RFA "Mounts Bay". We have historically deployed a ship to the West Indies—it used to be called the West Indies guard ship—all the time precisely for hurricane relief of our dependencies and to counter drugs.

The RFA "Largs Bay" has gone because we do not have enough frigates. A frigate has about 200 men. Every ship in the Royal Navy exercises and has to pass a big exam about disaster relief before it goes off to sea. The RFA "Mounts Bay" has a Royal Fleet Auxiliary civilian crew—they have done some work on that—and that is part of the reason we need 40 Marines and engineers on board. The amount of effort it could put in was probably less than could have been done by a frigate.

Having a ship there makes a great deal of sense. However, it was not far-sightedness for this particular operation because we always have one there. It is wrong to pretend that it was far-sightedness in regard to this particular hurricane.

However, my question is not about that. I have been concerned at the reports of British citizens in various places, such as St Martin, not being collected by the Americans because we have no agreement with America. If we do not have agreements with America and other allied nations to withdraw our own nationals—not only for hurricane relief but for other things that might happen in different parts of the world—something has gone very wrong. Can we ensure that in the future this does not happen and that there are links in place to ensure that people will be recovered?

Lord Ahmad of Wimbledon: The noble Lord speaks from great experience but the RFA "Mounts Bay" was dispatched two months ago. I acknowledge his point that this has been an ongoing deployment through different ships and different vessels but, equally, I am sure he will acknowledge that this is done exactly for the reason that the hurricane season in the Caribbean is not a new phenomenon. What was different was the force of Hurricane Irma, a category 5. The deployment ensured that we had immediate assistance on board the RFA "Mounts Bay", which was already in the region. It acted on that and she was able to visit both Anguilla and the British Virgin Islands. Today she has returned to Anguilla to help in providing basic reconstruction material.

The noble Lord made a point about the consular support we have made available for the population and for evacuation. Consular support is, in a general sense, exactly that. It establishes who needs what. I said earlier that, for anyone who needs to leave any of the affected territories, we are working with the appropriate authorities to make that happen. He mentioned St Martin specifically. The US, Germans and the Dutch are sending in flights today and we are liaising directly with them to ensure that those Brits who want to leave that territory are able to do so. They are prioritising according to need.

We are currently also working on this across other capitals in Europe, including Paris and The Hague. As I indicated earlier, we have had great assistance from the Cayman Islands and Barbados.

I emphasise again that this is about co-ordination with those in the region. The noble Lord mentioned the US and, yes, we are working directly with it. I indicated in the Statement how we are working collectively with the US. We have had no pushback from the other countries, nor in our support have we resisted others. When crises hit we come together collaboratively in our humanitarian efforts, and that has been reflected in this crisis.

Lord Naseby (Con): I declare an interest as having family on the Cayman Islands.

Is my noble friend clear that forward planning was missing? The Government have available remote sensing and satellite technology, which give a wonderful forward look into today's world. That technology indicated that this was not an ordinary hurricane but the largest and most damaging that nature has seen. It therefore does not take a genius to work out that there will be devastation.

I can say as a former RAF pilot that I am surprised that RAF Brize Norton was not immediately on standby, with its aircraft loaded, so that the minute the hurricane struck the islands that have been mentioned they would take off. It takes the best part of 10 hours to get out there so, by the time they got there, there would have definitely been places to land. Why were they not ready? That is the key question.

Sixteen minutes ago, I believe, the Premier of the Cayman Islands, along with a number of medical teams, back-up facilities and medical facilities, arrived on their own Boeing-345 or 347. As far as I can see, they are providing considerably more medical back-up than we in the UK have provided so far.

Lord Ahmad of Wimbledon: On my noble friend's final point, I was aware of that and, of course, that has been co-ordinated with the visit of the Foreign Secretary to the islands. I have already acknowledged that the support from the Cayman Islands has been greatly appreciated. Returning to a point made earlier by the noble Lord, Lord West, who is not in his place at the

moment, I say that we are co-ordinating with our partners and all countries across the region to ensure that aid is provided in the quickest way along the quickest route possible.

On the issue of the state of preparedness, the noble Lord, Lord Naseby, is right about satellite technology but, equally, as he will know from his own experience—and as we have seen with the path of Hurricane Irma—tracking a hurricane is not scientific in itself because it can change direction. That said, of course there are always things that can be learned from any experience and a full assessment will be made in the medium term. However, as I am sure my noble friend appreciates, the immediate need is about ensuring that the priorities required in the overseas territories and the wider Caribbean are met. I can assure him that we are responding accordingly across the board.

Lord Campbell-Savours (Lab): Following on from what the noble Lord, Lord West of Spithead, referred to, the fact is that our failure to co-ordinate with other countries the evacuation of people has been shameful. People should be held to account for their failure to sort out that problem as they should have done.

However, recognising our responsibilities for overseas territories and for the increased incidence of hurricanes and other environmental disasters, particularly in the Caribbean, have we looked at what the Americans established many years ago, the Federal Emergency Management Agency, and its work? In the light of what has happened in this case, will the British Government now look closely at FEMA's operations to see if we can establish a similar operation here within the United Kingdom?

Lord Ahmad of Wimbledon: I do not accept the noble Lord's first point. The reality is that we are working as rapidly as we can in a co-ordinated fashion. I do not know how many times I will have to repeat this fact, but I will repeat it. We are not only getting assistance but we are providing it.

Let me put it into context. Half a million British nationals have been affected by this storm. We are assessing each case individually and providing support to the foremost in the most vulnerable areas.

The noble Lord made a further point about the evacuation. I have already indicated that we are evacuating those who wish to leave the territories or the wider region and making appropriate and suitable evacuation plans for them.

The noble Lord's final point was about learning from others. In all this I have already indicated that I have been talking, as I was prior to this event, through the Commonwealth to many countries in the Pacific that face similar challenges. I agree on the principle that from any such events we always learn—history has told us that—and we will continue to do so. However, the response that has been provided to date is co-ordinated, I reiterate, not just across Whitehall but across the wider region and with our partners including the French, the Dutch, who we are providing support to, and—yes—the United States.

Lord Birt (CB): Noble Lords have focused, understandably, on the pressing short-term need, not least for food, water and shelter, but I ask the Minister to say something about the mid to long-term need. It is clear from the broadcast footage that has emerged over the last few days, including from drones, that the level of destruction of these islands is simply extraordinary, and that there will need to be a major programme of rebuilding of housing and infrastructure once the short-term need is dealt with. Has any thought been given as to how we can help over the mid-to-longer term?

Lord Ahmad of Wimbledon: The noble Lord is right to raise that issue. I acknowledge, and I am thankful that he accepts, the principle that some basic needs—food, water or power supply—have been addressed. I will give him a specific example to illustrate what has been done. On Anguilla, which was one of the territories affected, the first issue was about getting specific aid in terms of water and food. RFA "Mounts Bay" got the airfield up, which has allowed further access, and six tonnes of aid got through. As I indicated earlier, "Mounts Bay" returned yesterday to Anguilla for the next stage and provided building materials for essential repairs.

The noble Lord will be aware that in the Caribbean bank for reconstruction there was £300 million prior to this, all to do with infrastructure spending. Of course, we have already started the medium and long-term planning across Whitehall, looking at what options are available to ensure that as soon as we get out of the immediate emergency phase we can talk about the important element of rebuilding these communities.

Baroness Sheehan (LD): My Lords, the figures for the death tolls that we have been given for both the British Overseas Territories and the Commonwealth island of Barbuda seem, mercifully, to be low. However, there are media reports which suggest that many people remain unaccounted for. I wonder whether the Minister has any indication yet of how many people remain missing and, if not, when does he expect to receive that figure?

I also ask the Minister about the 997 British military personnel that he mentioned were in the Caribbean. How many are on each of the British Overseas Territories affected by Hurricane Irma—Anguilla, British Virgin Islands, and Turks and Caicos? How many are present on the Commonwealth island of Barbuda where, in the words of the Statement, "infrastructure no longer exists"?

Lord Ahmad of Wimbledon: I can give a few facts, but in the interests of time I will write to the noble Baroness with a complete answer. In the BVI, current staffing is 120 troops, which includes engineers, medics and marines. Sixteen police officers, with co-ordination from the Cayman Islands, are working with the local police—we heard earlier about the issue with the prison and the law and order situation, which is a priority. Specialist FCO staff have also provided direct and additional support to the governor in terms of the consular support. In Anguilla, there is immediate staffing of 15 military personnel; nine police officers and two FCO staff have arrived with kit, including building supplies to repair the hospital. Regarding other territories and questions, in the interests of time I will write to the noble Baroness, if I may.

Lord Blencathra (Con): I congratulate my noble friend on his excellent and detailed Statement today, and the passion which he obviously brought to helping British citizens in need in our overseas territories. I think he was right to be robust in his rebuttal of the noble Baroness, Lady Northover. I think her criticism that we were slow and tawdry is a bit unfair. The Americans have huge bases in the Caribbean and dozens of ships; we do not, and our response was as good and as fast as I believe it could be.

I want to look at the future and press the Government to ensure that we spend, from our overseas aid budget, whatever it takes to reconstruct these British Overseas Territories. I am told that DfID does not have brief to fund the overseas territories; if that is the case we had better change it. Thirty two million pounds is good for a few days or weeks of relief, but if it takes £132 million, or £1.32 billion, we should find it from the £13 billion spent on overseas aid. These people are British citizens, they fly the union flag, they are loyal to this country; they should take priority, followed by assistance to Commonwealth countries.

Lord Ahmad of Wimbledon: I thank my noble friend for his support and the suggestion that he has put forward. I am conscious of time, so all I will say at this juncture is that he makes important points and, as the Minister responsible for overseas territories, I assure him of the same passion and vigour in ensuring that we focus on the rebuilding of these communities at the earliest possible opportunity. On the wider discussion about reconstruction and financing, I think it is important to ensure that there is a full look across all funding, both public and private sector, to see how we can rebuild those communities and provide the essential services as well as the community services which will be required for the territories.

Lord Howell of Guildford (Con): My Lords, a previous Prime Minister, Jim Callaghan—who was a very good Prime Minister, in my view—used to remind us that a lie can get halfway round the world before the truth can get its boots on. I was glad to hear the Minister refute some of the wilder allegations that have been made in the press and elsewhere about the apparent weakness of our effort. It was not weak at all. Furthermore, as he reminded us, we actually made a pre-positioning move by having a ship in the area. Of course we all want more frigates—I always support the noble Lord, Lord West, in his call for frigates—and of course there were immediate, individual and tragic problems which we have to address, but on the whole I think the reaction and co-ordination have been excellent.

In his role as Minister for the Commonwealth, could the noble Lord give as much encouragement as possible to co-ordination by all Commonwealth member states involved in this tragedy? This applies particularly to Canada, which I think is very much involved in the Caribbean and Antigua and Barbuda anyway. Could he reassure us he is really working with the Commonwealth members to see that we give the maximum benefit from that direction as well as the benefit we can provide to our own overseas territories?

Lord Ahmad of Wimbledon: I thank my noble friend for his words of support. The short answer is yes. He knows I am a passionate advocate for the Commonwealth. We have been working hand in glove with the Commonwealth Secretary-General, who attended the Pacific Islands Forum, and I would acknowledge her assistance and the support that was provided. Noble Lords have mentioned how we work in ensuring co-ordination in this respect for the longer term. We have of course prioritised support that we have extended to other parts of the Commonwealth family within the region. I have been particularly struck, as I said, by the support that we have received from those islands within the Commonwealth family that have not been affected. Equally, we need to recognise, for example with Antigua, the tragedy that has unfolded in one part of that country. We are also working closely with the Bahamas to ensure a co-ordinated response. These responses are only possible because they are strengthened by the fact that we are all part of the Commonwealth family. We continue to work for the medium and long term within the context of the Commonwealth to ensure that we get rapid responses wherever such challenges occur.

Lord Campbell-Savours: My Lords, can I take the Minister back again to the question I asked, and the question asked by the noble Lord, Lord West? Is the reality not that Ministers are brushing over the fact that British passport holders were denied access to aircraft that were evacuating citizens because they were not citizens of the nations to which those aircraft belonged? Is that not an example of the lack of co-ordination? There have been many reports in the press of people who were denied access to those aircraft. How can he stand there and simply brush over this fact as if there has been the fullest possible co-ordination?

Lord Ahmad of Wimbledon: My Lords, we are not "brushing over"—I take exception to that, because it has not been the case. If the noble Lord were to talk directly to the governors of those territories, he would see the passion and vigour with which the British representation has prioritised the situation on the ground. On security, the noble Lord asked a question; I will co-ordinate an appropriate response to him. He needs to understand that this was a category 5 storm which had an impact on UK overseas territories and the wider Caribbean. There has been co-ordination. Great support has been given to us by countries within the region, but, equally, we have extended support to others. The noble Lord said that he is talking specifics; I believe that he is not. If there are specific cases that he wishes to highlight to me, I will take them up. We will provide the support at consular level to ensure that, for anyone seeking to evacuate, whether it is in the overseas territories or the wider Caribbean, we make appropriate arrangements. The noble Lord has not acknowledged the efforts of our military personnel and our governors on the ground. I assure him that I was talking directly to Gus Jaspert as the hurricane hit. He was outlining exactly the situation on the ground. That allowed us to prioritise security and to ensure that we provided support and security personnel

on the ground as the prison security broke down. If that is not a direct response to the priorities of a particular region, I am not sure what is.

UK and EU Relations

Motion to Take Note (Continued)

6.31 pm

Baroness Goldie (Con): My Lords, before we recommence our debate on withdrawal from the European Union, I again remind your Lordships about the advisory time limit. I know that it is purely advisory and I am totally in noble Lords' hands, but it is to keep an eye on the clock and on the fortunes of our colleagues who will be speaking later. I would be very grateful for your Lordships doing everything you can to facilitate compliance with the advisory limit.

Lord Hannay of Chiswick (CB): My Lords, reading the 12 papers—I am afraid I have managed only to get to 12 because the Minister added one that arrived at lunchtime today—has struck me as a pretty depressing experience, even if one does not throw in for good measure the leaked paper on immigration policy which we are told is not government policy, or at least not yet. It is depressing because there are so many words yet so little substance, so few clear indications of what sort of outcome the Government are hoping to achieve in the Brexit negotiations—and that when a quarter of the time for their completion has already been frittered away.

It is hard to avoid the conclusion that the Government are still playing hide-and-seek with Parliament. That is bad enough when it is Parliament which is meant to be taking back control from Brussels over these matters, but what is worse is that the Government seem to be playing hide-and-seek with our negotiating partners, too. No doubt there is an element of the tactical in the complaints from Brussels of a lack of clarity in the Government's negotiating position, but these papers demonstrate pretty graphically that those complaints are not simply tactical. That is serious indeed, because successful negotiation requires each side to have some clarity about what the other is seeking to achieve.

Many of the papers are just "cut and paste" jobs; for example, the paper on *The Exchange and Protection of Personal Data*. Often, it is simple common sense, as in this case it is, to conclude that it is essential to avoid the fragmentation of a currently frictionless entity, the exchange of data right across Europe, but the paper is remarkably coy about the fact that to achieve that objective on a lasting basis, we will need to mirror here any future changes in the EU's data protection regime and any rulings on it by the European Court of Justice. That data protection iceberg conceals a mass of other EU regulatory functions, some 35 at the last count, on which the Government have not yet revealed their hand.

Other papers were obscure to the point of incomprehensibility. I instance the paper on *Enforcement and Dispute Resolution*. It is fairly clear that the Government have at last realised that the line that the Prime Minister drew at last October's party conference on the outright rejection of any jurisdiction of the European Court of Justice is simply unnegotiable. So they are moving crab-wise away from it, inventing a new description, "direct" jurisdiction, and juxtaposing it with "indirect" jurisdiction. We are now told that direct jurisdiction remains taboo, but indirect, by admission, is not. How is that to be done? Just producing an academic list of the options, which is what the Government's paper does, is not a negotiating strategy. If, as I would suspect, something along the lines of the EFTA court is required, why not simply say so?

Then there are the papers such as the one on Northern Ireland and that on customs arrangements, which suddenly surface completely unprepared and out of the blue new and untried solutions—what the Secretary of State for DExEU called blue-sky thinking—but without a trace of any detail or any evidence-based underpinning. Indeed, the new customs arrangements are described in the paper as "unprecedented" and "challenging to implement"—words that could have come from a script for "Yes Minister".

The paper on co-operation on science and innovation is welcome if belated, but it conceals that this chapter of EU budget expenditure—one of the most rapidly growing chapters of that budget and set to continue to be so—is one from which we have derived huge net benefits. That is surely unlikely to survive any new arrangement when we are outside. The paper glosses over rather unconvincingly the fact that we will no longer have a full say on the EU scientific and research programmes, which will be decided by the 27 without our participation.

Is this all unduly critical of the Government's approach? I do not think so. The Brexit negotiations are not going particularly well and there is little or nothing in these papers that we are debating today which will help them to do any better. Nor, I fear, is the Government's relationship with this House over Brexit going particularly well. Last week, the Government's response to your Lordships' report on the Irish dimension arrived one hour before the debate began and seven months after it should have been available. Today, the Government produced a new paper in the series that we are debating which was available only an hour or two before the debate began. That, frankly, is no way to run a railroad, let alone a Parliament.

6.37 pm

Lord Framlingham (Con): My Lords, in a moment, I intend to indulge in some special pleading, but let me first say that I am delighted with last night's result in the House of Commons, which further paves the way for us to leave the European Union. The vast majority of the British people will also be pleased, I am sure. We are being told from every side, "Just get on with it", and that is exactly what we are doing.

I continue to hope that opponents of Brexit will finally bow to the weight of public opinion, common sense and, most importantly, the long-term good of the country. I am rather tired of people saying that they accept the result of the referendum when they clearly do not, and, instead of using their undoubted talents to help make a success of Brexit, are foot-dragging and putting every possible obstacle in the way of a successful outcome. It is very hard for a team to win if half the team want you to lose. In this category, sadly,

[Lord Framlingham]
I place the BBC. In due course, we shall be able to convert all EU law into UK law and then alter it where appropriate. It is a very sensible approach.

One area not yet dealt with in position papers—it is not really a headline issue but it is of particular interest to me—is the protection of our urban trees and our woodlands from imported diseases. In this, Brexit will prove invaluable. Your Lordships will, I am sure, remember Dutch elm disease, when an infected shipload of elm logs resulted in the loss of every elm tree in the country. You may also be aware of the problems caused in the more recent past by ash dieback, which was also imported on trees from Europe. What your Lordships may not know is just how many other tree diseases are present in Europe and which, unless we are fiercely vigilant, could enter this country with devastating consequences. Forty-two thousand plane trees lining France's historic Canal du Midi are being felled because of a fungus now spreading across Europe. This disease, sometimes called plane wilt, would be devastating if it infected our London plane trees. A bacterial disease, xylella fastidiosa—I apologise for the Latin but there is no common name that I know of—is present in Italy and France and could infect a wide range of plants, including our native oak. To date, there has been just one interception of that disease in this country—on an ornamental coffee plant, which was destroyed.

The emerald ash borer is an exotic beetle pest that causes significant damage to ash trees, resulting in the death of many within two or three years. There have been no incidences so far in the UK, but the Forestry Commission is asking tree owners to remain vigilant and report any suspected sightings.

There are existing regulations governing the importation of trees into the United Kingdom, but they are far from watertight and are designed to work for countries with land borders with each other, who do much trading of trees across those borders. The regulations are not as tight or rigorously policed as they should be. We are an island, and should make the most possible use of that to protect our trees from infection. It may even be appropriate to revisit the question of a quarantine period for imported trees.

Brexit presents us with a golden opportunity to look at this matter afresh, to put biosecurity at the top of our agenda and ensure we are doing all we can to protect Britain's trees. My concern for all our trees and what, thanks to Brexit, we can do to protect them is just one example of the opportunities now being presented to us if we have the courage to take them. Be it in trade, defence, immigration or any other aspect of our national life, I hope we can work together as a nation to make the most of the opportunities that Brexit presents.

6.41 pm

Lord Cashman (Lab): My Lords, not for the first time am I delighted to follow the noble Lord, Lord Framlingham, and give a completely different perspective. As someone who voted to remain in the EU, I assure him that I will certainly not finally bow on what I believe was a wrong decision that does not serve the future of this country.

In recent weeks, there has been much speculation about a Brexit transition agreement. Sadly, the position papers—or "shifting position" papers, as I call them—have not helped matters. There is now greater uncertainty, not less. Where there should be clarity on the Government's position and intention, there is only confusion—especially within the negotiating chamber in Brussels. I have to admit that there seems to be confusion too within my own party on where we want to be post Brexit, but I look forward to a speedy resolution.

I voted to remain. I oppose Brexit, as is my democratic right, and believe that we must maintain membership of the single market and the customs union at the very least, even if it is along the Norwegian model. Anything else would be national suicide as we throw away the rights fought for by previous generations, such as my father and grandfather, who fought in two world wars for a united Europe—for a Britain in solidarity with Europe, not isolated and aside from Europe. We would be throwing away, too, the rights of younger generations and generations yet to come.

There are over 3 million EU citizens in this country who face a starkly uncertain future. Everything is no longer certain: their homes; the education of their children; learning and life choices for their families; their employment and retirement prospects; indeed, their very right to reside in a country that they have lived and worked in and where they have played by the rules. Instead of offering those people certainty, the Government use them as cheap bargaining chips in shoddy negotiations. It is entirely unacceptable.

We cannot even negotiate to offer certainty to British citizens living and working in the EU 27. The emails and messages I have received are truly heartrending: people who have married other EU nationals and raised their families in a country where they thought they were welcome and wanted, only to find that they are now feared by some, resented by others and misrepresented elsewhere. In that regard, elements of the British press have played a despicable and reprehensible part.

Let me come to some facts about where we are from two surveys. London First and the Lloyds Banking Group have worked together on a UK-wide survey of over 1,000 businesses, both large and small. They found that over half of businesses have faced a negative impact from Brexit. They have been forced to put investment and recruitment decisions on hold and to revise their supply chains. They are seeing reduced demand for products and services. Some 40% of UK businesses believe a transitional agreement will have a positive impact, enabling them to unblock investment or recruitment decisions. Those businesses that see a transition agreement as having a positive impact want to see an agreement that covers all the elements of the existing EU relationships, including freedom of goods, services, capital, talent—yes, that means people—a common set of tariffs and EU legal arrangements. For those businesses, continued access to the people they need is their number one concern; they call for the Government to give a unilateral, unconditional guarantee to the EU citizens already living and working in the UK, and to set out plans for a fair and managed approach to future immigration policy—a call I am sure every decent person would endorse.

In another survey, Focus on Labour Exploitation—FLEX—and the Labour Exploitation Advisory Group explore how migrant worker vulnerability to exploitation has been affected by the UK referendum. Sadly, they highlight uncertainties creating conditions for vulnerability. There is a rise in hate crime and hostility post referendum that contributes to a general sense of being unwelcome and makes migrant workers feel like second-class citizens in the UK.

These are the human consequences of Brexit. We must keep these people and their families and their deep and all-consuming concerns at the forefront of our minds in all our deliberations and negotiations. In the Brexit negotiations, now more than ever before, we need leadership allied with courage, imagination, flair and daring. Sadly, as I look out across the Brexit horizon, I see none.

6.47 pm

Viscount Ridley (Con): My Lords, it is a delight to follow the noble Lord, Lord Cashman, and, like him, to give a different perspective on these matters and address the position papers. In the interests of brevity, I will confine my remarks specifically to the Euratom and nuclear safeguards papers.

A lot of people have made a lot of mischief over this issue, scaremongering about the reasons for leaving Euratom and the consequences of doing so. In my view, the claims are mostly baseless; the Government's position papers on nuclear materials and safeguards issues makes it clear that that is true. There is genuinely nothing sinister, worrying or difficult about replacing the Euratom treaty arrangements with new and comparable intergovernmental arrangements with Euratom countries, other countries and the International Atomic Energy Agency.

I welcome the fact that the position paper makes it clear that withdrawal from the Euratom treaty will in no way diminish our nuclear ambitions. There need be no threat to non-proliferation, the UK nuclear industry, how we handle nuclear waste, research and international collaboration and, above all, to cancer treatment—a myth that has been shamefully spread by those who frankly should know better.

Had the Euratom treaty been separate from the EU treaties, and not justiciable by the European Court of Justice, there would be no need for us to leave Euratom. The Government say—I believe them—that they have no animus against Euratom. During the referendum, that was not an issue for those who voted to leave. The whole thing is a purely administrative matter—a tidying up exercise that cannot be avoided. Compared with other aspects of negotiations to leave the EU, this one is simple. The Euratom countries want a deal with us, and vice versa, that replicates as closely as possible the harmonious relationship that exists now.

So why leave at all? It is because the treaties are "uniquely legally joined", as the position paper says. It is as simple as that. I, for one, would be thrilled if the lawyers said they had changed their minds and we do not have to leave Euratom after all; but that is not what they are saying. The noble Lord, Lord Teverson, summarised well the issues behind Euratom. In the debate on 20 July, the Minister—the noble Lord, Lord Prior—stated:

"We are preparing a domestic nuclear safeguards Bill; we are opening negotiations with the EU; we are talking to third countries about bilateral agreements; finally, of course, we are talking to the International Atomic Energy Agency. My officials have met with IAEA officials in Vienna and had constructive conversations about a new voluntary offer agreement, to replace the current one that we have by virtue of our Euratom membership".—[*Official Report*, 20/7/17; col. 1796.]

That sounds like good progress on several fronts at once. Will my noble friend the Minister confirm this and update the House on those negotiations?

Let me deal briefly with the medical isotopes issue. As noble Lords know, medical radioisotopes are not classed as special fissile material and thus are not subject to nuclear safeguards. Thus, radioactive material used in cancer treatments is not subject to nuclear co-operation agreements that deal with trade in nuclear materials. The import or export of medical radioisotopes is not subject to any Euratom licensing requirements. Euratom places no restrictions on the export of medical isotopes to countries outside the EU. They are subject to the same EU customs rules as any other good. Therefore, as I understand it, the UK's ability to import medical isotopes from Europe and the rest of the world as a result of leaving Euratom will not be affected—full stop. Will the Minister confirm that? Scaremongering to the contrary has caused needless concern among cancer patients and their relatives, fanned by irresponsible journalism. It is the reddest of red herrings, a scarlet sardine, a magenta mackerel, a vermilion vendace. I hope noble Lords who raised this issue will use the opportunity to concede that it is a non-issue according to the UK Government and international authorities. In conclusion, I welcome the Government's position paper on nuclear materials and safeguards issues, and look forward to a smooth transition to new arrangements outside Euratom.

One final point: I listened with care to the noble Baroness, Lady Smith, who is now not in her place. I was left in the dark on one point. Could she produce a position paper on the Labour Party's position on the single market? Some of us are very confused about that.

6.51 pm

Lord Taverne (LD): My Lords, I will concentrate on the effect of the Government's decision to stay out of the customs union, their plans for controlling immigration even though that is not yet an official paper, and the prospects of a new referendum.

First, I find so depressing the Government's complacency and lack of realism. This is one factor why our negotiators seem much better at losing friends than making new allies. One example is the way the Government keep boasting about how strong our economy is. The fact is that it is very fragile. Our 16 to 18 year-olds rank in the bottom four of the OECD's 35 members for numeracy and literacy. As a result, we lack the skills that industry needs. Our growth is now the slowest in the G7. Nine out of northern Europe's 10 poorest regions are in Britain. Our productivity is about 20% less than the average of the G7 and has not improved for a decade. Brexit will make matters worse.

There was an important and impressive recent report about leaving the customs union by the All-Party Parliamentary Group on EU Relations. Unfortunately,

[Lord Taverne]

I have time only to quote part of its summary. It says that leaving will gravely damage our industry, and the damage will affect business across many important sectors of the economy, such as food and the chemical industry, and will be particularly damaging to industries with just-in-time supply chains such as the motorcar industry and aerospace. Leaving the customs union will see UK companies having to comply with high levels of new bureaucracy. Requirements on rules of origin alone could add costs of up to £21.5 billion for UK exporters. IT systems will need to be improved and we will more than double the number of traders making customs declarations.

All the trade deals that the UK currently enjoys with third-party countries as part of the EU will have to be renegotiated, starting from scratch. Deals with new markets will take many years to negotiate. It seems clear from the report that the likely loss of trade with the EU and these third countries cannot be offset by new trade deals around the world. The report points out that the Government's important promise of, "the freest and most frictionless possible trade in goods between the UK and the EU", is ludicrously optimistic at best and dangerously misleading at worst. As the noble Lord, Lord Hannay, added, no details are given of how that is to be achieved, except that it will need new and untried imaginative IT technology—or "magic" as the noble Lord, Lord Adonis, called it. In fact, the Government's record in introducing grand IT schemes is not particularly encouraging. One of the most disturbing of the report's conclusions is that the only certain way to avoid a hard border between the economies of Ulster and the Republic, which almost everyone agrees would have a devastating effect on both, is to remain in the customs union.

On the leaked plans for immigration control, although those are not yet official policy they obviously represent what Mrs May wants, given her record in the Home Office. They went down badly with the CBI and the Institute of Directors because of the loss of skills and their effect on productivity. However, for the public the most serious impact of strong curbs on immigration of the kind outlined in that paper will be on the NHS, which is already heading for a crash. A third of new nurses each year come from the EU and yet applications from EU countries are down by 94%. EU doctors also play a vital role; many of them are leaving as they no longer feel welcome. Other public services will also suffer grievously. One example is the Government's plan to build more than a million houses in the next few years. This requires a 35% increase in the construction workforce. Instead, that is forecast to decline by 6% as Poles and Lithuanians want to leave.

The fact is that negotiations are going badly. Indeed, it seems that the Government and their allies are already preparing for the consequences of a hard Brexit or no deal by blaming Brussels. However, this time that strategy may not work because the public have begun to see the Government as incompetent and no longer believe what they say. Living standards are falling. As wages barely increase if at all, inflation heads for 3% and may well be rising. The pound is likely to fall further. This can hardly be blamed on Brussels. It will become only too obvious that Brexit is making Britain poorer.

What, then, are the prospects of a new referendum? I admit that at the moment there seems to be no majority in favour. However, polls show that public opinion is beginning to move quite sharply towards the idea of what would not be a rerun of the last referendum but a new one, now we know what Brexit means. It is not £350 million a week for the NHS but instead a worsening shortage of nurses and doctors, and a big divorce bill. People did not vote to lower their own living standards and did not expect that to follow. It is now plain that it will. A referendum would give them a chance to change their view. I may be completely wrong, but I would be surprised if there were not increasing support for a new referendum. It is interesting that more and more people now surface who accept that "no Brexit" cannot be ruled out. It is no longer an impossible dream.

6.59 pm

Lord Inglewood (Con): My Lords, during much of the summer and the Recess, for reasons which I need not go into, I became very much preoccupied with non-political things. At the beginning of the autumn I awoke rather like a slightly insomniac Rip Van Winkle and took stock of Brexit. We are now on the road which, unless something intervenes, inexorably means we head off over the cliff edge of a hard Brexit. I was struck by the irony of how voting to take back control had conferred on the EU a veto over all our subsequent relations with it concerning everything in the treaties. If there is a possibility we go over the cliff edge, we have to plan for that because if it happens and we do not, complete chaos will ensue. All our relationships therefore via the treaties have to be rearranged under public and private international law when the EU law falls away. These new arrangements have to be comprehensive and will almost certainly involve choice and value judgments. At the same time that this is happening, there appears to be a widespread, although not universal, doubt about the wisdom of going off the cliff edge; and the Government appear to be looking, in their own words, for a new "deep and special relationship", which I consider sensible, since we cannot unilaterally decouple from an interdependent world.

Both these strands are found woven together in the position papers. The inherent problem that we end up with is that we are going to be simultaneously arguing for two separate and sometimes incompatible things, unless and until we know what the final position is going to be. I would hazard a guess that, if the EU were asked what was the best possible deep and special partnership we might have with it, it would say the EU membership that we have now. However, we have rejected that and we are entitled to do so, and we want this new relationship. That being the case, it seems entirely reasonable to me for it then to come back to us and say, "Tell us what you want and we will consider it". It is entirely up to it how it responds and how it might or might not negotiate thereafter.

At the heart of the position papers, and where we are politically in these negotiations, are these two strands. I would like to briefly touch on two of them. First, I turn back to last week's debate on the EU Committee's report on Brexit and Ireland, which seemed very illustrative of the problems that we are facing.

I have never spoken in the British Parliament on Ireland although I have a significant Ascendancy component in my background, even though—rather surprisingly—the only members of my kith and kin who anyone may have heard of were really quite prominent nationalists. Nevertheless I follow, and always have followed, what is going on there. Two things emerge very clearly. First, it is fiendishly complicated. Secondly, honourable and intelligent people have very differing, honestly held views. This is symptomatic of the wider background to the quest for our new deep and special partnership. It is not going to be easy.

Secondly, and it has just been referred to by my noble friend Lord Ridley, is the position paper on Euratom. As a Cumbrian, much of whose political and business life has been associated with and touched one way or another by both Europe and the nuclear industry, I suspect I am as familiar with the criticisms of both—my goodness, there are a lot from time to time—as anybody. Never can I recall, though, any criticisms made of Euratom membership. Listening to my noble friend Lord Ridley and the noble Lord, Lord Teverson, it struck me that if ever there was a case that Paris was worth a mass, this must be it. After all, as Alexander Pope put it:

"For forms of government let fools contest;
Whate'er is best administered is best".

We are arguing simultaneously in two slightly different directions in respect of two possibly separate outcomes to Brexit. This is both difficult and hazardous. It is always said of politics, and it was said by Jimmy Maxton, that if you cannot ride two horses at once you have no business to be in the circus. Of course that is true but the problem and the risk is that, if you are trying to ride two and you slip off one, you are likely to end up having fallen off the other as well and find yourself lying on the ground with your face in the mud.

7.04 pm

Lord Dykes (CB): I followed very closely the wise words of the noble Lord, Lord Taverne, and shared his feeling of gloom about the economic situation, which is the dreadful background to the paralysis which the Government are now going through, without admitting it, on these impossible negotiations. The situation is now so bad that one shares the views of Ian McEwan, that very famous brilliant author, who has been joining a lot of the marches and demonstrations against Brexit, and is a fervent European and remains so. He says: "I still say to myself when I get up in the morning, I can't believe that it's happening. It's a dream. No, it's a nightmare. It can't be happening that the Government is pursuing such a foolish course". I share that view as well.

It is a pleasure to follow the equally wise words of the noble Lord, Lord Inglewood, with his vast experience of the European Parliament. I hope he agrees that when the European Parliament decides to express its view on the negotiations—if it can actually proceed to some kind of tangible conclusion, and that is a big if—I doubt very much whether it will show much enthusiasm for what the British Government appear to be preparing to propose, on the basis of the very flimsy collection of words that we have already. I agree with the criticisms that have been made in this debate about the flimsy nature of the Government's various little booklets on negotiation policy areas and so on. They do not really amount to much other than mainly blue-sky—or dark-green-sky—thinking instead of wise and tangible specific proposals about how to proceed.

I was beginning to muse that, instead of having the Department for Exiting the European Union, the name should be changed back to "DTI", because then we could emphasise the second stage of the Government's wishes, which are still unachievable with what is going on so far—namely, building up some kind of trade situation. But I do not mean "DTI" in that old sense; I mean the department of total insanity, with what is going on with these negotiations. They are totally stuck. The Government do not know what to do further, and there is no reason why the EU should respond by saying, "We will make it easier for you by bending forward with these daft ideas and trying to help you out of your own mess"—a mess created by this Government's maladroit decisions, and by an inexperienced and clumsy Prime Minister who has lost a mandate now as a result of the 8 June election. That mandate to pursue Brexit was writ large in the first election campaign and in the words of her manifesto in the second election campaign, but completely destroyed by the vote. Even Sky News said—and its announcements are not normally taken with this kind of direction in mind—that a majority of people in that total vote for all parties voted strongly to remain.

That applies particularly to the younger voters in this country. When the next decision comes forward in due course, sadly and according to the laws of nature, several millions of people who took part in these votes so far will have passed away, into heaven I hope. Two million youngsters, including the ones who will be voting at an earlier age in any decision that will be made, will be voting for the first time, and we know what their views are. We know why they are supporting the Labour Party more. That tallies not only with their domestic political priorities, but with what they think about Brexit: a total disaster facing this country.

The Government are responsible for this nightmare and they have to respond to the growing feeling of dislike about what is going on and what is being so-called "negotiated". It is not really being negotiated properly. There is no confidence at all in the Ministers in charge of this process. They cannot even speak French to have a discussion in another language just for a change, like all our other EU colleagues can do vis-à-vis ourselves. It is such a depressing scene that I find it very difficult to really concentrate on what the Government are actually saying because none of it is realistic.

I conclude with the Irish question, raised quite rightly by the noble Lord, Lord Wigley. It is a matter of huge concern because anything the British Government propose is literally undoable. Nothing the Government propose will be able to succeed without damaging at the margin at least, and probably a very big margin, the rights of Ireland as a free state in the EU to have those EU powers and privileges which it now possesses. That border situation therefore is unachievable without some kind of miracle which no one yet has been able to propose.

[Lord Dykes]

Finally, I am also worried about the link between this Government and the DUP. The only way for this ailing, weak Government, who have less of a mandate now than before and no sense of realism at all, to proceed in Parliament is with the support of a fairly dodgy and questionable group of politicians—if I may put it like that without sounding too harsh—in the DUP. There is a Tammany Hall snag to this, too, because along with the questionable alliance the DUP is also a party to the Anglo-Irish treaty. Without a functioning Stormont Administration, there are serious questions about policy formation and money usage. If we had a written constitution in this country—I fervently hope to get a better voting system in future as well—that would not be possible. It would be illegal in most serious European countries. Should a £1 billion bribe be used for public budget purposes to keep a weak Government in power artificially? I think not. These matters will come home to haunt the Government in future and I urge them to think again.

7.10 pm

Lord Hamilton of Epsom (Con): My Lords, I would like to use my five minutes to talk about the progress of the negotiations with the EU or, perhaps more accurately, their lack of progress. Michel Barnier, the EU negotiator, has made it clear that he needs to see progress on three issues: the rights of EU citizens living in this country and British citizens living in the EU; the Irish border question; and, of course, the money.

It strikes me that if there was any political will behind it, agreement would already have been reached on the EU citizens. We want them to stay here and it cannot be impossible to find the means by which that happens. We do not have to agree to the jurisdiction of the European Court of Justice for its citizens who live in this country because that would admit that our legal system was rather inferior to that of the EU. I do not think that anybody in this House would really go along with that.

At the same time, the Irish border issue is one where there seems to be complete unanimity. Everybody seems to agree that we should continue with the frictionless border between the north and southern Ireland, which existed decades before anybody joined the EU. If there was any political will there, I believe that issue could have been solved. The problem is that if it were solved, that would create a template of frictionless borders which could then be applied to the rest of the EU. That would then draw the EU into the question of the next phase of discussing our trade relationships with it.

Then there is the money. I always think that the whole debate about how much we should pay the EU was rather snarled up at the beginning by its absurd claim that we should pay it €100 billion. Not unnaturally, the UK position seems to be to go back to the EU and say, "We will of course honour our international obligations, but produce us the evidence that we actually owe you money. If you do, we'd be more than happy to pay up if we are clearly liable for those debts". That does not seem an irresponsible position to be in.

However, the problem is that the question of whether we are making progress on these issues is a subjective judgment in anybody's language. I expect that the noble Lord, Lord Liddle, was right to say that the advice to be given to the Council of Ministers in October will be that insufficient progress has been made, so we will not be able to move on to the more serious issues of our future trading relationship with the EU.

The most important question put in this Chamber today came from my noble friend Lord Caithness. I repeat it to my noble friend the Minister: is it right that the United Kingdom made a proposal to the EU that we should have a rolling programme of negotiations, which should just continue, and that the EU turned this down by saying that we had to wait for the next scheduled meeting? If that is the case, it is quite clear that—as per the alarm bells sent ringing by my noble friend Lord Blencathra—it does not want an agreement but wants to push it right to the end of the period. If you have negotiations going on between two parties, one of which wants an agreement and one of which does not, it will clearly be very difficult to get an agreement. This brings us back to the remarks of the noble Lord, Lord Jay, who made it clear that we might reach the end of the period without any agreement because it has just been impossible to get any agreement during that period.

If there was an agreement, it does not follow that it will be ratified and agreed by the European Parliament, which might well take the view that it does not want to encourage anybody to leave the EU. It would therefore be very important not to approve it in the European Parliament. The agreement then has to go to 27 different countries in the EU. There are also something like 11 regional Governments—I do not know whether they all have a veto on it as well. So there are many hurdles to be cleared and it seems not inconceivable that we might end up, through no fault of our own, with no deal whatever.

There are moments when I feel quite sorry for Michel Barnier. He is trapped between businessmen and sensible people in the nation states, who want to go on trading with the United Kingdom, and lunatics in Brussels who want to punish anybody who has the nerve to leave the club.

7.16 pm

Baroness Crawley (Lab): My Lords, I usually enjoy a few improbable detective novels as summer reading. However, this year the Government supplied their own—some might say, improbable—reading matter over the Summer Recess. Some of the position papers I read were wildly optimistic: "hope" and "belief" appeared several times. Some of the papers were thin to the point of emaciation. The *Confidentiality and Access to Documents* paper ran to a full one and a half pages, as did that on *Privileges and Immunities*, while the *Nuclear Materials and Safeguards Issues* position paper did little better. It came in at a full four pages.

On the vastly important issue of the border with Northern Ireland, which will become the EU's new external border, we were treated to more detail on the Good Friday agreement, the free movement of goods, the common travel area and energy supply on the island of Ireland. However, the paper still does not meet the EU's concerns that there is a distinct possibility of a return to a hard border and of damage to the

existing frameworks of funding for the peace process, such as the EU-funded PEACE programme. The EU believes that the issues relating to the Irish border, created by Brexit, are the UK's responsibility to resolve and it is right. Both Northern Ireland and the island of Ireland have been well and truly dropped in it by our decision to leave the European Union. The complex and difficult issues created by Brexit, as it relates to Ireland, would be far better tackled if the UK stayed in the single market and the customs union.

The position paper on safeguarding EU citizens living in the UK and UK nationals living in the EU raises so many new questions that it is hardly a comfort to those left in limbo as to their future status. The paper states that we—the UK—are,

"ready to make commitments in the Withdrawal Agreement which will have the status of international law".

What does that mean if we are not going to recognise the Court of Justice of the European Union? Is it the case that those EU citizens who have already obtained a certificate of their permanent residence must still reapply? How much better for everyone, and how much more humane, would it have been for the Government to have said, the day after the referendum result, that those EU citizens legally residing in the UK were more than welcome to remain—full stop?

The science and innovation position paper ran to an impressive 16 pages but it managed to do so only by having page 1 marked as page 3, oddly. We are reminded in the paper of the Government's achievements and how, in the years of our collaboration within Europe, the UK has brought about so much in the field of research and innovation. We have been there in the development of new therapies and in the medical technologies that have benefited all EU patients. We have, in so much, been participatory leaders in science and innovation in the EU. There is an attempt in the paper to say, "It's not going to be so bad. We can continue to do all this innovation and science after Brexit, but as a non-EU country". Yet, it does not take much probing to see that, as a non-EU country, we cannot lead projects as we have done in the past—projects in CERN, the European centre for nuclear research, for example.

In another part of the paper is the suggestion that we, the UK, could have special access to these research programmes that other non-EU countries have never had. This, I suggest, is wishful thinking, and so we will go from leading in research, as we do now, to having no influence, no vote and bringing our own credit card to the table every time, as a non-EU country. We would have indeed voluntarily put ourselves out of the Premier League and settled for the Vauxhall Conference, or whatever its equivalent is today.

April 2019 looms, as many noble Lords have said, and these position papers, with their wishful thinking and special pleading, do not yet make for the detailed road map that this country so desperately needs.

7.21 pm

Lord Kakkar (CB): My Lords, I thank Her Majesty's Government for providing the opportunity for a debate specifically on the position papers. I will confine my contribution to the paper on science. In so doing, I must declare my interest as professor of surgery at University College London, chairman of University College London Partners and UK business ambassador for healthcare and life sciences.

The president of the Royal Society, Sir Venki Ramakrishnan, in providing his response to the position paper on science, on behalf of the Royal Society, recognised the Government's commitment to the science agenda and the aspiration in the tone of the paper, but remarked that there was much work still to be done. That is true, and important, because science and innovation play such a vital part in our economy. When we look at research output from the United Kingdom, 50% is results from international collaborations. Of the internationally co-authored publications from UK science, 60% are co-authored with European collaborators. The £1 billion a year of funding that we receive from the Horizon 2020 programme and the regional development research funds of the European Union represent 10%—or the equivalent of 10%—of the expenditure in research and innovation provided by government, and about 5% of gross expenditure on research and development, for both the public and private sectors. If we look at UK scientists' collaborations globally, the country with which there is the greatest amount of collaboration is of course the United States of America but, of the top 10 countries for UK collaboration, seven are from the European Union. So this is a very important issue.

There is considerable anxiety still in the science community over the way forward, despite the publication of the science position paper. There are three areas where it will be vital to make early progress to provide the detail attending the aspirations laid out in the paper. The first is research funding. There is a commitment to continued funding obligations for Horizon 2020 until the time of departure from the European Union, but that important commitment needs to continue throughout the Horizon 2020 commitment period and beyond to the next framework of research—framework 9. Discussions are now starting on the nature of that programme to support research and research excellence. It will be vital for our country to find a way to influence both the discussions on and the structure of those programmes, and to be in a position to make commitments on our longer-term participation and funding in that area.

The second area is research scientists—that is, people. Again, there are substantial anxieties. There are fewer applications now to UK institutions as a result of that uncertainty, with regard to collaborative scientists coming to work here. However, a very interesting observation was made in the science position paper on the Rutherford Fund. This fund has been developed to promote excellence in collaboration and to encourage both early-career scientists and established investigators to come from around the world and be able to work—funded—here in the United Kingdom. Is it possible that this programme might be extended, both in the scope of funding available—currently £100 million a year in this interim period—and that some mechanism might be found to guarantee the visa status, and therefore the ability, of scientists wanting to come to work in our country, when they have programmes of research funding by those UK Government-designated research funding opportunities?

[Lord Kakkar]

The final area is regulation, again identified in the science position paper. The point is made that our country will be uniquely positioned with regard to regulation post-Brexit, because we have been part of the regulatory frameworks in science to date. These are all vital, and relate to such issues as clinical trials and data protection, as we have heard in this debate. The issue is that we are not only well aligned in regulation at the moment but we have influenced much of the nature of that regulation. A mechanism must be found to ensure that we can continue to influence the development of regulation, so that we can remain completely aligned with it and, therefore, can participate in the research programmes, collaborations and networks going forward. We must also ensure that our innovation and technology businesses continue to be able to participate in the important European markets.

7.27 pm

Lord Cavendish of Furness (Con): My Lords, how hugely refreshing to follow a speech which is so constructive and given with such authority, hoping to make these negotiations work. I congratulate the Government on their use of the long recess to provide us with a large folder of position papers, and I thank my noble friend the Minister for giving the House the opportunity to debate them. I also thank her for introducing the debate with her customary clarity.

I have tried to read all the position papers as they appeared and, as a result, I feel that I have gained a clearer view of what the Government have in mind in the different areas under discussion. That surely is what they are intended for. They are not dogmatic and frequently offer alternative approaches to problems. They have formed the basis of intelligent debate in various quarters, not least among a number of your Lordships. I have also read them in conjunction with the European Council's document on guidelines for Brexit which, aside from the usual self-promoting claims that one might want to challenge, held no real surprises. But what I have found striking is how sparse the EU negotiator's response is. I can understand that the EU will indeed miss our financial contribution, but I would have thought that there were aspects of Brexit, other than money, and especially those set out in the position papers, which merited a greater reaction than has so far been forthcoming.

Much of the criticism that I have seen in the press and which has been articulated this afternoon has been, in my view, largely synthetic. We have heard that there has been both too much detail and too little detail. More broadly, I rather miss the days when convention held that, in international affairs, criticism of one's own country and Government was measured. Sometimes I hear and read things that suggest there are elements in Britain which appear not to have their country's interests at heart. Their disappointment at the outcome of the referendum is manifested in an apparent wish for the negotiations to stall or fail.

The message of the position papers suggests to me that Ministers recognise that Brexit has implications for all our EU partners as well as ourselves, and that we stand ready to make the process as painless as possible.

On many occasions since the referendum result, I have paused to reflect on how common ground might be found between we leavers and the almost, but not quite, equal number of my fellow citizens who took the opposite view. Although I continue to rejoice at the decision that was reached and to feel a free man at last, I do not understand the rationale of those who wish to retain membership of the EU. It still eludes me, but I know that I need to keep in mind that 48% of voters represents a very substantial minority. It is for those of us who won by a not-great margin to go on listening to those we disagree with and respect their feelings.

Conversely, the 48% should not seek to derail the decision reached by the British people. As for those who seek to abort the whole process, I invite them to reflect on what might be the reaction. They might also give some thought to the kind of terms Britain would be offered if we crawled back in supplicant mode. Like my noble friend Lord Ridley, I await patiently and with interest for the Labour Party to find a settled position on Brexit. There is little to say until it does. The Liberal Democrats were the only party at the last general election that campaigned to reverse the referendum decision. Voters hardly flocked to support that policy, and unless they are listening only to themselves, one might think that some restraint would be appropriate when the repeal Bill arrives in this House.

Baroness Ludford (LD): I thank the noble Lord for permitting me to intervene. For his benefit, I will just clarify that we did not seek to reverse the referendum. What we are saying is that the referendum last year was rather like buying a house subject to a survey and that once the details are known, there should be a referendum on the concrete details of Brexit. That is not a reversal or a second referendum.

Lord Cavendish of Furness: I will read very carefully what the noble Baroness has said and I hope I will be clearer.

I will now briefly look to the future, because I believe there is a vision for this country behind which we could reunite and thrive—the vision of global free trade. There are people I know devoting energy and talent beyond the minutiae of current negotiations who see in the ancient notion of free trade a means to worldwide prosperity and peace. When we leave the European Union, we will also leave behind a protectionist organisation, whose policies harm the poorest of the world. I say to the noble Lord, Lord Newby, no, trade is not good for all. The European Union is an organisation where the producer is placed above the consumer, where the powerful prosper at the expense of the weak, where huge youth unemployment is deemed acceptable and where government comes before the governed.

On leaving the European Union there is a real opportunity to work towards global free trade. Although no one pretends this will be easy, it has this extraordinary feature: it can be done unilaterally. If a country dismantles tariff and non-tariff barriers while others do not, that still brings benefits that others come, in time, to emulate. That is the lesson of history. It is a vision that offers peace, fairness and prosperity to a country and to a world that has become full of self-doubt. My right

honourable friend the Prime Minister has spoken of a post-Brexit Britain becoming the "global leader" in free trade. Can I ask the Minister what the current thinking is on that? I can think of no greater ambition, and it must be ever present in our minds in the months and years ahead.

7.33 pm

Lord Davies of Stamford (Lab): My Lords, I always enjoy debating this matter with the noble Lord, as we have done on a number of occasions over the last year or two, but a tone crept into his speech this afternoon that rather worried me: the suggestion that those of us on our side of the argument are either politically irresponsible or maybe not entirely patriotic. I must tell the noble Lord very forcefully that those of us on this side of the argument regard ourselves as being every bit as patriotic as those who are on the Brexit side. We think of Brexit as a great threat to this country's interests and are prepared to argue specifically why we believe that to be the case. That is why most of us are here this afternoon. We believe it is our patriotic duty not to go through with Brexit, and if we do have to go through with it, to go through with it as far as possible in a way which enables us to remain inside the single market and the common customs area.

I will direct my remarks this afternoon specifically to the common customs area. It is very important for two reasons, which I think the House recognises. First, it is a matter of existential importance to a number of industries that there should not be unpredictable customs delays at the frontier. That includes, obviously, anything to do with perishables—fresh food, cut flowers and so forth—some quite interesting parts of the pharmaceutical industry and nuclear materials, such as radioactive isotopes, many of which have half-lives of a few days or even a few hours, such that timing is absolutely vital. It also includes those manufacturing industries which depend on just-in-time inventory replacement. They have already expressed a lot of concern about the prospect of our leaving the common customs area.

Secondly, there is a whole political dimension to the threat involved in our leaving the common customs area, which is the Ireland issue. We debated that last week in great detail, so I am not going to go into it now, but I think the Government recognise that staying in the common customs area is the only way of reconciling our commitment not to have a hard border in Ireland with their determination to leave the European Union.

This is very important, and the great question is whether we can leave the common customs area in such a way that those businesses that I have just enumerated could continue to survive here. Many of them are making contingency plans at the moment to leave this country, which is a matter of very great concern. The implication of those who are happy to go ahead on that basis, including the Government, is that there is enough slack in the system to accommodate customs controls without causing undue delays. Representatives from the Port of Dover came here yesterday and kindly entertained a number of us at a reception in the House of Commons—I dare say Members of this House who are present in the Chamber at the moment went there—and I was able to have some interesting discussions with them. On an average day, 16,000 lorries go through Dover or the Channel Tunnel to the continent. Noble Lords can do their own maths, but that means about 700 an hour, or 11 or 12 every minute. That is a pretty tight schedule. if you hold up a lorry by two minutes by reading the driver's certificates of origin or talking to him about that or something, that means you immediately have two dozen lorries held up. If you hold them up for half an hour, you have a backlog of 3 miles, I am told. If you have an hour's delay, that means a backlog on the motorway of 6 miles. If you had a 24-hour hold-up for any reason, you would have trucks backed up the M20, around the M25 and out to Hemel Hempstead. It is a very serious matter; there is no slack in the system.

The Government have produced a paper, which of course I have read, which says, "Oh, there are all kinds of new technologies which mean there won't be any delays at all". But those new technologies, which are described I must say in a very vague fashion and not necessarily always very persuasively, are all based on leaving out three very important issues. One is the fact that there must always be spot checks in any system. It is no good having just an electronic system: if you never have spot checks, the whole thing will become a farce in no time at all. The second thing is that you always have to take account of human error and delays. For example, a truck may not work, so at the last minute the cargo is put on to another truck, which has a different number plate which is not recognised by the computer system, and there is a big hold-up. That sort of thing can happen the whole time. Thirdly, and very importantly, all those systems described in this new paper all involve prior clearing and a connection to a computer system and so forth—a lot of prior arrangement and registration. They are not suitable for, and do not accommodate, people who move across the Channel or the frontier at the last moment—which they should be entitled to do if their business drives them to do that—or small businesses that have not yet managed to get round to registering or are not regarded as being sufficiently large scale to be worth taking on. None of those issues are dealt with in the paper at all, so I am very much less than convinced by it.

I have very little time left. The great question arises of why we are taking these risks with these potentially enormous costs. The Government have a simple answer, which I think shows up the compete falsity of their logic. They say, "Well, we are going to be leaving the European Union, so we shall no longer be able to trade in that area on the present favourable terms". That is 45% of our trade. When we leave we shall also leave preferential access to the other markets which have free trade agreements with the EU, which represents about 22% or 23% of our total exports. That leaves about 30%, and the Government say, "Well, that's all right: with the 30% we are going to do so well, and so much more incremental business will come as to compensate us for the loss of business from the 70% where we shall be at a disadvantage". That is completely implausible and unrealistic—not to mention the fact that it takes many years to negotiate a free trade agreement with anybody; it has taken seven and a half years already for the EU to negotiate with Japan, for example.

[Lord Davies of Stamford]

The whole of this potential threat to very important industries, to employment and to our relations with Ireland is all based on a very flimsy assumption, and it really is about time that the Government looked at these assumptions again. At present, I do not believe that those assumptions would get through the board of directors of any half-competent or half-viable business in this country. It would be very frightening indeed to think that this country is being managed on that sort of basis.

7.40 pm

Baroness Stroud (Con): My Lords, I thank my noble friend the Minister for securing this debate on the position papers. Although this topic covers a number of papers, I shall limit my remarks to the subject of the Irish border.

As we all know, in March 2019 we will embark upon a new era in the history of this great nation. We are the world's fifth-largest economy, supported by the world's most dynamic, creative and resourceful people. We should therefore be optimistic about our prospects. But it would be wrong not to acknowledge the real challenges that, as we have heard this afternoon, lie ahead. We must work together to find a pathway to minimise potential disruptions at the Irish border, so that we can ensure a future for the UK and the Republic of Ireland that is open and inclusive, creates growth and jobs, and encourages innovation and enterprise.

We must ensure continued ease of movement for people and goods, so that we can ensure border controls do not have a detrimental impact upon businesses, families and communities. Finding a solution to the issues created at the Irish border by the UK leaving the EU is very much in the interest of both parties. Here I refer to my entry in the *Register of Members' Interests* as CEO of the Legatum Institute, which this week published its paper on resolving the issue of the Irish border.

In my limited time, I want to focus on two main priorities for the border. First, as we have heard, we must ensure the continued ease of movement for people. The UK Government's paper recommends the continuation of the common travel area and ease of movement of people across the Irish border. Secondly, we must ensure the continued ease of movement of goods. The UK Government's paper talks about there being no physical infrastructure for a customs border for goods—achieved either by the UK simply not applying such infrastructure, or by the UK acting as an agent for the EU in the collection of duties. It offers all Irish people the chance to live and work in the UK if they so choose.

In the report that the Legatum Institute published yesterday, we echo and support many of these proposals, and offer a few of our own. The Government are right to specify that we should facilitate the free movement of people between Northern Ireland, the Republic of Ireland and the UK mainland by the indefinite continuation of the common travel area. The process of delegated immigration controls should continue, with the Republic of Ireland authorities handling the administration of EU citizens arriving there, including those wishing to travel onward to the UK.

Potential infrastructure to ensure proper implementation of the border agreements is already in place in the form of existing bodies such as those created by the Belfast agreement, which could be used to create a joint committee with that responsibility.

When focusing on ensuring the continued ease of movement of goods, the most important point is that one simply cannot solve the problems of the Irish border without understanding the trade relationship between the UK and the EU. Our data show that the trade of both the Republic of Ireland and Northern Ireland is overwhelmingly with mainland Great Britain, so it is critical for all parties that the trade arrangements between the UK and the EU be resolved quickly. While we do not underestimate the disruptions at the border for which real solutions must be found, these trade data are evidence that the most important disruption for businesses and people in both the Republic of Ireland and Northern Ireland would be to their trade with mainland Great Britain.

The most effective way to reduce border disruption for trade in goods between Northern Ireland and the Republic of Ireland is by the UK and the EU agreeing a smooth customs arrangement. This is an opportunity to deploy the latest technology available, similar to that deployed on the Norway-Sweden border, and even for the London congestion zone, in a limited area which could become a prototype for other regions.

In addition, the Governments of the UK and the Republic of Ireland, as well as the EU Commission, should focus on the appropriate mechanisms to minimise the disruption to relatively low-volume high-frequency trading across the border, including trusted trader programmes that are easy to use, and appropriate mechanisms to minimise risk so that frequent traders face fewer obstacles. It should be pointed out that the challenges posed by the border mirror those that must be resolved between the UK and the EU. If we can get this right, it could become a model for other border arrangements around the world.

We owe it to all the people of the UK, regardless of how they voted last June, to ensure the best possible Brexit. We have a duty and an opportunity to create a prosperous, imaginative and ambitious future for this nation, taking the challenges and opportunities of this unprecedented change, and ensuring that we continue to be the outward-looking and leading nation we are known to be.

7.46 pm

Baroness Humphreys (LD): My Lords, I am grateful for the opportunity to contribute to this debate on the Government's position papers, and in the short time available I will confine my comments to the paper on future customs arrangements.

As I and other speakers have said in the past, the customs union is vital to Wales: 67% of Welsh exports go to the EU, the Welsh Government have called for "free and unfettered" access to the single market and the customs union—and, of course, my own party has recognised the importance of the two and has called for continued membership of both.

It was with great interest that I read the position paper, and I was struck by how much the Government hope to achieve by the end of March 2019 in order to

ensure a "smooth and orderly transition" when, as they hope, we leave the EU. If we are destined to leave the EU on Friday 29 March 2019, it will not have been lost on many in your Lordships' House that our bright new future outside the EU will begin on Monday 1 April 2019. To some of us, that is a rather apt date to start on this new venture.

In the paper, I found what we might call the "current positon" statements useful, but the proposals for future relationships were vague and gave very little information or detail—relying, I thought, on a certain element of wishful thinking. How, for example, would the idea of a "highly streamlined customs arrangement" work in reality? Given the reputation of previous government IT systems, its dependence on new technology seems unrealistic, and the idea that these systems would be operational in 18 months' time appears far-fetched. To ensure that the system can deal with the number of declarations associated with leaving the customs union, the Government must guarantee that the customs declaration service system is fully operational by January 2019, so that it can be tested before 1 April.

Those of us on the remain side of the debate were cautioned last week to avoid repeating the same arguments as we have used in the past. But the arguments, concerns and worries we have still persist, because we receive no concrete proposals or answers when we put them forward. The position paper fails to address a number of challenges that the Government face.

There is nothing here to enable me to assure farmers in the Conwy valley, where I live, or farmers in the rest of Wales and the UK, that the markets they have today in the EU will exist on 1 April 2019, or that any clear pathway exists to replace those markets. There is nothing to prepare farmers for increased prices if tariffs are placed on their goods, or for the extra paperwork involved in "taking back control" of our borders.

There is nothing to calm the fears of the design engineer I met on the train yesterday morning that the car industry he works in will suffer a 10% tariff on vehicles and an average 4.5% tariff on components, or that the industry will suffer delays if parts are held up as customs officers check their country of origin.

Where is the forward planning for ports? Holyhead on Anglesey can seem rather remote to those living on mainland Britain, but it is the busiest roll-on-roll-off port in the UK after Dover, dealing with 400,000 trucks a year making their way from all over Europe to Dublin. The National Assembly fears that a hard customs border between Northern Ireland and Ireland will mean chaos in Holyhead, with extra customs checks in operation. Already there are concerns that Dover may have to operate an Operation Stack policy. Will Holyhead have to operate a similar system? Have the cost implications been considered?

In the coming weeks I will be paying a visit to Airbus in Broughton where the wings of the A350 are manufactured. The company relies heavily on the free movement of goods and people and it fears that a hard Brexit, with the inevitable tariffs, will push it out of the UK. I can find nothing in this document that realistically assuages those fears.

Finally, nowhere is there an analysis of the impact of leaving the customs union on various sectors of the UK economy, although I believe that the Government have carried out up to 50 such analyses. When will they be published?

7.51 pm

Lord Suri (Con): My Lords, I have heard a great deal of gloomy talk in the past few months on the prospect of success in the Brexit negotiations. I have lost count of the editorials and columns loudly proclaiming that no deal is hurtling down the tracks.

In every negotiation in which I have been involved, there needs to be some fundamentals in place. First, both sides must have some good will. I think that while there is less than there was previously, the UK and the EU do not loathe each other to the extent that some in the media portray. Secondly, there must be a position which benefits both sides. Of course, this exists here, as the trade relationship is a net plus for us and the EU. Finally, we need realism. That is: proposing unworkable positions must be curtailed. This issue of realism is probably the biggest sticking point to moving talks onward. With that in mind, I will outline where the Government and the EU need to be more realistic.

The Government's papers on Northern Ireland and the customs union are not adequate in correctly explaining the need for, or consequences of, a hard border. The reliance on technological solutions to speed up the process is not credible. Neither is the idea that the Government will be able to get in place a full scan and track customs movement system in less than two years. These systems are extremely complex, and can confuse exporters even when well administered. The record of British Governments of all stripes on large IT projects is, I am afraid, not good. There is either a hard border for goods moving from one side of the island of Ireland or there is not. All indications now suggest that a hard border in Ireland is the only workable solution if one wishes to leave the customs union. It may be very quick and hassle free, but it must be described for what it is, if the Government are serious about leaving the customs union. The Minister may have visited the Canada-USA border in her previous department, and if she has, she will see that it is a hard border, but various solutions have been used to make it as easy as possible—solutions we should learn from.

There is also the need for some realism on the EU side, on two issues in particular: the divorce bill and citizens' rights. I am not one of those Conservatives who opposes any divorce bill, like in that letter circulating around Conservatives in the other place. We have obligations and ought to uphold them in return for similar good-will gestures. But waving around figures of £100 billion and demanding that we create the rationale for calculating the contribution is patently absurd.

The further obstructionism on trade talks is also unhelpful. Why should the Government commit to a large payment without being sure of anything in return? To further claim that the CJEU ought to have jurisdiction over citizens in the UK post leaving is also fantasy. Some combined court or EFTA Court referral mechanism would work perfectly well, as laid out in the position papers, but a foreign court claiming supremacy over its citizens abroad is neo-imperial.

[Lord Suri]

I think these talks will be declared dead another few times, and our position papers will be declared to be unrealistic. I think these are puffs of hot air, and I will be supporting the Government in the EU withdrawal legislation coming to this place.

7.57 pm

Lord Robathan (Con): My Lords, having listened to most of this debate, I have changed a few notes that I wrote and the tenor of my speech. I do not think that I am alone in being very disturbed, indeed astonished, by some of the views that have been expressed in this debate. Leaving aside the absolutely risible idea of a second referendum—not wanted by almost anybody in the country—why do some speakers imagine that Monsieur Barnier and Monsieur Juncker, or indeed the Irish Foreign Minister, must be right, and that their views must be heard, while considering that the UK Government in obeying the instruction of the British people must be wrong? It shows a complete lack of confidence, and personally I have confidence in the ability of both this country and the British people to flourish, as they have done in the past.

In this brief contribution I want to speak about general points, but I may try to come on to one or two particular position papers. Leaving the EU will not be in any way easy. We all know that—after 40 plus years of legislation and ever-closer union—but some in this debate seem to imagine, or create, greater difficulties than exist. I might expect it from BBC journalists, but I wish that some politicians would not wish to frustrate the democratic will of the people.

Before 1973—and I am younger than the average age in this House—there were no visas to travel to Europe. We could work and travel easily, pace the Iron Curtain. In the 1960s, I went on holiday to France, Germany and Spain; I trekked and skied; and travelled by train in Austria and Italy. We did not need visas; we just went. In 1973, just after we had joined, I hitch-hiked across the continent. I had friends who were teaching and working in France and Italy. So let us get things in perspective. Of course, we can cross borders without visas if we want to. We can work and live on the continent, and EU citizens can do the same, although there may be work permits both ways.

I want to raise three points, if I may, from the position papers. The first, which has been very well covered by my noble friend Lord Ridley, is on Euratom. Why on earth should there be problems about co-operating on civil nuclear issues and safeguarding material, et cetera? France and the United Kingdom are the only two nuclear powers in Europe—I remind the House that Germany has abandoned its nuclear programme. Of course, there are many other nuclear-energy countries, and of course we can continue to co-operate with all others on material, on energy, on medical research and so on. So what exactly is the problem that people raise? I thought that my noble friend Lord Ridley did an excellent job on that.

On defence, the only threat to NATO that I can see is that of the proposed European army, which would side-line NATO and exclude our North American allies, Canada and the United States. NATO has defended the West since 1949. It has grown from 12 countries then to 29 now. On security, we will of course co-operate with Europol and its European counterterrorism centre. Apparently we provide over 50% of the intelligence on crime and security, especially CT, to those organisations, so why would they not want to co-operate with us?

On Ireland, I turn very briefly to the border there. It has, of course, had a vexed history over the past century, but we should remember that not 100 years ago there was no border between the south and north; it was one country. Then, between 1922 and 1973, they were separate countries with border controls. But there were not really any border controls. There was an open border for so much of the time. I do not think we need to talk about reviving old enmities. Why should that be the case? It is not beyond the wit of man to come to a perfectly reasonable agreement with the Irish Republic—and indeed with the EU—over this matter. I was particularly asked to raise this point by somebody who knows much more than I do about this subject. While the British position paper is not perfect—none of them is, of course—the EU paper is inflexible and small-minded, and one should not just accept that paper as gospel. We should look at it very carefully and see whether we cannot come up with a very much better solution for the good of the people of both north and south Ireland.

These continental countries are our friends and allies, even if Monsieur Barnier wants to, as he said, educate us—which, to me, means teach us a lesson. Jean-Claude Juncker thinks David Davis is unstable. Guy Verhofstadt of the European Parliament rages against us. I prefer to be confident in the abilities of the United Kingdom and its people and its citizens to prosper outside the EU in co-operation with our friends and allies on the continent for our mutual prosperity and benefit.

8.02 pm

Baroness Smith of Newnham (LD): My Lords, I rise feeling a sense of déjà vu. Two years ago, after the 2015 general election, when it became clear that there was to be a referendum on the UK's membership of the European Union—which now sounds a very long time ago indeed—there was a discussion about what the Prime Minister really wanted. There was frustration in Brussels: "We don't know what the Prime Minister wants". Members of your Lordships' House, particularly on the Labour Benches, were saying, "We don't know what Cameron is asking for".

It was actually quite straightforward what was being asked for in the renegotiation. The then Prime Minister had made clear in the Bloomberg speech what he was looking for. It was repeated in the 2015 Conservative Party manifesto. There was a broad sense of what was being asked for. To some extent, I feel the same today. There is a lot of shadow boxing going on, not just in your Lordships' House—where I would never suggest there is shadow boxing going on—but in Brussels and in the negotiations so far.

So far, we have had six months of not very much negotiation happening. The noble Baroness, Lady Smith of Basildon, suggested in her opening remarks that there is not enough progress. We are in a period when, if we were joining the European Union, we would be going through something called screening. I think that

is what the European Commission calls it. In that very preliminary process, the European Commission explains what it is looking for and what it expects of would-be member states, outlines the process and explains what needs to happen. With departure, surely we would expect something similar. We need, on both sides, to identify what it is that we are leaving and how we are to go about it. Accession negotiations take many years because there is so much detail associated with membership of the European Union, so at this stage perhaps we should not expect a huge amount of progress in the negotiations, if that means David Davis can come back and say, "I have agreed X, Y and Z".

Last week, the noble Baroness, Lady Anelay, who has just returned to her place, said that nobody had talked numbers yet in discussions about the budget. They have not discussed numbers precisely because at this stage we are looking at what is at stake and what are the lines in the EU treaties that we need to think about to get to the point of looking at numbers. The fact that we have not made major progress in the negotiations yet, particularly before the German elections, is perhaps not that surprising. But with the position papers and the future relationship papers, there seems to be something akin to what we were saying about the then Prime Minister, David Cameron. What is in these papers? What are we expecting? When he made his Bloomberg speech, it seemed quite clear. A year later, when he spoke to Chatham House, he said almost exactly the same things as he said at Bloomberg, but rather less eloquently. With the position papers that we are getting at the moment, there is a sense that we are hearing the same points rehearsed again and again.

The current Prime Minister, Theresa May, in her Lancaster House speech in January, may have been clear about what sort of relationship—a deep one—we should be having with the European Union. But the position papers do not seem to have got us very much further. I confess that I have not yet read them all in detail. Some of them do not take very long and will not have much detail. But what seems to come across in all the position papers bar one is that the United Kingdom wants to keep as close a relationship as possible with every aspect of the European Union that we are leaving, with one exception: the European Court of Justice. After listening to the noble Lord, Lord Adonis, this afternoon when he talked about the customs union, saying, "Actually, why don't we just stay in?", I have got to the point of thinking, on almost every one of the position papers, that the conclusion seems that the best response is: why do we not just stay in? Clearly, however, the one difference is the European Court of Justice.

The noble Lord, Lord Hannay, suggested earlier that the paper looking at the European Court of Justice was rather academic. I slightly take exception to that because he was rather critical, thinking it was not a very good paper. But there is a sense in which all these papers are superficial. They are words almost without meaning, and they do not take us very far forward. Last week, the noble Baroness, Lady Anelay, was able to explain what has happened in the budget negotiation so far. Can she explain how much further detailed work has taken place? In the covering pages, we have a suggestion that extensive work has been done in the past year. So far, the position papers do not show us that. Greater elaboration would be most welcome.

8.08 pm

Lord Howard of Rising (Con): My Lords, Her Majesty's Government are to be congratulated on the number of quality position papers, which provide good bases for discussion. The papers are a fine rebuttal of the arrogance of EU representatives slinging mud at British negotiators—for instance, as my noble friend Lord Robathan mentioned, Herr Juncker accusing David Davis of instability, which is a fine example of a very well-oiled pot calling a clean kettle black. The route of Brexit, and therefore these position papers, is the wish of the majority of the people of Great Britain—they want to leave the European Union—but reacting to what the electorate would like is a strange and alien idea to European Union officials. They see themselves as responsible not to the people but to an unelected and arrogant bureaucracy, which has been criticised by its auditors for making payments—in the words of the auditors—not being "free from material error" for over 20 years.

It comes as no surprise that the EU negotiators' main preoccupation is how much money they can extract from the British public to fund their extravagance. They spend money in a way which would be intolerable if they had to account directly to an electorate. As my honourable friend Jacob Rees-Mogg has pointed out, if the position was reversed and Britain was a net recipient, Monsieur Barnier would not have been showing the same enthusiasm to give us handouts as he is to take our money.

This lack of concern for the people of Europe is a cause of unhappiness and distress in many countries within the Union. For example, the response of European officials to the immigrant and refugee crisis in Italy and Greece has not been to address the cause of the problem but to try to force others to take unacceptable numbers of immigrants. Guy Verhofstadt tweeted:

"Happy to read that the Hungarian & Slovak Govs have failed to sabotage a European response to the refugee challenge we face".

That tweet demonstrates the contempt with which European officials view the peoples of Europe. There are signs that this contempt may be backfiring. Viktor Orbán has accused Herr Juncker of trying to change the culture of Hungary and is refusing to accept the ruling by the European Court of Justice that his country should open its doors to immigrants and refugees assigned to it by the Europeans.

In Germany, industrialists are asking their Government to create a special body to protect their interests during Brexit negotiations. Ultimately, the European Union will have to respond to electorates, especially those benefiting from the £90 billion a year trade surplus the Union enjoys with Britain. This pressure on the European Union negotiators will accelerate, so enabling Britain to take a firm stand in negotiations. It is of supreme importance for Britain to stick to the core principles—and achieve these by 2019—of no longer being subject to the European Court of Justice; leaving the customs union so that this country is free to make trade agreements with others; and having the right to decide who shall come to live in this country.

8.13 pm

Lord Hutton of Furness (Lab): My Lords, I bring the attention of your Lordships' House to the interests I have declared in the register. I am chairman of the Nuclear Industry Association. It probably follows on from that that no one will be surprised to learn that I will confine my remarks largely to the decision which Ministers have made to take the United Kingdom out of membership of the European Atomic Energy Community. These follow the remarks of the noble Lord, Lord Teverson, and the noble Viscount, Lord Ridley.

It is probably true to say that the decision to leave the Euratom treaty was one of the unintended consequences of the referendum. I do not recall a single supporter of the leave campaign banging their fists on the table and saying: "The UK must leave the Euratom treaty". No one mentioned it, and for a perfectly good reason. The UK's membership of this treaty has been the bedrock on which our nuclear industry has thrived and to which it owes its pre-eminent position today as one of the leading nuclear nations trading in goods and services, fissile and other material around the world. It has been essential for the growth of our nuclear industry. It is worth a little bit of context: the nuclear industry makes the same contribution to the UK economy as aerospace does, in terms of jobs, wealth creation and the taxes it pays to the Treasury. We should do all we can to protect and secure this strategic industry.

I welcome the publication of the Government's position paper on exiting the Euratom treaty. It sets out six high-level principles and it is very difficult to pick an argument with any one of them because it is all common sense. No one in their right mind wants to see such an industry compromised or its trade around the world affected by a rash and badly implemented decision to leave this fundamentally important legal instrument. To answer the noble Lord, Lord Robathan, the principles are fine but there are still two fundamental problems at play. First, how are we going to achieve these principles in the most effective way? There is nothing in the position paper which gives an answer to that. Secondly, and more significantly, how are we going to do all the things which are necessary to do that in the 18 months that we have left before we leave the treaty?

It is worth reminding ourselves what we have got to do if the Government's high-level principles are to be secured. We have got to agree a replacement voluntary offer safeguards agreement with the International Atomic Energy Authority. It would be useful if the Minister could tell us when she envisages this being in place. The particular problem is that we are going to have to renegotiate a number of nuclear co-operation agreements with our nuclear partners: the Euratom community itself, China, the United States, Canada, Australia, South Korea and Kazakhstan. What progress has been made on these new bilateral agreements? As a lawyer, I always study the precedents. Looking at the precedent established in the United States, in particular, these nuclear co-operation agreements have the status of international treaties and have to be approved by the United States Congress. Any student of politics will tell you that there has never been a treaty like this agreed by Congress in 18 months. So what do we do?

We clearly also need to clarify the validation of the UK's current bilateral nuclear co-operation agreements with Japan and other states. Has that process begun yet? The Government must also set out the process for the movement of nuclear materials—goods, people, information and services—to be agreed, when we leave the treaty, with the Euratom Supply Agency. Have we made any headway with that? We have to agree also a new funding arrangement for the UK's involvement in future fusion research and under the wider European Union nuclear R&D programme—

Lord Robathan: I am very grateful to the noble Lord who speaks with real authority on this. I understand the Swiss are associate members of Euratom. Would that be one way forward?

Lord Hutton of Furness: It certainly could be one way forward, but it has been ruled out by Ministers to date. It might well be that the best outcome is some form of associate membership. No one in this House, or outside this House, wants to see any harm done to the nuclear industry by leaving the Euratom treaty. But, if we are going to avoid that outcome, Ministers will have to show considerably more pragmatism than they have done to date in making sure harm is not caused to the industry in the way that the Article 50 negotiations are handled. The most obvious need of all, given the difficulties in negotiating these agreements, is that we do not actually leave the Euratom treaty until all the nuclear co-operation agreements are in place and are legally robust.

Trade in nuclear goods and services is different to trade in goods elsewhere. Unless there is a clear, robust legal framework for the movement of goods and services in nuclear materials, in most jurisdictions that we trade with, that trade becomes instantly illegal. It is a cliff edge which is much more apparent and real than the consequences and dangers of exiting the European Union without an agreement on future trade arrangements under Article 50. This is the ultimate cliff edge. If there is no agreement with other nuclear states within the 18-month period we have left, we are in a serious position. I urge the Minister and her colleagues in the Government not only to confirm tonight that they are willing to be pragmatic and look at extending the transitional periods of membership of the Euratom treaty, but to keep this House more fully updated on the progress of these important negotiations.

8.19 pm

Lord Fairfax of Cameron (Con): My Lords, I too would like to congratulate the Government in publishing their recent position papers; it is also good to hear from the Minister about the concrete progress made in negotiations on many items of substance, which is contrary to the impression given in certain quarters.

This of course is to be contrasted with the Opposition, which sadly often snipes unconvincingly and inconsistently from the side-lines. This is a shame in view of the huge importance of this subject. As many others have said, it is impossible in five minutes to do this subject justice, so I confine myself to a couple of remarks.

Firstly, as it was mentioned earlier, and as it illustrates the Opposition's party-political opportunism in voting against it, I would like to touch briefly on the repeal

Bill, which was debated yesterday in the House of Commons. As we know, it repeals the European Communities Act and repatriates sovereignty to the UK. It converts EU law into UK law and, in Section 7, about which much heat has been generated, it provides temporary powers to correct laws imported from the EU so that they may function appropriately. I understand the Section 7 power cannot be used to make policy changes; that must give some comfort to those who have criticised it so greatly.

Apparently there are as many as 20,000 EU regulations and statutory instruments resulting from EU law. I would like to ask, where were the strident voices we now hear about pernicious secondary legislation when this veritable forest of regulations and statutory instruments was being introduced into UK law? The noise now compared with the silence then seems a little inconsistent.

For the benefit of the noble Lords, Lord Taverne, Lord Dykes, and others, I would like to make a couple of comments about the stance of EU negotiators. In the published words of a Frankfurt-based German financier who, incidentally, is a senior finance officer in Mrs Merkel's own party, he said:

"It is about as obvious to us Germans as it is to the Brits—the EU cannot tolerate the thought of a successful UK outside the Brussels sphere of influence because, if that were to happen, others might decide to start leaving the club too".

It is this attitude on behalf of Messrs Barnier, Selmayr and others that threatens to put at risk the win-win outcome to the negotiations that, otherwise, by good will, might be achievable by the EU and the UK. But the divorce bill and the size of it is the number one issue for the EU negotiators, which may likely be colouring some of Monsieur Barnier's wilder utterances. If it is €100 million, then it is no wonder we voted to leave.

I wish Her Majesty's Government and the Minister as well as possible in their mammoth undertaking, which is so important for the future of this country. I add a few comments to comments made earlier, by the noble Baroness, Lady Kramer, and the noble Lords, Lord Taverne, Lord Dykes, and others. This is in relation to "Project Gloom". Are they aware, for example, that Deutsche Bank recently signed a 25-year lease on a new London headquarters building and that the Norwegian Sovereign Wealth Fund—which, incidentally, is the world's largest—has just increased its target allocation of UK Government bonds? Reference was made to Lloyd's by the noble Baroness, Lady Kramer, as if it were not the Lloyd's corporate establishment of a few tens of—or even a hundred—people leaving for Brussels, but the thousands of brokers who work in that industry. They are not going off to Brussels; it is only the corporate staff who are doing so.

I have personal experience of this—and it is in the register—as I am a director of a marine insurance company based in Newcastle. We, along with many other financial services firms, have been required by the Prudential Regulation Authority to look at passporting options, should there not be a successful outcome from the negotiations. That is certainly something that many firms are having to look at, because they are required to do so by the PRA. It does not mean, as many people have suggested, that financial services are going to move wholesale from this country. We should forget "Project Gloom". More of us should talk matters up rather than down.

8.24 pm

Lord Judd (Lab): Meanwhile, my Lords, in the real world very many people in industry, commerce, business and universities, and not least countless ordinary families, are waiting for some kind of certainty about where their future lies. They have to plan and make arrangements for the future but at the moment that is just not possible.

Nowhere is that more important than in the sphere of law. I serve on the Justice Sub-Committee. We took evidence on civil law and listened to very distinguished barristers in this country. I was quite moved when, one morning, they broke off and said, "Look, what we want to say to you as a committee is not in our selfish commercial and financial interests. There are a lot of families who cross borders and a great number of broken families. There has been a real problem with the children of broken families, with one country giving a verdict on their future but one of the partners rushing off to get a verdict elsewhere. For the first time, we are beginning to work in a sane, constructive atmosphere in which a verdict given on the future of children will run across frontiers". What are we doing? Cross-border realities are the nature of life in Britain.

On Ireland, a great deal has been said but I want to say only this. Fixing the Irish problem is not just a technicality; it has been a peacebuilding process. People have been engaged in building a new future for Ireland. If we jeopardise that, history will never forgive us.

I am afraid that there has been a fundamental flaw in Britain's relationship with the Community from the very beginning—right from the time of the European Coal and Steel Community, when we were not a member. We have always insisted on looking at it as a financial or commercial arrangement, but the driving force behind it has not been financial or commercial arrangements; it has been the political objective of a stable and peaceful Europe. Our failure, intellectually and emotionally, to engage in that process of building Europe has meant that we have not built up a great well of good will towards us. I was a Minister for Europe a long way back and I know that we are seen as always being concerned about what we can get out of it, as distinct from what we can contribute to it. That is a cultural difference and, if I may say so, a moral challenge that we have to face.

In conclusion, in the face of the world as it is, we have no alternative but to regenerate a good working relationship with Europe. Whether it be terrorism, events in south-east Asia and Burma, the Korean peninsula or the United States, or climate change and an accelerating increase in the flow of refugees across the world, there is no way that we can face those things without working with our European partners. We have to generate a sense of joint commitment with Europe on these matters. If we do that, we can then approach together much more constructively the practical challenge of how we organise ourselves.

8.30 pm

Lord Kerr of Kinlochard (CB): My Lords, I want to make three points. First, there was a document on citizens' rights that we put forward in the negotiations in June. That was a genuine negotiating document. None of the documents since is a negotiating document. None of the documents we are talking about today gives the negotiators anything to get their teeth into. They are lists, options, essays—some are rather interesting little essays—but clearly they are aimed mainly at a domestic audience and the aim is to avoid any new outburst of disagreement in the party. So they do not say anything.

My second point is that this is counterproductive. The papers have gone down rather badly in Brussels. On 31 August, Mr Barnier said:

"The UK wants to take back control, it wants to adopt its own standards and regulations. But it also wants to have these standards recognised automatically in the EU. That is what UK papers ask for. This is simply impossible".

A further cause of doubt in Brussels is the confusion between what we say and what we do. If it is the case that, as the CBI and the TUC want, the Government now think that the right course—at least for an interim period—is to stay inside the single market and possibly the customs union, there is a real negotiation to be had. Why do the Government publish a withdrawal Bill that eliminates completely the umpire of the single market—the European Court of Justice—on Brexit day? You cannot say, "I want to play in your game, but I don't respect the umpire". If we want to stay in the customs unions, why does somebody not switch off Dr Fox? There is an inconsistency inside the Government. We need them to come forward with a clear, achievable objective and then with precise negotiating proposals which would get us towards that objective. They need to avoid actions and speeches that are inconsistent with it.

Thirdly, the worst feature of the papers we are talking about is that there is not one on money. I agree that the bill that the European Union—the 27—has presented is grossly inflated. Of course it is. It is far higher than the first draft which Mr Barnier produced. Do not attack Mr Barnier: it is the member states that inflated the bill. I agree that the decision on sequencing that the European Council took was the wrong one. It is a pity that their position is, "Agree on the money before we talk about anything else". I understand why they reached that decision. It is because they had heard too many people in this country saying that we were just going to do a runner and they could whistle for the money. That is why they said, "You've got to show us sufficient progress on money before we move on". That was a mistake, but we are where we are. Unless we have put forward counterproposals on money and a real negotiation has started, it is not conceivable that next month's European Council could conclude that sufficient progress has been made.

I have one final point to add. All these papers describe—in rather optimistic, aspirational terms—a special relationship or special partnership with the European Union, which we will have left. The European Union runs on law. If there is no agreement on money—if we go to a court of arbitration to settle a dispute over real or alleged legal commitments—there will be no agreements on anything. The European Union will be unable to conclude agreements on anything. The special partnership will not exist and all these little papers will be so much waste paper. We need to put some money on the table and start a real negotiation. If we do not, we are risking the cliff edge—no relationship at all—and that would be very bad indeed.

8.34 pm

Baroness Bloomfield of Hinton Waldrist (Con): My Lords, I, too, congratulate the Government on this extensive set of position papers and welcome the opportunity to comment. In common with the noble Viscount, Lord Ridley, and the noble Lords, Lord Robathan and Lord Hutton, I will restrict my remarks to those papers which relate to the nuclear industry.

The UK's scientific community has benefited enormously from membership of the EU and Euratom in terms of research, funding and the free movement and exchange of scientists and ideas across borders. We are at the forefront of research and development in pharmaceuticals, biotech, space and indeed the nuclear industry. The Joint European Torus project at Culham in Oxfordshire is evidence of our being a key player in this field. International teams, both here and in southern France, are leading research into nuclear fusion, the holy grail of sustainable energy.

Europe has benefitted in equal measure, however, and there is no reason why this should not continue. As the position papers on the collaboration on science and innovation and those relating to nuclear materials stress, it is in all our interests that our joint enterprises continue.

There are complexities and a very challenging timeframe. The position paper on nuclear materials and safeguards makes it clear that we need to ensure a smooth transition to a UK nuclear safeguards regime to provide both certainty and clarity to the industry, which already employs more than 66,000 people and, crucially, wishes to invest significantly in a new generation of small modular nuclear power stations. We need this generating power to secure our future supply of power at prices we can afford.

The UK must also address the issue of nuclear supply contracts, which extend beyond the date of our EU withdrawal. Equally, we shall seek to ensure continuity of existing trade agreements on materials, spent fuel, radioactive waste and radioactive sources.

The fundamental principle that spent fuel and radioactive waste remain the ultimate responsibility of the state in which it was generated is reaffirmed under international law to which both the UK and the other Euratom member states are parties. The UK will be seeking reciprocal assurances in relation to spent fuel and radioactive waste, whether generated here or in another Euratom country.

The UK is known to be both a responsible nuclear state supportive of international nuclear non-proliferation and a state which has a strong desire to protect its own nuclear power industry. While we shall no longer be a member of Euratom, many of the standards it sets are legally binding and arise from obligations to which the UK is in any event committed under the IAEA as well as the Nuclear Energy Agency within the OECD.

In the Queen's Speech the Government announced a new nuclear safeguards Bill. This is intended to establish a UK nuclear safeguards regime and will delegate responsibility for this to the Office for Nuclear Regulation. There is little doubt that this fine but already overstretched body will need extra resources to take on these expanded responsibilities, and some of this expertise will have to be sourced from overseas.

So what will be the way forward for a United Kingdom that will be outside Euratom but wishes to continue co-operation? According to Article 206 of the Euratom treaty:

"The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures".

Switzerland became an associate member in this way in 2014. Many believe that pursuing this route would be the most beneficial for the UK. Alternatively, under Article 101 we could apply to acquire the status of a third country in the same way as have the United States, Australia, Canada, Japan, South Korea and Kazakhstan.

In a policy paper in May the Prime Minister noted that, while the Government was of the view that Article 50 covered Euratom, Britain still wanted,

"to collaborate with our EU partners on matters relating to science and research, and nuclear energy is a key part of this".

The paper also suggests that we may indeed look further afield than Europe, noting that Britain is a world leader in nuclear research and development and that,

"there is no intention to reduce our ambition in this important area".

We have confidence that it is in our mutual interests for the EU and the UK to continue their joint research. We must hope that all sides can work together speedily and with the active input from industry bodies to bring about a satisfactory outcome to negotiations. The end result might even be one in which the nuclear industry, when freed from some of the strictures of Euratom, becomes more nimble and better placed to pursue research and business opportunities globally.

8.39 pm

Lord Soley (Lab): My Lords, I have never liked referendums, not least because they rarely solve disputed problems in political parties. But if you have a referendum, the golden rule is to have a strategy for what to do if you win and a strategy for what to do if you lose. The tragedy is that the Government at the time—David Cameron's Government—had a strategy for winning but not a strategy for losing. We are now paying the price for that.

The issue is important because, before the referendum, Europe had been a divisive issue in Britain but the referendum has deepened that division. That is one reason why, although I voted remain, I do not think we can go back in any time soon, and I do not think any attempts should be made to reverse that referendum decision because all you will do is aggravate the divisions in the country. The divisions in the Tory party are serious, particularly in the House of Commons, where the party is divided much like it was over the corn laws in the 19th century. The problem for the Labour Party is rather different. It is much more to do with the divisions in our voters: working-class voters largely voted for Brexit while middle-class voters tended to vote remain. In other words, both the country and the two main political parties have divisions which make it difficult to come up with a proper structure.

One of the things I welcome, particularly in these position papers, is at last the Government saying that they want a good and positive relationship with the European Union. I wish that had been said more loudly and clearly at first, and that some of the more insulting comments that were made about the European Union had not been made; we are paying a high price for that. We now have to concentrate on how we deliver that better relationship, because we are all saying that, and these papers say it loud and clear. That is good, but the problem is in achieving that outcome.

One thing that troubles me about the papers is their relative vagueness. I understand that we are still, despite the time limit, at a relatively early stage of negotiations. It will not be the first time that the European Union has pushed negotiations up to the wire, and then made decisions at the last moment. That happens; we have done the same, and it is not a unique experience by one party. To get there, so much detailed work has to be done—much of which is being spelled out in this debate today—that we really have to work on this very hard if we are not to run into major problems. I would like to know from the Government how much we see equivalence on some of these areas of difficulty being a stepping stone on the way forward.

Look at the paper on the exchange of personal information and data, an important area for Britain. We are a world leader in many respects; we are also one of the countries that sets the standard in Europe. But somehow we are going to have to maintain that data protection standard at the same time as we are pulling out of the European Union, so we will probably need some form of equivalence system to make sure that the EU and the UK stay in step. Ultimately data protection will be something we need throughout the world to trade in increasingly complex areas, and we will need that relationship with Europe to do it in the rest of the world as well.

If we have to have an equivalence agreement—and I can see the logic of that and suspect the Government are looking at it—then you also have to have enforcement and dispute resolution, and that brings me to the other paper. The Government have turned their face against the European court, I understand that, but in the paper on the European court they say they will need international agreements on some of these things. That might be one way forward. We will have to come up with international agreements with the European Union without acting as a foreign power towards it as a power. That means we will need much more of that spelled out and will have to look at ways of getting international agreements which have the force of law without necessarily using the European court or the British courts, but just using conventional international law. That will apply to a number of these papers.

The last thing I wanted to mention—and I would have liked to have talked about it in much more detail but the document came out only today—is the foreign policy and defence issue. My noble friend Lord Judd

[Lord Soley]
mentioned this; one of the big problems for Britain is that for years Britain has been a drag anchor on the European Union. The Europeans really did see this as a political union; the British saw it as an economic union. I have put it before, in simple terms: the Europeans saw it as a political state; the British saw it as a supermarket. That role has made it very difficult for us to be seen as one of the strong members of the European Union. Very largely, we have been seen as a drag anchor. It remains my view that it is in Britain's interest to see greater political union in Europe. Those who argue for the European Union breaking up are making a serious mistake. We need only to look at the history of it to see how wrong that can be.

We have a lot of work to do on this. If we are to use equivalence in a number of these areas, we have to come up with some method of dispute resolution, either via the courts or by setting up agreements of some type. It is on that that I want to hear more from the Government.

8.45 pm

Lord Bridges of Headley (Con): My Lords, as this is the first time that I have spoken since leaving the Front Bench, I would like to start by thanking all of your Lordships who spared the time to discuss Brexit with me while I was a Minister. It reinforced in my mind not just the vast talent that this House has to offer but the basic point that talking to people, even if one disagrees with them, is better than throwing brickbats from a distance.

My shoes have been filled by someone with much greater experience than me, my noble friend Lady Anelay, who has already shown her prowess and skill. Her Secretary of State, for whom I have the utmost admiration and for whom it was a pleasure to work, is lucky to have her on his team.

Many of the position papers that we have been discussing today share one aim: to help us make sufficient progress in the negotiations on our withdrawal so we can move on to negotiate our future relationship with the EU. While my noble friend the Minister says that we have made progress, it appears to me that we are still some way off that immediate goal of sufficient progress. So I want to discuss briefly the situation as I see it in its entirety.

Although I voted to remain, I believe firmly that we must honour the result of the referendum. We are to leave the European Union, period, not stay in part of it. So the question before us is how we should achieve this without damaging our nation in the process.

First, an observation: faced with any challenge, one must acknowledge the truth. If we are not honest with ourselves, our plans will be built on sand. Consequently, we will lose the trust of those who look to us for leadership, and those with whom we are negotiating. We must be honest about the task we face—its complexity and scale. We must be honest about the need to compromise and about the lack of time that we, and Europe, have to come to an agreement on our withdrawal.

I hope that we can agree on a new relationship with the EU by the winter of next year, but even if we do so, we will need time to implement that agreement. Alternatively, if we manage to agree on a heads of terms—"the framework" as Clause 2 of Article 50 calls it—we shall have to negotiate the details after March 2019. So, either way, we will need more time before any new agreement finally kicks in or the details are negotiated.

I am delighted that the Government have grasped this, but I now urge them to make a much bolder move and break the impasse that we are in. My suggestion is this, and it echoes points made by a number of your Lordships today: first, we should clarify that, as part of the Article 50 process, we want to agree—at the very least—an extensive heads of terms of our new relationship with the European Union and, crucially, that this new relationship would begin, I suggest, at the end of 2020.

Secondly, we should be clear that we want to negotiate a bridge—I am obviously keen on bridges—that takes us from 30 March 2019 to when that new relationship begins. We must not agree to a transition with no end. That would be a gangplank into thin air, increasing uncertainty and fuelling a suspicion that it would be a means to stay in the European Union permanently by stealth. During this period, we should keep, as far as possible, the existing arrangements we have today with the EU. Why? Because that would avoid Governments and businesses, here and in the EU, having to change processes twice: once to reflect the terms of the transition and again to reflect the terms of the new relationship.

Thirdly, we should make it clear that we are willing to continue to contribute to the EU budget as we cross the bridge—in other words, between March 2019 and the end of 2020. That would help us to address the EU's concern that our withdrawal blows a hole in its budget. We would be honouring commitments we have made for the rest of the EU's budgetary period; the EU would then need to justify why we must contribute more than that. Such an approach would give assurance to those who fear that a transition means we would never leave the EU. There would be a double lock: both the date and the destination would be clear. That would comfort those here, and in the EU, who are concerned that we may face a cliff edge in 2019 and it would give us more of the thing we have so little of at the moment: time.

The challenge of creating a new partnership touches on every aspect of our lives, as we have been discussing. It is a gargantuan task; so, let us be honest about this too. I hear the Government talk of not wishing to be defined by Brexit. Brexit is the biggest change this nation has faced since 1945. To say we do not wish to be defined by Brexit is like Winston Churchill saying in 1940 that he did not want his Government to be defined by the war. Such careless talk costs time, as it allows the machinery of government to be distracted from the task at hand. The priority for every department must be to help Ministers to get the best possible deal, prepare us for Brexit and ensure we prosper once we have left. Nothing is more important.

That brings me to the paper that is still missing. Much of the debate has been focused on the process of withdrawal, and how we are—to coin a phrase—to take back control from Brussels. Fair enough—but

what are we going to do with those powers once we have that control? What kind of nation do we want to build? That question is unanswered. That dog has not barked. As Sherlock Holmes might remark, this is a "curious incident".

Let me conclude by saying this: just as the Government will need to make compromises in the negotiations in Europe, so too will people here, who hold passionate views on both sides of the argument. Future generations will not forgive us if we put dogma before fact, or party before country. At this pivotal moment in our nation's history, all of us here have a part to play. Parliament's role in this debate is absolutely crucial and, having heard today's debate, it is a role I am sure this House will fulfil.

8.53 pm

Lord Spicer (Con): My Lords, before I forget, I want to ask a question that I have not heard anybody else ask. Coming to what the noble Lord, Lord Kerr, said about money, I ask: whose money? This country has put massive investment into infrastructure in the European Union: research establishments, offices, conference halls, and so on. That infrastructure must have gone up in value, so there is a case for arguing that it should be pounds down the end of the table he is talking about, rather than euros.

I am speaking in the gap, so I have four minutes to say what I want to. As a matter of fact, it will take me only half a minute to say what I really want to say, which is that the main point on the negotiations is that we should come out on 29 March 2019. That seems to be absolutely crucial to me, because I believe, and always have done, that the nation state is the best unit of accountability and democracy. It is therefore essential for this country, from the point of view of democracy alone, that we come out on that date.

Now it is true that there is detail to be discussed and of course we cannot go forward without detail. There are good negotiations and bad negotiations. I would argue that a good negotiation would move us closer to free trade and a bad negotiation closer to what I have always believed the European Union is about, which is protectionism—for instance, protecting the high-cost German standards of technology and low-cost Greek technology.

In saying that, we must understand something. The noble Lord, Lord Liddle, who does not appear to be in his place, asked why Britain should on its own be particularly good at negotiating these trade deals. The answer is partly mechanistic and a question of numbers. When we negotiate we do so for ourselves, whereas when the European Union negotiates on our behalf it does so for 27 or 28 countries. It is partly that, but it is also something much more fundamental, to do with the fact that we believe in free trade and the Europeans on the whole believe in protectionism. That is perfectly fine; we just happen to believe in free trade.

Historically, we happen to be rather good at free trade, too. We started as pirates in the 16th century, but have moved on from then. We have been very successful. We are a high-seas trading nation. It is a pity that we did not do something about our airport entry limit. Had we built the third runway at Heathrow, it would have made us even more successful in future trading. We are a high-seas trading nation and for that reason must assume that we will negotiate much more effectively on our own behalf.

8.56 pm

Baroness Ludford: My Lords, to start, while I fully share the concerns of the noble Lord, Lord Framlingham, about the spread of diseases, the sealing of our borders is not the answer. If instead of co-operating we start blaming each other—Britain needs to remember its own track record on exporting animal diseases—we are doomed to hang separately. I thought Brexit was supposed to mean global Britain, not closet Britain.

The Government's attitude to parliamentary scrutiny of its conduct of Brexit negotiations is rather perfectly illustrated by the publication of the foreign, security and defence paper today: the Minister appears on the "Today" programme, the media have the paper under embargo, and parliamentarians and the public get it many hours later at lunchtime, when it finally appears on the website.

Last week's Statement on the progress of negotiations said that the negotiating rounds were about reaching detailed understanding of each side's position and beginning to drill down into technical detail. However, the Brexit Secretary just days before referred to the partnership paper on future customs arrangements as blue-sky thinking, so detailed it was not. That paper will not help retain the jobs of the Airbus workers in Wales to which my noble friend Lady Humphreys referred.

The Brexit Secretary also said last week that the rationale for the partnership papers is that they are,

"designed to make points to our European partners so that they could see what the future might look like under our vision".—[*Official Report*, Commons, 5/9/17; col. 48.]

As the right reverend Prelate the Bishop of Birmingham said, we need a strategy—and, I would add, practicalities. Vision butters no parsnips. The Minister said in her introduction that the Government do not aim to dictate the future arrangements. Leaving aside the obvious fact that they cannot dictate as it is a negotiation, this fig leaf does not cover the lack of hard proposals with realistic content.

It is hard to blame Michel Barnier for his exasperated reaction to the UK's demand to start negotiations on future relations. He said:

"We must start negotiating seriously. We need UK papers that are clear in order to have constructive negotiations. The sooner we remove the ambiguity, the sooner we will be in a position to discuss the future relationship and the transitional period".

As my noble friend Lord Newby said, the Government's ambiguity is not constructive.

It is largely the behaviour of the UK Government that is preventing an important linkage between the withdrawal negotiations and the future relationship negotiations, and a speedy move to the latter—not least their refusal to deal honourably, as well as toughly, on the divorce bill, which echoes what the noble Lord, Lord Kerr, said, and their ungenerous positions on the rights of EU citizens. I contend that this Government are not generating the necessary trust to move the negotiations on. This is not a case of bad, rigid, punishment-mode Brussels; it is a case of a Government

[Baroness Ludford]
who, 15 months after the referendum, are unable to act in a grown-up, competent, organised manner and who indulge in occasional, extremely unproductive hissy fits. The Government need to be honest and willing to compromise, as the noble Lord, Lord Bridges, urged. My noble friend Lady Kramer, with good reason, thanked the noble Lord, Lord Blencathra, for revealing the Brexiteer war mentality, which helps explain the lack of progress. The Government would do well not to listen too much to that mentality.

My noble friend Lady Kramer also raised the prospect of how the Government seem to be pursuing international regulatory co-operation, rather than focusing on a relationship with the EU regulatory regime. I suspect that the UK is trying to subvert the importance of EU regulation by diluting it, and I really do not think that is going to be helpful.

Other noble Lords have produced their own lists of rules and themes. I have detected eight common features of the position and partnership papers. First, there is always an assertion of common goals, that continued co-operation is in both sides' interests, and a declaration of undying devotion to all things European, including as my noble friend Lord Wallace of Saltaire noticed in the paper today, a paean of praise for the European co-operation, foreign and defence policy that we have never heard from any government before probably. There is even sometimes an assertion that we will co-operate even more once we are out of the EU. Often this is accompanied by a strong hint of "they need us more than we need them".

Secondly, there is an assumption that the degree of benefit and convenience for us Brits will stay pretty much the same as we enjoy now through membership of the European Union, even when we leave its arrangements. So nobody needs to worry.

Thirdly, there is a declaration that the deep and special partnership we seek goes way beyond any existing run-of-the-mill third country, because we are special. Our relationship would be unprecedented, which I have come to realise is an excuse for not pointing to any concrete examples of existing co-operation for a non-EU member state, or practical guidance on how ours would work. The term unprecedented is a convenient peg not to explain.

Fourthly, there is a tone ranging from optimism to fantasy that runs through all of the papers. Indeed, the fifth feature is insufficient detail of how the Government see the actual arrangements working in the context of a future relationship. Several noble Lords have mentioned that in the context of the science field. There is also a lack of realism on the costs involved. The Institute for Government yesterday published a report which says that the costs of the customs arrangements could be up to £9 billion. We need to confront those kinds of figures.

The sixth feature is to cite other third countries—variously Norway and Switzerland, sometimes Canada. But we then reject EEA membership, so quite how these are good examples I am not sure. Then it is said that the UK's relationship will be unique, or uniquely ambitious, because of our starting point of close integration.

The seventh feature is that we want to maximise certainty about what the arrangements will be while supplying no basis for what that certainty looks like. The last feature is that we are to have autonomy of UK laws, with the prospect of therefore diverging from European laws and a regulatory gap—but that we want the maximum depth and specialness in the relationship, including lots of mutual recognition and reciprocity. The noble Lord, Lord Liddle, dealt with this very well.

Noble Lords: Where is he?

Baroness Ludford: That is not for me to answer. As Michel Barnier has described it, this last position—the freedom for the UK to adopt its own standards and regulations but to have them automatically recognised by the EU—is "simply impossible". He said,

"You cannot be outside the single market and shape its legal order".

His position is surely correct.

I am afraid that the topic of citizens' rights illustrates how the Government have squandered time, trust and goodwill. I do not have time to go into the detail, but the way in which the Government have let EU citizens down is a great shame, given that the original problem was a simple guarantee of rights.

We have rightly taken the Government to task in this debate for their lack of clarity and precision. However, may I also press the Opposition? I understood that the Labour Party was now committed to single market and customs union membership during the transitional period. However, the Motion cites "participation", which is not so precise, while their leader, Jeremy Corbyn, has reverted to the manifesto language of mere "access". I thought that was history.

Baroness Smith of Basildon: Come on.

Baroness Ludford: Perhaps the noble Baroness might be able to explain rather than heckle me. That would be helpful. I look forward to the responses from the noble Baroness and the Minister.

9.07 pm

Baroness Hayter of Kentish Town (Lab): My Lords, this debate should have nudged the Government to make more rapid progress on Article 50 and the final agreement; to involve Parliament, the devolved Assemblies, consumers, unions and business; and to propose a transition period along the lines outlined by the Minister's predecessor, the noble Lord, Lord Bridges. We particularly welcome him to the debate today.

We have heard many criticisms: of the Government's response to a nine month-old report at 3 pm before a 4 pm debate; of the unwillingness of the Secretary of State to appear before our EU Committee, as we heard from the noble Lord, Lord Jay; and of the threadbare and, incidentally, undated position papers, which left the right reverend Prelate the Bishop of Birmingham at a loss to know what the endgame is.

I have received some pretty flimsy Answers to many Written Questions that I have put, such as:

"The extent to which European Medicines Agency procedures will apply … after we have exited … will be subject to negotiation".

I could have worked that out for myself. Other Answers said that the Government,

"are working to understand the impacts that withdrawal will have",

including on the European Food Safety Authority, and:

"The Government is currently considering how to ensure functions … carried out by the European Commission … continue".

These were 15 months after the referendum.

There is even an apparent backtracking on Parliament's involvement, with the Minister seeming to recoil from the earlier undertaking of the noble Lord, Lord Bridges, that "a meaningful vote" on the exit deal would take place before that in the European Parliament. She said only that "We expect and intend" that to happen before the European Parliament's vote. Of course, we are still awaiting clarification of the status of any such meaningful vote. And now we have Clause 9 of the withdrawal Bill, which allows Ministers to implement as UK law—by statutory instrument—anything in the withdrawal agreement, without primary legislation.

My right honourable friend, Hilary Benn, asked the Secretary of State for assurance that such Henry VIII powers to implement the withdrawal Bill would not be exercised until Parliament had had its vote on that agreement. He is still awaiting a reply. It is not just Parliament that the Government ignore. The Prime Minister has declined an invitation to address the European Parliament—the one Parliament which, under Article 50, must give its consent to the exit deal. Today, the Welsh and Scottish Governments, which have been completely sidelined in preparing the UK's negotiating positions, have signalled their intention to withhold consent if there is no radical change to the Bill. Their legislative consent papers set out how they want the Bill to change. Without any concessions to these elected bodies, this House might have something to say.

Business wants to know more. The CBI has asked for the talks to speed up and to enable trade to continue without disruption. A survey of over 1,000 businesses showed that two-thirds need to know the details of transition arrangements by June next year, with one-third needing details by the end of this year. As the chief executive of London First said,

"we can't afford to wait … the government must act now on a transitional agreement while setting out what the UK's long-term future will look like".

Meanwhile, unlike the noble Baroness, Lady Neville-Rolfe, businesses do not like what they are seeing in the leaked immigration paper and nor do scientists, who fear it would lead to a brain drain. Please do not say that it is only a draft; it is all beautifully laid out, photographs and all—it looks a bit official to me. Consumer representatives feel totally excluded from the process, while the TUC says that the Government are heading for "kamikaze" Brexit, thanks to a near "criminal lack of preparation" for the talks. No wonder six in 10 voters have lost faith in the Government's ability to deliver Brexit successfully.

Our Constitution Committee's chair, my noble friend Lady Taylor, said that the withdrawal Bill,

"represents an extraordinary transfer of legal powers from Parliament to the Government … this is unacceptable".

She goes on,

"we warned … that such powers must come with tougher parliamentary scrutiny … and we are disappointed that we have not only been misquoted by the government, but that our key recommendations have been ignored".

If that committee thinks that the Bill has shortcomings, it should look at the position papers, which have been described today as—admittedly—"fine" and "useful" by some on the Government Benches, but more generally as "depressing", "optimistic", "magical thinking", full of "meaningless phrases", "vague", "thin", "so many words; so little substance" and, perhaps more seriously, "shadow boxing", "playing hide and seek", being "poles apart", "counterproductive" and operating in a "parallel universe" from our EU partners.

The papers begin to acknowledge the challenge of exit but reveal a refusal to face up to hard choices—just 12 months from when a deal is needed. The European Parliament's co-ordinator and President judged that it was unlikely that there would be sufficient progress in the Brexit negotiations by October to move on to the second phase of talks, which would mean that they could be delayed to December. We have just heard today that the next round of talks has been postponed by a week. Perhaps the Minister can tell us the reason for and implication of this delay.

Our future trading relationships with the EU will be crucial, so these second-phase talks are key, as the noble Lord, Lord Hamilton, noted. The British Retail Consortium fears that unless the right customs system is in place, it will affect availability on the shelves and push prices up. Given that we produce only 60% of our food, and with three-quarters of food imports coming from the EU, we need to replicate the current EU food standards to allow smooth transit through customs and,

"avoid unnecessary interruption to trade".

The BRC's chief executive said:

"Getting this right is essential to ensuring UK consumers are able to buy the products they want after Brexit".

With annual customs declarations to rise from 55 million to 255 million from 2019, the BRC said no deal could mean delays at ports of up to three days. For the food sector, exit day seems very close. According to the BRC,

"to ensure supply chains are not disrupted and goods continue to reach the shelves, agreements on security, transit, haulage, drivers, VAT and other checks will be required to get systems ready for March 2019".

We have seen the boss of Sainsbury's fearing that food could be left rotting at borders. The NFU has warned that the wrong exit could leave Britain with a bare larder, leading the NFU to want the UK to remain in the customs union, at least for a transitional period.

Meanwhile, Ryanair's Mike O'Leary describes,

"a serious threat of no flights",

from the UK to the EU unless the two sides strike a deal similar to the current open skies framework, although he sees little prospect of such a deal. The longer Brexit remains up in the air, the higher the risk that flights will be grounded—his words, not mine. Perhaps the Government's next position paper might be on transport.

[Baroness Hayter of Kentish Town]

I say to the noble Viscount, Lord Ridley, and the noble Lord, Lord Cavendish, that I am very happy to produce our policy if they do not have time to look at the Labour Party website and read Keir Starmer's position, or indeed for us to go to the other side and take over the negotiations. I say to the noble Lord, Lord Fairfax, that neither I nor my noble friend Lord Hutton—or any of the Opposition—are sniping from the sidelines. We are trying to prevent the Government making a hash of the exit process.

It is clear to business, Parliament and the devolved Administrations that our exit from the EU is far more complicated and challenging than the Government will admit. This points to the need for a transition period, as the Minister I think acknowledged today with her description of an interim implementation period. For the sake of business, this must be within the current customs union and single market, as businesses cannot readjust their processes twice. Whatever is finally agreed, new rules, regulations and paperwork—and all the associated training and preparation—will take time to design and to bed in. Could the Government therefore commit to work for this as a priority, to provide the clarity and certainty so urgently needed?

We have already heard about summer reading. Last week, I read *Alice in Brexitland* by David Davis—no, sorry, by Leavis Carroll—whose only happy words were the title of the final chapter: "It Was All a Dream". Except it is not. The referendum asked that the UK leave the EU. It did not authorise this shambles of a negotiating Government, listening neither to business nor unions, neither to the devolved Administrations nor to consumers. It did not authorise a Government without a majority to bamboozle their plan through Parliament without proper dialogue and debate. We were always likely to need a transition period. Now it is urgent to settle that, on the current terms, so that we can have what the Government want—a "smooth and orderly" departure.

9.19 pm

The Minister of State, Department for Exiting the European Union (Baroness Anelay of St Johns) (Con): My Lords, I am grateful to all noble Lords who have taken part in the debate. We have certainly heard, I will not say a full range of views, but pretty much everything that has been said in the past year has been said in a different way today—and with verve, because this House deeply cares about these matters. So do I, and so do the Government. That is why I said at the beginning that I wanted this to be part of the parliamentary engagement that builds up so that we have feedback.

I was discussing that this morning with the noble Baroness the Leader of the Opposition, as she was kind enough to mention in her opening speech. I felt that it was not just a case of having debate after debate—although we will have them. Other Members throughout the House can promise that we will, because they will put down those matters for debate. I said that I really did want to hear from Peers. That can be done in several different ways, not just in the more structured ways such as debates, Questions for Short Debate or Statements, but I want to find a way that will enable all noble Lords to feel that they have had the opportunity to participate—and I hope that the sturdy nearly 50 who have done so today will continue to stay with it throughout. In fact, I think that they will promise that they will. Thank goodness, because that is what we intend to do with the negotiations.

That is the whole point about this process: it is a negotiation. The frustration that I can feel in the House about the fact that we cannot be more open about the detail is a frustration that we too feel. We would like to be more open too, but the very nature of negotiations, and the confidentiality, works for the participants on both sides—both for the European Commission and for us.

Whatever has been painted in the press about hostility, and whatever comments have been made about people's character, there has been a really good relationship between the negotiators on both sides. I was grateful for the earlier reference to the fact that Michel Barnier has paid tribute to the professionalism of the UK negotiators, and I pay tribute to the professionalism of the EU negotiators. We are very fortunate in how they do their work, often against a background of sniping from the press. I shall not comment on other criticism, but there certainly has been sniping from the press, and it continues.

I must say how pleased I was to hear from my noble friend Lord Bridges today. I was much happier to hear from him when he was sitting beside me, but if I cannot have that, having him sitting behind me will just have to do for the moment. I wish him continued success in his new life—I shall not say "next life", because that sounds as if I am expecting him to pop off.

Critically, this is a serious matter of parliamentary involvement. May I pick one specific item up immediately? The noble Baroness, Lady Hayter, said that she thought there had been a change in our view of our commitment to a meaningful vote. That has not changed. "Expect and intend" has always been the position that we have taken, and the reason for that is a practical one. I asked, when I went to the department, why those words were used. I am afraid the reason is straightforward, if one thinks about it. We do not dictate the date on which the European Parliament holds its vote. If it suddenly decided to do that while this House was in recess, we would have to seek the advice of the House. We do not recall Parliament in such circumstances. So clearly, we expect and intend. We are talking about next autumn, and we do not know when the European Parliament will have its vote. We want to have our vote before it does. That is exactly what we set out, and I do not think I can be clearer than that. "Expect and intend" means that we are maintaining our commitment to Parliament.

Our commitment to Parliament is certainly to assist with scrutiny wherever we possibly can. I was worried that the noble Lord, Lord Newby—I nearly said "my noble friend" again; I am getting back into bad habits, or good ones, perhaps—somehow thought that my right honourable friend the Secretary of State had given a commitment to the Select Committee to appear after every round. He did not. He gave a commitment to work out the balance of the way in which that reporting could take place. We have a very strong sense of our responsibility, which he has stated repeatedly

in his letters to chairs of committees, and we want to carry it out. However, there are committees in both Houses, and he has just accepted the invitation to appear before the newly formed Brexit committee in the Commons. We will continue to service committees as best we can. The way in which my department is set up to deliver the negotiations means that the officials who support Ministers who appear in front of committees are also the negotiators. Therefore, when they are doing their absolutely valuable work here to support parliamentary scrutiny, it necessarily has an impact on negotiations. So it is balancing that while making sure that we do not let Parliament down, because that is not the way forward.

Nor shall we let down the devolved Administrations, and we do not intend to do so. There has been engagement throughout. There can always be more—of course, there can. It is not a case, of course, that the devolved Administrations are part of the negotiations, because they do not have that competence in the constitutional sense, but we have engagement and that will continue. As I mentioned last week in this House, very shortly there will be another meeting of the specialised JMC that it just invites the devolved Administrations to talk about the European negotiations. There is the other committee, which I have the honour to chair, that looks at European issues more broadly.

Throughout all of this, I understand some of the frustrations of noble Lords. I will continue to look for ways of finding where we can give more information in a more timely way. By the way, the publication date is the date on the papers. They are published to assist with the negotiations. It is not done just to make life difficult for this House when it is about to have a debate. It is because it has been timed to coincide with some of the negotiations that are going ahead.

Throughout there has been a determination from both the UK and the Commission that we should come to an agreement that is good for both of us. There is not hostility on that, and there is certainly not foot-dragging.

I was asked specifically whether the negotiating dates had been changed. Indeed, they have, but it is a joint agreement between the UK and the European Commission to start the fourth round on 25 September. The reason why is to give time for the negotiators to have more flexibility to make progress in the September round, which was highlighted in the August round. On some of the issues discussed there, we are close to reaching legal text status. I hope at some stage to be able to set that out, but clearly that would be an advance. It may not be on some of the high profile issues, but it is certainly on issues that are core to all the discussions we have had. It is right that my right honourable friend the Prime Minister has called for some flexibility in making sure that, if we need to have more dates to continue negotiating, we should find a way of doing that. We stand ready to work with the Commission to find more dates to do so.

Looking at some of the issues that were raised, clearly Northern Ireland was very much first on the list for so many people. The noble Lord, Lord Jay, rightly asked, "What next?". If I can assist him in some small part—I wish I could tell him that everything has been resolved, but it is a case of getting it right throughout—what I can say is that there is a high degree of convergence on the key issues of the common travel area and safeguarding the Good Friday agreement, and we are working on how the text should look.

What has been agreed on the Good Friday/Belfast agreement is that we will carry out further joint technical work. The noble Lord will realise the implications of that, and it means that we will take steps forward. There was agreement on both sides on the benefit of further technical discussion on the GFA—protecting citizenship rights enshrined in the GFA and the permanent birth right of the people of Northern Ireland to identify themselves and be accepted as British, Irish, or both. We both agree that that should continue. So, again, these are technical steps. When I asked where we were not converging, the answer was none. We are converging on all the major issues, so that is the, "What next?".

There were three particularly important speeches today—those of the noble Lords, Lord Hutton and Lord Teverson, and my noble friend Lady Bloomfield—in that they addressed the issues of Euratom in a very practical way. The question was put again: why are we leaving Euratom when clearly we all agree that its work is essential and we need to be part of it? Again, I repeat what my noble friend Lord Bridges and I have said. We are leaving because Euratom and the EU share a common institutional framework, including the European Court of Justice, a role for the Commission and decision-making in the Council, which makes them uniquely legally joined. Because of that, when we leave the EU, we have to leave Euratom at the same time. We have said that we want to look very carefully at how we form an agreement to still be able to carry out the responsibilities we have heretofore.

The noble Lord, Lord Teverson, raised the issue of associate membership. We are looking at what we want to achieve rather than the mechanism; that will be important. What it will be called I cannot say, but certainly there are alternatives available, including bilateral agreements. The noble Lord raised some extremely interesting and very helpful points.

My noble friend Lord Ridley exposed some of the misinformation in the press about what leaving Euratom really means. It will not mean that the UK loses access to radioactive isotopes for medical use. I refer to that because I thought his speech was exemplary in giving detail on those matters.

Euratom is one of the separation issues being discussed. They are confidentiality, access to information, privileges, immunities, pending cases before the ECJ and, indeed, Euratom. In some of those areas we are now ready to move towards legal text.

Lord Hutton of Furness: I am exceptionally grateful to the Minister for giving way. Before she moves on, will she confirm that the UK will not leave the Euratom treaty until and unless those replacement bilateral nuclear co-operation agreements have been negotiated and are in place?

Baroness Anelay of St Johns: My Lords, the fact is that as we leave the European Union, we will leave Euratom. What I can say to the noble Lord and to the House is that a lot of work has been done, not only

[Baroness Anelay of St Johns]
with respect to Euratom but with other international obligations, to scope out exactly what all our international agreements mean, whether any need to be replaced and, if they do, how they would be replaced and how that would be affected by our leaving the European Union. So although I cannot say specifically that the two would be contiguous, because we will leave Euratom on the date we leave the European Union, we are in the position whereby we cannot negotiate new agreements until we have left the European Union. However, we can carry out technical exploration of such agreements. Therefore it is important to know what kind of agreements we need to reach. Above all, we are making sure that we do not in any way compromise our current position as members of the European Union. We gave that undertaking and we will keep to it.

I was asked about the transitional implementation period. My noble friend Lady Neville-Rolfe looked very closely at that with great interest, because it is all about making sure that we enable those who are in business, as well as everybody else, to know that they do not have to go through the same process more than once. If we are leaving the European Union, they will not have to keep changing their processes in business. We have certainly heard from business about what an implementation period needs to look like. Different businesses think of different periods. We have said very firmly and clearly that an implementation period is something that we will need to negotiate with the European Union but that we do not see it going beyond the date of the next election. Of course, we are not in a position to be able to discuss the terms of an implementation period until we have reached the next stage, which is to look at what our future relationship with the European Union will be. Clearly, if anyone wishes to stay in both the single market and the customs union, it means that they have to accept the four freedoms. The Commission and the EU 27 made it very clear early on that those freedoms were not divisible.

There was a lot of strong feeling about the customs paper not being clear enough. By the way, I reminded myself the other day that blue-skies thinking was the way in which Apple started its rather special business; it is a way of testing out new ideas that can really take off and work. The real reason we put in alternatives is because that is what you do in a negotiation—test out alternatives.

I turn to money. I was challenged on many occasions to say that we should simply tell the European Union how we were going to work out what we owed. It is a two-way street: the European Union also has obligations to the UK. We recognise that we have obligations with both an international legal basis and a moral one. I am sure that noble Lords will have read the paper put out by the European Union. It is three and a half sheets of paper, two of which simply describe the fact that the UK owes something. It says that the debts ought to be shared out among all the people who need to take a share, without actually quantifying or saying how they were going to calculate that, or giving an idea of how they value certain premises—the wherewithal of the European Union. What is the value of the obligation that is owed? What it did do, which is helpful, is to carefully list, on one and a half pages, a whole load of reference to treaties and regulations saying, "This is the legal basis for us demanding money". Not how much money or how it should be divided up, but why it wants some money.

I recognise how vital this is to the other EU 27. They face losing the third largest net contributor to the European Union. They have been given a bald choice: either they get less in the way of infrastructure funds, or they pay more. Neither is a particularly attractive option for them—and they have been told that, if they can find a third way to solve the problem, they should let the Commission know. This is a problem—these are our friends, and we want Europe to continue to succeed, so I understand the difficulty. However, our duty to the British people is to challenge the European Commission and say: "You say that that particular section of a treaty confers on the UK an obligation to pay. Let us first of all test that legal basis". That was what was happening about two weeks ago. We were challenging the legal basis, not in a hostile way, but as lawyers do, by simply saying: "How does this work"? That is at the core of why there has been so much anxiety in Brussels. It is because we have different ways of doing things, not because we do not want to reach agreement. The UK way of doing things is to analyse, challenge, then agree. I promise this House that that is what we will do.

We have had two speeches from noble Lords who nearly always make me want to think and think again, as they did tonight. The first was my noble friend Lord Bridges, who said that we have to think what kind of society we want to build in this country as we leave the European Union. My noble friend Lord Howell of Guildford carefully set out how it is important to have an eye to the future and said that we need to challenge what that future is like. How do we look at the reform of institutions across Europe, which we have helped to build but which need to be resilient for the future? Whether it is Europe, the UK or this House, all of us want to be resilient for the future.

Lord Hamilton of Epsom: Before my noble friend sits down, could she answer the question put to her by my noble friend Lord Caithness and myself? Is it right that we offered the Commission the option of a rolling programme of negotiations and that this was turned down by the EU?

Baroness Anelay of St Johns: My Lords, I put the position very early on, in my winding-up speech, I hope, when I explained that the Prime Minister had made it clear that we were prepared now to ramp up the speed and increase the number of days for negotiation. That has not yet happened, but clearly what has happened is constructive and we now have time before 25 September for some of the technical agreements—which are right on the cusp of being made—to be sealed. That is to be welcomed. There is good will on both sides in this negotiation.

Lord Kerr of Kinlochard: My Lords—

Motion agreed.

Brexit: Progress of Negotiations

Motion to Approve

9.40 pm

Tabled by ***Baroness Smith of Basildon***

That this House believes that there has been a lack of progress towards agreement on issues relating to the United Kingdom's withdrawal from the European Union; calls on Her Majesty's Government to lay before both Houses of Parliament a statement of the strategy and principles which underpin their negotiations on withdrawal, transition and future relationship, including key issues such as the Irish border, accompanied by a plan on full involvement of the devolved administrations in the development of United Kingdom negotiating policy and consultation of consumer, employer and trade union organisations; and calls on Her Majesty's Government to seek an agreement as a matter of urgency with the European Union on comprehensive interim arrangements which maintain United Kingdom participation in the single market, the customs union, and security frameworks during a transitional period during which the future United Kingdom-European Union relationship is to be negotiated and implemented.

Baroness Smith of Basildon (Lab): My Lords, the purpose of my Motion was to help to frame tonight's debate, which it has done, so I shall not move it.

Motion not moved.

House adjourned at 9.41 pm.

Grand Committee

Tuesday 12 September 2017

Armed Forces (Flexible Working) Bill [HL]

Committee

3.30 pm

The Deputy Chairman of Committees (Baroness Henig) (Lab): My Lords, if there is a Division in the Chamber while we are sitting, this Committee will adjourn as soon as the Division Bells are rung and resume after 10 minutes.

Clause 1: Regular forces: part-time service and geographic restrictions

Amendment 1

Moved by ***Lord Craig of Radley***

1: Clause 1, page 1, leave out lines 6 and 7 and insert—

""(ha) enabling a person serving with a regular force—

(i) to serve on a flexible basis; or

(ii) to request periods of unpaid leave of absence;", and"

Lord Craig of Radley (CB): My Lords, I shall speak also to Amendments 2, 3 and 5, which are in this group. The amendments in this group are tabled in my name and those of my noble and gallant friends Lord Boyce and Lord Walker, neither of whom is able to be present today, but I speak on their behalf.

As I suggested at Second Reading, I question the sense and the potential for misunderstanding and for belittling the reputation of the Armed Forces if the phrase "part-time" is specifically used in the mixed and more flexible working arrangements. Could a better, less questionable word or phrase be used instead? First, let me confirm my acceptance in principle of flexible schemes which are viable, enjoy service support and do not detract from the operational 24/7 capability of the Armed Forces.

The first sub-paragraph of Amendment 1, sub-paragraph (i), seeks to retain the general concept of flexibility without specific reference to "part-time". As the Minister has explained, the purpose of this short Bill is specifically to sketch out an additional flexible working scheme, described as serving on a part-time basis. Even so, it was notable that in his opening 10-minute speech at Second Reading, the Minister mentioned "part-time" only once, but he used "flexible" and "flexibility" at least 17 times, so it seemed worth reflecting that balance by referring to flexibility in a general way. It could be the basis for introducing further types of flexible working in the future.

The second provision of this amendment is to promote the use of unpaid leave of absence as an alternative approach to part-time. In his letter of 21 July, the Minister made specific reference to existing use of unpaid leave for flexible working. It said:

"Options already available for flexible working include both working patterns and the use of paid and unpaid leave".

At present I am unclear about what so distances this Bill's part-time basis from these other examples.

The Minister described "part-time" at Second Reading and in his letter of 21 July. In his speech he said:

"Service personnel will be able to temporarily reduce the time they are required for duty—for example, by setting aside one or two days a week".—[*Official Report*, 11/07/2017; col. 1176.]

In his letter, he referred to women starting a family or those who wish to undertake long-term studies. These suggest to me a variety of periods and lengths of approved absences and—in part—appear to be more widely drawn than civilian-style part-time working. Fact sheet 2 also states that periods would be limited,

"to no more than 3 years at any one time".

Will the request for absence be measured in reducing the 24/7 commitment to, say, 24/6 or 24/5, for example, over a period of weeks or months? A member of the Armed Forces does not sign up to work so many hours in a week. Would it not be confusing to measure "part-time basis" by a reduction in the number of hours worked? The commitment is to be available for service 24/7.

The Minister has stated that "part-time basis" would be of a different order to the existing forms of unpaid leave, but that is difficult to accept given the Minister's examples of existing flexible working schemes and those in the fact sheets. Indeed, for clarity, a different definition of part-time service in Section 376 of the Armed Forces Act—definitions applying for purposes of the whole Act—would, I believe, be necessary if this subsection (2)(a)(ha) were ever inserted. Does the noble Earl agree?

Whatever the length and periods of absence, the noble Earl suggests that it is unlikely to involve much more than a thousand or two individuals at any one time. The noble Earl says:

"In practice, these new options will be temporary, limited to defined periods".—[*Official Report*, 11/7/17; col. 1175.]

Surely this is so small scale; can this new scheme not be brigaded with other unpaid leave of absence arrangements? The Committee is familiar with the problems of unexpected consequences following enactments. Are there foreseen but undisclosed consequences for the Armed Forces Act which this Bill is to amend? The House has been assured that there is no intention to achieve savings in defence expenditure by this measure. Of course I accept that assurance, but it can only be for this Administration. The Armed Forces Act amended by this Bill will be renewed annually and re-enacted quinquennially into the foreseeable future. The Committee needs to be very satisfied that there is no devious hostage to fortune secreted in this Bill. To conclude on Amendment 1, leave is a well-understood and established arrangement for the Armed Forces, whether as a term for a holiday from work or a break from duties. Its meaning and purpose has been expanded to cover other types of absence, both paid and unpaid—even so-called gardening leave. Why complicate matters, and risk disparaging reactions and misleading reporting, by introducing a concept that suits working arrangements for civilian

[Lord Craig of Radley]
employment, with a working week of, say, 38 or 40 hours, but is alien to the fundamentally different concept of a commitment to 24/7 service? I expect that the noble Earl will try to justify the distinction that he seeks to draw between "part-time basis" and "unpaid leave". A lot has already been said and written. I hope that other noble Lords will see merit in the "unpaid leave of absence" descriptor for this small addition to flexible serving arrangements and will speak in support of Amendment 1.

I turn to Amendment 2. When checking what was to replace Section 329(2)(i) of the Armed Forces Act, I found that this subsection in the Act provides for,

"enabling a person to restrict his service to service in a particular area".

This Bill's replacement submission provides for,

"enabling a person's service with a regular force to be restricted".

"To be restricted" to service in a particular area: why is this significant change being proposed? The original wording seemed to be in tune with assurances given at Second Reading which indicated that the flexible initiative lies with the individual, not the Ministry of Defence. I refer to my earlier comment about the risk of untoward outcomes from this legislation. The Committee should learn why the original phrasing has been replaced. Might it become a convenient handle with which to enforce reduced service or as a savings measure at some future date? I commend Amendment 2 to avoid this trap.

Amendment 3 proposes deleting the phrase,

"to be subject to other geographic restrictions".

It has been suggested that this is to arrange for the individual not to be separated from their normal place of residence. Why cannot this be included in the meaning of the phrase "service in a particular area"? It seems an unnecessary complication. The purpose of this probing is to seek a fuller explanation of the proposed geographical restrictions. How would they assist individuals more easily to combine military and private commitments? Why are they not satisfactorily covered by the existing phrase,

"service in a particular area",

which, as I suggested, could include location of family accommodation? I also note that the wording of Section 329(2)(j) says that a person may be required,

"to serve outside that area … not exceeding a prescribed maximum",

but the replacement paragraph makes reference only to serving outside a "geographic restriction", not a particular area. Why is the latter omitted by the Bill and said to differ from the former?

Finally, on Amendment 5, I questioned the use of the word "right" in new subsection (3A). The only reference to "right" in Section 329 of the Armed Forces Act is in subsection (3), which refers to,

"any right conferred … by … subsection (2)",

which includes paragraphs (i) and (j), which this Bill seeks to replace. Why is it not satisfactory to rely on this overarching, less-deterministic phrase rather than introduce into Section 329 of the Armed Forces Act subsection (3A) with a specifically identified and explicit right applying to only three of 10 paragraphs in subsection (2)—a right that the noble Earl admits in his letter of 21 July is not absolute? Fact sheet 2 says that personnel will not have the right to work under the new flexible working arrangements. This amendment seeks an alternative approach to the matter of rights conferred while retaining the varied and other circumstances of new subsection (3A). I beg to move.

Baroness Jolly (LD): My Lords, I shall speak to Amendment 14 in my name and that of my noble friend Lady Smith of Newnham, who, because of the Statement immediately after Questions, has got herself in the wrong place at the wrong time and has had to go into the Chamber. It is a very straightforward amendment. It asks for information to be provided by the Defence Council at least a year in advance to all members of the Armed Forces, giving them information about the scheme, how it will operate, how to apply and what alternative forms of flexible working are available.

Lord Stirrup (CB): My Lords, when I spoke at Second Reading I indicated that I was supportive of the principle that the Bill seeks to enshrine. After all, who could argue against increased flexibility? But I did have a number of caveats and cautions. It seems crucial that whatever we do does not undermine the ethos that is essential to a successful fighting force. I raised a number of issues, not all of which have been dealt with to my satisfaction, but I set those to one side for the moment to focus in particular on Amendment 1.

At Second Reading, the noble Earl took me to task for using the term "flexible employment". He pointed out to me that service personnel are not employees as such. He is of course quite right, although the waters are somewhat muddied when the MoD itself uses terms such as "new employment model". Service men and women have always understood and accepted that they are liable to be called to duty at any time—24 hours a day, seven days a week, 52 weeks a year. The Bill seeks to change that. In doing so, though, it introduces the term "part-time" and part-time is a concept which in the military has never been recognised for regular service. It implies something that is completely removed from the ethos that is essential to a fighting service.

We all know what the Bill is talking about. We all know that it does not intend to undermine that ethos. But we also know that Bills which become Acts can have unintended consequences, and this Bill has to be treated with a great degree of caution, in my view, because of the fundamental nature of the changes that it introduces. As the noble and gallant Lord, Lord Craig, has already pointed out, the use of such terms as part-time is anathema to the military. Why use such a term when much more appropriate terms are there, ready to be employed? I therefore support very strongly Amendment 1.

3.45 pm

Lord Ramsbotham (CB): My Lords, I regret that I was unable to attend Second Reading but I have since talked at length to the Chief of the General Staff about the implications of the Bill for the future Army. He introduced me to an interesting phrase that I had

not been familiar with: portfolio career. He said that the Bill would enable people joining the Army in future to enjoy what he described as a portfolio career, thanks to the flexible working.

I am very glad that my noble and gallant friend has questioned the use of "part-time" because when you look at the medical cover for the Army, for example, 80% of it is reservist and that is not part-time in the true sense of the word; it is reservist and it is a mixture of the regular and the reservist. I am worried about the term part-time, as my noble and gallant friend is.

In talking to the Chief of the General Staff, I was also interested in knowing, when the Bill is enacted and flexible working is enabled, who is going to be in control? I was very pleased to have his reassurance that the Army Board was going to be in control of the Army part of it, and I suspect that exactly the same line will be taken by the other two services because it is extremely important, if there is this flexibility, for somebody to be in control, to make certain that the services are always available, as my noble and gallant friend said, 24/7/52 in order to carry out their essential duty on behalf of the country.

Baroness Burt of Solihull (LD): My Lords, I will just comment on Amendment 5. The noble and gallant Lord, Lord Craig, challenged the use of the word "right" during the pre-meeting we had in July. The idea here is that we relinquish the principle of having a right in favour of a "working arrangement".

Of course, we all understand that rights in this context can never be absolute. The Minister made that comment in his response to questions raised in the meeting. But the protections that are afforded to regulars will give rise to some legal rights, as the Minister has said. These regulations give enlisted regulars the right to apply for part-time working or geographically restricted service. Refusal of that request will give rise to a right of appeal. To my mind, the meaning of that is absolutely clear. I suggest to the Committee that this should not be fudged.

Lord Craig of Radley: If the noble Baroness reads carefully Section 329(3), "any right" is referred to and that refers to all those in Section 329(2). The amendment does not remove all rights. It relies on the existing "any right" in Section 329.

Baroness Burt of Solihull: I am grateful to the noble and gallant Lord for that clarification. However, I would still suggest to the Committee that substituting the principle of a right for that of a working relationship in any context in which it occurs in these new elements of the Bill would not be helpful at all. As I have said, it would fudge the issue. I urge the Minister to reject the amendment.

The Lord Bishop of Portsmouth: My Lords, I humbly confess—your Lordships may think that seemly for a priest—that despite the weighty contributions of noble and noble and gallant Lords, I am confused about the problem apparently being raised by describing those who serve in the Armed Forces as part-time.

Of course, part-time is a slippery term that seems to relate to the actual hours of delivery so that even those of us who claim to work full-time certainly do not. Working occupies only part of our day, whether we are in the Armed Forces or we are politicians, doctors, priests or whatever. So soldiers, sailors and air force personnel have a whole-time, sometimes decades-long commitment to the security of our nation regardless of the number of hours they are working and on duty in any week or month. In the same way, my local GP practice has more doctors who work part-time than full-time, but that is no measure of their skill and competence. Surely we are long past the point when part-time might suggest second rate. My surgery offers a whole-time service and capability through a blending of people working different patterns and hours.

My own clergy have a whole-life vocation. They may be called upon at any time but they minister in a variety of flexible patterns, including part-time. Part-time is well understood to be an accepted and honourable working pattern, including among those whose service and work is a vocation.

Lord Touhig (Lab): My Lords, we are in Committee. It is always tempting to make a Second Reading speech but I will resist that. However, before I make some brief remarks about the amendment, if the Committee will indulge me, I would like to thank the Minister and his officials for their engagement so far.

At the end of Second Reading, the Minister and I were far apart on agreeing the merits and demerits of this piece of legislation. Indeed, he said that my remarks were,

"sceptical bordering on the cynical".—[*Official Report,* 11/7/17; col. 1205.]

But, as always with this Minister, he has sought to assuage my concerns and those of other noble Lords, and while I still have some reservations and share some of the concerns expressed today, especially by those with first-hand experience of command at a very high level in our Armed Forces, I am more positive about the measure now than I was at Second Reading. We have received some very useful briefings and the Minister has sought and welcomed comments, criticism and discussion. I am encouraged that he is prepared to take these issues seriously and I look forward to his response.

I am sympathetic to the amendments tabled by the noble and gallant Lord, Lord Craig of Radley. Terminology is all-important in matters of this sort and the Minister did indicate, I believe, that we would be given more details on the current options for flexible working. The Minister has gone some way towards responding to that with the helpful papers that have been produced in the past week or so, but there is a powerful argument for putting something concrete in primary legislation, even if it is not strictly necessary because such definitions may already be covered by the Queen's Regulations. The amendments tabled by the noble and gallant Lord are important because we need to understand the proper definitions of what we are talking about. I hope that the Government will give them the fullest consideration and, if they are not able to respond positively today, to do so on Report.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, through this group of amendments, the noble and gallant Lord, Lord Craig, questions the wording of the Bill in a number of ways. I hope to persuade him that Clause 1 has been drafted with careful consideration of the effect that the Bill would have on implementation of flexible working.

Amendment 1 seeks to remove new Section 329(2)(ha) and replace it with new wording, which would provide the Defence Council with different powers. Those different powers would enable the Defence Council to make regulations enabling flexible rather than part-time service for enlisted regulars and for a regular to be able to request periods of unpaid leave. The noble and gallant Lord raised these points at Second Reading, and the aim, as I understand it from his remarks today, is to move away from the language of "part-time service" and replace it with "flexible service", the underlying thought being that it would be more appropriate to label this change as another form of unpaid leave.

Regulars can already serve on a flexible basis. The options which exist are several: variable start and finish times; compressed hours; home working; and career intermissions. The first three of those are essentially a means to rearrange the working day or week, while career intermissions involve unpaid leave for up to three years for, say, a period of study. The Bill is doing something quite different from those arrangements. It is creating part-time service, as commonly understood. That is why the language used has to be the right language.

The effect of Amendment 1 would be that all flexible working arrangements for regulars would have to be provided for by way of Defence Council regulations. We regard that as unnecessary, and it would require a major rewrite of the existing terms of service regulations to deliver. I cannot agree with the noble and gallant Lord that the term "part-time" is belittling, nor do I think that it will undermine service ethos. I was grateful for the pertinent observations of the right reverend Prelate in this context.

We have to remember several key things here. We are envisaging that only a modest, albeit significant, number of our people will apply to take up the new arrangements once they are introduced; the majority of regular service personnel will continue to serve on a full-time commitment basis. Personnel whose applications to work part-time are approved will do so for a temporary period only. They will remain subject to service law at all times and will be subject to recall under defined circumstances. We need constantly to bear in mind that this measure will, par excellence, help us retain and recruit the best people for defence. Currently people choose to leave when their circumstances change and the current system cannot accommodate them. We know this from extensive surveys that we have done. One therefore has to see this in the wider context.

As for unpaid leave, as the noble and gallant Lord rightly said, regulars can already request this; for example, by asking for a career intermission. While we agree that leave is of course a well-understood service arrangement, the part-time working arrangements to be delivered under the Bill go beyond unpaid leave, which is why they require special provision. They go beyond unpaid leave for very particular reasons. Under the unpaid leave arrangements, the individual has no formal level of protection from recall to either full-time duty or deployment other than that of being on leave. The right to apply to work part-time to be delivered under the Bill goes considerably beyond that. It will provide more certainty for the individual, affording them rights to remain on a flexible working arrangement which can be revoked, as I said, only under certain circumstances, such as a national emergency.

The noble and gallant Lord's second amendment seeks to remove some of the language in new Section 329(2)(i) and replace it with wording to make it clear that only the regular can restrict their service to service in a particular area. I take this amendment to be driven by a view that the current language in the Bill would permit defence to place geographical restrictions on a regular's service against their will—potentially—although I was grateful for the noble and gallant Lord's concession that the present Government do not intend that, but I hope to persuade him that no Government could do it. This is certainly not the intention behind the existing language, nor is it its legal effect. Section 329 is there to provide protections for regular service personnel, so it is clear that these new regulations will be able to make provision for this new form of service only for the benefit of the regular, subject to the other restrictions permitted by the Bill. It cannot be imposed upon them. In fact, the Bill would ensure that service personnel are in control over whether to choose to apply to take up the new flexible working options. They would have the right to apply but there is absolutely no provision to make service personnel take up the new flexible arrangements.

4 pm

The third amendment in this group looks to probe the language in new Section 329(2)(i), which provides for the new type of geographically restricted service being introduced by the Bill. In practice, geographically restricted service means that a serviceperson may seek to limit the time they are separated from their permanent place of residence or home base. This, of course, as for all flexible working options, would be a temporary arrangement. I should also explain that this restriction is not tied to service in a particular area but prevents separation from a particular place for more than a maximum number of days or occasions each year. As such, the language in Clause 1(2)(b) is, in my submission, essential.

Amendment 5 in this group intends to remove the language referring to rights conferred on regulars under the new regulations in new Section 329(3A) by replacing it with the wording referring to agreed working arrangements. The existing wording is both appropriate and necessary. I was grateful to the noble Baroness, Lady Burt, in this context. Existing Defence Council regulations made under Section 329 create legal rights. A good example is the right of a recruit to determine their service by giving notice or the right of an enlisted regular to transfer to the reserve. We expect that the new regulations resulting from the Bill will give enlisted regulars the right to apply for part-time working and/or geographically restricted service. If their application is

refused, as the noble Baroness rightly pointed out, the regular will then have the right to appeal that decision. They will not, though, have the right to work flexibly. Substantively, if an individual has a part-time application approved, they will then have a right not to attend for duty on their authorised days of absence. Therefore, we consider that the language used in the Bill is appropriate and I do not believe that it is necessary for the Bill to be amended.

Finally in this group, we have the amendment in the names of the noble Baronesses, Lady Smith and Lady Jolly, which seeks to require the Defence Council to provide information on the administration of the new flexible working arrangements that we plan to introduce from 2019, and on the existing flexible working opportunities that are already in place. It also proposes that this information should be distributed in both written and electronic formats. I agree that we must be comprehensive in our approach to communicating the availability of these new measures and how they will operate if we are to ensure their successful introduction. My officials have already published and updated documents on GOV.UK following Second Reading, which provide further details about the new flexible working arrangements. The topics covered include the application and appeals process; the body of evidence that has supported our policy-making; more details about the regulation changes we plan to introduce under secondary legislation; the effect on pay and allowances; operational capability; and some key questions and answers on flexible working. The documents also highlight the existing flexible working opportunities we provide for our people, some of which have been available since 2005. I hope that noble Lords found this helpful, or will do so if they have not yet accessed it.

With regard to ensuring that members of the Armed Forces are aware of the opportunities that these new flexible working arrangements will provide, how they will operate and how to apply, we will of course deliver a comprehensive communications campaign to members of the Armed Forces to provide them with the essential information to enable the success of these changes. This will include written and oral briefings; informal notes; internet and magazine articles; written policy guidance and advice to individuals and the chain of command; and process guides. There will be comprehensive guides for those who wish to apply.

As I mentioned at Second Reading, we have a communications plan in force already to build on the reality of the flexible duties trial. I wrote further to noble Lords in mid-July to explain how the availability of flexible working is going to be made known across the services, and I hope I assured your Lordships that the MoD has an effective communications plan in place that is well under way with a range of activities delivered through a variety of channels and mediums aimed at key stakeholders. Our plan is designed to ensure that our activities peak at key moments as we progress towards implementation of these new arrangements in 2019. As well as informing our people about the new opportunities, the communications plan aims to influence military culture and attitudes to part-time working and enable the cultural change required to ensure that flexible working is successfully implemented. Service chiefs have been and will continue to be engaged with the process. They will oversee the cascading of communications down through their commands to ensure that service personnel are aware of the new opportunities that are being introduced. Therefore, given the amount of activity that is already under way and the additional activities that we plan to undertake, I do not believe it is necessary for the Bill to be amended. I hope, following those assurances, that the noble and gallant Lord, Lord Craig, will agree to withdraw his amendment.

The Earl of Listowel (CB): My Lords, listening to the Minister's comments and reflecting on the discussions on the Bill, I understand that the children of many service personnel have quite difficult journeys into adulthood, with a lot of disruption. Looking at the new provisions in Clauses 1 and 2, am I right in thinking that the Bill will make it easier for parents with young children to remain close to those children if they choose to do so, and might it reduce the disruption to those children's lives? Might that be the effect of the Bill?

Earl Howe: Certainly. Although that is not the whole rationale, the provisions that we are proposing to introduce are designed to be family-friendly—for example, for women considering starting a family or those with caring commitments, or those who are bringing up a family and, for any reason at all, there are personal circumstances that create difficulties for them. That could be a very good reason for somebody to apply to work part-time on a temporary basis. So I agree with the noble Earl.

Lord Craig of Radley: My Lords, I thank the noble Earl very much for what he has said. I am not sure that I followed it all completely so I look forward to reading it. I would just make one or two comments, if I may, at this stage.

On Amendment 1, the noble Earl's addiction to "part-time basis" and part-time service is clear, but I am not sure that I understand why it has to be in primary legislation. If the Government want to have a number of flexible working arrangements, most of which are already in place and have been put there as a result of secondary legislation or Queen's Regulations, why does this particular one have to be singled out, causing the amount of exposure that worries a great number of us?

On the amendment dealing with "restrict" and restrictions, I am still uneasy. Section 329 of the 2006 Act provides for,

"enabling a person to restrict his service to service in a particular area",

whereas the amendment says very precisely,

"enabling a person's service with a regular force to be restricted".

It seems to me that that can put the individual in a position where he is being told that it will be restricted rather than he saying, "I would like to do this form of restricted service". I think that that needs to be looked at very carefully, and I will look at exactly what the Minister said on the point.

[Lord Craig of Radley]

The other point is on rights. Clause 1(3) refers to,

"A right conferred on a person by virtue of subsection (2)"—

and subsection (2) will include (2)(ha), (2)(i) and (2)(j). So it seems to me that the overarching new subsection (3) gives you the right that you were looking for. Therefore I suggest that we can drop new subsection (3A).

Earl Howe: My Lords, I would be very happy to write to the noble and gallant Lord on all those points—in so far as they were not made clear in my original response—and in particular on why we need primary legislation, and perhaps explain further the reasons why we think the Bill is correctly worded in this clause. I hope that the noble and gallant Lord will allow me to do that between Grand Committee and Report, and I will of course copy in noble Lords to that correspondence.

Lord Craig of Radley: My Lords, at this stage I beg leave to withdraw my amendment.

Amendment 1 withdrawn.

Amendments 2 and 3 not moved.

Amendment 4

Moved by ***Baroness Jolly***

4: Clause 1, page 1, line 14, at end insert—

"( ) After subsection (2) insert—

"(2A) With regard to the rights conferred on a person by subsection (2)(ha) to (j), the regulations must specify—

(a) whether and for how long a person must have served in a regular force before being entitled to apply for those rights;

(b) to whom and in what manner a person must apply;

(c) how many times a person may apply to exercise those rights;

(d) whether there is any limit on the number of times a person may have an application approved;

(e) for what specific periods of time a person will not be required for duty or liable for overseas deployment;

(f) if the application is approved, for how long the agreed arrangements may remain in place;

(g) the factors that may be taken in account when considering an application;

(h) how the agreed arrangements may be altered or suspended; and

(i) if an application is refused, how a person may appeal the decision.""

Baroness Jolly: My Lords, Amendment 4 is a probing amendment. I am very grateful to the Minister and his team for the meeting that we had—it seems a very long time ago—just before we rose for the Summer Recess. We went through these issues with him. As the noble Lord, Lord Ramsbotham, said, employment patterns are changing. The idea of joining the service man and boy—or perhaps it is girl and woman these days—seems very much a thing of the past, or at least not what is always expected. We want to understand exactly how this works and what the Government's intentions are behind it—hence the probing nature of the amendment. We are after the what, the how, the how long and the how many.

The devil in this sort of thing is very often in the detail. We on this Bench have some concern that a lot of the detail will be in secondary legislation. I know that we will be dealing with that and I know that my noble friend Lady Smith will be dealing with those issues later. However, I would be grateful if the Minister would respond to these points—he has had the summer to look at them with his team—and then we will see how we can move forward from there.

Lord Touhig: My Lords, Amendment 6 in my name and that of my noble friend Lord Tunnicliffe relates to the powers conferred on the Defence Council by Clause 1. It is a simple but important amendment and it is one that has the full support of the House's Delegated Powers and Regulatory Reform Committee. If I may, I will echo the comments made in the Chamber last week about the noble Baroness, Lady Fookes, who chaired the committee when it produced its report. We all wish her well and look forward to her speedy recovery and return to Parliament.

In its report on the Bill, the committee noted:

"These powers are conferred without any detailed provisions on the face of the Bill limiting or restricting how the powers are exercised. In the circumstances we consider that the affirmative procedure should apply".

The timing of the Bill, with the so-called repeal Bill and its many proposed delegated powers, which was approved in the other place in the early hours of this morning, is significant. We in this House always pay attention to the granting and use of delegated powers and it is only right that if additional powers are conferred on the Defence Council or on Ministers, a proper level of parliamentary scrutiny is guaranteed.

Following meetings and discussions with the Minister, it is my understanding that the Government intend to accept that view and will either agree to this amendment or table a similar one; we will wait for the Minister to tell us. The introduction of part-time working and reforms to geographically restricted service represent fundamental changes to the terms and conditions of our Armed Forces. By ensuring appropriate scrutiny of the forthcoming regulations, the House will be fulfilling its duty to our hardworking service men and women.

Perhaps I may say a brief word about Amendment 4. We certainly do not oppose the amendment moved by the noble Baroness, Lady Jolly, but much of the information it seeks is in the supporting documents that the Minister has provided. The key question that we want the Minister to answer is to assure us that this information will be put into regulations. If that is the Minister's intention, it may not be necessary to put this provision into the Bill.

I do not know whether it is the intention of the noble Earl, Lord Attlee, to speak to his amendment, but I shall say a brief word about it because he and I discussed it last week. I agree with him that there are too many instances where legislation is passed and commencement never seems to occur. I certainly

sympathise with him on that point. However, I believe that the Government have made it clear that they want this option to be available from 2019, and in those circumstances I wonder whether that might well suffice.

4.15 pm

Earl Attlee (Con): My Lords, I am grateful for the noble Lord's forbearance with my amendment. I have some slightly difficult personal circumstances which mean that I have not been able to prepare quite as well as I would like, and therefore I shall not speak to my Amendment 18.

If these two proposed new subsections to affect the main clauses in the Bill were part of the wider quinquennial Armed Forces Bill, would we look at them in such great detail? I think that if we are honest, we would say probably not. I can understand the thinking of the Delegated Powers and Regulatory Reform Committee in recommending the affirmative procedure. The committee rightly recognises that your Lordships will want to look closely at the detail. However, as drafted I believe that even the most minor amendment in the future would have to be debated by both Houses, and I am not convinced that that would be a good use of parliamentary time. Worse still, a situation may arise where some minor change is desirable but the change is delayed, or even worse not made at all, because of the effort required. Noble Lords should be aware that putting an affirmative order through Parliament is not an exercise in rubber stamping; it is a complicated process. Would it not be better to use the affirmative procedure for the first set of regulations and then revert to the negative procedure for subsequent amendments? I wonder whether the noble Lord would like to consider that.

Baroness Smith of Newnham (LD): My Lords, I shall speak to Amendment 18 tabled in my name and to Amendment 6 which is tabled in the name of the noble Lord, Lord Touhig. The amendments are similar. In contrast to the noble Earl, Lord Attlee, we believe that it is important that Parliament should play its full role in legislation. If the Defence Council is to have new powers conferred on it, it would be appropriate to make an affirmative decision rather than use a negative instrument. The noble Lord, Lord Touhig, took the words out of my mouth. I was in this Room last week taking part in a debate about reporting on the process of Brexit. The issues being discussed included questions about the role that Parliament plays in that. The Henry VIII clauses which are in the EU withdrawal Bill cover a bigger set of issues, but the noble Earl, Lord Attlee, has asked, "If these clauses were part of a bigger Bill, would we be bothered about them?". Perhaps not, but that is not the point. At the moment there seems to be a tendency on the part of Her Majesty's Government to say, "If the Government have an idea, it should be accepted without any amendment or scrutiny". It is important that your Lordships' House and Parliament as a whole play their part in scrutinising legislation, and it is right that this should be done through the affirmative procedure.

On reports, the noble Lord, Lord Touhig, reminded us that there now is information; I am grateful to the Minister for ensuring over the summer that further information was provided regarding the sort of questions we were looking for. As my noble friend Lady Jolly said, Amendment 4 was a probing amendment, but obviously, the more information that can be given and made available to people and the more detail we have, the greater the opportunity for this to be successful.

Lord Touhig: Perhaps I may comment on the point made by the noble Earl, Lord Attlee. His suggestion would not be the right way. He discussed it with me last week. The Bill substantially depends on regulations to bring in its measures, and how would one decide what we would bring in the first tranche and the second tranche, and so on? Therefore everything that relates to this matter should be subject to the affirmative procedure.

Earl Howe: My Lords, the first amendment in this group, Amendment 4, seeks to place in the Bill information to define how flexible working should be implemented. I agree that it is important that we have clarity over exactly how the new flexible working opportunities will be administered. I reassure the Committee that the policies and processes that will support the changes brought by the Bill have been designed by the services for the services. We have done a great deal of work with the services to develop policies that work for them and their people, and we will continue to refine them in the lead-up to their introduction in 2019 and after to ensure that they are clear and fit for purpose. In doing so, we will continue to consult our people.

As noble Lords will recall, I outlined at Second Reading how we envisage the new flexible working arrangements will be administered following their introduction in 2019. In my subsequent written responses to Peers, I also promised that my officials would publish some additional information over the summer that would explain in more detail how the new arrangements would work in practice. I hope that noble Lords have received that information and found it helpful, and that it has answered the points raised in this proposed amendment.

It might just be helpful if for the record I went through some of the processes that we envisage. We have a position on how we intend that flexible working arrangements will operate in practice. I am sure that noble Lords will appreciate that at this stage the detail remains subject to adjustment as a result of the ongoing policy refinement with the services, further work in the light of surveys and other feedback and, indeed, the need to account for the views of Parliament. In summary, however, the policy is intended to operate as follows.

We believe that regular service personnel must have completed their basic and professional training and a period of further service, defined by their parent service, before they can normally undertake flexible working. A serviceperson wishing to apply to serve flexibly will apply through the joint personnel administration system through their commanding officer to an approvals authority at the headquarters of their service. No limit will be imposed on the number of occasions over a period that the serviceperson will be able to apply to serve flexibly, although they will be restricted to having only one live application at a time being processed by

[Earl Howe]
the administration system. However, there will be limits on individual periods of flexible working to help the services manage the applications and people's expectations.

We intend to limit periods of flexible working to no more than three years at any one time or to the end of an assignment, whichever is sooner. Within this period we intend to enable people to reduce their liability to serve by up to 40%, such as two days in a five-day working week of their regular full-time service. Service personnel requesting limits to their routine unlimited liability for separation from their home base will still remain liable for a maximum of 35 days separation in any one year. This will enable them to continue to undertake essential courses or participate in smaller periods of exercises.

We also intend to restrict the total cumulative time that a serviceperson can serve on flexible working arrangements. This is to maintain the principle that regular service is a full-time and unlimited commitment, while also helping to share the opportunities for flexible working among the broadest range of personnel. Currently we are planning for the total period of all types of flexible working to be limited to four years in a 12-year rolling period. The exact approvals process is likely to vary slightly by service and we are still designing certain elements of it. Currently we plan that the approvals authority will take decisions after being informed by the chain of command, the employing organisation—for example, if the person is working with another service—career managers, manpower planners and other specialists as required.

The principal deciding factor when considering applications will be the ability to maintain operational capability. The individual merits of each application will be considered and will include factors such as the type of role the person is serving in, whether the person has been warned to prepare to deploy for operation and, if appropriate, the personal circumstances surrounding the application. If an application is refused, an individual can appeal against the decision, as I mentioned earlier.

Appeals will be considered by a separate appeals authority which will operate at the headquarters of each service. The exact make-up of that body has yet to be set. The appeals authority will make its decisions informed by information from the employer, the employing organisation, the chain of command, career managers, manpower planners and other specialists. Service personnel will of course have the right to escalate their appeal to a service complaint if they remain unhappy with the decision.

The services will retain the right to recall regular service personnel from flexible working arrangements to ensure that operational capability is maintained while providing as much certainty of the arrangement for the individual as possible. Such recall will be against prescribed criteria sanctioned by the headquarters approvals authority within each service. Personnel will be subject to two levels of recall. The first will be immediate recall in cases of national emergency, and the second is curtailment after 90 days' notice. The latter would apply where there is a significant change in the circumstances used to judge and approve the original agreement.

We continue to work on the detail but envisage that a change in circumstances would include a change to the requirement for operational capability which is affected by overall manning levels of the service or trade or any specific skills held by the serviceperson during the period of flexible working. Should any of these change substantially, the service would be able to issue a 90-day notice to recall the serviceperson to full duties, either by suspending the flexible working arrangements for a defined period to allow them to be adopted again later for the remainder of the originally agreed period or by cancelling the flexible working arrangement outright. Where these circumstances occur, they would constitute a manning crisis as a result of severe manning constraints, manpower shortages on specific operational tasks or skills shortages. All approvals, refusals and amendments to agreements between a serviceperson and their service will be set out in writing to avoid any uncertainty and to provide an audit trail. The detail I have just outlined has been published on the GOV.UK website.

As we intend to continue to refine the parameters of exactly how this policy will operate within the services by learning from their experience of operating it after introduction, it would be unnecessarily constraining to have the parameters proposed in the amendment set in primary legislation. The noble Lord, Lord Touhig, and the noble Baroness, Lady Jolly, made clear their view that this should all be in regulation, at least. The provisions that I have outlined will be set out in a mixture of regulation and policy statements, rather than exclusively in regulation.

The purpose of Amendments 6 and 18 is to require any new regulations made by the Defence Council of a kind to be introduced by Clause 1(2) of the Bill to come into force only following the affirmative resolution procedure. Amendment 6 looks to achieve this by inserting into Section 329 of the Armed Forces Act 2006 a new subsection (4A). However, I must tell the noble Lord, Lord Touhig, that due to the way in which the 2006 Act works, any amendments to the procedure would need to be by way of amendment to Section 373, as identified by the noble Baronesses in their Amendment 18.

4.30 pm

The Government are aware of the recommendation from the Delegated Powers and Regulatory Reform Committee to the same effect as these amendments. The committee rightly highlighted to the House that some of the new Defence Council regulations to be made under the Bill will go beyond matters of pure procedure. While we acknowledge the force of the point made, we are not persuaded that there is any significant difference between the regulations that we will look to make here and the existing terms of service regulations made under Section 329 of the 2006 Act. Those regulations already make provision for, for example, the type and length of an engagement that a person is entitled to enlist on, and they prescribe a regular's right to determine their service. Those are

important rights, but those existing regulations were made using the negative resolution procedure. Nevertheless, the Government have heard the strength of feeling on this matter in our debate today and always take seriously a recommendation from your Lordships' Delegated Powers Committee. I am not in a position today to give any undertakings on the substance of this issue, but I undertake to reflect further on the matter in a constructive way ahead of Report.

Finally, I welcome the attempt by my noble friend Lord Attlee to ensure that flexible working for the Armed Forces does not slip from the agenda, which I take to be the purpose of his amendment. I wish to reassure my noble friend that our plans to introduce flexible working are firmly on the table. Indeed, they are an essential part of the Armed Forces people programme, which is designed to explore new ways of modernising the employment offer for our Armed Forces, better to allow defence to attract and retain the right mix of people and skills. We propose to implement the new flexible working arrangements in 2019, as I mentioned, and we have no plans to change that timescale. In view of the positions that I have outlined, I hope that my noble friend will agree that it is not necessary for the Bill to be amended. I hope, too, that following the assurances and information that I have provided the noble Baronesses and my noble friend will agree not to press their amendments.

Baroness Jolly: My Lords, I am happy to withdraw my amendment.

Amendment 4 withdrawn.

Amendments 5 and 6 not moved.

Amendment 7

Moved by ***Baroness Jolly***

7: Clause 1, page 1, line 17, at end insert—

"( ) After subsection (5) insert—

"(5A) Within three years of paragraphs (ha) to (j) of subsection (2) coming into force, and annually thereafter, the Secretary of State must lay a report before each House of Parliament evaluating the impact of those paragraphs on recruitment and retention of members of the armed forces.

(5B) The report must include—

(a) an assessment of recruitment and retention of technical specialists in the armed forces;

(b) a comparison of recruitment and retention between Her Majesty's naval, military and air forces; and

(c) a comparison of retention between those serving on a full-time basis and those serving on a part-time basis.""

Baroness Jolly: My Lords, this amendment is intended to look at the impact of the measures in the Bill on recruitment and retention, including on technical specialists across the forces. The amendment provides that, within three years of the new flexible working arrangements coming into effect, the Secretary of State must lay a report before Parliament evaluating the impact of the arrangements on recruitment and retention in the Armed Forces. The report must include an assessment and comparison of the recruitment and retention of technical specialists in the three Armed Forces—the Royal Navy, the Army and the RAF—and those serving on a full-time and part-time basis. Our intention is that "technical specialists" in proposed subsection (5B)(a) should also include those working in areas where specialist training or qualifications are required and which are significantly understaffed at present.

We hope that the Government might look at including these factors in a wider report on recruitment and retention in the Armed Forces. The Armed Forces continuous attitude survey and families continuous attitude survey go some way towards this but do not dig deeply enough into why morale is low and people are leaving. The top reason for leaving cited in the Armed Forces continuous attitude survey is impact on family and personal life. That is a broad statement and it is difficult to see how the Armed Forces or the Government can take effective action to address the issue. It needs to be broken down into factors such as hours, time away, impact of frequent moves, problems with military accommodation, spousal employment and other covenant issues.

Another issue that needs to be looked at is the impact of welfare and community services on retention. "Patch life" provided by such things as SSAFA, with well-funded facilities, clubs and community services, is a large pro for members staying in the Armed Forces as a family. Anecdotally, concerns have been raised with us that the prospect of this life disappearing in the face of cuts and the FAM is turning into a reason for leaving rather than staying.

Amendment 15, in my name and that of my noble friend Lady Smith of Newnham, seeks to find out how those who are working part time or restricted to a particular geographical location will be recorded in the PID or JPA. These exist only if the military has assessed that it needs the posts to carry out a capability. Therefore, any significant disparity between the number of posts and the target number of personnel in the military is statistical evidence that the Government are asking it to do more than it has the personnel to do, even if fully manned. There will also be more posts than personnel to allow for flex. However, we get the sense that the disparity is currently more than it has been historically, and more than it should be. In the context of this amendment, it is critical that part-time workers do not count as a full person in a post to avoid the disguise of manning shortfalls. What is the current number of PIDs/JPAs in the military? Can the Minister provide this figure broken down into the three forces? He might not be able to do that now but we would appreciate the figures as and when. I beg to move.

Baroness Burt of Solihull: My Lords, Amendment 8 is in my name and that of my noble friend Lady Jolly. This may be an appropriate moment to apologise to the Committee, rather than to the House, for my misuse of terminology. I also apologise to the noble and gallant Lord, Lord Craig. I have not been here a long time and I find this issue a bit confusing. I ask for noble Lords' patience.

This amendment provides that, three years after the new arrangements come in, the Secretary of State will lay annually thereafter a report before Parliament

[Baroness Burt of Solihull]
evaluating the impact of diversity within the Armed Forces. By "diversity" we mean all protected characteristics. Diversity is about not just gender and race. In fact, the Act covers age, disability, gender assignment, marriage, civil partnership, pregnancy, maternity, race, religion, belief and sexual orientation. Although we have to be pragmatic in what realistically can be set before the House in parliamentary reports, I am trying to get to the spirit of this issue. Unless and until the Armed Forces are truly diverse, they will not make the best decisions to achieve their optimal effectiveness. Until everyone feels included, we will not have the team cohesiveness that the forces so prize, and which is so important to operational functionality in times of danger and stress.

It is also important to report on these characteristics by rank. The Minister pointed out in his letter over the summer that as the services are "base-fed" organisations, some of the improvements will take time to feed through. That is all the more reason why we should measure this as time goes on because what you do not measure you cannot change. As I understand it, the Bill lacks any mechanism to track future progress or lack of it. Therefore, we hope that the Minister will be sympathetic to this amendment.

Lord Touhig: My Lords, Amendments 10 and 11 would introduce new clauses that cover the making of an annual report on the impact of part-time service and geographic restrictions, and on the Bill's impact on recruitment and retention. These two amendments will enable the Government and Parliament to see what impact the Bill has on this very important question.

I am sure that I am not alone in believing that we need more post-legislative scrutiny. Time and again, Parliament—with the best of intentions—passes into law Acts that have unintended consequences and fail to meet their objectives. Greater post-legislative scrutiny will lead to better lawmaking. The same principle applies here. Having served for several years on the Public Accounts Committee in the other place, I strongly believe in doing "lessons learned". Time and again I sat through evidence sessions with the most senior civil servants, who had been made to appear before the committee to explain some major policy failure discovered by the National Audit Office. Indeed, when I served as a Minister—I am sure things have changed—I found an almost institutional objection to doing "lessons learned" among some of my officials. Our Amendment 10 is an important step in ensuring that the operation of this measure is kept under constant review and its impact reported to Parliament. It is as simple as that.

The second new clause, outlined in Amendment 11, goes to the heart of what is one of the key questions for this Bill in the first place: the impact that service life is having on service men and women and their families. The SDSR 2015 committed the Government to ensure that,

"a career in the Armed Forces can be balanced better with family life".

The noble Baroness, Lady Jolly, rightly pointed out that the 2017 Armed Forces continuous attitude survey, which lists the top five reasons why personnel leave the services, revealed that the number one reason was the impact of service life on family and personal life. We need to know whether this Bill has a positive impact on the quality of life of our Armed Forces, hence the need for this amendment.

Earl Attlee: My Lords, in those halcyon days when I was an Opposition Front Bench spokesman, I would have been proud to have tabled any of these amendments, something I did many times. I leave it to the Minister to say whether they are a good idea, but I draw the Committee's attention to Amendment 15, which has not yet been spoken to, although it is in the grouping.

We need to know how many servicemen are taking advantage of these provisions, because otherwise the stats on the strength of the Armed Forces are to an extent meaningless. Perhaps the frequency of the report is too great but I would like some reassurance from the Minister that we will know, from time to time, how many members of the Armed Forces take up flexible working.

Baroness Smith of Newnham: My Lords, I will also speak briefly to Amendment 15. Picking up on the points made by the noble Earl, Lord Attlee, it is hugely important that we have clarity on what percentage of our Armed Forces are working full-time and what percentage part-time. At Second Reading the noble Lord, Lord Touhig, frequently asked whether this was a cost-saving measure. While we listened respectfully to the Minister and understand that it is not a cost-saving exercise, the question is whether, if a significant number of our Armed Forces are working on a part-time basis, there may be a cost saving, but equally a loss in capability. Having this basic information will be important in giving us a sense of whether we are up to full strength. If there were significant numbers of people working part-time, would there be a necessity to create new part-time or full-time posts equivalent to the time that they are not working—up to 40%?

4.45 pm

Earl Howe: My Lords, the introduction of new flexible working measures is designed to attract, recruit and retain people from a more diverse cross-section of society who have the knowledge, skills and experience that we need to deliver operational capability.

Currently, service personnel who have dedicated themselves to public service sometimes struggle to meet their full military commitment—for example, due to a short-term change in personal or family circumstances—and the only option in such circumstances has been to leave the Armed Forces. This represents a loss to the individual and to defence. New flexible working options aim to address this so that in such situations personal circumstances are no longer a barrier to continuing service. We believe that these measures will benefit a small but significant cohort; for example, women and men starting a family, those with caring commitments or those who wish to undertake long-term studies. Moreover, our evidence derived from external reports, comparison with other nations, internal surveys, focus groups and our ongoing flexible duties trial shows that providing our people with modern choices

will help us retain highly skilled personnel who might otherwise leave and join organisations which provide these choices. In short, through these new measures we are aiming to modernise the terms of service for the Armed Forces with a view to improving recruitment and retention into the future.

Many other external factors, such as the economic climate, have the strongest influence on recruitment and retention and are likely to mask the impact of these new flexible working arrangements in the short to medium term, and we have to bear that point in mind. Defence is experiencing many of the same skills and recruitment challenges that are being faced nationally. To meet those challenges are proactively as possible, we are modernising the employment offer for our Armed Forces, as I have described. These collectively are being managed under the Armed Forces people programme, which comprises projects including the new joiner offer and enterprise approach. The new joiner offer should support and improve retention by developing a new, more modern and more relevant offer for new joiners that better supports service personnel throughout their career. We also aim to improve retention by better management of critical skills across defence through the enterprise approach project. Changes to enable members of the Armed Forces to work more flexibly originate from the flexible engagement systems project, which forms a further part of the people programme.

These amendments seek to place various obligations on defence to publish reports on the effects of flexible working on the Armed Forces. I am sure the Committee is aware that intake, outflow and strength by rank, trade and specialisation are monitored and managed on a regular basis at service level and centrally by the MoD. The MoD already publishes detailed information and analysis in the *UK Armed Forces Monthly Service Personnel Statistics*. This publication provides statistics on the number of service personnel by strength, intake and outflow in the UK Armed Forces, and detail is provided for both the full-time Armed Forces and reserves. We carefully monitor information on trade, specialisation and sub-specialisation by rank and service, and routinely release on a regular basis, as part of official statistics publications, a wide range of information on outflow from the UK Armed Forces.

We also publish comprehensive data in the *UK Armed Forces Biannual Diversity Statistics*. This statistical release presents information relating to the gender, ethnicity, nationality, religion and age of personnel employed by the MoD and meets the department's obligations under the public sector equality duty to provide information on its workforce in relation to the protected characteristics identified by the Equality Act 2010. Information on numbers of personnel undertaking and returning from maternity and shared parental leave is also provided as part of this publication.

It is important to highlight the evidence from trials and surveys commissioned by the Armed Forces, which indicates that take-up for options that enable service personnel to work more flexibly is likely to be low in the early years of implementation. Furthermore, while the MoD promotes the importance of the Armed Forces being appropriately representative of the diverse society they exist to defend, with operational effectiveness being dependent on inclusion and fairness, we estimate that the overall numbers taking up the new opportunities will be small to begin with. Therefore, assessing any correlative impact that flexible working has on increasing diversity in the Armed Forces is likely to be difficult, particularly in the early stages. This will mean that any detailed evaluation of the impact of flexible working measures on overall recruitment and retention rates, skills retention and outflow, and diversity in the Armed Forces will be difficult to achieve in the early years of operation.

The recording requirements for any pattern of work for our Armed Forces are stipulated in policies and recorded on the joint personnel administration system—JPA. JPA is already used to process applications for existing flexible working options. There is planning in place to enable all instances of part-time working or geographical restriction by personnel to be recorded on JPA when these options are made available. It will be crucial to ensure that all cases of flexible working are properly recorded and monitored to provide personnel and commanding officers with a record of all discussions and agreements. However, since it is estimated that the number of applications is likely to be low in the early stages, collating and reporting information on a monthly basis to provide figures on the number of personnel undertaking flexible working as a proportion of the total of full-time serving members of the Regular Forces would not provide significant or beneficial data.

It is important to emphasise again that the new arrangements are aimed at improving recruitment and retention in the long term, as part of a series of projects being delivered through the Armed Forces people programme. The long-term effects of these collective initiatives should be the measure of how effective the new arrangements are, rather than short-term reporting and figures on take-up.

We judge that formal annual reporting for a small cohort would not add value or provide a real sense of the impact of introducing these new opportunities. However, my department recognises the importance of keeping the delivery and effect of these changes under continuous review, in terms of both the benefits to personnel and the impact on operational capability. We will closely monitor the rates of uptake for new flexible working options by service, rank and specialism and will carefully examine any long-term trends and links to overall retention rates and diversity.

As noble Lords will be aware, the Secretary of State is required to lay an annual report before Parliament each year outlining the Government's progress in delivering the Armed Forces covenant. The introduction of the new flexible working opportunities falls within the scope of the covenant and we envisage that the introduction of these measures in 2019 will be monitored during the first year of implementation and will be reported on in the covenant annual report and yearly thereafter.

The noble Baroness, Lady Jolly, asked about FAMCAS and AFCAS and drilled down with some further questions. I will write to her on the questions that she asked. I will need to consult the department to understand what further information it would be possible or practical

[Earl Howe]
to provide her with, but what information we do have I will be happy to give her. She also asked how flexible working could be introduced within a fixed headcount. The simple answer is that we will manage the levels of flexible working permitted and therefore will be able to ensure that the right levels are maintained to deliver defence outputs. It is envisaged that capacity surrendered to flexible working arrangements will either be within reducible capacity or can otherwise be resourced through other means such as the employment of reserves. Like other organisations with part-time workers, the organisation will change over time to better accommodate flexible working.

I do not believe that it is necessary for the Bill to be amended in this way. I understand that these are largely probing amendments and I hope that the explanations and information I have given to the Committee will be helpful to noble Lords and that they will not press their amendments.

Baroness Jolly: My Lords, I am happy to withdraw Amendment 7.

Amendment 7 withdrawn.

Amendment 8 not moved.

Clause 1 agreed.

Amendment 9

Moved by ***Lord Touhig***

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

"Protection of pay and allowances

(1) Nothing in this Act shall lead to the full-time equivalent level of remuneration provided to persons serving with a regular force being reduced.

(2) In this section, "remuneration" means—

(a) basic pay;

(b) the x-factor allowance; and

(c) any other universal payments,

provided to persons serving with a regular force."

Lord Touhig: My Lords, at Second Reading there was much discussion of the potential consequences of the Bill on pay and benefits received by our Armed Forces. On this side we agree that it is perfectly reasonable that if somebody decides to scale down the time commitment of their job there should be an appropriate adjustment to pay and there will be consequences for pensions, but I describe that as part-time working, not flexible working. Indeed, I believe the Government also understand that and maybe agree with it. Throughout the Bill the proposed new working arrangement is referred to as part-time working. The only reference to flexible work is in the short title. However, the Minister will have heard concerns from all sides that this change could represent an attempt at cost saving or a slippery slope to forced part-time work.

In meetings the Minister has assured us that there will be no compulsion and no one will be forced into part-time or flexible working. I am certain that that is welcomed on all sides, but in our discussions the Minister explained that there was already in existence a system of flexible working which did not involve service personnel taking a pay cut. I may have misunderstood, but I understood that to be the case. I have a number of questions to ask about that existing scheme, such as how widespread is it? Is it some form of informal arrangement, varying from place to place and dependent on local interpretation, or is it codified in some way? Is the existence of such a scheme publicised in the forces?

A number of these questions have been answered in the very useful papers that the Minister has provided to us, which leads me to ask whether it is intended that this flexible working arrangement will be operated alongside the part-time working arrangement outlined by the Bill. In the case of someone who needed to take half a day every Friday for, say, the next 10 weeks to accompany a wife or partner to hospital, could this not be done under a flexible working arrangement whereby that person would make up the hours and not suffer a loss of pay? Another person may decide that he or she wants to commit to fewer hours and work part-time. That would obviously have an impact on pay and pensions.

A life in the Armed Forces can be incredibly rewarding in many ways, but it is rarely highly lucrative. The very existence of the x-factor payment demonstrates that being in the forces is not like any other job. Our amendment on pay and allowances would protect the full-time equivalent base level of pay, the x-factor payment and any other universal payment or allowances provided to personnel serving in any of the regular forces. It would not preclude people from working part-time but would prevent the option of working part-time or subject to geographical restriction—which the Minister acknowledges is envisaged for only a small number of people—being used as justification to reduce remuneration overall.

A recent document provided by the Bill team states that,

"personnel who remain working on a full-time commitment will not see a reduction to their basic pay, x-factor payment, and any other universal payments".

I therefore hope the Minister will accept our amendment so that this information is available for all to see. In the same document it is stated that the Government are,

"engaged with the Armed Forces' Pay Review Body to help determine what a fair and appropriate reduction",

of the x-factor payment would be for those who have limits placed on them at their level of separation. There is also discussion on the need to inform how the Armed Forces Pension Scheme will operate after the passage of the Bill. I hope we will hear more from the Minister about these points.

I thank the noble Baroness, Lady Smith of Newnham, for tabling her amendment on access to accommodation. We have received assurances from the Minister and his officials that those affected by the Bill will not see any change in their entitlement to service accommodation. If this is the case, surely the Minister will agree to put these assurances in the Bill.

Amendment 16 tabled in the name of the noble Baroness, Lady Burt of Solihull, is also important.

As with the issues of accommodation, we are simply asking that the assurances we have already received are added to the Bill. Similarly, Amendment 17 tabled in the name of the noble Baroness, Lady Jolly, is also invaluable. Some important points have been made and it may be that the Minister is not able to respond positively today. However, we shall certainly be looking for much more when we come to the Report stage. I beg to move.

5 pm

Baroness Smith of Newnham: My Lords, I shall speak to Amendment 13 on accommodation. As the noble Lord, Lord Touhig, mentioned, this is an important issue. We have had some indications that those service men and women who avail themselves of flexible working will not be adversely affected, but there is already pressure on service accommodation, in particular a lack of single living accommodation. Moreover, we are looking at new accommodation through the future accommodation model. The question I have for the Minister is this: to what extent has planning been made to ensure that there will be sufficient accommodation for part-time service men and women? If the overall number of personnel remains unchanged, clearly the pressures will not change from what they are now. However, if there is a need for more personnel because some people are working part-time, has consideration been given to providing additional accommodation to ensure that those who work part-time will have the access to service accommodation that they have been promised?

If it is the case that there are more personnel in total because some people are working part-time, that would suggest the need for additional service accommodation. Not only would this not be a saving, there could potentially be a cost in this. Is the Ministry of Defence willing to consider additional accommodation being made available and meeting the costs that that might entail? If not, how does it envisage squaring the circle?

Baroness Burt of Solihull: My Lords, I wish to speak to Amendment 16 tabled in my name and that of my noble friend Lady Jolly. Before doing so, however, I want to make a comment about Amendment 9 tabled in the name of the noble Lord, Lord Touhig. It seeks to protect the full-time equivalent level of remuneration for regulars. As the noble Lord has pointed out, there are components to this such as universal payments, basic pay and the x-factor, which until recently I thought was something else entirely, but I shall not go into that. The idea is to protect against any reduction in pay being slipped in for individuals who will be affected by this Bill. But since we are not changing the classification of a regular, these components will not change, including the 14% which is the current x-factor payment. It will remain throughout the term of an individual's employment. My view is that this should be a matter for concern and we would appreciate an assurance from the Minister that that indeed will be the case.

I turn to Amendment 16, which ensures that a person can be promoted regardless of whether they work part-time. We would welcome a reassurance from the Minister that the new arrangements will not affect someone's career progression. The situation is complicated and not necessarily what people outside the Armed Forces might imagine. As I understand it, the current performance appraisal, postings and promotion system is not based primarily on competence. It relies heavily on direct comparisons being made with immediate peers in a unit. A tick-box system is used whereby someone has to have done certain jobs in order to get the next job. In that way, an individual can score enough to go before a promotion board. Under the current system, anyone working part-time will inevitably be penalised, particularly if they are on geographical restriction as one. They are unlikely to do all the posts they need to do to remain in the promotion thread, and they may not score as well in direct comparison with peers. If the Government accept the premise that promotion should not be affected by using the flexible employment scheme, does the Minister also accept that the appraisals-posting promotion structure really could do with a massive overhaul?

Earl Attlee: My Lords, I share some of the concerns of the noble Lord, Lord Touhig, and I hope that the Minister can reiterate the assurances he has given us in private that there would never be any encouragement of a serviceperson to seek part-time work in order to meet budgetary restrictions. If you have a branch and a headquarters, it would be quite easy to meet a cost-saving requirement just by having everybody take up part-time working. That would be an easy reassurance for my noble friend to give and I hope that he will do so. Can my noble friend also give an absolute reassurance that part-time working would not be used as part of the disciplinary machinery? In other words, if someone has fouled up, they are told that they will do six months of part-time service.

An interesting question for the Minister is this: when the pay of a serviceperson who has taken up part-time working is reduced, is it reduced on the basis of a seven-day week—a 365-day year—or on the basis of a five day week? Most people in camp normally work a five-day week unless they are on exercises or deployed. This is quite an interesting question because reservists are paid only for the days they do. The answer to my question about that will be rather more complicated than it first appears.

Amendment 16 concerns promotion and would ensure that part-time service in itself will not affect promotion. I hope that the Minister can give us a reassurance on that. The drafting of the amendment is a little bit problematic because it says "irrelevant". It will be relevant, but it might be positive. For instance, the soldiers' or officers' joint appraisal report—the pen picture that describes how well or badly the serviceperson has done—might say, "Despite the fact that this soldier or this officer is working only four days a week, they have achieved all the objectives required", or maybe even more than was expected. So you could acquire quite a good SJAR or OJAR despite the fact that you are working part-time. It is a rather complicated picture, but I hope that the Minister can give us some reassurances.

Earl Howe: My Lords, approval of the Bill will afford regular service personnel the right to apply to vary their commitment temporarily. The new arrangements will not be mandated for service personnel. I can reassure my noble friend in particular on that point. Those who wish to continue serving on a full-time commitment will be free to do so.

The noble Lord, Lord Touhig, seeks to amend the Bill to ensure that regular service personnel will not see a reduction in their basic pay, x-factor payment or any other universal payments provided for regular service personnel as a result of the Bill. I am sure that noble Lords will agree with me that it is fair and appropriate that in the future, those regular service personnel who elect to vary their commitment should see a commensurate variation in the reward they receive. We have worked closely with the services to ensure that this variation will be above all else fair and reasonable both to those who work under the new enhanced flexible arrangements and to those who do not.

As noble Lords will recall, I made this point during Second Reading. I can also now say categorically that those who remain working on a full-time commitment will not as a result of the Bill see a reduction in their basic pay, x-factor payment or any other universal payments provided for regular service personnel. Furthermore, let me reassure the Committee that the introduction of part-time working will not be used to lower the full-time equivalent basic rate of pay, the X-factor allowance or any other universal allowances payments available to personnel.

During the Bill's Second Reading, I provided reassurances that regular service personnel undertaking part-time working would retain those entitlements available to full-time regulars. Service accommodation in particular is an important provision for many personnel and their families that helps enable their mobility in support of defence capability. It is an important part of the offer for our people and an entitlement that the noble Baroness, Lady Smith, seeks through her amendment to ensure will still apply to personnel who successfully apply to work part time. To support my earlier reassurance, I can also confirm that our current policy makes provision for all regular service personnel to have an entitlement to service accommodation commensurate with their personal status category and other qualifying criteria. Service personnel will retain an enduring liability for mobility when working part time because they will still be subject to the same moves associated with new assignments as others in the regular Armed Forces. Therefore, they will remain entitled to service accommodation as under our existing policy and there is no need to alter the entitlement to accommodation for those who undertake part-time working; they will continue to be able to access service accommodation under the same criteria as full-time regulars.

I spoke earlier of the future accommodation model project that is due to be introduced in 2019 as part of the defence people programme. That project aims to create a more fair, affordable and flexible model for providing accommodation for our people while giving them more choice about where, how and with whom they live. It will also provide a subsidy to help more personnel live in private accommodation, including by helping to meet their aspirations for home ownership. Eligibility under the future accommodation model will not be altered for those personnel who work part time or subject to geographical restriction for a period. The noble Baroness raised the question of accommodation pressures as part-time working is rolled out. My answer to her at present is that given the anticipated low take-up, we do not expect additional pressures on housing to any significant degree.

Similarly for service personnel who opt to leave the Armed Forces, access to resettlement and employment support for up to two years prior to their discharge date and for two years afterwards will remain an entitlement for those who undertake part-time working. We want to ensure that our people transition successfully from an Armed Forces career where they receive world-class training to a civilian one where they can add real value to society because we have good quality people with developed skills who can really benefit external organisations. The noble Baroness, Lady Jolly, has sought to amend the Bill to protect the entitlement to resettlement under the new measures, and I can confirm that there will be no difference in resettlement entitlement for full-time service personnel and those regular personnel who work part time and/or restrict the amount of time that they are separated from their home base. The entitlement to resettlement is currently based on the number of years of service between the date of enlistment and the date of discharge. This will not change for those who take the opportunity to work flexibly on the introduction of the new flexible working opportunities. I can also confirm that there are no plans proportionally to calculate resettlement entitlement for personnel who undertake flexible working based on their actual number of days of work. Our resettlement policy guidance will be updated on the introduction of the new flexible working arrangements to state that resettlement support will remain the same for those who take advantage of them so that applicants are fully aware of their continuing entitlement.

It will be difficult to assess what impact the new flexible working arrangements might have on resettlement services in light of the fact that entitlements will not alter. Additionally, as the noble Baroness, Lady Jolly, will recall, I said at Second Reading that we expect a small yet significant number of personnel to undertake flexible working. For these reasons the impact on resettlement entitlements is likely be minimal and challenging to measure.

5.15 pm

Amendment 16 deals with the effect that undertaking flexible working opportunities may have on an individual's promotion prospects. The need to ensure fairness for those personnel who take up the new flexible working opportunities and those who do not is one of the fundamental principles underpinning the design of the policies and processes that will support the changes brought by this Bill. They include making sure we avoid intentional and unintentional career penalties, creating the opportunity for individuals to maintain or regain career momentum and maximising accessibility

of transfers between regulars and reserves in both directions. Service personnel will continue to be promoted on the basis of their performance and potential. Choosing to work flexibly will not in itself damage someone's promotion prospects. However, it may delay the development of skills and experience, which will be a consideration for individuals on applying, and the impact will vary depending on the stage of their career.

As noble Lords may recall from my response to a similar question at Second Reading, I am confident that the administrative process for the new flexible working arrangements already has the same safeguards that the noble Baroness is seeking to build into its design. Furthermore, as a matter of policy, promotion boards will be directed to assess fairly all candidates for promotion on the basis of their merit and future potential, irrespective of any period of flexible service.

The new arrangements will be supported by a number of key principles with underpinning activities. They include that personnel working flexibly will not be managed as a single cohort or commitment type but will continue to be managed within their existing service, branch and trade structure. In addition, we will seek to avoid intentional or unintentional career penalties for those who undertake flexible service and we will create the opportunity for individuals to maintain or regain career momentum.

Our current position and future intent therefore is to provide a fair and consistent opportunity for those taking advantage of the flexible working arrangements to be able to advance at the same rate of opportunity as others in their cohort. This will also help to ensure that flexible working is regarded as a fair, viable and retention-positive proposition rather than a negative one and will promote the best talent to the higher ranks for the benefit of the services and defence. The noble Lord, Lord Touhig, asked whether flexible working is currently codified. It is. Current flexible working arrangements are set out in JSP 750. I would be happy to provide the noble Lord with a copy.

As I mentioned at Second Reading, a decision on promotion is very largely forward-looking, rather than an exercise in looking back. It should absolutely be about the person's potential above all else. It is important to stress again that the introduction of enhanced flexible working options is about providing opportunities for our people who want to work more flexibly and not to disadvantage them or their families by limiting access to entitlements and support available to regular service personnel. Similarly, any effects on allowances or promotion are intended to be proportionate and fair, and our policy has been developed to limit any negative impact. With this in mind, we will work closely with the services to monitor the impact of these new measures on service personnel undertaking flexible working and, as I promised earlier, we will report findings in the *Armed Forces Covenant Annual Report*.

My noble friend Lord Attlee asked a specific question about whether part-time working would be used as a disciplinary tool. Part-time working will absolutely not be awarded as a punishment or anything like that. I hope I have answered the main question about how pay will be reduced on a proportionate and fair basis, but on my noble friend's specific question on whether the calculation will be based on a seven-day working week or a 365-day working year, I will write to him, if he will allow that.

I hope that my rather lengthy answer will convince noble Lords that it is not necessary for the Bill to be amended in the ways suggested and that, following my assurances, the noble Lord, Lord Touhig, will withdraw his amendment.

Lord Touhig: My Lords, the Minister has given his usual very full response. I need to reflect on it, because I keep coming back to the points made in our first debate by the noble and gallant Lord, Lord Craig. There is a question of definition and terminology: the Minister has constantly referred to "flexible" working but the Bill keeps referring to "part-time" working. It mentions flexible working only in the short title. I need to look carefully at his remarks on the Bill in *Hansard* tomorrow to make sure that he is talking about part-time working, not flexible working, because that was one of the key points I was trying to draw out. He said that the existing flexible working scheme is codified. I would be grateful to receive a copy of that. My earlier point was that people working in that flexible environment should not be penalised in any way by having their pay cut. That is a key point we need to look at before Report.

We have had a very useful and interesting debate, but it certainly underpins the need for clear definitions and terminology. I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendments 10 and 11 not moved.

Amendment 12

Moved by ***Lord Touhig***

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

"Implications for the Armed Forces Covenant

(1) Within six months of the coming into force of this Act, the Secretary of State must lay a statement before both Houses of Parliament outlining the implications of this Act for the Armed Forces Covenant.

(2) In preparing the statement, the Secretary of State must determine whether the Armed Forces Covenant, or any of its supporting documentation, requires revision in order to reflect the measures provided for in this Act.

(3) The Secretary of State must ensure that the Armed Forces Covenant annual report considers the contribution of this Act to meeting the goals of the Armed Forces Covenant."

Lord Touhig: My Lords,

"The need for an Armed Forces Covenant is ever more relevant today".

Those are the words of the very first sentence that the Defence Secretary wrote in the foreword to the *Armed Forces Covenant Annual Report 2016*. For once I find myself in complete agreement with Sir Michael Fallon—

Lord Tunnicliffe (Lab): Don't get carried away.

Lord Touhig: I will not get carried away. The publication of the *Armed Forces Covenant Annual Report* has become a well-established practice, and the Government should be congratulated on that. Because of that, we on this side were motivated to table Amendment 12.

The Bill is a small but by no means insignificant measure, and when enacted its impact should be measured to see what implications it has for the covenant. Subsection 2 of the amendment requires that,

"the Secretary of State must determine whether the Armed Forces Covenant, or any of its supporting documentation, requires revision in order to reflect the measures provided for in this Act".

By including the requirement set out in subsection 3 of the amendment, we are deliberately linking the impact of this Bill on the lives of service men and women to the covenant. By explicitly linking the Bill to the covenant, we are giving the external members of the covenant reference group an opportunity to consider and comment on the operation of the Bill when it becomes an Act.

The external members of the covenant reference group make a major contribution to monitoring the life and well-being of our Armed Forces, their families and all that affects their lives. This Bill should be no exception, so I heartily welcome the comments made by the Minister in a debate earlier this afternoon which made clear that the Government will ensure that the operation of this legislation will be reflected in a report on the covenant. That will give the external members of the covenant reference group a chance to comment on it. That is progress, and I look forward to that being enacted. I beg to move.

Earl Howe: My Lords, as the noble Lord, Lord Touhig, has explained, this amendment seeks to require the Secretary of State for Defence to lay a Statement before both Houses of Parliament, within six months of this Bill coming into force, outlining the implications of this Bill, once enacted, for the Armed Forces covenant. This amendment would also require the Defence Secretary to consider whether the Armed Forces covenant, or any of its supporting documentation, requires revision to reflect the measures in the Bill. Finally, it seeks to commit the Defence Secretary to ensure that the annual report on the covenant reflects the contribution of this Bill to meeting Armed Forces covenant goals.

I share the view of the noble Lord about the importance of measuring and reporting on the impact of the changes that will be introduced through this Bill. I want to ensure that it is done in the most appropriate and effective way for both the MoD and Parliament. As I mentioned at Second Reading, and several times today, we expect a small but significant number of our people to take up the new opportunities introduced by the Bill.

For this reason and, I submit, the disproportionate administrative burden we believe it would create, we judge that there would be little value to be gained from producing a statement only six months after the Act has come into force. The long-term aim of providing these new arrangements, alongside a range of other measures in the MoD, is to modernise the terms of service and ultimately improve Armed Forces recruitment and retention, which I am sure all noble Lords would welcome.

In addition to this, evidence from our ongoing flexible duties trial suggests that in particular those with families have benefited from the greater stability that comes from having more choice over how they serve. This latter prospect has been welcomed by the services' families' federations, which view this as an important part of the drive for a better work/life balance among service families. It is these specific areas that I have just mentioned rather than the concept of the Armed Forces covenant itself that will feel the direct impact following the introduction of the new flexible working arrangements. We therefore do not anticipate that there will be any need to revise the wording of the covenant or its supporting documentation. As noble Lords will be aware, the Secretary of State is already required to lay an annual report before Parliament each year outlining the Government's progress in delivering the Armed Forces covenant and, as I mentioned earlier, it is likely that a future report will include a section on the introduction of the measures included in this Bill and their effect. That would be entirely appropriate. For this reason, and the others I have already outlined, it seems unnecessary to legislate that the Secretary of State should report separately on the introduction of the new measures that the Bill will introduce. I do not therefore believe it is necessary for the Bill to be amended as suggested by the noble Lord. Following these assurances, I hope that he will agree to withdraw his amendment.

Lord Touhig: I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

Amendments 13 to 18 not moved.

Clause 2 agreed.

Clause 3: Short title, commencement and extent

Amendment 19 not moved.

Clause 3 agreed.

Bill reported without amendment.

Committee adjourned at 5.27 pm.