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PARLIAMENTARY DEBATES  
(HANSARD)

# HOUSE OF LORDS

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

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*§ Members of the Government listed under more than one department*

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THE  
PARLIAMENTARY DEBATES

(HANSARD)

IN THE FIRST SESSION OF THE FIFTY-SEVENTH PARLIAMENT OF THE  
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND  
COMMENCING ON THE THIRTEENTH DAY OF JUNE IN THE  
SIXTY-SIXTH YEAR OF THE REIGN OF

HER MAJESTY QUEEN ELIZABETH II

FIFTH SERIES

VOLUME DCCLXXXV

THIRD VOLUME OF SESSION 2017-19

House of Lords

*Monday 9 October 2017*

2.30 pm

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

**Fracking: Policing**  
*Question*

2.37 pm

*Asked by Baroness Jones of Moulsecoomb*

To ask Her Majesty's Government whether they have reviewed their policy of making no funding stream available to meet additional policing costs incurred as a result of fracking.

**Baroness Vere of Norbiton (Con):** My Lords, it is not correct to suggest that there is no such established funding mechanism available. Police and crime commissioners can apply for special grant funding to help meet the additional costs of unexpected events, including policing protests at hydraulic fracturing sites. The Home Office has previously provided special grant funding for the policing of fracking protests.

**Baroness Jones of Moulsecoomb (GP):** I thank the Minister for her reply. I was at Preston New Road two weeks ago, which is the front line of anti-fracking protests in Lancashire. The remarkable thing was how many local residents were protesting, because every level of local government had turned down the fracking application from Cuadrilla, yet the Government came in and overturned all those local decisions. How does that fit with the Government's manifesto promise to allow local people to decide for themselves? The Government have not only broken their promise but have also incurred hundreds of thousands of pounds-worth of extra policing costs, which the public have to pay.

**Baroness Vere of Norbiton:** The noble Baroness raises a number of issues. Peaceful protest is a vital part of our democratic society. However, it is important that protesters protest within the law. The noble Baroness mentioned Lancashire. In the last few weeks, 26 people have been arrested in Yorkshire, two of whom have been released under caution and 22 have been charged, including for assaulting a police officer. That obviously relates back to costs: if people stayed within the law, perhaps the taxpayer would not have to pay for all these additional policing costs.

**Baroness Featherstone (LD):** I suggest that the Government follow Scotland's example and ban fracking, in which case there would be no policing costs in this regard. Does the Minister agree?

**Baroness Vere of Norbiton:** My Lords, I think it is a great shame that Scotland has taken the decision that it has. It has had a moratorium on fracking since 2015, and it appears that this is now permanent. However, we believe that hydraulic fracturing can be done safely in the UK, and that there are strong regulations in place to protect individuals. It is important because it will reduce our gas imports, create jobs and heat our homes.

**Lord Wigley (PC):** My Lords, the noble Baroness will be aware that there is a moratorium on fracking in Wales. In those circumstances, is it not a bit ironic that the Gwent police force was sent up to Lancashire for the purposes of controlling the protesters? Given that the costs of such an exercise can sometimes become very great, can she give an assurance that all the costs incurred by Gwent will be paid for from central funds?

**Baroness Vere of Norbiton:** My Lords, as I am sure the noble Lord is aware, mutual aid between different police forces is very well established, and the costs for meeting those things are, of course, sorted out in the wash.

**Lord Tebbit (Con):** My Lords, does my noble friend not agree that if the police and the authorities were to give in to the nimbys who are against fracking, the nimbys who are preventing planning consent being given to deal with the housing shortage crisis would be at it as well? It is nimbyism and it needs to be put down.

**Baroness Vere of Norbiton:** I refer my noble friend to my previous answer about protesting being a vital part of our democratic society. However, he raises a very important point. The most recent figures from the public attitude survey carried out by BEIS show that the vast majority—90%—of the public feel that they simply do not have enough information about fracking. That and not the fact that it is taking place is where the problem lies.

**Lord Berkeley (Lab):** My Lords, I too have been reading the Conservative Party manifesto—it is sad but there we are. Perhaps I may quote from it. It says that it is necessary to,

“maintain public confidence in the”,  
fracking,

“process ... uphold our rigorous environmental protections, and ... ensure the proceeds of the wealth generated by shale energy are shared with the communities affected”.

Has that happened yet?

**Baroness Vere of Norbiton:** The noble Lord will know that there is no active fracking at the moment but I am pleased that he spent the Recess reading the Conservative Party manifesto. The important thing is that advances in technology are happening all the time, and fracking will be an important part of our energy security going forward. For example, the noble Lord may have seen recently that superhydrophilic filters have now been invented. They remove 90% of the hydrocarbons, bacteria and particulates from any post-hydraulic fracturing feed. These are all good things. I think that we should support fracking and of course make sure that the local communities benefit too.

**Lord Hayward (Con):** Further to my noble friend's comments in relation to Scotland, does she not recognise that Grangemouth refinery is in part dependent on such gas supplies? The SNP welcome it, yet it has now said that it is not willing to have such supplies developed and researched in Scotland.

**Baroness Vere of Norbiton:** I agree with my noble friend. I said that it was a great shame about Scotland, but we must recognise that Scotland has a 50-year history and heritage of oil and gas exploration and drilling. It is a great shame that it will not be participating in this and a great shame that Grangemouth will potentially suffer.

**Lord Rosser (Lab):** My Lords, the Lancashire PCC sought help from the Home Office to pay for the extra costs of policing fracking protests following a government

decision overruling Lancashire County Council. This request has so far been declined, and the Minister for Policing has stated that,

“there is no central government funding stream available”.

Can the Government say whether the Lancashire PCC, who is responsible for the county's police force's budget, has the statutory power, if he so chooses to use it, to instruct his chief constable not to provide policing in connection with the fracking protests until such time as the Government agree to help with the additional expenditure incurred on the grounds that there is no provision within his police force's budget for such expenditure and that money is not available from other parts of his budget? Is the answer yes, he has those statutory powers, or no?

**Baroness Vere of Norbiton:** I will have to revert to the noble Lord on whether he has those statutory powers. However, special grant funding has been used to support fracking protests before. In 2014, Sussex got £905,000. Greater Manchester applied for funding but it was refused because it was not a significant amount of its budget. However, in the case of Lancashire, the application for £3.1 million is still under consideration and no decision has yet been made.

**Lord West of Spithead (Lab):** My Lords, one of the attractions of fracking is that it produces fuel onshore. The noble Baroness will be aware that over 30% of the energy supply in this country comes across the sea. As the Government seem intent on scrapping or selling the bulk of the Royal Navy, does that make fracking even more important to us in the future?

**Baroness Vere of Norbiton:** I thank the noble Lord for his intervention and I am pleased that we got on to the Navy. However, to turn to ships, the noble Lord raises a very important point. One-third of our energy demand comes from gas and we currently import a huge amount of gas. By 2030, we could be importing three-quarters of the gas that we use. That will come in ships from the US, which is a very long way away. That is why we need fracking in our country.

## Brexit Question

2.45 pm

Asked by **Lord Dykes**

To ask Her Majesty's Government what is their current assessment of the prospects for reaching a Brexit agreement with the European Union by March 2019.

**The Minister of State, Department for Exiting the European Union (Baroness Anelay of St Johns) (Con):** My Lords, as the Secretary of State for Exiting the EU said when closing the fourth round of negotiations, we have made considerable progress on the issues that matter, increasing certainty for citizens and businesses. Thanks to the constructive and determined manner of both sides in negotiations, we are making decisive

steps forward. Both parties want to achieve the best possible outcome and the strongest possible partnership for the future by March 2019.

**Lord Dykes (CB):** Yes, but when are the Government, at long last, going to produce viable proposals for the Irish border which will also be acceptable to the Irish Government and the Dáil?

**Baroness Anelay of St Johns:** My Lords, there has been a very firm, fair and collaborative discussion about the issue of Northern Ireland. The most recent discussions continue to be constructive and we have made progress in some areas. For example, we have begun drafting joint principles on preserving the common travel area and associated rights, and have continued building on the general principles of ensuring that there is no hindrance at the border.

**Lord Wallace of Saltaire (LD):** My Lords, will the Minister give us her current assessment of the prospect of reaching an agreement on Brexit within the Conservative Party by March 2019?

**Baroness Anelay of St Johns:** My Lords, the Cabinet has made it clear that it is fully in support of the Prime Minister.

**Noble Lords:** Oh!

**Baroness Anelay of St Johns:** And that is the way it is going to stay.

**Lord Higgins (Con):** My Lords, does my noble friend agree that it would speed up negotiations if the British Government put forward quite specific and quantitative proposals with regard to what we think any exit payment ought to be?

**Baroness Anelay of St Johns:** My Lords, my noble friend speaks from his background of work in the Treasury. There is a move from the Commission to change the rules of the game. The rules set out at the start of the negotiations were that we should have sufficient progress by this stage. Suddenly, some members and parties are saying that we should have agreed a particular sum. This is more than horse-trading; it is the future of our country. We are having a technical and detailed discussion that will bear fruit.

**Lord Dubs (Lab):** My Lords, going back to Northern Ireland, does the Minister agree that the only way to stop there being any border between Northern Ireland and the Republic is for us to be members of the customs union?

**Baroness Anelay of St Johns:** My Lords, it is a fact that as we leave the European Union we are not going to cherry pick one or more of the four freedoms—the Commission has made it clear that that is not acceptable and we understand and abide by that. However, we do seek a strong customs partnership. We cannot be in a customs union unless we have all the other freedoms, and, of course, contribute to the budget, without having a say in it: that is not the British way.

**Lord Hannay of Chiswick (CB):** My Lords, can the Minister say what effort the Government made before triggering Article 50 to ensure that they would be able to discuss with our partners in the EU the new partnership straightaway? If they did not make any such efforts, was not that a little foolhardy?

**Baroness Anelay of St Johns:** My Lords, when we triggered Article 50 it was at a time when we had already heard extensive analysis of a range of issues that we knew would be the subject of discussion in reaching an agreement on our withdrawal from the European Union. That includes, as I have mentioned at the Dispatch Box in the past, an analysis of more than 50 sectors of the economy. An extraordinary amount of detailed work has been carried out, which is why we have been able to publish a raft of papers this summer.

**Baroness Ludford (LD):** My Lords, the Prime Minister allowed herself to think again about holding an early general election. Why will she therefore not allow people to think again about the advisability of Brexit once they know the facts?

**Baroness Anelay of St Johns:** My Lords, I remind the noble Baroness, who is also a friend, that her party, which stood for that in the last election, got hammered.

**Lord Cormack (Con):** My Lords, does my noble friend agree that we all have cause to be grateful for the calm, prudent, constructive contribution of the Chancellor of the Exchequer in these talks?

**Baroness Anelay of St Johns:** Yes, my Lords. I have seen that close up because I was fortunate enough to be briefed throughout the summer by officials from the Treasury about the patient, technical work that they have been carrying out to ensure that when we are able to reach agreement not only on principles but on practice, the result will be fair for this country as well as for the rest of the European Union.

**Baroness Hayter of Kentish Town (Lab):** My Lords, as we know, the European Parliament will get a vote on the final deal. It has passed a resolution saying that it does not consider that sufficient progress has been made to go on to the all-important trade negotiations. The Bank of England, agriculture, industry, higher education and UK citizens all want progress. Is it not time to put the national interest first and make real progress on these talks so that we can get on to the deep trade ones?

**Baroness Anelay of St Johns:** My Lords, we have made great progress—we would say sufficient progress—to be able to proceed with the next stage of our negotiations. Of course, as the noble Baroness will certainly recall, Article 50 specifically says that discussions on the withdrawal agreement should be against a background of discussions about the future partnership. We are

[BARONESS ANELAY OF ST JOHNS]  
ready, willing and able, and it is time now for the European Commission to be more flexible to be ready for the next stage.

**Lord Trimble (Con):** My Lords, to return to the question of the two parts of Ireland, does my noble friend recall that Monsieur Barnier, after publication of Her Majesty's Government's proposals, said that the European Union was opposed to an invisible border? Surely there will be no progress on this issue until Europe changes its mind.

**Baroness Anelay of St Johns:** My Lords, my noble friend, who has some of the best experience of the issues of importance to Northern Ireland, raises a crucial point. Flexibility is important from the Commission and also from other members of the European 27. A political decision will ultimately make the difference. It is worth noting that the Motion in the European Parliament to which the noble Baroness, Lady Hayter, referred a moment ago proposed that one part of the United Kingdom—Northern Ireland—could remain in the single market and the customs union, thereby breaking up the United Kingdom. That cannot be a way forward.

## Work Capability Assessment Question

2.52 pm

Asked by **Baroness Thomas of Winchester**

To ask Her Majesty's Government what plans they have to reform the Work Capability Assessment.

**The Parliamentary Under-Secretary of State, Department for Work and Pensions (Baroness Buscombe) (Con):** My Lords, we consulted on work capability assessment reform in the *Improving Lives* Green Paper and have committed in our manifesto to building more personalised and tailored employment support to help disabled claimants and those with health conditions to return to work where appropriate. We continuously seek to improve the WCA, including recently stopping reassessments for claimants with the most severe and lifelong health conditions and disabilities. We will set out further plans in due course.

**Baroness Thomas of Winchester (LD):** I am grateful for that Answer and am glad that there is some progress. However, does the Minister agree that the WCA is particularly bad at assessing whether people with more than one impairment—constant pain, for example—are capable of doing jobs in the real world of work and not just theoretical jobs? Will she undertake to ensure that the assessment will be underpinned by rigorous research into the kinds of jobs that people with limited capability for work could do? Also, will she ensure that any new legislation in this area is piloted first?

**Baroness Buscombe:** The noble Baroness will know that this is the fifth review of the work capability assessment since it was introduced in 2008. It is important

to continually reassess and review the way the assessment is carried out. That is why since April, when we rolled out the new PSP—the personal support package for people with health conditions, which may include having one or more conditions—we have recruited 300 new disability employment advisers and 200 community partners, as well as introducing peer support job clubs in 71 jobcentres. We have allocated £15 million to the flexible support fund, made changes to the permitted work rules and have almost completed the rollout of the health and work conversation. This is in line with our ambition to provide a support system that can be tailored to individuals' needs.

**Lord Watts (Lab):** My Lords, the Minister will be aware that the Prime Minister has accepted that the system is still flawed. There have been five reviews. I follow on from the earlier question: do we not need a pilot to make sure that this review actually works?

**Baroness Buscombe:** My Lords, the *Improving Lives* Green Paper was published in October 2016. I am pleased that we received around 6,000 consultation responses supported by 166 accessible events across the country. That is good; it is all about us listening to people, to understand what is truly needed and how we can tailor support to meet the needs of different people. Since the Green Paper consultation, our officials have been working hard to analyse that fantastic response. We are working towards an autumn publication which will set out our response to the consultation and how it has informed what we are going to do next.

**Lord Low of Dalston (CB):** My Lords, to ensure that the work capability assessment is fit for purpose, will the Government undertake to carry out a thorough inquiry into the alarming reports that assessors are disregarding evidence of unfitness to work put before them by claimants; and that claimants are even taking their own lives as a result of the stress to which they are subjected by work capability assessments, something which has been confirmed by coroners' findings?

**Baroness Buscombe:** My Lords, it is important to point out that we are talking about approximately 2.4 million claimants who make up the employment support allowance caseload. Obviously the references made by the noble Lord to particular individuals are of concern, but the nominal expenditure forecast for 2017-18 is £15.3 billion. In that case, we have to proceed with care in the changes we make, to ensure that the delivery of assessments works for everyone. Since the Centre for Health and Disability Assessments took over the contract to carry out assessments in 2015, a number of improvements have been made to claimants' experience of them. The number of HCPs has been increased by 68%—

**Noble Lords:** Too long.

**Baroness Buscombe:** I am sorry, but I think that noble Lords would like a clear explanation. Since August 2017, the centre has ensured that claimants go through the assessment process more quickly and

increased the number of mental health champions it employs, as well as appointed a head of customer experience.

**Baroness Lister of Burtersett (Lab):** My Lords, two noble Lords have asked specifically about piloting any revised work capability assessment. Will the Minister now answer that question about piloting?

**Baroness Buscombe:** My Lords, I hear what noble Lords are saying in relation to piloting. As I have said, our officials are working hard to consider the next steps. I will take that suggestion back to them. They are thinking about all the future plans and taking into account the concerns of all the 6,000 people who responded to the consultation. Of course, if there is a wish to have more pilots, I am convinced that my department will look at that.

**Lord Kirkwood of Kirkhope (LD):** My Lords, if the Minister is bringing forward plans, that is extremely welcome, but before she makes any positive changes will she look at the Ministry of Justice employment tribunal statistics that were published last month? They show a rate of successful overturn on appeal in ESA cases of 68%. Further, the mean period for the disposal of a case is now 20 weeks, which is three weeks longer than last year. These are important things that need to be remedied in any plans she brings forward, so a review is fundamentally and urgently needed now.

**Baroness Buscombe:** My Lords, we are committed to ensuring that people have the best support possible. That is why we have allocated £330 million for new voluntary employment support for people with limited capability for work over four years, starting with this year. The current system fails to provide the right incentives and support to help disabled people and those with health conditions toward and into work. Those people deserve better.

## Sterling: Euro Exchange Rate *Question*

3 pm

*Asked by Baroness McIntosh of Pickering*

To ask Her Majesty's Government what assessment they have made of the impact of the relative value of the euro to the pound sterling on individuals and businesses.

**The Minister of State, Department for International Development (Lord Bates) (Con):** My Lords, the UK has an inflation target, not an exchange rate target, and the Government do not express a view on the level of exchange rates. The value of sterling adjusts flexibly in response to economic conditions and market forces and sentiment. The Government will continue to monitor economic developments closely, while at the same time taking steps to promote economic growth and to support individuals and businesses.

**Baroness McIntosh of Pickering (Con):** My Lords, since 2015 the pound has lost between 20% and 30% of its value against the euro, leading to the loss of Monarch Airlines and Air Berlin, among others, in the last few months. Does my noble friend the Minister believe that the quantitative easing programme embarked upon by the Bank of England to shore up the level of the pound and keep interest rates down is sustainable? Will the Treasury come clean on what the real cost to the UK economy—to individuals and businesses—will be if the United Kingdom crashes out of the European Union without a deal?

**Lord Bates:** We can certainly say that a number of those elements are, rightly, matters that are independent of government. The Bank of England has been given the UK macroeconomic mechanisms to make those judgments on interest rates. Interest rates are at an historically low level. Exchange rates can have a negative effect on imports but a positive effect on exports. It is important that we emphasise that the fundamentals of the British economy remain strong. Employment is at record levels and we continue to grow and expand, and we want to see that continue. That is very much the positive outcome we want from this complex negotiation.

**Lord Davies of Oldham (Lab):** My Lords, if the economy is so strong, why was our credit rating reduced recently? Sometimes Governments preside over the depreciation of their currency in order to improve their balance of payments and trading position. Why is that clearly not working under this Government?

**Lord Bates:** Since 2010, the economy has grown by 15.3%. That is 1.5 times the level of France. I do not necessarily want to remind the noble Lord, who was standing on this side of the Dispatch Box during 2008-09, that the economy contracted by 6.3% during that period. The fact that we have record levels of employment and are seeing sustained growth should be welcomed and built upon.

**Lord Fox (LD):** My Lords, a fall in the relative value of the pound was advanced by some of the most enthusiastic Brexiteers as the antidote to future potential export tariffs. Can the Minister tell this House whether that is also Her Majesty's Government's policy? If the answer is yes, what evidence has been amassed over the last 12 months of a phenomenally low pound to support that view?

**Lord Bates:** As I have said, the Government have not said exchange rates are their responsibility. Those matters are driven by the markets and sentiment. We have to make sure we have a strong, competitive economy. That is why we have lowered taxation rates, why we have high employment levels and why the Chancellor has announced a new national productivity investment fund of £23 billion. We have to do everything in our power; the markets will respond as the markets respond.

**Lord Forsyth of Drumlean (Con):** My Lords, will my noble friend take this opportunity to remind people that the strength of the euro has been bought on the backs of those unemployed young people in Greece and the southern European states, that the eurozone is embarking on a project to screw that down even harder, and that the misery that will create is one of the reasons why we are best out of the eurozone?

**Lord Bates:** My noble friend is absolutely right that we are out of the eurozone as far as that is concerned. The strength of the UK can be recognised not only in how people respond to our market but in how they respond in terms of foreign direct investment. That is a much more concrete and long-term form of investment. The UK continues to be the second-largest recipient of foreign direct investment in the EU and second in the world only to the United States. The fact that companies such as Nissan, Toyota, Apple and Bloomberg are making major long-term investments in the UK should encourage us to do the same.

**Lord Lea of Crondall (Lab):** My Lords, in saying that we do not have an exchange rate policy but simply an inflation policy, the Minister has repeated the Written Answer that he gave to a Question that I tabled. In the hypothetical situation of the pound falling further, is it not ever more obvious that it is a totally false binary to say that we have a policy on inflation but not one on the exchange rate, when the one feeds into the other in a very material way?

**Lord Bates:** I acknowledge the noble Lord's great professional experience in economics, but I am saying something slightly different. I am not saying that we do not pay attention to that and do not watch it at all; I am saying that the way in which it has been configured, through successive Governments, is such that this is a matter for the Monetary Policy Committee of the Bank of England to respond to. Where inflation rises above 3%—its target is 2%—it has to respond. Where it sees matters which are causing concern, it can choose to cut interest rates—as it did after the referendum, to historically low levels of 0.25%. We are not saying that we do not have any policy; we are saying that we have a core set of policies which the Government are responsible for and we are acting on them.

**Lord Brooke of Alverthorpe (Lab):** Will the Minister explain to the House why we have been downrated?

**Lord Bates:** If someone wants a historical lesson on the accuracy of the ratings agencies in making predictions, the events of 2008-09 might raise some question as to what they were doing then. We are talking about a downgrade of one notch. That reflects some concerns that they have about the transition period as we exit the European Union. They are perfectly entitled to say that. We are saying that we have a clear plan as to how we want that exit to happen, we want it to happen as soon as possible and we believe that the prospects for this country thereafter are very positive indeed.

## Fire Safety

### *Private Notice Question*

3.07 pm

*Asked by Lord Kennedy of Southwark*

To ask Her Majesty's Government how many bids from local councils for funding of fire safety measures in tower blocks have they (a) accepted and (b) refused since the tragedy at Grenfell Tower on the 14th June 2017.

**Lord Kennedy of Southwark (Lab):** My Lords, I beg leave to ask a Question of which I have given private notice. In asking the Question, I refer the House to my registered interests, particularly as a councillor in the London Borough of Lewisham and as a vice-president of the Local Government Association.

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con):** My Lords, building owners are responsible for funding fire safety measures but, where works are required to ensure fire safety, we are ensuring that lack of financial resources will not prevent them going ahead. Thirty-one local authorities have contacted DCLG. We have invited councils to provide more detail about essential works and will consider requests as information is provided. Discussions are ongoing, but we have not turned down any requests for essential works.

**Lord Kennedy of Southwark:** Since 2007, the fitting of sprinklers has been compulsory in new blocks over 30 metres tall. The London Fire Commissioner has said since the Grenfell Tower tragedy that retrofitting sprinklers,

“can't be optional ... can't be 'a nice to have'”.

However, the Minister's honourable friend the Minister for Housing in the other place has been telling councils that bids for sprinklers are additional rather than essential. Does the Minister agree that it is time for the Government to reflect on and review those decisions in the light of comments from the Government since the tragedy and the advice of professionals in the fire service and elsewhere, who regard these measures as essential and not additional?

**Lord Bourne of Aberystwyth:** My Lords, the position as set out by my right honourable friend the Minister, Sajid Javid, in his letter of 31 July, where he clearly indicated that essential local work for fire safety will not be restricted by financial resources, remains the position. We are currently in discussion with six authorities, one of which, Portsmouth, has now submitted all the documentation required—it is the only one to have done so so far and we are now looking at it. There are another 35 which we are still assessing, and 31 local authorities have responded in full. If they set out essential work, we will, as indicated in that letter, ensure that the resources are forthcoming.

**Baroness Pinnock (LD):** My Lords, I am very grateful to the noble Lord, Lord Kennedy, for asking this Question, because there is considerable concern in local authorities about funding the costs of cladding replacements. Forgive my cough; I have caught the Prime Minister's bug. It is shocking to me that the Government are failing to take full financial responsibility for the failures of public policy, the Grenfell Tower fire being the result of those failures. I have two questions for the Minister. First, I understand that 186 buildings have failed the more stringent tests by the building research laboratories on cladding and fire safety. Will the Government publish a list of those buildings so that those of us who are concerned can see the extent of the problem? Secondly, I asked in this House on 26 June about the Government taking full financial responsibility for funding local authorities' costs for cladding. The Minister agreed that this was an important aspect for the Government to consider. I think that he ought to consider it now and let us know that they will be funded, so that those people will be safe.

**Lord Bourne of Aberystwyth:** My Lords, I thank the noble Baroness. On her first question, I will certainly revert to her and to other Peers who have participated in this debate and put a copy of the list of the 186 buildings concerned in the Library. On cladding, I come back to the central issue, the subject of the Question, which is essential works. Essential works, which might include sprinklers or might not, will be assessed by the department on a case-by-case basis. As I say, until now we have had one completed documentation, which we have just received and which we are looking at. I do not think that there is anything unfair about that. There are five further authorities that we have asked for further information; they will, no doubt, come forward with it. Each case has to be assessed on what the fire officers are recommending and what the building owners think is required; there is no standard rule. We will look at it, but I repeat the undertaking made by my right honourable friend the Secretary of State in his letter in July that we will not stand in the way of the performance of essential work because of a lack of financial resources.

**Baroness McIntosh of Hudnall (Lab):** My Lords, will the Minister enlighten the House a bit more about how the word "essential" is being defined? From the answer he just gave it appears that it is a very mutable concept. Will he give us some idea of what criteria are being brought to bear when determining, even if it is on a case-by-case basis, what constitutes "essential", particularly when it appears that the consistent advice of the fire service is that, for example, retrofitting sprinklers is essential? Is its advice being questioned, or is advice being sought from elsewhere?

**Lord Bourne of Aberystwyth:** My Lords, I come back to the basic point that no application has been turned down: every application that has been made is still open and there have been 31, covering roughly 10% of authorities. We are looking at those. Clearly, "essential" is going to depend on the circumstances of each case; I do not think that I can do fairer than that. It is what is deemed necessary by the building regulators

and by the owners and it will be looked at by the department. I come back to the basic point that nothing has been turned down. We remain wedded to the central concept that safety is everything and we will not allow lack of financial resources to prevent essential building work.

**Baroness Watkins of Tavistock (CB):** My Lords, will the Minister assure the House that similar approaches in terms of financial recompense will be taken to requests regarding housing association property that was transferred from council housing structures originally? I declare my interests with two housing associations.

**Lord Bourne of Aberystwyth:** My Lords, the noble Baroness makes an interesting and fair point. The application is made separately in relation to housing associations but exactly the same yardstick is used. Once again, we will not allow financial difficulties to stand in the way of doing the essential work. I do not know of any housing association which has made an application that has been turned down. I do not think that that is the case. If I am wrong about that, I will write to noble Lords.

**Lord Shipley (LD):** My Lords, I remind the House of my registered interests. The Minister has just said that no applications have been turned down but at the weekend it was reported in the media that Nottingham City Council's request to install sprinklers inside flats and communal areas in 13 towers had been turned down because, according to the Housing Minister:

"The measures you outline are additional rather than essential".

Given that there is a public inquiry and, separately, a building regulations review, if either or both of those reviews conclude that works to fit sprinklers are essential, will the Minister guarantee that the Government will fund them?

**Lord Bourne of Aberystwyth:** My Lords, the noble Lord makes a fair point. The position at the moment is that nothing essential has been turned down—I checked that with officials today. Clearly, an inquiry and a review of building safety regulation and fire safety are ongoing. It would make a material difference if one of those were to come forward with something that is essential forthwith. We will look at that situation. I do not think that is an unfair response. It is something that could happen and, clearly, in the light of changed circumstances we would have to look at that anew.

**Baroness Berridge (Con):** My Lords, rightly, the focus has been on housing associations and social housing generally but will my noble friend the Minister assure the House that with regard to high-rise buildings that are either in shared ownership or actually in private ownership, the Secretary of State has written to those developers to check that there are not safety concerns in those blocks? Some of the fires that we have seen in other countries have been in privately owned dwellings.

**Lord Bourne of Aberystwyth:** My Lords, my noble friend makes an entirely fair point. I think that has been the subject of a letter from my right honourable

[LORD BOURNE OF ABERYSTWYTH] friend. I will double-check that, if I may, to ensure that that is the case, and if it is not we will certainly need to pick it up.

**Lord Campbell-Savours (Lab):** But, my Lords, there is no difference between a publicly owned block and a privately owned block. Over the months, in replies to these Questions that have been asked in the House, the Minister keeps drawing a distinction between where the work should be required by law to be carried out and it being left voluntarily to private landowners. How can the Minister carry on justifying this great inconsistency?

**Lord Bourne of Aberystwyth:** My Lords, that is not an inconsistency I have expressed. I think it must be a figment of the noble Lord's imagination. I certainly have not said that at all. What I have said, just now in response to my noble friend Lady Berridge, is that we will look at it in exactly the same way. Anything that is essential to be done will be done. We will ensure that financial hardship does not stop that happening.

## Telecommunications Infrastructure (Relief from Non-Domestic Rates) Bill

### *Second Reading*

3.18 pm

*Moved by Lord Ashton of Hyde*

That the Bill be now read a second time.

**The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con):** My Lords, I am very pleased to be able to assist my noble friend Lord Bourne in moving the Second Reading of this short but vital Bill.

In our modern world, businesses and individuals depend on being connected, and the ways in which this happens are becoming more and more diverse. We are fast moving beyond mere mobile phones to increasingly digital communications, and in the future this will include ultrafast broadband technology and 5G—the next generation of mobile connectivity. Fibre is crucial to both of these. The Bill will support that progression for both fixed and mobile or wireless networks by delivering a vital part of the Government's package on fibre investment. The Bill will provide the framework to implement the Chancellor's promise in the Autumn Statement 2016 to allow 100% business rate relief for new fibre up to 2022.

Many noble Lords have raised the problems of slow internet or poor mobile phone services. These matters are important to people. They affect the enjoyment of their lives and the success of their businesses. By delivering world-class connectivity we can transform our public services, bringing efficiencies to business and improving the lives of individuals. Central to this challenge is providing the digital infrastructure that can support these demands. All these connections rely on more fibre-optic cable. Fibre is the gold standard, and we are committed to delivering it, but we have heard concerns from operators that business rates acts as a barrier to that investment.

The commitment given at the Autumn Statement in 2016 will mean that new fibre investment made after April 2017 will not be subject to business rates until 2022. Telecom operators will continue to pay rates on their existing network, alongside all other ratepayers who pay business rates on their business properties, but by providing a temporary relief for new fibre we will give this sector the boost it needs to meet demand. The sector has been calling for this and telling us it will make a difference in the delivery of new fibre. We have made great progress in the last few years to improve connectivity across the UK. Superfast broadband is already available to 93% of homes and businesses; we are on track to reach 95% by the end of the year. We want to go further and providing rate relief on new fibre will help achieve this goal.

We will have the opportunity to discuss the Bill in more detail in Committee but I will briefly outline what it does. This short Bill contains six clauses and, essentially, gives us the powers we need to deliver the relief through regulations. The first three clauses contain the powers for those regulations covering occupied and unoccupied properties on local rating lists, and those on the central rating list held by the Secretary of State. The remaining three clauses deal with consequential and financial matters, allowing the relief to be backdated to 1 April 2017.

In order to calculate how much relief should be awarded on telecom networks, the regulations made under these powers will require the valuation officer to issue a certificate of the rateable value attributable to the new fibre. This will then be used by the local authority to calculate the amount of relief which should be awarded, ensuring that we will give relief only on the new fibre and not on any existing networks. We have already published draft regulations, in August, explaining how this will work and started discussions with the sector on its implementation. Consultation on the draft regulations will run for 12 weeks. The Valuation Office Agency will also hold discussions with the sector on how the relief will operate in practice. So I hope noble Lords will appreciate that we have already explained how the powers will work, thereby ensuring that the scheme operates smoothly.

More widely, the Bill is just one of several measures we are taking to boost Britain's connectivity, including our ambition for more fibre. Over the summer we announced more details of the universal service obligation, so that every household will be able to get acceptable broadband by 2020. This will provide a vital safety net to ensure that no one is left behind. In the Digital Economy Act we reformed the Electronic Communications Code, which regulates agreements between site providers and communications operators, to make it easier to deploy, maintain and upgrade electronic communications infrastructure. We are also forming a dedicated team to look at how government can remove barriers to deployment, which will work with other departments and industry.

We will see a more competitive market as a result of the agreement between BT and Ofcom to separate out Openreach. A legally separate Openreach will serve not just all its customers but the whole of the United Kingdom. We are supporting fibre rollout through a



£400 million Digital Infrastructure Investment Fund. This will help accelerate the rollout of fibre by providing better access to commercial finance for alternative developers of full-fibre infrastructure. In turn, that will help smaller operators compete with larger players. The Government's investment will be at least matched, on the same terms, by private sector investors. As a result, we expect to see private sector investment into full-fibre broadband reach around £1 billion overall. We are also investing £200 million in our local full-fibre programme, supporting local bodies to stimulate new fibre development.

In total, our efforts are worth £1.1 billion to support the sector, and once this Bill receives Royal Assent the Department for Communities and Local Government and the Valuation Office Agency will move quickly to implement the rate relief for new fibre retrospectively to 1 April 2017. We want to see a country where people are better connected, where everyone can get online and reach their full potential and where no one is left behind. This Bill provides a step on that journey. I beg to move.

3.25 pm

**The Earl of Erroll (CB):** My Lords, I want to say a few words on this Bill. It is extremely welcome as the rateable value of fibre connections has long been a problem in the rollout of new systems and new local solutions. BT has for some time used it to block other providers with alternative solutions. It has been quite a problem. Several companies have gone bust over it, and there is litigation on it in the EU at the moment. One problem is that when a new company tries to put in a new solution and has to light some fibre, it is rated very highly, as if it suddenly had as many connections as that fibre could take, not the 10 or 20 subscribers the company may have to start off. Every time BT connects something new to fibre or puts new fibre down, it reduces its rate bill because of the deal that was done when it was set up by statute. Nothing has been done about this. It is inherently unfair and anticompetitive, and something needs to be done about it.

The sad thing about the Bill is that we are talking about new fibre only. What about making the old stuff competitive too, so that we can have alternative solutions? There should be an opportunity to look at that, but I suspect that good lobbying behind the scenes has made sure it will not happen.

The language of the Bill is so obscure that I find it quite difficult. The Explanatory Notes told me something about it. I am not sure whether it applies to newly laid fibre only or to dark fibre that has not been used and is about to be lit. I hope it applies to both because if fibre is already in the ground but has not been used, what is the point of forcing people to lay a new fibre cable to get it working? I cannot see why the Bill cannot be extended to make it more economic for people to attach to existing fibre to provide new local solutions where necessary. There is fibre there, but for one reason or another it is not economic for BT to do the last bit of the connection. I do not get the argument for it having to be totally new fibre.

The trouble is that BT is a publicly owned company not a UK plc asset. We have no control over BT. It has lots of problems to face. It inherited an enormous pension deficit. I have huge sympathy for its commercial problems operating in a global market. However, that does not mean that the British taxpayer, the British broadband user and people who are trying to get businesses going or to reduce the cost of government by getting broadband into areas that do not have it, such as parts of London, communities on the edges of cities and towns and certain rural areas, although some rural areas are better than others—we should not snap at little bits of the problem. We should take a bigger view. What annoys me is that if we put the amount of money we are putting into smart meters into rolling out broadband, we would have no problems and we could have smart meters everywhere. There is a lack of logical thinking at the beginning, but I am almost diverging.

I cannot work out how much power is in the hands of the Valuation Office Agency. It worries me that it tends to favour the incumbent as opposed to new development, quite aggressively in some circumstances, and, despite appeals, is not interested in increasing the rollout of broadband. It is more interested in sticking to what it sees as its rules and rating stuff like a Victorian water pipe.

I have had quite a few briefings on these issues over the years, and they give rise to concern. I hope things are going to change. This is a move in the right direction. I am still worried that Openreach is a wholly owned subsidiary of BT. When you look at how investments run and how things work up the corporate pipeline, you can influence things an amazing amount, even though you are not meant to, by where you put your investment, how you repatriate the profits, jiggle the money around et cetera. The separation may not be as great as we think.

The important thing is to get universal fast broadband out there everywhere, even in areas that do not have people living in them, because when the internet of things comes along, it will not work unless we have broadband everywhere. We need to worry about this to a greater extent than people think. It is not just a matter of cabling up every house, but that will be a start, so let us get there as quickly as possible and reduce the rates bill and the blocks to getting it out there, most of which are commercial.

3.30 pm

**Baroness Harding of Winscombe (Con):** My Lords, I begin by declaring my interests. I only recently, four months ago, stepped down as chief executive of TalkTalk, the internet service provider.

In my brief time in the House, I have heard many speeches lamenting poor broadband speeds, and it is quite cheering to speak today in a debate about a potential, although admittedly only partial, solution. Connectivity, as my noble friend said, is essential to modern life, and becoming more and more essential. Unfortunately, the copper wires that we all—98% of households—depend on for broadband today are not fit for purpose. It is nothing short of a miracle that they deliver even poor broadband at all, because they

[BARONESS HARDING OF WINSCOMBE]

were certainly never designed to when they were laid decades ago. Full fibre, on the other hand, is designed for that.

I draw the analogy with the electricity market. Imagine if we all had apps on our phone to check the power wattage into our homes and we started conversations of an evening by saying, “I’m terribly sorry, we live quite a long way from the electricity substation here, and therefore the lights don’t work all the time”. That is exactly what happens with copper-based broadband today, and it is not good enough for now, let alone for the world that we will be inhabiting in the next 10 or 20 years. I worked for a business that was starting to trial full fibre right the way to the home. Families using it do not say, “I have fantastic ultra-fast broadband”; they just say, “My broadband works; it does what it says on the tin”. That is why pushing to have full fibre, and fibre-optic cable laid right the way to everybody’s home or business premises, is so important. It is modern technology that will not just be fit for today—all you have to do is pump more power down it and it will be fit for a very long time ahead.

It is extremely good to support the Bill today, because although I am hugely hopeful about the role Britain can play in the digital revolution, and how we can emerge stronger and more competitive as a result of it, we do not do very well on full-fibre take-up today. As I have said, 98% of households use a copper-related product, so although availability is a bit more than that, there is a 2% take-up in the UK. That compares to 40% in Sweden, 26% in Portugal, 11% in France and an EU average of just under 9%. These are figures from the FTTH, the Fibre to the Home Council Europe, from this time last year. We are a long way behind today and I am pleased to support a Bill that will incentivise all providers to start investing more firmly in full fibre. The danger is that the large incumbents attempt to eke out a return from their legacy copper assets, while the new businesses are daunted by the sheer scale of the challenge ahead in investing in full fibre. So it is great to see the Government coming up with a proposal that will genuinely incentivise everybody to invest.

I will just make three brief comments on the Bill. First, it is very important that the scheme cannot be gamed. I am reliably informed by people in the industry that, according to the business case based on full rates relief, ripping out existing fibre and replacing it with a new one that would be eligible for rates relief would pay back in just a couple of years. It would be a real shame if an intent to do the right thing translated into a subsidy for the old networks we already have. I assume that this will be in secondary legislation, and it would be very good to hear from my noble friend how the Government intend to ensure that this cannot be gamed and will genuinely incentivise the building of new fibre to premises across the UK.

Secondly, this is a good Bill but it is only a relatively small contribution. I believe the Treasury estimate is £60 million over five years—would that all our broadband problems could be solved with £60 million over five years—so this is good but it is only a start. The Minister has set out quite an impressive list of other initiatives that the Government are putting towards

nudging, cajoling and encouraging the industry to build out more fibre, and it is hugely important that we complete on all those actions. It is not the words that will drive this but the actions and there is a lot more to do, particularly making it easier for all providers to access existing poles and ducts; ensuring that the commitment to the universal service obligation is not an excuse to rely more on copper and less on investing in fibre; and ensuring, as the noble Earl, Lord Erroll, has just said, that Openreach separation is just that and genuinely drives the investment that the country needs.

I bow to the experts here, of which I am definitely not one, on the rating regime. While temporary short-term relief in a specific sector is good, I very much doubt that it is the long-term answer to enable businesses to understand how the rating regime works and invest in the things that the country needs for the long-term future. That all said, it is important that we do not let the perfect become the enemy of the good. This is a good Bill and I am pleased to support it.

3.35 pm

**Baroness Pinnock (LD):** My Lords, I draw Members’ attention to my entry in the register of interests as a councillor and a vice-president of the Local Government Association. I have to say that I agree with much that has been said by people who know much more about this subject than I do, the noble Earl, Lord Erroll, and the noble Baroness, Lady Harding.

I speak from my understanding of what is being proposed. As the Minister said, this is part of a package of inducements to the telecommunications industry to ensure wider accessibility of superfast broadband. However, that seems to raise the question of why telecoms companies are not obliged by law to ensure that there is full superfast broadband access. In a situation where public bodies such as the Government and local authorities are digital by design, households as well as business premises need access to broadband to access public services. That is my first query. I accept that steps have been taken in that direction, but when I think that other utilities such as water and electricity companies are required by law to ensure that there is access to their services, it seems to me that connectivity should be on an equal footing. I look forward to hearing how the Minister might respond to that comment.

The financial inducements in the Bill to put in full-fibre broadband will not be necessary in West Yorkshire, where European Union funding is currently enabling that to happen. What a shame, therefore, that we are on the route to leave the EU because it might have been able to fund it out of EU funds rather than out of public funding from the Government.

Much-improved connectivity is of course welcome, so the purpose of the Bill will clearly be welcome. As the noble Baroness, Lady Harding, has pointed out, though, all it does is provide full-fibre connectivity to the nearest roadside cabinet, and the further you are from that cabinet the worse your connectivity will become. That will put a limit on connectivity. I was interested to hear that there had been only 2% take-up of full fibre to the house. Have the Government considered

inducements to the telecoms companies and providers of broadband to ensure that there is full-fibre connectivity to the premises rather than to the nearest roadside cabinet? That is how we will get access to superfast broadband across the country.

The other major question which the Bill raises, and to which I have seen no answer, is that, as well as broadband connectivity, we need improvements to mobile connectivity. For many families, mobile connectivity is far more important than broadband connectivity. Poorer families can often afford to access only mobile technology and do not use full broadband. That is true everywhere, but is particularly the case for improved mobile connectivity in rural parts of the country, where it may be the only way that many people can access public services—through their mobile phones.

To expand on that point for a minute, experts in this House may be able to throw some light on this, but I understand that 5G will be more advantageous than having superfast broadband to many people—not to businesses, I accept, but to many individuals and their families. Should there not be inducements to companies wanting to extend the reach of mobile connectivity, as we are doing here with broadband?

I think the Minister has answered the other point I wanted to make, but I was concerned about how local authorities will access reimbursement for the loss of business rates. It sounded as though it will be the responsibility of individual local authorities to claim reimbursement through the Valuation Office. If regulations have been laid, perhaps the Minister can expand on them when he responds.

Finally, I urge the Government and perhaps their Bill drafters to amend the Bill to include information about the meaning of the formulae that have been included, which make for interesting reading. For example, the Bill states:

“Where subsection (4F) below applies, the chargeable amount for a chargeable day shall be calculated in accordance with the formula—

$$\frac{A \times B \times F}{C} \text{ ”.}$$

Nowhere in the Bill is there any indication what A, B, F or C is, and further on in the Bill, we have a “T” as well. I know that the Bill relies on amendment of previous legislation but, for the sake of transparency and the understanding of those who will be affected by the Bill, it would be enormously helpful if Bill drafters included notes about what the formulae mean.

With those remarks, I welcome the move to extend both the speed and reach of broadband through the Bill and hope it can be extended to mobile connectivity.

3.43 pm

**Lord Kennedy of Southwark (Lab):** My Lords, I refer the House to my entry in the register of interests as a councillor in the London Borough of Lewisham and a vice-president of the Local Government Association.

On behalf of the Opposition, I welcome the Bill as far as it goes. It is a positive step in boosting investment in fibre broadband infrastructure and the development of 5G. The Bill will encourage new fibre rollout, and

that will boost connectivity for both residential and business users. That will have knock-on effects for improved economic growth. It has been estimated that 5G infrastructure will outstrip the economic benefits of fibre broadband by 2026, when that technology will have become outdated. It is important to ensure that we have the right infrastructure and connectivity speeds to deliver improved economic growth, boost businesses and create the new jobs of the future that we will all need.

There have been suggestions that the boost to economic growth with the new 5G network will be worth billions of pounds to the UK economy, so it is imperative that we place ourselves at the top in delivering the speed and connectivity for business and residential users, so that we have the tools to compete with anyone in the world. However, we were expecting a much larger Bill, dealing with a wider variety of local government finance issues, and it is disappointing that the Government have decided to come forward with only this one small part. Lack of parliamentary time really is not a good enough excuse for this and, if that is what the noble Lord, Lord Bourne of Aberystwyth, is going to tell the House shortly, it would be useful if he could update us on when we can expect the wider issues to come back to Parliament that were contained in the Local Government Finance Bill lost due to the Prime Minister calling the general election.

Local authorities need certainty and stability in these very challenging times, as does business. The lack of clarity on business rates, the shambles of the business rate revaluations and the hastily pulled together packages go nowhere near enough, while our high streets are in crisis. It is no way for the Government to behave. We have been exceedingly quiet in respect of legislation since the general election; we have just come back from another break, and we are away again next month—the lack of parliamentary time argument is difficult to accept. There may be a lack of will on behalf of the Government or, dare I suggest it, something of a crisis in the Government at the moment.

In subsections (4) and (5) of Clause 4, the Government appear to be taking Henry VIII powers. I have not seen a report from the Delegated Powers Committee, but I have seen the note issued by the department. It would be helpful if the Minister could reassure the House as to the limited nature of these powers, because Clause 4(4)(b) appears to contain a very wide power indeed.

The omission from the Bill of anything meaningful in respect of improving the rural broadband offering is most disappointing. Many noble Lords on all sides of the House speak up for rural areas and the threat to both their viability and sustainability across a wide variety of issues. I can recall debates about housing provision for working families, rural bus services, train services, shops, pubs and many other issues. Delivering proper broadband services, let alone anything close to 5G, is vital to ensure that our rural areas prosper. Without firm action from the Government on this matter, we risk leaving numbers of our fellow citizens further behind, which is not acceptable for them or the communities in which they live, which seek to remain sustainable. I shall table an amendment on that issue for debate in Committee.

[LORD KENNEDY OF SOUTHWARK]

Another issue that I want to explore further in Committee is the definition of “new fibre”, which the noble Earl, Lord Erroll, referred to in his remarks. The regulations propose that this is to be fibre that was,

“not laid, flown, affixed or attached before 1st April 2017”,

with those operators which light dark fibre already in the ground not eligible for relief. I want to explore the potential that that has for distortion and the risk to companies that have already invested in fibre networks, which may be at a competitive disadvantage to another company that comes along and lays new fibre that is exactly the same as the fibre already in the ground but not yet lit. The noble Baroness, Lady Harding of Winscombe, made reference to that issue, which we need to discuss much further in Committee.

In Committee in the other place, my honourable friend Mr Jim McMahon tabled an amendment to require the Secretary of State to provide an assessment to Parliament on how the business rates relief system was working. I would, again, like to bring that back for consideration by your Lordships.

In conclusion, we give a cautious welcome to the Bill as it stands, although there is disappointment that some of the wider issues that I have outlined have not been brought forward. I have a couple of issues that I intend to raise as amendments to this Bill in Committee, and I have posed a couple of questions to which I hope the Minister can respond.

3.49 pm

**The Parliamentary Under-Secretary of State, Department for Communities and Local Government and Northern Ireland Office (Lord Bourne of Aberystwyth) (Con):** My Lords, I thank my noble friend Lord Ashton for introducing this Second Reading debate and all noble Lords who have participated in it. I am grateful for their contributions and for the welcome—so far as it went. This was, predictably, a wholehearted welcome but with regret for some things which the legislation did not contain. I can understand that, and I will deal with it shortly.

I will focus first on what the Bill does contain. The noble Lord, Lord Kennedy, is absolutely right: it is an important facet of the legislation that it helps the residential sector as well as business and provides assistance for the 5G mobile connectivity element, as referred to by the noble Baroness. The objective of this measure is to support and reward companies which invest in the telecoms network. As such, it is important to appreciate that this is actually buying something. This dates from April 2017 so we therefore do not propose to compensate any fibre which was already in the ground in February 2017. This is for new fibre put down for a five-year, fixed-term period. This brings me to the gaming aspect: I too was keen to know whether this was likely to be gamed. On consultation and inquiry it looks unlikely but we are watching this like hawks. If noble Lords think there is some means by which it could be gamed I invite them to let us know because we are, obviously, seeking to make sure it is not. I am pretty convinced that it could not be, because the financial incentive would be zero.

As we have heard in the debate, this is a technical area in respect of both telecommunications networks and how they are treated in business rates. We will, no doubt, return to the detail in Committee, but I reassure the House that we intend to develop the proposals for this measure in collaboration with the sector and only after consultation. The draft regulations are out for consultation at the moment and that will go on until 21 November. There is still an opportunity for everybody to participate in that and I encourage experts and politicians—do not take that the wrong way—to do so, particularly those who understand it in detail and politicians who represent those who do. My noble friend Lady Harding clearly understands this area very well, as does the noble Earl, Lord Erroll. I am very grateful for their participation and for giving the House the benefit of their expertise.

Broadband speeds and connectivity impact on the everyday lives not just of businesses but of households. Investment in new fibre will make a real change to people’s lives and is part of a package worth over £1 billion to the sector, as my noble friend Lord Ashton outlined. Providing rate relief for new fibre will give a welcome boost to investment. My noble friend Lady Harding asked about access to BT lines. They are consulting on that at the moment and we regard it as important. In terms of the rates relief offered, there will be a level playing field for participants in the system. No fear or favour is given to any provider: they are all treated in the same way.

It is important and fair to all ratepayers that telecoms operators pay business rates in the normal way, outside this five-year period where there is relief. We will not therefore seek to provide relief in relation to dark fibre, which would clearly be wrong. However, we have heard concerns about business rates deterring investment in new fibre, and providing this temporary relief from business rates just for new fibre investment would send a clear message to operators. If you invest in new fibre after 1 April 2017 you will not pay rates on it until 2022. For that new investment, you can remove business rates from the spreadsheet. As my noble friend Lady Harding indicated, that is important for getting investment going in this area where we lag behind. This legislation has some important provisions.

The noble Lord, Lord Kennedy, raised the issue of the Henry VIII clause. As he will know, consistent with my approach to legislation I am very keen to bear down on this, so I have looked at it to make sure that it is as confined as it can be. I well remember the noble and learned Lord, Lord Judge, participating in our proceedings and rightly being tough on Henry VIII clauses. This has not yet gone to the Delegated Powers and Regulatory Reform Committee but it will do so. As I say, we seek to confine it as much as is sensibly possible and, of course, it will be subject to affirmative resolution. I hope that both those points reassure the noble Lord.

Such is the technical and fast-moving nature of the sector that I do not think it would be prudent to try to put on the face of the Bill the detailed arrangements of the scheme. These will be done in the detailed regulation through consultation and discussion. I know that noble Lords will understand that. However, we want to

ensure that the House is fully aware of how we intend to operate this measure. As I have said, we have published draft regulations and are continuing discussions with the sector, and the Committee stage will give us the opportunity to consider these matters in more depth.

The noble Lord, Lord Kennedy, sought, somewhat mischievously, as is his wont, to try to open this issue of rate relief on a much broader front all over the place. I have indicated previously that we remain very much wedded to the retention of business rates. I have also indicated that we will want to look at the broader issue of the high street versus the internet in the context of the G8—I think I am right in saying that—in which we participate, and take a lead on that. I think that is due next spring, so I can give the noble Lord that reassurance.

As I said, draft regulations will come forward. I reassure those who have a close connection with local government—the noble Baroness, Lady Pinnock, raised this issue—that local authorities will not be financially disadvantaged as a result of the relief. We will, through grant payments, compensate local authorities for the loss of the rates income that they suffer through the rates retention scheme as a result of this relief. This is a commitment that I am happy to restate and it is also given in the consultation document.

I thank all Members who have participated for the support that they have shown, at least in terms of the central core of this legislation. The commitment to provide rate relief on new fibre was given by the Chancellor in the Autumn Statement 2016. To maximise the benefit of this policy, telecoms operators need to be confident that the relief will be applied retrospectively to April 2017. I confirm that that will be the case. That is why we have brought forward the Bill as quickly as we have, with the support of the Opposition Benches, certainly in the other place and here too, to send a clear signal to the sector that this relief is on its way. With that, I commend this legislation to the House.

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

## **Devolution (Constitution Committee Reports)**

### *Motion to Take Note*

3.58 pm

*Moved by Lord Lang of Monkton*

That this House takes note of the Reports from the Constitution Committee *Inter-governmental relations in the United Kingdom* (11th Report, Session 2014-15, HL Paper 146) and *The Union and devolution* (10th Report, Session 2015-16, HL Paper 149).

**Lord Lang of Monkton (Con):** My Lords, thanks to the courtesy of my successor as chairman of the Constitution Committee, the noble Baroness, Lady Taylor of Bolton, I welcome the opportunity to introduce the debate on two reports published by the committee during my tenure.

I also welcome to the House, and to the Dispatch Box for his first appearance there, my noble friend Lord Duncan of Springbank. I am sure that the House much looks forward to his maiden speech and to further contributions, particularly given his knowledge of agriculture, especially fisheries, and his experience in the European Parliament. We wish him all success as he takes up his new role.

Our committee has waited quite some time for the opportunity to debate these two reports. *The Union and Devolution* report was published over a year ago and that on intergovernmental relations two and a half years ago. Since then there have been two general elections, one election in Scotland, another in Wales, the constitutional crisis in Northern Ireland and the referendum on our membership of the European Union. We are nevertheless grateful for this opportunity to debate the reports. Despite that heady brew, I believe that our reports remain valid—indeed, perhaps even more so—and relevant to present circumstances. I particularly welcome the fact that the European Committee’s admirable report on Brexit and devolution is to be debated alongside the report of the Constitution Committee, adding topicality and focus to our proceedings, and I look forward to hearing the noble Lord, Lord Jay of Ewelme, introduce his committee’s report shortly.

If Europe has been one unsettling force upon our nation’s constitution over the past half century, devolution has been another. It is one that has cast a shadow over my entire career in politics, as it has over those of others who have consistently resisted it, because we believed that it could not form a new or stable settlement that would improve government but would, instead, generate an inexorable process of demanding ever more powers with no obvious stopping point and, ultimately, would put in jeopardy the unity of the United Kingdom. And so it has proved. This is not the time to dwell on the past but it is why our committee decided that there was a need to address the subject in a positive way, accepting that what was done is done, and trying now to find ways of bringing stability and balanced decision-making to what has become a dangerously fragile situation.

For years, the approach of central government was one of instant concession to the inevitable demands from the new territorial Administrations for ever more powers. What was piously called “incremental devolution”, when a “settlement” became a “process”, was in fact open house for a succession of ad hoc, piecemeal, demand-led giveaways. I know that those involved in the successive tides of further devolution tried hard to rationalise their packages—I say that particularly because I see my noble friends Lord Lindsay and Lord Selkirk present today; both of them will speak after me and both were active in seeking to develop successful packages—and it is always possible to do so because you can rationalise anything if you try hard enough.

However, I blame central government because it offered little, if any, resistance. In the case of the Smith commission, for example—I am delighted to see the noble Lord, Lord Smith of Kelvin, in his place, unless he has just slipped out, because his was a heroic achievement in attaining any kind of outcome from the commission’s deliberations—the Government promised at the outset to accept in full whatever the

[LORD LANG OF MONKTON]  
committee of MSPs might demand. This was a wholly reactive process that gave no thought either to the role of Parliament or to the implications of such changes for the integrity of the nation as a whole. That is where we are now, but at long last in the case of Scotland, where the threat is most acute, the Government of the day, in the person of my right honourable friend the Prime Minister, has said, politely but firmly, “No, now is not the time”. For that, she deserves great credit—it has changed the weather.

Dwelling on Scotland for a moment, if I may—for it is important as part of the background to our recommendations—despite the clear verdict of the Scottish people in the 2014 referendum to remain in the United Kingdom, the Scottish Government, instead of getting on with governing, have continued to pursue separation to the exclusion of all else. It is my belief that they prospered in the subsequent 2015 general election not because of a sudden belated rush of converts to separation but precisely because the electorate thought that the referendum had already settled that matter “for a generation”. They failed badly in 2016 and 2017 because it had by then become clear that they intended to break that pledge.

In Edinburgh, the administration of Scottish government has been neglected—almost no legislation has been laid before the Scottish Parliament—so it comes as no surprise that in a recent Scottish opinion poll fewer than half of voters were reported to believe that Scotland’s health service, education service or economy had been improved by 20 years of devolution. Perhaps the First Minister should remember the words of Alexander Pope:

“For forms of government let fools contest;  
Whate’er is best administer’d is best”.

It is with “whate’er is best administer’d” that our reports are concerned.

But the Scottish experience reveals that the destabilising threats persist. The constitution needs continuing careful attention. Enoch Powell’s dictum that power devolved is power retained may remain true in theory, but in recent years we have come close to ceding sovereignty not just de facto but even in legislation. The 2016 Scotland Act, with its ill-advised declaratory first two Sections, has already led to a hazardous encounter in the Supreme Court.

Our committee’s reports have tried to set out a new way forward. Their central messages are: put the United Kingdom first in constitutional matters, and make no change that could undermine the core United Kingdom Parliament, where all the countries of the union are well represented. At the same time, central government should work proactively and sympathetically at all levels with its devolved Administrations, recognising the different needs in each and, above all, dispelling the despairing criticism we heard in evidence from both Wales and Northern Ireland of “devolve and forget”.

These three words should send a strong signal to central government that a new approach is needed. Our report on intergovernmental relations sought to outline that approach. We recognise that there would need to be continuing reappraisal, which, since we published it, the Scotland Act 2016, the Wales Act 2017 and now the European Union (Withdrawal) Bill will

inevitably bring about. This makes it more important than ever that the right mechanisms are in place to govern relations between Governments in all parts of the United Kingdom.

Of course, it seems hard to make headway when all approaches from the centre are met with hostility in some quarters, but consultation may eventually achieve progress where confrontation never will. We made a large number of recommendations but I will confine myself to some of the main ones. In particular, we called for a major overhaul—reinforced, I am glad to say, by the EU Committee’s recent report—of the Joint Ministerial Committee. We called for more transparency of its meetings, agendas and minutes, and for more frequency of meetings, allowing the devolved Administrations to initiate policy proposals. We sought reforms to the committee’s structure, including more formal bilateral mechanisms to manage intergovernmental relations and more co-operation between central government and the devolved Administrations. We welcome such changes as have followed, and especially, of course, the establishment of the European negotiation sub-committee. We expressed deep concern at the lack of co-ordination and oversight of the devolution settlements and called for the identification of a senior Cabinet Minister with specific responsibility for oversight of the constitution as a whole.

After publication, we waited for almost two years for a response from the Government. When it came, they agreed with some of our recommendations, disagreed with others—including one that we had not made—ignored a few and in six cases claimed that they were already doing them. After two years, I suppose we should be grateful for small mercies. However, there has been no sense of enthusiasm for our proposals, still less of urgency. I sense that the Government have not yet fully engaged with the need to devise and articulate a vision for the future of the state and its devolution settlements. We now have to weave those Administrations into the fabric and processes of the nation’s governance. The drive must come from the centre, and that requires a new attitude and mindset.

The essence of our report, *The Union and Devolution*, was broadly similar: we must stop taking the union for granted. We could find no evidence of strategic thinking about the cumulative impact of devolution upon the union as a whole, so we tried to set out how the needs and interests of the union, as well as of its nations and regions, can be protected in the event of any further devolution in the future.

**Lord Garel-Jones (Con):** Is it not the case that, in the increasingly interconnected global world in which we live, it is important for both Scotland and Wales to be part of a United Kingdom that is able to exercise serious influence in international fora, given that, on their own, they would be mere spectators?

**Lord Lang of Monkton:** My noble friend makes a very fine and highly relevant point, with which I agree.

Successive British Governments have failed to adapt to devolution. Again, it has seemed to be a case of devolve and forget. With so much now devolved, so much asymmetry, so much potential for playing catch-up

and leap-frog among the different Administrations, and so many overlapping and shared competences between devolved and central government, it stands to reason that there must be a new mindset, on all sides, of co-operation and mutual understanding. That is not easy, I acknowledge, where separatism is the predominant, even the only, motivation, but in the interests of good government it is essential.

In an attempt to disaggregate the problem, we identified some key elements that underpin the union. These include the economic union, the social union, the political union, the cultural union and the security and defence union. Any weakening of those would, in our view, cause grave damage to the nation state. We urged the Government to identify which public responsibilities were, in their view, essential to the effective functioning of the union, so that they could be protected in any future consideration of devolution; and we identified a number of underlying principles that might assist that. Unfortunately, the Government in their response, published almost a year later, declined to do so beyond the headline areas of defence, foreign policy and, ironically, the constitution.

We called for a devolution impact assessment to accompany any future proposals in order to measure any negative effect that they might have on the UK's core responsibilities and to measure any planned benefit to the relevant devolved Administration and any impact, good or bad, that might be felt in other Administrations. Again, regrettably, the Government declined to commit to those proposals. Will my noble friend the Minister now bring a fresh eye to what we seek and perhaps persuade his colleagues in government to have another look at all of this?

Among our other recommendations we called, yet again, for the replacement of the inadequate and inequitable Barnett formula with a new needs-based system. It is a continuing disgrace that the distribution of resources from the Treasury should take no account of the relative needs of the countries and regions that it is intended to help. We expressed our strong opposition to full fiscal autonomy, which would break the union apart. My personal view is that although the need is obvious for fiscal accountability, we may already have gone too far in the forms chosen for fiscal devolution and indeed with the scope of welfare benefits. We recommended that if there should ever be a future independence referendum, provision for it and its proposed terms should be set out in primary legislation and laid before this Parliament for proper scrutiny by all parts of the United Kingdom.

We recommended that in future, UK government services should be clearly branded throughout all parts of the United Kingdom in order to make sure that the electorate understand where they came from and in case the devolved Governments should by chance forget to tell them. We emphasise the vital importance that the BBC, as the national public service broadcaster, should continue without qualification to provide a common UK-wide service, particularly on news and current affairs, in addition to whatever regional and local services it may provide.

I could go on—in combination, our two reports contained 115 paragraphs of conclusions and recommendations—but I feel that I have already detained

the House too long and I hope that other noble Lords will choose to bring out any important points that I may have missed. I therefore conclude by saying that the problems that the Constitution Committee sought to address are still with us. The threat of those who would tear Scotland out of the union may be in abeyance, but it has not dissolved. I am conscious that Northern Ireland is beset by serious problems. Its condition is fragile and I leave it to other noble Lords, better informed than I, to address them should they choose. Similarly, Wales, originally lured into devolution by the slimmest of margins, has its own distinctive subtleties and priorities that others may wish to draw out. My purpose is to emphasise the welfare of the union on which we all depend. Devolution is not a casual throwaway matter. We are all a part of the main. It is time to acknowledge the failings of the past and the problems and dangers that they have brought and, with care and persistence, to resolve them. I beg to move the Motion in my name.

4.14 pm

**Lord Jay of Ewelme (CB):** My Lords, I too am glad to welcome the Minister to the House and to the Dispatch Box, and I look forward to working with him over the months ahead. It is also a great pleasure to follow the noble Lord, Lord Lang of Monkton. I am delighted to pay tribute to the eloquence and passion, if I may say so, of his speech and to his committee for its series of thought-provoking analyses of devolution.

When the European Union Committee launched its inquiry into the impact of Brexit on the devolution settlements, we were acutely aware of the risk that we might stray into areas that are properly the domain of the Constitution Committee. We are therefore enormously grateful to the noble Lord, Lord Lang, and the members of his committee for sharing their thoughts with us. I hope that our report is not guilty of any constitutional faux pas.

The bewildering pace of events since the referendum means that many of us have found it hard to keep up. The noble Lord, Lord Lang, spoke of that, and the European Union Committee is no exception. We took the bulk of our evidence in February and March, but our plan to publish a report in the spring was forestalled by the general election. While the committee was considering its draft report in June and July, negotiations started in Brussels, and just two days after we agreed our report, on 11 July, the European Union (Withdrawal) Bill was published. Since that time, we have had position papers from both the Welsh and Scottish Governments, along with innumerable political interventions, and who knows what will happen in the coming weeks. Given that, rather than describing our report in detail, I shall concentrate on one or two key points before turning to more recent events, in particular the EU withdrawal Bill.

The first point I wish to make, on which we are at one with the Constitution Committee, is that EU membership has, since the devolved institutions were established in the late 1990s, been part of what the committee called the, “glue holding the United Kingdom together”.

[LORD JAY OF EWELME]

We have a free and open internal market within the United Kingdom largely because all parts of the UK fall within the European Union single market and are subject to the same European Union rules. Once we are out of the European Union, we will need, as the Government have stated and as our report acknowledges in paragraph 210, common frameworks to ensure that the United Kingdom internal market continues to function. I think we are all agreed on that. But the fundamental basis of the devolution settlements was an acknowledgement that the different nations of the United Kingdom have different needs and that they should be entitled to develop differentiated policies and laws to take account of those needs. As we set out in chapters 3 to 5 of our report, each of the devolved Administrations faces different challenges: Wales's hill farming sector, for example, and its reliance on manufacturing; Scotland's specific demographic needs; and the close integration of Northern Ireland's economy with that of the Republic of Ireland. The common frameworks needed to maintain the integrity of the United Kingdom internal market after Brexit therefore also need to allow for differentiation, and the challenge which the Government seek to address by means of the European Union (Withdrawal) Bill is to maintain that balance to ensure both that the frameworks are in place to uphold the United Kingdom internal market and to respect the diverse interests and priorities of the different nations and regions that make up the United Kingdom.

There is huge complexity here, so in chapter 6 of our report we outline the interaction between the competences currently exercised by the European Union and those which are either devolved or reserved within our domestic devolution settlements. We note that some EU competences are already devolved, notably those relating to the environment, agriculture and fisheries. Many other EU competences are reserved, such as those relating to competition and state aid.

The central point underlying our analysis is that the domestic balance of competences is fully set out in the various Acts of Parliament which have established the devolved institutions. Parliament has thus taken a view in successive devolution Acts on what should be devolved and what should be reserved. For instance, Parliament decided that competition should be a reserved matter, but that environment should be devolved. That is why, in paragraph 237 of our report, we concluded:

“On the day of Brexit, competences ... will, by default, be exercised in accordance with these pre-existing statutory provisions”.

The Government's response to the committee's conclusion, which we received last month and for which the committee is grateful, states:

“The UK Government is responsible for ensuring that the internal market within the UK operates freely and openly. Previously, European legislation has set the frameworks to guarantee that a consistent approach is taken across the UK ... The powers currently held by the EU that provide that guarantee on the internal market are not, and never have been, within the competence of the devolved administrations”.

I find that rather opaque. I assume that the Government are referring to the *acquis* of single market legislation; but within that *acquis*, there is the bulk of EU environment legislation, which plays an important part in ensuring

that the UK's internal market operates freely and openly—yet responsibility for the environment has been explicitly devolved to Scotland, Wales and Northern Ireland by Parliament. So on what basis do the Government claim that such legislation has never been within the competence of the devolved Administrations? I do not fully understand the Government's position.

That takes us to the heart of the current disagreement between the UK Government and the Scottish and Welsh Governments. I find much with which I agree in the Welsh and Scottish Governments' memoranda. For instance, the Welsh Government state:

“Legislative competence for devolved matters which are currently subject to EU restrictions would remain with the devolved legislatures post-exit”.

That is essentially the same point that our report makes. I have yet to hear a convincing counterargument. Rather, the difficulty is with the Government's position. As Mark Drakeford of the Welsh Government told us,

“some UK Ministers ... believe that, when the European Union is not there, these powers will somehow be free-floating and that if they grab them first they will be able to make decisions and the devolved Administrations will have to live with those decisions”.

Mr Drakeford's fears seem to have been realised in the EU withdrawal Bill, which not only confers extensive delegated powers on UK Ministers but proposes that once Ministers have used those powers to convert retained EU law into domestic law, the devolved legislatures will not be able to amend that law, even in areas that fall within their competence. The Government response to our report describes this as,

“a temporary measure that provides the necessary time and space for detailed discussion on whether common frameworks are needed and how they might operate”.

There is nothing temporary about the relevant clause, Clause 11, which, as the Welsh and Scottish Governments have pointed out, contains no sunset provision. As I understand it, Clause 11 of the EU withdrawal Bill will permanently curtail the power of the devolved legislatures to amend a vast array of laws affecting areas that Parliament has determined should fall within devolved competence. Instead, those laws will be made by UK Ministers, using delegated powers and potentially with little parliamentary oversight. If I have got that wrong, I am sure the Minister will put me right.

As I said at the outset, the committee agrees with the Prime Minister that common standards and frameworks will be needed to support the integrity of the UK internal market after we leave the EU; but we also believe, equally strongly, that:

“Any durable solution will need the consent of all the nations of the United Kingdom”.

That means dialogue, compromise and mutual respect.

The key conclusion in our report is that contained in paragraph 271:

“We call on the UK Government and the devolved Governments to work together to put in place the frameworks needed to ensure consistency at UK level, thereby preserving the integrity of the UK single market, while respecting national, regional and local diversity, and the autonomy of the devolved institutions”.

Of course time is short, but even if the Government were simply to add a sunset provision to Clause 11, all sides would have time to come together and reach a lasting agreement on the common standards needed



to protect the UK's internal market, which could then be implemented by the legislatures in London, Edinburgh, Cardiff and Belfast.

I do not know why the Government have not pursued that approach. Any attempt to use the EU withdrawal Bill to impose common frameworks on the nations of the United Kingdom against their will would contradict the principles that underpin the devolved settlements. Of course the politics, particularly between Whitehall and Edinburgh, are difficult. I will not pretend that securing agreement will be easy, but so much is at stake that all sides—led, I hope, by the Government—must surely make the effort. The Brexit negotiations are complex enough. The last thing we want is to create unnecessary difficulties, too, for the make-up of the United Kingdom.

4.25 pm

**Lord Desai (Lab):** My Lords, I very much welcome the debate—we have three substantial reports to discuss. I also welcome the Minister to his new position. He has been thrown in at the deep end and I hope that he manages to survive this ordeal.

Given the two speakers who will follow me, I think that I have to speak for England, because no one is here doing that yet. I point first of all to the very useful table provided in the report, *Brexit: Devolution*. Noble Lords will see from the numbers there that the devolved regions together voted to remain; it is England which voted to exit. The margin in England was larger than the total margin in favour of exit—I have said this before in your Lordships' House.

We have to understand that one reason for dissatisfaction in England—it may have been reflected in terms of Europe—is that it is the only undeveloped region of the United Kingdom. As the noble Lord, Lord Lang, said, the problem with devolution is that we have done it in a piecemeal fashion. I was told when I had my colonial education in India that that is the way we do things: we do not do things systematically; we do them one at a time. Suddenly, Brexit, among other things, has shown us the shortcomings of this approach. We have this great conflict between what the union is, what the devolved powers are and where the gaps in the arrangements are. One problem which will come up again and again in the months ahead is that, if we are to preserve the union—as, quite eloquently, the noble Lord, Lord Lang, said—we will have to do something about the problem of England. English votes for English laws was tried in a very gingerly fashion and I think that it has sunk without trace.

I do not think that it will happen but I will say it anyway: a constitutional convention or—God forbid—a royal commission will have to take on afresh the issue of the constitutional structure of the union after powers have been devolved to Scotland, Wales and Northern Ireland, with the situation of England left anomalous in that respect. We have toyed with the idea of regions of England having their own devolved governments or assemblies or something like that, but that went nowhere. In piecemeal fashion, we have now created some powerful mayors in large metropolitan areas, and there is now a movement in Yorkshire to have an independent Yorkshire or whatever it is. However, as a result of all these reports, I think that we have to come to terms with

deciding what we are going to do about England. Are we going to have Westminster as a parliament for England and for the UK, or are we going to have a separate parliament for England and then have Westminster as the federal or the union parliament? It looks like an academic question, but I think it will come up again and again, because of dissatisfaction in England about lack of devolution.

The Barnett formula is one indication of this: every time the Barnett formula comes up, there is resentment in England that the same amount of money is not spent, per capita, in England as in Scotland. It may be a perfectly valid thing, because needs are different in different regions, but then you need to set an entire budget for each region, including England, on the basis of needs and then explain to people that, because the needs are dealt with equally and because they are different in different areas, this is why the Barnett formula exists; but nobody has ever done that. We have done the Barnett formula in an ad hoc fashion and it has long been reformed in an ad hoc fashion, without any reference to England.

I think it is very important that, as a result of these very important reports, we decide that now would be the best time, because Brexit is posing some very big challenges to us and when we are out, we will have problems. I was impressed by what the noble Lord, Lord Jay, said about the problem of re-establishing the single market. We are all old enough to remember that we had a single market before we went into Europe—what happened to that? Apparently it disappeared because, along the way, we have devolved power. How did that happen without anybody finding out? That kind of question is very important. We had the Kilbrandon commission, as some noble Lords will remember, back in the 1970s, but I think we need another commission, or some serious thinking as to how we will deal with dissatisfaction in England about the constitutional arrangements. It has not come up in a big way except in the Brexit world.

One problem we will have is that if the union is to be preserved, and I think that is a very important issue, we have to ask what kind of federation the union will be. Will it be one large region, England, and the three devolved regions? We see the asymmetry of that in the Brexit vote results: we may think that four units voted, but one unit overwhelmingly cast 28 million out of the 34 million votes cast for Brexit, and it was England which carried the result. Given that, are we going to have just four devolved regions, including England, or are we going to break England up into 10 separate independent regions with their own assemblies, or whatever it will be? How will we decide the question of the single market or the questions identified by the noble Lord, Lord Lang, of the social union, the defence and foreign policy union, the economic union?

Such questions have to be posed in an abstract way at the beginning and then we have to discuss the practical arrangements, instead of doing the practical arrangements in a piecemeal fashion and then finding that we have anomalies in the arrangements we have made. We will have anomalies because we have not thought about these things systematically. I do not think I can go on much longer like this, in an abstract fashion, but the problem I see being raised by the

[LORD DESAI]

reports of both the Constitution Committee and the European Union Committee is that something will have to be done about England. The only way to do something about England is to approach the question of the nature of the union formally, and decide once and for all how we are going to include the devolution of England within the overall framework of the union.

4.34 pm

**Lord Wallace of Tankerness (LD):** My Lords, I thank the noble Lords, Lord Lang of Monkton and Lord Jay of Ewelme, for introducing the debate, and their respective committees for giving us the opportunity to consider some very substantial reports containing some very important recommendations. I welcome the noble Lord, Lord Duncan of Springbank, to the Front Bench. We look forward not only to his maiden speech replying to this debate—what a challenge—but his subsequent contributions to your Lordships' House.

There is probably no better place to start than the opening words of the European Union Committee's report, which sum up the situation quite succinctly:

"The impact of UK withdrawal from the EU on the UK's devolution settlements is one of the most technically complex and politically contentious elements of the Brexit debate".

If anything, that may even be an understatement. As has already been referred to, the architecture of the devolution schemes fully reflected—almost took for granted—our membership of the European Union. Section 29(2)(d) of the Scotland Act 1998 indicates that an Act of the Scottish Parliament is outwith the competence of that Parliament if it is incompatible with Community law; there is similar provision for executive actions. I think the noble Lord, Lord Jay, said that the European Union was the glue that held our union together. In addition, the structure of devolution has been such that everything is devolved unless it is expressly reserved. Devolution includes agriculture, fisheries and the environment—all devolved issues but which hitherto have had a very important European Union component. Logic would certainly indicate, as the noble Lord, Lord Jay, did, that following Brexit these would become the responsibility of the Scottish Parliament and the other devolved bodies.

It is right to say that the Scottish Parliament, in exercising its powers over a number of these areas, has done so within frameworks established by the European Union. Who knows, if we had not been an EU member in 1998—we can speculate but it would be somewhat academic—what further exemptions might there have been in Schedule 5 to the Scotland Act? But that is not where we are. There are some very good reasons why we should be pragmatic and apply common sense in suggesting that there must be frameworks which should be discussed and applied at a UK level. I do not believe it is anti-devolution to say so. The committee itself recognised that some things would be best done at a United Kingdom level when we are outside the European Union. Indeed, paragraph 19 of the Scottish Government's legal consent memorandum on the European Union (Withdrawal) Bill states:

"The Scottish Government has made clear ... its willingness to negotiate UK frameworks in certain areas previously covered by

EU law. This could be, for example, to support the functioning of UK markets, or to facilitate the management of common environmental resources".

The Scottish Government themselves accept that there is a need for United Kingdom frameworks. It is important, therefore, that we address how we best tackle this and the European Union Committee is absolutely right when it emphasises the,

"need to set aside ... differences and work constructively together to achieve an outcome that protects the interests of all parts of the UK. No durable solution will be possible without the consent of all the nations of the UK".

One of the Select Committee's recommendations reflects some of the earlier reports from the Constitution Committee about the importance of Joint Ministerial Committees. The noble Lord, Lord Lang of Monkton, welcomed the establishment of the Joint Ministerial Committee (EU Negotiations). It was announced by the Government, with much fanfare, last autumn. I received during the most recent Recess a Written Answer from the noble Baroness, Lady Sugg. I had asked how many times that Joint Ministerial Committee had met in 2017. The answer was twice, on 19 January and 8 February. I have no doubt that the Minister will tell us that there is a meeting scheduled for next week and there have been umpteen, or several, bilateral meetings. But the mechanism established by the United Kingdom Government was to have a Joint Ministerial Committee. The recommendation of the European Union Committee was very practical and the Government's performance to date has fallen well short of this very reasonable recommendation. It is a test of how seriously the Government take their responsibilities towards achieving an outcome that will be satisfactory to all parts of the United Kingdom.

If we look at how we would establish which should be the areas for common frameworks, it would be wrong for the Government to determine that this should be done on a top-down basis. The concerns expressed by the noble Lord, Lord Jay, with regard to the European Union (Withdrawal) Bill betray a certain attitude that this would be done in a top-down way.

A body or a commission should examine these issues. It should be transparent and constructive, in a way that commands support from all parts of the United Kingdom and from all parties. The timescale of a royal commission would probably be too long. However remarkable the work done by the Smith commission, it was far too short and done with a degree of relative secrecy—it was not particularly opaque. We need something that is transparent and engages people, for example by taking evidence from the fishing industry, the agricultural industry and environmental groups as to what they think it important that we should do on a United Kingdom basis. After that the respective Administrations could, as they do now under European frameworks, produce detailed policies within that framework to meet the needs of particular areas.

Even when these United Kingdom-level frameworks are agreed, it would again be wrong if it were purely the United Kingdom Government who set the agenda. We should look for a balance of competences that is both devolved and shared. For example, the Joint Ministerial Committees could be put on a statutory

footing. They would no longer be the talking shops which they often have been and could be invested with executive powers. For example, it may be necessary to consider whether they should operate with the possibility of weighted voting. Having made that agreement, the respective devolved Parliaments and Administrations—and the Westminster Parliament, as far as England is concerned—could then be allowed to work out how these agreements would be implemented in detail. That might in some ways be seen as a derogation from the sovereignty of Parliament but I believe David Cameron's Conservative Government went down that path with their English votes for English laws. We now have a situation where one subset of Parliament, the English Members, can veto a measure that has been passed by the Lords and the Commons.

**Lord Forsyth of Drumlean (Con):** The noble and learned Lord is making a very sensible and careful speech but could he just explain to me how agricultural subsidies would work under his scheme of things? Most of the money spent by the European Union is on the CAP and before we joined the European Union, we had a common system set by the United Kingdom Parliament. I find it quite difficult to envisage different subsidies for sheep on either side of the Scottish or Welsh borders, or how a market would operate under those proposals. I am thinking of the politics of it, where we have a Government in Scotland who wish to break up the United Kingdom. I just do not see how it could be practical. Is it not a little hypocritical of those who argue that we should remain in the European Union, and that these powers should therefore remain in Brussels, to say that they cannot possibly be exercised by the United Kingdom Parliament?

**Lord Wallace of Tankerness:** My Lords, the noble Lord, Lord Forsyth, makes an important point about the distribution of funds but that point should be agreed. It should not be done, as it were, on a top-down basis by the United Kingdom Government. I would point out to him that when there was a change in the basis for European Union agricultural payments in the early years of this century, Scotland went down the route of historic payments whereas England certainly went down that of payments based on area—I am not sure about Wales. So even under the present arrangements, there are differences in how these things are dealt with north and south of the border.

I will not detain the House on other issues relating to migration, on which the committee made important recommendations. Having looked at the Government's response, it makes the word "banal" sound exciting—there was no response at all. The Government should have second thoughts on that and address the very important points made by the committee.

If we had a ministerial group setting out the framework, as I have proposed, we would also need some body to overlook it. That could well be done through an interparliamentary body, trying to bring the different Parliaments of the United Kingdom together—in Scotland, Wales, Northern Ireland and the Westminster Parliament—to provide that kind of oversight. If that is a step towards federalism, then certainly from these Benches I do not apologise.

4.44 pm

**Lord Wigley (PC):** My Lords, some people may wonder why there is a somewhat sparse presence of Peers with Welsh links participating in this debate. One factor is undoubtedly an event taking place in Cardiff, where there is an important international football match in which Wales faces the Republic of Ireland. The outcome will probably determine whether Wales, for the first time since 1958, participates in the World Cup finals. Incidentally, my condolences to my Scottish friends.

I hope that I will gain a few brownie points from colleagues by my presence here tonight. I bought tickets for my son, my grandsons and myself a year ago, and my heart is there, but noble Lords will perhaps recognise that the supreme importance of tonight's subject dictates that I should participate in this debate concerning the implications for devolution and Brexit. I thank the two noble Lords who introduced the important reports before us today.

Let me first refer to other events which may have a tangential significance for the subject at hand—namely, the constitutional developments in Catalonia. Without trespassing into matters outside the reports which we are considering, I shall put two issues on record. First, my Plaid Cymru colleagues and I utterly abhor the heavy-handed tactics used by the Spanish Government, which have been condemned around the world, although only belatedly and half-heartedly by senior figures of the European Union. For those of us who have been strongly committed to the European ideal and devolution, this serves to remind us that the construct of Europe is still not a Europe of the people, but a Europe which is largely orchestrated to meet the needs of 19th-century imperial states and which can still tolerate actions reminiscent of 20th-century fascist dictators. For the first time in 50 years, my faith in the European dream has been badly shaken.

Secondly, noble Lords may have noticed pictures of David Cameron being paraded by Catalan voters in Barcelona. The experience in Spain allows a new, favourable view of the events surrounding Scotland's independence referendum in 2014. Certainly there were aspects of that event which dismayed many of my friends in Scotland but virtually everyone, I believe, accepted that if there had been a 55% to 45% vote for independence, the UK Government, while greatly saddened by such an outcome, would have respected the democratic decision of Scotland and would have worked with Scotland's Government to secure a sensible transition to a new form of partnership in these islands.

For those of us who are sometimes critical of aspects of the British state—justifiably in some matters, such as the iniquitous Barnett formula and the impact it has on Wales, which has been mentioned tonight—there has been a salutary lesson. There are positive aspects of British democracy which we should rightly recognise, and respect for people's views, and their right to express them through referenda, is something we should cherish. There may come a day when, once again, Scotland, Northern Ireland or Wales vote on their constitutional future. They will do so knowing that, unlike the experience of the Catalans, their voice will be respected and the outcome of the referendum delivered.

[LORD WIGLEY]

That brings me to the Brexit issue. As I have already stated in this Chamber, while I bitterly regret the outcome of last year's referendum on the UK's membership of the European Union, I have to recognise that the result has to be respected, although I also recognise that Scotland and Northern Ireland voted to remain in the EU, and that is why the subject of tonight's debate is additionally significant. These differences and the need to accept that the UK voted in total to leave underline the requirement to secure a form of Brexit which takes on board the diverse demands and expectations of the four nations of these islands and their elected Governments.

The referendum determined that the United Kingdom state will leave the EU, but it did not determine what would be the relationship of the UK as a whole or its constituent nations with the residual EU of 27 member states. The choice which the UK Government should be seriously addressing is whether there will be one overarching solution addressing the diverse needs and considerations of all four constituent nations of the UK, which would inevitably mean that either there has to be large-scale compromise or that the needs of some nations are subjugated to the needs of others. In other words, can we formulate a solution involving multiple geometry and a flexibility which allows a different interplay with Europe among the constituent nations of the UK? That is where consideration of the role and, indeed, the extent of devolution comes centre stage.

The report of the European Union Committee on Brexit and devolution has identified many of these problems. I congratulate the committee on its work; I was fortunate in being invited to give evidence and I thank it for that courtesy. In its conclusions, the report states, on page 4:

"No durable solution will be possible without the consent of all the nations of the UK".

It recognises that common standards, which may be needed for the integrity of the UK single market,

"cannot be imposed top-down by the UK Government".

It recognises that the UK Government will need to secure the consent of the devolved legislatures to the withdrawal Bill.

I also highlight the European Union Committee's criticism of the working—or should I say the non-working—of the Joint Ministerial Committee (EU Negotiations). It notes that that committee, which should have a key co-ordination function as the Brexit negotiations move forward, had only ever met twice, and not since 8 February. I also noted the emphasis placed on this by the noble Lord, Lord Lang, when he introduced the debate and indeed by the noble and learned Lord, Lord Wallace of Tankerness, a moment ago. It is difficult to see how the Prime Minister can claim, as she did at the start of her tenure of office, that she would be "fully engaging" the devolved Administrations in the Brexit process. Indeed, in her Lancaster House speech, she saw the question of what powers should be passed to the devolved Administrations from Brussels as a matter solely for the UK Government to decide.

This brings us to the heart of the issue, concerning which Plaid Cymru has commissioned legal advice from Fflur Jones of the leading Cardiff solicitors Darwin Gray, to provide a legal analysis of the withdrawal Bill and its constitutional implications for Wales. Her paper explains why, in her opinion, the Bill is in breach of the current devolution settlement. Indeed, she goes as far as to state that, in the present form, the withdrawal Bill is,

"an existential threat to the current devolution settlement in Wales".

The advice states that the Sewel convention, since it has been enshrined in statute,

"is a powerful political mechanism whereby all legislative changes that will affect the devolution settlement in Wales, or the introduction of any framework agreements within the UK, should be introduced by way of consultation and agreement between the UK Parliament and the National Assembly".

Any other kind of imposition of changes would mean the UK Parliament considers it right to impose changes that affect the devolution settlements without the Assembly's consent and which may well countermand the constitutional settlement which has been approved by the people of Wales in two devolution referendums.

This is not just a question of legal niceties, it is an issue which will impact on all aspects of Welsh life. It is true, regrettably, that Wales voted by a small margin to leave the EU. In doing so, many Brexit voters may have been motivated by the case for "taking back control". Passing power from Brussels to London over matters such as agriculture, which are almost wholly devolved to Wales, does not in any way constitute bringing back control to Wales.

In fact, all three current devolution settlements are framed in the context of the UK's pre-existing EU membership and reflect the supremacy of EU law. This is highlighted in the EU Committee report before us, where, in paragraph 36, it is stated,

"the European Union has been, in effect ... the glue holding the United Kingdom together since 1997. The supremacy of EU law, and the interpretation of that law by the Court of Justice of the EU, have in many areas ensured consistency of legal and regulatory standards across the UK, including in devolved policy areas, such as environment, agriculture and fisheries. In practice, the UK internal market has been upheld by the rules of the EU internal market".

How is this now to be replicated within a UK-only context? The European framework is not the plaything of one member state, nor even of the EU Commission itself. The European Court of Justice is an independent judicial body. If after Brexit we are to have a set of rules for the UK single market, laid down by just one of the four parliaments of these islands, it is, as the committee itself asserts, a development which,

"presents a risk that the complex overlapping competences within the UK could become increasingly unstable".

In the concluding words of this report, the UK Government must work,

"in a spirit of partnership and cooperation with the devolved legislatures and governments",

as was emphasised earlier by the noble Lord, Lord Jay of Ewelme. I wait with interest to hear how the Government intend to discharge this most fundamental of duties.

4.55 pm

**Lord Dunlop (Con):** My Lords, I thank the noble Lords, Lord Lang and Lord Jay, for the way in which they introduced the debate. I welcome my noble friend Lord Duncan to the Front Bench and I look forward to his maiden speech. He has certainly been busy in the last four months, consulting groups across Scotland. As his immediate predecessor, I did the same thing. My progress across Scotland was always forensically—one might say obsessively—tracked on social media by a cybernat called the Tartan Hippo. I grew quite fond of the Tartan Hippo, although he seemed to imagine that ministerial visits to Scotland represented some sort of extended holiday. So, notwithstanding my noble friend's doctorate in palaeontology, if he encounters the Tartan Hippo on his travels I can only wish him the very best of luck.

We are debating today three important reports. The common thread running through all of them is how the UK manages a period of unprecedented constitutional change to provide constitutional stability and protect the integrity of the UK. The greatest existential threat to the integrity of the union has come from Scottish independence. That threat takes two forms: the direct fundamentalist threat that nationalists will seek, by stirring up grievance, to engineer the circumstances in which Scotland votes to leave the UK; and the indirect, gradualist threat that powers are indiscriminately devolved to the Scottish Parliament to an extent that the UK becomes so hollowed out that it can no longer function as a viable nation state.

No one can doubt the significance of Brexit to our territorial constitution. Handled badly, Brexit risks exacerbating the threats to the UK's constitutional stability. Handled well, it provides a unique opportunity to strengthen the union between our four home nations. So I want to set out grounds to be hopeful and thoughts on the repatriation of powers from Brussels. The most obvious reason to be hopeful is that the threat of a second independence referendum has receded, although, I hasten to add, not gone away. Campaign fatigue is doubtless a factor but there are three other important factors: grievance denial, accountability and the SNP's independence paradox.

On the first of those, grievance denial, the way in which the devolved Administrations are handled is often criticised, and I would be the first to admit that the UK Government sometimes do not help themselves—for example, by unnecessarily being slow to share information and not holding regular meetings of the Joint Ministerial Committee. However, I know from personal experience what efforts are made to behave reasonably and to be seen to do so. The Edinburgh agreement, which has been referred to, is seen as an example of how reasonably and successfully to hold an independence referendum. It gave force and legitimacy when the Prime Minister came rightly to refuse to concede a second independence referendum. Similarly, in this 20th anniversary year of the Scottish devolution referendum, despite well-publicised tensions, the business of managing areas of shared competence has continued to be conducted successfully. City deals and the joint ministerial group on welfare are current examples of effective intergovernmental co-operation. It has become commonplace for UK and Scottish government Ministers

jointly to meet with Scottish business and civic society. So while Scottish devolution was not stress-tested at the outset for the possibility of an SNP Government in Holyrood and a Conservative Government in Westminster, it is being now and is proving remarkably resilient because most people in Scotland want the two Governments to work together.

Brexit is further testing the arrangements, with the Scottish Government insisting that they will not give legislative consent to the European Union (Withdrawal) Bill, but let us remember that the Scottish Parliament threatened until the last minute to withhold consent for both the Scotland Acts 2012 and 2016. Indeed, many was the time that I stood at the Dispatch Box waiting, in the memorable phrase of my noble friend Lord Forsyth, for Billy Bunter's postal order to turn up. Well, it turned up in the end in the form of legislative consent for the Scotland Act 2016, and there are sound reasons for the Scottish Government to reach agreement this time, too: to achieve more powers and ensure that Scots law continues to work.

That brings me to accountability. At its heart, the Scotland Act 2016 is about strengthening the accountability of the Scottish Government by increasing their financial responsibilities and reducing their reliance on the UK block grant. I accept that it is still early days, but the 2016 Holyrood and 2017 general elections suggest that the Smith package is having a positive effect on Scottish political debate, with less focus on what more powers Scotland needs and much more on how those powers are being used. This can only be healthy.

My final ground for hope is the paradox at the heart of the independence proposition. Brexit has not proved the recruiting sergeant for independence that Nicola Sturgeon expected it to be, and it is not hard to see why. For those who want Scotland to have more control of its own destiny, the paradox is being asked to leave a long-standing union where power is being dispersed to stay in a more recent union where the clear direction of travel, as recent speeches of Presidents Juncker and Macron make clear, is towards more integration, not less.

A similar paradox applies to the SNP's claim that the UK Government are seeking to hoard at Westminster powers repatriated from Brussels. Not only does this defy the Government's recent devolution record and commitment to devolve more powers post-Brexit, it is also hard to square with the SNP's apparent preference for powers to remain concentrated in Brussels instead. Voters have a keen ear for justifications and arguments that sound fake or phoney.

Against this backdrop, the government approach set out in the European Union (Withdrawal) Bill to the repatriation of powers is broadly to confer on the devolved Administrations power to correct technical deficiencies in repatriated EU law in order to provide a workable devolved statute book on exit day; to replicate for retained EU law the existing requirements prohibiting devolved Administrations from legislating contrary to EU law; and to establish a mechanism for releasing, by mutual agreement of the UK Government and the devolved Administrations, powers to the appropriate level of government from what is, in effect, intended as

[LORD DUNLOP]

a temporary holding pattern. This makes possible an orderly process for establishing and agreeing where common UK frameworks are required, because all three devolution settlements assume the UK's membership of the EU and, as the noble Lord, Lord Jay, and others have already said, EU law is the glue holding together the United Kingdom's single market. Without common UK frameworks to replace this, there is a real risk of undermining the UK home market as we exit the EU.

The Government's intentions are sound and sensible. Without that approach, powers currently exercised at EU level could flow back by default to the devolved Administrations. This would be contrary to one of the central conclusions of the Constitution Committee's report on the union and devolution: that proposals for further devolution must take into account,

"the needs of, and consequences for, the entire Union".

That said, moving forward, the Government will need to demonstrate that the process for agreeing how repatriated powers are allocated is both fair and robust, and there are two areas where action could be taken to build greater confidence in the process. The European Union (Withdrawal) Bill is currently asymmetrical between the constraints imposed on the devolved Administrations and the extensive delegated powers conferred on UK Ministers. I am not arguing for the constraints on the devolved Administrations to be removed. If, however, as the Government say, the delegated powers in the Bill are intended to effect not major changes of policy but technical changes to make the law work, this should be reflected in stronger safeguards in the Bill against their misuse. I commend to the House the Constitution Committee's proposals in its most recent report for achieving this. A better balance of constraints would have the virtue of providing the UK Government and devolved Administrations with similar incentives to reach early agreement on substantive policy issues.

The second area of risk is the risk of reservation by default, to which the noble Lord, Lord Jay, has already referred. The power to fix deficiencies is time-limited, but the mechanism in Clause 12 of the European Union (Withdrawal) Bill for releasing powers from the holding pattern is open-ended. There needs to be clarity, therefore, about where the competences repatriated from Brussels will be exercised if there is no agreement between the UK Government and devolved Administrations. The Government have said that they will seek the legislative consent of the Scottish Parliament for the European Union (Withdrawal) Bill; they therefore have the strongest possible incentive to get this right, which underlines the importance of having in place a clear route map and timetable for reaching agreement. I hope that my noble friend will say more about this in his speech.

In conclusion, the great strengths of the UK's unwritten constitution are its flexibility and resilience, which have been tested often and increasingly questioned. In the face of these challenges, the temptation is to propose statutory solutions for constitutional arrangements governed by convention and practice. However, we should be careful not to reach for judicial adjudication, excellent though it is, when what is required

is political negotiation and agreement. It was the late Garret FitzGerald who asked, in relation to a public policy proposal:

"I can see that it works in practice, but does it work in theory?"

It is unfashionable to say it, but I believe that the daily management of the Scottish devolution settlement has worked better in practice than theory and theorists would suggest. I am confident that in handling the issue of repatriation of powers, the Government will demonstrate that that remains the case—so no pressure.

**Lord Morgan (Lab):** My Lords, I begin by apologising to the House. I was told that the debate was beginning two hours later than it appears to have done—

**Viscount Younger of Leckie (Con):** I apologise for interrupting the House, but I understand that the noble Lord has withdrawn from speaking, as he was not here for the opening speech.

## Monarch Airlines Statement

5.08 pm

**The Parliamentary Under-Secretary of State, Department for Transport (Lord Callanan) (Con):** My Lords, with the leave of the House I shall repeat a Statement made by my right honourable friend the Secretary of State for Transport in another place. The Statement is as follows:

"I would like to make a Statement about the steps that the Government have been taking to support those affected by the collapse of Monarch Airlines, in particular the 110,000 passengers that it left abroad without a flight back to the UK and the almost 2,000 people who have lost their jobs.

Mr Speaker, this situation is deeply regrettable, and all parties considered options to avoid the collapse of the company. Ultimately, however, Monarch's board took the decision to place it into administration and it ceased trading at around 4 am on Monday 2 October. The engineering arm of the group remains a viable business and continues to trade.

Ahead of the collapse, my department had been working closely with the Civil Aviation Authority and several departments across Whitehall to prepare contingency plans, and the response has been swift and substantial. To put this into context, this is the largest operation of its kind ever undertaken, and has meant that the CAA has essentially set up one of the UK's largest airlines to conduct this operation. To give Members a sense of the scale, we have put arrangements in place to bring back 110,000 people to the UK, which requires 700 flights over a two-week period and a maximum of 35 aircraft in operation at one time. The CAA is working with 27 different airlines, and more than 200 CAA staff are working on the project, with thousands more in partner organisations. There are over 40 airports involved, in the UK, around the Mediterranean and beyond. It has required 267 coaches, carrying over 13,000 passengers. So far there have been over 39,000 calls to our customer service centre,

all swiftly answered by more than 250 call-centre staff. There have been over 1 million unique visitors to a dedicated website—[monarch.caa.co.uk](http://monarch.caa.co.uk)—and 7 million page views. Furthermore, more than 1 million people have been reached through our Facebook promotion. There have been 10 government departments and agencies involved, including the FCO in London and our extensive diplomatic and consular network in those affected countries.

I have seen at first hand the work being done across government and by the CAA to make this operation a success, and spoken to some of the passengers who have returned to the UK on government flights. I have been hugely impressed by what I have seen and we have had a very strong response from passengers, with many praising the CAA and the Government themselves for a well-organised and professional response.

Normally, the CAA's responsibility for bringing passengers back would extend only to those customers whose trips were covered by ATOL. However, this is the largest airline failure in UK history and there would have been insufficient capacity in the commercial aviation market to enable passengers to get home on other airlines. The danger was that we would have seen tens of thousands of passengers abroad with no easy means of returning to the UK. I therefore instructed the CAA to ensure that all those currently abroad were offered an alternative flight home. As of last night, around 80,000 passengers have returned to the UK, almost three-quarters of the total number who were abroad at the time of the collapse. We have also deployed teams of government officials to overseas airports to provide advice and assistance to passengers. Despite robust plans and their success so far, this is a hugely distressing situation for all concerned. Obviously, one of my top priorities has been to help those passengers abroad get safely back to the UK and our hearts also go out to those passengers who had lost advance bookings as a result of the collapse.

In addition to supporting passengers, we have been working across government to ensure that the almost 2,000 former Monarch employees receive the support they need. I am pleased to report that airlines have already been directly appealing to Monarch's former employees. For instance, Virgin Atlantic is offering a fast-track recruitment process for cabin crew and pilots, and easyJet has invited applications for 500 cabin crew vacancies. EasyJet is also calling for direct-entry captains or first officers who meet captain qualifications. All former Monarch employees will have received information from Jobcentre Plus outlining the support available to them. In total, Jobcentre Plus has pulled together a list of more than 6,300 vacancies across the major UK-based airlines—more than three times the number of people made redundant—which will help former Monarch employees remain in the airline industry.

The Aviation Minister has been in contact with those Members whose constituencies will have been hardest hit by these job losses, and given assurances that we will work with the industry to offer what support we can. However, I am also aware of the duty the Government have to the taxpayer, and while affected passengers have been told they will not have to pay to

be flown back to the UK, we have entered into discussions with several third parties with a view to recovering some of the costs of this operation.

The ATOL scheme will, of course, provide the financial cover for those who have ATOL protection. We are currently engaged in constructive discussions with the relevant credit and debit card providers in order that we might recoup from them some of the costs to taxpayers of these repatriation flights. We are also having similar discussions with other travel providers through which passengers may have booked a Monarch holiday, and I would like to thank all those involved for their constructive and realistic approach. The initial response to this unprecedented situation would not have been as successful were it not for the support and co-operation of many players.

The loss of a major British brand, which was close to celebrating its half-century, is undoubtedly a sad moment. However, this should not be seen as a reflection of the general health of the UK aviation sector, which continues to thrive. We have never had the collapse of an airline or holiday company on this scale before. We have responded swiftly and decisively. Right now our efforts are rightly focused on getting employees into new jobs, and passengers home. But then our efforts will turn to working through any reforms necessary to ensure that passengers do not find themselves in this position again. We need to look at all the options, not just ATOL, but also whether it is possible for airlines to be able to wind down in an orderly manner and look after their customers themselves without the need for the Government to step in. We will be putting a lot of effort into this in the weeks and months ahead.

This has been an unprecedented response to an unprecedented situation, and I am grateful to all parties who have stepped in to support those affected”.

5.14 pm

**Lord Rosser (Lab):** I thank the Minister for repeating the Statement made earlier in the Commons by the Secretary of State. I also appreciate that the Minister has himself been directly involved in these issues as the Aviation Minister.

The demise of Monarch Airlines has caused a great many problems and much distress for both passengers and certainly some 2,000 staff who have lost their jobs. Could the Minister say how many Monarch staff have so far either found alternative employment or, perhaps more realistically at this stage, been offered alternative employment?

The government Statement said that the CAA had essentially set up one of the UK's largest airlines to conduct this operation. I agree that this is a very good example of how a state-run enterprise can deliver effectively and efficiently. Those involved in bringing home Monarch customers left stranded by its demise are to be congratulated, not least the staff of the Civil Aviation Authority. There are, though, a few questions I would like to raise.

First, how long before the demise of Monarch Airlines did the CAA start to organise aircraft to bring stranded passengers home, since concerns have been expressed about the reality that Monarch Airlines was still selling flights a few hours before it ceased trading? If the CAA knew that Monarch Airlines was

[LORD ROSSER]

on the verge of failing, and it must have done otherwise there would not have been the issue over renewing the licence, why did it not warn the public of the potential adverse consequences of continuing to purchase Monarch flights? Is this part of a general issue that the Government are looking at in the light of the comment in the penultimate paragraph of the Statement that they intend to look at all the options for ensuring that passengers do not find themselves in this situation again?

Secondly, the organisation that took over Monarch in 2014, Greycapital, a private investment firm, frankly has form when it comes to the collapse of companies—My Local convenience stores and Comet, for example. Bearing in mind that the taxpayer is having to pick up at least part of the price tag of Monarch's failure, do the Government intend to consider what role they should play in future when companies are being taken over in situations where the taxpayer is likely to have to pick up a not insignificant part of the bill if the company that has been taken over then fails?

Thirdly, I understand that KPMG was appointed to seek buyers for Monarch's short-haul business prior to the airline's collapse, and was actively doing so. If that is correct, is it also correct that KPMG is now acting as Monarch's administrator, and, if so, does that not raise questions about at least potential conflicts of interest?

Fourthly, I understand that there was a report in yesterday's *Sunday Times* suggesting that the £165 million rescue package to Monarch last year was largely funded by Boeing as part of a cut-price deal for an order for aircraft. Is that suggestion correct or incorrect? It has also been claimed that Monarch had £50 million in the bank. Is that correct and, if so, who will get that money, and indeed the money from the value of Monarch's landing slots, claimed to be £60 million?

Fifthly, the Statement says that the Government are currently engaged in discussions with the relevant credit and debit card providers with a view to recouping from them some of the cost to taxpayers of what the Government describe as repatriation flights. What is the current cost to taxpayers of these flights? What is the likely final cost before any money is recouped? What is the legal position of credit and debit card providers, and indeed the other travel providers with which the Government have said they are in discussions, when it comes to paying the cost of those government repatriation flights?

Sixthly, and finally, the government Statement says that the CAA's responsibility for bringing passengers back extends only to customers whose trips are covered by ATOL, but that the Government instructed the CAA to ensure that all those currently abroad were offered an alternative flight home, although I understand this does not apply to those returning after next Sunday. Perhaps the Government could say if, and if so why, this latter point is the situation. In the light of the penultimate paragraph of the Government's Statement, which referred to looking at the options and trying to prevent passengers being, to put it mildly, inconvenienced in this way again, there appear to be issues about the

Government's future intentions, to be pursued perhaps more appropriately during the Committee stage of the ATOL Bill on Wednesday.

**Baroness Randerson (LD):** My Lords, I start by thanking the Minister for repeating the Statement and for having provided the opportunity to talk to him about this issue following the failure of Monarch.

Clearly, this is a massive task and our thanks must go to those who are engaged in bringing people back to Britain. This is probably the first failure of a major UK company that can be directly ascribed to the impact of the falling pound caused by the Brexit vote. I fear that it will not be the last such failure and that the Government will have to intervene to alleviate the impact of Brexit-induced failure on numerous occasions in the future.

It is true that other factors, such as increased costs of security, were involved in this situation, but the falling value of the pound increased the costs of fuel, handling charges and lease payments in a way that proved fatal for this company. So, despite a 14% growth in the number of passengers travelling with Monarch, the company was not viable any more and nearly 1,900 Monarch employees have lost their jobs. Our sympathy must go to those who have been made redundant. It also needs to go to those customers who experienced distress and will face considerable financial loss, as many are not covered by the ATOL scheme.

My questions to the Minister are as follows. First, rumours about the financial instability of Monarch had been swirling around for weeks, yet it continued trading. I received an email a couple of days before the company collapsed tempting me to buy one of hundreds of thousands of holidays on offer. Why was the company allowed to continue not just to provide holidays to those who had already booked but to entice new customers at a time of such instability?

Secondly, it appears to have been revealed that credit card firms withheld from the airline an estimated £30 million from ticket sales because they feared that it would go under. Is the Minister satisfied that this practice was legal and that it did not contribute to tipping Monarch over the edge? Do the Government intend to investigate this situation and to ensure that in future cases of a similar nature there is no knock-on effect from action of this sort by credit card companies?

Thirdly, what percentage of customers are not covered by the ATOL scheme? I appreciate that the Minister may not be able to give us a precise figure at this stage but some indication would be helpful. In what respect will the ATOL Bill, which is before this House at the moment and will be discussed in Grand Committee on Wednesday, improve the situation in the future? Will he undertake to re-examine that Bill in the light of these events to see whether more could or should be done to protect customers buying flights as part of a holiday in the new online arrangements that the vast majority of us now participate in?

Finally, how much will the repatriation cost? How far do the Government believe that they will be able to recover that cost and what steps will they take to do so?



This collapse of a company nearly 50 years old and the sheer number of customers involved emphasises how much we travel abroad these days and how important it is that the Government grapple urgently with the challenges that the transport industry faces in relation to many aspects of Brexit.

**Lord Callanan:** My Lords, let me first thank the noble Lord, Lord Rosser, and the noble Baroness, Lady Randerson, for their complimentary statements about the Civil Aviation Authority, with which I completely concur. It has done a fantastic job in very difficult circumstances, and—if I can perhaps concede something to the Labour Party—it demonstrates that the Government can organise things relatively well, sometimes, although I continue to believe that the airline industry is best carried out in the private sector.

The noble Lord, Lord Rosser, asked what percentage of staff have found alternative employment. I am afraid that I do not know that yet. It was only last Monday that this unfortunate collapse occurred, but as soon as we have some available figures I will be sure to share them with him.

How long in advance were we aware? Clearly, we had advance information that this was a possibility—indeed, it nearly happened a year ago—and contingency arrangements were put in place. It is right and proper that, when we received information a few days in advance that this was a possibility, we of course put in place contingency arrangements. I am sure that noble Lords would have been on their feet criticising me if we had not done that.

It is the case that flights were sold a few hours before the collapse, but the situation is very difficult for any airline because as soon as they stop selling flights, they will automatically collapse. Why did the CAA not inform passengers, or indeed the Department for Transport? The same argument applies. If we came out and made a statement, the one thing that that would guarantee is that the airline would then collapse. Rumours of the health of this airline have been around for a long time, as the noble Baroness, Lady Randerson, indicated. The CAA works closely with airlines and, for those that are UK based, issues them operating and ATOL licences. Part of those checks involves studying the airline's financial health and the airline would not have received the licence 12 months ago if the CAA was not satisfied that it was in robust health. I am told that, at the time, there was a long period during which the licence was extended temporarily until further financing was received.

I am afraid that I cannot comment on the role of KPMG. It is the court-appointed administrator and will fulfil its statutory duties, part of which is to report to government within three months on the actions of the directors of the business. The noble Lord can be assured that we will take robust action if any malfeasance is proved.

In response to questions on the Boeing bailout or financing last year, I am aware of the press reports. However, as to where the money in the bank goes, there is a set process under the administration Act for how that money is allocated.

The value of the slots is an extremely complicated legal conundrum that many lawyers are currently grappling with. It is not clear at all whether it will be able to sell the slots, because the slots have to be owned by a viable licensed airline before they can be sold. Intense legal discussion is going on about whether the value of those slots can be realised. That is a matter for the CAA, the slots administrator and the administrators of the company to work out between them.

The legal position with regard to credit cards is regulated under the Consumer Credit Act, and for anybody who paid with a credit card, the credit card company is liable for the refund of their flight home and any incidental costs incurred. Similarly, with debit cards there is a charge-back arrangement. It does not provide quite the same protection as under the Consumer Credit Act but, nevertheless, customers and passengers are still protected.

Of those returning after next Sunday, we estimate that only about 5% of passengers will remain abroad. There will then be plenty of capacity in the commercial market. The reason we felt the need to step in on this occasion—as indeed the last Labour Government did in the case of XL Airways in 2008—is that there just was not enough capacity available in the commercial market to repatriate so many people. Even if you had had the money, travel insurance and ATOL protection, you would not have been able to purchase a commercial flight in the market—the capacity was just not there—and therefore people would have been stranded abroad.

Moving on to the questions from the noble Baroness, Lady Randerson, I am afraid that I just do not agree that this was the impact of Brexit. I know that she wants to attribute everything that goes wrong at the moment to Brexit, but on this occasion she is just wrong. Monarch Airlines was carrying 14% more passengers this year than last year. The issue is that because of intense competition, particularly on the Mediterranean routes, prices dropped to such a level that the airline was not able to make money on them. Nevertheless, other airlines are making substantial profits—they have been announced in recent weeks—and they are doing well. There is competition in the market. Some routes, such as Sharm el-Sheikh and Tunisia, have had to be dropped for understandable security reasons. That has concentrated all of the market in the eastern Mediterranean. Many other airlines are setting up other routes and businesses as we speak in airports across the country in order to serve those markets. If noble Lords look on those websites they will see just how cheaply tickets are available. This was because of competition in the market. Of course, the value of the pound dropping also played a small role, but that applied to all the other airlines as well.

With regard to the rumours that were circulating, I have studied them in great detail. There were a lot of rumours in the media beforehand but, again, as a responsible Government we cannot comment on the financial health of companies; we can only act on definite information and decisions when they are made. I assure the noble Baroness that we will look at the implications of this, and I am sure that there will be studies from this House's committees and possibly committees in the other place to look at all of the

[LORD CALLANAN] circumstances. We will take any appropriate action that falls from that. I can give the noble Baroness an estimate of the number covered by ATOL. We estimate that, roughly, 10% to 15% will be covered by ATOL protection.

The noble Baroness asked about the ATOL Bill. Actually, the Bill would have had very little effect on this. Most of the people were flying as normal airline passengers under normal airline conditions and the ATOL Bill would not affect them. A very small proportion—10% to 15%—are covered by the existing ATOL provisions, but even with the extension to other operations that we are currently discussing in the ATOL Bill, I do not believe that many of the Monarch passengers would have been affected if that Bill had been in effect.

The noble Baroness asked about the costs. We estimate that the total cost will be roughly £60 million. We will get the final bills when the operation has finished. I can confirm that the Secretary of State and I are in active discussions with the credit and debit card companies and with the travel agents to attempt to secure as much of those funds for the taxpayer as possible. When I have more precise financial information, I will update the House.

5.32 pm

**Lord Myners (CB):** My Lords, the Minister said that this was an unprecedented and most regrettable story, but it is not unprecedented for Greybull, the owner of Monarch, to have seen a company fail. In the past, companies have failed with damage to creditors, customers and employees, but with much less damage to Greybull because it has taken secured credit on receivables and fixed assets. It has put itself in the position of being a preferred creditor. I hope that the Government will encourage the authorities to investigate whether that is not an issue of fraudulent preference.

Secondly, the Minister praised the CIA and said that it could organise things reasonably well. I wonder whether it did so a year ago because the method by which Monarch was recapitalised was to lease planes from Boeing, which told it that the planes were worth £100 million more, which it could book as equity in its accounts. The Minister said that the money was in the bank. I suggest that the Minister is showing a complete failure to understand what has happened here. I encourage him to look objectively at the performance of the CIA, which appears to have licensed a business with inadequate equity, and also at the Insolvency Service and its investigation into the activities of Greybull—which this House was previously told would be reported on to Parliament, although the Government then decided that they would not publish the Insolvency Service report.

**Lord Callanan:** I am sure that the CIA is doing a great job, but on this occasion I will talk about the CAA—the Civil Aviation Authority. The noble Lord makes a number of very serious accusations. As I said, the administrators have a duty to report to the Government within three months on the actions of the directors. Again, as I said, if there is any evidence

that those directors have acted improperly we will not hesitate to take action against them. I am afraid that I do not agree with the noble Lord: the CAA has done an excellent job in unprecedented circumstances. I have been working very closely with the CAA and it has acted in the best interests of the passengers involved. The noble Lord shakes his head. If we had not done anything and not put any contingency plans into action to bring people back, I am sure that he and many of his colleagues would be criticising us for not doing so. The CIA—the CAA; the noble Lord is getting me into it now—has acted properly and done an excellent job in very difficult circumstances pulling together a huge rescue operation for over 110,000 people. It deserves our credit.

**Lord Cavendish of Furness (Con):** My Lords, as someone who was stranded rather absent-mindedly by Monarch's failure, may I be allowed to recognise the Government's response? Clear instructions appeared on the internet and arriving at Palma airport we were met by courteous and efficient representatives and returned home with only a few minutes' delay. Significantly, the representative also explained the need to protect the taxpayer as far as possible. Will my noble friend pass on the appreciation for a rescue that was so efficiently carried out?

**Lord Callanan:** I thank my noble friend for his comments. I will certainly do that. Of course, we are all happy to criticise government agencies and organisations when things go wrong—quite rightly—but in this instance we should pay credit to those who have put so much work into organising this rescue operation. I am pleased that his repatriation flight worked well. The Secretary of State visited the first repatriation flight at Manchester Airport and I visited Leeds Bradford Airport to meet repatriated passengers. I was met with almost universal praise from those people for the way that the problem had been handled and the way they had been met in foreign airports by both Foreign Office staff and government surge team staff who were sent out to assist with the efforts in over 40 airports across the continent. On this occasion, things have gone extremely well. We still have a few more days of the operation left so we should perhaps not speak too early, but so far it is looking very good and we should thank the agencies involved.

**Lord Berkeley (Lab):** My Lords, I am sure the whole House is grateful for what the Government have done with the CAA to sort out this urgent problem. I am sure contingency plans were in preparation for many months. It happens on the railways, too, when a passenger franchise goes bust or similar. But my worry is that there is a much bigger problem sitting on the sidelines in the shape of Ryanair, which seems to have forgotten that its pilots need holidays. Enormous numbers of flights have been cancelled—probably many more than in the case of Monarch. Where it will all end up we do not know. The passengers have probably had a much more difficult time sorting out how to complete their journeys than the Monarch passengers because the CAA was well organised. Will the contingency plans that have worked so well in this case be available

in the future for other potential failures, whether the airline concerned is registered in the UK or not? I hope the answer will be yes.

**Lord Callanan:** The noble Lord is tempting me to comment on the financial health of airlines but it would be wrong to do so. I think I have been robust in the conversations and exchange of correspondence I have had with Ryanair. The company's actions and the way it treated passengers during the flight cancellations were disgraceful and it certainly misled me when I wrote to it about the cancellations. I have made that extremely clear to Mr O'Leary in writing. While it is the responsibility of the CAA, we will not hesitate to ensure that the passengers of Ryanair or any other airline get the compensation that they require and that Ryanair and other airlines fulfil their legal responsibilities to let people know the terms of the EU 261 directive. We will not hesitate to take action through the CAA to ensure that they do so.

**Viscount Waverley (CB):** My Lords, would the Minister care to say a word about the passengers who were caught out in needing to return home from the UK as opposed to returning passengers? In the wake of Monarch and wishing to ensure no future disruption to passengers, should the Government be encouraging Ryanair to abide by the payment of local taxes and social security to individual EU countries where pilots are stationed on a permanent basis rather than to Ireland, where their contracts are designated? I understand that the French have won a case in the ECJ, with the result that Ryanair pulled all its planes from France.

**Lord Callanan:** I am afraid I am not familiar with that case, but Ryanair will have to comply with the rules and regulations in the same way as everyone else, as I said in my previous answer. With regard to passengers who are leaving this country, I am afraid that in this case our responsibilities extend to getting those who are stranded abroad repatriated. People who have booked flights in advance with Monarch will need to look at their travel insurance or their credit or debit card companies to gain a refund. However, I am sure the noble Viscount will understand that it cannot be the Government's responsibility to fly people out from this country. We took the view that our responsibility was to repatriate those who were stranded abroad at no cost to themselves. As I have said, we are working with credit and debit card companies to try to recover as much of that money as possible, but there is a limit to how much we can intervene in these matters.

**Lord McKenzie of Luton (Lab):** My Lords, I start by declaring my interest as an advisory member of the board of London Luton Airport. These are difficult days locally, as the Minister has said. Monarch has been a proud Luton-based carrier for nearly 50 years and a good employer. It is one of two airlines that for many years helped to sustain the airport itself, together with Britannia Airways. If there is a silver lining, as has been explained, it is the vibrancy of the aviation sector, and London Luton Airport in particular, which is the fastest growing airport in the UK and the country's fifth-biggest airport.

I welcome the action that the Government have taken and recognise that substantial costs have hit the public purse in the form of repatriation costs, redundancy payments and the pension scheme, involving the PPF. Is it right that when Greybull Capital purchased Monarch Airlines, it was on the basis that the PPF should take responsibility for a £600 million pension scheme obligation in return for a derisory stake in the business? Can the Minister also say something about Monarch Aircraft Engineering? He has said that it is not affected by this, which is good news so far because plenty of skills and skilled jobs are deployed in that company. However, can he say where this will leave the ownership of that entity?

**Lord Callanan:** The noble Lord has given me an opportunity to pay tribute to the five UK airports involved, considering that they were informed only a matter of hours before the administration took place. All five airports, including Luton, did an absolutely fantastic job in helping us by laying on staff to inform people who, sadly, were arriving on the Monday morning expecting to go away on holiday that the airline had gone into administration. Credit is due to all the airports. I am not aware of the precise circumstances of the bailout a year ago, but I understand that the information the noble Lord has is correct. The PPF took responsibility for the pension fund as part of that deal. I was not in post at the time and I do not know all the details, and it would be remiss of me to comment too much on them, but I will write to him.

**Lord McKenzie of Luton:** Could the Minister please deal with the point about Monarch Aircraft Engineering?

**Lord Callanan:** As I understand it, the engineering business is still trading normally and is not in administration. Clearly, a substantial part of its work was with Monarch, but the majority of it is with other airlines. As I say, I believe it is trading normally but if I have any updated information, I will be sure to let the noble Lord know.

## **Brexit: UK Plans** *Statement*

5.44 pm

**The Lord Privy Seal (Baroness Evans of Bowes Park) (Con):** My Lords, I should like to repeat a Statement made in the other place by my right honourable friend the Prime Minister. The Statement is as follows:

“With permission, Mr Speaker, I would like to update the House on our plans for leaving the European Union. Today, the fifth round of negotiations begins in Brussels and this Government are getting on with the job of delivering the democratic will of the British people. As I set out in my speech in Florence, we want to take a creative and pragmatic approach to securing a new, deep and special partnership with the European Union which spans both a new economic relationship and a new security relationship. Let me set out what each of these relationships could look like before turning to how we get there.

I have been clear that when we leave the European Union we will no longer be members of its single market or its customs union. The British people voted

[BARONESS EVANS OF BOWES PARK]

for control of their borders, their laws and their money, and that is what this Government are going to deliver. At the same time, we want to find a creative solution to a new economic relationship that can support prosperity for all our peoples. We do not want to settle for adopting a model enjoyed by other countries, so we have rejected the idea of something based on European Economic Area membership. This would mean having to adopt, automatically and in their entirety, new EU rules over which in future we would have little influence and no vote. Neither are we seeking a Canadian-style free trade agreement, for compared with what exists today, this would represent such a restriction on our mutual market access that it would benefit none of our economies.

Instead, I am proposing a unique and ambitious economic partnership. It will reflect our unprecedented position of starting with the same rules and regulations. We will maintain our unequivocal commitment to free trade and high standards, and we will need a framework to manage where we continue to align and where we choose to differ. There will be areas of policy and regulation which are outside the scope of our trade and economic relations where this should be straightforward. There will be areas which do affect our economic relations where we and our European friends may have different goals, or where we share the same goals but want to achieve them through different means. There will also be areas where we want to achieve the same goals in the same ways because it makes sense for our economies. Because rights and obligations must be held in balance, the decisions we both take will have consequences for the UK's access to the EU market and EU access to our market, but this dynamic, creative and unique economic partnership will enable the UK and the EU to work side by side in bringing shared prosperity to our peoples.

Let me turn to the new security relationship. As I said when I visited our troops serving on the NATO mission in Estonia last month, the United Kingdom is unconditionally committed to maintaining Europe's security. We will continue to offer aid and assistance to EU member states that are the victims of armed aggression, terrorism and natural or manmade disasters. We are proposing a bold new strategic agreement that provides a comprehensive framework for future security, law enforcement and criminal justice co-operation: a treaty between the UK and the EU. We are also proposing a far-reaching partnership on how together we protect Europe from the threats we face in the world today. This partnership will be unprecedented in its breadth and depth, taking in co-operation on diplomacy, defence and security, and development.

Let me turn to how we build a bridge from where we are now to the new relationship that we want to see. When we leave the European Union on 29 March 2019, neither the UK nor the EU and its member states will be in a position to implement smoothly many of the detailed arrangements which will underpin the new relationship we seek. Businesses will need time to adjust and Governments will need to put new systems in place, and businesses want certainty about the position in the interim. That is why I suggested in my speech at Lancaster House that there should be a

period of implementation and why I proposed such a period in my speech in Florence last month. During this strictly time-limited period, we will have left the EU and its institutions, but we are proposing that for this period, access to one another's markets should continue on current terms and Britain should also continue to take part in existing security measures.

The framework for this period, which can be agreed under Article 50, would be the existing structure of EU rules and regulations. I know some people may have concerns about that, but there are two reasons why it makes sense. First, we want our departure from the EU to be as smooth as possible. It would not make sense to make businesses and people plan for two sets of changes in the relationship between the UK and the EU. Secondly, we should concentrate our negotiating time and capital on what really matters—the future long-term relationship we will have with the EU after this temporary period ends. During the implementation period, people will continue to be able to come and live and work in the UK, but there will be a registration system: an essential preparation for the new immigration system required to retake control of our borders. Our intention is that new arrivals would be subject to new rules for EU citizens on long-term settlement.

We will also push forward on our future independent trade policy, talking to trading partners across the globe and preparing to introduce those deals once this period is over. The length of the period should be determined simply by how long it will take to prepare and implement the new systems we need. As of today, these considerations point to an implementation period of around two years. As I said in Florence, because I do not believe that either the EU or the British people will want us to stay in the existing structures longer than is necessary, we could also agree to bring forward aspects of that future framework, such as new dispute resolution mechanisms, more quickly if that can be done smoothly. At the heart of these arrangements, there should be a clear double lock: giving businesses and people certainty that they will be able to prepare for the change and guaranteeing that the implementation period will be time limited, giving everyone the certainty this will not go on for ever.

The purpose of the Florence speech was to move negotiations forwards. That is exactly what has happened. As Michel Barnier said after the last round, there is a 'new dynamic' in negotiations. I pay tribute to my right honourable friend the Secretary of State for Exiting the European Union for all he has done to drive through real and tangible progress in a number of vital areas. On citizens' rights, as I have said many times, the Government greatly value the contributions of all EU citizens who have made their lives in our country. We want them to stay. In Florence, I gave further commitments that the rights of EU citizens in the UK and UK citizens in the EU will not diverge over time, committing to incorporate our agreement on citizens' rights fully into UK law and making sure that UK courts can refer directly to it. Since Florence, there has been more progress, including reaching agreement on reciprocal healthcare and pensions and encouraging further alignment on a range of important social security rights. I hope our negotiating teams can now reach full agreement quickly.

On Northern Ireland, we have now begun drafting joint principles on preserving the common travel area and associated rights; we have both stated explicitly that we will not accept any physical infrastructure at the border. We owe it to the people of Northern Ireland, and indeed to everyone on the island of Ireland, to get this right.

Then, there is the question of the EU budget. As I have said, that can only be resolved as part of the settlement of all the issues we are working through. Still, I do not want our partners to fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave. The UK will honour commitments we have made during the period of our membership, and as we move forward, we will also want to continue to work together in ways that promote the long-term economic development of our continent. That includes continuing to take part in those specific policies and programmes that are greatly to our joint advantage, such as those that promote science, education and culture, and those that promote our mutual security. As I set out in my speech at Lancaster House, in doing so we would want to make a contribution to cover our fair share of the costs involved.

I continued discussions on many of these issues when I met with European leaders in Tallinn at the end of last month. In the bilateral discussions I had with Chancellor Merkel, Prime Minister Szydło, President Tusk and the Taoiseach, Leo Varadkar, they welcomed the tone set in Florence and the impact that was having on moving negotiations forward.

Preparing for life outside the EU is also about the legislative steps we take. Our EU withdrawal Bill will shortly enter Committee stage, carrying over EU rules and regulations into our domestic law from the moment we leave the EU. Today, we are publishing two White Papers on trade and customs, which pave the way for legislation to allow the UK to operate as an independent trading nation and to create an innovative customs system that will help us to achieve the greatest possible tariff and barrier-free trade as we leave the EU. While I believe it is profoundly in all our interests for the negotiations to succeed, it is also our responsibility as a Government to prepare for every eventuality—so that is exactly what we are doing. The White Papers also support that work, including setting out steps to minimise disruption for business and travellers.

A new, deep and special partnership between a sovereign United Kingdom and a strong and successful European Union is our ambition, and our offer to our European friends. Achieving that partnership will require leadership and flexibility, not just from us but from our friends, the 27 nations of the EU. As we look forward to the next stage, the ball is in their court—but I am optimistic that it will receive a positive response, because we are seeking the best possible deal, not just for us but for our European friends too. While of course progress will not always be smooth, by approaching the negotiations in a constructive way, in a spirit of friendship and co-operation and with our sights set firmly on the future, I believe we can prove the doomsayers wrong and seize the opportunities of this defining moment in the history of our nation.

A lot of the day-to-day coverage is about process, but this, on the other hand, is vitally important. I am determined to deliver what the British people voted for—and to get it right. That is my duty as Prime Minister, it is our duty as a Government and it is what we will do. I commend this Statement to the House”.

My Lords, that concludes the Statement.

5.56 pm

**Baroness Smith of Basildon (Lab):** My Lords, it is the first day back and we are discussing Brexit already. I am grateful to the noble Baroness for repeating the Statement, although I admit I felt an increasing sense of déjà vu as she went through it—probably I was not the only one. So much of it is vague and repeats previous speeches, Statements and comments that we have heard before.

At the outset, I want to pick up on one specific aspect. The noble Baroness will know of my interest in it from when the noble Lord, Lord Taylor of Holbeach, and I faced each other across the Dispatch Box on Home Office legislation. I listened carefully to the section on security—it is so vague and unspecific that it tells us absolutely nothing about priorities for negotiations or expected outcomes. Given the importance of the issue, we need more than that; phrases such as “bold, new strategic agreements” and “comprehensive frameworks” have been said time and again, but at this stage I do not know what they mean. I want to flag that up early on.

The noble Baroness mentioned the two White Papers that were published today—one is on the customs Bill. Is she aware that there are only 10 copies—nine now, because I have one—available to Members of the House of Lords? That seems entirely inappropriate and I hope she can look into it. Can she also say something about the consultation period? Cabinet Office guidelines indicate about 12 weeks as the norm for consultation, yet this paper—and similarly in the one on trade—has no deadline for consultation except to say that responses are encouraged on this by 3 November. That is less than four weeks away, and the other deadline is 6 November. That does not seem appropriate. I assume that if responses are encouraged by those dates, they are also the deadline for responses to be considered, and negotiations. I would be grateful if she could comment on those two points.

This is a hugely significant point in negotiations, the importance of which cannot be overestimated. On the day Article 50 was invoked, the countdown started for the UK to leave the EU. Only one thing was clear: two years is a very short time to ensure that we resolve all the issues relating to Brexit and our future relationship with the EU, including on trade, security, finance and our domestic regulations and legislation for public protection. We are around a third of the way through and it seems that too little significant progress has been made. Within days, we should have clarity on whether sufficient progress has been made in phase 1, to allow us to proceed to phase 2 in a couple of weeks’ time, or if negotiations will have to be delayed.

It is clear that the Prime Minister’s visit to Florence was designed to break the deadlock, and her speech was important for a number of reasons. First, it was

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the first time that she had accepted the need for a transitional phase—she prefers “implementation” phase; I do not care what it is called, but her recognition that such a period was required was important. Recognising the problems ahead, she tried to use the speech to jump-start the negotiations by supporting talks on a transitional, or implementation, deal.

We have always been clear, especially given the number of issues on which there is no certainty, that to prevent a Brexit cliff edge for our economy we must negotiate a time-limited transitional deal that maintains the same basic terms as we currently have with the EU. That means remaining in a customs union with the EU and within the single market while we build the bridge about which the Prime Minister spoke to a strong final deal. I welcome her commitment on that, but any negotiations should start from where we are now. Ruling out options at the start is like trying to operate with one arm tied behind our back.

This pragmatic approach has been welcomed by many of those organisations, including the CBI and trade unions, which fear the impact on businesses and jobs of a cliff-edge exit. It was a significant policy shift for the Prime Minister. She rightly recognised the warnings from businesses that opposition to transitional arrangements was already hitting the economy. Both the head of UBS Investment Bank and the chairman of RBS, and many others, have reinforced the message that unless transitional arrangements are agreed soon, there will be a significant shift of both staff and businesses out of the UK. Yet within days of the Prime Minister’s welcome comment, five of her Cabinet Ministers revealed conflicting and contradictory views. It is no surprise that the list of names is probably very similar to that for the next Conservative leadership contest. I am sure that many share the view that, following a disastrous election campaign which has weakened the Prime Minister at a time when, in the national interest, she has to be at her strongest, she is being further undermined by members of her Cabinet.

The Prime Minister’s speech was also part of her pitch that on the three key phase 1 issues, progress had been made and that progress was adequate for phase 2 to proceed. It will be a huge failure of government strategy if those talks are delayed. The Prime Minister is right that some progress has been made on the three issues, but the question is whether it is enough. It is clear from last week’s events in Strasbourg that the EU does not think that it is.

Let us look at those three issues. For those of us who voted in your Lordships’ House before the negotiations started on arrangements for EU nationals and the consequences for UK nationals in the EU, it is disappointing that this issue has not been resolved. I can see the noble Lord, Lord Tebbit, pointing around the Chamber and muttering. Unless he wishes to comment, I will continue. Businesses and academia are already experiencing some of the difficulties that we feared. The lack of agreement means that both here and across the EU, British and European Union citizens feel their lives blighted by uncertainty. Many in your Lordships’ House and the other place were persuaded by the Government not to vote for our Article 50 amendment, as the Government had promised

that this was an early priority and would be resolved at the start of negotiations. The Government might find it harder to earn such trust in the future.

On the matter of the Irish border, there is an agreement on the required outcome, but the Government have been unable to say how it can be achieved. Initial proposals for a “technical solution” have been ridiculed by experts. A leaked report by the Irish Revenue Commissioners sets out in stark detail the vast increase in the amount of resources and bureaucracy that may result from Brexit, which will be significant at all levels and for all communities. Not only do the Revenue Commissioners warn that an open border will be impossible from a customs perspective but they even expect the important annual ploughing championships to be hit. That will affect the quarter of a million people who attend that event, and it makes a serious point about the possibility of additional paperwork being needed for machinery imported from the UK.

On the third issue—agreeing a formula for the “divorce bill”—not only is there no agreement with the EU but there is no agreement within the Cabinet either. Depending on your point of view, Boris Johnson is either an unprincipled, gaffe-prone Minister who shoots from the hip or a first-rate diplomatic Foreign Secretary. But even he has had to retreat from telling the EU to “go whistle” to accepting the need for an agreed formula and for quick progress to be made.

There is a debate to be had on whether progress is adequate to proceed to the next stage. The Prime Minister’s confidence about this is not widely shared. A war of words seeking to apportion blame will not make it any easier, but discussion and negotiation will, as will honesty and openness about the sticking points and difficulties. It is therefore all the more worrying that two Conservative Party Members of the European Parliament, a former chief whip and a deputy leader, who were honest enough to express their view and vote accordingly that progress was not yet sufficient, have been suspended from their party. That does not inspire confidence that these issues are being examined with an open mind.

I have three specific questions for the noble Baroness. Your Lordships’ House will have seen the joint statement from the TUC and CBI on citizens’ rights. The Prime Minister said in her Statement that she expected a quick agreement, but we have heard that before. Can she be more specific? Can the noble Baroness confirm that the UK negotiating team expects an agreement on citizens’ rights this week, thus concluding phase 1 of the negotiations? If not, will the Government keep an open mind, as urged by your Lordships’ House and now by many others, including the CBI and the TUC?

Secondly, returning to last week’s events in the European Parliament, it was significant that both President Juncker and Monsieur Barnier have addressed MEPs, as they do regularly. The Prime Minister has had an opportunity to do so and has not accepted the invitation. Given the possibility of a delay to phase 2, will the Prime Minister now reconsider the invitation for her to do the same?

Finally, if the Prime Minister’s Florence speech is really to break the impasse, it is clear that we must overcome the sticking point that is the financial settlement. I am not asking for details of figures, but have the

UK's negotiators been permitted to discuss potential figures at this week's talks? I hope that the noble Baroness will be able to address those questions as well as the points made about the two White Papers published today.

**Lord Newby (LD):** My Lords, since our debate in September on the Government's so-called position papers, there have been three developments. First, we had the Florence speech, of which this Statement is a précis. Secondly, we had the Prime Minister's conference speech, which was noticeable for the fact that less than 5% of it was devoted to the most important issue facing the country; namely, Brexit. Thirdly, we have had an extraordinary degree of infighting among members of the Cabinet. Many of us have lived through periods when there has been infighting within our own parties, and we know what it means: it becomes all-consuming; it becomes completely debilitating. That is the state of the Government today.

As I said, the Statement is a précis of the speech made by the Prime Minister in Florence, which, in her own terms, was intended to move the negotiations forward. How does it fare in doing that? It starts by talking about the economic partnership, which is to be "unique and ambitious". The rest of the section simply sets out what the Government will not do. It says nothing about what the Government intend this to be. This is the first of what one might call "the ball in whose court?" issues. The Government say, "We're not having this; we're not having that; we're not having the other". The assumption is that somebody will come up with a solution, but not them. Certainly, there is no suggestion in the Statement of what the solution might be.

Ditto the security relationship. The phrase there is that there is to be a partnership that will be, "unprecedented in its breadth and depth, taking in cooperation on diplomacy, defence and security, and development". We wait to see what that might mean, but that is it. We then move on to the next phase, implementation. The Government have accepted that there has to be an implementation phase, and there is to be a two-year standstill. The Government should not take any great credit for this. It is impossible to move from our current position in the EU to a new position without an implementation or transition phase. All they have done is accept the inevitable with extraordinary bad grace.

Half way through the Statement, the Prime Minister marks her success in the Florence speech. She says that it was extremely successful and that Michel Barnier said,

"there is a 'new dynamic' in the negotiations".

Well, there is a new dynamic for the Secretary of State—he is staying put. The Secretary of State for Exiting the European Union is not going to Brussels today, and has not been, so all his input, at most, this week as in the past, is going to be some kind of Panglossian statement on Thursday afternoon, when he has just whizzed in, which will be immediately contradicted, no doubt, by Michel Barnier.

The Statement then gets back to the substance, the three big issues, of which Northern Ireland is the first. The Government say that we and the EU,

"have both stated explicitly we will not accept any physical infrastructure at the border".

The problem here is that nobody—not this Government, not the Irish Government, not the EU, not a think tank, not a lawyer, not a company—knows how you can be without the customs union without some kind of border control. There is not a soul on the planet who has come up with a viable proposal for dealing with that, so how can the Government believe that they are making progress there, or that they could get a quick outcome?

We then come to the EU budget, where we want to make a contribution,

"to cover our fair share of the costs involved".

What does "fair" mean? It is a very interesting word, but the Government give zero indication of what it means. Does the EU have any idea what our view of fair is? If it does, it is certainly something that has not slipped out from anybody in Brussels or in this Government.

We now come to legislation and the two White Papers that have been published today. I have not had a chance to look at them, but I have just one question for the noble Baroness. On customs, we are about to create "an innovative customs system". It sounds great, but is she aware that, as we speak, HMRC is in the process of reducing regional and local offices so that the ports of East Anglia, Harwich and Felixstowe, are about to be managed from Stratford, in east London? I accept that this is, indeed, innovative, but it does not fill me with any confidence that the Government have even the vaguest idea how they are going to implement a new customs regime.

Finally, we come to the conclusion, which is that, as we look to the next stage,

"the ball is in their court. But I am optimistic it"—

I do not know whether that is the ball—

"will receive a positive response".

What is "it"? On too many issues there simply is not an "it": there are simply vacuous statements and pious exhortations. With parliamentary Liberal Democrat colleagues I spent a couple of days in Brussels during the recent Recess attempting to find out what was really happening in the negotiations. We met representatives from the Council and UKREP, other permanent representatives, MEPs and many others. Everybody, with the inevitable exception of UKREP, was at a loss as to what the UK was really after. It was not that they were objecting to what we were after; they simply had no clue. There was no beef, as they saw it, in the negotiations. Today's Statement, I am afraid, suggests that on current trends they are likely to be kept waiting for this beef for quite a long time.

**Baroness Evans of Bowes Park:** My Lords, I am grateful to the noble Lord and the noble Baroness for their comments, as ever. I shall address some of the issues they raised. I know very well the interest of the noble Baroness in the area of security—she has held me to the fire over it a number of times—and the noble Lord, Lord Newby, raised the same issue. I stress again that the UK is unconditionally committed to maintaining Europe's security and we will continue to offer aid and assistance to EU member states that are the victims of armed aggression, terrorism or

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natural or manmade disasters. Indeed, the European Council's negotiating guidelines identify the importance of partnerships against crime and terrorism and it is clearly to the benefit of both sides to make sure that this new partnership is comprehensive and effective. I know that this will not satisfy the noble Baroness, but I stress that there is currently no pre-existing model of co-operation between the EU and third countries that replicates the full scale or depth of collaboration that currently exists between the EU and the UK in this area, which is why we want to design new arrangements that go well beyond any existing arrangements the EU has in this area and to draw on legal models the EU has previously used to structure co-operation with external partners in other fields, such as trade.

I apologise for the small number of copies of the customs White Paper. I agree that 10 is not enough and I have been assured that more are being produced and will be available shortly. I will look into the issue raised by the noble Baroness, of which I was not aware before she mentioned it.

On the implementation period, the Cabinet is united behind the vision the PM set out in Florence about a strictly time-limited implementation period based on the existing structure of EU rules and regulations during which the UK and EU would continue to have access to one another's markets on current terms. I welcome the comments of the noble Baroness that this is, indeed, a step forward.

On citizens' rights, we have been very clear that we want this issue resolved. The Statement made it very clear that we recognise the contribution EU citizens make and we want them to stay. As I said, and as the Statement made clear, in Florence the PM gave further commitments that the rights of EU citizens in the UK and UK citizens in the EU will not diverge over time, committing to incorporate our agreement on citizens' rights fully into UK law and making sure that UK courts can refer directly to it. As for EU citizens living in the UK, where there is uncertainty around underlying EU law we have said we want the UK courts to be able to take into account the judgments of the European Court of Justice. We will be working hard to get an agreement. I am sure that the noble Baroness will accept that I cannot prejudge or guess the outcome of the current round of negotiations, but I reiterate the importance we place on achieving an agreement in this area as we know how important it is.

On the financial settlement, the basis of our negotiations in this round is clear. We have said that we do not want our partners to fear that they will need to pay more or receive less over the remainder of the current budget plan as a result of our decision to leave, that we will honour commitments we have made during the period of our membership and that we will make an ongoing contribution to cover our fair share of the costs involved. Again, I cannot prejudge or guess the outcome of the current round of negotiations, but we are obviously aware that this is an important issue. I fear that I am also unable to provide the noble Baroness with any further information about the Prime Minister's interaction with the European Parliament, but if I am able to do so at a future point, I will, of course, do so.

The noble Lord and the noble Baroness raised the issue of Northern Ireland. It is important that both the UK and the EU have explicitly stated that we will not accept any physical infrastructure at the border; that means we are working from a common ground to achieve an outcome that we understand is extremely important to all of us. The noble Lord, Lord Newby, asked about customs. The White Paper sets out that we will be guided by what delivers the greatest economic advantage to the UK and three strategic outcomes in terms of our future customs: 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. I say to the noble Lord that HMRC operates one of the most efficient customs regimes in the world and we already have highly efficient processes for freight arriving from the rest of the world.

6.18 pm

**Lord Tebbit (Con):** Perhaps I might raise a couple of points with my noble friend. First, can she tell me whether we have yet valued our share of the buildings occupied by the European Union and its agencies? Have the EU authorities yet proposed how that value in those buildings will be paid back to us following Brexit?

Secondly, on the legal rights of European Union citizens here and UK citizens in the EU, can my noble friend say how many UK citizens are currently imprisoned or detained in the European Union without trial or charge, and how many EU citizens are similarly detained here in prison without trial or charge? I fancy the numbers will tell us something about the legal rights of citizens, both here and on the continent. Lastly, does my noble friend not agree that the simple and short way to solve the dilemmas around the Irish frontier with Northern Ireland would be for the Irish Republic to look after the best interests of its citizens by leaving the EU?

**Baroness Evans of Bowes Park:** I would not dream of telling the people of Ireland what to do. On my noble friend's question about prison numbers, I am afraid I do not have those figures to hand but I am happy to see whether they are available and I will write to him. In relation to the financial settlement, as he will be well aware, a lot of work has been done across the piece looking at the contributions that we have made and the settlement that we may come to. As I said, we have set out that we do not want our partners to fear that they will need to pay more or receive less over the remainder of the current budget plan. Of course, all these issues will be discussed in detail during the negotiations.

**Lord Davies of Stamford (Lab):** The Government remain in complete denial about the very considerable costs of leaving the single market and, equally, about the quite significant costs of leaving the customs union. There is nothing at all about costs in either of the White Papers. If the Leader looks at pages 24 and 25 of the *Customs Bill* White Paper, she will see a number of things referred to which represent considerable costs to traders. There is a suggestion that traders will need new intermediaries and forwarding agents, which



they did not previously utilise. It is suggested that they will need to introduce new IT systems and spend money on consultants. Have the Government made any estimate of what the cost will be to traders in this country from the restrictions that they are intending to impose when we leave the customs union? It is usually considered a good sign of honest and competent governance or administration, in the private sector or the public sector, not to commit to go into any venture without having some idea of what the cost is. The Government have not told us the cost of this gratuitous attempt to pull us out of the single market and the customs union.

**Baroness Evans of Bowes Park:** As the noble Lord himself said, we have published two White Papers today, setting out our objectives for both the new customs arrangements and our future trade policy. Of course, we have a continuing dialogue with businesses involved in this and we will make sure that their voices are heard and any issues that they have are reflected in the work we do. But that is the reason we have published a White Paper, to make sure that that discussion is had.

**Baroness Ludford (LD):** My Lords, perhaps the Leader of the House could help me understand. There appears to be a contradiction between pages 1 and 3 of the Statement. On page 1 there is an insistence that, “when we leave the European Union we will no longer be members of its single market or its customs union”; then on page 3 it is asserted that the framework for the transition or implementation period would be, “the existing structure of EU rules and regulations”. That surely must mean the single market and the customs union. So how are we going to leave the single market and the customs union and stay in them in the transition period? I would welcome enlightenment.

**Baroness Evans of Bowes Park:** We will be leaving the EU and its institutions in March 2019 but the fact is, at that point neither the UK nor the EU will be in a position to implement smoothly many of the detailed arrangements that will underpin this relationship. We want a strictly time-limited implementation period based on the existing structure of EU rules and regulations, during which the UK and EU would continue to have access to one another’s markets on current terms and the UK would take part in existing security measures. Because we want our departure to be as smooth as possible, it does not make sense to make people and businesses plan for two sets of changes in the relationship between the UK and the EU, and we should concentrate all our negotiating time on what matters: the long-term future relationship.

**Lord Forsyth of Drumlean (Con):** My Lords, does my noble friend accept the view that the Prime Minister has taken an entirely consistent and reasonable line on these matters? The Leader of the Opposition talked about a feeling of *déjà vu*—not something we would get from the Opposition’s position, which varies from week to week. That consistency is clearly important but I ask my noble friend: how much patience does the Prime Minister have? At what point do we say, “Enough is enough” to this intransigence that we are seeing? What has happened to the duty of sincere co-operation

which is part of the *acquis* and the requirement in the treaties? At what point are we actually going to say that these people are deliberately obfuscating and creating difficulties by refusing to enter into the wider negotiations and actually get on with preparing what is in the best interests of our country in the longer term?

**Baroness Evans of Bowes Park:** I entirely agree with my noble friend about the consistency of the Prime Minister’s position. In fact, we have been putting a lot of information out to the public. We have published seven Brexit position papers, seven future partnership papers and four White Papers, including the two today, and we have set out a clear vision. We want to see progress and we are hoping, as Michel Barnier said, that we will see a “new dynamic” in the negotiations. Inevitably, leaving is a difficult process but we believe, on both sides, that it is in all our interests for the negotiations to succeed and we will continue to work on them in a spirit of good will. Having said that, we also have a duty to plan for the alternative, which we are doing, because that is what any responsible Government would do, but I reiterate that we truly believe that we will come to a deal which will be best for both of us.

**Lord Wigley (PC):** My Lords, if I understood the noble Baroness correctly, in quoting the Prime Minister she said that the Government are planning for “every eventuality”. That being so, can she confirm that the Government are indeed planning for an exit from the European Union without any agreement? If that appears to be the position in January 2019, is that not the time when the people should be asked again whether they want to leave on those terms?

**Baroness Evans of Bowes Park:** I am afraid that I hold a different view from many noble Lords in this House but, as I have said, we are confident of getting a good deal. But, yes, as I just said, we are planning for an eventuality where that does not happen, because that is what any responsible Government should and would do.

**Lord Tugendhat (Con):** My Lords, I agree with my noble friend Lord Forsyth that the Prime Minister has been consistent in her approach and I commend it. But is she aware that there are a large number of people in this country, and I count myself among them, who worry that perhaps the biggest obstacle to achieving a satisfactory outcome to these negotiations are the divisions that are being displayed on our own side? The more divided we appear, the greater the disadvantage we find ourselves at in Brussels. We are up against very experienced and tough negotiators and when they see that we are divided, they will take advantage of that. If the Prime Minister’s very sensible initiatives are to bear fruit, it is essential that she is able to enjoy the unity of purpose of her own Cabinet colleagues.

**Baroness Evans of Bowes Park:** I agree with my noble friend. Indeed, the Cabinet is united behind the vision in the Florence speech. There is unity in the Cabinet. We are behind the Prime Minister because we all want to see these negotiations succeed.

**Lord Cormack (Con):** My Lords, I ought to be reassured by those last words but I reiterate what my noble friend Lord Tugendhat said: there is a perception that the Cabinet is divided. There has been no doubt that individual members of the Cabinet—and one in particular, who bears responsibility for this country's foreign policy—have not been as they should have been. Either we expect him to fall into line properly—explicitly, continuously—or the Prime Minister to exercise her undoubted authority.

**Baroness Evans of Bowes Park:** I have no doubt that the Prime Minister does and will continue to exercise her authority. I want to reassure noble Lords again: the Cabinet is united. We want to get the best possible deal for the UK and the EU, and to ensure a smooth and orderly withdrawal, and that is what we are all working towards.

**Lord Wallace of Saltaire (LD):** My Lords, I welcome the Government's acceptance now that there are broad security dimensions of leaving the European Union and that the European Union has always had large security elements involved with it. I recall the noble Lord, Lord Forsyth, denying that that was the case, and the leave campaign certainly did not accept it. Can the Government begin to tell us something about how they will maintain the relationship both on cross-border security and in terms of defence, foreign policy and intelligence, after we leave? Looking round the Chamber, I think there are one or two Members old enough to remember, for example, a body called the Western European Union. It existed solely to allow the United Kingdom to have conversations with the then six members of the European Community on foreign and security policy when we were otherwise outside the room. Do we imagine that we are going to try to persuade others to set up some sort of special arrangement of this sort or will we hope to maintain, for example, the current multilateral intelligence arrangements through associate membership of Europol? As the position paper on this said, these are clearly in our national interests.

**Baroness Evans of Bowes Park:** I entirely agree with the noble Lord that this is an extremely important area. As I said, it is very encouraging that the European Council's negotiating guidelines also identify the importance of partnerships against crime and terrorism. The specific details will obviously be for the negotiations but I say again that no pre-existing model of co-operation between the EU and third countries replicates the scale and depth of the collaboration that exists between the EU and the UK in this area. We want to maintain that, which is why we want to work towards new arrangements that go beyond any arrangements the EU has in this area at the moment.

**Baroness Smith of Newnham (LD):** My Lords, the noble Lord, Lord Forsyth, commented on the Prime Minister's consistency in her view of what Brexit ought to look like, but at times it has looked as if the EU 27 have one position on Brexit and the UK Government have 27 positions on it. One of the issues for Monsieur Barnier is that he has been given a negotiating mandate by the EU 27 and cannot exercise flexibility, because that is not within his gift. As we

look towards the next European Council meeting and beyond, what bilateral work are Her Majesty's Government doing behind the scenes, with the ministries and Heads of Government of the other 27 member states, to look at how they could try to persuade the 27 that a different, more flexible mandate might be helpful for Monsieur Barnier going forward?

**Baroness Evans of Bowes Park:** I am sure that the noble Baroness will be aware that the Prime Minister has had regular conversations with other leaders at the events she has been to and at other stages, and that departments are of course working closely with their counterparts. We all understand that getting a good deal for both the UK and the EU is in our best interest, and that is what we are all working towards. There is a lot of engagement going on, through companies and business, on the ground to try to make sure that we can move together towards a position that we both want.

**Lord Butler of Brockwell (CB):** My Lords, do the Government share my view that if the European negotiators persist in their refusal to discuss our future relationship, they are themselves in breach of Article 50? Would we be prepared to seek a statement to that effect, if necessary from the European Court of Justice?

**Baroness Evans of Bowes Park:** We are all hopeful that we will be able to move forward together in a constructive manner. That is certainly what we intend.

**Lord Wallace of Tankerness (LD):** My Lords, how do the Government anticipate that the common fisheries policy will work out in relation to the United Kingdom during the transitional period?

**Baroness Evans of Bowes Park:** We are committed to leaving the common fisheries policy and developing arrangements for fishing that can create a more profitable and self-sufficient seafood sector. Taking back control of our waters means that we can decide how we allocate access to our waters and our fisheries. Any decisions about giving access to vessels from the EU and other coastal states will be a matter for negotiation.

**Lord Berkeley (Lab):** My Lords, can the Minister explain how this taking back of our fishing policy will work? My understanding is that most of the fishing quotas that we received when the agreement was first made have been sold by the UK fishing fleet to foreign fishing companies. Perhaps she can explain how we are going to get the quotas back from those companies which, presumably, have been enjoying them for the past 20 years.

**Baroness Evans of Bowes Park:** As I have said, policy in this area will be a matter for negotiation.

## Devolution (Constitution Committee Reports)

*Motion to Take Note (Continued)*

6.34 pm

**Lord Lexden (Con):** My Lords, we return to the debate on the Constitution Committee's reports and the report of the EU Committee on devolution. Among other things, this debate brings us the maiden speech

of a new noble friend. My noble friend Lord Duncan of Springbank is to reply to this debate in terms that I hope will reassure us about the Government's enduring commitment to the union. He follows in office my long-established and personal noble friend Lord Dunlop, who throughout his career has been a staunch defender of the union and sometimes showed a little more flexibility than I have managed to create.

Since I entered the House in 2011, nothing has brought me greater satisfaction and pleasure than my three-year stint on the Constitution Committee between 2012 and 2015. Wise counsel was provided by convivial colleagues from across the House. Immensely skilful chairmanship was supplied first by the noble Baroness, Lady Jay of Paddington, and subsequently by her successor, my noble friend Lord Lang of Monkton—how wonderfully well they steered our discussions. The testimony of a wide variety of expert witnesses helped to add authority and depth to our discussions. Absolutely first-rate officials drew our conclusions and recommendations together in lucid reports to the House and the Government. When the work is done, however, those involved in the committee's activities have to brace themselves for some disappointment. The Government's responses to their detailed and carefully considered reports on issues of great political significance are invariably delivered after long delays, in breach of the commitment included in paragraph 11.39 of our *Companion to the Standing Orders*:

"The government have undertaken to respond in writing to the reports of select committees, if possible, within two months of publication".

I was a member of the committee when it carried out its inquiry into intergovernmental relations in the United Kingdom. Is it not extraordinary that over two and a half years should have elapsed between the publication of the committee's report and this debate? In their response of just five and three-quarter pages, which they took just under two years to prepare, the Government make a perfunctory apology for the delay but offer no explanation for why this protracted delay occurred. Convincing apologies surely need to be accompanied by clear explanations.

Indeed, throughout the response as a whole, explanations of the Government's views and decisions on the issues raised in the committee's report are hard to find. The Government seem to think it sufficient simply to assert their own positions and views in a rather curt fashion without giving their reasons for adopting them or for rejecting, as they so often do, the committee's recommendations. I note, too, in passing that the Government need to improve their proofreading: there is a serious grammatical error at the start of paragraph 8.

I am perhaps in danger of being unfair; the response has positive features. In paragraph 12 it states:

"The concordats and devolution guidance notes will be reviewed by the four administrations in due course",

repeating the point for good measure in the following paragraph. But when will this be done? Rarely are definite dates assigned to the useful developments foreshadowed in the response.

We are told more than once that plenary sessions of the Joint Ministerial Committee—the linchpin of the entire structure of intergovernmental relations—are

to be held more frequently. This pledge seems to be being redeemed. The Joint Ministerial Committee met in October last year and again in January this year. The terse communiqué of just eight sentences issued after the meeting in January stated:

"Ministers agreed to meet again in Plenary format later in 2017".

Has a further date been fixed in conformity with the pledge to increased frequency?

The Constitution Committee's report noted:

"The current reporting of JMC meetings is bland and unilluminating; much more information could be made public in advance of and after meetings".

The eight unilluminating sentences issued after the last JMC meeting on 30 January hardly suggest that improvement is on the cards. There is, however, a specific undertaking in paragraph 17 to publish a report on intergovernmental relations this autumn. Has a firm date been fixed for its appearance?

The large measure of uncertainty surrounding many features of future intergovernmental relations surely lends weight to the Constitution Committee's recommendation:

"The Government should consider whether the framework of inter-governmental relations should be set out in statute".

In that way core principles and the basic shape of the system would be clearly defined and the devolved Governments would have their place in the system firmly delineated, but the Government say, curtly, in paragraph 6 of their response that they do not agree, without of course giving any reasons.

At the heart of both the Constitution Committee's reports before us today there stands a question of immense national significance. The report *The Union and Devolution* sums up that issue perfectly:

"The UK Government needs fundamentally to reassess how it approaches issues relating to devolution. What affects one constituent part of the UK affects both the Union and the other nations within the UK".

My noble friend Lord Empey, who has been detained in Belfast today for pressing family reasons, has often eloquently deplored the haphazard and ill-considered nature of recent constitutional changes which show why a new approach is needed. Ten months ago one element of our constitutional arrangements ceased to function. The ramshackle coalition of political incompatibles at Stormont collapsed. It had impressed no one with its capacity to deliver good government. Here is one illustration of the need for the fundamental reassessment for which the committee has called to ensure that such a crisis is fully considered in the wider context of the union.

Another issue that proves the point is the denial of the right to same-sex marriage in the same part of our country, even though it commands widespread support there. Why should our fellow countrymen and women, who are fully part of our union, have to endure such discrimination?

How valuable it would be to have a Cabinet Minister to whom the active guardianship and protection of the constitution was entrusted. Sir Oliver Letwin, then in nominal charge of the constitution, took the Constitution Committee's breath away by dismissing the need for such active guardianship and protection

[LORD LEXDEN]

out of hand. There is a pernicious phrase, “devolve and forget”, which was rightly disparaged by my noble friend Lord Lang in his powerful opening remarks. The danger it expresses is increased by the unduly wide scope of the convention which, remarkably, still bears the name of a disgraced former Member of this House. Is it not time to consider such aspects of devolution afresh from the standpoint of the union, the rock on which we all rest, remembering always that one large part of the reason Northern Ireland has suffered so grievously in our lifetimes is that the Parliament of the union gave it no attention during its first period of devolution after 1920?

6.45 pm

**Lord Cullen of Whitekirk (CB):** My Lords, in its report *The Union and Devolution* the Constitution Committee, of which I was a member, made this as one of its recommendations:

“There is a strong case for creating a flexible framework, based on appropriate principles, as a guide for future action within which any further demands for devolution can be considered in a coherent manner”.

The committee found that in the past there had,

“been no guiding strategy or framework of principles to ensure that devolution developed in a coherent or consistent manner and in ways that do not harm the Union”.

I have to say that I find the Government’s response to the case advocated by the committee to be entirely disappointing. The Government state that that they support the approach which was taken by the Smith commission and the Silk commission. That approach was, they said, considering proposals for devolution against a set of principles. One initial difficulty I have with this response is that the principles applied by the Smith commission were not similar to those of the Silk commission, as the Government claim, but were different in kind. The Smith commission followed the line agreed with the representatives of the five political parties in the Scottish Parliament, namely that a package of new powers for Scotland should,

“not cause detriment to the UK as a whole nor to any of its constituent parts”.

It was a negative principle. It was understandable that the commission used it in testing the outcome of negotiations between those parties within a short timescale, but it focused not on what devolution should do, but on what it should not do. The Silk commission, on the other hand, applied positive principles such as collaboration, equity, stability and subsidiarity. Part of its stated vision was that:

“Devolution of power to Wales should benefit the whole of Wales and the United Kingdom”.

Elsewhere in their response, the Government also state that their approach to devolution,

“is governed by the principle that ... it is the right thing to do for the integrity and success of the UK”.

So far, so good, but what are the other principles that they have in mind? That is not clear. Surely if the Government are in favour of the application of a set of principles to consideration of further devolution, a matter of great importance for the constitution of this country, they should say what are those principles, and do so clearly and coherently. However, they seem to have avoided doing so.

The committee identified some of the core principles which it considered should govern the relationship between the union and the devolved nations. They are solidarity, diversity, consent, responsiveness, subsidiarity and clarity. These are positive and constructive principles going to the strength of the union and the vitality of that relationship. In the case of some of these core principles, the Government have responded. Others they have ignored. It is somewhat strange that where they have agreed with the Committee, they have mostly referred to the negative principle adopted by the Smith commission in the circumstances I referred to. It is in the light of these matters that I find the Government’s response on matters of principle unsatisfactory and, indeed, lacking in clarity and coherence. It is of some interest to note that in the course of its report the European Union Committee made this recommendation:

“Thanks to Brexit, it is now more important than ever that reform of the devolution settlements should be underpinned by a clear and agreed framework of guiding principles”.

6.49 pm

**Lord Norton of Louth (Con):** My Lords, I declare my interest as a member of the Constitution Committee. I too pay tribute to my noble friend Lord Lang for the way he has moved the Motion and for his most effective chairmanship of the committee. In the time available, I wish to pursue two points that merit a response from the Government. Both derive from the two reports of the Constitution Committee that are before us.

As we have heard already, the basic message at the heart of the report on *The Union and Devolution* is that instead of being defensive, we need to spend more time saying what is right with the union. There is a clear, positive case to be made. As the report says, the union has brought stability, peace and prosperity to the United Kingdom.

I was a member of the Conservative Political Centre National Policy Group on the Constitution that produced a report, *Strengthening the United Kingdom*, in 1996. My noble friend Lord Dunlop was also a member, and the committee was serviced by my noble friend Lord Lexden. We emphasised the case for the union. We argued that it reconciled order with personal liberty, and national differences with common citizenship, thanks to one constitutional citizenship established by the union. We also drew out that it creates a constitutional citizenship transcending national and regional parochialism, that it successfully reconciles the ideas of nationalism and nationality and that it promotes cultural diversity and the sharing of rich differences which diversity produces.

I am sure my noble friend the Minister will endorse these essential attributes. I think it important we put them on the record. However, the first point I wish to develop, and invite a response to from my noble friend, derives from another, crucial observation in the report on *The Union and Devolution*. As it says:

“Proper consideration of the cumulative impact of devolution on the integrity of the Union itself has been lacking”.

This relates to a point that I have pursued for many years, namely the essentially incoherent approach taken by successive Governments to constitutional change. Changes to the constitution have been disparate and

discrete, advocated on their individual merits and not set within a clear view of what type of constitution is appropriate to the United Kingdom.

I was recently invited to pen an article entitled “Constitutional Change: Unfinished Business?”. I argued that it was more appropriate to refer to “never-ending business”, because “unfinished business” implies that there is an end-point. There is presently no end-point, because no Government of recent years have articulated what they are working towards in terms of our constitution. Specific reforms have been advocated, and in most but not all cases implemented, by Governments, and there have been changes that are essentially the product of reacting to different demands. The reaction has been, in constitutional terms, incoherent, with no obvious thought about the impact on other changes. As Professor Charlie Jeffery told the committee:

“We have seen ... a real absence of territorial statecraft—thinking about how the state as a whole can accommodate the demands for decentralisation in its various parts. Unless we do that, we will continue on this ratchet process of gradual disintegration”.

Even within the context of devolution, there is a need to see it within the wider context of the union. As we have heard, we need a clearer articulation of the case for the union: to have a grasp of the principles underpinning that union and determining what government should seek to achieve. Unless we have that, government will spend too much time in firefighting mode. However, it was clear from the committee’s two inquiries—this brings me to my second point—that one impediment to achieving this was the structure of government. As we reported in our 2015 report, responsibility for devolution was dispersed within government, with a lack of effective co-ordination and oversight. Indeed, we said it was extraordinary that the Cabinet Minister stated to be responsible for devolution, the Deputy Prime Minister, was not a member of the Cabinet Committee on that very subject.

After the 2015 election, a Cabinet Committee on Constitutional Reform was established. However, it met only once in nine months, with constitutional issues being cleared instead through the Home Affairs Committee. As we said at paragraph 344 of our 2016 report,

“consideration of constitutional issues as simply one part of the work of the much broader-ranging Home Affairs Cabinet Committee risks the loss of any explicit focus on the constitutional implications of the UK Government’s policies”.

The situation has not improved since. If anything, it has got worse. There is no Cabinet committee dedicated to constitutional reform. There is no committee on devolution. The Government in their much-delayed response to the 2015 report said that,

“issues concerning devolution cut across a large swathe of Government business considered by different Cabinet Committees”.

They said that it was up to Ministers to consider the interests of all citizens of the UK and the impact of all policies on the whole of the UK. That is it. It is in effect conceding that the Government have no structured collective means of looking holistically and proactively at devolution, and more generally the constitution. There is the Minister for the Cabinet Office with responsibility for an overview of constitutional issues, supported by the Minister for the Constitution. Where is the Cabinet Minister—where is the Cabinet committee?—that has dedicated responsibility for

devolution, for addressing what we need to be doing to preserve the union? Where is the Cabinet committee that has responsibility for looking holistically at our constitution?

There is within government an obvious and necessary focus on Brexit. That, though, should not be at the expense of looking at our constitution as a constitution and how the different parts fit within a clear and coherent framework of principles, derived from an understanding of the constitution we want for the United Kingdom. Without that, we are in danger of a never-ending process of disparate and largely reactive changes, resulting in a constitutional framework that no one wants or necessarily understands. How do Brexit, developments in the union, decentralisation in England and demands for a British Bill of Rights fit together within an intellectually coherent view of the constitution we want for the United Kingdom?

We can, I believe, start to get there from some of the principles enunciated in the committee’s 2016 report. There is value, as a witness citing the noble Lord, Lord Hennessy, said, in looking at,

“the issues that bond the union”,

in essence the constitutional citizenship to which I referred in opening. Professor Adam Tomkins, of the University of Glasgow, now an MSP and formerly a legal adviser to the Constitution Committee, said in evidence:

“We really cannot carry on, in the United Kingdom, developing devolution or developing Britain’s territorial governance in silos ... Really for me the value of thinking about principles of union constitutionalism is that it gets us, or might help to get us, out of those silos and into the space where we can start thinking about the things that we have in common”.

Getting out of the silos and thinking about our constitution as such—as a whole and not simply the sum of its parts—is essential. The Government need to be on the front foot and not hunkering down in their silos.

I shall conclude by putting the two questions that derive from this to my noble friend Lord Duncan. First, echoing the noble and learned Lord, Lord Cullen, could he please delineate the principles that govern constitutional change? As I say, we need a clear and coherent framework, not only to know how to respond to demands for change but to be proactive in making the case for the fundamentals of the British constitution that have served us well and are in danger of being swept away.

Secondly, what plans are there to restructure the process of government to address constitutional change? There needs to be a structure to enable the Government collectively, at Cabinet level, to discuss and agree change within that framework of basic principles. The clear message in both reports from the Constitution Committee is that existing arrangements are not up to the task. These are crucial matters of principle and process that need to be addressed urgently if we are to maintain and promote the union of the United Kingdom.

7 pm

**Lord Murphy of Torfaen (Lab):** My Lords, there are four Welsh men and women in this Chamber this evening. We are a band quite unique, bearing in mind that within the hour Wales and Ireland will be playing each other at soccer. That is another story but what it

[LORD MURPHY OF TORFAEN]  
tells us is how important this debate is to those of us who are from Wales, Scotland, Northern Ireland or indeed, as my noble friend Lord Desai said, England.

It has been an interesting debate. I congratulate the noble Lords, Lord Lang and Lord Jay, on their speeches and on their committees' reports. They are excellent; they outline the issues in front of us vividly and cogently. There is no doubt that the implications of Brexit for the devolved nations of our country are considerable, economically, politically and constitutionally. In Wales, for example, it is hugely significant economically: 70% of Wales's manufacturing exports goes to the EU. On the question of agriculture, sheep farmers and hill farmers in Wales depend heavily upon the EU. Wales, as opposed to other parts of the UK, is a net beneficiary of EU funding. So to Wales this is an important issue.

A few weeks ago in this Chamber we discussed how important Brexit is to Northern Ireland. It was a very good debate. The problem, of course, is that there is no Executive, Parliament, Assembly or Government in Northern Ireland to deal with Brexit but, as that debate indicated, it is uniquely affected. The uniqueness of the land border is still an unresolved issue, as are the implications of leaving Europe for the Good Friday agreement and the peace process, which were helped by our common membership, with the Republic of Ireland, of the EU. I congratulate the Minister on making his maiden speech later today and welcome him to this Chamber, and I ask him to take back to his colleagues the plea—certainly from these Benches but I am sure from all Benches in the House—that those negotiations be speeded up. So long as there is no Executive or Assembly in Northern Ireland, the voice of Northern Ireland is not directly heard in the negotiations in Brussels.

Another issue touched on by many noble Lords is that the devolution settlement, not just with Northern Ireland but with Wales and Scotland, could itself be undermined unless we handle these negotiations properly, understanding that they can in fact directly affect the relationship between the UK Government on the one hand and the devolved Administrations on the other. The repatriation of powers is crucial to that.

Perhaps the Minister can enlighten us, but an issue that has been largely ignored is that we are still unaware whether the Scottish Parliament, the Welsh Assembly and, hopefully—if it is there—the Northern Ireland Assembly can refuse to pass legislative consent Motions. Even if eventually that does not matter, in the initial stages it would seriously hold up the negotiations.

I want to concentrate my remarks on the relationships, which all the reports touch on, between the UK Government and the devolved Administrations, first with regard to the issue of Brexit. We have said that there is no Northern Ireland Executive to deal with the issue, but a Joint Ministerial Committee (EU Negotiations) has been set up. It is a good idea but does not seem to be doing an awful lot at the moment. The Constitution Committee's recommendations—for example, on ensuring that there are pre-meetings between the various devolved Administrations and the Government on the work programme, on ensuring there is a link with the proper negotiations in Brussels, and on the

timeliness of the JMC (EN)—would make it much more effective. At the moment I fear that it is nothing more than a talking shop, but it needs to be a committee with real powers and real teeth. That would be very important to the EU negotiations.

Happily, the Constitution Committee also talked about the importance of looking at the wider field of relationships between the devolved Administrations and the UK Government. Much has been said about the phrase “devolve and forget”. It is an absolutely apt phrase. I spent 10 years of my ministerial life dealing with territorial departments and their relationships with the UK Government. There is no doubt in my mind that Whitehall and Westminster generally did not take the devolved Administrations all that seriously after devolution; as my noble friend Lord Wigley said, if we think about what is happening in Spain and Catalonia at the moment, we know we do that at our peril. I am convinced that the Catalonia/Spain crisis could have been assuaged if there had been negotiation, debate and discussions between the central Government and the devolved Government to avoid what is happening there now and what is likely to happen in the days ahead.

I agree with the noble Lord, Lord Lexden, about the Government's response to the Constitution Committee on the work of the JMC. It was pretty hopeless, to be honest—a load of bureaucratic waffle. All the committee's suggestions on how to improve the workings of the JMC were ignored, but the Government did not give any reason for doing so. For example, the Government do not agree that the JMC should be put on a statutory footing. Why not? What is the problem with that? It would make it more effective and give it more teeth, which would be very useful. Not a word—they just did not agree with it, end of story. That is because they do not think enough about it or take it seriously enough.

What about the question of a Cabinet Minister responsible for devolution? “There's no point in having one. We'll have a junior Minister in the Cabinet Office dealing with that”. When I was Secretary of State for Wales on the second occasion, I was charged by Gordon Brown with the responsibility generally for devolution and the working of the JMC. So I suppose you can blame part of the problem on me in those years, but at least we tried. It meant that I went to Edinburgh and Belfast; even though my responsibilities were technically Welsh ones, I had the general responsibility of ensuring that these institutions at least met and had some meaning. So I think there should be a Cabinet Minister. It could be one of the three territorial Ministers, as it was in my case, or it could conceivably be the Lord Chancellor, as it sometimes was, but there should be a serious attempt by the Government to ensure that proper Cabinet ministerial responsibility is held on these issues, together with a Cabinet committee.

There should be an annual report to Parliament—in the House of Commons it should be delivered by the Prime Minister; here, by the Leader of the House of Lords—on the relationship between the devolved Administrations and the UK Government. We simply do not take this seriously enough and, I repeat, we do so at our peril.

It is not just about the current situation; it is about the exchange of best practice. If Scotland are looking after the health service in a certain way which is good, why cannot the health services in Northern Ireland, Wales and England benefit from that experience? Why cannot there be sub-committees of the joint ministerial committees which meet bilaterally on different issues? This really has not been thought about enough. I hope that one result of this deliberation and debate is that the Government will at least consider improving the way we structure our relationships governmentally in this country.

There is another organisation, of course. The British-Irish Council was set up by the Good Friday agreement to deal with the so-called strand 3 of the agreement: east-west relations. It is the only one that allows the British and Irish Governments to get together. Its counterpart, the British-Irish Parliamentary Assembly, which meets this weekend in Liverpool, is the only body that brings together parliamentarians from across these islands. Why cannot that be used to consider best practice and improve relations?

More than 10 million people live under the devolved Administrations in Wales, Scotland and Northern Ireland. Frankly, they deserve better, and perhaps the Minister can give us some hope that, in the weeks and months ahead, we can improve the situation—not least because of what is happening with Brexit.

7.11 pm

**Lord Selkirk of Douglas (Con):** My Lords, the speech just made is very interesting, because we are well aware that the devolution issues relating to Scotland, Wales and Northern Ireland are all quite different. The noble Lord, Lord Jay, led delegations from his Select Committee, on which I serve, and we went to each of the parliaments and saw very clearly not only that the issues are different but that we have a lot to learn from each other.

Tonight, I warmly welcome the noble Lord, Lord Duncan of Springbank. He is a very experienced parliamentarian from the European Parliament, and we very much look forward to his maiden speech—although I can think of few parliamentarians who have made more speeches before they make their maiden speech in this Chamber.

I served as an MSP for the first eight years, as did the noble and learned Lord, Lord Wallace of Tankerness, whom I vividly remember performing very effectively as Acting First Minister of Scotland when the Scottish Parliament met in Glasgow.

The Government and the opposition parties have been concentrating for months on how we can successfully undo the complex ties which bind us to the European Union. We know that there is still a long and winding parliamentary road ahead for us all to navigate, but while we discuss powers wielded by Henry VIII and the future jurisdiction—or more possibly non-jurisdiction—of the European Court of Justice, it is extremely important that we do not weaken the structure of our United Kingdom. I hope that the Minister will acknowledge this danger and assure us that the Government will do everything in their power to hold together what the Prime Minister has described as our “precious union”.

During the current Brexit process, this calls for an understanding of the sensitivity and hostility of the devolved Administrations to any unjustified retention by Westminster of power returned from the EU. It also requires a wholehearted commitment by representatives of the devolved institutions to engage in genuinely trying to reach agreements which benefit the whole United Kingdom.

The report *Brexit: Devolution* by the European Union Committee, of which I am a member, recognises the real danger which leaving the EU can pose to the somewhat piecemeal political structure and asymmetrical disposition of devolved power in these islands. It correctly concludes that our membership of the European Union has, as was said by the noble Lord, Lord Jay,

“been part of the glue holding the United Kingdom together since 1997”.

It continues:

“In practice, the UK internal market has been upheld by the rules of the EU internal market”.

It warns presciently that with Brexit comes,

“a risk that the complex overlapping competences within the UK could become increasingly unstable”.

Those statements come from pages 12 and 74 of the report.

The report cites the supremacy of EU law and its interpretation by the European Court of Justice as having ensured the consistency of regulations and standards across the whole United Kingdom. This includes devolved areas such as fishing, agriculture and the environment, whose future governance has already become a source of conflict between Westminster and the Scottish and Welsh Governments.

Clearly, it is a difficult balancing act to return power over those areas from Brussels directly to the devolved Governments while making sure that this does not result in a kind of economic balkanisation which damages the seamless working of the UK’s internal market, but this is surely a prime example of the need for the intergovernmental dialogue and co-operation which the report recommends. It must be improved, strengthened and made more transparent.

According to the report, most of the witnesses who gave evidence to the committee agreed that the United Kingdom Government needed to raise their game in this respect. It suggests that this could begin by making the present joint ministerial committees more effective by more preparation, a structured work programme and a willingness to accept that the Joint Ministerial Committee (EU Negotiations) is much more than a talking shop. The Constitution Committee, in its report *Inter-governmental Relations in the United Kingdom*, also acknowledges the need for improved lines of communication between the nations of the United Kingdom and calls for meetings of the joint ministerial committees to be given a higher profile, with more explanation of their work. The positive, well-thought-out recommendations of the noble Lord, Lord Norton, deserve to be given careful and serious consideration.

In their response to the EU Committee’s report, the Government insist that they have been clear from the

[LORD SELKIRK OF DOUGLAS]

start that the devolved Administrations should be fully engaged in the EU exit process. We can achieve far more,

“if we pull together than if we are divided”,

they say. Any post-Brexit changes, however,

“would be for the UK Parliament and where applicable the devolved legislatures to comment upon”.

It is hard to look beyond Brexit, but once our new political course is clearly set, we must take action to shore up our own union. One aspect of this was referred to the other day, when our Scottish leader Ruth Davidson criticised Britain for being too London-centric, calling for more jobs and cultural institutions to be located around the country, better to spread the benefits of the union.

The EU Committee report sees the need in the longer term for a strengthened forum for inter-parliamentary dialogue within the United Kingdom, and states that its resourcing and relationship with existing bodies such as the British-Irish Parliamentary Assembly needs careful consideration. It promises that this House will hope to play a part to begin with, by developing and broadening its well-established mechanisms for collaboration with colleagues in the devolved legislatures.

Can the Minister assure us that the Government will be sympathetic to all such aspirations and that they truly understand the need for more diversity, flexibility and transparency as we seek to strengthen and nurture our most precious union, now and in future?

7.19 pm

**Lord Bruce of Bennachie (LD):** My Lords, the mood of the House seems to confirm a long-held view of mine: that the UK needs a root-and-branch overhaul if it is to hold together. That is behind many of the speeches that we have heard.

The destructive forces of nationalism—British, Scottish and Irish—have divided us to such an extent that rational decision-making is becoming nearly impossible. A referendum that I recall was supposed to unite the Conservative Party has split that party and the country. The Tory party is now a faction containing two factions fighting like ferrets in a sack. Survival of the Conservative Party, whatever it costs the nation or the interests of the people, is the overriding and only glue that holds it together. If the Tory party does not split, the nation will.

The hope and belief for the EU for many people was that it would act as an umbrella to accommodate and moderate the forces of nationalism. To some extent, that was why the EU was created in the first place. The EU provided the common space to move forward the peace process in Ireland. For many years, the SNP sought to blunt the barb of separatism by calling for independence in Europe, thus reassuring unionist sentiment that we would still be in the same family, even if Scotland became independent. The question for us is whether Parliament can save the United Kingdom from the divisive, destructive forces of the Conservative Party.

Here is an irony. At this year’s election, the Tories fell back everywhere but in Scotland. The Scottish Conservatives have 12 MPs, distinguished sharply, at least by their leader, from the ultra-conservative Democratic Unionist Party within the current government arrangement. In my part of Scotland, the Conservatives had their biggest surge for decades. North-east Scotland appears now as the Tories’ biggest stronghold across the UK. They took six out of seven seats, including my former constituency of Gordon. Why was that? Quite simply, it was a reaction against the SNP and, perhaps particularly, its former leader Alex Salmond.

In 2015, when I retired as a local MP, my party the Liberal Democrats fought a strong campaign to retain the seat with our candidate, Christine Jardine, now the MP for Edinburgh West. Sadly, Edinburgh’s gain is Gordon’s loss. Gordon had voted by two to one on a nearly 90% turnout against independence. Yet only a few months later, they voted in the former leader of the SNP as their local representative. For that, I blame David Cameron. The day after the independence referendum, he called for English votes for English laws—EVEL. “Evil”—a very good name for it. He knew what he was doing: he was promoting the electoral chances of the SNP to defeat Labour in its former stronghold of Scotland and secure a Conservative majority. And it worked.

However, on his election, Alex Salmond interpreted the result as mandate to campaign for a second independence referendum, which was a total misjudgment. The majority of his constituents were outraged. I know that from the doorsteps. Mr Salmond seemed to think that the pathological dislike of the Tories that had characterised Scottish politics for years was irreversible. He accused Liberal Democrats and even Labour of betraying Scotland and effectively endorsing Tory rule. The irony is that Alex, who loved to coruscate the Tories and fellow travellers, gave them the oxygen they needed. Tory strength in the north-east of Scotland was largely achieved by Mr Salmond’s arrogant misjudgment of local people, and his party has paid the price.

So the Tory revival in Scotland is entirely due to its robust campaign to gather the anti-independence referendum forces behind its banner. I am not decrying that as a political expedient—and it worked. But it was certainly not an endorsement of the Brexit shambles now being stumbled through by Mrs May’s Government. I doubt if it was even support for the more attractive brand of social Conservatism espoused and promoted by Ruth Davidson. After all, as a cheerleader for Theresa May she faces a backlash in Scotland if the outcome is as disastrous for the will and interests of the people of Scotland, as now seems likely.

So what do we do now? The SNP Government are wrong to pursue the idea that somehow, Scotland, as part of the UK, can maintain membership of the single market, the currency union or even some kind of EEA arrangement. That is simply not politically or legally achievable. But they are right to join forces with others to fight for continued membership of those institutions, or the best possible access that we can achieve. In my view, they should challenge Ruth Davidson and the Scottish Conservatives to join with



them, and they should put Scottish Labour under pressure to do likewise, and make Jeremy Corbyn understand that, without a more constructive approach to Brexit, he will find it much harder to build a majority in any future election.

As a number of noble Lords have said, what has happened and is happening is piecemeal and full of anomalies and contradictions. These reports, as we would expect of reports of this House, are a constructive, useful and helpful contribution to the debate, even if they are somewhat belated in coming to the House. We have to assume, of course, that the key players who are making decisions are listening to this debate. If the devolved Administrations and a significant section of regional government in England—the noble Lord, Lord Desai, is right about that—see leaving the single market and the customs union as damaging and disturbing, do not the Government have a responsibility to explore how much of those we could remain connected to and what compromises would be worthwhile for that purpose? I look to the Minister in his maiden speech.

The problem I articulated at the beginning of my remarks is that it seems that the extreme Brexiteers want to break off all connections with the EU and float off into the mid-Atlantic, and will go ape at any suggestion of compromise—but without compromise there can by definition be no agreement. We know that huge sectors of British society and the economy want to maintain good links with the EU. We know that our financial services still want to serve the EU market. We know our universities and research institutions want continued co-operation. Student exchanges want to continue, and we want to collaborate on culture and the arts as well as intelligence and security—the list is almost endless. The noble Lord, Lord Murphy, mentioned the sheep sector and the rest of the agricultural sector. I am not sure whether noble Lords recognise that in the week after the EU referendum, exports of Scottish lamb to France fell by 80%. They recovered because there was nowhere else to get lamb from, but it tells you that the French will not buy Scottish lamb when we leave the EU, which will destroy our entire sheep sector.

Where is the leadership? The current devolution settlement is inherently unstable, and leaving the EU makes it more so. We need some kind of constitutional convention to explore the basis for a sustainable way of governing the United Kingdom and maintaining good relations with our neighbours. We need a clear statement of where power lies—at which level—and how disputes are resolved. There may well be justification for replacing the Barnett formula with a needs-based approach and a proper share of tax revenues and tax-raising powers, as long as it is not done in an inherently destabilising way.

I am a bit disappointed that the reports reject fairly quickly any form of English Parliament, arguing that England is too big. That fails to address the fact that English MPs and voters see no need for an English Parliament because they regard this Parliament as the English Parliament. That is not consistent with the devolution settlement that we have maintained. There is a good case to be made for devolution within England—I accept that. There is a good case for

devolution in Scotland, by the way, as it has been overcentralised under the SNP. But English regions should not be equated with the devolved Administrations; they do not have a historical identity.

Whether it is a Parliament or not, there needs to be an England-wide legislative forum, and we need to work out how we do that. Doing it piecemeal, as EVEL does, creates resentment, just as transferring decision-making to the devolved Administrations creates resentment in England. We need to acknowledge that. But is it not time to stop addressing legitimate concerns in ways that kick off more grievance, and to make a radical change through proper constitutional arrangements?

I would look for a federal constitution, recognising the status of England, clearly defining the powers for all components of the UK and guaranteeing the rights of local government and individual citizens. This issue is bigger than any one political party. No party can be trusted with this, and certainly not the Conservative Party. If we carry on in this incoherent, ad hoc fashion we will not just severely damage the UK's economic and political wellbeing and our standing in the world, which is already suffering; we will undermine the sustainability of the United Kingdom as a whole. It is time to think hard and long.

7.30 pm

**Baroness Wilcox (Con):** My Lords, I am pleased that I follow the noble Lord, Lord Bruce, because I was getting madly overexcited about the life ahead that I am going to have when we get out, have our go and enjoy ourselves. Listening to the noble Lord, I thought: “Gosh, what a dreary world he wants to live in”. I am glad to follow him because I think I can cheer him up.

I am a member of the EU Select Committee. I am delighted that the noble Lord, Lord Jay, was our chairman and the House has heard a wonderful speech from my noble friend Lord Lang. If I had to pick two men to get out there and run it for us, these two could make it very well. I am looking forward no end to hearing from the Minister, the noble Lord, Lord Duncan of Springbank, as he makes his maiden speech in the ministerial reply, which is unusual and different. I draw attention to the recent entry I have made in the register of interests as president of the National Consumer Federation. I have returned to representing consumer interests—work which brought me to this House some 20 years—this time doing so throughout the Brexit negotiations. This is an exciting and wonderful time for us to all work together.

Our report draws attention to the risks resulting from the complex, overlapping competences within the United Kingdom and the devolved regions, and the loss of the overarching EU legislative framework within which devolution has developed since 1997. As has been said, there is now an urgent need for a guiding strategy, or framework of principles, to ensure that devolution develops in a coherent and consistent manner, and to ensure that the devolution principles are underpinned by a clear and agreed framework of guiding principles. I seek assurance from the Minister, as did my noble friend Lord Lang and the noble Lord,

[BARONESS WILCOX]

Lord Desai, that these conclusions will be acted upon and that work will commence without delay to reform the Barnett formula.

Brexit provides many opportunities for the United Kingdom to regain control of our waters and to redevelop our fishing industry. Fisheries is a devolved policy but close co-ordination must be maintained if the United Kingdom is to achieve the future benefits that Brexit offers. The UK will assume control of 200 nautical miles and will soon be able to control access to them. Conversely, UK vessels will no longer have automatic access to EU waters. In the six to 12 nautical mile zone, those with historic rights to fish may retain their rights. Under the UN Convention on the Law of the Sea, the United Kingdom, as a coastal state, will need to sustainably manage fishing activities within our exclusive economic zone. It will be essential for the UK Government and devolved Administrations to work together to develop and implement fisheries policy after withdrawal from the EU. We will be required to co-operate with other coastal states to manage shared stocks. To achieve this, it is likely that some kind of quota system will be needed again to minimise the risk of overfishing. It is in all our interests for any agreements to be consistent throughout the British Isles and between the UK and our neighbouring states.

I ask the Government to implement strategies and effective mechanisms to ensure that the United Kingdom benefits fully from regaining control of all our fisheries. I also urge the Government to ensure that the inshore protection vessels start to be built now and that we look to control our waters with offshore vessels for the wider EZ. This request could equally be directed at other business sectors where interests are wider than a single devolved region.

As a long-term consumer champion who also has business interests, particularly in the small firm area, I have considerable interest in the need to maintain the integrity of the United Kingdom's internal market post Brexit. Consistent UK consumer rights and regulation are fundamental to an effectively operating UK market. These issues are common to all consumers, whether from Northern Ireland, Scotland, Wales or indeed the regions within England. After all, consumers contribute 65% of the UK's economy. Scotland trades about £50 billion per annum with the rest of the UK, for example, and much of that trade will be in consumer goods and services purchased in the three other UK nations. In meeting the challenges for devolution identified in our report, there is an opportunity for closer co-operation across the devolved regions for business and societal stakeholders. Working together, businesses and consumers have the potential to deliver an enhanced, thriving, internal market that in turn will act as a springboard for our global market ambitions.

It is certainly a challenge to transpose all the legislation built up over more than 40 years into UK law. Earlier this year the NCF held its congress to identify key messages for Government as we leave the European Union. Among the messages delivered by the congress was a call for current UK policy to protect consumers to be maintained and that, where there are gaps in domestic policy, protection should be enhanced and

strengthened, especially in relation to cross-border legislation such as e-commerce, health and passenger rights. Our people's safety is a priority; intelligence-sharing and systems of redress must continue to operate cross border. Our needs for protection and fairness are the same across all the UK.

As we transpose all the required legislation into UK law, I am concerned that lack of enforcement of the law could threaten businesses and consumers alike. All the changes we face could, without proper enforcement, provide opportunities to defraud the system and provide inadequate services to us all. As we proceed with Brexit, our ability to monitor consumer markets and enforce regulation, through trading standards and industry self-regulation across the nations of the UK, needs strengthening and improving.

In conclusion, I quote from our committee's report, *Brexit: Devolution*:

"Brexit will be a major constitutional change for the United Kingdom. Any attempt to use Brexit to make a power-grab, either to 're-reserve' powers previously devolved, or to claim more devolved powers, could compound instability: this is not the time to embark on controversial amendments to the devolution settlements ... The House of Lords Constitution Committee has concluded that hitherto 'there has been no guiding strategy or framework of principles to ensure that devolution develops in a coherent or consistent manner'. We agree. Brexit makes it more important than ever that a clear and agreed framework of principles should underpin any future reform of the devolution settlements".

It is vital that there is a well-managed, close co-operation between the UK Government and the regions on devolved matters and where consumer interests are involved. Stakeholders need to be directly engaged in the process and this can be facilitated only by our Government.

7.39 pm

**The Earl of Lindsay (Con):** My Lords, I welcome my noble friend Lord Duncan of Springbank and warmly congratulate him on his appointment to the Scotland Office. He brings very valuable experience to that role and to this House. His career has seen him working for the Scottish Refugee Council and the Scottish Fishermen's Federation and he knows the length and breadth of Scotland in considerable detail. He also brings a very timely experience to tonight's debate in that he has worked for the Scottish Parliament, which has seen him gain first-hand experience of the JMC in action.

I also thank my noble friend Lord Lang and the noble Lord, Lord Jay, for introducing their excellent reports. I would happily speak on all three reports but, for the sake of brevity, I want to focus on the issues raised in the report from the Constitution Committee on *Inter-governmental Relations in the United Kingdom*. In introducing it, my noble friend suggested that his report remains relevant and valid. Sadly, this is the case. It is very disappointing that in October 2017 intergovernmental relations within the United Kingdom remain as much of a concern requiring urgent attention as they were when the Constitution Committee published its report and recommendations in March 2015, two and a half years ago.

The disappointment is all the greater given that some months before the Constitution Committee published its report and recommendations in 2015, the

then Government had accepted a key recommendation on the importance of achieving better intergovernmental relations from the noble Lord, Lord Smith of Kelvin, which he issued when the Smith commission launched its report in 2014. The recommendation from the noble Lord, Lord Smith, was:

“Both Governments need to work together to create a more productive, robust, visible and transparent relationship. There also needs to be greater respect between them”.

The Government, in their response to the Smith commission, agreed with his call for greater intergovernmental co-operation and respect with the following statement:

“Effective inter-governmental working is essential to guarantee the best possible provision of services and representation for the people of the UK; a renewed commitment to build these relationships and explore better ways of working, as recommended by the Smith Commission Agreement, will require close collaboration between the UK Government and Devolved Administrations”.

The Government made that commitment nearly three years ago.

It has to be said that the recommendations of the noble Lord, Lord Smith, in 2014 and of the Constitution Committee in 2015 were not the first time that the Government had been told that the need for greater intergovernmental co-operation was a problem that needed to be urgently addressed. Five years earlier, in June 2009, a similarly urgent call for action was put to the Government by the Calman commission when it published its report and recommendations on Scottish devolution.

I was a member of the Calman commission, as was the noble and learned Lord, Lord Wallace of Tankerness. He and I both have particular reason to recall that the importance the Calman commission placed on both intergovernmental and interparliamentary co-operation was such that it became one of the longest chapters in our report and ran to 23 separate recommendations. I believe that it ran to something like 40 pages. We deliberately put it at the heart of the Calman commission report because we saw it as being such an important strand.

That call for action from the Calman commission was issued over eight years ago. The call for action from the noble Lord, Lord Smith of Kelvin, was made three years ago. The call for action from the Constitution Committee was made two and a half years ago. Here we are in late 2017, three calls for action later, still needing to see greater action and greater progress being sought and achieved. I am not suggesting that nothing has happened since 2009 to improve intergovernmental relations, nor am I underestimating the difficulty of strengthening co-operation when one of the parties involved is happy to see it frustrated. However, if you look at the timeline from Calman to today and the actual detail of the recommendations that were issued in 2009, 2014 and 2015, it is deeply disappointing that more progress has not been made. It echoes the lament of my noble friend Lord Lang that there seems to be no sense of urgency.

The message over eight years has remained constant and unambiguous—that the need for co-operation is compelling and that good intergovernmental relations, alongside the ability of different Governments and Parliaments to co-operate

and work together in a constructive and structured manner, are essential ingredients of a stable, devolved constitution. How can greater progress be achieved going forward and how can it be achieved without further delay? My noble friend suggested that we need a new attitude and a new mindset and I agree. I believe that we need a new focus, new energy and new determination.

The recommendations of the Calman commission and the Constitution Committee need to be dusted off and reviewed with a commitment to implementing a series of fresh measures. Many of the recommendations of Calman and the Constitution Committee are relatively modest or straightforward. Few require any legislation and all are practical and focused on delivering improved intergovernmental and interparliamentary relations. Therefore, the question is: where do we look for the much-needed new focus, energy and determination that need to be brought to bear? I was interested to hear my noble friend Lord Lang suggest that our noble friend on the Front Bench would bring a fresh eye to this. I completely agree. He is new to his role and intergovernmental relations are an important dimension of his ministerial responsibilities. As I said at the beginning, his career to date is very well suited to someone who wants to bring fresh energy to the intergovernmental sphere, as he has worked for the Scottish Parliament and seen the JMC in action.

Furthermore, those noble Lords who know my noble friend know that he does not lack focus, energy or determination. Therefore, I very much hope that when he sums up, he will set out not only the Government's commitment to the early delivery of further measures designed to improve intergovernmental relations across the United Kingdom but also his own commitment as a Minister with Scottish and Welsh responsibilities to ensure that rapid progress is made.

7.47 pm

**Baroness Randerson (LD):** My Lords, I thank the committees for their excellent reports that provide a very thorough background, albeit some of it is almost historic as they have been in existence for so long before we debate them.

The noble Lord, Lord Lang, emphasised the lack of care and involvement of the UK Government in constitutional affairs and said that we must stop taking the union for granted. This Government have at best a chaotic attitude to constitutional change. In fact, for decades Governments have been less than systematic in their approach to the devolved Administrations and to the process of constitutional change as a whole. Of course, the current Government have their eyes, hours and funding all fixed on Brexit. However, Brexit itself fundamentally shakes the foundation of the union. It does so most noisily in the case of Scotland. These arguments have been well rehearsed here today. However, the impact in Northern Ireland, which has received less attention today, is massive and potentially tragic, and it is overwhelmingly ignored in England in my experience. Over the summer I had discussions with senior figures in Irish politics. They see no realistic practical solution to the border issue which observes both the spirit and the letter of the Belfast agreement.

[BARONESS RANDEKSON]

I do not need to spell out to noble Lords here today that that has huge implications for politics in Northern Ireland.

However, I want to concentrate on Wales, which, as usual, has received less focus today than Scotland, despite the efforts of, among others, the noble Lord, Lord Murphy. The noble Lord, Lord Jay, set out clearly the situation in relation to EU powers on, for example, agriculture and the environment and their importance to the devolved Administrations.

I do not always agree with the First Minister of Wales but I certainly always agree with his right to be at the table and his right to be heard. In his response to the EU Committee's report, he emphasised that the Welsh Government have repeatedly but vainly tried to engage with the UK Government. Indeed, they put forward their own policy paper on Brexit and devolution, and I recommend it to those noble Lords who have not yet had a chance to read it. That paper emphasises that the National Assembly for Wales is now the principal law-making body for Wales in most matters that affect people's daily lives; for example—it is a long list—health, education, training, housing, the environment, economic development, local government, transport, planning, agriculture, fisheries, culture, sport and recreation. Several of those powers—for example, those relating to the environment, agriculture, fisheries and economic development—are exercised specifically according to the framework of EU law.

This Parliament retains the power to legislate on any matter for Wales, as it does for the rest of the UK, but, according to the Sewel convention, which several noble Lords have mentioned today, Parliament will not normally legislate for Wales on matters within the legislative competence of the National Assembly for Wales unless the Assembly has given its formal consent through a legislative consent Motion. That Sewel convention has been observed throughout the history of devolution.

The Welsh Government also have their own direct relationship with the EU, as does the Welsh Assembly—for example, on the administration and strategic direction of structural funds and on implementing the common agricultural policy. They also contribute to European Councils, which Welsh, Scottish and Northern Ireland Ministers attend. I did so myself when I was a Minister in the Welsh Government. It is not surprising, therefore, that the Welsh Government take strong issue with key sections of the Government's response to the EU Committee's report.

I agree with those noble Lords who raised the Barnett formula. Some welcome progress was made on this issue during the coalition Government and more recently in the Wales Act 2017, but then a bomb was placed under it through the deal with the DUP to keep the Conservative Government in power. However the additional billions are channelled to Northern Ireland, you cannot escape the fact that that deal upsets the uneasy balance that the Barnett formula represents.

The Welsh Government's paper proposes, for example, replacing the JMC with a new UK council of Ministers to take forward negotiations, reach binding decisions and resolve disputes. My experience of the JMC is

that it is not the most productive and effective of organisations, and that experience predates the point at which Brexit became such a divisive issue. As my noble and learned friend Lord Wallace pointed out, the JMC body established by the UK Government specifically to deal with Brexit has not met since early February, despite repeated calls by both the Welsh and Scottish Governments for it to do so. By any measure, the UK Government are clearly not even pretending to take that process seriously. Noble Lords could draw the conclusion that the Government are simply frightened of meeting the devolved Governments because they have no answers to the constitutional issues they raise.

I am also informed—I would be interested in the Minister's comments on this—that there has been a total lack of consultation on the series of position papers issued by the UK Government over the summer, even when those papers dealt with devolved issues. The Welsh Government apparently received less than 24 hours' notice that they were even being published.

The Government's response represents the status quo on EU policy-making. It says:

“The UK Government is responsible for ensuring that the internal market within the UK operates freely and openly ... The powers currently held by the EU that provide that guarantee on the internal market are not, and never have been, within the competence of the devolved administrations”.

However, in relation to devolved powers, such as on agriculture, the UK Government have in practice been formulating their responses in agreement with the devolved Governments. I repeat that those responses to European powers have been made with the agreement of the devolved Governments.

In respect of Wales, the government response talks specifically about the,

“opportunity to redesign our policies to make them work for us”—

the “us” being apparently the UK Government. It applies this approach to agriculture, which is of course a devolved issue. It talks about replacing structural fund programmes with a new fund, but those structural fund programmes are entirely devolved to the Welsh Government. Taking those comments along with the lack of a sunset provision on the powers that the UK Government intend to repatriate from the EU to themselves, is it a surprise that when the Government say to us, “Trust us. We'll bring back these powers from the EU but we'll pass them on to the devolved Administrations in due course”, so many of us simply do not trust them and suspect that this is a simple power grab by the UK Government? I remember when debating the Wales Bill having time and again to argue against the centralisation of powers.

Brexit threatens to destabilise our already shaky union. Northern Ireland poses an impossible conundrum and upsets the relationship with one of our closest neighbours—the Republic of Ireland. Northern Ireland is nowhere near as settled as it looks from this side of the water. Wales already resents the disdain with which its problems are treated by the UK Government. Recent events in Catalonia should warn the Government to take nothing for granted in Scotland. The Government must wake up and smell the constitutional coffee. They simply must engage fully with the devolved

Administrations and recognise that they have to go forward with the express consent of the devolved Administrations.

I look forward to the Minister's response and I welcome him to this Chamber. As someone who previously spoke from that place for the Wales Office, I shall be particularly interested in what he has to say in relation to Wales, but I hope that he finds his job enjoyable and fulfilling. In the long term, our untidy, lopsided devolution settlement becomes less and less sustainable and acceptable. I urge the Government to listen to those pressing for the establishment of a constitutional convention, to engage with civil society as well as politicians, and to restore respect within the union.

8 pm

**Lord McAvoy (Lab):** My Lords, I begin by adding my thanks to the members of the Constitution Committee and the European Union Committee for their work in producing these excellent reports. In introducing his committee's report, the noble Lord, Lord Lang of Monkton, displayed the intellect and experience he has shown throughout the years of his ministerial career. His dissection of the SNP's record in government goes a long way to explaining, perhaps, his attitude. Perhaps, though, he was in danger of re-running the devolution battle and vote as he showed us his long-standing and genuine concern about the possible eventual road from devolution to separation. We must all work together to make sure that that does not happen. Support for the union has been common throughout the Chamber—in varying degrees, at times—and I add my support to that.

I welcome the noble Lord, Lord Duncan of Springbank, to his post. He follows an extremely distinguished predecessor in the noble Lord, Lord Dunlop, who raised the bar very high and gained the support of this side of the House on many occasions with his attitude and ability. We wish the noble Lord, Lord Duncan of Springbank, well in his new post.

The reports before the House on the union and intergovernmental relations focus on the United Kingdom's inner workings: how we work together and how we work as one. We are, as the committee expressed, a union by consent, and our political settlement is unique to our United Kingdom. I am a very firm supporter of the union, but it is over 300 years old and we cannot say that it should not evolve, devolve or change in any way—things have got to change in the light of experience and reality. But for as long as the union is there, it will have our full support.

The Constitution Committee outlined the strengths of the union and the risks to it in the context of Brexit. As has been stated before, it is striking that these first two reports were written before the vote on 23 June 2016. The issues raised over the stability of the union, the need for a blueprint for the future and the shortfalls of the joint ministerial committee have a new context and increased urgency in the light of the current EU negotiations.

It was interesting to hear positive support for Brexit from—what is her name?—the noble Baroness, Lady Wilcox. I remember her well as a Minister and so should not have forgotten her name; my apologies.

The stability of our union requires careful management of the balance between unity and diversity. This is a mainstay of the report's conclusions. Brexit is an acute test, and an opportunity, for this. Getting Brexit right for the United Kingdom means getting it right in Northern Ireland, Wales, back home in Scotland and, as my noble friend Lord Desai mentioned previously, here in England too.

The European Union Committee report summarises the political complexities that are the backdrop to these negotiations: the Scottish independence question, which was a threat to the union; the very real concern of colleagues in the Welsh Government that Wales will be overlooked, which has also been expressed here by colleagues from Wales; and the lack of a functioning power-sharing Executive in Northern Ireland, as so expertly diagnosed and commented on by my noble friend Lord Murphy of Torfaen. It has been six months since an Executive were in place in Northern Ireland. The Government have supported multiple rounds of negotiations, which have failed to return devolved government to the people of Northern Ireland. With what new conviction and what level of involvement will the Prime Minister of the United Kingdom approach the current round of talks to ensure that the outcome is different?

The Secretary of State for Exiting the European Union is currently engaged in the first round of negotiations in Brussels, which include the stark issue of the Irish border. I am impressed and pleased by the unity around the Chamber on the unique position of Northern Ireland as part of our United Kingdom. We all need to work hard to make sure that we come up with a sensible, practical solution that we can implement to assuage the fears expressed by that part of the United Kingdom. We commend the agreement there has been on all sides on the importance of retaining an open border and the Government's stated commitment to the Good Friday agreement in their duty as co-guarantor. But—and I am not trying to gain party-political advantage here—this is the second set of negotiations in which the Government have achieved far too little. It is imperative that the Northern Irish parties are properly consulted and engaged with as we grapple with the future of this shared UK-EU border.

The joint ministerial committee has been mentioned a lot, and I was especially impressed by what the noble Lord, Lord Norton of Louth, said—he will be pleased that I managed to say his name without stuttering this time. He stressed the importance of the mechanics of government that would make sure this co-operation is extended. The reports detail the strengths and shortcomings of the joint ministerial committee. Concerns have been expressed a few times around grandstanding and time limits, but the report also recognises the strength of these formal channels in bolstering informal communication between Governments. It is difficult to say how well the Joint Ministerial Committee (EU Negotiations) has been working this year, since it has not met since February.

The Labour Party took seriously the committee's recommendation that the Government should consider setting the JMC out in statute, which has been mentioned tonight by a number of noble Lords. We supported amendments during the notification of the withdrawal

[LORD McAVOY]

Act which would have built consultation with the devolved Administrations formally, in statute, into the Brexit process. Rather than this structured blueprint on how to move forward, the Government opted instead for no blueprint. Can the Minister tell the House with what frequency and through what mechanisms the devolved Administrations have been consulted in lieu of the JMC meeting?

The reports powerfully raise the issue of shared and overlapping competencies between the UK Government and devolved powers, with the EU Committee's report setting out the new landscape we have to navigate. We take the point of view that these are not problems to destroy things but opportunities to come to new agreements and co-operation for the good of the people we all represent. It has been mentioned often tonight that as powers are repatriated to the UK from the EU, the EU frameworks that standardised, for example, the UK's single market, will no longer be applicable. The number of varying competencies that overlap between devolved and central jurisdictions will increase. If ever there was a moment for a thought-out blueprint on UK governmental relations moving forwards, it is now.

Genuine fears have been expressed on all sides of the House that the withdrawal Bill brought forward by the Government fails to achieve this. There are concerns that it represents a sweeping power grab by Ministers at the expense of the sovereignty of this Parliament, and undermines the United Kingdom's devolution settlements. We all have the responsibility to make devolution work—the United Kingdom Parliament and the devolved Administrations—because we all represent people. I take the point of view that we are all trying our best to do that. But in our opinion, it requires slightly more determination to consult with the devolved Administrations and come to practical agreements with them.

Labour has tabled an amendment to remove the proposed restrictions on the ability of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly to legislate on these devolved matters. Your Lordships' House will be aware that the Welsh and Scottish Governments have already worked together to publish a series of amendments on devolved issues in the Bill. It is not a case of accepting willy-nilly what anyone else says: these are serious people bringing forward serious suggestions and they should be looked at seriously for the future of the United Kingdom.

With regard to future working, in the coming years the Government will have to work closely with the devolved Administrations. Devolution is here to stay, but we need to secure a post-referendum settlement for the UK. I suggest that the Bill is not the best way to begin that process. What is the Government's vision for the future devolution settlement in the United Kingdom? What thought has been given to establishing structures to be put in place so that the common frameworks that the UK as a whole needs to thrive can be consulted, agreed and legislated on?

I raise a final point about the Civil Service expertise that was also recently raised in the excellent paper on British-Irish relations. Different departments work with the devolved Administrations to differing degrees, as

has been mentioned tonight. As the committee expressed, there are differing levels of success. But as officials work through repatriated powers and changes to policies in the coming years, it is incredibly important that they understand the significance of a policy for the people on the Isle of Barra as well as in Birmingham, for example. Can the Minister tell the House what the Government are doing to ensure that expertise about the devolved jurisdictions is widespread through the Civil Service?

We take the point of view that the union need not be threatened or jeopardised by devolution. The facts of life in Scotland are that the Labour Party was elected on a mandate in 1997 to hold a referendum. The Scottish people voted quite overwhelmingly for that. That is their expectation and that is their demand. The demand on all of us is to make sure that it works.

8.12 pm

**The Parliamentary Under-Secretary of State, Scotland Office (Lord Duncan of Springbank) (Con) (Maiden Speech):** My Lords, this is the first time I speak in your Lordships' House. The phrase "baptism of fire" probably springs to mind. This is indeed one of the most challenging issues that we will face as a country and as constituent parts of that country. But before I go on to that, if I may, this is also my maiden speech so I hope noble Lords will indulge me for a moment before I return to the business in hand.

I come to the House from another place, not along the Corridor, as many have done—not for want of effort on my part, I hasten to add—but from over the channel, from Brussels and the European Parliament. I represented Scotland, the largest and many would say the best constituency in the European Union. I learned a great deal from watching how that chamber works. Some things worked well and some things did not. I suspect we will be able to look again at how things are developing there with some interest as the Brexit process goes on.

Just as Charles de Gaulle lamented the challenge of governing a land of 246 cheeses, the challenge is all the greater trying to represent a land of 118 distilleries, as Scotland has. However, the tour is slightly more invigorating than the tour of cheese production in France. I had hoped to bring to this House some experience of events in Brussels and Edinburgh, but given the extraordinary collection of talent on the Benches on both sides, from former Commissioners and ambassadors to distinguished former MEPs, frankly, I just hope to keep up. I recognise that there is a wealth of experience in the debate today, and I hope to try to respond to some of that.

When the Garter Principal King of Arms asked me to consider which place name I would take as my title, I asked, somewhat tongue in cheek, whether I could take Brussels. He smiled benignly, as is his wont, and explained only if I could claim to have achieved a great military victory there. I fear my success on the non-road mobile machinery directive was perhaps not quite qualification enough. Instead, I chose Springbank in the county of Perth. My grandparents moved to the newly constructed council scheme of Springbank Road in the town of Alyth in 1934. They came from a mill cottage with an earthen floor. My mother was born

there in 1936 on the kitchen table, as she would often tell me, and thank goodness for Formica. Upon marriage, my father moved into the same house and it was there that my brother and sister were born. Indeed, for the first few years of their marriage that is where they lived, alongside my grandparents and their other son. My parents' first home of their own was also in the same council scheme. My grandparents lived their whole life in Springbank Road, as did my mother, who passed away only a few years ago. I am the third generation to hail from Springbank and I believe that it is appropriate to take that as my title. I also again commend the notion of council housing, which I believe we are once again looking to improve. It is significant and important and I commend it.

Before I move on to the substantive elements of the debate, I should give my thanks to my noble friends Lord McInnes of Kilwinning and Lady Goldie for guiding me so expertly through my introduction here only a few weeks ago. I have to admit that it was the most nerve-racking experience of my parliamentary career and I would not want to go through it again. None the less, it was an extraordinary thing to find myself here among noble Lords. I also thank the doorkeepers who have guided me more than once up different corridors and helped me to locate toilets, which are not well publicised, in different parts of the building. I thank again the clerks who have guided me through various other elements of my work and my ministerial colleagues who have guided me in so many of the elements of what I am about to speak of today. They have all shown me great kindness and I appreciate that a great deal. It is a privilege to be here.

Perhaps I may turn to today's business. Let me begin by commending the approach of my noble friend Lord Selkirk: the union is precious and there is no question about that. Throughout the debate we have heard many noble Lords speaking of that very precious union. Indeed, as my noble friend Lord Lang of Monkton began the debate, he recognised that we must not take this union for granted. We had a close shave not so many years ago, and again the noble Lord, Lord McAvoy, was very kind to point out how we worked together to try to move forward and recognise the challenges faced at that difficult time.

I shall start by addressing head-on the point made by my noble friend Lord Lang. There was a delay in the response to this paper; that is not appropriate and it will not happen again. We must make sure that we address these challenges in good time and we cannot take for granted that time will be given to us to make sure that that happens. It is also important to stress the attitude of this Government, which is to ensure that both the Brexit process and the devolution process work together. A number of noble Lords pointed out the challenge of the piecemeal approach we have adopted to our constitutional evolution, and indeed some of those changes have not always been in the best interests of the entire union. Some have been made in haste and some, I suspect, we regret and would revisit were we to have an opportunity to do so. The challenge with devolution as we understand it is that it is a ratchet that moves in only one direction. The problem is that if we do not get it right the first time, it unfortunately moves on too fast to change it around.

The joint ministerial committees were mentioned a number of times by several noble Lords, including my noble friends Lord Lang and Lord Dunlop, and the noble and learned Lord, Lord Wallace of Tankerness. I was a clerk in the Scottish Parliament in the early days of the joint ministerial committees and I can assure noble Lords that they were not working well then—long before we had the situation of Brexit and long before we had embraced many aspects of devolution. There were a number of reasons for that. I think that to some degree everyone expected different things from those committees and everyone was slightly disappointed by not getting what they wanted out of them. Let me answer some of the other questions which have been raised. How often have the joint ministerial committees met this year? Not enough—they must meet more often. The times we face now are a challenge and we must embrace that by doing so together, using these committees to help us take the steps forward; of that I am in no doubt whatever. But I should also stress that although these committees have not met as often as perhaps all would have wished, to some degree there were extenuating circumstances such as the election and other elements. None the less, we need to do better.

However, I would also say that the bilateral discussions have been significant and important at all stages of the process. The noble Lord, Lord McAvoy, was right to point out that we are well served by a Civil Service that is able to continue to collaborate even when politicians cannot always quite find themselves at the same table facing each other in the same direction. For example, in rural affairs, over the past few months of the summer period there have been more than 50 face-to-face meetings to discuss each of the aspects of Brexit as they impact on the rural affairs agenda, and that is not without significance. Again, it is important that we are as open as we can be. The UK Government are committed to being as open as they can and have been so throughout the process. Part of the challenge, however, is that we have not always been able to secure from the others participating the same level of openness, and that in itself can be a challenge. The consent aspect has to work both ways. There needs to be collaboration from both sides; it cannot just be all give on one side and all take on the other. It is important that we recognise that.

Perhaps I may go into a little more of the detail. Again, I am fearful that I will not be able to do justice to the sheer range and depth of knowledge and expertise that noble Lords have displayed today. Perhaps I may take a moment to say that, as someone who sat in the European Parliament for a number of years, I have probably experienced more serious debate and insight in the past few hours here than was often the case in some of the debates I witnessed there. First, I turn to the reports themselves. There are elements that we must look at in trying to address how we consider the devolution settlement. It is easy to look on it as unfinished business, but the question is: what would finish that business? How shall we bring together each of the constituent parts to create what needs to be a functioning constitution? We cannot simply keep feeding the crocodile and hope that it will eat us last. There needs to be a recognition

[LORD DUNCAN OF SPRINGBANK]

of what we are for. What is our country and what shall be our constitutional settlement? We need also to recognise that each constituent part must play its role in that. We do that against the backdrop of Brexit, which makes the whole process considerably more difficult in terms of trying to achieve progress. However, I am well aware that we have to achieve that progress because without it we will be in a terrible situation.

The noble Lord, Lord Jay, made a significant contribution to the discussion today. I am under no illusion about some of the challenges the noble Lord has presented to the Government. What I would say as a former Member of the European Parliament is that there is a challenge in how the *acquis communautaire* functions, how the frameworks within which we exist today have been constructed and how the devolution settlement itself embraced those frameworks. It is true to say that when we witnessed the changes in Brussels, as we have done over the years, they have been negotiated by the United Kingdom with the involvement of the home nations; none the less, the devolution frameworks were established within an established European framework. That was the glue, as the noble Lord rightly put it, but none the less it was there. That is why the Government have no ambition to change in any fashion the powers currently exercised by the devolved Administrations. What we have to do is work out where the frameworks need to be functional. At the moment there are 111 areas in the Scottish legal world and 64 in the Welsh where again, we hope to collaborate to establish exactly where we can find a common framework, a common approach and the right outcome.

We have no ambition to retain powers that we do not need and do not deserve to hold. We must recognise that the devolution settlement is fixed; we will do so, but we must also recognise that on day 1 after Brexit, each element of our procedures must be legally sound. We can take no risk of there being an upset, stumble or breakdown, and we should take time to echo the points made by so many of my colleagues on these Benches. We must take time to ensure that we get the frameworks settled and sorted and workable. If we get them wrong, we will live to regret it. One problem we face now is that that day is fast approaching, so we need to make sure that on day 1 we have a legally sound system, but that we work out how, as a common people of different nations, we will come together and pull in that direction.

The noble Lord, Lord Desai, is quite right. England can often be overlooked and it is one of the great challenges that we sit in what many people consider to be one of the Chambers of the English Parliament—and yet, the very nation of England itself can often be overlooked in the wider sense of the word. That is a great pity, and we need to recognise that as each of the other home nations pushes for particular changes to the wider constitutional settlement. I served as a clerk on the committee when my noble and learned friend Lord Wallace of Tankerness was in the Scottish Parliament—not that long ago, it seems, but here we have arrived, apparently for greater things.

**Lord Wallace of Tankerness (LD):** You may think so.

**Lord Duncan of Springbank:** Well, we are certainly moving in the right direction.

I am aware that we face serious challenges in working out each of the component parts of the overall settlement. I am particularly concerned about the devolution settlement and the replacement for the structural funds and the common agricultural policy, to which reference was made. The Government have given a commitment to 2022. In truth, that is one year more than we would have been able to offer to the wider Welsh, Northern Irish and Scottish farmers and others. That is a year more than we would have had if we had stayed in the EU. We are giving a greater degree of certainty. Each of those elements is up for significant change.

When I met the Commissioner for Agriculture in Brussels not so long ago, he talked about the fact that the overall sum of money given to farmers will be significantly reduced in certain areas and that farmers will have to tackle that. As a Government, we are committed to 2022 and we will see how we can reform and move forward at that point; but there is still no desire, I hasten to add, to seek powers being drawn back from those Administrations—none at all. It is about trying to recognise where we can work together. To give some examples—I am aware we are often accused of not explaining where those examples may rest—we are currently focusing on the wider question of pesticides. We are conscious of the food and feed law for animals, but we need a common approach. We are aware of the food labelling issue because, as we begin to look at some of the geographical indicators—I was in the Western Isles not so long ago, breakfasting on Stornoway black pudding, a feast of kings—we need to recognise that we need a common approach across the United Kingdom. The final example is infectious diseases—which is more fun to talk about than look into, I hasten to add.

We face challenges in establishing what the frameworks need to look like. We need collaboration, and that is where the joint ministerial committees will work. It is at such gatherings that officials will sit down and work, because in truth, many of these issues are almost above our pay grade. They are at the level of detail where we need to understand how the law comes together with practical and policy issues. That can be something of a challenge.

The noble Lord, Lord Wigley, is right to point out the issue of Catalonia. We cannot see such issues being resolved with bloodshed on the continent of Europe. I absolutely agree. I am also fully aware that the Edinburgh agreement, which was brokered between the Government of the United Kingdom and the Scottish Government, is a template for how other nations may embrace the demographic and democratic challenges presented by independence movements. It is a model that many people across Europe should be looking at.

I hope the Welsh football team are doing rather well right now—I am sure the noble Lord, Lord Wigley, is as interested in the outcome of that match as I am—but at the same time, he is right to talk about multiple geometry. Much of our situation today is about the asymmetry of our land. We do not face, as the US does, a number of small, medium-sized and large states all mixed together. We have such asymmetry



and we need to recognise that. That may be part of the challenge when we start looking at the JMC. How do we contain within the JMC the correct structures to reflect the fact that—as the noble Lord, Lord Desai, pointed out—England is just bigger? How do we recognise that asymmetry, but none the less recognise the obligations we have to the home nations to reflect on the wider settlement of our constitution? It is not as easy as I would like to think.

My predecessor, the noble Lord, Lord Dunlop, has been very kind to me during my time finding my feet. I have not yet witnessed the tartan hippo, although I have witnessed many other tartan animals, if I may be a little unkind. A challenge in trying to do one's job is embracing social media—it is not always full of laughter, it is fair to say.

It is important to stress that there is an existential threat to our nation. There is no question of that. One thing I would note in passing is that there are far too few nationalists in here. There needs to be more. That seems an odd thing, perhaps, for a unionist to say, but if we are to reflect the wider interests of our country, we must recognise that those voices need to be heard in both Chambers, not just in the House of Commons. That is perhaps not for me to create, but for others to look into; none the less, at this time, more than any other, we need those voices as part of the overall discussion that we are looking into.

Some of the aspects which my noble friend Lord Dunlop was kind enough to point out need to be addressed at the technical level. There are technical deficiencies. There are some issues around subsidiarity which we need to look at and then work out how best to do the job. Certainly in the Scottish situation devolution need not rest in Edinburgh, any more than in Wales and Northern Ireland it need rest in Cardiff or in Belfast. We need to recognise where power needs to be exercised. That is the European concept of subsidiarity. We need to recognise where it works even within the United Kingdom itself. If we can do that, we have a fighting chance of ensuring that our union continues. As someone who comes from outside the central belt of Scotland, I am very conscious that there is a great lament that overcentralisation to Edinburgh can be a huge problem, yet it needs to be addressed.

My noble friend Lord Lexden is quite right that some of the issues that we are talking of are worthy of note. The long delays in responding are unacceptable, and I am happy to confirm that we will not be moving in that direction again. We will move to address that.

“Devolve and forget” is not a concept that I wish to see go forward. We cannot simply hope to push things away, particularly during the Brexit process.

I am conscious that I have several other Members to respond to. Let me make one commitment: if I do not address their questions this evening, I ask them to hunt me down and I will come back to them. I do not wish them to feel that they have been short-changed because I have seemingly glossed over their points.

In the latter moments of my speech, I need to stress Northern Ireland. That will be one of the intractable aspects of the overall Brexit situation. It is equally a challenge within the wider devolution question. I assure noble Lords that James Brokenshire, the Secretary of

State, is working very hard, but we have to recognise that the challenge need not rest solely with those inside the would-be Executive or Assembly; it is at all levels within Northern Ireland. They must also be part of the wider question of devolution and Brexit.

How do I finish off without short-changing other noble Lords who have spoken? Many of your Lordships have raised important issues. We need to recognise that the EU has provided the constitutional glue within which we as a Parliament have been able to operate, but we must also recognise that because of the approach that we have taken—by holding a referendum—that glue will not be as available to us to hold these things together. We must find another glue, something else that works for us as a people but also as a country. I hope that we can do so.

I am fully aware of how challenging Brexit will be, but I assure your Lordships that, in so far as I can, I will respond to any and all entreaties to co-operate and to collaborate. We will do all that we can to ensure that there is serious dialogue on all aspects, not just with MSPs and AMs but with councillors as well, to make sure that all are part of the process. This is an important time and we cannot get it wrong, because the ratchet is turning in only one direction. If we are not careful, we will turn it too tight and, as with winding up those old-fashioned clocks, the whole thing will unravel in our hands.

I again thank your Lordships for your forbearance and kindness in listening to my remarks. I assure you that I will do all I can to take forward the issues that we have discussed today in a timely, sensitive and careful manner.

8.33 pm

**Lord Lang of Monkton (Con):** My Lords, it is well known that maiden speeches are conducted in a warm glow of charm, courtesy and sympathy but also of trepidation, not just on the part of the maiden speaker but in the minds of those who must welcome them and anticipate the brilliance that they are about to face and of those who have to speak afterwards. This evening, we have heard a quite exceptional, indeed outstanding, maiden speech. I think that the whole House will recognise that.

I did a little homework during the gap in the middle of the debate on the background of the noble Lord, Lord Duncan. I discovered that he had received a first-class honours degree in geology from Bristol University and a doctorate in palaeontology from St Andrews University—I think that I have those the wrong way round. He later lectured at Bristol University and in the meantime went to the Smithsonian Institution in Washington and spent some time at Harvard University. He then took up a business career in various spheres and eventually became a Member of the European Parliament in 2014, where he fulfilled major roles in the fields of energy and environment and had the praise of his colleagues heaped upon him—as is evident from the little research that I did.

It is therefore slightly less of a surprise that he has made such a brilliant start to his career, but I think the widespread mastery that he has clearly developed over the years in many spheres will stand him and this

[LORD LANG OF MONKTON]

House in good stead. His speech was eloquent, knowledgeable, masterly and stylish and the House will look forward to hearing from him again.

This is not the time to rerun the debate and I certainly do not intend to do so. The hour is getting on and it is appropriate that I simply thank all those who have taken part. It is quite difficult to knit together debates on reports from two separate Select Committees on slightly different themes, but the truth is that I believe the themes knitted together extraordinarily well in the event. There was a sort of harmony among almost all speakers as to the method and the means by which the committees had sought to convey to government the need for action and a positive response. There was also a harmony in the disappointment expressed by many speakers that that response has not been forthcoming sooner, but I hope that the debate we have had today will convey to the Government, through the good offices of the Minister, that we are not happy that devolution is being treated in the way it is, and that intergovernmental relations within the United Kingdom, between this Parliament and the other Parliaments, are not being treated as well as they should be. I know a lot of efforts have been made and some success has been achieved, but there are still deep-rooted problems. The Minister has

clearly recognised this, so I simply end by asking him to pass on our concerns, as I know he will, to others. I beg to move.

*Motion agreed.*

### **Brexit: Devolution (EU Committee Report)**

*Motion to Take Note*

8.36 pm

*Moved by Lord Jay of Ewelme*

That this House takes note of the Report from the European Union Committee *Brexit: devolution* (4th Report, HL Paper 9).

**Lord Jay of Ewelme (CB):** My Lords, I join the noble Lord, Lord Lang, in thanking those who have spoken in the debate, particularly those who have focused on Brexit and devolution. I also join him in congratulating the Minister on his reply. On the substance and the form of his reply, that was quite a maiden speech—and as the Minister said, thank goodness for Formica. I beg to move.

*Motion agreed.*

*House adjourned at 8.37 pm.*