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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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House of Lords

Tuesday 16 January 2018

2.30 pm

Prayers—read by the Lord Bishop of Durham.

Death of a Member: Baroness Nicol *Announcement*

2.36 pm

The Lord Speaker (Lord Fowler): My Lords, I regret to inform the House of the death of the noble Baroness, Lady Nicol, on 15 January. On behalf of the House, I extend our condolences to the noble Baroness's family and her friends.

Personal Statement

2.37 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, on 21 December 2017, in response to a Question asked by the noble Lord, Lord Beecham, I gave information to the House regarding expenditure at Her Majesty's Prison Liverpool. I advised that there had been no expenditure on cell accommodation since 1994. Further inquiry has disclosed that this was incorrect and that money has been spent on the maintenance of cells at Her Majesty's Prison Liverpool during this time. Although the information I provided was to the best of my knowledge accurate, I regret that it was not so, and I apologise to the House. I will write to the noble Lord, Lord Beecham, and all noble Lords who asked supplementary questions to clarify the position in more detail, and I will place a copy of that letter in the Library of the House.

Women: Political and Public Office *Question*

2.37 pm

Asked by Baroness Gale

To ask Her Majesty's Government what measures they are taking to encourage women to stand for political and public office.

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, this year marks a century since women have been able to stand as parliamentary candidates and the Government will mark 2018 with grants to initiatives that encourage women to participate in democratic life via the centenary fund. We are also commissioning evidence to understand how to remove the barriers to participation.

Baroness Gale (Lab): I thank the Minister for her reply. As she said, it is the centenary of some women getting the vote. During the past 100 years, 489 women have been elected to the House of Commons as opposed to 4,801 men. The United Kingdom ranks at just 39th globally for women's representation in Parliament. Does the Minister agree that our elected institutions should look like the people they represent? To achieve

this, will she take the advice of the Women and Equalities Committee that the Government should set a domestic target of 45% representation of women in Parliament and in local government by 2030 in response to indicator 5.5 of the United Nations sustainable development goals, because the present situation really needs to be improved?

Baroness Williams of Trafford: I wholeheartedly agree with the noble Baroness that Parliament should look like the people it represents and is legislating for, and as she says, a 50:50 Parliament is long overdue. That is why we will be consulting parties and producing evidence on a range of approaches that can help us to increase the number of women who stand as candidates. Initiatives such as #AskHerToStand and Vote 100 are ongoing to improve representation.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend on the work that the Government are doing. Will she ensure that the spirit of the suffragettes lives on by ensuring that the names of Emmeline Pankhurst and Emily Wilding Davison, who spent a night in the cupboard to ensure that she would appear on the census, will be remembered forcefully this year?

Baroness Williams of Trafford: My noble friend has asked a pertinent question because certainly in my home city of Manchester there will be a statue of Emmeline Pankhurst, and here in Parliament a statue to celebrate Millicent Fawcett. In addition there are all sorts of initiatives and projects going on.

Baroness Hussein-Ece (LD): My Lords, 100 years on, 32% of MPs and 33% of councillors are women. If we compare ourselves with comparable OECD countries, such as Sweden, Denmark, Iceland and others, we see that they do far better, but it is no coincidence that they also have cheaper, more affordable and more accessible childcare. The noble Baroness mentioned barriers that will be looked at. Will she say what is being done to address those barriers, to make sure that women will not be prohibited from engaging in public life because they simply cannot afford childcare?

Baroness Williams of Trafford: A few years ago, parliamentary hours were made more sociable—not that we can always say that they are terribly sociable—but I agree with the noble Baroness about childcare. We have a nursery here in Parliament, but childcare generally will be looked at to encourage women to come forward and participate in public life.

Baroness Afshar (CB): My Lords, what are the Government doing to accommodate Muslim women, who have particular, very different needs from women in general, to participate?

Baroness Williams of Trafford: My Lords, we want to make this Parliament one that is open and accessible to women no matter what their race, religion or background. Muslim women should be no different in that context. I hope that women, no matter what their

[BARONESS WILLIAMS OF TRAFFORD]

background, will feel that Parliament is open for them. Of course, in our demographic we represent what people, particularly women, might aspire to.

Baroness Lister of Burtersett (Lab): My Lords, about a century ago the suffragette Hannah Mitchell said that we women fight with one hand tied behind us. We still do, because she was referring not just to childcare but to the care of older people, the responsibility for domestic housework and so forth, responsibilities that do not affect men's ability to take part in political and public life. What are the Government doing to help make the sharing of care between men and women more equal?

Baroness Williams of Trafford: I think that the sharing of care has become more equal, but perhaps not as equal as many would wish it to be. As I said at the beginning, the GEO is commissioning a wide-ranging evidence review that will encompass the range of approaches that will be taken, both internationally—the noble Baroness, Lady Hussein-Ece, mentioned Sweden—and here at home to provide political parties with a variety of solutions that they can draw on. The noble Baroness, Lady Lister, is absolutely right to raise that flag of women being less likely to participate in public life, particularly in Parliament. It is more difficult to get women to stand as candidates in elections and we need to change that.

Baroness Jenkin of Kennington (Con): My Lords, the Committee on Standards in Public Life's recent report highlighted the fact that women candidates, and disproportionately Conservative women candidates, received intimidation and abuse, which is obviously a deterrent to their coming forward. The Conservative Party has now put together a code of conduct based on responsible behaviour and showing respect. Is my noble friend aware of whether any of the other political parties are planning to make the same pledge?

Baroness Williams of Trafford: I certainly know that there is a cross-party working group, chaired by the Leader of the House of Commons, which is developing an independent complaints and grievance procedure. I cannot answer for other political parties but I am pleased to say that I have seen and signed the code of conduct. I think it is absolutely right. I cannot believe that standards of conduct on this Estate were not in the Ministerial Code before now but they now are—writ large.

Baroness Corston (Lab): My Lords, will the Government consider extending the Sex Discrimination (Election Candidates) Act beyond the present term for which it is enforced to allow political parties to have women-only shortlists?

Baroness Williams of Trafford: My Lords, positive discrimination in that sense is something that the Conservative Party has not subscribed to. I hope, though, that political parties will see that if they do not have diverse representation they are far less likely to appeal to the public at large—who elect them.

Brexit: Women in the Workplace

Question

2.46 pm

Asked by **Baroness Crawley**

To ask Her Majesty's Government what assessment they have made of the effect on women in the workplace of the United Kingdom leaving the European Union.

The Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy (Lord Henley) (Con): My Lords, we have made a clear commitment to protect workers' rights and to ensure that they keep pace with the changing labour market. We will not roll back EU rights for women in the workplace.

Baroness Crawley (Lab): I thank the Minister for his reply, but I am not sure that I am convinced by his rebranding of the Government as champions of equality and workplace rights. Their lukewarm response to the recent House of Commons Women and Equalities Committee report on this subject speaks volumes. Does the Minister accept that British women facing discrimination in accessing their maternity rights at work, for instance—and his own Government's figures bear this out; there are thousands of women who face discrimination in this area—would have a better future if we aligned ourselves as closely as possible with EU legislation and European Court of Justice case law in this area post Brexit?

Lord Henley: My Lords, obviously we will take note of what the EU does, but one of the important things about Brexit is that we can make our decisions about this. We do not have to be part of the EU to have high standards in the workplace. We already go way beyond the EU minimum standards in a number of important areas, such as annual leave, maternity leave and flexible working. But it is for the United Kingdom Parliament to consider these matters, not the EU.

Lord Spicer (Con): Has my noble friend read the recent report by the eminent economist Patrick Minford, who says that a no-deal Brexit will cost the EU £500 billion and will benefit the UK by £640 billion? Does that not say it all—for women as well as for the rest of us?

Lord Henley: My Lords, I am aware of Professor Minford's report and I have taken note of it. But the important point in relation to this Question is what the United Kingdom Parliament can do, and the important point to remember is that these will be matters for the United Kingdom Parliament and Government to decide.

Baroness Burt of Solihull (LD): My Lords, I was very glad to hear the Minister say that the Government will not roll back EU rights for women in the workplace. This year the European Commission introduced proposals for a directive on work/life balance for parents and carers, which would provide for four months' paid non-transferable leave for fathers. Will Her Majesty's Government commit to keeping pace with the EU regarding equality and employment rights, including this directive?

Lord Henley: My Lords, while we are in the EU we will obviously continue to take a constructive approach to the various Council working groups, in particular that which the noble Baroness referred to on the new work/life balance directive, and we will seek to ensure that the text is appropriately clarified. We look forward to continuing discussions under the Bulgarian presidency. I am not going to make any commitments about what we will decide to do about different parts of that work/life balance directive, but we will certainly continue those discussions, and if we are part of the EU we will sign up to it, if appropriate. If not, these are decisions for ourselves.

Baroness Hayter of Kentish Town (Lab): My Lords, one eminent equalities lawyer has said that the failure to bring across the charter of fundamental rights into UK law would mean that the free-standing right to equality will have no equivalent in domestic law, so we would lose one of the fundamental standards underpinning the other regulations being brought across in the withdrawal Bill. Given that we have heard that the new Brexit Minister in the other House wants to get rid of such rights anyway, what comfort can this Minister offer to women that their right to equality will not be weakened?

Lord Henley: My Lords, one eminent lawyer has made that statement, but not all eminent lawyers agree with it. We are fully signed up to human rights and will continue to be fully signed up to all other aspects of human rights. Leaving the EU does not make any difference in this matter.

Baroness Hussein-Ece (LD): My Lords, the Minister mentioned the right to flexible working, but there is growing evidence that women who ask their employers for flexible working hours—particularly if they are older women, caring for elderly relatives or younger women trying to juggle work with caring for children—are often faced with discrimination, being ostracised or not being promoted. Is any work being done to look at this in a bit more detail and at why these women face such discrimination?

Lord Henley: My Lords, the Government and in particular the Prime Minister are fully committed to equality in this area. These are matters that we can resolve for ourselves. As I said, we already meet very high standards, which are higher than in the EU. Where our existing law is not working, these matters can be looked at and we hope that bodies such as the Equality and Human Rights Commission will look at them: it is the regulatory body in this area. I hope that appropriate action will be taken if that is the case—but, if necessary, it is also something that the Government can pursue themselves.

Baroness Goudie (Lab): Will the Minister answer the second part of my noble friend Lady Hayter's question? The Minister for Europe said yesterday in the other House that the Government were not going to stand by European policy on equality issues.

Lord Henley: My Lords, the important point I am making is that we are still fully signed up to human rights. I have not seen what my honourable friend said in another place. I am perfectly happy to look at what was said and I will write to the noble Baroness.

Syria: Refugees Question

2.52 pm

Asked by **Baroness Hodgson of Abinger**

To ask Her Majesty's Government what help they are giving refugees and internally displaced persons in the countries bordering Syria who have been displaced by fighting and the actions of Daesh.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the UK is at the forefront of the international humanitarian response to the Syria crisis. We are providing life-saving and life-changing support to millions of people displaced inside Syria, and to millions of Syrian refugees living in neighbouring countries as a result of Daesh and the ongoing conflict.

Baroness Hodgson of Abinger (Con): I thank my noble friend the Minister for his Answer. Last September, I went to Kurdistan to observe its referendum and while in Irbil, I visited St Joseph's Cathedral. There, the church is helping Christian refugees and internally displaced people who, I was told, are not able to go to the UN refugee camps as they are not safe there. I understand that this is the case in Jordan too. Is DFID aware of this situation and what are Her Majesty's Government going to do to investigate these claims? Please can they take it up with the UNHCR and UNICEF to ensure that everyone, regardless of their religion, is able to get the help and protection to which they are entitled? Would my noble friend be willing to meet me and others who are interested in this, so that I can raise these matters further?

Lord Bates: I would certainly be willing to meet my noble friend. In fact just this morning, I met the All-Party Parliamentary Group for International Freedom of Religion or Belief and earlier I met with the noble Lord, Lord Alton, and my noble friend Lady Nicholson. I believe there is repeated evidence that there is no fair treatment in the refugee camps. That is deeply worrying because the UN Convention on Refugees advocates against any discrimination at all. Her Majesty's ambassador in Amman, Jordan, is hosting a roundtable on 23 January with faith leaders and the UNHCR so that they can present their findings and the evidence they have received, so as to seek to remedy any discrimination against people fleeing the terrible actions of Daesh and other organisations.

Lord McConnell of Glenscorrodale (Lab): My Lords, I think we can all agree that the best investment for refugees and internally displaced people is education, giving an opportunity for children who have been displaced across borders or within states to have a better future as time moves on. What are the Government doing to support education for refugees and internally displaced people not just in Iraq and Syria but elsewhere too?

Lord Bates: The noble Lord is absolutely right; this is a priority. There are good campaigns on this: Education Cannot Wait and No Child Left Behind. These initiatives are very important and we fully support them. Our efforts in Lebanon have provided education places for some 300,000 Syrian children and for about the same

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number in Jordan. The noble Lord is absolutely right that these protracted crises disrupt the future generation on which any peace will be built.

Lord Alton of Liverpool (CB): My Lords, the ethnic and religious minorities in Syria who have been hunted down in a campaign of genocide are now caught in a vicious circle after not daring, as the noble Baroness said, to enter the camps because their lives will be at risk there too, and then they are excluded from the vulnerable persons resettlement programme. I welcome what the Minister has told the House, but how does he respond to official figures that show that in the third quarter of last year fewer than 1% of Syrian refugees resettled under that programme came from those hunted minorities—just 13 out of 1,583 refugees accepted in the UK—despite the fact that those minority groups made up some 10% of the Syrian population before the war began in 2011?

Lord Bates: Part of this is about collecting the data—that is very important—and the other part is to be very clear about what is going on. The special rapporteur on minorities in Iraq reported to the UN General Assembly:

“Overwhelming evidence supports claims of crimes against humanity, war crimes and genocide that must be fully investigated and appropriately addressed by the Government and the international community”.

That is why we support the investigation of Daesh crimes and the collection of evidence as requested by United Nations Security Council Resolution 2379 in September.

The Lord Bishop of Leeds: My Lords, is the Minister aware that there is a generational challenge here? When one visits Kurdistan, in particular, the older generation of those who have been internally displaced or who are refugees still have a conception of home to which they might wish to return. The younger generation, whoever you talk to, do not see that home as existing. They want to be somewhere else. Are the long-term implications of this, particularly in relation to the education of children, being taken seriously by Her Majesty’s Government?

Lord Bates: They are being taken seriously. They are also being taken seriously by the UNDP which has the funding facility for stabilisation in Iraq. It is working with the federal Government in Iraq and also the regional government in Kurdistan based in Irbil. It is looking at these plans. One aspect of hope that I was encouraged by is that more than half the people who were displaced as a result of the fighting and the conflict in Iraq have now returned home. The reason why many do not return home is fear over security. That is one of the issues that needs to be addressed.

Baroness Sheehan (LD): My Lords, Palestinian refugees who fled from Syria are in a particularly vulnerable situation given their uncertain legal status. What are the Government doing to ensure that Palestinian refugees receive the same level of support as Syrian refugees and are not discriminated against simply because they have had to move home twice?

Lord Bates: That is a very good point. It is certainly something that I should look into further and I will write to the noble Baroness with an update.

Baroness Berridge (Con): My Lords, I welcome my noble friend’s acceptance of evidence and cases in relation to the treatment of religious minorities that affect aid. However, as outlined by the noble Lord, Lord Alton, this also affects the resettlement programme. Is it not now time that the UK asked the United Nations to hold an independent investigation into these claims, so that we can know the truth as to whether or not the millions of pounds of aid that has been sent by the UK taxpayer has actually reached the people who most need it?

Lord Bates: We discussed that issue this morning. As I said at that meeting, I will look at the readout and the feedback from the meeting taking place on the investigation into the claims in Amman next week, on 23 January, to see whether we need to take further action with the UN to ensure that it upholds its own convention in not exercising any discrimination whatever on the basis of religious belief or identity.

Lord Collins of Highbury (Lab): My Lords, the huge pressures on the host nations neighbouring Syria, particularly Lebanon and Jordan, are obviously of concern. Can the Minister update us on exactly what support we are giving to ensure that the host communities are not put at a disadvantage and to make sure that we do not end up with a conflict situation as a consequence of this terrible refugee crisis?

Lord Bates: That is a very good point. Turkey of course has the largest number of refugees—some 3 million—and there are 1.5 million in Lebanon and 660,000 in Jordan. We have given some £543 million to Lebanon and £429 million to Jordan. Perhaps more important for the long term are these compacts that we now have with Jordan and Lebanon, where we are providing not only for education but also for livelihoods, so that people can actually rebuild their lives while waiting to return home. That is very important.

Rail Franchises: Govia Thameslink

Question

3.01 pm

Asked by *Baroness Randerson*

To ask Her Majesty’s Government what action they are taking to ensure improvements in the performance of rail franchises run by Govia Thameslink Railway.

The Parliamentary Under-Secretary of State, Department for Transport (Baroness Sugg) (Con): My Lords, passengers on this route have not had the level of service they expect or deserve, and we are sorry to them for the disruption that has been caused. We are working closely with Govia Thameslink Railway and Network Rail to deliver a better service to passengers through a range of actions. We have invested £300 million for Network Rail to improve infrastructure resilience, and agreed a £13.4 million package with GTR to pay for key passenger improvements.

Baroness Randerson (LD): Last week's NAO report is a woeful catalogue of government errors, including the failure to assess the impact of potential industrial action, the failure to ensure enough drivers and a contract structure with no incentive to avoid strike action. The £13.4 million financial settlement the Minister just mentioned is judged by the NAO to remove the incentive for Govia Thameslink to improve. In the light of that judgment, can the Minister explain how and why things will now improve? Can she promise us that passengers' interests will be put absolutely at the centre in future franchises?

Baroness Sugg: My Lords, we broadly accept the recommendations of the NAO report. We accept we have made mistakes and are learning lessons. I assure the noble Baroness that we will put passengers at the forefront in our future franchising decisions. We are listening to passengers and acting on what they tell us. We are opening public consultations as part of the franchising process and will use the responses to inform our decisions.

Lord Berkeley (Lab): My Lords, could the Minister explain one thing in the National Audit Office report? It said that the timetable that the Department for Transport agreed could not, according to Network Rail, be operated and that it was trying to put too many trains on the line. I understand there is the same problem on the east coast main line, which is why things have gone wrong there. When will the Government look at the timetables, with Network Rail, before they let franchises?

Baroness Sugg: My Lords, the department did take National Rail's views on feasibility into account. As part of the evaluation of the bids for this franchise, and indeed all franchises, we look at National Rail's concerns. It had concerns about all of the bidders' timetables propositions in this instance, although Govia's proposition had a lower risk rating than other bidders. Network Rail said that the proposed timetable needed more development at the beginning of the franchise, and we agreed with that. The Thameslink timetable was some years off, and the project, as the noble Lord knows, was a complex one. We always accepted that more work would need to be done, and we have been working with Network Rail to finalise the timetable. I agree with the noble Lord that we need to work more closely with Network Rail to make sure that the timetables can be delivered in the future.

Lord Clark of Windermere (Lab): My Lords, in light of the Carillion fiasco that we are facing now, it seems to me that the Government changed their strategy in the last round of franchises, in that they encouraged a smaller number of companies, with subsidiary companies running the actual franchises, as highlighted in the NAO report, whereas Govia Thameslink covers a number of companies. It also applies to Arriva in the north. We had a situation with the Lakes line where there were no trains over five years old, whereas with Northern Rail there are no trains under 30 years old.

Baroness Sugg: My Lords, we are investing heavily in rolling stock, and passengers in the north will see new trains rolled out across all the lines. We have set

out changes in our rail strategy on how we will approach rail franchises to ensure that we get the best of both worlds. The new model will keep the benefits of privatisation while maintaining vital infrastructure in public hands and preparing our railways to meet the challenges of the future. This large franchise was designed to deliver Thameslink. We are actively looking at the size of that franchise and expect in future to split it up into smaller franchises that can better deliver what passengers need.

Lord Vinson (Con): My Lords, all over the world railways run at a loss, largely to do with the fact that track maintenance costs are inherently high and very difficult to manage. High Speed 2, if it is ever built, will run at an enormous loss. Does the Minister agree that, without the profit motive, any nationalised railway would run at even greater losses?

Baroness Sugg: I agree with my noble friend. The privatisation of passenger services has helped to transform our railways, with private sector competition delivering innovation and private investment. As I said, the changes in the rail strategy that we have announced will improve the franchising process.

Lord Bradshaw (LD): Would the Minister go back to the answer to the previous question that she was asked? The splitting of this franchise into two is probably not a good idea. I worked on the original Thameslink franchise, and the idea was to connect north and south London under one management with one railway. Any splitting of the franchise would waste money on management and undermine the productivity of train crews. I ask her to think very carefully about what she has just said.

Baroness Sugg: I reassure the noble Lord that we will be considering this very carefully. I will certainly feed his comments back to our new Rail Minister.

Lord Tunnicliffe (Lab): Does the Minister accept that it is the duty of the Department for Transport to assure itself that bidders are capable of delivering? If the answer is yes, why has it failed on so many occasions?

Baroness Sugg: I agree with the noble Lord that it is indeed the DfT's responsibility to ensure that bidders can deliver. As I say, we have looked carefully at the NAO report and will be learning lessons from it. There are a number of reasons why passengers have suffered disruption on Southern, such as infrastructure works and the process of introducing new trains. However, I want to be clear that the main cause of the widespread disruption in this case was union action. We have seen an unprecedented 39 days of strikes by the RMT, which have directly led to the terrible time that passengers have experienced. Until the RMT calls off its strikes, passengers will continue to suffer.

Stronger Charities for a Stronger Society (Charities Committee Report)

Motion to Take Note

3.09 pm

Moved by **Baroness Pitkeathley**

That this House takes note of the Report from the Select Committee on Charities *Stronger charities for a stronger society* (Session 2016-17, HL Paper 133).

Baroness Pitkeathley (Lab): My Lords, I have worked in or with the charitable sector for most of a long working life, and I begin by declaring my interests as set out in the register and drawing attention to my position as president of the National Council for Voluntary Organisations. I was therefore delighted to be appointed to chair the House of Lords Select Committee on Charities. I most warmly thank the members of the committee, many of whom are speaking in this debate, for their commitment, diligence and wisdom. I also express thanks on their behalf to our excellent special adviser, Rosie Chapman, and our staff, Matt Korris, Simon Keal and Gabrielle Longdin. Their skill and professionalism were much valued by us, and thanks particularly to Matt Korris as he took over at short notice following the illness of a colleague. Our thanks are also due to those who submitted evidence, appeared as witnesses and hosted our visits outside Westminster.

The committee managed to reach consensus after much robust discussion, and we came up with 100 conclusions and 42 recommendations. I think few of your Lordships will disagree with the statement at the beginning of our report:

“Charities are the eyes, ears and conscience of society. They mobilise, they provide, they inspire, they advocate and they unite”. The timing for the committee was significant. It was recognised that we are living in a time of profound economic, social and technological change and that the environment in which charities work is altering dramatically. In addition, some high-profile failures in the charity sector had eroded trust and, at the same time, newspapers published a series of reports alleging that some of the best-known charities in the UK used exploitative and unethical fundraising methods, so it was the right time to set up a committee which focused on the charitable sector. I have been told many times that the report—we called it *Stronger charities for a stronger society*—is an important milestone for the sector.

In the limited time available, I can give only a flavour of our 42 recommendations, but as the Government will respond to the debate, I will concentrate on those recommendations to which we hope to achieve a response. Those are, for example, that better government consultation with the sector is vital—it must be improved—that commissioning and relationships within the contract culture must also be improved and that more encouragement should be given to consortia in the bidding processes. A consultation should be launched on employers giving time off for trustee duties. The impact of devolution and of Brexit on the charitable sector have scarcely been considered and must be addressed.

We also comment on the Charity Commission, itself going through major changes at present and considering whether to charge charities to part-fund its services. We raise concerns about that and emphasise that if it goes ahead, we need to be clear what the benefits for charities would be and must ensure that no burden falls on small charities.

Your Lordships will know that the normal process is for the Government to respond within three months. As the general election intervened, we understood that there would be a delay, but I do not think we could have anticipated a delay of almost 10 months in the Government’s response, for which the newly appointed Minister apologised when the response was eventually produced. I am bound to say that when committee members read it, their most frequent reaction was, “What on earth took you so long?”. The Government’s response to the committee’s inquiry addresses its recommendations point by point, it is true, but most recommendations are dealt with only briefly.

There is general recognition of the importance of the charity sector, although little reference to the specific challenges it faces in the current economic and fiscal climate. It acknowledges that the sector is growing but not what is driving the growth. Increased demand for services and support from charities is mentioned only in passing, while our witnesses constantly emphasised that charities are being asked to do more with fewer resources, and the problem of getting even their core costs funded.

The response lacks a sense of co-ordination regarding how the Government, and particularly the Office for Civil Society, plan to respond to some of the challenges and opportunities the sector faces. There are repeated commitments to consult or work with charities, sector bodies and other stakeholders to consider how to strengthen charities, but no reference to how those commitments might be monitored or followed up, or the likely timeframes.

Overall, the response is largely focused on actions that the Government have already taken or are considering through a proposed civil society strategy. There is little or no detail as to the concrete steps the Government intend to take to enact or support the recommendations they agree with. Absent also from the response is a sense of the Government’s priorities for the charity sector and how, for example, they envisage charities’ role in civil society might change, and their increasing role in the delivery of public and other services.

I freely admit to disappointment in the government response, but I take some consolation from the recent announcement that the Government are preparing a civil society strategy. In her letter to me accompanying the response, the Minister acknowledged that the report will be,

“extremely helpful as we set the direction of our work preparing for the strategy”.

I am sure the development of a new strategy is the Minister’s own idea, but I feel that the Select Committee I chaired can take at least some credit for making her aware that better understanding of the charitable sector and the problems it faces is vital if it is to fulfil its potential.

The Minister goes on to say that this is an important opportunity to improve partnerships between sectors and local communities to build a stronger and fairer society, and that the strategy will recognise the value that civil society brings and help to unlock its enormous potential. Amen to that. But can the Minister update the House on the proposed strategy? What is its timetable? How will it be consulted on? Will some kind of guiding or advisory body oversee it? How will the sector be represented and consulted? I cannot emphasise too strongly that no strategy, however well intentioned, will be of any value at all unless put together with the sector, which in turn represents the needs of the beneficiaries of charitable services, who know about their own needs and what services are required to meet them.

I know that today, the Minister, for whom I have the greatest respect, will promise this co-operation, but I am afraid that the Government have form on this. Their decision not to amend the lobbying Act in the way my noble friend Lord Hodgson recommended—I call him my noble friend, although he sits on the other side of the House—which most charities thought was the best way to safeguard that precious function, being the voice of their beneficiaries, was a great disappointment to charities. The Government have promised to work with charities to help them understand the legislation and give them the confidence to campaign. As yet, I regret to say, we have seen no sign of this, so my confidence in their commitment to partnership is a bit weak.

We also made recommendations about the Charity Commission, and I was grateful for its response—also recently received—in which it accepted most though not all of my committee's recommendations. However, here I must raise an issue of particular concern to the charitable sector. The current chair, with whom the committee had extensive contact during our inquiry, is standing down at the end of this month. In due course, I am sure there will be opportunities to pay tribute to William Shawcross for his sterling service to the commission. The process of appointing a successor has been going on for several months, and it is understood that the names of suitable candidates were approved by the DCMS at the beginning of December and passed to No. 10 some four weeks ago at least. Still no announcement has been made. This is extremely undermining for the commission's staff and, of course, unsettling for the whole sector, as this is a most significant appointment for charities.

I have two questions to ask the Minister about this, and if she is not able to answer today I hope she will get the relevant information and write to me with all dispatch. Is the delay simply because the appointment is seen as insufficiently important to come to the top of someone's in-tray, at a time when, admittedly, No. 10 has a lot else on its mind; or is some kind of political influence perhaps being exerted? I am sure she would agree that this would be highly inappropriate in the case of an appointment which must, above all, be totally neutral politically. When will a decision about this important post be made?

So I have had a few moans about things and I have no doubt that my colleagues will have a few more, but there have been many positive outcomes since the report was published.

Many of our recommendations, including on governance, were for the sector itself and did not have to wait for a government response. Good governance is essential to a strong charity sector. Charities need robust structures, processes and good behaviours in order to deal effectively with their beneficiaries. We call for new efforts to provide training and development for trustees and recommend that charity boards should be more engaged in self-reflection, checking out how they operate, doing appraisals, examining their behaviours and measuring their impact. We urge infrastructure bodies to identify any shortcomings in the provision of such training and advice and do more to raise awareness of what does exist.

We were very concerned about the lack of diversity on many trustee boards. Of course, boards should reflect their beneficiaries in terms of ethnicity, age and background but when the commonest way of becoming a trustee is still because someone asks you, boards are almost bound to be limited to the same kinds of people. As we know, charities are concerned about the supply of trustees. How do you get them? Where are they going to come from in the future? We need to emphasise more that this is a two-way street. You give something as a trustee but you get something back. It may be something for your CV; recovery from illness or bereavement; learning a new skill. These are perfectly valid reasons for becoming a trustee but those recruiting should be open about this.

My committee felt it was most important to do a lot of work on increasing the sector's self-confidence—to give acknowledgment and recognition. I am therefore very pleased that the report has been so well received by the sector. In a pretty difficult environment for charities, the consensus achieved seems to have been particularly helpful. Several commentators have said that it is, in effect, a road map for strengthening the sector and I very much hope that is how it can continue to be used. I am delighted to say that the sector has taken up the challenge and is using the report to help further the recommendations. NCVO and ACEVO convened a group of membership organisations and set up a series of working groups to see how this joined-up approach can help us make the proposals in the report a reality. They include governance, diversity, leadership, campaigning, public services and volunteering.

The willingness of the charitable sector to work together, to examine itself and put its own house in order, is a great example which should be recognised and valued. The sector itself knows that trust in charities took a knock in recent years; it may be getting better but it can never be taken for granted. Levels of probity and transparency must be constantly monitored. Charities' confidence in themselves is important in this regard, and I hope the report has increased that. I know that we shall hear from other contributors to this debate about their own concerns, so I will conclude with a quote from the CEO of the Big Lottery Fund, who told us that:

"You cannot run the Big Lottery Fund without, every morning, being overwhelmed by what people in this country achieve in the charity sector. It is glorious and a wonder".

I am sure we would all agree

[BARONESS PITKEATHLEY]

Charities face greater operational and environmental pressures than ever before but their principles are enduring and they have always helped society through periods of upheaval such as the one we face at present. I have no doubt they will do so again, but they must be recognised and supported in the vital work they do. I beg to move.

3.23 pm

Lord Hodgson of Astley Abbotts (Con): My Lords, I was not a member of this Select Committee, although I was privileged to be able to give evidence to it. The report is a thoroughly professional piece of work which reaches many sensible conclusions. I congratulate the noble Baroness and members of the committee on their work. I note that Tracey Crouch, the Minister responsible, has given a “positive response”—the phrase used by the noble Baroness in her introduction—and I hope that follows through to the implementation of the recommendations.

I will focus my remarks on three areas where I particularly support the committee’s conclusions. The first is on the need to ensure proper governance of individual charities and, in particular, the need to ensure that bodies of trustees or boards are regularly assessed and refreshed. In the research which I carried out for my own report on the sector five years ago, it became clear that, too often, the presence of too many long-serving trustees had a deadening effect on the operations of the charity. In my view, the committee is absolutely right in its recommendation of a maximum of three three-year terms for trustees. However, this should not be a statutory requirement, as the charity sector, above all, does not come in one size; comply or explain must be the right way forward. I look at the noble Lord, Lord Shutt of Greetland, as he has raised this concern with me.

Secondly, I very much support the committee’s comments on charity mergers and amalgamations. It can be argued that, with over 150,000 registered charities, there are already too many, but it would surely not be right to unduly restrict the formation of new charities, many of which are established in the aftermath of an appalling personal tragedy. We should instead encourage the long tail of longer-established and, too often, semi-moribund charities to wind up, merge or amalgamate. A decision to do this is often seen by trustees as a sign of weakness or failure. In my view, they should instead see it as a sign of realism and strength.

My third issue concerns the report I prepared for the Government on Part 2 of the lobbying Act on third-party campaigning, to which the noble Baroness referred. Of course, it is immensely flattering when a distinguished committee of your Lordships’ House recommends the implementation of one’s report, and it is very tempting to roll over and have one’s tummy tickled. However, I say to my noble friend on the Front Bench that I am disappointed that the Government have decided not to proceed with the implementation of the report, particularly since they seemed in favour of it initially, judging from the remarks of the Ministers then responsible for this issue, my noble friend Lord Bridges of Headley in this House and John Penrose MP in the other place.

We seem to have become snagged on the single issue of the “intent test”: what was the purpose behind a particular action of a third party? On the one hand, the Government appear to think that the protections offered by the Representation of the People Act are inadequate, though it has been in force now for over 30 years and there do not appear to have been any particular problems with it. On the other hand, third-party campaigners are nervous about the potentially capricious, and perhaps *ex post*, interpretations of a particular activity they may have undertaken. If this is the problem, there are still ways forward if we wish to follow them. The Electoral Commission could produce a statutory test covering the intent test. That would obviously have to be approved by both Houses of Parliament via statutory instrument but, once approved, compliance with it would give legal protection to any third-party campaigner. If that is not possible, the Electoral Commission could itself undertake that where a charity complied with CC9—the Charity Commission’s guidance on political campaigning—the Electoral Commission would not seek to bring a prosecution. This would at least bring legal protection to the charity sector. One way or the other, I hope the Government may be persuaded to reconsider their approach to this issue. The present position is not satisfactory for the Government, the Electoral Commission, the Charity Commission or, indeed, third-party campaigners as a whole.

I shall focus the rest of my remarks on an issue which does not form part of the committee’s report but which I think needs some government attention—the Royal Albert Hall. It is a complex matter but shows how the existing legal framework is less effective than it should be. As regards the background, noble Lords may be aware that the Albert Hall was built in Victorian times and funded by public subscription. The corporate structure is complex but includes a registered charity. Those who subscribed to the construction costs were given in return a seat or seats enabling them to attend events in the Albert Hall in perpetuity. A difficulty has arisen because individuals or individual families have acquired blocks of seats and, it is alleged, have begun to attempt to sell the seats at prices not necessarily linked to their face value. This difficulty is increased where the individual purchasers are themselves directors or trustees of the Albert Hall charity, and where, as I understand it, the seat owners control 19 of the 24 board places.

There has been a veritable blizzard of allegations and counter allegations; if noble Lords want to follow the events in more detail, the broadsheets will provide some acres of newsprint. I have met with Jon Moynihan, the chairman of the board, and Mr Richard Lyttelton, who is leading for the opposite side. After some years of skirmishing, in September the Charity Commission applied to the Attorney-General to have the issue referred to the Charity Tribunal for investigation and determination, and just before Christmas the Attorney-General gave his consent.

The case gives rise to some points on which I would like the Minister’s views. First, how long do the Government think it will take the Charity Tribunal to adjudicate on this case? I appreciate that the tribunal is a court of law and makes its own timetable. But difficult cases like this should surely be dealt with as

speedily as possible and not allowed to fester. I have no idea where the truth lies, but the present confused picture not only potentially damages the reputation of the sector as a whole—the noble Baroness's report refers to other celebrated cases in recent years that have the same effect—but, maybe unfairly, damages the reputation of the Albert Hall itself. We need sunlight, and quickly.

I will make one final structural point. Under the present regime, the Charity Commission—the regulator of the sector—is unable to apply to the tribunal directly for a ruling on a point of law. It has to get the permission of the Attorney-General, which, in the case of the Albert Hall, took over three months to obtain. Surely this is an unnecessary measure, presenting a barrier to the commission's ability to contribute constructively to the development of the law against which it is required to regulate. Should not the commission have the power to make references to the tribunal directly, without the need for permission, provided that notification of the reference is given to the Attorney-General, who retains the power to be joined as a party in the case if he so wishes? The Minister might like to take that issue back to the department as an important way in which we could improve the regulation of the sector in the future.

In conclusion, again I congratulate the committee on its report and the Government on their broadly supportive stance. I look forward to seeing progress towards an implementation phase of its many sensible recommendations.

3.32 pm

Lord Rooker (Lab): My Lords, I was a member of the committee and I much enjoyed it—it was the first time I had sat on an ad hoc committee and I found it incredibly useful. I pay tribute to all the members, and in particular the chairmanship of my noble friend Lady Pitkeathley. I have taken a message on board and have come to have a moan. I point out that I am a trustee of the British Motor Sports Training Trust, which does not train drivers but the volunteers and the marshals, and when we started our work I was a trustee of the James Brindley hospital school in Birmingham.

We had some good outside visits. I particularly remember the visits to Manchester, but we did not confine ourselves just to England; we had a successful visit to meet charities in Cardiff. Since the report was published, I have addressed a couple of meetings around the country, one with a group of regional funders—infrastructure bodies—and the other with the Rural Community Council. The message from both was of pleasure that we had not piled red tape on charities; we deliberately set out not to do that.

I will make only a couple of points. First, local government has a tendency to try to snuff out charities on the dubious but unspoken ground that it, the council, should deliver all the services as a job-creation exercise. This is a somewhat Stalinist approach—everything from the centre. In my experience, the driver—I will not give examples—is as much officers as elected councillors. This is apparent when you read the evidence relating to public sector commissioning. I read all the evidence, and we had some fantastic items of evidence, but when you read the evidence on public sector commissioning, it is all there. We deal with this

in particular in recommendations 18, 20 and 21. I shall not go over the details, as I shall certainly not speak for long, but those three recommendations are core.

Without core costs, a charity cannot operate. Core costs are part of the service—they are part of the delivery—and we really need to watch what happens here in relation to our recommendations. I accept the government caveat relating to legislation in respect of recommendation 18 on social value, but I am not really sure that all local authorities know what social value is.

The other key point that I want to raise relates to the training of trustees and staff. We particularly set out to deal with this vital issue at some length in recommendations 1 and 8. Training is a core cost in the same way as the paid staff of a charity, who in some cases organise hundreds of volunteers, are a core cost. A core part of the charity is the person who organises the volunteers. People who donate to charities say, "Oh no, we only want to give to the front end—to the delivery part. We're not interested in the back office". However, without the back office, you cannot have delivery, and that point came across again and again in the verbal and written evidence that we took. Training is good in any organisation.

Of course, it should be made much easier for charities to merge. I fully accept that there are too many charities, but they are started with the best of intentions and I would not want to snuff that out. Eight thousand charities a year are started. The Charity Commission undertakes a massive enterprise in registering 8,000 new charities a year, as well as regulating the existing ones, but it should be made easier for charities to merge and to amend the terms under which they operate if circumstances change. It is not a failure to merge like-minded charities if various things change—although that is how it has been put across in the past—and that message has to be put out to both the trustees and the Charity Commission. I would like to see a Charity Commission whose members have hands-on, third sector experience. That is highly desirable, but it is a matter for the Government, not for the Charity Commission.

I want to make a final couple of points, one of which relates to recommendation 41. It will be incredibly difficult to ask charities to pay for the regulator. People will not want to donate to a charity in order to pay for the Charity Commission. The commission is a government department; it is not a quango. It is not a non-departmental public body and it is not an executive agency; it is a non-ministerial department exactly like HMRC and the Food Standards Agency. They are just departments that do not have a Minister mucking around and interfering day to day. In other words, they are quasi-independent; nevertheless, they are government departments. You are going to have a hell of a job asking the donor to pay for a government department. We went through all this when the FSA was set up in the late 1990s, so I think that that will be difficult.

On the other hand, a very small minority of charities pay their chief executives enormous six-figure salaries, and I do not see a backlash from the donors. So there is an issue there. It would seem that some donors are quite happy about that because you do not see a backlash. In the past, I have raised the question of charities owning trading companies which pay their chief executives over £1 million.

[LORD ROOKER]

Finally, this is something that we did not spend a lot of time on, but we raised the issue of trustee membership. That can be a problem. I know of one trustee just entering their fifth decade of trusteeship. One might say, “Oh, they’re elected every four years, so all that is looked at”, but there has to be a time when the founder trustees are told, “You’re in the way of change and fresh blood coming in”, although we did not quite put it like that in our report.

I think that it is a really useful report, notwithstanding the Government’s lukewarm response to the recommendations. It takes a long time to write a short report, and that is one of the problems. However, the response needs watching and following up. I know that the idea of ad hoc committees is that they are set up, they report and that is it. But we have not had that many of them—they have been in place for less than three or four years—and there will come a time when the House ought to say, “Hang on, let’s have a look at the outcomes of the ad hoc committees we have set up”. They are specific and special, and different from all the others, and we need to see whether they do what it says on the tin.

3.40 pm

Baroness Scott of Needham Market (LD): My Lords, I start by drawing the attention of the House to my relevant interests as set out in the register, particularly as a trustee of Community Action Suffolk and a member of the advisory board of the NCVO. It is a pleasure to participate in today’s debate, and to be able to do so having had to wait such a long time for the Government to respond. In contrast, the ink had barely dried on our report before the sector nationally began deciding how best to implement the recommendations.

During 2015 and 2016, the charity sector came under intense scrutiny as a result of the fundraising issues brought to light after the death of Olive Cooke, the collapse of Kids Company and the introduction of new rules on lobbying. My strong feeling is that, during that time, both government and Parliament got the tone wrong. Of course it was right to expect a serious response from the sector to these problems, and for it to learn from them and prevent them happening again. However, there were times when the dialogue was over-confrontational and left the whole sector feeling as though it was taking the blame for the problems caused by a few. Dialogue should be robust, yes, but not confrontational, and it should be respectful of the amazing job that charity groups do in our society.

I am pleased that the committee decided to focus on the needs of smaller charities: 167,000 registered charities have incomes under £100,000 a year and they make up three out of every four charities. While many of our recommendations and conclusions apply equally to charities of all size, the real difference is the capacity of smaller charities to make the changes that they need to in order to thrive in an increasingly challenging environment. We pondered whether there are just too many small charities, although I do not subscribe to that view. The whole sector is about service—people spot a need and they try to fill it, often showing

immense passion, commitment and dedication to do so. That is what makes the charity sector so wonderful, so vibrant and so inspiring.

I agree that new charities should be encouraged to take a long, hard look at whether someone else is doing similar work, and the point of application to the Charity Commission is a useful reminder to do so. I also agree that trustees should be encouraged to regularly review whether the original need still exists and, crucially, whether they are meeting it. I welcome the Charity Commission’s commitment to look further at its guidance on mergers and the need to make winding-up charities more straightforward.

On the whole, however, I would prefer to see emphasis on support for small charities to deal with the major issues that face them; namely governance, regulatory compliance and operational effectiveness, including fundraising and digital skills. This is where the infrastructure bodies come in, and I am keen to ensure that local infrastructure bodies are encouraged. They can provide support to small charities in a way which is tailored to local need and perceived by stakeholders as relevant, affordable and more easily accessed than London-based provision. The overwhelming evidence we received was that smaller charities struggle to access the advice, guidance and training that they need. Yet a quick glance at our report shows that over 25 organisations gave evidence on who might provide such help and support. When you add in the local and sectoral bodies, it seems to me that the problem is less about the amount of advice and support that is available and more about how to access it. So I strongly urge Members to support our recommendation 67, which urges the sector to look more closely at how advice is signposted.

Community Action Suffolk was founded in 2013 and was a coming together of 10 community groups in the county, many of which were struggling. Coming together has provided a better scale for good delivery, better value for money and, above all, a stronger voice in the county and more leverage in creating local partnerships. The inevitable pain and compromise of merger has proved very worth while.

As we highlight in our report, trustees are the key to good governance, but in small charities focused on and motivated by their wish to deliver their own objectives they are often seen as more of a legal nicety than as integral to the success of the organisation. Trustee boards often lack diversity, not just in gender and ethnicity but in background. Legal, financial and digital skills are often absent, and failing to look for trustees outside the charity sector runs the risk of boards losing or not having the right skills mix to be fully effective. Regular skills audits can be very powerful and larger charities should hold genuine open recruitment.

This is one of the areas where government can make a difference, promoting trusteeship both within its own workforce and to business. I should like to see the Government consult on statutory time off for trustees, which would be of great practical help and would send out a powerful message about the value of being a trustee.

Because I have not mentioned Suffolk for at least a minute, I should like to highlight the Suffolk young trustee programme. This will give young people a

shadow trustee role initially, along with a mentor and appropriate training, to give them a taste of the work of being a trustee. We hope it will encourage voluntary organisations to welcome young trustees and young people to come forward. It is not only commendable from a diversity perspective but could help to promote the digital understanding that so many trustee boards lack.

Noble Lords will have picked up by now that I am a fan of infrastructure bodies, particularly local ones, but they cannot run on fresh air. They face a real conundrum because charging at even a modest level acts as a barrier to smaller charities getting the support they need the most. There is a reluctance from donors, stakeholders and commissioners to cover the core costs of charities, particularly governance costs.

We have heard evidence that the relationship between local government and charities is not always a positive one, despite the fact that their work should be complementary. This is something that government at local and national level needs to address. Perhaps the new regional devolution settlements will provide such an opportunity, but this requires real partnership working between government at all levels and the sector, which we have failed to see so far.

3.47 pm

The Lord Bishop of Durham: My Lords, I draw notice to my charitable interests as listed in the House register.

This insightful report rightly stresses that we live in a time when charities provide an ever-greater volume and range of social provision in our society. Therefore, their role must be thoughtfully recognised and supported by the Government. I am proud of the role that the Church of England and all UK faith groups play in this provision. As examples, we run food banks, advice drop-ins, youth clubs and practical skills and jobs training, support the elderly and offer legal support to asylum seekers. According to New Philanthropy Capital, more than a quarter of charities in Great Britain have an association with faith and many people of faith help in the full range of charities. The significance of faith as a motivator for charitable action should never be underestimated. The particular needs and challenges that the Church and other faith-based charities face must be considered and taken seriously in any coherent strategy for the long-term flourishing of UK charities.

Sometimes these charities encounter a lack of religious literacy when relating to local authorities. A recent report from NPC found that many faith-based charities have concerns that a negative or sceptical perception can count against them, particularly with local authority commissioners. Equally, there is a challenge and responsibility for Christians and other faith groups to express their belief in a way that is confident and inviting. In my experience, where churches and Christian charities develop a reputation for delivering services well and inclusively, trust builds and opportunities for collaboration grow. Langley House Trust, for example, is an innovative Christian charity providing offender rehabilitation and substance abuse services across England, operating in 120 sites across 22 local authorities.

Some excellent work has been done on this issue, including the APPG on Faith and Society's faith covenant. This sets out a joint commitment between local authorities and faith-based groups to guide engagement between them. The covenant is currently working in six areas but could be implemented more widely. What are Her Majesty's Government doing to improve religious understanding and awareness to ensure further healthy engagement of faith-based charities in the design of future service provision?

I wholeheartedly commend the report's emphasis on partnership working between the charity and public sectors and the strengthening of social value considerations in commissioning. Too often, provision in one locality or another is fragmented and bewildering. This is detrimental to the charities, particularly small ones, which are often underresourced and subsequently forced into competition with one another. Lack of partnership is, moreover, detrimental to service users, which often slip through gaps in provision. Partnerships lead to holistic, people-centred approaches that can cater to all of an individual's needs, enabling human flourishing as well as streamlining resources in a time-efficient and cost-efficient way.

A brilliant example of this from my own diocese is Advice in County Durham. This partnership includes more than 120 organisations across the county, including the council, Welfare Rights, Citizens Advice and many small and medium local charities. As well as offering training and network events, it runs an online referral system that enables one charity, for example a food bank, to make an immediate referral to another, for example a debt advice centre. For faith-based charities, many of which, as with many other charities, are small and underresourced, with a high output, partnership working of this nature is fundamental to their survival. While I welcome the Government's commitment to the Public Services (Social Value) Act in respect of commissioning processes, I lament the recent shift in focus and resources away from voluntary sector compacts. I look forward to the Government's forthcoming civil society strategy and I trust that it will be a timely opportunity to refocus on this kind of partnership working.

It is vital that good governance, transparency and accountability are at the heart of UK charities. This should include an evidence-based approach to understanding a charity's impacts. I fully welcome the report's recommendations on this subject. However, it must be acknowledged that gauging the impact of charities is not easy. The less tangible nature of tasks such as combating social isolation and loneliness, and building community cohesion and belonging at a local level, do not always fit neatly into impact assessments. At a time when many statutory services are going online or facing considerable pressure on time and resources, the relational work that charities and grass-roots community groups undertake is more vital than ever. We must ensure that all independent evaluations of the impact of charities on their clients respect a broad, expansive and inclusive definition of impacts. Gathering stories of change can be one particularly valuable way of evidencing the difference that this work makes.

As we have heard today, volunteers are the lifeblood of charities in the UK. If the charitable sector is evolving in the way that this report identifies, with an

[THE LORD BISHOP OF DURHAM]

ever-larger sphere of responsibility for social provision, we cannot naïvely hope that enough volunteers will just sign up. Indeed, a 2015 Church of England and Church Urban Fund report on church and Christian social action found that one of the biggest barriers to expanding faith-based provision was access to volunteers. Innovatively investing in volunteers is both an appropriate sign of respect for the invaluable role that they play in civil society and fundamental to the sustainability of the sector. I commend one such initiative, Step Up To Serve's #iwill UK-wide campaign, which aims to make social action a regular part of the lives of as many young people as possible. Much more, however, can be done to change the narrative of volunteering. It must be recognised as a good in its own right and not simply a springboard to paid employment.

How will Her Majesty's Government facilitate ordinary working people incorporating voluntary action into their lives? We cannot rely on the young and the retired to bear the full strain of UK charitable provision. The charity sector of this nation is one of which we should be rightly proud. Let us do all that we can for it to go from strength to strength.

3.54 pm

Baroness Jenkin of Kennington (Con): My Lords, I start by thanking the noble Baroness, Lady Pitkeathley, not only for introducing the debate so comprehensively but for chairing the committee with experience and wisdom. Much of her expertise was shared by others around the table. She kept us focused and on track when the temptation might have been to drift off at a tangent. I too thank the committee staff, who I think were not in the Box when the noble Baroness thanked them, as well as the specialist adviser and all those who gave evidence. Sometimes their contributions were robust and challenging. Finally, I thank my noble friend Lord Shinkwin for suggesting the sustainability of the charitable sector as a topic for an ad hoc committee. There was total agreement that the title of the report, *Stronger Charities for a Stronger Society*, reflected what we were all trying to achieve.

I for one learned a lot, not least about the enormous variety among charities. The centrality of the sector to British life, from the smallest kitchen table operation to the largest multinational NGO, is unique in its diversity and complexity. Charities are now responsible for managing assets of value on behalf of local communities and local and national government, whether that be parks, canals or even the local village hall—I know that my noble friend Lord Chadlington, who was on the committee but is not here today, brought his experience to our deliberations as a trustee of a village hall—and for delivering vital public services, whether that be in scientific research or community care. The underpinning foundations of public benefit and the voluntary principle of trusteeship tie together what would otherwise be wildly different organisations. As a trustee of WRAP, Feeding Britain, Cool Earth and until last year UNICEF UK, I have some knowledge of this breadth at first hand.

Of course, the background to the report was the pressure that charities have come under as a result of governance and fundraising issues, reducing the public's

trust and denting the confidence of charities themselves. In the time allotted, I wish briefly to address four issues that were raised in the report: governance, funding, mergers and the work of the Charity Commission.

With all the issues raised around governance, it is a wonder that anyone is prepared to take on the role of trustee, let alone chair. These people—many of us, and all volunteers, let us remember—need support and direction to fulfil their duties to the highest standards. Moreover, we need to inspire a new generation, as other speakers have said. We raised the issue of employers enabling their staff to fulfil these roles, and more should be done to encourage this.

We acknowledge in the report that grant funding has reduced significantly and however much we would wish it to be otherwise, we accept that that is unlikely to change. So an innovative search needs to identify other funding models which will achieve the sustainability we were set up to support. To secure sustainable funding, meaningful and lasting impact needs to be identified. Successful charities know that it is what they do rather than what they say, what they deliver rather than what they promise, that will lead to support from funders. However, outside the scope of this report, there is clearly a need to develop and trial other funding models. Would the Minister consider this and support the setting up of a working group to explore the options?

As other noble Lords, most notably the noble Lord, Lord Rooker, have mentioned, every charity believes that it alone can make a difference. In other sectors, if two organisations can work well together to provide a more effective, efficient and viable service, they do. Mergers should be seen as a success, not a failure, and the charitable sector should be encouraged to merge where appropriate. What matters is for the beneficiaries to get the best service. Government, funders, beneficiaries and whoever else is involved should all encourage this where appropriate.

I turn now to the Charity Commission. The formal role that charities play in our lives makes the regulation of this sector ever more important. The public must have trust and confidence in charities, but as I mentioned earlier, this trust has been dented. We require a robust and effective regulator to maintain it. Our report, government and the sector generally recognise this, which is why they have been afforded such a broad remit. However, as the chairman of the commission has said, both to our committee and elsewhere, the commission no longer has the resource it needs to do the job asked of it. It now regulates 167,000 registered charities in England and Wales. Those charities have a combined annual income of £74.8 billion and gross assets of £265 billion. They are regulated on a budget of £21 million a year by fewer than 300 staff.

Five years ago, amid the scandal of the Cup Trust, the commission was heavily criticised for its failings and for not having been robust enough in rooting out and tackling those who abuse charities. In response the commission, by its own admission, knuckled down and prioritised its investigations work to protect charities and the public, which was what was needed, and it has been recognised as being far more effective in fulfilling that role. Indeed, the National Audit Office recently

commended the commission for the significant change it has undergone. At the beginning of that period we all, including the charity sector umbrella bodies, demanded a more robust commission to protect public trust. This is what the public expect.

The key question, which we address in the report, is if we now want the commission to do more, who pays? Our report indicates that if the commission seeks to introduce some form of charge on the sector to pay for some of its work, then it must make clear how it will spend the money. As I understand it, the commission has plans in place to do just that. Now that discussion needs to take place, rationally and objectively, so that we can work in the best interests of charities and the public to ensure that we have a regulator that is funded to meet its wide remit in the best way possible.

I put on record my thanks to Paula Sussex, the former chief executive, and Helen Stephenson, the current chief executive of the commission, as well as to William Shawcross, chairman of the commission, who finishes his term at the end of this month. Over the past five years the commission has changed fundamentally. This has involved hard work from the three chief executives over that period, as well as the commission's staff, but transformation takes leadership and Mr Shawcross has shown leadership. He joined the commission at a time when its actions—and indeed inactions on notable occasions—were under the spotlight, but as the NAO recognised in its progress report published late last year, the journey has been recognised and appreciated.

As we know, public service is not always easy and we should celebrate and thank those who are prepared to give their energies so willingly and successfully. I place on record our thanks to William Shawcross and I wish his successor, whoever that may be, every success for the future.

4.02 pm

Baroness Warwick of Undercliffe (Lab): My Lords, I declare my interests as set out in the register. I thank my noble friend for securing this debate, for her outstanding work on behalf of carers and for her lifelong commitment to the charitable and voluntary sector. The wide-ranging and thorough work of the Select Committee has resulted in an excellent report, clear-sighted and full of sensible recommendations. It rightly recognises that charities are the underpinning of our civil society, the glue that keeps us together as caring communities, and often an inspiring, mobilising force for helping our most vulnerable to live better lives. This is essential, one might think, and integral to the Prime Minister's vision of a shared society. It is all the more disappointing, then, that the Government's response to it is so bland.

The report has been widely welcomed, even when it has some tough things to say about the need for charities to adapt and to change for the better. I know that, since its publication, considerable work has been going on in many charities to take the report's recommendations on board. I make my remarks today with that positive engagement by the charitable sector in mind. I want to voice my support for the report's recommendations on funding, particularly those on

commissioning and core costs as they apply to small and medium-sized charities. Such charities are usually said to have a turnover of less than £1 million, but for the vast majority it is very much smaller. Yet they deliver vital support and services to our communities, helping those most in need through their knowledge and experience. They are the charities facing the biggest challenges.

As demand increases, public funding is increasingly routed through large contracts that effectively cut out small charities. The replacement of grants by contracts disadvantages smaller charities when having to bid for services. I welcome the report's recommendation that support be given to developing voluntary sector bidding consortia and that steps be taken to promote commissioning based on impact and social value, rather than simply the lowest cost. Can the Minister tell us more about how the Government are working with the Commissioning Academy to support a more flexible and innovative commissioning approach—one that is indeed focused on impact and social value?

On core costs, my concern is that the pressure to reduce back-office costs and ensure that all donations go to the front line is having a negative impact on smaller charities' viability. Public sector commissioners should include,

“realistic and justifiable core costs ... in contracts”,

as the report recommends. Longer-term contracts would also allow charities,

“to plan effectively for the future”.

As others have said, it is vital that we further strengthen our smaller charities—not just to survive, but to thrive. Charities are working in an ever changing economic and social environment, which is constantly posing new challenges. High-profile failures prompt greater scrutiny, and the report's recommendations on governance are important and timely. The committee is right to highlight that charities need to look closely at themselves and carry out regular skills audits of their boards. They must identify shortcomings and organise training for trustees, to ensure that the sector maintains the confidence of the public.

Headline-making instances of malpractice have shaken that confidence and linger long in the memory, not least when forensic questioning by the Public Administration and Constitutional Affairs Committee about the failure of one charity becomes the subject of a London show, as it was at the Donmar Warehouse last summer. The credited authors did not need to make it up—it was verbatim theatre at its most topical and illuminating and, I might add, it was sold to theatregoers as,

“how civic life in the UK is really governed”.

Therefore, the report's suggestions on how to strengthen charity governance are important, and I am heartened by the publication of the updated Charity Governance Code, produced by a cross-sector steering group comprising NCVO, ACEVO, the Small Charities Coalition and others, together with the Charity Commission. Its key recommendations chime with those in the Select Committee's report. The real momentum it signifies will, I hope, encourage much of the good practice on governance identified by my noble friend's report.

[BARONESS WARWICK OF UNDERCLIFFE]

The need to encourage diversity on charity boards was also highlighted in the report. Regrettably, of course, this is an issue for all boards. A lack of diversity limits a board's experience and knowledge, whether in business, schools or charities. The report recommended, "a public consultation on introducing a statutory duty to allow employees of organisations over a certain size to take a limited amount of time off work to perform trustee roles".

I am disappointed that the Government have shown no appetite for this. Why ever not? This would rightly put trustees on a par with school governors and magistrates. It would be a really positive step towards greater diversity and take-up of board places, it would promote trusteeships to employees, and give greater recognition to trustee roles when recruiting and promoting staff. Of course, the same goes for volunteering. Volunteers make a marvellous, vital contribution to charities' work, but they need support, managing and training. Employers have a role to play in encouraging people to incorporate volunteering into their lives and further government support for this would make a huge difference. I hope the Minister will agree with me on this.

I will make two further points. I want to add my voice to others who have raised the challenges for charities presented by the new landscape of Brexit. The charities sector receives some £200 million a year from the EU, mainly via the European Social Fund. Can the Minister tell us what steps the Government are taking to replace that £200 million or, at the very least, to mitigate the impact of the loss of that funding? Will the Office for Civil Society carry out the impact audit called for by the report?

I will say a final word in defence of the role of charities in campaigning. This is a legitimate activity by charities and non-partisan campaign groups but the wording of the so-called lobbying Act is vague and confusing, while compliance is costly and burdensome, particularly for smaller charities. Can the Minister give us any indication whether new leadership at the Cabinet Office might see the Government reconsider the reforms proposed to that Act by the noble Lord, Lord Hodgson, which would minimise its unintended consequences? If not, can she say whether campaigning and democratic engagement feature in the civil society strategy?

The report's 42 recommendations are practical and progressive. Can the Minister assure us that the civil society strategy's listening exercise will indeed take on board many of the suggestions? Most importantly, will it turn the blandishments of the Government's response to the report into real action?

4.09 pm

Lord Bichard (CB): My Lords, I refer to my interests as set out in the register. It was a privilege to serve as a member of this Select Committee under the redoubtable chairmanship of the noble Baroness, Lady Pitkeathley, who, as your Lordships have heard, has now been installed as the president of the National Council for Voluntary Organisations. She is therefore formally confirmed as queen of the sector—but then, many of us knew long ago that that was the case.

I welcome the debate today but I will point out, as others have, that it is 10 months since we published this report and we have had five days' notice of this debate.

This rather suggests to me that, in addition to being concerned about the number of Peers in this House, we should be concerned about how we manage our business—how we make use of our time and the talents of the Members of this House. I hope that the Lord Speaker will take that on board shortly.

The report is important simply because the charity sector now plays a crucial—I would say indispensable—part in the way that our society functions. It increasingly delivers essential services for public good—services that even 10 years ago would have been delivered by the public sector. As we say in the report and as the noble Baroness, Lady Pitkeathley, drew attention to, charities provide,

"the eyes, ears and conscience of society. They mobilise, they provide, they inspire, they advocate and they unite".

As such, I believe that they deserve to be cherished and nurtured because, as the title of the report concludes, strong charities are now a precondition of a strong society. The problem is that, for all the warm words, there are still insufficient signs that the vital role of the sector is even now understood in government. I certainly found the Government's response to the Select Committee's report deeply disappointing, as others have said. It does not identify priorities and, more worryingly, does not provide a sense of purpose or direction, a strategy or a way forward.

We must all hope that the forthcoming civil society strategy review delivers a more convincing way ahead. It needs to do that because charities, especially smaller charities, are in danger of being engulfed in a perfect storm of negative developments, all of which the report refers to. We have seen a massive reduction in the level of grant funding for charities, with a consequent loss of autonomy—the freedom to do what the charity believes needs to be done. Those grants have largely been replaced by contracts and, as the report concludes, that shift in the balance of funding will not change and we therefore need to find ways of making it work.

The problem is that charities are having to struggle with, first, very poor-quality commissioning—with catastrophic effects for some, especially again the smaller charities. Contracts are often very short term, so that charities are unable to plan for the future or develop a longer-term strategy, and they often seek to prescribe not just the outcomes but the way in which they should be achieved by particular charities. That takes away the scope for charities to be creative and to innovate. I should remind noble Lords that some of the best public policy ideas of the last 20 or 30 years have derived from the creativity of the charitable sector—but that is being squeezed out by poor commissioning. Many contracts from statutory authorities fail to make sufficient provision, as we have heard, for core costs. Some donors, too, are reluctant to fund anything which does not directly benefit clients. I find it deeply ironic that our state-funded bureaucracies are so reluctant to recognise the need for core administrative costs in others—but they are.

During our work, we also met some brilliant charities of the highest quality. Their leaders told us just how difficult it now is to cope with multiple funders, all of whom seek to impose their own particular audit

arrangements and evaluation systems. All of these require additional staff, time and cost, none of which anyone else is keen to fund. They also told us that the social value Act is not delivering its potential and needs to do so.

We also found that contracts are becoming increasingly large because it suits statutory providers to have large uniform contracts. But smaller charities are unable to compete for them and can participate only via subcontracts with the larger charities, so they become dependent upon the big beasts in the charitable jungle. Despite promises down the years to reduce the complexity and the burden of tendering processes, nowhere near enough has been achieved so that, again, especially smaller charities do not have the time and the energy, and the resource and the reserves to compete for those contracts—and, once again, innovation from smaller charities is lost.

I have been struck in recent days, as I am sure other noble Lords have been, by how ironic it is that the Government make it so difficult for small companies and small charities to win contracts in the public sector while they are happy, it seems, to continue to support and invest in very large organisations, such as Carillion, even when the risks are very clear for all to see.

We have heard a great deal about the partnership between statutory providers and the charitable sector. But, like so many so-called special relationships, the reality can be very different. The reality here is that the partnership is not as strong as we would want. That is to some extent evidenced by the failure to involve charities early enough in the design of the services they have to deliver or in changes to policy that affects them. All of us who sat on the Secondary Legislation Scrutiny Committee know just how serious a problem that is. For me, the subtext of the Select Committee's report is that we cannot continue to heap more responsibility and expectations on the charitable sector while at the same time allowing the environment within which it operates to become more complex, in some ways more obstructive and in some ways more hostile. Someone in government needs to understand that a strong society needs strong charities operating in a supportive environment.

4.17 pm

Lord Grade of Yarmouth (Con): My Lords, I draw the attention of the House to my interests as set out in the register, most particularly as chair of the Fundraising Regulator. I am still a trustee of Band Aid and Live Aid. I am also involved with the Samaritans in a formal way, and with many more charities as well.

This is an extraordinary report. It is very practical and sensible, as we would expect from the committee that was put together to look at these issues. Whatever the Government's response to it point by point, one of the great values of the report will be for the trustees of charities to read it and to identify some of the issues that they should be thinking of but might not be thinking of and prioritising. That will be of huge value in the years to come. Regardless of how many of the recommendations the Government are willing to accept, I think we will look back at this report as a road map.

There have been quite a number of references to partnership. I have to chuckle when I hear discussions of partnership in the public sector. I remember going to a conference of chief police officers where one chief constable stood up and said that his definition of partnership was the sublimation of mutual loathing in search of further funding. That has stuck with me, so I blanch a bit when I hear the word "partnership", but it is obviously important.

I will confine myself to a couple of points. As chairman of the Fundraising Regulator, I know there has been a lot of fear about what it was going to do and how it might upset the fundraising abilities of the charitable sector. I arrived from the starting point of being totally overwhelmed in admiration for the British public's generosity and good will. Having lived through the rise of Children in Need, Comic Relief, ChildLine and many other things, I am staggered by how wonderfully generous the British public are. The job of the Fundraising Regulator is essentially to safeguard that good will and make sure that where there is bad behaviour, we can correct it and give the public confidence that their good will is well founded and looked after. That is our job. We are full of admiration for the work that the charities do and we work very hard to allay their fears that we are there to stop them raising money. That is not the object of the exercise—quite the contrary.

Recommendations 41 and 42 of the report, in respect of the Charity Commission, come down to funding. I am deeply concerned that the funding of the commission is an urgent matter. The responsibilities placed on the Charity Commission today are enormous. There is huge public scrutiny and huge opportunities, particularly online, for abuse and fraud and so on. There is mismanagement and bad governance in places. The Charity Commission is expected to deal with all this, but on the present funding arrangement it is impossible. We have expectations of the commission which go way beyond its resources.

Talk to any charity and it will always say that it has great respect for the Charity Commission, but that it takes ages to get an answer from it. That is not surprising, as it is so underfunded. It is a matter of grave urgency for the Government to settle this. I am not particularly in favour of charities paying for the regulator or of taking money out of the charitable sector in order to pay for regulation. The Government have huge expectations of this statutory body and should make urgent arrangements to have a settlement with it that reflects the responsibility that it has.

I have huge admiration for the retiring chairman, William Shawcross, and all that he has done, most particularly his concentration on reminding trustees of their responsibilities. Having been a trustee for many charities over the years, I sum that up as asking the question which needs to be answered sometimes—why are we doing so well? How is all this money coming in? Are we raising it ethically and so on? The responsibilities of trustees are really important and I congratulate the Charity Commission on its emphasis on that.

There is one item that is perhaps not covered in the otherwise excellent report. I hope the Government will continue to encourage the pay platforms through which people donate to charities to be more transparent.

[LORD GRADE OF YARMOUTH]

There is good dialogue going on with the pay platforms, and we are making progress, but it is important that all the pay platforms—whether it is Virgin Money, BT, PayPal or whichever—tell us how much they are charging so donors can make their own decisions. We need greater transparency. I think the sector is moving in that direction and I hope the Government will continue to encourage that.

Coming back to the Charity Commission, since we all understand that the process of appointing the next chairman has been completed, I can see no reason why we cannot have the decision. Could my noble friend the Minister give us some idea of when we can expect a decision on that particular issue? I congratulate the committee on an excellent report. I shall make sure that the whole board and all the staff of the Fundraising Regulator have it as their bedside reading.

4.24 pm

Viscount Chandos (Lab): My Lords, I too welcome the report of the Select Committee on Charities and pay tribute to the exceptional work done by my noble friend Lady Pitkeathley and her fellow committee members. I draw the attention of the House to my entries in the register of interests as a trustee of a number of charities, notably the Esmée Fairbairn Foundation, which provided both written and oral evidence to the committee.

What are charities for? They are, “the eyes, ears and conscience of society”, begins the report, as quoted by my noble friend Lady Pitkeathley. It goes on:

“They mobilise, they provide, they inspire, they advocate and they unite”.

To that, I suggest is added, “and they innovate”. In the striking written evidence from the Welsh charity People and Work, there is a passage that reads:

“During the twentieth century charities adapted as the State took on many of their traditional roles. As the State ... moves away from non-statutory interventions, charities will need to change again but it would be wrong for them to just pick up what the State is walking away from, even if they had the resources to do so. The challenge, and opportunity, is to do things differently and better”.

This has been a persistent theme of Bill Gates ever since he established the Bill and Melinda Gates Foundation in interviews and speeches, in both the US and the UK. In a recent speech in Washington, he said that philanthropy cannot be a substitute for the Government in achieving wider societal improvements. Philanthropy depends on research and innovation in seeking solutions for societal problems, but it is the Government’s role to work for an overall better society. If that is true from the perspective of one of the largest grant-making foundations in the world, how much truer is it for smaller institutions? It should therefore be a critical principle for charities to adhere to but even more important that the Government should recognise it rather than, as they have done too often in the past, seeing philanthropy and charity as convenient substitutes for their own obligations.

I shall pick up on just two points from the wealth of important analysis in the report. The recommendation of independent evaluation would have to be implemented with due regard to the size of the organisations concerned

and their capability of delivering this. Even the largest and best-resourced charities are challenged to make an effective assessment of impact. Indeed, I was struck by reference in the evidence to the “paradox of outcomes” put forward by Dr Toby Lowe of Newcastle University, who suggested:

“the more we measure, the less we understand”.

In looking at grant-making, I have often seen a parallel with the famous dictum of Lord Leverhulme: “Half the money I spend on advertising is wasted; the problem is I don’t know which half”. Impact evaluation is and may well remain an impressionistic part, not a precise science. We should therefore not have unrealistic expectations of what can be achieved or, hence, place unreasonable burdens on charities in reporting on it.

The other point that I wish to raise relates to social investment. Although this has not been much discussed today, your Lordships’ House considered the issue of social investment during the passage of the Charities (Protection and Social Investment) Act 2015, and the report has added significantly to the analysis of the potential for social investment. Social investment, in whatever form, requires the recipient to have prospects of generating revenue that allows the investments to be repaid or realised. As Andrew O’Brien of the Charity Finance Group commented, the “vast majority of the” charity,

“sector is working in areas of market failure ... so the idea that you can commercialise those services and try to generate a surplus that could pay an investor is in most cases quite limited”.

I believe that this analysis is more compelling than, for instance, the evidence from Investing for Good that the potential scale of social finance compared to grants was much larger. In comparison, according to Richard Jenkins of the Association of Charitable Foundations, grants,

“are almost unique in their currency”,

and,

“can do things that other forms of funding cannot. It offers flexibility and a bit of freedom for innovation”.

I do not wish to imply that the development of social investment is unwelcome; indeed, it should be further encouraged, but care must be taken to ensure that this is not at the expense of donations and grants to charities, on which their day-to-day operations depend. Nor should the further development of social impact bonds based on payments by results lead to government funding of public services at unnecessarily high cost, with inadequate transfer of risk relative to the payments made—a case of PFI syndrome.

I end by strongly supporting other noble Lords in advocating that the recommendations of the noble Lord, Lord Hodgson, should be adopted by the Government.

4.30 pm

Lord Shutt of Greetland (LD): My Lords, first, I should declare my charity interests. They are Pennine Heritage, X-Pert Health, Cober Hill Charitable Trust and the Halifax Choral Society (1817) Ltd. Because of my two years in government from 2010 to 2012, I had to stand down from other charities; these were the Joseph Rowntree Charitable Trust, JRSST Charitable Trust, the Historic Chapels Trust, Northern Broadways and the Irish Peace Institute. For completeness, I should add that in 1990 I started the Community

Foundation for Calderdale, where I am now a vice-president. I now realise that these charitable endeavours have taken place over some 43 years.

The Select Committee's report makes some very valid contributions on such subjects as grants, contracts and commissioning, digital technology, alternative forms of charity finance, the opportunity for all for charitable service, including time off work, the resources of the Charity Commission and the impact of Brexit for some charities. I have to say that the Government's response appears to be, "How interesting".

I find it of interest to see from the preamble that the committee, while being concerned about reductions in national and local government funding for charities, was tackling its work at a time of concern about the Kids Company failure and alleged exploitative and unethical fundraising methods by some of the best-known charities. As the noble Lord, Lord Rooker, pointed out, it was also at a time of issues with high salaries for some executive officers of charities. The committee chose to concentrate on issues relating to sustaining the charitable sector and challenges of governance, and I will return to that later.

However, I believe that one of the more interesting features of charitable endeavour is the incredible variety in what I may call the horizontal and the vertical, the horizontal being what the charity does. A charity may provide a service or be an awareness raiser or an endowed foundation and grant maker. The vertical is the different form that the charity takes: governed by a trust deed, accompanied by guarantee or a charitable incorporated organisation. These different features and the new definitions of charity set out in the 2006 Act provide even more opportunity to let many flowers grow. It occurs to me that charities may have very different challenges and governance needs dependent on those factors.

Turning to governance, one question worth asking is: to whom do charities belong? I believe that the answer can only be the trustees, for the time being. The trustees or their predecessors are those who formed the charity, and it is they or their successors who are able to lay it down or wind it up. I am therefore concerned at the report's conclusions that trustees be more transient, with the voluntary governance code suggesting a nine-year maximum time limit for service as a trustee. I note that this code is voluntary, and it is suggested there might be exceptions, but I believe that if this were to gain greater force and, indeed, if at some stage some Government were tempted to make it a statutory provision, it would be harmful to charities as a whole. While agreeing that trustee turnover can and does have benefits, in my experience it is happening more and more because of changing employment patterns and people's time availability. I contend that, if you get a good trustee, you should hang on to him or her. I also believe that it is essential for a trust board to have anchorage to its ethos and to retain a corporate memory within the trustee body.

I am also concerned that it is for the UK corporate good that endowed foundations in particular continue to be created. A culture of a nine-year time limit could well put off the potential entrepreneur from being generous and setting up a foundation if they believe,

or are advised, that a time limit on personal involvement was now the prevailing culture. It has to be remembered that charitable generosity is a one-way ticket; there is no return ticket whereby resources, once given, can be returned to the donor. I repeat: the wealthy donor could be deterred from creating new foundations. Nothing should be seen as an impediment to this century's Rowntree or Cadbury coming forward and creating foundations.

I return to the concerns that troubled charitable endeavour when the committee commenced its work—the executive employees overreaching themselves. It may be that such employees, having asked the question, "To whom does the charity belong?", came up with the wrong answer. This is but one reason why strong and sound trustees are needed; it is an area in which the Charity Commission could perhaps give advice to strengthen and make clear to trustees to whom the charity belongs.

4.37 pm

Lord Lea of Crondall (Lab): My Lords, I welcome the report and take the opportunity to welcome my noble friend Lady Prosser to her role on the Front Bench replying to this debate.

I think that I may be about to rock the boat slightly, first on some general considerations and, secondly, on the specific issue of the Charity Commission's interpretation and process of whether or not to judge a charity "political" and therefore ruled out from being registered for tax relief purposes.

Tax relief is a big driver; there is no doubt about it—I was going to say that it is a tax relief sector. In that sense, I am sure that from the Treasury's perspective it is a public policy tool for various reasons, but that puts great pressure on the Charity Commission to get it right when it comes to registration. I do not have the numbers in my head, but I would guess that 80% of charities are registered charities. People may nod or shake their heads if I have got that wildly wrong, but there is a very strong incentive, as we all know, for a charity to get Charity Commission-registered status.

The Government in their reply underline the point that there has been a very big growth in the turnover in charities. It is £100 million or £100 billion—the number is in there, and I shall dig it out and get it right in a minute. It is a big number, and no wonder it is growing because, although the donors get the tax relief and not the charity, it means that we have this big growth.

This makes it extremely important that everybody is comfortable with the way in which the sector operates. This raises important questions—some of the ideas are outrageous and, although they do not come from my noble friend Lord Rooker, the issue he raised leads to them. In what sense do people working for charities think of themselves as being judged by different considerations to those who are maximising profits or whatever in any other sector of the economy? Sometimes it is not so obvious.

I put my name down to speak in this debate to register an interest of sorts—what I will call a negative financial interest—having failed to get charitable status from the Charity Commission for the Hammarskjöld Inquiry Trust. This meant that the £60,000 which it costs to run it comes out of my own pocket and nobody else's.

[LORD LEA OF CRONDALL]

I had to pay every penny, including for visits to the United Nations in New York—the hotels, the lot. The Charity Commission refused charitable status because it said it was political. It had contacts in New York and said that the United Nations were not interested. Only last December, a further resolution, submitted to the United Nations by Sweden, was carried by 90 votes to zero. It recognised that there was considerable evidence that the death of Dag Hammarskjöld was associated with the presence of a second aeroplane. Six years before, the Charity Commission said that one reason for refusing charitable status was that there was no evidence that the United Nations was interested. Put that in your pipe and smoke it, Mr Shawcross, or anybody else who was involved at that time.

I was able to present a report to the United Nations a year after the trust was set up and it led to this inference being drawn and a considerable change to United Nations policy. I cannot go into more detail now, but the trustees were very distinguished, including a former Secretary-General of the Commonwealth, a former assistant general secretary for legal affairs at the United Nations, the former chief prosecutor to the Rwanda inquiry of the International Criminal Court and a former president of that court in The Hague.

I found the idea that we were a political body outrageous at the time. It is inconsistent that so many other groups, such as think tanks, which are doing more self-evidently political work are readily given charitable status. I do not know who got at the Charity Commission, either from the Foreign Office or anywhere else, but I do know that the decision was outrageous. I suggest that the political test should be more transparent, with a protocol setting out what the test is, so that we can all see it out in the open.

4.44 pm

Lord Harries of Pentregarth (CB): My Lords, it was a great privilege to serve on the Select Committee under the excellent chairmanship of the noble Baroness, Lady Pitkeathley.

Charities have always played a key role in our society, and in recent years an increasingly crucial one. One way in which their role has expanded enormously, of course, is in the work they now undertake as service providers. A number of our recommendations—14 to 21—address this. The noble Lord, Lord Bichard, drew attention to the difficulties that the current process causes for many contracts.

I draw attention to recommendation 20, which says: “Charities cannot operate unless their core costs are met”.

The Government in their response agreed that the sustainability of delivery organisations was an important factor but went on to say:

“Securing best value for taxpayers’ money will also continue to be a key factor”.

Of course, it should be a factor but it is very disappointing that the Government have not been more explicit about the need for core costs to be met. Without those core costs being met, a charity will fail in the end, and everyone will be the loser. It is not an excessively complex task to work out on any particular contract what percentage should be added to the direct service costs to cover the administration which makes the

continuing existence of the charity possible. After all, charities themselves do such sums when they raise money. They will often tell the public how much they spend on administration and publicity and how much goes directly to their clients. They often pride themselves on the low percentage that they spend on administration and the large percentage that goes to the cause in question. Therefore, I would like a much more definite commitment from the Government that realistic core costs will indeed be included in the contract for delivery. A number of noble Lords emphasised this, particularly the noble Lord, Lord Rooker, who did so eloquently.

Recommendation 28 says:

“Funders need to be more receptive to requests for resources for volunteer managers and co-ordinators, especially where charities are able to demonstrate a ... potential volunteer base”.

The Select Committee had this drawn very much to its attention on our very enlightening visit to Sheffield, where we spoke to members of the council who told us about the difficulties they faced given the 50% cut in their budget: for example, libraries having to be staffed significantly by volunteers. If I remember correctly, they said that they had two paid managers for their volunteers. Volunteers, by definition, are cost-free. However to be effective on a large scale, they need effective management from somebody who is most likely in paid employment.

A number of recommendations are addressed to the Charity Commission, and some good points have been made in relation to that. However, the point has not been made that when the Charity Commission consults the sector on how these extra costs might be raised and deployed, it is very important that it consults with various infrastructure bodies, as we were surprised at the number of infrastructure bodies that already exist to help charities in one way or another. It is obviously very important that the work they do is not simply replicated by the Charity Commission. There needs to be good, strong consultation in this regard.

My final area of concern is picked up in Recommendation 37, which states:

“We believe that Lord Hodgson of Astley Abbots’ proposals for a review of the rules set out in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 are eminently sensible”.

I stress “eminently sensible”. It was good to hear the noble Lord, Lord Hodgson, speak about that this afternoon. It was therefore particularly disappointing that the Government responded that they would not bring forward legislation to implement his recommendations on the grounds that:

“The legislative programme for this session is already at full capacity”.

I briefly remind the House what lies behind the Hodgson report. In 2012, the Government brought forward a hasty and ill thought-out piece of legislation—Part 2 of the lobbying Act—concerned with what third-party groups could do by way of campaigning during elections. I declare an interest as chair of the Commission on Civil Society and Democratic Engagement, which represents a whole range of charitable and campaigning bodies of very varying political views and persuasions. They were and are still concerned about the effect of

what is now the 2014 Act. Your Lordships managed to get some changes to the Act as it passed through this House, not least getting a recommendation that the Act be reviewed. That review has now taken place, and the result is the Hodgson report.

It is important to remind ourselves that campaigning by voluntary groups in our history has brought about most progressive changes, from the abolition of slavery to our present period. In our own time, charities of one kind or another are usually at the front line of meeting human need and are most acutely sensitive to how government policy impacts upon the people they serve. It is therefore crucial that they be allowed to make their views known, including during election periods.

Most of the recommendations in the report of the noble Lord, Lord Hodgson, could be implemented without difficulty. As our report says, they are “eminently sensible”. There is one particularly complex area, about which the noble Lord spoke, and I hope that the Government will listen to what he said. It is a genuinely complex area which has teased philosophers of mind and philosophers of law for hundreds of years. But what he suggested today would make possible a meeting of minds on that recommendation, and I very much hope that, in the not too distant future, a parliamentary Session will be able to implement those recommendations. The charity sector is disappointed by the Government’s negative response to that excellent report.

4.51 pm

Lord Judd (Lab): My Lords, I have spent a great deal of my life in the charitable sector. I worked professionally—among other things, I was chief executive of Oxfam and Voluntary Service Overseas—and spent a great deal of time in the charitable sector as a volunteer and trustee, in some instances chairing boards of trustees.

This report is superb, and I warmly congratulate my noble friend Lady Pitkeathley on her leadership in producing it. However, I found it striking to read the declarations of interest by the members of the committee as published in the report. What a wealth of talent and in-depth experience of the issues we are discussing. It is important for the Government not to cherry-pick but to take the whole report, take it seriously and implement it. In this respect, special tribute must of course be paid to the noble Lord, Lord Hodgson, for the courage and character of his own observations on all this.

It is true to say that, particularly during my time with Oxfam, I came to the conclusion that campaigning was perhaps at times the most important service to those we claimed to serve. It is as though intellectually and morally, charities have grown up. They said, “We’re no longer prepared simply to succour need”. Very often that can in effect perpetuate the need, because it may remove the unpalatable signs of what is wrong but fail in the responsibility to speak out about the causes. That is why I find it sad that, in what we want to be a thriving democracy, we do not accept that charities have an important, key role to play at times such as general elections. They are not just political party manifestos; they speak with the authority of engagement.

One other point which should be emphasised—the noble and right reverend Lord, Lord Harries, has drawn attention to it, as have others—is that core funding is in many ways key to the whole concept of a charity. In the last two decades there has been a tendency to move towards a world of subcontracting, and charities have, in effect, become deliverers of services contracted by somebody else. I want the best possible public services in Britain—I take second place to nobody in that—and that is one of the reasons why I am on this side of the House. However, charities are not just about public service; they are about being catalysts in society. They are about engaging with and enthusing the public with the issues that need to be addressed; they are about increasing public awareness of the challenges we face. If we do not give core funding the attention it deserves, a charity loses the ability to be itself, to develop thought and to make its own choices about where the priorities are. I repeat that it becomes a deliverer of services, which is increasingly a world of subcontracting.

I conclude with an anecdote from my time as director of Oxfam. I was coming towards the end of my stint and was in central America, which at that time was a terrible place—the most terrible things were happening. I had been in El Salvador and Nicaragua and was now in Mexico. I remember our field director getting rather irritated with me. I was talking about all the things that were happening in the countries I have just mentioned and she said, “But it’s happening here”.

I met the Bishop of San Cristóbal, who was an incredibly courageous chap. He wore an open-necked shirt, was very simply dressed and wore a wooden crucifix, but, my God, was he standing by the poor of Chiapas, who were being exploited. He was always in trouble with the Mexican Government of the day because he challenged them about what was happening. We were sitting in his simple terraced house talking over a cup of tea. I asked, “Have you got a message that you’d like me to take back not just to my colleagues and supporters in Oxfam but to the wider public?”. He said, “Yes, I have”. The first point that he made haunts me to this day, and it is something none of us working in the charity sector can escape. He said, “Oxfam talks a great deal about its commitment to equality, but how equal are these people with whom you work, or how far are they in effect the indispensable objects of your institutional need?”.

My second point is that in situations like that you cannot be neutral—you have to stand up and be counted. However, what matters is solidarity. He said, “Solidarity is a process of identification at the level of the individual, the family, the community and the nation and, hopefully, internationally”. My God, I wish that there were more international solidarity abroad in Britain these days. He said, “Solidarity is the real challenge of charity”. I have never forgotten that conversation; it has been a lodestar for me in my life ever since.

When you think about it—and we in this House should think about it—you will see that we talk about the poor and to the poor, but how often do we talk with them and for them? How far are we the instrument of putting on the agenda the real issues as seen from the perspective of those about whom we are speaking?

[LORD JUDD]

For that reason, I believe that the Government's failure to respond on this point, as was so well emphasised by the brave stand of the noble Lord, Lord Hodgson, is a very serious omission that needs to be put right as soon as possible.

5 pm

Baroness Barker (LD): My Lords, I declare an interest as the owner of a consultancy that works in the third sector and as an adviser to Charity Checkout. Last year, I was in conversation with a well-known political commentator and we were talking about an eagerly anticipated report from a sub-committee of your Lordships' House. The commentator said, "I gather it is going to be somewhat critical of the Government, and this from a body in which the raising of an eyebrow is the equivalent elsewhere of throwing a chair through a window". We did not throw any chairs out of windows in our committee, but we had some really robust discussions and we gave the people who came to talk to us quite a hard time occasionally. As a result of that, we came up with the report that we did.

If I had to say only one thing about the report, it would be this: in the wake of all the scandals and so on that people have talked about, we set ourselves a challenge to think strategically about the development of the charitable sector and the part that it has to play in our society. I think that, together in our collective wisdom, we did a very good job. We can contrast our way of working and what we have achieved with a debate that took place on 28 November in another place. I suggest that Members of this House look at that House of Commons debate on fundraising. It was astonishingly naive and misinformed, and it came to some wrong conclusions.

The noble Lord, Lord Grade, should know that there is another definition of partnership: if somebody is working on something in a closely allied part of the forest to you, you acknowledge that and let them get on with it. Because his work concentrates very much on fundraising regulations, we did not. However, since he has mentioned it, I will say this: a number of fundraising platforms that are working now have behind them substantial donations from philanthropists, and therefore they are not declaring the full costs of their operation in the way that other groups do. I hope that when the noble Lord's committee looks at that, it makes sure not to draw false comparisons between different operating systems.

We did quite rightly home in on the issue of governance, because that is what the sector needs to get right fundamentally. We were fortunate that the governance code came along as we were doing our work, but having such a code is not in itself an answer because governance in the charity sector is complicated—charities do not just have a profit and loss accountant to tell them what they are doing right; they have triple-line accounting. Therefore, as the report states, it is important that for many of the things we talked about there are sources of help and support to enable trustees to ensure that they are getting governance decisions right. We heard a lot about the involvement of young people as trustees, and I urge noble Lords to look at the evidence presented to us on that. During the summer,

I conducted a governance review of a major national charity, and we have begun to look at ways in which we could develop things such as trustee apprenticeships, to enable young people to approach sitting on a board as a stepping stone towards further civic engagement.

We talked briefly about commissioning and the social value Act. We have this debate while watching the fallout from Carillion, which is only just beginning to unfold. I say to noble Lords: your local library may well have been run by Carillion and may not be there much longer. At a time of greater devolution of power and decision-making to local government, it is right to go back and look at the social value Act again. In many areas, local authority funding is still a large part of the local economy and we need to find ways for smaller organisations to be supported by those funds, to make sure that an area's social fabric is sustainable.

I banged on all the way through our report about the need to support the charitable sector in digital development. It is crucial for companies and all of us throughout all areas of life to get on top of digital. Frankly, it is essential for charities but they do not have access to resources and they get precious little help from the big tech companies, some of which gave evidence to our report—I have to say, it was not very impressive. A woman called Zoe Amar has produced the *Charity Digital Skills Report* and it is clear that we need the support of government and funders, such as the Big Lottery Fund, to enable charities to make this key change in all that they do.

Charities thrive on being the ones that know what is happening first in society. However, a question we asked pretty well everyone who came to give us evidence was: if, in your local area, a charity showed up and Aldi showed up, which would you be more pleased to see and which do you think would know more about your community? The answer is not always the one that we would hope for. It is for the Government to step up on their answer to this and in supporting us to work better digitally and for the regulators to improve their digital involvement with charities. The Charity Commissioners for Northern Ireland and Scotland were very clear about the ways in which they are encouraging charities to be accountable via the web—via Facebook pages and so on. That is truly important if charities are to regain, as they wish to do, the support of the public.

The right reverend Prelate is absolutely right about the role of religious charities and I encourage him to look at our discussions with the Church Urban Fund and the Islamic charity Penny Appeal. However, I say to him that unless and until those religious charities welcome everybody—and I mean everybody—in a locality, there will always be something of a tension and something of a reservation before some of us engage with them in the ways that we would wish to.

There is an awful lot in this report; it is for now and for the future. I am very glad that the infrastructure bodies have given it the welcome it deserves and I wish the Government and the Charity Commission would do likewise.

5.08 pm

Baroness Prosser (Lab): My Lords, first, I draw the attention of the House to my interests as listed in the register. Secondly, I thank my noble friend Lady Pitkeathley for her introduction to the report and congratulate her and her fellow committee members on an excellent and thorough report. Thirdly, I welcome the noble Baroness, Lady Chisholm, to her place back on the Front Bench.

I can see that there is respect across the House for the work of the charity sector. It is an integral part of the framework of our society, able to move into action while national and local bureaucracies start by establishing a committee to help them think about it. My support for the voluntary sector may of course be coloured by my having spent seven very happy years working in a law centre in the London Borough of Southwark. We worked jointly with other local organisations such as the CAB, housing advice groups, tenants' and residents' organisations and so on. We knew each other and we knew the neighbourhood and that was important because it helped us to make sound judgments.

That was all quite a long time ago. Since then, life has become much more complicated and the range of services provided by the third sector wider and more varied. The health and social care sector is of course at the heart of this changing scene—all the more need then for a secure, well-supported sector capable of employing professional and skilled staff ready to deliver to the myriad concerns confronted by today's society.

What do charities big and small most need to be able to function effectively, to listen and act for the people or groups of people they seek to serve, to work proactively and professionally, to bring concerns to a wider audience and to promote suggested solutions for the way forward? The committee's report makes recommendations for a number of those areas. There are two main elements that have been identified as essential to the long-term health of the charitable sector—sufficient resources and stability are each essential to success. Reliability of core costs is essential. My noble friend Lord Rooker has already made that point, as have other noble Lords.

The Government's mantra regarding reduction of back-office costs is seriously misplaced. Of course, no one should tolerate waste, but this discussion is conducted as though back-office costs were a luxury and bore no relation to the work of an organisation overall. Charities need secure core costs. Front-line staff cannot do their jobs effectively or efficiently without the day-to-day work of administrative and support staff. The irony of the Government's argument does not escape me when I meet with Ministers who are always accompanied by a phalanx of civil servants and advisers—back-room staff writ large.

It is also a penny-wise and pound-foolish argument. I understand that HMRC no longer tolerates legally qualified staff doing their own photocopying because it understands the argument that is not sensible to pay a lawyer's salary for time spent doing an admin job that could and should be done by a person on the appropriate grade.

An organisation with secure finances is also more likely to be a stable organisation, enabling it to think longer term. Most charities have a keen awareness of the long-term nature of their work. Building knowledge and trust does not happen quickly. The experience of staff and of course of trustees is key and central to reaching a professional position commanding respect from their particular communities of interest. Stable finances, including longer-term contracts and the long-term commitment of staff and trustees, would all make charitable and third sector organisations capable of delivering outcomes valuable to the community and helpful to government.

The committee's report also highlights the need for better consultation from the Government when introducing new or different policy proposals. The anti-advocacy proposals have caused much upset and have been mentioned many times this afternoon in this debate. They have led many organisations to feel genuinely threatened. The review of the noble Lord, Lord Hodgson, was welcomed and the Government should recognise that their own proposals, described by many as a gagging clause, were seen as deeply offensive. The work of many charities is about campaigning for change and for the influence of policymakers. To try to curtail that legitimate function borders on the anti-democratic. The letter to the then Secretary of State in August last year about this matter was supported by more than 120 charities ranging over the whole spectrum.

Much has already been said about the recommendations of the report and I will not repeat those points now, but there are two other areas that I believe must be hammered home. First, what are the Government proposing to do to ensure security of funding for those organisations currently funded in whole or in part by the European Union? Personally, I have all my fingers and toes crossed that we never leave the EU, but we must be prepared. It is estimated that £200 million will be lost to the sector. The Labour Benches in the other place have called for a full DCMS-led assessment of the impact that Brexit will have on funding, on the workforce and on service demand. Is the Minister prepared to commit the Government to conducting such an assessment and how will that fit into the proposed civil society strategy?

Finally, perhaps I may repeat a point made by my noble friend Lady Pitkeathley. What is the situation with regard to the appointment of a new chair of the Charity Commission? If I may say so in the confines of this Chamber, the Government are not building themselves a fine reputation with regard to public appointments, which leaves those of us concerned about such matters feeling slightly anxious when appointments are delayed. I am sure that the House would be keen to be assured that matters are under control and that an announcement of the new chair for the commission will be made imminently.

5.15 pm

Baroness Chisholm of Owlpen (Con): My Lords, I am delighted to be at the Dispatch Box to respond to this debate and I welcome the noble Baroness, Lady Prosser, to the Front Bench. I do not think that this is her first foray, but I welcome her none the less. First, let me thank the noble Baroness, Lady Pitkeathley,

[BARONESS CHISHOLM OF OWLPEN]

for her speech and for chairing the Select Committee on Charities. The noble Baroness has a wealth of voluntary sector experience and expertise and is a strong and persuasive advocate for it. I always enjoy and learn from her speeches on this subject and indeed when she speaks on carers. I thank the members of the committee for their knowledge and expertise as well as all those who gave evidence for the report. As the noble Lord, Lord Rooker, mentioned, I welcome in particular the decision of the committee to hear the voices of smaller charities, with round-table events in Cardiff, Manchester and London. The result is a wide-ranging and thoughtful report which informs the debate and helps us to set the agenda for our future work on the civil society strategy, which I will talk about later in my speech.

I apologise that we were able to publish our response to the report only just before the Christmas Recess, and I know that this has upset many noble Lords who have spoken in the debate. This was due in part to the ministerial changes resulting from the general election and in part to ensure that our response could dovetail with our plans for the development of the civil society strategy.

As the noble Baroness, Lady Warwick of Undercliffe, mentioned, civil society is a vital part of our society, playing a hugely important role. Charities sit at the heart of civil society and we should celebrate our charities for all they do to benefit the public. We are fortunate to have a charity sector that is resilient and continuing to grow. The Charity Commission has noted an increase of 40% in charity registration applications over the past three years, and the sector's annual income has grown by £5 billion over the past two years to an all-time high of £74.4 billion. The noble Baroness, Lady Pitkeathley, said that this growth has come at a time of economic uncertainty, which makes it all the more impressive. However, we appreciate that the overall picture masks the fact that some charities have struggled to adapt to the changing economic climate. Those which have been historically reliant on funding from the public sector have perhaps been the most affected.

It is hard to single out particular charities for special mention given the scale and diversity of the sector and the sheer amount of good work that charities are doing, supporting those in need in every community in all parts of the country. However, I want to pay tribute to the work of the charities that have responded to last year's terrorist attacks and the Grenfell Tower fire. They have worked tirelessly to raise and distribute significant funds to victims, survivors and next of kin, and give support to those in need. They showcase many of the selfless qualities that we see across civil society, mobilising resources quickly and helping people at the time of greatest need.

We have seen the huge impact that those in the public eye can have in mobilising support and raising the profile of charitable causes. We owe a special debt to the Royal Family for their unstinting support for a huge range of charities and causes. We have recently seen the difference that can be made in mobilising the young when Prince Harry and the Duke of Cambridge speak out.

I also want to mention the significant contribution of the chair of the Charity Commission, William Shawcross, as he completes his term of office. As my noble friend Lady Jenkin mentioned, he has led a major transformation programme at the Charity Commission, turning it into a modern, effective regulator. Like her, I was pleased to see that the significant progress made by the Charity Commission was recognised by the National Audit Office in its most recent update report in November. The noble Baroness, Lady Pitkeathley, naturally asked when we were going to get the new commissioner, and several noble Lords mentioned the impartiality of the new commissioner. The new chair of the Charity Commission will be announced in due course. I know that that is a maddening thing to say but in this case "in due course" means really shortly.

As for impartiality, the recruitment process for the new chair follows the Cabinet Office *Governance Code on Public Appointments*, including its principles of fairness, merit and openness. Under the code, any significant political activity undertaken by an appointee in the last five years must be declared. This is defined as including holding office, public speaking, making a recordable donation or candidature for election. The new chair will be the best person for the role and will be expected to be independent and impartial.

Turning back to the committee's report, I shall address three of its central themes—funding and commissioning, advocacy, and trustees and partnerships—before I conclude by saying a few words about the Government's forthcoming civil society strategy. The first theme relates to funding and commissioning. Overall, government funding for the sector remains relatively stable despite fiscal pressures. According to the NCVO almanac, government funding for the sector has increased from £14.6 billion in 2012-13 to £15.3 billion in 2014-15, the most recent year for which figures are available. Funding is split almost 50:50 between local and central government and more than 80% of funding is earned through contracts. The ratio of government funding through contracts, as opposed to grants, has remained relatively stable since 2010.

We recognise that grant funding can remain an important source of funding for some charities, as the committee's report highlights. There has been a significant effort in central government to strengthen our grant-making processes to ensure that grants are properly managed and taxpayers' money is being used effectively. Grants will continue to be an important part of the funding mix. Following on from that, more than 260 small and medium-sized civil society organisations were supported by our £18 million local sustainability fund, to help organisations secure the long-term future of services aimed at vulnerable and disadvantaged people. The evaluation of that fund is being published today and shows the positive impact that funding focused on sustainability has had.

We have also done much to improve commissioning practices, although we accept that there is still more to be done. Our work to date has included promoting the Public Services (Social Value) Act, working with the Commissioning Academy, which has trained more than 1,400 public sector commissioners, and working with small and medium-sized charities to identify barriers

that are preventing them accessing the public services market. The noble Viscount, Lord Chandos, talked about social investment and social impact bonds and I hear what he says. Our focus on social investment and social impact bonds is expanding a range of innovative funding mechanisms that reward impact and positive outcomes, leverage in other sources of finance and can be more sustainable by recycling funding. Also, our work so far on the public services programme has given us important insight into the issues relating to the public service market. This will feed into the forthcoming civil society strategy. We still intend to appoint a VCSE Crown representative and they should be in post soon. Our commissioning academies also continue and the next wave has just got under way. We remain fundamentally committed to the Public Services (Social Value) Act and continue to implement the recommendations of the 2015 review carried out by the noble Lord, Lord Young.

In relation to advocacy and campaigning, the Government recognise and respect charities' important role in speaking out on behalf of their beneficiaries. The transparency of lobbying Act, which was mentioned by many noble Lords, does not stop charities campaigning in support of their charitable purpose in a non-party-political way. The purpose of the Act is to ensure that there is transparency where non-party campaigning influences election outcomes. Despite not being able to take forward legislation to implement the review of my noble friend Lord Hodgson, we remain keen to work with charities to shift the perception of the legislation, and encourage them to continue their important campaigning work. My noble friend will know that Cabinet Office Ministers are responsible for this. I am sure they will want to consider his points and I will make sure that they hear what he has said.

The third area of the report I want to focus on is trustees and governance, which was mentioned by the noble Lord, Lord Shutt of Greetland, and others. We all owe a debt of gratitude to charity trustees, who perform a vital voluntary role, as the committee's report recognises. We agree with the committee about the importance of the trustee role. As the noble Baroness, Lady Scott of Needham Market, mentioned, in 2016 the Office for Civil Society established the Skills Exchange Alliance with business and voluntary sector representatives to support growth in the quality and quantity of employer-supported volunteering, including encouraging more people to become charity trustees. The noble Baronesses, Lady Pitkeathley, Lady Scott of Needham Market and Lady Warwick of Undercliffe, all talked about more work needing to be done in supporting trustees in their role and in improving trustee diversity, particularly growing the number of young people who are trustees. We heard from the noble Baroness, Lady Scott of Needham Market, about the successful Suffolk Young Trustee Programme—a good example of how to encourage the young to get involved.

We also know that small charities can find changing regulation particularly challenging. This year the general data protection regulation comes into effect, and I welcome the work of the Information Commissioner in providing a dedicated helpline service for small organisations, including charities, and an updated SME toolkit to reflect the requirements of the GDPR.

The Fundraising Regulator, working with a number of other partners, including the Institute of Fundraising, is also developing simple guidance, specifically aimed at small charities, to help them better understand the new GDPR requirements.

Last year we established the Inclusive Economy Partnership with charity and business leaders. It is bringing together business, civil society, faith groups and government to help address some of the key challenges facing society. Partnerships, including those that cross sector boundaries, will be a key theme in the forthcoming civil society strategy. Many noble Lords talked about this. We all realise how important it is that there is some joined-up thinking across the whole sector to help charities move forward and to help them through the difficult time that many of them are having.

On the theme of partnerships, I welcome the leadership role shown by the charity sector in establishing several working groups to take forward the committee's recommendations. As my noble friend Lady Jenkin mentioned, there is also potential for greater collaboration between like-minded and mission-oriented charities, which work tirelessly for their beneficiaries. It is when we all work together that we can deliver real, long-lasting social change.

I will now address points that were raised in the debate, before finishing on civil society and what we are doing to make sure that we listen to the recommendations that have been put forward by the committee.

Brexit was mentioned by several noble Lords. The Government will of course continue to assess the impact of leaving the EU on charities and social enterprises, which includes access to future funding. Officials in DCMS are working with colleagues across government to inform plans for future funds, including the UK's shared prosperity fund, and to ensure that charities are fully considered.

Several noble Lords, including the noble Baronesses, Lady Pitkeathley and Lady Warwick of Undercliffe, mentioned time off for charity trustees. Many public sector organisations and businesses already run impressive volunteering programmes, in the absence of a statutory requirement to provide time off for voluntary duties. This is a matter for individual employers, although we would always encourage them to treat such requests sympathetically.

My noble friend Lord Hodgson talked about the problems with the Royal Albert Hall. I will take his views back to the department but I am afraid that this is a matter, as we know, for the Charity Commission as an independent regulator of charities. We welcome the Charity Commission's attempts to resolve this long-standing and complex issue and the referral of the case to the charity tribunal to consider specific points of law. I agree that this should bring sunlight on to some tricky legal issues. The point about references to the tribunal is noted.

The noble Baronesses, Lady Prosser and Lady Scott of Needham Market, the noble Lord, Lord Rooker, and my noble friend Lady Jenkin all mentioned core costs. I hear what all noble Lords have said and I think this will come up in the civil strategy. We have to remember that at the moment we are in a time of fiscal

[BARONESS CHISHOLM OF OWLPEN]

constraint, as we know, and price is likely to remain the dominant factor in contracting decisions. But I hear what has been said and this is an important matter. Most noble Lords brought this up in their speeches, which means that we need to take this further and make sure that we listen to what everybody is saying.

Support for small charities was, again, brought up by several noble Lords, including the noble Baroness, Lady Barker. The Government are committed to supporting small charities to become more independent, resilient and sustainable. We encourage all small charities to make their views heard during the civil society strategy engagement. We will work with partners, including the Foundation for Social Improvement, to deliver expert training opportunities for small charities over the next three years.

My noble friend Lady Jenkin talked about the need to explore new funding models. We are already doing this and exploring a new range of funding models. We will take this forward in our civil strategy review.

My noble friend Lord Grade and the noble Baroness, Lady Barker, talked about websites and social networks. Websites and a social media presence are, as we know, a good way for charities to demonstrate their transparency and public accountability. The Charity Commission has done much in recent years to improve the information that is publicly available on the online register of charities and it has recently consulted on changes to its annual return, which would further increase charities' transparency. We note the committee's recommendations that funders take account of charities' transparency when considering requests for funding.

Our civil society strategy will provide a clear vision for the Government's work with and for civil society. The strategy will reaffirm the value that we place on civil society and explore what more we can do to support its work in building a stronger and fairer society. It will be developed through open dialogue and debate. We are working towards launching opportunities for civil society and beyond to share their views on how government can best support civil society to realise its full potential, and help solve the most pressing social challenges we face. This will involve online and face-to-face engagement activity over the coming months.

All speeches today have mentioned the fact that your Lordships feel that the Government have not responded properly and have taken a long time to do so. All I can say is that in the short time I have been involved in this our Minister, Tracey Crouch, feels very strongly about it. From the meetings I have been in at DCMS, this really is at the forefront of the department's thinking. The speeches that we have heard today mean that I can take some really powerful things back to the department, which I assure the House I will do.

The strategy will be a vehicle through which we can build on the idea of the shared society, which the Prime Minister has advocated. I think that we will consider ways of tackling all the burning and everyday injustices in society. At its core, the strategy will focus on the following challenges: it will articulate the Government's vision for civil society in a way that reaffirms the value they place on its role; it will unlock civil society's

potential by addressing the challenges it faces through non-financial governmental intervention; it will set a new framework for effective collaboration between government and civil society to solve the most pressing and complex societal issues. Following a period of dialogue and debate with the sectors, the civil society strategy will be published later this year.

The committee's report, *Stronger Charities for a Stronger Society*, has been extremely helpful in setting out a number of challenges. Some of these we are taking forward through our existing programmes and others will form part of the engagement on our civil society strategy. I reiterate our gratitude to the committee for its comprehensive and extremely helpful report. It has helped shape the agenda for the future of our work with civil society. This afternoon we have had a good debate about a vital sector and, once again, I thank all noble Lords for their participation.

5.37 pm

Baroness Pitkeathley: My Lords, far be it for me to attempt to sum up the richness of our debate but I thank most warmly all the speakers today. It strikes me that the passion, commitment and concern we have heard from them very much reflects the passion, commitment and concern which is so apparent to anyone who has anything to do with the charitable sector. I remind your Lordships that not only do we here see it as indispensable and something to be proud of; it is the envy of the rest of the world. Anyone who has had anything to do with international work about the charitable movement or the charitable sector knows that other countries envy it very much—its ability to be the voice of disadvantaged people, and to convey that to government in a way which is both innovative and taken up to be formed into other ideas, which form part of our society.

In response to this report, charities have certainly shown that they do not shy away from improving their performance or measuring their impact. They are committed to positive engagement. In thanking the Minister for her courteous and wide-ranging reply, I assure her that I do not doubt her commitment—nor that of the Minister at DCMS—to taking this forward. She has shown a commitment to real partnership and we hope that will continue. We all acknowledge the importance of the strategy which is to be developed, and I assure the Minister that we shall be watching and participating as it is developed.

Motion agreed.

Brexit: Deal or No Deal (European Union Committee Report) *Motion to Take Note*

5.39 pm

Tabled by Lord Jay of Ewelme

That this House takes note of the Report from the European Union Committee *Brexit: deal or no deal* (7th Report, HL Paper 46).

Lord Whitty (Lab): My Lords, I rise to move the Motion in the name of the noble Lord, Lord Jay, who regrettably is now unable to be here. As a member of his committee, I am therefore introducing this report. The speech I am about to make is, in fact, the speech of the noble Lord, Lord Jay, with only minimal interpolation by me. However, I wish to record my appreciation of the work the noble Lord has done on the Select Committee as acting chair. He replaced the noble Lord, Lord Boswell, for the period when he was unable to be here. I am happy to report that the noble Lord, Lord Boswell, is now back in harness and has just chaired a meeting of the committee. Your Lordships will also be gratified to hear that speaking in the place of the noble Lord, Lord Jay, means that I will not be speaking in my place in the list as well. Any remarks I have, I shall leave until the end.

This report was published only last month, and I am therefore grateful that the usual channels have found a place for it early in the agenda. It also means that we have not had a government response, although I am looking forward to receiving one shortly. Indeed, the day after our report was published, on 8 December, a new deal between the Government and the European Commission was reached on the key withdrawal issues. Time is therefore moving on.

Our report covered two key issues, both of which remain in the forefront of our minds. They are, first, the consequences of a potential no deal outcome, and, secondly, the nature of any transitional period that may follow Brexit on 29 March 2019.

First, on no deal, there are some who believe that no deal, a complete break with the EU and a resort to trading on WTO terms, is the right outcome for the UK. The views of that group were represented to our inquiry by John Longworth, of Leave Means Leave, who urged the Government to act now to, as he put it, “crystallise” the benefits of Brexit. That was a minority position, and even many convinced pro-Brexit experts, such as Ruth Lea, of the Institute of Directors, who gave evidence to our inquiry, believe that agreeing a trade deal is vital to our national interest in the post-Brexit era.

Still more striking, of the 40 written responses to our open invitation to submit evidence, not one argued that no deal would be the preferred outcome. We did not ask them to comment on whether Brexit was a good thing or a bad thing; we simply asked them to assess, on the assumption that Brexit was going to happen, the impact of no deal. The conclusion, contained in paragraph 56 of our report, is clear:

“It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom”,

than no deal.

Last December’s agreement between the Government and the rest of the EU was a necessary first step to reaching a deal to avoid this damaging outcome, and I hope that the Minister will reassure us tonight that the agreement covering the rights of UK and EU citizens, the implications of Brexit for Northern Ireland and Ireland and the UK’s honouring of financial commitments it has voluntarily entered into is irreversible. What businesses and people across the country now need is an absolute assurance that there will indeed be a deal at the end of this process.

Lord Garel-Jones (Con): Does the noble Lord agree that one of the characteristics of this country is that we do not have a written constitution, that the non-constitution is summed up by the words “Parliament is supreme”, that therefore the Supreme Court was right to rule that the referendum has taken place because it was authorised by Parliament and that Parliament has not authorised the outcome, which is, at the moment, unknown?

Lord Whitty (Lab): My Lords, I am not, in my limited capacity tonight, going to argue with the Supreme Court or, indeed, the noble Lord. Clearly, there is a parliamentary process which, no doubt, noble Lords in the course of this debate may well refer to, and which I may refer to in my final remarks. However, the position of Parliament and how binding the role of Parliament in the final vote would be—a meaningful vote, which is now being debated in the other place on the withdrawal Bill—did not form part of this report.

What businesses and people across the country now need is an absolute assurance that there will indeed be a deal at the end of this process, and both sides need to realise that tone is as important as substance. As we say, government statements that no deal is better than a bad deal are not helpful. Last week’s spat between the Secretary of State, Mr Davis, and the Commission over the EU’s preparations for a no deal outcome was a case in point. Once the Government raise the possibility of no deal, of course the Commission is equally justified in advising those who will be affected by such an outcome of how it will affect them. In fact, our report attempts to do the same thing.

The evidence we received was that no deal would be deeply damaging to key sectors of the British economy: financial services, the agri-food sector, freight and transportation, higher education and research. Against this overwhelming evidence, it makes no sense for the Government to talk about retaining no deal as an option. We say that in paragraph 57. As last week’s events so clearly demonstrate, this kind of language, “risks becoming a self-fulfilling prophecy”.

It does not make any sense to threaten the EU that we will shoot ourselves in the foot if we do not get what we want. It is we who will end up limping.

No deal will affect not just the economy; co-operation on security, counterterrorism, foreign policy—co-operation that is hugely in our interest—would be affected, too. That is no doubt why David Davis spoke to the committee about a so-called bare-bones deal covering some of these non-economic issues, but even if it were possible to negotiate such a deal, the damage to the rest of the economy of not reaching a trade deal would remain, so I hope the Minister will reassure the House, when he replies to this debate, that the Government are wholly and unambiguously focused on achieving the best possible deal, one that will benefit both the United Kingdom and the EU.

The second major theme of our report was transition, or implementation as the Government prefer to call it. This is an altogether more complex, though equally important, issue. Almost everyone, including the Government, agrees that we need a transition period; we cannot simply switch off the system of EU law, which has underpinned so many aspects of our national

[LORD WHITTY]

life for 45 years, at 10.59 pm on 29 March next year. There will have to be a transition, a bridge to lead us safely from where we are today to our as yet unknown final destination.

The Government continue to insist that transition will be merely an implementation phase, a time-limited period that will allow for a phased adjustment to the terms of the new UK-EU relationship, but if that is to be the case, the terms of that new relationship will have to be agreed, in full, before exit day in March next year. The committee agrees, at paragraph 123, that an “early and comprehensive” agreement would be the best outcome, but we have to be realistic, and the fact is that almost no one outside Her Majesty’s Government thinks that achieving agreement on this timescale will be possible, so unless there is extraordinarily rapid progress in the coming weeks, sooner or later the Government will surely have to acknowledge that transition will, in fact, be made up of at least two distinct elements. There will have to be an initial standstill phase, where everything stays pretty much as now, while negotiations to finalise the terms of the future relationship continue, and there will then be a period of adaptation or implementation.

We cannot say much about adaptation or implementation at this stage, since the negotiations on future relations have yet to start, but so far as the initial standstill phase is concerned, we cannot afford to wait. Uncertainty over the terms of UK trade with the EU from 30 March 2019 onwards is already having an impact on many sectors of our economy, for instance in the financial services sector, where insurers will soon be issuing policies which, by their very nature, extend beyond that date. So the forthcoming negotiations on transition really need to be concluded quickly and decisively. We cannot afford any lingering impression that the transition period is contingent upon reaching agreement on the future relationship. That would be damaging for business confidence and the wider economy. Instead, we need a commitment from both sides that, in effect, the legal framework for trade will remain unchanged between 29 and 30 March next year. In other words, we want to confirm that it is the Government’s intention that the transition period will be a standstill period in all respects, save that the UK will no longer be party to EU institutions.

My next point may appear more technical, but it is equally important. Both the Government and the Commission have indicated that they envisage transition forming part of the withdrawal agreement under Article 50 of the Treaty on European Union. The fact that both sides agree on this is welcome, but the ultimate arbiter of EU law is neither the UK Government nor the Commission, but the Court of Justice of the European Union. There is every likelihood that the ECJ will be asked to review the compliance of any proposed withdrawal agreement with EU law before March 2019.

As the report therefore points out, there remains a possibility, however remote, that even if political agreement is reached on transition, the court could strike it down before it comes into force. We recommend that the Government, as a matter of urgency, and if possible in agreement with the Commission, set out their view on the legal basis for transition. I hope that the Minister,

if he cannot set out those views tonight, will at least assure the House that the Government will accept that recommendation.

Finally, I touch on the last paragraph of our report. There are two legally watertight ways to achieve a time-limited standstill period to buy more time to finalise the details of the agreement on the future UK-EU relationship. These are clearly set out in Article 50 itself: either to extend the two-year negotiating period or to post-date the withdrawal agreement so that it takes place later than March 2019. I recognise that neither side is currently contemplating such an extension of our EU membership, but the committee suggests that we should not rule it out, if only as a last resort—not to thwart Brexit, but in order to make it as smooth as possible.

We now have 14 months before we leave the European Union. I welcome the agreement the Government reached with the EU in December, although the substance of an agreement on Ireland remains dangerously opaque. The most difficult phases of the negotiations lie ahead. Time is short. The objective must be an orderly and legally certain transition to a new and lasting partnership between the UK and the EU. I beg to move.

5.53 pm

Lord Hamilton of Epsom (Con): My Lords, I join the House in saying how sorry I am to hear about the noble Lord, Lord Jay. I hope he recovers quickly.

I wish I could go along with the customary congratulations that the House normally pays to reports and say what a good report it is, but I would be both dishonest and hypocritical if I said I thought this was a good report. It is a very weak report. The only thing I can say is that it is slightly better than one I debated some time ago, about the time of the referendum, which failed to address any of the issues that were coming up in that referendum. It was quite interesting that in that debate, unlike in this one, only one member of the European standing committee actually attended the debate, the noble Lord, Lord Boswell. Obviously all the others were so humiliated by the quality of the report that they did not bother to come.

The reason this is a very bad report is that at the end of the day, we are assessing the effect of no deal on the United Kingdom, but we should face the fact that no deal will affect not just the United Kingdom but the EU as well. As the EU sells one and half times as much to us as we do to it, if there are any adverse effects of no deal, they will be felt more powerfully in the EU than in the UK. In the absence of the noble Lord, Lord Jay, I would like to ask the noble Lord, Lord Whitty, when he winds up, why the committee did not call for evidence from, for instance, the German car manufacturers’ association. There is not a single German car that we buy in this country which is not assembled outside the United Kingdom. If we resort to the WTO, there will be a 10% tariff to pay on those cars. It would surely be interesting to know how German car manufacturers would react to that. Maybe they think we would pay anything for our German cars; maybe they think that because they already sell cars to us, despite the devaluation of sterling against the euro, they will therefore continue to do so. But it is a matter of interest, is it not, to know what the EU may actually feel about selling its cars to us?

Lord Davies of Stamford (Lab): I am grateful to the noble Lord for giving way. Would he not agree that in trade negotiations, the leverage of one side or another is a function of the proportion of the GDP of that party which is exposed to trade with the other country in question? I am sure the noble Lord is very well informed on these matters and knows that, in the case of the British relationship with the other 27 members of the EU, we have 14% of our GDP exposed to the EU—that is the proportion exported to the EU—while in the other direction, with the exception of the Republic of Ireland, no single member of the EU sells to us more than 4% of its GDP. So in fact our dependence on them is much greater than their dependence on us.

Lord Hamilton of Epsom: That is one way of looking at the balance between the United Kingdom and the EU. But at the same time, I think the noble Lord, Lord Davies, would accept that if we are putting at risk 10,000 jobs in the United Kingdom, we are putting at risk 15,000 jobs in the EU; if we are putting at risk 100,000 jobs in the United Kingdom, we are putting at risk 150,000 in the EU. There are two ways of looking at this, and it would have been a good idea if the committee had also called some Commissioner—I am sure there is one—responsible for employment in the EU and asked how they would react to seeing very large numbers of their own citizens made unemployed by the fact that they cannot reach a deal with the United Kingdom. Would that not have been helpful? The noble Lord, Lord Davies, would be the first to accept that EU levels of unemployment are running at between 8% and 9% at the moment, compared with just over 4% in this country, so the EU has double the rate of unemployment that we do. You would have thought that in those circumstances they would think the jobs of people in the EU were quite important and would not want to sacrifice them by having no deal with the United Kingdom. It is important to ask that question.

Baroness Falkner of Margravine (LD): One of the problems with the argument being made by the noble Lord, Lord Hamilton, is that he sees the EU 27 as one unitary decision-making body. He may be surprised to hear that employment law is not an EU competence but a member state competence. I am a member of the committee, and the answer to his question about calling German car manufacturers is that we did not need to do it, for two reasons. First, we know what German car manufacturers say: the German chamber of commerce and the German employers' federation both came out early and told the German Government that they stood behind their negotiating position and would not seek exceptional deals. So we knew the answer to that, which is why we did not call them. Secondly, when he is talking about these figures, the noble Lord also needs to think that there are 27 member states, not one.

Lord Hamilton of Epsom: Certainly, there are 27 member states, but you could produce that argument for not calling anybody to give any evidence whatever to the committee. You could say, "We know what their position is anyway". Come on, this is ridiculous! You have to call evidence from people just to have their position confirmed. You can also cross-question them

and ask them what they think the significance would be for car sales to this country if a 10% tariff barrier was imposed under WTO regulations. They would tell you whether they thought their turnover was going to go up or down, or whether they thought they were going to sell more or fewer cars, and they might be able to tell you about the impact it would have on employment in Stuttgart. The noble Baroness is making an absolutely ridiculous claim, if she does not mind me saying so: that you do not call somebody because you know what their views are already.

The other thing wrong with the committee's findings on all this is that at the end of the day we have only one ace card in our hand: if we reach no deal with the EU, we stop paying. We are under no obligation whatsoever to pay towards the EU's budget. There are perhaps a few side-effects on pensions and things, but the main payment would stop on the day that we actually reached no deal. As we know, the EU is absolutely obsessed with getting hold of our money because it really does not know what it is going to do. Juncker has already made noises about others among the 27 nations of the EU contributing more. I will tell your Lordships what is going to happen: all the poor countries of the EU are going to say Germany should pay because it is the richest country, so the Germans are not very keen on this either.

It therefore strikes me that if we completely discard the idea of no deal we are completely undermining our negotiating position. On top of that, it is not inconceivable that we may be unable to reach a deal. On both those counts, it is very important that we actually work on no deal and take steps to provide more customs posts and generally put in the logistics that would be needed for no deal. If we do not, we are going to be in a very weak position in negotiating with the EU. If we want a good deal, we have to have the threat of no deal permanently there. If anyone is actually saying that under no circumstances should we entertain the idea of no deal—indeed, there are people in the Government saying it—they are guilty of undermining our negotiating position with the EU.

The other day a German ex-ambassador called Mr Thomas Matussek said the EU's position on the negotiations is that it wants as soft a Brexit as possible but at the same time, it does not want to encourage anyone else to go down the same route as the UK. Germans, of course, believe in the two-headed eagles that have the great ability to face in opposite directions at the same time. When you come to think of it, those two statements are completely contradictory. My best guess as to what is going to happen is that we are going to reach heads of agreement terms by October or November this year, and then there will be a two-year transition period while the detailed negotiations go on.

I hope we have learned by now that dealing with the EU is actually very difficult. We started off these negotiations rather like someone playing tennis on a vicarage lawn, lobbing soft furry balls over the net. Unfortunately, what came back were cricket balls hurled with great vehemence and accuracy and designed to injure and break bones. I hope we have learned by now that negotiating with the EU is not going to be easy in any circumstances. We must therefore keep our position

[LORD HAMILTON OF EPSOM]
as carefully as possible, with options. If we do not have options, we are going to end up with a very bad deal.

That transition period is going to be the start of some very difficult negotiations; whatever deal is reached by October or November of this year may be much easier. So we must keep “no deal” as an option if we want to have a good deal, and anyone who suggests otherwise is undermining this Government’s negotiating position.

Viscount Waverley (CB): Before the noble Lord sits down, could he tell the House what, according to what he is suggesting, he believes Parliament would be voting on?

Lord Hamilton of Epsom: What should Parliament be voting on at the end? It will be voting at the end of the Article 50 process on whether to accept the deal for the transition period that is then possible. The “no deal” may kick in later if we cannot reach agreement during the transitional arrangements.

6.04 pm

Lord Wallace of Saltaire (LD): My Lords, unlike the noble Lord, Lord Hamilton, I think this is an excellent report. I strongly endorse its conclusion, which the noble Lord, Lord Whitty, has already quoted:

“It is difficult to envisage a worse outcome for the United Kingdom than ‘no deal’”.

No deal, a complete and abrupt break with the EU, leaving the UK to go trading on WTO terms, or perhaps even to embark on a policy of unilateral free trade, now seems to have become almost the preferred outcome of the most embittered Brexiteers. Their argument, as recently put by Boris Johnson, is that a soft Brexit with an association agreement is not an attractive option; it would leave us with obligations to the EU but without influence. The stark choice that we face is therefore between staying in and breaking away.

That is not what the leave campaign was saying before the referendum. I have just looked back at the briefing book for Business for Britain that leave campaigners carried with them to debates during the referendum campaign. It is a hefty and authoritative volume, edited by a distinguished group that included Matthew Elliott of the TaxPayers’ Alliance, Mark Littlewood of the Institute of Economic Affairs and our own noble Viscount, Lord Ridley. It sets out a range of options, from Norway through Switzerland to Canada, assuring us that co-operation across a wide range of sectors can continue after we leave. Were the voters deliberately misled, or had the leaders of the leave campaign not thought through the detailed implications—

Viscount Ridley (Con): I wonder if the noble Lord would give the title of that volume. It was called *Change, or Go*.

Lord Wallace of Saltaire: It was called *Change, or Go: How Britain would Gain Influence and Prosper outside an Unreformed EU*. I have the summary version with me.

Viscount Ridley: The point is that it was published before the renegotiation, so it was all about how we should go into the renegotiation. It was a quite different situation.

Lord Wallace of Saltaire: I merely remark that I was given this during the referendum campaign when it was being extensively used by speakers from Business for Britain, so it was very much part of the briefing for the referendum campaign itself. I rest my case on that.

I feel that the extent to which Britain’s achievement in 40 years of membership, and the whole corpus of regulation that has grown up in that period, has been achieved by engagement with our neighbours, including what was after all Mrs Thatcher’s greatest European achievement, the European single market. There is little new in the evidence presented to the committee for this report on the implications of a hard Brexit. Most of it has been reported in successive exercises and inquiries over the last few years, most comprehensively in the 32 balance of competences papers, which were the outcome of an extensive consultation conducted by the coalition Government at the insistence of Conservative Eurosceptics.

As the noble Lord, Lord Hamilton, has just demonstrated, Brexiteers and remainers still seem to be living in parallel universes in how they see Britain’s relationship with our European neighbours. One of the noble Lord’s colleagues on the Conservative Benches told me the other day that the British had been misled when we were taken into the European Community and not told that this was a political project to build a united states of Europe—what I see the *Daily Mail* now calls a “European empire”. Britain, he added, must regain its independence; the details of our future co-operation scarcely matter. However, as the report makes clear, the details matter a great deal.

The easy promises and illusions of the leave campaign that we could go back to the relationship that we had before 1973 ignore the transformation in the global economy since the 1970s: the impact of new technology, the communications revolution and the accompanying transformation of international security and global threats. Data protection and exchange, air traffic regulation and pharmaceutical and financial regulation have all become far more complex. Britain has helped to shape the European framework for these regulations. If we leave the EU completely, we will have to choose between whether we go back to following American regulation, which is what we did before we joined and before the European single market, or follow European regulations in order to have continuing open access to its markets. I note that the London Chamber of Commerce evidence told the committee:

“For the aviation sector, there is no World Trade Organisation ‘fail safe’”.

There is no fail-safe either for phytosanitary regulations, which are vital for our food and agricultural industries, or for managing tensions between free data flows, data protection and efforts to combat cross-border crime and terrorism. The leave campaign seems to be still back in the 18th century world of David Ricardo, where tariffs were the only things that mattered and regulations and standards hardly existed.

However, it is the focus on timing that is the most important part of this report. The report notes the closeness of the intermediate deadlines that we face, well before the Government's self-imposed deadline of March 2019. The Government have stated that they wish to reach agreement on a transition or implementation arrangement no later than March 2018, now a matter of weeks away. In order to leave the EU in March 2019, they also state, the UK and other European Governments need to reach agreement by October 2018 to allow sufficient time for domestic approval and ratification in the UK and other states. The Government have boxed themselves in by insisting, to placate the hardliners in their party, that the UK will formally leave the EU in March 2019 and that any period of implementation after that will be as a third-country non-member. So time is extremely short.

The noble Lord, Lord Hamilton, suggests that we should ask the Germans to provide an answer, to define the future relationship for us, but if the Government cannot define what they want, negotiation is impossible. The Prime Minister herself is still unable to define what she means by a "deep and special partnership" with the EU, without which it is difficult to negotiate any such relationship. The Cabinet, we are told, held its first discussion on the definition of the future partnership with the EU that we should seek to negotiate on 19 December, a few weeks ago, and it was reported in the *Times* that the discussion did not enter into much detail. The Cabinet clearly disagrees on the nature of the transition or implementation agreement we are asking for.

The noble Lord, Lord Hamilton, suggests that we should immediately stop paying for the European budget, which is clearly a source of great grievance to the Brexiteers. He will no doubt recall that enlargement of the European Union to eastern Europe was, again, one of Margaret Thatcher's greatest priorities in the 1980s and 1990s and that a substantial part of our net contribution to the EU budget goes to fund the economic development of eastern Europe and the eastern neighbourhood and is thus a contribution to European security. I hope that the Government want to continue to contribute to European security in various ways. The foreign policy implications of leaving the European Union have not been fully addressed, except in the excellent position paper we received last September.

The Cabinet clearly still disagrees. Perhaps if the Government had placed their best Ministers in charge of negotiations, we might have made more progress. Perhaps if the division of responsibilities between the Cabinet Office and DExEU had been clearer and the turnover of staff within DExEU had been lower, the Government might also have made more progress. Perhaps if the Prime Minister had paid more attention to Britain's long-term national interest than to holding her bitterly divided party together, we might by now be in a different place. As it is, we have lost a year, including an unnecessary general election, and we are in danger of running out of time to negotiate an acceptable agreement with the rest of the EU rather than collapsing into a chaotic no-deal outcome, which would be a tragedy and a disaster for this country.

6.13 pm

Lord Kerr of Kinlochard (CB): I think it is a very good report, and it is clear that the noble Lord, Lord Whitty, would make a superb FCO Permanent Secretary. Since the report came out, the story has moved on a little. It is now clear that no deal would be even more damaging than the report suggests, but it is also clear that the risk of no deal is now rather lower than it suggests. I mean because of the Prime Minister's agreement in December, approved by the European Council in December. On citizens' rights there are still a few "t"s to cross and "i"s to dot, but it seems wildly unlikely that a file which should never have been brought into the negotiation at all will now not be successfully closed, whatever else happens in the negotiations. As the report states, it is really time that the Government stopped saying that:

"Nothing is agreed until everything is agreed".

It is clear that, on citizens' rights, we have the outlines of an agreement.

We have more than that on money. The Prime Minister and Presidents Tusk and Juncker have shaken hands on a finance deal. However much some in London may try to present the deal as the price of future market access, that is not how it was computed. With a little more to come on pensions and if guarantees are called, there is now a mutually agreed computation of the costs to which we were already committed, and to which we are now doubly committed.

I have to tell the noble Lord, Lord Hamilton, that I see no chance that any UK Government would disown the deal and refuse to pay—no chance whatsoever. If we did, there would be serious bond market and credit-rating consequences: ask Argentina, ask Venezuela. There would be legal consequences, and I cannot see how we could win in court or before any arbiter. There would be trade consequences for UK enterprise, because it could hardly expect open market access to the EU if the UK was in default of a financial obligation to the EU. There would be wider trader consequences: in the WTO, we need unanimous approval of our revised tariff schedules and quotas, and I am not sure that the EU would be totally co-operative in that exercise. In short, default would be a disaster. A deal is a deal, and a deal done at prime-ministerial level is a doubly done deal.

At least two files in the negotiation are now in practice closed. Of course, on money, rash suggestions in London that the finance deal was not legally binding but merely "a direction of travel" have led the 27 to insist that the first bit of business this term is to turn the deal into a legally binding text, but it was politically and morally binding the moment the Prime Minister shook hands on it and the European Council approved it. I had thought there was a risk of no deal precisely because I worried that the Prime Minister might listen to her Foreign Secretary and decide that, on money, the right course was to tell the 27 to "go whistle" for it. They would undoubtedly then have refused to move on to discuss anything else and there would have been a very high chance of no deal, but that has gone.

As for what happens now, I think a standstill agreement will be quite easily reached, and quite soon. It will not be an implementation agreement because there is nothing

[LORD KERR OF KINLOCHARD]

to implement; it will not be a transition agreement because there is nothing to transit to. The eventual deal, if we leave, will be reached only after we have left. The sequence on standstill would be very similar to the one which played out last year on money. The Commission will produce a draft mandate—actually, it already has it in the 29 April text of last year. The 27 member states will toughen it up a bit, as they did on the money. According to today's *Financial Times*, that process has already started. We will huff and puff but, in the end, we will basically come to heel. The 27 will tell us that, provided it is for a limited period, a transition agreement—a standstill agreement—can be written on an Article 50 legal base, but the key will be that it should be a very short deal, so it is a part of the withdrawal process rather than a continuing new relationship between a third country and the EU. That is probably the answer to the legal conundrum that the report raised and the noble Lord, Lord Whitty, highlighted. They will say, “Of course you can, if you want to, for a limited period after you’ve left, retain precisely the full market access you now have, provided that you apply the whole *acquis*, respect ECJ jurisdiction in full and respect the four freedoms, all four of them—and all that despite your having no votes, no MEPs, no judges and no Commissioner. But if that’s what you want, you can have it for a strictly limited period—and it has to be limited, because the lawyers will insist”.

We will huff and puff. Mr Johnson will say, “Ah, but there are no new EU regulations or laws”. Mr Gove will say, “Ah, but no CFP”. Mr Fox will say that he wants to be free to undercut the common commercial policy—but the other side will say that we cannot cherry pick. We will come to heel in the end, probably quite quickly, because it is very important to avoid the cliff edge next year. We will not avoid it, but we will postpone it while the debate moves on to whether we may cherry pick in respect of the future pound arrangement, and Mr Barnier will offer us Canadian terms. At least we will not be able for much longer to talk bafflingly about a bespoke arrangement without explaining what it is or saying what we want.

As it becomes clear in the end that we cannot have our cake and eat it, maybe we will stop and think about whether it all makes sense—whether a standstill period when we have to take all EU rules but have no say in making them, and an eventual partnership arrangement where our principal export services are systematically disadvantaged, is really what we want. I do not think that the question is now “deal or no deal”. That question has been overtaken. On money there is a deal, and this country does not break its word. The question now is whether any future deal can be a good deal, a deal as good as the one that we now have as a full member of the world’s largest single market and free trade area. If it were to emerge that the answer is no, at least we can remember that an Article 50 notification can always be withdrawn.

6.22 pm

Lord Wigley (PC): My Lords, I welcome this most timely of debates, and I thank the committee and the noble Lord, Lord Jay, for presenting the report and the

noble Lord, Lord Whitty, for introducing it. Deal or no deal is, for me, an absolutely critical question. I respect the referendum vote to give up our membership of the EU, although I do so with the utmost of bad grace. However, we cannot ignore that vote or rerun the same question, even if Mr Farage, for his own reasons, seems to be advocating that.

During the referendum, Mr Farage and his Brexiter colleagues repeatedly emphasised that, of course, we would get a deal, a very good deal, because, we were told, it was in the interests of all the 27 other member states that such a deal was achieved. So, fine—if we do, indeed, get a good deal. For me and for the vast majority of my former colleagues in manufacturing industry, and for the livestock farmers of Wales, this means a deal that enables them to trade with the single market without any physical barriers or tariffs whatever. For the tourism industry in Wales, it means free movement of people, both visitors and employees, and for the NHS it means having no disincentives to recruiting staff at all levels of work. That is the core of a good deal.

Having no deal fails to deliver those key requirements. Indeed, today, to my mind, with this report, the Brexit chickens have finally come home to roost. A no-deal scenario represents an utter disaster for the countries of Britain. The Government are criminally irresponsible to present no deal as a viable option, and to use it as a bargaining counter, as Brexit Ministers come close to admitting, risks having the Government’s bluff called, to the ultimate detriment of both sides. Millions of people who voted for Brexit on the basis sold to them by Brexiteres that of course a deal would be done would most certainly think twice before endorsing a no-deal Brexit. That is why, to my mind, if the no-deal outcome is what finally transpires, Parliament should insist that it cannot go ahead without there being a confirmatory referendum. I hope that, even at this late stage, MPs will have the foresight to build this into the Brexit Bill. If they do not, we in this Chamber should most assuredly do so.

A very real danger, as this report highlights, is that a no-deal outcome happens almost by default. Both sides may call the bluff of their antagonists, and that could go right up to the wire. That is the stark reason why building into legislation a fixed and immutable deadline late at night on 29 March 2019 is sheer madness. The hands of the negotiators in Brussels on both sides and the hands of Parliament itself must not be tied by unnecessary macho posturing. The issues at stake are far too important for them to be put at risk in a game of Euro-bluff.

Let us remind ourselves what a no-deal really means if it comes about by default, with negotiations possibly going up to the wire on 29 March and collapsing without agreement. On 30 March next year, it would mean that the border between the Irish Republic and the six counties will be closed, with a requirement to control the movement of goods, people and money. It would mean chaos in the Irish dairy industry, as the report highlights, with the possibility of a 44% tariff on Irish cheddar. It would mean that, on that Saturday morning, all the lorries going through the ports would have to be checked, with all the extra staff in place to handle such an eventuality and with potential chaos in

Holyhead, not to mention Dover, where the report says there could be tailbacks of 17 miles. It would mean exporters having to adjust their prices to reflect, as the report mentioned, an additional 4% tariff on manufactured goods, up to 10% on cars—and such tariffs would apply to 90% of the UK's manufactured exports.

Over 70% of Britain's food exports go to the EU. On 30 March, farmers could face an instant tariff of between 40% and 80% on beef and lamb in various carcass forms. Imported food prices would instantaneously rise by over 20% if, on that black Saturday morning, we had to fall back on WTO rules. If at that point in time, when nothing is agreed because everything is not agreed, on that morning the London Chamber of Commerce warns, on page 15 of the report, "flights from the UK ... will be grounded on exit day".

As Johnson & Johnson warned the committee, on page 14:

"A no deal scenario could potentially disrupt the supply of medicines".

On that Saturday, UK citizens in EU countries and EU citizens in Britain will be in limbo. No deal means no deal. For the service sector, there is no succour from falling back on WTO rules, because, as the report notes, they do not apply to the vital financial sector.

It would be criminally irresponsible for the Government to allow the slightest possibility of a no-deal Brexit emerging at the last minute. They have to do at least three things, to my mind, which emerged from the report. First, they have to step back from the crazy policy of "nothing is agreed until everything is agreed", as demanded in paragraph 106 of the report. They will need a phased approach. Secondly, a withdrawal agreement on the future UK-EU relationship needs to be agreed by October this year, separately from the deal on future relations. That is in paragraph 122. Thirdly, the Government need to spell out urgently what they expect in terms of the proposed transitional agreement, clarifying the legal basis for every element in such a transition package, as asked for in paragraph 132. I would also highlight the comments in paragraph 134 that:

"The consequences of a 'no deal' outcome would be so damaging that a fall-back position is now needed".

There I rest my case. A damaging no-deal outcome, to my mind, demands that there be a confirmatory referendum. That is the only way that so damaging an outcome can be legitimised or, better still, buried once and for all. Let this unelected House resolve to allow the electors to have a final say on that most damaging prospect, which confronts us in the context of the report, of a no-deal Brexit.

6.29 pm

Baroness Wheatcroft (Con): My Lords, we should congratulate the noble Lord, Lord Jay of Ewelme, and the European Union Committee on securing this debate so relatively shortly after publication of this excellent report. It is, perhaps, an acknowledgement that time is running out and crucial decisions on this momentous subject have to be taken soon. The most important decision that needs to be taken, and very soon, was raised in the report and mentioned by the noble Lord,

Lord Whitty. The Government should stop talking about transition and ask for an extension of the negotiating period. Transition, or implementation, comes later.

The evidence that no deal would be the worst possible deal is now overwhelming, yet the risk of the country hitting the self-imposed deadline of March 2019 without a workable deal is real. The Government have maintained so far that nothing is agreed until everything is agreed, but it is obvious that everything will not be agreed by the time that the withdrawal agreement has to be finalised this coming autumn, nor by March 2019, when our membership of the EU is scheduled to end.

The risk is that the rhetoric of "nothing is agreed until everything is agreed" will change, and it will be proposed that we leave the EU and enter into a limbo period in which negotiations will continue. This cannot be the implementation period which used to be discussed, since there will not be any clarity over what should be implemented. It would, undoubtedly, be a transition period, but Britain would be transitioning to we know not what.

There would be a bare-bones deal. Planes would still fly, but the future terms of trade would be up in the air, as would so many aspects of life. Having left the EU, our negotiating position would be weakened. Business would not have the clarity it craves, and it is highly unlikely that the UK would be free to negotiate the much-vaunted trade deals with the rest of the world while we were in transition.

The dictionary definition of limbo is,

"An uncertain situation that you cannot control and in which there is no progress or improvement".

Some theologians suggest that it can go on indefinitely. None of us, not business, not citizens, want to enter into limbo. I accept that a time-defined period of negotiation does not provide the certainty that we all seek. However, to leave without knowing where we are going cannot make sense. Protracted negotiations do provide the chance of negotiating the best deal possible for future generations, and that, surely, should be our aim.

The overwhelming weight of economic evidence is that Britain will lose by leaving the single market. The estimates vary—they are produced by economists—but the conclusion is the same. The independent Rand Corporation modelled the outcome of various scenarios and found that Britain would be significantly worse off outside the EU in all but one set of circumstances. This nirvana where we would be better off would involve the UK negotiating a free-trade deal with the EU, and the EU and the UK concluding the TTIP agreement with the US. The likelihood of this seems slender: negotiations on the Transatlantic Trade and Investment Partnership have been going on for many years and have made no progress since 2016. Issues such as the American fondness for chlorinated chicken have proved hard to overcome and they would be, even when we tried to negotiate our own trade deal with the US.

Rand concluded that, in the absence of this dream scenario, the UK would suffer by as much as \$140 billion over 10 years. It admits that its modelling took no account of the drift of EU workers out of the UK,

[BARONESS WHEATCROFT]

a consequence of Brexit which is already becoming apparent. Only this week we heard of the estimated cost to the Scottish economy of leaving the EU. The Scottish Government say that even a Canada-style deal would cost their economy 6.1% of GDP by 2030.

We need a good deal. The Cabinet Secretary, Sir Jeremy Heywood, has told the Public Administration and Constitutional Affairs Committee that his troops are doing work on a no-deal eventuality, as they must. For clarity's sake, will the Minister confirm that the Government do not, however, have a "Minister for No Deal", as had been suggested before the reshuffle? Government has to be prepared for the worst case but must try to engineer the best, and Parliament must know the implications of what is being planned. How else can it do its job?

I would therefore also be grateful for clarity on the issue of impact assessments. We were led to believe that nearly 60 of these were being prepared in order to assess the impact of Brexit on various sectors. They were so detailed that they could not be made public for fear of jeopardising negotiations. Then they seemed to metamorphose into sectoral analyses that could be unveiled. As a snapshot of a sector as it currently operates, they may suffice, but they do not attempt to analyse the potential effects of Brexit.

I refer noble Lords to the *Agriculture, Animal Health, and Food and Drink Manufacturing (including Catering, Retail and Wholesale) Sector Report*. The title gives a hint of the somewhat broad-brush approach. It includes revelations such as:

"The sector is vital for consumers".

Yes, but enlightenment over the impact of leaving the EU is there none. How can we take sensible decisions on a massive issue such as this without evidence of the potential effects? Are there actually more detailed impact assessments which Parliament is not being allowed to see? Might the coyness be because so many sectors will be seriously damaged if we leave the single market?

I have been a consistent supporter of the need for Parliament to have a meaningful vote on the outcome of our negotiations with the EU 27. I am delighted that we seem to be moving in that direction. I firmly believe that if taking back control has any meaning then it means that the sovereignty of Parliament should prevail. It would be a tragedy if Parliament were asked to approve legislation that would see the country leave the EU for limbo land. We must ask for an extended negotiating period. If it proved impossible to negotiate a good deal that the British public could find acceptable, we would still be in the EU and able to take advantage of the absolute assurance from the noble Lord, Lord Kerr, that Article 50 is unilaterally revocable.

6.37 pm

Lord Liddle (Lab): My Lords, as a member of the EU Select Committee, I add my thanks to the noble Lord, Lord Jay, who very ably prepared and chaired this inquiry. I also thank the secretariat, who cut through a very complex issue and produced a very able and well-argued report—I disagree with the noble Lord, Lord Hamilton.

This speech will be a bit of a first for me. It is the first time I have disagreed with the noble Lord, Lord Kerr of Kinlochard, on a European matter. I believe there is still a horrible danger of a no-deal outcome to these negotiations. I wish I shared the noble Lord's optimism that we are on course for some kind of beneficial outcome, but I fear not.

It is worth remembering that the soundbite, "No deal is better than a bad deal", was one of Theresa May's more politically misjudged lines in her Lancaster House speech last January. It was the Prime Minister who gave life to this soundbite and opened up in the Conservative Party the view that no deal might be a viable stratagem for this country. For the past 12 months, she has spent an awful lot of her time trying to soften the impact and reduce the significance of what she said then.

There are many in the Conservative Party who still appear to believe that this is a viable threat to make. The poor Chancellor of the Exchequer was attacked for awarding only £250 million to be spent on preparations for no deal. He had to up that to £3 billion in the Budget. Perhaps that was the price of him keeping his job in the reshuffle.

As we heard from the noble Lord, Lord Hamilton, the hard Brexit camp is united that Britain must talk up walking away from the negotiations as a realistic possibility. But how big is this threat to walk away? Of course, there is a lot of pub talk where you hear businesspeople say, "In any negotiation I go into, I always have to have the possibility of walking away from it". That may be true if you are buying a house or a car: if you think the other side is asking far too much for it, you walk away. That is fine, but the reality is that you do not lose very much by walking away because you can always go out and find some other car or house that you want to buy.

However, if Britain were to walk away from the Brexit talks, the result would not be the status quo that we have now of membership of the biggest free trade area in the world. Our walking out would result in a breakdown of our main trading relationship and, on some accounts, would mean that planes flying to the continent would be disrupted, nuclear materials could not be transported across borders, pharmaceutical regulations would no longer be operative, many EU citizens would become illegal foreigners in this country and there would be massive legal uncertainties about all kinds of business and insurance contracts. That seems to me a pretty appalling prospect.

The committee analysed the possibility of walking away and concluded that it is a credible threat only if it is made well in advance of the leaving date. That point had not struck me until it was pointed out. The nearer you get to the deadline, the less credible the threat of walking away becomes because the resulting chaos would be so much greater that you would not be able to cope with it.

Lord Forsyth of Drumlean (Con): I am most grateful to the noble Lord. I read the report over the weekend. He lists all the Armageddon consequences, as he sees it, that would accrue to this country if we left without a deal. Could he explain why his list of disastrous consequences does not mention any of the things that would be disastrous for European countries, and why the report did not look at that?

Lord Liddle: The evidence is overwhelming. I could point the noble Lord to many research reports which show that, in the event of no deal, the damage to British GDP would be far greater than to the GDP of the EU 27.

Why is no deal still a possibility in my view, despite what was agreed in December? It is basically because the Cabinet cannot make up its mind on its long-term vision for the economic relationship between Britain and the EU. The Prime Minister talks about a bespoke trade deal for Britain despite Mr Barnier having made clear many times that the choice is either a Norway-style deal, where we are close to the single market or in it, or a free trade deal on the Canada model. Those are the limits of the choice. The Cabinet seems unable to make that choice. It is fundamentally divided between those who want to keep as close to EU rules as possible and believe that can be negotiated, which might be difficult—such as the Chancellor, for example, who wants to do that—and those who want to break free.

We are in very perilous political circumstances that might come to a crisis as early as March this year, when the European guidelines for the trade talks emerge. Those who favour a hard Brexit may be close to resolving in their mind that Britain should choose a very different future from the one we now enjoy. They may decide that Britain should go it alone. Goodness knows what the politics of that would be. I think it would mean a split in the Cabinet and the Conservative Party to match that of 1846 and the dispute over tariff reform in 1903. I say to my own Front Bench that in those circumstances there would be a very heavy responsibility on the part of the Labour Party to act in the national interest.

6.45 pm

Lord Butler of Brockwell (CB): My Lords, one of the many virtues of committees of your Lordships' House—I congratulate the European Union committee on this report—is that they examine issues in depth and bring out important points not hitherto recognised. I remember the surprise that I and other members of the Financial Affairs Sub-Committee under the noble Baroness, Lady Falkner, felt during our inquiry last year when we were advised that if the EU failed to reach an agreement with the UK, it had no enforceable means of extracting a divorce payment from us.

In my contribution I want to concentrate on not the merits or prospects of a deal versus no deal but on a procedural point in the Select Committee's report, which, if I have understood it right, surprised me and seems to me important. It relates to what the Government have described as the implementation period following the UK's departure from the EU in March 2019, and others have described as the transition period. I had assumed—I think this is common ground among those who have spoken this evening—that whether or not the EU and the UK reach a comprehensive agreement by March 2019, everything will continue as now during the transition period subject to the fact that the UK will have left the EU. In other words, there would be a standstill before any divergence began to take place. Those of us who were sceptical about whether a comprehensive agreement on the future relationship

could be reached by March 2019 thought that further negotiations could take place during that transition period. That, again, seems to be widely accepted.

The point that has emerged from my reading of the committee's report is that whatever we may pass into UK law, Article 50 may not by itself allow our partners to provide us with a standstill period after March 2019. If the House will allow me, I shall quote from paragraphs 131 and 132 of the committee's report:

“it is not clear whether, in the absence of an agreement on future relations, Article 50 would provide a legal basis for an open-ended ‘standstill period’ ... It also seems unlikely that Article 50 could provide a legal basis for the implementation of the agreement on future relations, which the Government has conceded will have a separate legal base in EU law, such as Article 218 ... Any or all of these questions could fall to be determined by the CJEU, following references by the European Parliament or by a Member State, before withdrawal takes effect”.

The committee continues:

“We therefore recommend that, as a matter of urgency, the Government should set out its views on transition, including on the bases in EU law for the various elements that make up transition. If possible, the Government should secure agreement on these issues with the EU's Chief Negotiator”.

The Select Committee goes on to suggest that, unless we can reach a comprehensive agreement on the terms of our future relationship before March 2019, the only reliable basis for a standstill transition period may be by seeking to postpone our departure from the EU. If that is correct, it explains why the Government have asserted that, to leave in March 2019, they will reach a comprehensive agreement on the basis of our future relationship before then, and why they describe the period after March 2019 as an implementation period. However, it is generally accepted that this requires the negotiations to be successfully completed by this autumn to allow time for approval by the UK and European Parliaments. That is widely regarded by commentators, including the Select Committee, as unrealistic. If it is unrealistic, it throws into doubt the repeated assertions by government spokesmen that the UK will leave the EU in March 2019 with a standstill period for implementation thereafter.

Can the Minister therefore address the following question in his reply? Is the Select Committee correct in saying that Article 50 is a doubtful legal basis for a standstill transition period after March 2019 and that, absent a comprehensive agreement on our future relationship, the only secure basis for such a transition period will be to seek a deferral of the UK's departure from the EU? I noted that the noble Lord, Lord Kerr, was reassuring on the legal point, but it would be good to have the Government's view.

6.51 pm

Viscount Ridley (Con): My Lords, I have to say I got the impression on reading this report that the committee mostly started with its conclusions. I do not imagine there was a lot of changing of minds, or indeed challenging of minds.

I will focus on the assertions in the report that:

“It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom”,

than no deal, and that,

“the Government's assertion that ‘no deal is better than a bad deal’ was not helpful”.

[VISCOUNT RIDLEY]

With respect to the latter claim, I point out that saying the opposite, during the early months of 2016, was what was not helpful. It is now clear that the failure of the renegotiation prior to the referendum was guaranteed by the Government's insistence that they would recommend a remain vote however little the EU conceded. So we should have said, "Change or go" at that point. In any case, I find it far from impossible to envisage a worse outcome than no deal if no deal means no free trade agreement. A deal in which we agree to giving Brussels continuing control over our borders, our money and our laws indefinitely without any say, so that we are effectively stuck inside the EU for ever but with no say and no rebate, would be worse than no deal.

No deal means no free trade agreement, and it is not the same as "walking away" and failing to settle administrative issues such as mutual recognition agreements on goods and aircraft landing rights. No one is advocating that, and it is not going to happen, because under international trade law, discrimination is illegal. EU denial of "equivalence" to our banks when the same is granted to US banks would be illegal. Customs formalities and mutual standard recognition have to be provided seamlessly by both sides under WTO rules; any failure to do this is, again, illegal. Say what you like about the EU, but it is not about to start breaking the law on that scale.

The report cites evidence of problems at customs and ports if there is no deal. However, it ignores the evidence given by Jon Thompson, the head of HMRC, to both the Public Accounts Committee and the EU Committee in the Commons that 99.5% of non-EU imports are not physically inspected. Mr Thompson could not be goaded by members of the committee into the kind of doom-mongering that we have heard this evening about what would happen at ports.

If we were to fall back on WTO terms, then, according to no less an authority than the director-general of the World Trade Organization himself, Roberto Azevedo, speaking last November to Liam Halligan of the *Telegraph*,

"it's not the end of the world if the UK trades under WTO rules with the EU ... About half of the UK's trade is already on WTO terms—with the US, China and several large emerging nations where the EU doesn't have trade agreements".

He concluded:

"If you don't have a fully functioning FTA with the EU, there could be rigidities and costs",

introduced into that trading relationship,

"but it's not like trade ... is going to stop. There will be an impact, but ... it is perfectly manageable".

The committee report says that,

"no deal would also have a damaging impact on the EU".

This is the understatement of the century and it is a pity the report did not explore this in great detail. As others have said, it is baffling. According to Professor Patrick Minford's calculations, under no deal, the EU loses around £500 billion in net present value. That is because, first, it loses our financial support during the implementation period; secondly, the tariff revenue levied by us would be effectively paid by EU producers, who must keep their UK prices in line with world competition to sell anything here; and thirdly, we would

conclude free trade deals with the rest of the world earlier than otherwise. In contrast, according to Professor Minford's calculations, the UK would gain around £650 billion in net present value from this outcome, mainly through lowering the external tariff—a point largely ignored in the report.

You can dispute these actual numbers, but it is hard to argue with the general point that this would hurt them more than it hurts us. Claims to the contrary are almost always based on models that fail to assume current government policy; for example, that we will agree free trade agreements with non-EU countries that account for 60% of our global trade. Despite 60 years of trying, Brussels has failed to sign free trade agreements with China, Brazil, India and America. Many of its 50 or so trade deals are with tiny entities such as Jersey and the Isle of Man. Again, Mr Azevedo, the director-general of the WTO, explains why this is:

"Trade deals are difficult but there is an additional complicating factor for the EU, which is agriculture ... Once you start negotiating with a big agricultural exporter, they want market access—and, for the EU, that's a sensitive sector, both politically and economically".

Baroness Ludford (LD): Is it not the case that an EU agreement with India was prevented by the UK's objection to issuing more visas for Indian workers?

Viscount Ridley: It is still at the early stage of negotiation. It is a long process and the agreement with India is nowhere near ready.

Do not get me wrong. Of course I think we should strive for a good trade deal with the EU. If we fail, it will not be for lack of trying on our part. But look across the table. Mr Juncker and Mr Barnier refuse even to talk about a trade deal until March, showing no urgency on behalf of the people and businesses of the European Union. We are in a very odd situation here. The party that needs the deal most wants it least. Punishing the UK seems to be a higher priority for Mr Juncker than looking after the interests of the EU 27 economies and people. How do you negotiate a deal with the other side when it is interested not in what is best for its side but only in causing pain?

Lord Hannay of Chiswick (CB): Can the noble Viscount possibly contemplate that the party which he says needs a deal more than we do may have a different view on that matter?

Viscount Ridley: That is my point. Their view is that the politics must override the economic interests of the people in their countries.

Anyway, in those circumstances, of course we must prepare for no deal.

6.58 pm

Lord Teverson (LD): My Lords, perhaps I could point out that neither Mr Juncker nor Mr Barnier write the script; it is written by 27 member states' Heads of Government. They are the people who decide what is right or wrong, and they are chosen by their electorates.

I agree with the noble Lord, Lord Hamilton of Epsom, that the EU committee should look at the other side of this argument as well. That would be a

very useful report. He also said that perhaps we should speak to one of the European Commissioners. However, he is probably aware that, particularly during phase 1 of the negotiations, neither the Commission nor national Governments would enter into any discussion because they were maintaining their one-channel negotiation through the Commission representative. However, I agree with him entirely that perhaps the EU committee could look at the other side of this argument.

Where I disagree with the noble Lord completely is on negotiation strategy and leverage. The clear thing in my mind and in my analysis is that our Government gave away their position, their negotiating plan and all their advantages at the very beginning of this process because they declared all their red lines. They said to the EU, before it even asked, “We’re not going to be in the single market; we’re not going to be in the customs union; we’re not going to ask for any help from the European Court of Justice; and we are going to be out by 29 March 2019 whether you like it or not. We are setting our own deadline for coming out of this organisation”. I ask myself what the European Union would have said to us if it really wanted to punish us. It would have said straight after the referendum, “You’re not going to be in the single market; you’re not going to be in the customs union; we’re not going to give you any resort to the European Court of Justice; we’re going to have a deadline of 29 March 2019; and by the way, if you don’t co-operate, we’re not going to give you any deal at all”. That would have been the punishment that the EU would have inflicted on us.

It is those red lines and declaring that strategy at the beginning that has caused us to self-mutilate in the negotiations that have taken place since. Of course, the EU’s response is, “Okay, guys, if that is what you want, that equals a Canada deal. Done”. In fact, I disagree with my colleagues. The Government have not been in any way vague about the outcome that they want. They have been completely clear: they want a Canada deal, which includes a deal on free trade but no services. That is what we have gone for.

But what have we done in the negotiations? I suggest that we have agreed to everything. First, we have agreed the phased agenda, which we said we did not want. We have agreed that the timetable has to be completed by October this year. We have effectively agreed the financial payments. We have given a completely open agreement on the Irish border—that if we cannot solve it, we will stay in the single market and the customs union ever after. And we have said that we will probably agree to end transition by December 2020 at the end of the multiannual financial framework, rather than give ourselves even two years. I have tried to think of another negotiation that has been more one-sided and the only example that I can think of in history is the Delaware native Americans selling Manhattan island to the Dutch, although at least in that instance they got \$24 in goods in return, which is more than we have.

To be quite honest, the most important thing has been the time pressures. On the day after the referendum, we might as well have sent an email to Mr Barnier saying, “We agree everything. Let’s get on to phase 2 of the negotiations around the final deal”. If we carry on with this level of performance, then once we go out into the real outside world and start negotiating with

the hard-nosed trade negotiators of the United States, Australia and China, let alone India, we will be like lambs to the slaughter. We have had an atrocious negotiation in which we have given away our strategy and all our cards and have agreed to everything that the Commission has asked of us so far. I do not see that as acceptable, and it has not done our reputation internationally a great deal of good.

In terms of there being no deal, I am privileged to chair the House’s EU Energy and Environment Sub-Committee, which looks at agriculture. I remember that when we produced our report on agriculture, we had as a witness one of the main representatives of one of the farmers’ unions, although not the NUF. One of the first things that he said to us was that there is no deal that is worse than no deal. He went on to give a strong justification for saying that, particularly in relation to the agricultural industry. As the noble Lord, Lord Liddle, rightly said, if we get no deal, that will not mean going back to the status quo, as would be the case in most other areas of our life; it would mean something far less than that.

I was also privileged to lead the House’s delegation last year to meet Mr Barnier and Mr Verhofstadt—the first such occasion for this House. One thing that came over to me very strongly was that Mr Barnier is the sort of person who wants a deal, partly because that is his remit but also for the sake of his reputation of being able to do such deals. Particularly in December at the end of the phase 1 negotiations, one thing that was illustrated was that perhaps the Brexiteers were right—that the EU was desperate to get phase 1 sorted out. Despite the shambles of the DUP torpedoing the Prime Minister earlier that week, the EU found a way of dragging the Prime Minister over the finishing line to make sure that we could move on to transition and an overall deal. That is how it seemed to me to work.

I agree with the noble Lord, Lord Kerr, that there is now a lesser risk of no deal, but there are potential roadblocks out there. One could be the DUP. Will the DUP support the process all the way through? If it does not like the Irish outcome, will it vote with the Government when the time comes? Will the Cabinet be able to agree on the details into the future? I wonder. However, the issue that I really do question is the Irish deal as decided thus far. As I conclude, perhaps I may remind the House what the agreement on Ireland says:

“The United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border. Any future arrangements must be compatible with these overarching requirements”.

It goes on to say:

“In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement”—

effectively an open cheque. As I can see no short-term solution technically to the Irish border issue, that agreement seems to lock us into the single market and the customs union until we can sort it out.

This has been a shambolic negotiation—a disgrace to this country. A Government who I do not think even understand how to do negotiations gave away all their cards at the beginning of the process, and I can

[LORD TEVERSON]

only hope that they can recover. However, as I said, may the Lord help us once we try to negotiate further free trade agreements outside the Union in the wider, real world.

7.07 pm

Lord Hannay of Chiswick: My Lords, I too join those who have paid tribute to this report, which is one of the most recent of a long string of very valuable reports on the implications of Brexit. I also pay tribute to my noble friend Lord Jay, who I think has done a wonderful job. I was present at some of the debates on his reports when he was standing in as chair of that committee.

However, this report is one of the most valuable because it takes head on a basic tenet of the Government's negotiating strategy ever since the Prime Minister promulgated it at Lancaster House almost a year ago to this day—that no deal was better than a bad deal. That the Secretary of State for DExEU has apparently—so I read in the press—expressed surprise and indignation that the European Union should take that outcome seriously after the Prime Minister took the trouble of ramming it down the throats of all 27 ambassadors of the member states at Lancaster House I find pretty laughable. Or do we perhaps no longer expect ambassadors to take what the Prime Minister says seriously?

The proposition that “no deal is better than a bad deal” has become one of those largely meaningless mantras, along with “Brexit means Brexit”, which the Government have produced as a substitute for telling Parliament what their substantive negotiating objectives and strategy really are. It has become the battle cry of those who fundamentally believe in Brexit at any cost. That is why I think we have to look very carefully at the conclusions of this report, which so cogently explain how damaging such an outcome would be—the worst possible one for the country in the short, medium and long term. I repeat here the conclusion that has been mentioned by so many others that it is difficult, if not impossible,

“to envisage a worse outcome for the United Kingdom.”

I hope that that is understood and accepted, instead of this mantra being treated as a flirtatious sally towards the European Union, which clearly is not quivering in fear each time it is mentioned.

It is my hope that this report will help give the quietus to this self-harming approach. It is my hope but it is not my expectation, because the “no deal is better than a bad deal” mantra is the Rasputin of the Brexit negotiations. You can feed it cyanide cakes, you can pump it full of bullets and you can hold it under the ice, and yet it still emerges gibbering from the ordeal to exercise a fatal fascination for the true believers in Brexit.

Quite recently, I heard one of those true believers—the noble Lord, Lord Howard of Lympne, a Member of the House who is not in his place today—tell the BBC's “Today” programme, with all the certainty of somebody reading off the tablets of Moses, that if you are not prepared and seen to be prepared to walk away from a negotiation, you would inevitably be worsted in

it. Leaving aside the wisdom of bluffing in circumstances in which, as this report makes clear, we have the weaker hand in a no-deal situation, I do not think that the noble Lord's iron rule of negotiation is either true or suited to the present circumstances. Was that the object that we were prepared to work away when we negotiated the establishment of the United Nations or the Atlantic alliance, or the long string of negotiations that have brought freer and fairer trade including the Kennedy round, the Tokyo round and the Uruguay round, or the commitment to combat climate change, in which the noble Lord, Lord Howard, and I played some small part in Rio in 1992? We are, after all, talking about a new partnership with our nearest neighbours, with whom not only do we do almost half our trade but with whom we share a large range of common values and interests. Would not it be more sensible to say that failure is not an option that we are prepared to contemplate? Would not that be better than advocating billions of pounds to preparing for failure?

Moreover, it seems to me largely overlooked at this moment just how different the post-March 2018 phase of the negotiations is likely to be from the negotiations that were completed on phase 1 before Christmas. Those divorce negotiations, particularly those relating to the financial settlement, were always going to be a bit acrimonious and confrontational—that is the way it is with divorce proceedings—but surely the next phase needs to be undertaken in a spirit of mutual benefit if it is to have any chance of success. And there is plenty of mutual benefit around: in continuing to co-operate on the whole range of foreign and security policies; in working together on scientific research and innovation; in facing together the threats and challenges from international crime and terrorism; and, of course, in continuing to trade in the frictionless manner to which we have grown accustomed over more than 40 years of EU membership. To be fair, the Government do talk the talk on a lot of this, but, as the noble Lord, Lord Teverson, said, at least on the trade aspects they do not walk the walk. They spend an inordinate amount of time drawing red lines and listing all the approaches that we are not prepared to contemplate, which seems to be pretty much anything that the EU has ever negotiated with anyone else. Is it really wise to be so negatively prescriptive before we have even sat down at the negotiating table on these trade issues? I doubt it. Surely the approach to trade negotiations should be one with a much more open mind, to see what could be achieved for what.

Meanwhile, time marches on, and it is essential that the standstill or transition arrangements are settled, at least in their broad outlines, by the end of March if it is at all possible. I was encouraged by two little words in the Prime Minister's Statement that was repeated in this House following the conclusion of phase 1 in Brussels. She said that during the standstill period—she did not call it that; she has an aversion to that word, I think—matters would remain “as now”. That should enable rapid progress to be made in Brussels, but it will need careful presentation and explanation to the Government's more zealous Brexit supporters, who are going to find a good deal of it pretty distasteful. There is little sign of that explanation so far.

We need some provision in the standstill arrangements for what happens if it turns out that all we have done is postpone the cliff edge from 2019 to early 2021. We may then find ourselves going over it and subjugating business to two wrenching transitions rather than one. That would be bad news. I suggest that some flexibility on the duration of that standstill—some ability by common accord to extend the period—ought to be one of our objectives.

There is an awful lot at stake, and I am looking forward to hearing the Minister's reply. I am not suggesting that he do anything as silly as tell us that of course there will not be a no-deal situation—there are circumstances in which that could happen. However, I would like to hear him say that under no circumstances will this Government seek to make that part of their objective.

7.17 pm

Viscount Trenchard (Con): My Lords, it is a great pleasure to follow the noble Lord, Lord Hannay of Chiswick. Although I find his wit and eloquence most persuasive, I am afraid that I do not agree with much of the substance of what he said. Rather, I agree more with my noble friend Lord Ridley. I also can easily conceive of a deal that would be worse for this country than no deal. I believe that Mr Barnier has even talked about some examples of a worse deal.

I take issue also with the point about German industry, which was mentioned by the noble Lord, Lord Liddle, and others. The trade union representative on the supervisory board of Rolls-Royce's German subsidiary expressed great concern that the German Government would not put enough pressure on the EU to reach a sensible trade deal with the UK to provide continued good access to the UK market.

The report's conclusion that the Government should review the options for securing a time-limited extension of the UK's EU membership is flawed. It plays into the hands of the EU negotiators, who wish us to continue to pay inexorably increasing contributions and eventually to agree to a deal under which we are bound to maintain full alignment with EU regulations. The report exaggerates the damage that will be done to our economy if there is no deal and understates the potential upside of recovering our freedom to set our own rules, besides the obvious financial savings. Take financial services: we would have introduced much of the new post-financial crisis regulation anyway, but not all of it. AIFMD has undoubtedly cost the City a number of jobs and substantial earnings. Why do we never hear about the cost in jobs and tax revenue that the City would have earned if we had not been overruled almost every time we disagreed with a proposed EU directive or regulation?

New European regulation in recent years has arguably been more about harmonisation and centralisation of control than anything else.

Lord Hannay of Chiswick: I should be most grateful if the noble Viscount would tell me whether he was familiar with the fact that the first banking regulation passed after the single market was enacted was passed with the great help of the British Commissioner, the late Lord Brittan, and the Council, and involved voting down the Germans.

Viscount Trenchard: I fully take on board the noble Lord's point but it is a different point. I said that we would have introduced much of the regulation that has been introduced anyway. I was rather drawing attention to examples of regulations that I think were wrong and where we were overruled.

MiFID II is another case in point and is currently causing massive cost increases and damage to many asset management companies, particularly smaller ones. I do not like the terms "hard Brexit" and "soft Brexit" but I firmly believe we need a Brexit that allows us fully to resume our status as an independent nation on the world stage and a positive influence for free trade within the WTO and other international institutions. This will not be a Brexit that seeks to maintain absolute regulatory alignment with the EU in any principal sector. We start from the position of full alignment but if other potential trading partners around the world believe we have neither the freedom nor the will to diverge to any significant extent, it will mean that we have no credibility as a potential trade partner, either for third countries or for other international trade associations such as the Trans-Pacific Partnership or NAFTA.

If we were to agree to a Brexit that guarantees full alignment with EU rules, there is no point in leaving the EU since we would be prevented from taking advantage of any of the opportunities that leaving offers. As the people have decided to leave, let us leave on a basis that maximises the opportunities for our future prosperity. If the EU decides to insist on a deal whose price is too high, in terms of either payment for divorce or a continuing requirement to adhere completely to European rules—and the only reason it would wish to do that would be if it put political objectives first and decided to punish us for leaving pour encourager les autres—it would be in our interests to leave without a deal.

As noted by the committee, Barnabas Reynolds of Shearman and Sterling believes that a no-deal outcome might even enhance the gravitational pull of the City of London's markets. I do not believe that Oliver Wyman's analysis that up to 35,000 jobs in the financial services sector are at risk in the event of a no-deal Brexit is taken seriously in the City. Rather, some firms that have already decided to move some people to France, Germany or Holland have done so prematurely and unnecessarily. I therefore ask my noble friend the Minister whether he agrees that it would be helpful if the Government talked more—and talked more positively—about the future of our own markets and how attractive and open they will be, to both our EU partners and the wider world, and how keen we are to establish mutually beneficial free trade agreements with other partners as well as the EU. At present, the perception is that the Government's top priority is to maintain access to Europe's markets on the same basis as now. I do not believe that access is in any real danger, even under WTO rules. The bright future for our own markets is the most exciting aspect of Brexit and it would be helpful if the Government talked more about that and provided more leadership to the City. The City of London and the Metropolis of Tokyo entered into a memorandum of understanding last December to work together to deepen further the

[VISCOUNT TRENCHARD]

exchange and collaboration in financial services. It would be helpful if we could hear similar sentiments expressed by Mr Barnier and his colleagues in Brussels. Will my noble friend confirm that the Government agree that future regulation of trade in financial services between the UK and the EU could best be conducted within a framework of dual regulatory co-ordination and mutual recognition of standards, as advocated by the Legatum Institute and others?

Obviously we should continue to work closely with our European neighbours where it is in our mutual interest to do so. I believe 17 non-EU countries participate in the Horizon 2020 science programme. I expect we will wish to continue with this and others, such as the Erasmus educational exchange programme.

It is manifestly in the interests of the EU and the UK to enter into a free trade agreement that enables the current level of trade in goods and services to continue, and to continue to grow. It should by no means be impossible for our negotiators to agree this if both sides put economic good sense ahead of political objectives. However, if the EU is not prepared to agree to such a deal and to agree the basic framework of our future relationship over the next few months, we need to be ready to leave without a deal. After all, Article 50 stipulates that the terms of withdrawal should be negotiated taking account of our future relationship with the EU.

Anyone with any experience of negotiations knows that the most important points are usually agreed at the 11th hour and that there is no incentive to agree important points before that. Therefore, the Prime Minister's preferred option of an implementation period is greatly preferable to a transition period where we do not even know the broad framework of the end state. I look forward to hearing the views of other noble Lords.

Lord Wallace of Saltaire: The noble Viscount repeats what the noble Viscount, Lord Ridley, said: we should demand that the EU puts economics ahead of politics in its approach to these negotiations. Is he sure that what the Brexiteers are doing is putting economics first and politics second? Or are we asking the European Union to behave differently from us?

Viscount Trenchard: I am very sure that I am putting economics ahead of politics. When I worked in Brussels for our financial services industry, I very much regretted that I found that in the Parliament and other institutions many people on the European side put politics ahead of economics.

7.27 pm

Lord Gadhia (Non-Affl): My Lords, I welcome yet another important report from the EU Select Committee, which has now produced a total of 29 such contributions since the referendum. Your Lordships have been truly prolific in contributing to the evolving Brexit process, providing timely interventions and valuable insights at every turn.

My last public comments about Brexit were made on 2 March last year in a debate on the options for trade after leaving the EU. I had the pleasure of speaking

alongside my noble friend Lord Jay, whom I wish a speedy recovery. In that debate I sought to dissect how the dynamics of the negotiations might unfold, based on the Government's stated strategy. Looking back, much of what I said then has proved prescient, particularly on the impact on the sequential process of prioritising withdrawal arrangements first, as advocated by Michel Barnier, which David Davis confidently insisted would run in parallel with talks about the future framework. Also, on the need for a transition period, Ministers were confidently predicting that everything could be wrapped up in two years and such a period was therefore unnecessary. There is also the importance of the financial settlement in unlocking further progress.

The lesson from phase 1 of the negotiations is that the EU is a disciplined and determined counterparty, with very little appetite or need to deviate from its negotiating mandate. As a result, there has been more give than take from the UK side. Notwithstanding this, we should welcome the fact that agreement was reached in December, which reduces the risk of no deal, as noted by the noble Lord, Lord Kerr. As we move into the next phase of negotiations, I hope the Government will show a little more humility and be less dismissive of the input received from many sides of this House.

As I said last March, a no-deal outcome would be the Grand Canyon of cliff edges and is not a credible threat. That assertion is now backed up by evidence contained in this report across multiple industry sectors. In any normal commercial negotiation, you would certainly define your walk-away position based on a calculation of the private gains and losses that you are prepared to accept and the best alternative to a negotiated agreement—known by professionals as the BATNA. The Brexit negotiations, however, involve too many externalities and political ramifications to treat them like a private deal. The whole question of deal or no deal is not some kind of game show for armchair negotiators but a serious, nation-defining decision.

Although no deal is not a credible negotiating strategy or tactic, we need to accept that it might be the unintended consequence of a breakdown in negotiations, and it is therefore sensible for contingency plans to be made on both sides. In some ways, I would draw parallels between no deal and the 2008 decision by the US authorities to allow Lehman Brothers to fail: it would be a premeditated decision with unknown contagion effects that could easily be underestimated. You could call it a grey swan event.

Those who are more relaxed about no deal point out how WTO terms are perfectly workable, and they might be. Their focus on tariffs, however, is a red herring. Yes, trade in goods is important, but it is the least of our worries when exchange rates can provide a market adjustment to offset the impact of tariffs. It is services, where non-tariff barriers and market access issues are at play, and which represent 80% of our GDP, where no deal would inflict the most damage. So, as we move into the next phase of the negotiations, I would like to make four key points.

First, we have been outmanoeuvred on sequencing and are destined for a political fudge when it comes to the future trading arrangements. As the report

acknowledges in paragraphs 124 to 127, we do not have a single deal; we have two or more deals—the withdrawal agreement and the future trading arrangements. There may indeed be other agreements on non-economic issues, such as security and counterterrorism. The decoupling of the process means that there will be a detailed withdrawal agreement by March 2019, which will become binding, but the future trading agreement will be less advanced and take the form of a political declaration or heads of terms which will not become binding until finalised and ratified by all member states during the transition phase. It drives a coach and horses through the notion that nothing is agreed until everything is agreed, as noted in paragraph 126 of the report. Most importantly, it locks us into a financial settlement in March 2019 without the absolute certainty of a trade deal.

Secondly, securing an early transition deal will, ironically, remove the pressure on reaching a sufficiently detailed heads of terms on the future arrangements prior to March 2019. At this date, we will leave the EU in name only. If this were a commercial negotiation, the most practical legal solution would be to extend the withdrawal date, as described in the report. It would also helpfully preserve “nothing is agreed until everything is agreed”. This is, sadly, wishful thinking, and we must accept that extending the date beyond March 2019, other than for a very short period, is politically unacceptable because it removes the fig leaf of saying that we have left the EU.

Thirdly, come March this year, when the European Council signs off its negotiation mandate to the Commission on the framework for a trade deal, I fear that we will be offered a “take it or leave it” arrangement, largely modelled around CETA, with limited time or flexibility for substantive improvement. We will be left with no choice but to accept the deal and try to improve it later during the transition phase or even beyond, since our future EU relationship will be a continuous, rolling process and not a static, one-off negotiation.

Fourthly, and finally, our focus must now shift to achieving a soft landing for a hard Brexit. The proposed transition phase would defer the cliff edge only to the end of 2020. There is a case for providing a further true implementation phase beyond 2020 so that we can genuinely adapt to new procedures and processes. We should also acknowledge that trade is ultimately a function of competitiveness, not simply deals done by politicians. The ability to compete effectively depends on other factors not necessarily covered by an FTA, including continued access to skills, R&D collaboration, integrated supply chains and even the discipline of having state aid rules. So policy levers within our control, such as new immigration or anti-trust rules or research funding, will be equally as important as the FTA in securing a soft landing.

In conclusion, I believe that the risk of a no-deal scenario has diminished and that we will muddle through the Brexit process, taking us, in stages, out of the EU towards something like a Canada arrangement by 2020, even though our trade with the EU is eight times larger. The timetable is not guaranteed and might be extended again by design or necessity, but what is

certain is that Britain will become a rule taker in accessing the EU single market, particularly on services. It is less than an ideal outcome, but we can take some comfort that it is better than no deal, which remains the worst possible scenario for both sides.

7.35 pm

Lord True (Con): My Lords, noble Lords know that there has been so much concern in this House about overcrowding that some will be asked to leave your Lordships’ House, but 75% of the seats have been available at every stage of this important debate.

I declare an interest as a part-time resident of Italy for 37 years. I guess that I must have spent several years of my life in toto in that great country. But the context for this debate needs to be brought before noble Lords. It is the continuing efforts of the Government to pass legislation to implement the will of the British people in the referendum. Last week, in this House, the noble Lord, Lord Taverne, used a debate on housing to say,

“the only way ... to avoid the impoverishment of the British people, is to reverse ... the decision to leave the EU ... in fact, to stop Brexit”.—[*Official Report*, 11.1.18; col. 327.]

He spoke for what I have dubbed the fat yellow line opposite—100 unelected Lib Dem Peers aching to block the democratic will of the British people and force a second referendum.

On the legislation, they are abetted by the unprincipled opportunism of Labour. Bills to withdraw from the EU, the single market and customs union would pass easily if Labour kept its election promises of last year. Tony Blair says that stopping Brexit is more important than seeing Labour in power. But it will not be just Telford and Mansfield that go Tory if Labour take his line in this House.

My position is different. I do not want to reverse the public’s decision or stop Brexit. I do not agree that leaving the EU will impoverish the British people. We should remember that that was Project Fear’s line, shamefully orchestrated by the Treasury but readily broadcast by others. An EU ambassador recently told me that not one of our UK envoys made a single hint to the chancelleries of Europe to take the leave vote seriously. Having heard some of the interventions today, I wonder what they are now saying about no deal.

Project Fear told us that a vote to leave would cause “immediate and profound shock”, and a recession costing 500,000 to 800,000 jobs. But employment is up by 400,000 and unemployment is at a 20-year low. Mr Osborne, of course, was Project Fear’s mastermind and I find it sad to see a great newspaper like the *Evening Standard* still being used as a vehicle for what I guess now is project whimper laced with personal bile. Mr Osborne threatened an emergency Budget if the British people voted to leave. The noble Lord, Lord Darling, standing with him, warned of emergency Budget after emergency Budget. He said that he was much more worried than he had been in the crisis of 2008, which he handled so well. We all remember the threats—2p on income tax, 3p on the higher rate, 5% on inheritance tax, alcohol and petrol duties up, and 2% cuts in health, defence and education. None of that happened.

[LORD TRUE]

That is a meaningful background to the way in which I assess this report. Of course it impresses in its scholastic legal analysis, and we have heard some exposition of that in the debate. But it fails because, while it may not be Project Fear or even Project Whimper, it is another Giant Despair, a litany of ifs, buts, coulds and maybes, consistently loaded with spin to bury or—what was the phrase?—give the quietus to any idea of no deal. It reads as a siren call for longer and ever more tortuous negotiations, extending the withdrawal period and even, we now learn, our membership of the European Union. This brings us to the gravamen of the matter.

The noble Lord, Lord Kerr of Kinlochard, who is not in his place at the moment, was classically clear when he said that staying in the EU was his objective. That is the broad background to the apparently narrow ground of the report and this debate. Staying in the EU will not be accomplished by the frontal attack of the Liberal Democrats, although they will provide the votes: it will be the mandarin nudging, bit by bit, back into the same old sheep pen—perhaps in Kinlochard—after which, no doubt, not only Britain but the sheepdog will be called to heel.

We start these negotiations, uniquely, with no tariffs on either side. Who wants to impose them? In assessing risk, why did this report not press, as others have said, the overwhelming public duty of EU leaders not to hobble access to UK markets for their citizens? Where is that in the report? Free trade is the greatest generator of hope, prosperity and jobs known to mankind. The report totally ignores the benefits of opening up to a wider world that a bad deal could actually delay. Canada, China, South Korea and India are not even mentioned, while Australia and New Zealand get one reference in a tendentious context. Our great trading partner, the United States, creeps in twice with no comment on the risks of free trade being kicked into the future.

Of course, I thank the committee for its hard work and I join others in sending my best wishes to the noble Lord, Lord Jay, who serves this House so well, as he did his country. The report will be a useful legal vade mecum but it does little to shake the *acquis* commune in the Westminster, mandarin and media beltway. I disagree with the view expressed in the report that there would be a “crucial advantage” in extending EU membership after 2019. The people voted to leave in 2016, not some time in the 2020s at your Lordships’ pleasure. The Chancellor was right the other day to challenge the EU to say more about what sort of future it wants. He is no out-and-out Brexiteer, but a man with the interests of this country and Europe at heart. We do not need or want a hard border with the Irish Republic, and perhaps when he winds up the debate my noble friend will tell us who does want one. Of course we do not want Lufthansa airplanes circling Gatwick until they fall from the sky, as Mr Barnier hints. Who is suggesting such nonsense? These matters can be readily resolved and we should stop letting the shape and image of negotiations be finagled by others.

In conclusion, I hope that my noble friend on the Front Bench will confirm that an implementation period will be just that: implementation—brief, limited in scope and limited in time, not an across-the-board

transition, booting the can ever further down the road. I hope that he will reject any idea that the report suggests of extending EU membership and can confirm that if we do face stalling and failure to respond positively to the many offers of our Government, then no deal will remain an option that must lie on the table. That is certainly preferable to any deal which binds the UK to tracking the rules and regulations of the poorest performing sector of the world economy over the last generation.

7.44 pm

Baroness Falkner of Margravine (LD): My Lords, in his absence, perhaps I may also refer to the sterling chairmanship of the noble Lord, Lord Jay, of the EU Select Committee while the noble Lord, Lord Boswell, was indisposed. I am grateful to him for having taken us through this report in the way he did. I should declare that I am married to an EU national and that, like the noble Lord, Lord True, I own a property in Italy. It has also belatedly struck me that I need to welcome the noble Lord, Lord Callanan, to the Dispatch Box. I know that he has been in his role for rather a long time, but this is the first opportunity I have had to interact with him. We had extremely positive interactions while he was a member of the committee, and we miss him. However, he has been nobly replaced by the noble Baroness, Lady Neville-Rolfe, who is in her place behind him, so as a committee we are all secure and well.

From different perspectives, the noble Lord, Lord Hamilton of Epsom, and my noble friend Lord Teverson criticised our evidence-taking sessions for not having spoken to enough people who were cheerleaders for the no deal faction. I know that this will not please the noble Lord, Lord Hamilton, but the remit of the EU Select Committee is to look at the impact of EU legislation on the interests of the United Kingdom, not those of German car makers, Italian prosecco producers or French fishermen; it is domestic. I therefore need to say to him that we did take evidence from people who are cheerleaders for Brexit and have come out very definitively in support of that cause. I cite Mr John Longworth, the co-chairman of the Leave Means Leave campaign, and Dr Ruth Lea, whom I have known for a good 25 years. She is an eminent economist and commentator on the financial services sector. Interestingly, although both are Brexiteers, they took different positions. Dr Lea thought it would be disastrous if we had a no deal scenario, whereas Mr Longworth is frequently quoted in the press and made it clear to us that he really does mean that leave means leave, and that, frankly, if it happened tomorrow it would be all the better rather than bothering to negotiate anything with the EU.

In addition, the committee received more than 40 pieces of written evidence. Again for the interest of the noble Lord, Lord Hamilton, we put out a call for written evidence in order that anyone and everyone who wished to write to us was free to do so. Interestingly, not one item of the written evidence we received suggested that we ought to leave without a deal. So the evidence we received was fairly overwhelming.

We held nine oral evidence sessions. If we count the two from the Brexit camp, it means that roughly 20% of the evidence we took was from people who are

in that camp. In the debate today, in which any number of noble Lords were able to sign up to speak—every Peer who wishes to be heard will be heard—by my reckoning we have had four people who believe that a no-deal scenario is perfectly fine. We have yet to hear from the noble Baroness, Lady Deech, so I will be generous with my figures, but I anticipate that by the time we finish the debate, we will have heard from 20% of speakers, just as we did in our evidence-taking sessions, who believe that no deal might be okay. However, we tend to go where the evidence takes us, so on the whole we were told that it would be pretty disastrous for the United Kingdom. I therefore tend to disagree with my noble friend Lord Teverson when he says that we did not take evidence from the other side, but perhaps he was not present for that session.

I also have to disagree with the noble Lord, Lord Kerr, who is not in his place, that we are in no danger of a no-deal scenario. I have mentioned that I am married to a German national. The House will be pleased to hear that, so concerned are we, on the basis of the analysis we have seen that a no-deal scenario might develop, two weeks ago my husband became a British citizen because he was not going to rely on the guarantees given on citizens' rights or anything else. We accept that when the EU says, "Nothing is agreed until everything is agreed", it means that, but I agree with the noble Lord, Lord Kerr, that the report has been overtaken by events. Of course, the December Council changed the mood music of "Nothing is agreed until everything is agreed", but, alas, the noble Lord, Lord Kerr, is being rather sanguine when he thinks that citizens' rights is a done deal, the budget is a done deal and all that. He mentioned today's *Financial Times*: he only has to look at today's *Financial Times*, or, indeed, the *Times*, to see that the Irish border question is still very far from agreed and the question of citizens' rights is being reopened at the behest of the eastern European countries, which now want further rights to be given during the transition period, beyond what was agreed at the December Council or that the British Government have indicated they will give. So there is still a strong possibility that things will not go the way that the United Kingdom want or, indeed at the last moment will break down. The default position that the noble Lord, Lord Wigley, and others have commented on, where events lead us to an inevitable position where things go wrong, still very much exists.

I am sorry that the noble Lord, Lord Kerr, is not in his place, but I will also challenge him on what he referred to as the rash suggestion of the EU Financial Affairs Sub-Committee, which I have the privilege and honour to chair, when it published a report to say that the EU had no legal recourse to oblige the United Kingdom to make continuing payments to the EU after it had stopped being a member. We took evidence for that report from European Union legal advisers as well as people from within the European Union who are lawyers. That finding has never been challenged. Mr Barnier told me, on the delegation led by my noble friend Lord Teverson, that he had read the report. I know that the Chancellor of the Exchequer and the Foreign Secretary have read the report and numerous

think tanks in Brussels have told me personally that they agree with our conclusions, CEPS being one of them, a very reputable economic think tank.

Lord Butler of Brockwell: I am very grateful to the chairman of my committee for giving way. If I may defend the noble Lord, Lord Kerr, I do not think he was challenging that conclusion of our committee. What he was saying was that, even if there was no enforceable means for the EU to extract a divorce payment, having made an agreement the UK would never walk away from it. That, I think, was the point he was making.

Baroness Falkner of Margravine: I am grateful to the noble Lord for saying that. I heard that, yes, and I agree with that part of it, but what I was saying was that, across the House today, we have heard people criticising us very selectively when they do not like the tone of the report. The noble Lord, Lord Kerr, said that there would be legal consequences of what he described as rash suggestions. The point is that you go where the evidence takes you. That is what the EU committees are known for doing, which is why EU Committee reports are so widely respected across the EU, not just in the United Kingdom. I thank the noble Lord, Lord Butler, for being slightly fairer, perhaps, than I was being to the comments of the noble Lord, Lord Kerr.

Beyond the no-deal scenario, there is another important scenario and that is the scenario of transition, which I shall now touch on. We took evidence from across the EU Committee and from the Financial Affairs Sub-Committee about the need for such a scenario. I will not pre-empt our report, which will be coming out shortly, but the importance of transition is, to us, not to be underestimated because it gives legal certainty to business, to sectors like financial services which the noble Viscount, Lord Trenchard, commented on. It gives legal certainty to businesses that there will be a period, whether you call it an implementation period or a transition period, a standstill period where businesses can plan for the end state. However, the importance of the transition period will be negated if we do not know what the end state is. Will the Minister, in summing up, tell us whether it is still the Government's intention to try to negotiate a transition period by March, which is what the Secretary of State told us, and to enshrine the legal basis of that transition period in the withdrawal agreement?

My final comment on the transition period concerns what will happen if we are not able, for whatever reason, to negotiate a transition period along the lines that we want. Again, we have heard some negative comments coming from the EU, where that will be used as a negotiating position. I draw attention to paragraph 99 of the committee's report where another option was put down by one of our expert witnesses, that of extending EU membership. Professor Catherine Barnard from Cambridge University—this will be my last substantive point, lest the Government are concerned that I am going to go on too long—told us that we could, by using Article 50(3), have any date in the withdrawal agreement that we wished, if we could negotiate it. According to paragraph 99, "a withdrawal agreement could be post-dated—the UK would continue to be an EU Member State until the date specified".

[BARONESS FALKNER OF MARGRAVINE]

Alternatively, we could have a date that was further away than the date of leaving. In other words, we could embed the transition by using Article 50. Can the Minister tell us, in winding up, whether the Government will seek, if we come up against a stop-the-clocks scenario, to use that method to extend the period whereby we might get a deal?

7.56 pm

Baroness Deech (CB): My Lords, I am rather pleased to join the small band of dissenters in this House. As a lawyer, I believe that the adversarial process gets to the truth and it is often the case that the dissenting judgment in a case is the one that echoes down the years. Obviously, one hopes for a good deal, but the report was predictably gloomy, reflecting the majority of its selected witnesses. It was surprising that there was no reliance on the significant body of economists and commentators who are analysing no deal and who have come up with constructive views. The committee assumed that being outside the EU was de facto disastrous, taking no note of the situation of other countries outside the EU which have good quality of life and good regulation and which trade successfully. As a result, the report could have been written by Eeyore. Today, I present the Tigger response.

The only goalpost placed before the UK by the 27 is that the UK must not be seen to gain by leaving, lest others follow suit. What sort of organisation is this whose only purpose is to maintain itself in its present position by threats? How unacceptable is the reported attempt by President Macron to use the Calais refugees as the price of a deal? Where is the statesman or stateswoman in Europe who can draw a portrait of what the organisation will be in a few years' time, what its attractions and benefits might be? Nothing except "more Europe". A great leader, which it manifestly lacks, would not want to inflict harm on European citizens, including the British, for the sake of it, which is the tenor of the discussions now, but would have sufficient confidence in the EU's future to be able to say goodbye to one of its partners handsomely and generously. The attitude of the EU does not bode well for its future, and it has given us no idea what that is. It uses fright tactics—apocalyptic views of being out of the single market, punishing the renegade—rather than focusing on the well-being and prosperity of its citizens.

The EU's intransigence over its own citizens' rights, apparently unconcerned about what might happen to its own 3 million, and its intransigence over the divorce bill and the Irish border amount to self-harm. If the EU were reasonable or acted in the best interests of its citizens it would seek a free trade deal and give a degree of certainty to the troubled and unhappy economies of the 27. If in the end there is no deal, it will be the EU's doing.

Lord Teverson: To set the record straight, the EU is about to offer a free trade deal. That is where it is desperately trying to get to. It is not preventing it; it is trying to get it, and it is offering Canada, which is a free trade deal.

Baroness Deech: My Lords, it does not sound like it.

When we contemplate no deal, it means a default position of reverting to WTO rules. It does not mean that, in the event of a vote in Parliament on the final deal going against it, we would then seek to revoke Article 50 and be readmitted to the Union. That latter scenario is obviously what is sought by those who table elephant-trap amendments about a final vote. They want to stop Brexit by rejection of the deal. We should be clear about that. The EU, by putting forward a bad deal to provoke rejection by such a vote, would get what it wanted: a return by the UK, with its tail between its legs, and possibly Schengen and the euro to boot. It would be an affront to democracy and a permanent stain on this House.

The UK was a founder member of the WTO. Lots of countries trade with the EU under WTO rules; others have dealt with that. We might be free to set low or zero tariffs on what we import from the rest of the world and from the EU, with a consequent benefit to UK consumers, who would pay less in many instances. This would not stop trade—far from it. All nations have access to the single market provided that regulatory standards are met, which we do. The US and China conduct billions of dollars of trade with the EU without a free trade agreement. We could accompany that with massive deregulation, and there are lawyers who can reshape our laws and regulations in that event.

As for the dreaded scenario of grounded flights, many European airlines use our airports. They need a deal or their tourist trades would collapse. Memoranda of understanding could hold the position until new agreements are reached. The use of phrases such as "cliff edge" and "crashing out" are not merely inaccurate but designed to scare and confuse. Predictions made recently about losses that might occur in 2030 if we are not in the single market do not seem to be any more reliable than the inaccurate predictions for finances right after the referendum.

Set against the positive view of no deal is the refusenik approach:

"And always keep a-hold of Nurse
For fear of finding something worse".

But clinging on will risk paying a great deal of money for an arrangement worse than the present one, stuck in the prison of the customs union and the single market without a say in them, and still under the ECJ. It is a mistake to pay a great deal to gain access to the single market, let alone for an extended transition period—like a couple who are divorced but remain together because they cannot afford to sell the house. Countries all round the world have that access without paying for it.

Lord Wallace of Saltaire: I am trying to see where there can be a comparison between a single market, the basis of which is open access, and a prison, the basis of which is closed doors. Can the noble Baroness explain why she thinks there is a parallel between the two?

Baroness Deech: Prison is what it begins to feel like when we find it so very difficult to cut our ties with the EU. A transition period where things continue as they are will look to many people as if we are locked in, temporarily or possibly for ever.

Viscount Ridley: Surely the answer to the question of the noble Lord, Lord Wallace, is that the EU is a single market but it is also a fortress. It is a tariff-protected zone which prevents free trade from outside, to a surprisingly large extent.

Lord Teverson: My Lords—

Baroness Deech: No, I am not giving way. I have only a few minutes. I thank the noble Viscount, Lord Ridley, for putting it better than I could.

Leaving with no deal will not be a disaster, as many have said. So how can it be used as a negotiating tactic? We should say sincerely that we will manage very well if there is no deal. Our confidence in that would weaken the likelihood of the EU pressing a really bad deal on us, because it would know that we had a future elsewhere without its approval. I do not believe that the EU will want us to leave with no deal, unless its penchant for self-harm is even more marked than I can envisage. It would leave it with a financial gap to fill, problems with exports to us, and the loss of our defence and security assistance, which are so very valuable to it. After all, we are its biggest single export market, and European industries are under threat. Self-interest points overwhelmingly to a good deal being offered. It is just the priority that the EU gives to punishing us for ulterior reasons that is holding it back.

8.04 pm

Lord Taylor of Warwick (Non-Affl): My Lords, I too thank the noble Lord, Lord Jay, for securing this important debate, and the noble Lord, Lord Whitty, for introducing it. My thanks go also to the European Union Committee for producing such a comprehensive report.

On 6 April last year we considered Brexit and the EU budget. In that debate I said:

“I would not normally associate the TV personality Noel Edmonds with Britain’s exit from the European Union but for 11 years he presented 3,000 episodes of the popular high-tension TV game show “Deal or No Deal”. That is the situation we are now in ... but we do not have the luxury of 11 years and this is more important than a game show. It is about Britain’s future”.— [*Official Report*, 6/4/17; col. 1155.]

A few weeks after that debate, I was stepping outside Westminster Tube station at the precise moment a limousine pulled up and out came none other than Noel Edmonds. The chances of that happening, I would have said, were either slim or none. I explained to Mr Edmonds how his catchphrase had entered the Brexit political discourse. He had been unaware of this until then and seemed delighted. What is interesting is that “Deal or No Deal” started small in Scandinavian Europe, but was developed and transformed in Britain and then exported to more than 80 nations, including America, where it started the television career of a young lady named Meghan Markle. “Deal or No Deal” has become part of our British creative industry, which in total is worth more than £84 billion to the British economy and is our fastest-growing industry.

The reason that “Deal or No Deal” became so popular is that it said what it did on the tin and everyone knew what it meant. But that is not the case with Brexit. The public are grappling with phrases

such as smooth Brexit, soft Brexit, hard Brexit, transitional Brexit, cliff-edge Brexit, clean Brexit, timed-out Brexit, barebones Brexit, bespoke Brexit, and even full English Brexit. Will the Minister undertake on behalf of the Government to make their language simpler and clearer in the Brexit talks, to retain the confidence of the British people, especially the business community, which has to plan ahead?

It is in everyone’s interests that harmony is maintained. In paragraph 3 of its “Summary of Conclusions and Recommendations”, which in my view is a very important part of the report, the committee states:

“While the evidence we received focused on the impact on the UK, no deal would also have a damaging impact on the EU. It too would feel the negative effects of a loss of trade with a major trading partner, and restrictions on the movement of goods and services, new customs checks and the breakdown of aviation arrangements would be mirrored on the EU side. In addition, the EU would feel the loss of police and security cooperation, scientific and research collaboration, and of access to the City of London as a motor of the EU’s financial services industry, and to the City’s capital markets”.

The fact that a deal benefits both sides needs to be emphasised more. By their very nature, the media focus more on problems and personalities than solutions and success. About 46% of UK exports go to the EU, while about 53% of our imports come from the EU. It is not in the EU’s interests to punish us into resorting to the World Trade Organization’s trade tariffs. I had the privilege of being a speaker at the WTO in Geneva. I formed the impression of an organisation which, despite its good intentions, is in reality hindering, not helping, free trade with punitive trade tariffs. Will the Minister undertake on behalf of the Government to more forcefully press the case that no deal would have a damaging effect on the European Union and that it is in its interests to agree a deal?

During the 19th century Britain was the first nation in the world to industrialise and embrace free trade. It gave birth to the Industrial Revolution. So it is unfortunate that there are no UK trade envoys for any of the Commonwealth nations in the Caribbean. The UK has also failed to appoint trade envoys for half the African Commonwealth nations. Trade is a vital aspect of Brexit. We know that there are only three International Trade Ministers in the Government, so trade envoys are proving a valuable support to Ministers in promoting UK trade abroad. Can the Minister say when the Government intend to appoint more trade envoys?

It remains to be seen whether future talks with the EU will be a good-natured “Strictly Come Dancing” duet or a bad-tempered “High Noon” duel. I was encouraged, though, by the words of the President of the European Commission, Jean-Claude Juncker, who on 5 April told MEPs:

“We will of course negotiate in friendship and openness and not in a hostile mood, with a country that has brought so much to our union and will remain close to hearts long after they have left”.

There were also positive comments then from the EU Commission’s chief negotiator, Michel Barnier, who has said:

“The ‘no deal’ scenario is not the scenario we are looking for. We are looking for success, not against the United Kingdom but with the United Kingdom”.

[LORD TAYLOR OF WARWICK]

It is illuminating that throughout the Bible, there is a clear theme of one empire after another eventually overreaching itself and gradually collapsing. In the Old Testament it was the Egyptian Empire, followed by the Assyrian Empire, then the Babylonian Empire and finally the Persian Empire. They all fell. In the New Testament were the powerful rulers of the Roman Empire, such as Nero, but they all eventually fell because national sovereignty proved more durable and powerful than the politics of imposed empire.

Over the next couple of years and beyond, there will be no shortage of critics scaremongering and predicting disaster for Brexit. But fear is that dark-room where only negatives are developed. We must not be like the paranoid patient who visits his doctor, to be told: "Please listen. You've got hypochondria". The patient replies: "Oh no, not that as well".

The UK's deadline for leaving the EU is 29 March 2019. I am not suggesting that the months leading up to that date will be easy but the people and both Houses of Parliament have spoken. Article 50 has been triggered and we must approach these Brexit and trade talks with a confident, robust spirit. Let us remember that the pound has continued to rise against the dollar since the end of last year and that only today, it was announced that inflation is down. As Sir Winston Churchill may once have said, "Attitude is a little thing but it makes a big difference".

8.12 pm

Lord Cavendish of Furness (Con): My Lords, it is a pleasure to follow my noble friend Lord Taylor. I enjoyed hearing his warnings on the fate of empires.

Another day, another report from the European Union Committee. I am delighted to thank its members for the time and industry they have devoted to the subject and I thank most warmly the noble Lord, Lord Whitty, who is nearly in his place, and associate myself with the remarks of the noble Lord, Lord Jay, who always brings a polite and helpful tone to debates. Beyond that, I can think of absolutely nothing to say in support of this report or its findings. I also say with sadness that I find aspects of the report to be really disgraceful and unworthy of this House.

EU committees have been markedly Europhile for as long as I can remember. As a member of two of them, I recall that any and all criticism of EU institutions was virtually taboo during our hearings. I do not press this complaint too far since I acknowledge that the membership of the EU committees come close to reflecting the views of your Lordships as a whole. However, I find the report so blatantly hostile to Brexit and so uncritically in favour of the EU that those parts of it which address such legitimate concerns as say, open skies, customs arrangements and, especially, security are accordingly devalued and trivialised.

In paragraph 9 of its summary of conclusions and recommendations, the report goes so far over the top as to trespass into fiction. As has been much quoted, it says of having no deal that it is difficult, if not impossible, "to envisage a worse outcome for the United Kingdom".

As many people have pointed out—and as I do, too—that is simply untrue. I can think of innumerable outcomes worse than no deal. Leaving the EU but staying in the

single market and the customs union would, I venture to suggest, be a far worse outcome.

Mention has been made more than once of what the authors refer to as the overwhelming evidence that led to their conclusions. Not only is the committee's choice of witnesses scandalously selective; reading the transcripts, I was appalled by how little those witnesses were tested. Take for example the CBI, which said in its evidence that its views are a reflection of its membership. Well, I am a member and I certainly do not share its views—a point I often put to it. The truth is that it is a hostage to its major subscribers. Less and less does it represent the SME sector, which I happen to belong to and as such declare my personal interests as listed in the register. Our sector is the real driver of the British economy and it gets no mention at all that I could find. Nor did I find in the transcripts a declaration of the CBI's interest in respect of the money it received from the EU. But then again, perhaps special privileges apply to it as they apply to others in respect of European affairs. The CBI now enjoys a reputation for being wrong on almost everything; it comes as a surprise that so much weight is given to its testimony.

While it is true that the committee heard evidence from Ruth Lea and from John Longworth, co-chairman of Leave Means Leave, again it comes as a surprise to me that nothing was heard from such distinguished independent voices as Roger Bootle or Professor Patrick Minford. Did it occur to the committee, I wonder, to invite some of our more successful entrepreneurs such as James Dyson to give evidence? No—the committee heard what it wanted to hear.

I do not pretend to be entirely happy with the way that negotiations have gone—here I echo the noble Lord, Lord Teverson—and am certainly not happy with how much we appear to have given away, with not much to show in return. One must sympathise with the Government in trying to run these talks against the background of a chorus of those who seek to reverse the referendum result and want to undermine the Government at every turn. I have also heard the story on good authority of how, during David Cameron's negotiations before the referendum, every single Commissioner was briefed to the effect that there was a zero chance of Britain voting to leave the EU. It reminds me of the First World War joke about a man walking up Whitehall, looking in confused fashion left and right, and eventually flagging somebody down and saying, "Excuse me, which side is the Foreign Office on?". "Ours, I hope", comes the reply. What has changed?

The report says that the policy of nothing is agreed until everything is agreed should be abandoned. A huge amount has been made of this by supporters of the report but, according to my research, unless I am wrong, those words appear in a document in response to the Prime Minister's Article 50 letter to President Tusk. Those words appear in President Tusk's letter. That completely demolishes the arguments of about five noble Lords who argued in support of this report.

Where the report is right is that time is very short. In recent weeks, I have begun to notice that some blue water is beginning to emerge between the EU negotiators

and the member states, and here is the rub. I tend to agree with the former Greek Finance Minister, who told Radio 5 Live:

“Brussels does not want a mutually advantageous deal and London has not realised it ... the fallacy lies in the presumption that those who are conducting the negotiations from Brussels and their political masters in Berlin and Paris, are interested in an economic outcome. They’re not. They’re far more interested in making an example of Britain so that others around the European Union get a lesson that anyone who opposes their authority gets crushed”.

Perhaps noble Lords would prefer from nearer home the words of the former Governor of the Bank of England, Mervyn King, the noble Lord King of Lothbury, who warned that the talks are a waste of time:

“The European Union is a political construct and they have political objectives ... I think the idea that we’re going to get soft treatment from the rest of the EU is false”.

The committee discussed the question of whether politics trumps economics or vice versa but reached no conclusion. I found from the transcript that the chairman mused that arguments over the primacy of law or politics will continue. How right he is. It certainly complicates the Government’s task that so many political and economic forces are self-evidently at work here.

If I understand correctly, the distillation of the committee’s recommendations is that we should apply for time-limited extended membership of the EU to hammer out every last bureaucratic detail, paying in as we pay in now, constrained as we are constrained now but with much reduced influence. It leaves no one on either side of the argument in any doubt that the committee ultimately wants us to stay in the EU permanently. As other noble Lords have said, the committee needs reminding that the people and Parliament have spoken and it ill befits this unelected House to try to reverse that decision. It is a course I reject, and I hope it is a course that the Government also reject.

The report underestimates all the benefits and opportunities of leaving the EU, that ossifying, free-trade-hating organisation. It exaggerates all the risks. A conceit among the political and official class is that they somehow have great influence over trade. They have nothing of the kind. I look back on my experience of half a century of trading in some 40 markets of the world. I have never craved certainty or expected it. Markets suddenly collapse and I have to find other markets. Customers are the thing I look for, and that is what I get. Over that long period, I have almost always ignored what Governments said about trade. We have nothing to fear from leaving the EU. I fear that the EU negotiators will put politics ahead of economics, which will bring delays. There must therefore be a case for walking away politely sooner rather than later and starting a new life under WTO rules with the aim and ambition of becoming a new world pioneer in free trade.

8.21 pm

Lord Bew (CB): My Lords, I voted remain in the referendum because I was convinced that the consequences of a pro-Brexit vote would be destabilising for the island of Ireland—and, indeed, I think they have been destabilising. This afternoon, I attended with great pleasure the European Union Select Committee meeting

chaired by the noble Lord, Lord Boswell, who I am glad to see back in his place. A very valuable discussion about Irish matters was held.

It is therefore with surprise that I find myself agreeing with noble Lords who have expressed unease about the quality of this report. I must tell the House that that is exactly how I feel about it—particularly the section entitled “Box 7: ‘No deal’ and the impact on Ireland and Northern Ireland”, which is quite exceptionally weak. This bears on the broader point, which has been made before, that the report does not really deal with the bad side of no deal for countries other than the UK. Although it is referred to glancingly in a number of places, it is a classic case of where something is very important but the report just slides over it gaily as if it did not know what everybody in Ireland was talking about. The section is very weak.

Let me explain. If there is no deal and we are forced to crash out on WTO terms, it is widely believed in Ireland that the consequences will be disastrous for the Irish agricultural sector. In a small country, 30,000 to 40,000 jobs is a lot. The widely respected Economic and Social Research Institute in Dublin has said it, the Central Bank of Ireland has said it and the Department of Finance has said it. At the national ploughing championships this year, where thousands of Irish farmers meet, that was the subject of conversation. Is there any reference in our report to the consequences of no deal for Ireland and that obvious fear? No, there is not. Instead, there is a reference to the dairy industry in Northern Ireland and the possibility that it will have more difficulty selling into the Irish Republic.

I invite your Lordships to a little thought experiment. Close your eyes and think of our supermarket shelves stacked to a huge extent with products of the agricultural industry of the Irish Republic; and then think that those products are not there in the same quantities as before, because there is a significant WTO tariff on them. Who do your Lordships think is going to gain? Where do your Lordships think the dairy farmers who might gain as a consequence of the absence of those products from the Irish Republic are from? It is of course the dairy farmers of Northern Ireland. A moment’s thought would tell your Lordships that that is the likely reality. I do not believe we will ever reach that point, by the way, and crash out without a deal. I believe that eventually there will be a free trade deal, but it is a very serious weakness of our report when the most obvious aspects of reality and current fears on the island of Ireland are not referred to at all. That is a problem.

That has to be referred to, but it is part of the wider problem of not fully acknowledging the downside for other countries in the European Union if there is no deal, while dwelling extensively—at great length in this report—on the difficulties and downsides for this country of no deal. I am sure that many of the downsides of no deal for this country referred to in the report are listed entirely accurately, but it is remarkable how airy and light we are about the problems for others. The Irish issue is a very dramatic example of it. It is worth stressing—especially with the commitment given by the Minister, Robin Walker, to the British-Irish Parliamentary Assembly—that even in the event of no deal, Britain

[LORD BEW]

will give rights for the common travel area to Irish citizens. That too is not referred to in our report. It will mean, among other things, the right of Irish citizens to come and work here in a privileged way as against those from other European countries. I do not understand it in any other way. They will continue to have the same rights as they have now.

At any rate, this is a generous and liberal thing to offer; as indeed, by the way, was the report produced by the Government last summer about the various technical means by which you could ensure, or at least help to ensure, a soft border. However, I see no sign that the European Union even understands the scale of that concession. Its reference to it is extremely vague, and it is not clear that it quite understands how generous we are proposing to be to the citizens of the Irish Republic even in the event of no deal—again, this is not referred to as a consequence of no deal. I am not quite sure how European countries might feel about it, but that is the offer we have made. No thanks have been received from anywhere for this, either in the Irish Republic, which just noted what Robin Walker had said, or in the European Union more generally. But if we do not mention ourselves, in our own reports, that we have made this generous and liberal attempt to facilitate developments, why should we expect other people to mention it or even to notice that we have done it? It is a matter of very considerable importance that we have done this. I express my regret about the balance in our report, but my unease is real. I find myself very reluctant to say it, because in general I do not feel that about the excellent reports from the committee.

I turn to a point made by my noble friend Lord Teverson, which touches also on a point made by the noble Viscount, Lord Trenchard. They are both really talking about the same problem but from a different angle, which is the reference made at paragraph 49 in the progress report agreed before Christmas between the Prime Minister and the European Union. My noble friend Lord Teverson has already quoted this passage, which says that the UK,

“will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement”.

Now there is a real question mark as to the actual meaning of that sentence, and I hope that the Minister can perhaps help us with that point tonight in his conclusion.

There is no subject in our modern life in which the wish is father to the thought more than Brexit. In this case, Brexiteer paranoia that the UK has signed up to some all-singing, all-dancing model of wide-ranging alignment—with which the noble Viscount, Lord Trenchard, expressed unease—fuels a particular reading of the report. On the other hand, remainder enthusiasm, as expressed by Matthew Parris’s article last Saturday in the *Times*, assumes that we have already sold the pass and have conceded in this sentence that there will be a soft Brexit and so on.

I accept that the language is ambiguous, but just want to give an Irish perspective on it. First, none of the most skilled Irish commentators—Patrick Smyth,

the European editor of the *Irish Times*, for example, and I think also Dan O’Brien of the *Independent*—takes the grand reading. They argue that even for Ireland, it is not actually clear what these words definitively mean. The word “fudge” is used frequently in the most serious Irish commentary.

Patrick Smyth’s phrase is that we have no reassurances and no guarantees in this formula. There is a reason for that. His article says that Stormont has a veto in the interpretation of this document because it has a reference to the Good Friday agreement. There are already a number of forms of harmonisation or alignment between north and south. Back in the day in 1998, I was involved in the debate that led to the first initial list of these forms of harmonisation being agreed. It has now been somewhat extended. They are not controversial to the DUP but it means that, if you take seriously the protection of the Good Friday agreement, built into that agreement is the fact that the Northern Irish Assembly has a veto on how this develops, as Patrick Smyth points out twice in his piece. It is therefore very hard to believe that such a limited set of ideas can be the basis, as some have said, of an all-singing, all-dancing deal between the EU and the UK. The language is ambiguous, and if possible I would like the Minister to give us some clarification on that point. As I say, anything that is a fudge—and this is increasingly seen as a fudge in Irish terms—is unlikely to be a template for a wider and harder agreement on a large scale.

Having said that, there is also a reference to the role in this of the DUP. This House should note the very positive and irenic speech—a breakthrough for her in many ways—given by Arlene Foster in Killarney at the weekend, which signalled a willingness to work with the Irish Republic to produce a benign settlement of these difficult concerns. This is a positive development. People should not be especially concerned that the DUP wants a hard border, any more than anyone else in Ireland wants one. Frankly, no one in Ireland wants a hard border.

8.31 pm

Baroness Neville-Rolfe (Con): My Lords, I am delighted to follow the noble Lord, Lord Bew. It was good to see him this afternoon when we took evidence on Irish border issues. He is right to emphasise today the problems of no deal for Ireland.

I congratulate the noble Lord, Lord Whitty, on leading the debate skilfully in the sudden absence of the noble Lord, Lord Jay. I record my thanks to the noble Lord, Lord Jay, for chairing the committee with such verve and success in the absence of my noble friend Lord Boswell, who smoothly returned to his post today. It is a real honour to sit on such an interesting committee at this pivotal time and to work alongside talented colleagues of all political persuasions, although we sometimes disagree. The timing was good, and the public hearings that the committee had with a wide range of organisations helped to air the issues on Brexit at a critical moment. In a small way, they helped to ensure a satisfactory outcome at the December Council. I am sorry to have missed some of today’s speeches, but the lively disagreements have been both enlightening and entertaining—a strange benefit of Brexit.

I shall comment on three areas. First, I shall comment on financial services, as I also sit on the EU sub-committee concerned. We know Brexit is awash with uncertainty, which means that financial institutions have to operate contingency plans and work up a worst-case scenario—a matter of good corporate governance. Indeed, my impression is that, being streetwise, the sector is already moving forward with post-Brexit arrangements. That is one of the reasons why we know that the number of jobs lost seems to be lower than originally feared. For financial services, Brexit is complex. As our report says, it is in everyone's interests, especially in this sector, to have a standstill or a transition, as now seems to be envisaged. However, that should also be agreed soon if the enactment of unnecessary contingency plans is to be avoided. Time is short. It needs to be in a watertight form so that both sides have contractual continuity. This is vital in, for example, the ongoing payment of insurance claims.

The good news is that the EU 27 also appear to want a time-limited transition that changes as little as possible, so I am hopeful that this will be agreed soon and that the legal concerns outlined by the noble Lord, Lord Whitty, will prove to be groundless.

I am more concerned about the substantive negotiations on financial services. My main point is that it would be damaging if the whole industry—that is, the small and the large; the fintech and the conventional; banking, insurance and asset management right across the UK—found itself a permanent rule-taker from Brussels.

The big international banks are well ahead, with parallel arrangements being made in Berlin, Paris and Dublin, but the UK needs to be free to provide sensible arrangements and reporting requirements for those who are operating in the UK or in third-country markets only. We need good regulation: it is a strength valued by investors in London. We do not need bureaucratic suffocation of low-risk domestic firms and small innovative operations embracing the digital and AI revolution. They must not be faced with automatic EU rules after Brexit which the UK has had no part in setting. Those representing smaller firms in the financial sector, such as the New City Initiative, which came to see me last week, are vehement on this point.

My second point is that while I am keen to see a deal and to see one soon, a bad deal would be worse than no deal. On that, the Prime Minister has always been right, and I am with my noble friend Lord Cavendish of Furness. A bad deal would be a yoke of increasing discomfort around our neck for ever more. I agree with our report and most of our witnesses that no deal would be damaging, but that is why we must strengthen our negotiating position by being clear in our minds what no deal would look like. We must also spend the money that the Chancellor has set aside for contingency planning.

Finally, I was struck by the panic among the EU negotiators when it looked as if an interim agreement might not be reached in early December—thanks, I have to say, to the DUP. President Juncker and M Barnier began to talk turkey. Our tough stance created movement for the first time, but toughness is not the only thing that matters. My long experience of EU negotiation is

that you have to develop deep, strong, silken personal relations with the other side, devoting days and nights to this, while being tough and resilient on the substance.

Our experience in December shows that our negotiating position is stronger than many think. I hope that the Minister, who has so much valuable EU experience, will go into bat accordingly and conclude a good deal which Parliament can agree.

8.37 pm

Lord Blair of Boughton (CB): My Lords, as the last Back-Bencher to speak—I am sure you are all deeply happy about that—I thank the Minister for asking to meet me before Christmas, and beg his indulgence and that of the House to go somewhat off-piste from the detail of the report. If I may keep the metaphor going, I will be skiing in parallel, however. Skiing is quite a good metaphor, because there is silence about a particular aspect of the deal/no deal arrangement with which I am very concerned.

Other than a bare-bones comment, there is no substantive mention of anything to do with security, policing or intelligence in the report—I did not expect any. As I and several other noble Lords, including the noble Lord, Lord Hannay, have remarked in this House in terms over the past 18 months since the referendum, the phrase “deal or no deal” has salience not only to our future trading arrangements with the 27 but to a number of other issues. I want to know how the Government will negotiate or are preparing to negotiate on issues of security, policing and intelligence, as they are obviously, as the report suggests, preparing in some form of transition or implementation period for a future trading relationship.

I reassure the Minister that I am not asking for a detailed answer from him today—that would be unfair. I want to tell him and the House about an experience which has prompted this brief intervention. At their meeting last week, Cross-Bench Peers were addressed by Richard Harrington MP at what I must say was considerable length about the Nuclear Safeguards Bill, which will set out the UK's approach to counter-proliferation after our withdrawal from Euratom. Mr Harrington made it clear that the Government were preparing a whole set of options along the complete continuum of “deal, what kind of deal, no deal”. If they are doing that—and I commend them for it—I would like the Minister to give me a brief indication of what they are doing about the same continuum for our future relationship with European police forces, Europol, the Schengen Information System, the European Criminal Records Information System, and all the other apparatuses which connect the UK and our EU partners. If the Minister cannot do that in appropriate detail today—I do not expect him to—I ask him to write to me and lay his answer in the Library as to the state of the Government's negotiations over this issue. Which Minister below the Secretary of State in which department is in charge? Which Minister is involved? Are such arrangements to be caught up in the transition period? Does no deal on security and policing actually mean our current arrangements falling off a cliff?

I take the case of the European arrest warrant. If that ceases to be available in March 2019, no alternative exists. There are no current extradition treaties with

[LORD BLAIR OF BOUGHTON]

France, Spain, Italy or any of the 27—not even with the Republic of Ireland. The paedophiles, the organised crime syndicates and the terrorists win, in 12 months' time. A previous Home Secretary recognised this when she opted back into the justice and home affairs arrangements. She is now the Prime Minister. How will her legacy of having done so be protected?

I am sorry to have taken time to go off-piste, but the issue is parallel to the debate, and I hope that the Minister will accept that a deal or no deal in the security arrangements for our citizens and the citizens of our European partners is really important, and will write to me as I have asked.

8.42 pm

Baroness Ludford (LD): My Lords, this very good report blasts out of the water the notion that no deal could be anything other than a disaster. As Michel Barnier told the committee, we would go back 44 years, and we would do it precipitously. Maybe Doctor Who or Sherlock Holmes could do it, but not the businesses and citizens of this country. It would be a terrible, shuddering shock.

Reports from the Treasury and Foreign Affairs Committees in the other place share the gloomy prognosis of a no-deal scenario. The noble Viscount, Lord Ridley, who is not in his place, claims there is a difference between a chaotic no deal and an orderly one, but that latter is surely a contradiction in terms. No deal means disorder. As the Foreign Affairs Committee of the other place said,

“a complete breakdown in negotiations represents a very destructive outcome leading to mutually assured damage for the EU and the UK”.

So it is not just our own Select Committee that has these fears.

As my noble friend Lord Wallace of Saltaire said, it often seems as if the Brexiteer ultras ardently desire no deal. Indeed, John Longworth of Leave Means Leave told the committee, it,

“may well be the very best deal”.

That would be the purest, starkest expression of their liberation theology. With one bound we are free—free to plummet to the bottom of the cliff. But their fantasy dogma is totally divorced from the real interests of the people of this country—their prosperity, security and ability to travel and connect.

The report well documents the costs and horrific disruption of an abrupt, chaotic Brexit, with many specific examples. People stand to lose their jobs, see their food bills shoot up and find their lives badly affected in myriad ways.

The CBI also highlighted a very important point. While the UK might have enshrined EU law domestically, through retained status under the European Union (Withdrawal) Bill, that does not deliver the reciprocal recognition—whether for aviation agreements, car specifications or data standards—that is so vital. The noble Lord, Lord True, completely overlooked this. When Michel Barnier told the committee that there would be consequences in multiple areas, from the capacity of British planes to land in Europe to that of dogs and cats to cross the channel, it was surely this reciprocity that he had in mind.

The other vital point, overlooked either deliberately or ignorantly by the hard Brexiteers who gaily envisage that falling off the EU cliff edge means the warm embrace of the WTO, is that 80% of our economy is dependent on services, which are hardly touched by WTO commitments. In any case, we know that that parachute into the WTO is complicated by the certainty that other WTO member states would seek to reopen tariff rate quotas. If we withdraw, we will also no longer benefit from 40 free-trade agreements from March 2019. Even if transition means that we are applying EU single market and customs union rules domestically, we will be a third country outside the EU, as the Commission has pointed out. However, we will continue to apply EU external tariffs by virtue of continuing in the customs union in transition. So our car manufacturers would face an 8% tariff in trying to export to South Korea, but South Korean exporters would continue to benefit from tariff-free preferential access to our market. The solution, of course, is to extend the Article 50 timeframe.

The harmful consequences would not just be economic, or in industry sectors such as transport, freight, medicines, chemicals, the digital economy, cars, financial services, food and agriculture and universities, alarming as those are. There would, as the noble Lord, Lord Blair, has just pointed out, be serious damage to this country's security through an abrupt wrenching of the UK out of co-operation on counterterrorism, policing and law enforcement—including data exchange—foreign policy, judicial networks and nuclear co-operation. Indeed, just this morning the EU Justice Sub-Committee heard the opinion of the president of the EFTA Court. He believed that there was no way we could continue in the European arrest warrant if we did not accept the continuing jurisdiction of the Luxembourg court and EU law. So much for a Conservative Party which wants to be tough on crime.

With no deal, an entire web of deeply helpful facilities would fall away: from pet passports to roaming discounts to health insurance—a whole load of things that people take for granted at the moment. It is a mystery how it came as a surprise and a cause of indignation to the DExEU Secretary that Michel Barnier and his team were planning for the possibility of no deal. After all, the no-deal mantra—or threat, or promise—has been a sort of whack-a-mole in the last year, since the Lancaster House speech when the Prime Minister asserted that no deal is better than a bad deal. This got repeated in the Conservative manifesto in June, then seemed to be killed off in Florence. However, the Prime Minister invoked it again in questions after the Florence speech last September, as did David Davis in evidence before the Brexit committee of the other place in October, when he asserted that no deal is an option and made it clear that he thought it was a good ploy for negotiating leverage.

In the report that the House is discussing, our committee concluded that, notwithstanding the shift in tone since the election, the threat of no deal remains an important component of the Government's negotiating strategy. It appears; it disappears; it keeps coming back. So why were the Government indignant when they were hoist by their own petard? Michel Barnier's letter to UK businesses saying that EU trade marks

will no longer have effect in the UK as from the withdrawal date just stated the blinking obvious but made the DExEU Secretary go ballistic. Just as No. 10 briefed the press last Monday to expect a “Minister for no deal”, we learned that David Davis had complained to the Prime Minister that Barnier had taken that bluster seriously and was indeed preparing for an abrupt exit.

I read in a tweet today that Manfred Weber, the leader of the largest group in the European Parliament, the European People’s Party, to which the Conservatives once belonged, said:

“The British government has been complaining a lot recently. It seems to realise only now that Brexit will actually have an impact. My message to London is: please don’t complain any more, just deliver”.

The fact is that the no-deal posturing is not an effective negotiating strategy—far from it: it just undermines trust. It is part of an irresponsible and incompetent performance by this Government over the last 18 months, as my noble friend Lord Teverson described.

I say to those who reproach the committee for not analysing the impact on other countries that that might have been rather presumptuous. I say to the noble Lord, Lord Bew, that the committee produced a report in December 2016 on UK-Irish relations, which included a section on the economic implications for Ireland. That it did so rather early after the referendum demonstrated the importance it places on the Irish relationship.

Most sensible commentators now believe that a transition period is essential as there will be no future deal in place in nine months’ time. However, as the report notes, and the noble Lord, Lord Butler, took up, the Government have,

“yet to acknowledge the legal complexity”,

of a transition period. Can the Minister tell us whether the Government believe that Article 50 provides a secure legal basis for the continued application of EU rules after withdrawal in a standstill transition period, or, indeed, as that morphs into an implementation or adaptation period if a final deal is secured during transition? If not Article 50, what? Or do the Government believe, as the report discusses, that only an extension of Article 50, or a post-dated withdrawal agreement, under both of which scenarios we would stay in the EU during transition, would deliver legal certainty? We have a right to know what legal advice the Government have on these matters, as well as on the revocation of Article 50.

We on these Benches want Parliament to “take back control” of both the process and the substance of Brexit, subject to a final say for the people. I thus commend the amendment tabled by my colleagues in the other place, with cross-party support, to the EU (Withdrawal) Bill, which provides that if Parliament rejects either a deal or a no deal, the Government should be required to either exit from Brexit or seek an extension to the Article 50 deadline such that negotiations can continue. I hope that amendment succeeds but, if it does not, I hope we might take it up here.

I conclude by disagreeing, if I may, with the noble Lord, Lord True, who loves these Benches so much that he keeps referring to us. The final say for the people on the deal is not a second, rerun referendum; it is the

confirmatory stage in a purchase—is this what you really wanted or bargained for?—like a house purchase subject to survey. It is what Jacob Rees-Mogg once wanted—a two-stage process—and it is what Nigel Farage wants now. As Nick Clegg said, “I agree with Nigel”.

8.54 pm

Baroness Hayter of Kentish Town (Lab): My Lords, I too thank my noble friend Lord Whitty for introducing today’s debate. I thank the noble Lord, Lord Jay, and his committee for their choice of subject and for what I consider is the high quality of the report. I am sorry about the attacks made on it; I think that most were a cover for not liking its conclusions, although I exempt the noble Lord, Lord Bew, from that. I also thank the noble Lord, Lord Jay, for getting this debate today; it is particularly timely as it is of course on the very eve of the first anniversary of the Lancaster House speech when, regrettably, the Prime Minister gave legs to this rather vacuous “No deal is better than a bad deal” nonsense. But I also hope that this debate is in time to influence the Government’s thinking, particularly along the lines of the report’s advice, which is, basically, “Get real”. Both the report and the debate have laid bare the absence of any rationale for suggesting no deal and, of course, its failure to scare the other side to offer us lots of goodies, given that they view it as mere bluster. I will emphasise four points.

First, there is the near unanimity of advice that no deal has no merit. As paragraph 18 notes:

“Very few witnesses identified any positives arising as a result of ‘no deal’”,

while a former Chancellor of the Exchequer struggled to find any country of any significance that traded purely on WTO terms—the no-deal option—which the CBI judged would mean that 90% of our manufacturing exports by value would face tariffs. Yet as my noble friend Lord Whitty has warned, the very repetition of the no-deal rhetoric risks becoming a self-fulfilling prophecy. Indeed, rather oddly, as has been mentioned, even as Ministers insist it is an option and continue to prepare for it, as they say,

“any responsible government would do”,

they are then utterly surprised when the EU 27 do just that, with David Davis even having the effrontery in a letter to the Prime Minister to attack their “damaging” no-deal planning, even, we understand, consulting lawyers—presumably at taxpayers’ expense—over the EU’s preparations for no deal. It is unclear why David Davis should spend £3 billion preparing for no deal but get so het up when Michel Barnier does exactly the same. As the Commission spokesman responded:

“We are surprised that the UK is surprised that we are preparing for a scenario announced by the UK government itself”.

So of course the Commission should prepare. As it makes clear, if no deal is agreed by this October, the status quo would come to an abrupt halt next March. However, as the noble Lords, Lord Gadhia and Lord Taylor of Warwick, said, this is not a game show. Should we leave the stage, there would be dire consequences for our country.

Secondly, it is difficult to believe that the Government really believe that no deal could ever be satisfactory, given that it would mean: no security for United

[BARONESS HAYTER OF KENTISH TOWN]

Kingdom citizens living in the EU; probably a hard border in Ireland; immediate imposition of tariffs, customs checks and possibly travel visas; no flights to continental Europe; nuclear materials stacked at the border; no judicial co-operation or European arrest warrants, as the noble Lord, Lord Blair, mentioned; no new trade agreement with any other country, because they would not be in place by then, and the loss of all 57 existing trading relations with third countries; 17-mile tailbacks at Dover, without having even an IT system in place; a devastating impact on our farming and food safety, and food prices possibly going up by 20%; a rift in the all-Ireland energy electricity market, posing threats to Northern Ireland's lights; the financial sector in jeopardy, particularly on investment contracts, as we have heard; and, according to the impact assessment commissioned by the Mayor of London, which was rather more thorough than that done by Her Majesty's Government, some half a million jobs under threat, and effectively a "lost decade" of lower employment and economic growth, with perhaps £50 billion of investment lost. And of course it would mean no transition agreement, despite the proposal for an implementation period by the Chancellor and the Secretary of State for Brexit in the *Frankfurter Allgemeine Zeitung*, although of course that is not possible without a deal.

Thirdly, the Whitehall farce returned last week as the anticipated new "no-deal Brexit Minister" failed to appear and was replaced by a new Minister who supports no deal. Indeed, she does not even want a transition, despite the fervent pleas from industry. So "No, No, Nanette" becomes "Yes, no; well, maybe. We'll tell the EU 27 that we want a deal but we'll appoint a Minister who doesn't". If it were not so serious, it would actually be quite funny.

Fourthly, and crucially for this House as we prepare for the withdrawal Bill—it will soon end its passage through the other House—any decision to slam the door behind us, after 46 years, with no agreement on our temporary or future relationship is a big national decision. It is not a decision to be taken solely by Ministers; it is one to be taken by Parliament on behalf of the nation. Therefore, we will seek to amend the withdrawal Bill to ensure that any decision to have no deal resides with Parliament and not with Downing Street.

As the report says, failure to reach agreement is not a continuation of the status quo. No deal would mean the abrupt cessation of nearly half a century of economic, political and legal partnership. The elegant wording of the noble Lord, Lord Jay, repeated today by my noble friend Lord Whitty, and by the noble Lords, Lord Gadhia and Lord Wallace, concludes:

"It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom".

Lord True: I mentioned the position of the Labour Party. A lot has been said in this debate about not knowing where people stand. The noble Baroness is here as a spokesman for her party. Is it the policy of the Labour Party that the UK should come out of the single market and the customs union? It would be helpful for us to know before next week—tonight, please.

Baroness Hayter of Kentish Town: My Lords, your Lordships can absolutely know tonight. We have been very clear.

Noble Lords: Oh!

Baroness Hayter of Kentish Town: You do not hear what you do not want to hear. We would not go into the negotiations with red lines already closing off what we wanted to discuss with the opposite side. A number of noble Lords have said today that they are experienced negotiators. I have done a bit myself, starting in the trade unions. I have never gone into negotiations saying what I would and would not accept before I even started. The Labour Party has said absolutely clearly that we would not have taken anything off the table before we had even sat on the chairs.

Lord Forsyth of Drumlean: How is that consistent with the leader of the Labour Party, Mr Jeremy Corbyn, saying that he is not in favour of our remaining in the single market?

Baroness Hayter of Kentish Town: As the noble Lord knows, those were not actually his words. The leader—I did not need to know his name; interestingly, I remember it—said that he could see some difficulties in being in when and if we were no longer a member of that treaty. He did not say, and nor has he said, what the outcome of the negotiations should be. Importantly—it was a challenge, I think, made to me earlier by my noble friend—it was asked whether the Labour Party can rise to the national interest. If anyone would like us to take over the negotiations and do a better job than is being done at the moment, we will be very willing to do that.

For the moment, I leave your Lordships with these words:

"It is difficult, if not impossible, to envisage a worse outcome for the United Kingdom".

I hope that the Minister will now reassure us that that is neither the aim nor even a fallback and that every bit of work will be done to make sure that there is a deal in the interests of the whole country.

9.04 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I am grateful, as ever, for the opportunity to respond to the debate on the Select Committee's report, *Brexit: Deal or No Deal*. We have heard a series of excellent contributions—some I agreed with and some I did not, but, nevertheless, virtually all of them have shown your Lordships' House at its best. It has been an extremely good debate, even if all the positions outlined came as no surprise; nobody has changed their views, but it was interesting to hear the different opinions. I will refer to a number of the excellent speeches as I go on.

We have discovered a series of surprising facts, including that the noble Baroness, Lady Falkner, and my noble friend Lord True both enjoy Italian holidays. A vision went through my mind's eye of the pair of

them sitting on a lovely Tuscan terrace sharing a bottle of prosecco and exploring these issues, but I think it would probably take more than one bottle before they agreed with each other.

I thank the European Union Committee, chaired by the noble Lord, Lord Boswell, for producing this thoughtful analysis. I am pleased to hear that the noble Lord has now returned to his duties in the House. I pay tribute to the noble Lord, Lord Whitty, for stepping in for the noble Lord, Lord Jay. Incidentally, it occurs to me that being the chairman of your Lordships' European Union Committee is a bit of a hazardous occupation: first, the noble Lord, Lord Boswell, is incapacitated, and then the noble Lord, Lord Jay, is incapacitated. I hope that nobody else suffers any unfortunate accidents during their time in this obviously dangerous position. Nevertheless, the noble Lord, Lord Whitty, stepped in very ably to introduce our debate this evening.

I can inform noble Lords that a formal response to the committee's report is being prepared and is expected to be issued within the usual two-month response time. My department is working with officials from all departments and undertaking a wide range of work to support the negotiations. We recognise the need for businesses to prepare contingency plans, and we continue to engage with companies across sectors and regions to understand the challenges and opportunities that they may face. In November's Budget, the Chancellor committed to ensure that departments and the devolved Administrations continue to have the resources necessary to prepare effectively for a range of exit scenarios, including that of no deal. Her Majesty's Treasury has already given departments nearly £700 million to prepare for Brexit, and is making an additional £3 billion of funding available over the next two years.

Many of the points raised by the report relate directly to the second phase of negotiations, and, as such, I hope noble Lords will understand that I will not be able to go into great detail on some of those areas at this stage. However, as more of our contingency planning becomes public, this should not be interpreted as an expectation that talks with the EU will be unsuccessful but recognised instead as the actions of a responsible Government determined to ensure a smooth exit under any eventuality. A deep and special partnership, taking in both economic and security co-operation between the UK and the EU, is of such mutual importance—as my noble friend Lord Hamilton pointed out—that I am confident it can be agreed.

The noble Lord, Lord Whitty, and other noble Lords asked whether agreements to date will stand, what has been agreed in negotiations to date and whether we are still committed to the policy that “Nothing is agreed until everything is agreed”—that famous phrase. Of course both we and—let me emphasise this—the EU have been very clear from the outset that nothing is agreed until everything is agreed. However, we are clear that we want to honour the agreements that have been reached so far in the joint report, and we are proceeding with confidence that we can and will do so.

The noble Lord, Lord Whitty, and other noble Lords asked about the impact of no deal. The committee's report and our debate this evening have focused

predominantly on that scenario. Let me make it absolutely clear, as the Secretary of State did in front of the committee on 31 October, that this Government do not want or expect a no-deal outcome from these negotiations. We continue to seek a deep and special partnership with our European friends and allies as we leave the EU, and we approach the negotiations anticipating success.

In light of our successful phase 1 agreement, I am confident that the prospect of leaving negotiations with no deal has reduced significantly, as a number of noble Lords pointed out. While this progress is encouraging, the Government continue to act responsibly by preparing for a range of outcomes, including the unlikely scenario in which no mutually satisfactory agreement can be reached. Every government department continues to work to ensure a smooth exit from the EU in all eventualities.

Noble Lords have this evening expressed concern that the act of preparing for a no-deal outcome with the EU could act as a self-fulfilling prophecy, increasing the likelihood of this outcome. I do not agree that this is the case. The Government's contingency planning should not be interpreted as an expectation that talks with the EU will be unsuccessful, but recognised instead, as I said, as the actions of a responsible Government determined to ensure a smooth exit in every eventuality.

Noble Lords have spoken about potential no-deal scenarios. As we enter the next phase of talks, we do so optimistically and fully committed to the Article 50 process. Through the process we have already reached agreement on a number of the critical separation issues, including citizens' rights, judicial and administrative co-operation and the Ireland-Northern Ireland border. We have consistently called for flexibility, imagination and a willingness to make progress in every stage of the talks.

As I have noted, we are planning for a range of exit outcomes but our focus is concentrated on achieving an ambitious and positive deal. Such a deal is of mutual importance and beneficial to both parties in negotiations. We are therefore confident that such a deal will be agreed.

The noble Lord, Lord Whitty, asked about implementation periods, as did my noble friend Lord True in his excellent contribution—I particularly enjoyed the “fat yellow line” argument. Noble Lords have spoken about the implementation period aspect of the UK's exit from the EU, which was also considered in the committee's report. As part of a deal on the UK's future relationship with the EU, both parties agree that a strictly time-limited period would be mutually beneficial. Such an implementation period has been clearly set out by the Prime Minister in her Lancaster House and Florence speeches. It forms a key part of a smooth and orderly exit from the EU. An implementation period prevents businesses and Governments in the UK and Europe having to make decisions before they know the shape of our future partnership. It also provides individuals and citizens on both sides with time to adapt to the new relationship between the UK and the EU. We have been clear that during the implementation period access to one another's markets should continue on current terms.

[LORD CALLANAN]

My noble friend Lord True also said that the implementation period must be for implementation. Other noble Lords spoke about the timing and purpose of an implementation period; I agree that it must be time limited and used for implementation.

The Prime Minister has indicated that the duration should be determined by how long it will take to prepare and implement the new processes and systems that will underpin the future partnership. There is broad consensus between us and the EU on the duration of such an implementation period. Our current assessment points to a period of around two years, and the EU has suggested that it could be slightly shorter. Both the guidelines published by the Council and comments made by President Tusk point to the shared desire of the EU and the UK to make rapid progress on an implementation period, with formal talks beginning very soon. I can confirm for the benefit of the noble Baroness, Lady Falkner, that the Prime Minister has said that we want to reach an agreement on the implementation period by March. This will help to give certainty to employers and families as we work to deliver a smooth Brexit.

Baroness Hayter of Kentish Town: Could the Minister please clarify one thing? If agreement is to be reached by March, the idea of an implementation period is that you are implementing something. I still have not quite understood—maybe the Minister can help the House—what we could decide by March of this year that could be implemented from March of next year. Is he saying that the whole of our final agreement could be agreed by this March so that we will be implementing that?

Lord Callanan: No. As the noble Baroness understands very well, we can agree the principle of the period of implementation by March and we will then go on to the further agreements on the various issues that we have set out.

The noble Lords, Lord Whitty, Lord Butler and Lord Kerr, and the noble Baronesses, Lady Falkner and Lady Ludford, all asked about the legal basis of the implementation period and raised questions over that legal basis. Such an implementation period would be agreed under the Article 50 process, and would be enshrined in the withdrawal agreement, and implemented in this House under the withdrawal agreement and implementation Bill. The EU has been clear on this in its Article 50 guidelines and draft negotiating directive, and the UK Government agree with this approach. The desired implementation period will allow a period of smooth transition to the terms of a new relationship.

The report claims that the implementation period could be used as a mechanism to extend the negotiation period beyond March 2019. The noble Baroness, Lady Falkner, also suggested a method to extend the negotiation period using Article 50. On 29 March 2017, the Prime Minister notified the EU—

Baroness Ludford: On the legal basis for the transition, surely when the Commission says that it thinks that Article 50 is the legal basis, it is talking about a standstill transition. Is it really agreeing with the Government that it would be the legal basis for the

implementation of a trade deal, which would be based on another article in the treaty? Is the Minister asserting that the Commission agrees that Article 50 could be the legal basis for a genuine implementation period for a future deal—a roll-in of a future deal?

Lord Callanan: Clearly, the noble Baroness will understand that I cannot comment on what legal advice the Commission has received. But as I said, the Commission has agreed with us that the implementation period can be implemented under Article 50. We agree with that position.

On 29 March 2017, the Prime Minister notified the EU of the UK's decision to withdraw under Article 50, following consideration of the issue in both Houses of Parliament. As a matter of policy our notification will not be withdrawn. The British people voted to leave the EU and we will deliver on their instruction. There can be no attempts to remain inside the EU and no attempt to rejoin it. I emphasise for the benefit of the noble Lord, Lord Kerr, and others, that we will leave the EU on 29 March 2019, after which we will no longer be a member state. That is a matter of law under the Article 50 process.

My noble friend Lord Hamilton asked me what provisions we were making for no deal even though that is not the outcome we seek. As well as the EU withdrawal Bill, which will ensure that we have a fully functioning statute book on the day that we leave, the Government are already bringing forward other legislation as required. Our Trade Bill will give the UK a foundation for an independent trade strategy. We will create a world-class international sanctions regime through the Sanctions and Anti-Money Laundering Bill and we will deliver an effective customs regime through the customs Bill. Our Nuclear Safeguards Bill will ensure that we can deliver a domestic nuclear safeguards regime. This legislation will support the future of the UK in a wide variety of outcomes, including one where we leave the EU without a negotiated outcome.

Alongside bringing forward necessary legislation, we will be procuring new systems and recruiting new staff where necessary to ensure that we deliver a smooth exit, regardless of the outcome of negotiations.

Lord Hannay of Chiswick: In the Minister's enumeration of the legislative programme, he seems to have lost one or two rather important parts: the agriculture Bill, the fisheries Bill and the immigration Bill. Where have they gone?

Lord Callanan: It was not an exhaustive list, rather a few examples. I think that the noble Lord will find that those Bills will be coming through.

My noble friend Lady Wheatcroft asked whether we have a Minister responsible for no deal. The answer is yes. Steve Baker is the Minister responsible for our preparedness in all circumstances, including those of no deal. My noble friend Lord Trenchard and others asked about financial services. We will be seeking a bold and ambitious free trade agreement between the UK and the European Union. This should be of greater scope and ambition than any such agreement before so that it covers the financial sectors of both the UK and EU economies; financial services is one of

those sectors. This will require detailed technical talks, but as the UK is an existing EU member state at the moment, we have identical regulatory frameworks and standards which already match those of the EU. Both sides have said that they want to protect financial stability and we remain committed to reaching the best possible outcome for the sector and indeed for the UK as a whole in our negotiations.

My noble friend Lord Trenchard also asked how confident we are that we can attract trade deals. Leaving the EU offers us an opportunity to forge a new role for ourselves in the world to negotiate our own trade agreements and to be a positive and powerful force for free trade. Since 2005 the UK's non-EU trade has grown from less than 48% of UK exports to 57% in 2016. The noble Lord, Lord Taylor, asked about the appointment of more trade envoys. The Prime Minister has made it clear that one of the benefits of leaving the EU is the ability to develop our relationships with countries outside the EU in new ways, including through our own trade negotiations. The PM's trade envoys engage with emerging markets where substantial trade and investment opportunities have been identified by the Government. There are currently nine African Commonwealth countries covered by the programme.

My noble friend Lord Cavendish and others referred to the phrase "nothing is agreed until everything is agreed", but I have already covered that. The noble Lord, Lord Bew, talked about the very important issue of the Northern Ireland border. As I have mentioned, we have already reached an agreement on a number of the critical separation issues, this matter being one of them. In the event of a no-deal scenario, the Government would continue to adhere fully to the Good Friday agreement, its successors and the institutions that they have established. The Government are committed to protecting north-south co-operation and to avoiding a hard border on the island of Ireland in all circumstances.

The noble Lord, Lord Blair, raised the important issue of security, and I am grateful to him for the opportunity we had to talk through these matters personally before Christmas. We are confident that a future security partnership between the UK and the EU is in the interests of both sides. The UK's current participation in EU law enforcement and criminal justice measures is based on our membership of the EU. Our relationship with the EU will change as a result of leaving, but we remain committed to ongoing co-operation now and after we leave. However, rather than go into a lot more detail on this, as the noble Lord suggested, I am happy to write to him on the points he raised.

I conclude by reiterating what I said at the beginning of my speech. We are seeking a deep and special partnership with the EU in the second phase of the negotiations and we neither want nor are expecting a no-deal scenario. However, it is the duty of a responsible Government, which we are, to prepare for all possible outcomes, and that is what we are doing across government. We are working to formally publish our response to the committee's report as soon as possible.

I am immensely grateful to all noble Lords for their contributions over the course of what has been a fascinating debate. We will continue to meet our commitments to keep Parliament fully informed on

the UK's exit from the EU, and I am sure that this House will continue to play a valuable role in the work of the Government to secure a deal that works for everyone.

9.24 pm

Lord Whitty: My Lords, I thank the Minister and all noble Lords who have taken part in the debate. The noble Baroness, Lady Neville-Rolfe, said that it has been both enlightening and entertaining. That is certainly true. It was kicked off in high style by the noble Lord, Lord Hamilton of Epsom, which led on to rather more critical comments on this report, albeit from a minority of the speakers, than is normal in the Chamber. Select Committee reports are usually dealt with with a degree of deference, respect and gentility, even if there is some disagreement. Having had greatness thrust upon me and having therefore sat through the whole debate, which is not my wont, I feel that I need to reply to some of these contributions. Indeed, had I been in my own position in the speakers list, I would have spoken immediately after the noble Lord, Lord Hamilton, and I would have disagreed with him roughly on the same lines as did my noble friend Lord Davies, who is no longer in his place, and my noble friend Lord Liddle, who explained that we did not look at the damage to the EU primarily because the balance of advantage in these negotiations lies with the EU, because of the proportionate effect on the economies of both sides. It is also true that the report makes clear—I refer the noble Lord to paragraph 50—that no deal would also have a damaging effect on the EU. Indeed, Michel Barnier admitted as much when he gave evidence to us in July and we point that out.

I conclude from that, since we all at least make obeisance to wanting to make sure that whatever comes out of this Brexit process is good for the EU as well as for the UK, that our conclusion would have been that the damage of an absolute no deal would be to the EU as well as to ourselves. I doubt if a whole litany of German industrialists would have made that conclusion any different. As to British industrialists, we had responses from 20-odd sectors, all of which reached the conclusion that no deal would be the worst outcome for their sector. We cannot ignore that degree of evidence.

I was rather afraid at various points during this debate that we were refighting the Brexit referendum. Let me make clear that the committee accepted Brexit as its starting point. We also actually accepted what appears to be the Government's negotiating position; that they want to move to a comprehensive agreement in the new stage—the second stage of these negotiations—which will mean, on the trade front, some form of free trade agreement. That comprehensive agreement, incidentally, should also cover some of the points that the noble Lord, Lord Blair, raised towards the end of the debate, on security and on co-operation on foreign policy.

What concerned us was that the timetable that the Government seem to have got themselves into would preclude being able to reach a decent and detailed free trade agreement effectively by this October. We are now in the middle of January. The Government hope to

[LORD WHITTY]

reach a deal on transition this March and an agreement on a free-trade deal covering the anxieties of every sector of our economy by October. We did not consider that sensible. We therefore go along with the Government's objective that there will be a transition period and we regard that as being a period not just of standstill, during which we are still subject to EU regulation, but also as a period when we can finalise a full-scale free trade agreement. That seems to us sensible as a timetable.

The clock is seriously ticking on reaching agreement on a transition and on a free trade agreement, and getting a comprehensive new partnership with the EU. We were also concerned that negotiations so far have not filled us with as much confidence as we would like. The noble Lord, Lord Teverson, and my noble friend Lady Hayter pointed out the shortcomings of some of the negotiation stances. We over-eagerly accepted the sequencing put to us, which leads to some illogicalities. We ruled out many alternatives very early on. We exposed our negotiating position by disclosing our red lines very early. I have spoken about this before in the House. But what we are interested in today and what much of the debate has been about is whether a threat to walk away and have no deal actually enhances your negotiating position.

I have engaged in a few negotiations in my time—some successful, some not. Yes, people want to walk away in most forms of negotiation, and threaten to do so. At the end of the day sometimes they do walk away. But in most negotiations in business, industrial relations—and life—when you walk away, when the deal falls, you go back to the status quo ante. In this case there is no status quo ante because we have already determined that we are moving in an entirely different direction. That is why no deal appears to us to be so damaging. We are not going back to a position whereby we can start negotiating again if these particular talks fail. We are in an entirely different position in terms of the world economy as a whole, let alone our specific relationship with the EU.

Threatening to walk away, let alone what appears to have been suggested by some government spokespeople—that no deal could actually be a preferred outcome—does not do our immediate negotiating position any good whatever. I think that the mainstream of the Government—if I can put the Minister in that camp—feels broadly the same. That is the thrust of our report and why, for all the objective reasons that my noble friend Lady Hayter spelled out, an actual outcome of no deal would be so damaging, but the use of the no-deal option in these negotiations is of itself damaging

to those negotiations and the preferred outcome that the Government are seeking.

I will make one final point before I let your Lordships go home. We say in the report—this has been picked up by a number of people, and the noble Baroness, Lady Wheatcroft, actually said that she favoured this outcome—that there is the option of extending the date of leaving the European Union. We also say that there is doubt about the legal form of transition and whether that can be dealt with in the withdrawal treaty. Other noble Lords have complained about us envisaging that we might change that date, but the alternative—which is the alternative that is most likely to happen now—is that we will reach an outline agreement, I hope, by October this year for implementation after March 2019 and then there will be a transition period, when we are still in a standstill period, obeying European rules but without any influence in the European institutions. That is preferable to us not having a transition period, but an easier and more logical way of doing that—a smoother way of moving towards Brexit—would be to extend the date so that the negotiations to complete the comprehensive agreement and the free trade agreement could take another couple of years, and within those couple of years we would be a full member of the EU, with full rights within the EU, rather than being a total and complete rule-taker during that two-year period. That seemed to us to be a more desirable outcome and in many respects an easier way of dealing with this.

Of course, the difficulty is—and I remember saying this quietly to the noble Lord, Lord Jay—that there are elements in the governing party who would not accept this. More importantly, possibly, there are very large elements within the British media which would not accept it. Although we decided that we would put it in the report, my hesitation has been borne out tonight by those noble Lords who have portrayed this as a betrayal. That was not the intention. As a committee, we accept the Brexit decision, whatever our individual views may be, but a logical way out of the dilemma we are now in would be to extend the date.

I will end on that. It has been a very entertaining and enlightening debate, as the noble Baroness said. Once again, my thanks go to everybody and I will pass on your Lordships' good wishes to both the noble Lord, Lord Jay, and the noble Lord, Lord Boswell. The committee will be back in normal working order, I hope, very soon. I beg to move.

Motion agreed.

House adjourned at 9.35 pm.