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PARLIAMENTARY DEBATES  
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# HOUSE OF LORDS

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

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# House of Lords

Thursday 8 February 2018

11 am

Prayers—read by the Lord Bishop of St Albans.

## Royal Assent

11.05 am

The following Acts were given Royal Assent:

Telecommunications Infrastructure (Relief from Non-Domestic Rates) Act,

Armed Forces (Flexible Working) Act.

## Prisons

### Question

11.06 am

Asked by Lord Lee of Trafford

To ask Her Majesty's Government what assessment they have made of the size of the prison population and conditions within prisons.

**The Advocate-General for Scotland (Lord Keen of Elie) (Con):** My Lords, on Friday 2 February the prison population in England and Wales was 84,511. Work is under way to modernise the prison estate, closing some of the older prisons and creating in their place high-quality rehabilitative establishments.

**Lord Lee of Trafford (LD):** My Lords, 75 of the 119 prisons in England and Wales have populations in excess of the certified normal accommodation standard. The latest figures show a 12% rise in both assaults and self-injury in prisons. The chief executive of the Howard League tells me that, in 30 years in the sector, she has never known conditions to be so bad. When is this Brexit-paralysed Government going to treat prisons and prison reform as a national priority? How bad does it have to get? Will the noble Earl tell us when he last visited a prison to see conditions for himself?

**Lord Keen of Elie:** The conferment of a hereditary title is welcomed. Mrs Keen will be very pleased.

This is of course a serious issue. The demands on our prisons are a long-term issue, not a short-term problem, and we intend to address it with a programme of new prisons. Perhaps I may say that the question of capacity in our prisons has been with us for well over 15 years: indeed, we are not quite at the same sort of ceiling of use as we were even 10 years ago. As regards crowding levels, I regret to say that, since 2004, they have remained persistently at about the same level on a measure in percentage terms of between 24% and 25%—but, as I say, we are seeking to address these issues with our programme of new establishments.

**Lord Beecham (Lab):** My Lords, are the Government content that we have the fifth-highest incarceration rate in the EU—exceeded only by Poland, Hungary, the Czech Republic and Slovakia? If not, what do they propose to do about it?

**Lord Keen of Elie:** The Government are not content with such a situation and we are addressing more widely the issue of how and when we can develop non-custodial sentences to a greater extent. One of the pressures on the existing prison population has been the development of sentencing with regard to historic sex abuse, where long-term sentences have been imposed on a large number of people. That has put further pressure on the prison population.

**Lord Bird (CB):** Is the noble and learned Lord aware that the National Careers Service has been doing sterling work in our prisons to educate and prepare both young and older people leaving prison? The contract for this work is going to be terminated on 1 April and there does not seem to be any remedy in place. I would also like the Minister of State to reply to the letter from the Prisoner Learning Alliance, which has still not been answered, asking what will be done after 1 April for those people who are trying to get something out of prison so that they can leave prison with something.

**Lord Keen of Elie:** My Lords, the NCS is due to expire on 31 March 2018 and will do so on that day. There would have been an option to extend it for a further period of six months, but consideration of the variable delivery of services, and of in-custody services in particular, led to a determination that the contract should not be continued. Alternative means are now being considered.

**Earl Attlee (Con):** My Lords, I understand that the Sentencing Guidelines Council takes no account of the prison population. What would happen if we changed the rules so that the council did take account of the population and had a duty to make sure that we do not exceed the certified normal accommodation of the prison system?

**Lord Keen of Elie:** My Lords, we have not exceeded the certified capacity of the prison population, even over the last 20 years. We came very close in 2007, at which time the Labour Government had to introduce an executive licensing system to take pressure off the prison population—but at present we remain below capacity.

**The Lord Bishop of St Albans:** My Lords, research by the Ministry of Justice shows that women's centres have a statistically significant effect on decreasing reoffending rates, are substantially cheaper than keeping women in custody and often allow families to stay together. Will the Minister use his department's evidence to invest in women's centres that treat women holistically as the best way forward for many women?

**Lord Keen of Elie:** The right reverend Prelate makes a very good point. We will shortly be setting out our strategy for female offenders. At present there are about 3,900 female offenders in custody. The Government are investing about £1 million between 2016 and 2020 to support local areas to respond to the needs of female offenders and to adopt a multiagency approach to their particular issues and problems.

**Lord Richard (Lab):** My Lords, when the noble and learned Lord answered the Question he said that, of the 84,000 people in prison, a large number were due to historical abuse convictions. Can he tell us how many of the 84,000 are due to historical abuse?

**Lord Keen of Elie:** No, it is not possible for me to give that figure. However, it is an indication of the pressures that have developed on the prison population.

**Lord Woolf (CB):** My Lords, the Minister accepts that there are great problems within the Prison Service. They seem to correlate with the result we now have of constant changes in the Lord Chancellor or Minister of Justice—I say that seeing the noble and learned Lord, Lord Irvine, in his place—and the fact that Ministers have to learn about prisons, which is not an easy task. So we get a situation where good reforms are overlooked and mistaken reforms are implemented. Does he think that there is a solution to this?

**Lord Keen of Elie:** Speaking from a personal perspective, I hope that there is a solution in the form of some consistency and constancy of ministerial appointments in particular departments—but I quite understand the noble and learned Lord's concern. Within the Ministry of Justice we are pursuing a consistent policy with regard to prison improvement.

## Gulf States: Human Rights Question

11.15 am

*Asked by Lord Scriven*

To ask Her Majesty's Government what representations they have made to the governments of the Gulf States regarding human rights abuses in those states.

**The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con):** My Lords, the United Kingdom Government regularly discuss human rights with the Governments of Gulf states, covering topics such as reforms and individual human rights cases. Our objective is compliance with internationally accepted human rights standards while understanding cultural and religious differences which affect implementation. Saudi Arabia and Bahrain are FCO human rights priority countries, where we prioritise UK efforts including funding specific programmes and helping Bahrain establish independent oversight bodies.

**Lord Scriven (LD):** The Minister will be aware of the Bahrain Government's crackdown on human rights activists and of their families being targeted in an attempt to silence them. One such case is that of Sayed Ahmed Alwadaei, who is present here today. Sayed's family have been tried and sentenced on the basis of coerced confessions. The Foreign and Commonwealth Office has repeatedly told Sayed to report the issues to the ombudsman of the Ministry of Interior, who the UN Committee Against Torture has repeatedly said

lacks independence. What significant actions will the Government take to hold the Bahrain Government to account for the escalation of violence and reprisals against human rights activists in the UK and their families in Bahrain?

**Lord Ahmad of Wimbledon:** The noble Lord raises an important case, and of course there are other specific cases that we have raised directly, on a bilateral basis, with the Bahrain authorities. I assure all noble Lords that we continue both to monitor such cases and to raise them on a bilateral basis. We have also extended support and training to ensure greater independence of oversight bodies, so that those issues of human rights can be dealt with domestically. I reassure the noble Lord that we take these matters seriously and consistently raise them directly with the Bahrain Government.

**Lord Collins of Highbury (Lab):** My Lords, in last year's Foreign Office review of and report on human rights, Bahrain was identified as a country of interest. It reported progress, with the Government confident that the reform agenda would be followed, but, as we have heard from the previous question, there is now a backward trend. Can the Minister reassure us that the steps for progress outlined last year will be fully taken up and that we will see some change in terms of reform?

**Lord Ahmad of Wimbledon:** The noble Lord is quite right to raise this issue as outlined in the human rights report. As I said in my original Answer, Bahrain is not just a concern but one of the priority countries when it comes to a range of human rights concerns. I can reassure the noble Lord that we will continue to focus on the very priorities that he has highlighted to ensure that Bahrain remains true to the commitments that it has made with the international community and in its bilateral exchanges with members of our Government.

**Baroness Warsi (Con):** My Lords, I know that my noble friend is a huge advocate of the human right of freedom of religion and belief. Can he update the House in relation to specific representations that the Foreign Office has made in the Gulf states on the rights of minorities there?

**Lord Ahmad of Wimbledon:** My noble friend of course speaks with great expertise in this area. She will be aware that we discuss these matters with Governments across the Gulf, including with key countries that I have highlighted already and specifically Bahrain. How the Shia majority is dealt with by the Bahrain authorities is a matter that we have raised regularly. We have also regularly raised with other countries such as Saudi Arabia, UAE and Kuwait not just minority rights but the rights of religious minorities in those countries, so that they are able not only to profess and practise but to propagate their faith. Among the other areas that my right honourable friend the Prime Minister has highlighted, freedom of religion and belief is a specific priority on our human rights agenda.

**Baroness Tonge (Non-Affl):** My Lords, when will the Government—in fact, all Governments in this country—stop being so hypocritical on the matter of human

rights in continuing to trade with countries that abuse human rights? Of course, I give the example of Israel which abuses the human rights of the Palestinian people, whose land they occupy, but it applies to many countries all around the Middle East. It is time that it was stopped and we applied sanctions until it stopped.

**Lord Ahmad of Wimbledon:** The noble Baroness raises an important point about human rights. Looking at the record of successive British Governments, irrespective of political colour, we can be proud of the fact that we have been instrumental in raising these issues. The noble Baroness shakes her head; I do not subscribe to that. I am a passionate believer in human rights across the piece and when you look at the progress we have made, where there have been challenges—at the Human Rights Council, for example—that has not meant that we stepped away from our responsibility, including with our friends. The noble Baroness named Israel. We continue to impress our views upon the Israeli authorities, and it is because of our constructive relationship with Israel that we do have traction. We raise the issue of Palestinian communities within Israel and particularly in the Occupied Palestinian Territories, and urge that a solution is sought on the basis of what has been agreed internationally, which is a two-state solution.

**Lord Foulkes of Cumnock (Lab):** My Lords, I have here a map showing the worst countries in the world for attacks on journalists and press freedom. Most of them are in the Middle East. What representations, specifically, have our Government made in relation to press freedom and attacks on journalists in the Middle East?

**Lord Ahmad of Wimbledon:** We have mentioned Bahrain, but I have been focused personally on the issue of human rights defenders, particularly in the area of press freedoms, in another country, which is Turkey. I can reassure the noble Lord that we have been working very closely with organisations such as Amnesty International to ensure that the important principle of press freedom is very clearly understood as part of the human rights priorities that the UK Government articulate across the world.

**Lord Wallace of Saltaire (LD):** My Lords, Bahrain is the major British base in the Gulf now. The Government of Bahrain have paid for the expansion of that base. I must say that I think it is a rather odd relationship, which makes Britain, in many ways, dependent on the Government of Bahrain. How far does that inhibit our Government in criticising the Government of Bahrain for the way they treat the majority of their population?

**Lord Ahmad of Wimbledon:** We have, as the noble Lord knows, a range of relationships and we build alliances. On Bahrain, I think that relationship is strong. Yes, we do have a defence alliance with Bahrain, and it is an ally in the Gulf, but because of the strength of that relationship we are not deterred from raising the issues of human rights, whatever the abuses may be, candidly, very clearly and in a very honest manner with our Bahraini counterparts.

## Nurseries and Schools: Protection from Terrorism

### Question

11.22 am

Asked by **Lord Harris of Haringey**

To ask Her Majesty's Government what measures they are taking to protect nurseries and schools from terrorist attack.

**Lord Harris of Haringey (Lab):** My Lords, I beg leave to ask the Question standing in my name on the Order Paper and I refer to my interests in policing and security as set out in the register.

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, schools and nurseries have a legal responsibility to ensure that staff and pupils are safe, including in the event of a terrorist attack. The Government provide a range of advice to help them fulfil their responsibilities. The National Counter Terrorism Security Office also provides specialist advice on staying safe in the event of an attack, including tailored advice for education establishments, which schools and nurseries are able to draw upon.

**Lord Harris of Haringey:** My Lords, not for the first time I think that the Minister has drawn the short straw on the Government Front Bench, in that this is really a Question on what the Department for Education is doing about this. Two years ago I made a recommendation that every school governing body should appoint one of their members to take a lead in overseeing work on security and protecting pupils in the event of some attack of this nature. The Department for Education's response was to say, no, it would leave it to individual schools. That response was then criticised by the head teachers' associations which said they would welcome such general guidance. Will the Minister talk to her colleagues in the Department for Education so that it actually provides some guidance and a framework for schools to protect children in the event of such an attack?

**Baroness Williams of Trafford:** I am very aware of the noble Lord's advice and recommendations on governing bodies and a single person on a governing body. Governing bodies have to make a judgment as a whole on the health, safety and protective measures that they need to put in their schools. As for guidance, clearly the last year has been unprecedented in terms of security generally and our schools are no less vulnerable. The DfE is currently reviewing its health, safety and school security advice, giving consideration to how guidance material can improve advice that is given to schools.

**Lord Paddick (LD):** My Lords, the matter that the noble Lord, Lord Harris of Haringey, is referring to is recommendation 121 of his comprehensive report about London's preparedness to deal with terrorism. Recommendation 11 of that report states that it is essential that UK policing is able to maintain the required international arrangements that currently work

[LORD PADDICK]  
to keep us safe. There is no precedent for a non-EU country that is outside Schengen to have access to the essential intelligence databases SIS II and ECRIS, and the European Commission has said that a non-member state cannot have the same rights as a member state. Does the Minister accept that whatever the desired outcomes, we are likely to be less safe if we leave the EU? It is about not what everybody wants but what is legally possible.

**Baroness Williams of Trafford:** In terms of London's preparedness, the noble Lord will know that there has been quite an uplift in the CT policing budget. In terms of the EU, he will also know through the various debates we have had that the UK has been a leader in work across Europe in law enforcement and counterterrorism data sharing. We have had the pleasurable experience of the passage of the Data Protection Bill, during which law enforcement and other matters were discussed. We very much want to continue that to the extent that we have put the law enforcement directive into UK law.

**Lord Anderson of Swansea (Lab):** Does the Minister agree that the threat is less a general one than a specific one targeted against various minority communities, particularly the Jewish minority? Is she satisfied that the Government have sufficiently close consultation with the Jewish community in this country, particularly in London, to prevent attacks?

**Baroness Williams of Trafford:** The Government liaise closely with the Jewish community, in particular with the CST. All Jewish schools have security protective mechanisms, following some of the terrorist threats in Europe. I commend the CST for the work it does not only for the Jewish community but for the broader community.

**Lord Pearson of Rannoch (UKIP):** My Lords, are the Government aware that the National Police Chiefs' Council has estimated that only 8.6% of the tip-offs to the police and the Prevent programme come from within our Muslim communities? What are the Government doing to encourage those close-knit communities to do much more to expose their violent co-religionists before they strike?

**Baroness Williams of Trafford:** My Lords, the Muslim community is as anxious to prevent terrorist attacks as any other community. The Question relates to schools. Parents in the Muslim community do not want their children radicalised any more than we do.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, will the Minister tell the House what specific work the Government have done with head teachers and governors over the past year? As she said, the situation has been unprecedented.

**Baroness Williams of Trafford:** It has been—the noble Lord is right to point that out. DfE is working with the National Counter Terrorism Security Office and has had expert advice from the counterterrorism

policing unit. As I said earlier, it is reviewing its guidance on preparedness, security measures and vulnerability to attack.

**Lord Cormack (Con):** My Lords, might it not be better if the noble Lord, Lord Pearson of Rannoch, concentrated on Brexit and left this delicate issue alone?

**Baroness Williams of Trafford:** My Lords, I think we concentrate a lot on Brexit these days in your Lordships' House. The Question is important. Given the threats of the past year, it is important that we are all safe whether in our schools, our homes or our communities.

**Lord Reid of Cardowan (Lab):** My Lords, does the Minister accept that in the event—God forbid—of a terrorist attack on one of our schools, my noble friend Lord Harris's recommendation 121 would be implemented within the week? Is it not better to concentrate on prevention rather than afterwards? At a time when it is obvious that the terrorists are now moving towards soft targets, schools are among the major soft targets that should be protected.

**Baroness Williams of Trafford:** I could not disagree at all with the noble Lord when he says that we need to make sure our schools are protected. He will be aware, I am sure, of the *Crowded Places Guidance* that has come out. This is up to governing bodies. Of course the threat will feel different in different places, and we are updating our guidance on assisting schools. It would be a terrible thing if a school was subjected to a terrorist attack.

## Housing Associations Question

11.30 am

Asked by **Lord Shipley**

To ask Her Majesty's Government what assessment they have made of reports of the loss of 93,820 housing association homes for social rent between 2012 and 2017.

**Lord Shipley (LD):** My Lords, I remind the House of my entry in the register of interests and beg leave to ask the Question standing in my name on the Order Paper.

**Lord Young of Cookham (Con):** My Lords, the coalition Government secured more social housing by prioritising homes for affordable rent over homes for social rent. This enabled more than 357,000 new affordable homes to be built since 2010. We are providing more than £9 billion of funding for the affordable homes programme to March 2021 and £1 billion housing revenue account borrowing freedom for local authorities. This will support social landlords to build more affordable homes including homes for social rent.

**Lord Shipley:** My Lords, I thank the Minister for his reply. He will be aware that the loss of housing association homes for social rent reported at the end of last week reflects in part a move from social rented

homes to affordable rents but also the sale of some housing association homes. We have been waiting for the Government's Green Paper on social housing for many months. When is that Green Paper due? Do the Government actually believe in social housing?

**Lord Young of Cookham:** Of course the Government believe in social housing, which is why, as I said in my reply, more than £9 billion has been allocated to it. In the last seven years, more affordable homes have been built than in the last seven years of the last Labour Government. We are committed to more social housing. The Green Paper on social housing is expected in the spring.

**Lord Bassam of Brighton (Lab):** My Lords, with some 40% of council homes that were sold under right to buy now owned for rent by private landlords, does the noble Lord not agree that the sale of council houses has ceased to be a policy promoting low-income home ownership and that it would be wise, given our shortage of affordable homes, to suspend right to buy and allow sales only if they can be replaced on a like-for-like basis?

**Lord Young of Cookham:** The stock of social housing fell by 420,000 under the last Labour Government. More council houses—social houses—were sold than built. We have reversed that: more social houses are now being built than sold and the stock has increased by 86,000 since 2010. The receipts from right to buy are reinvested in social housing. Far from the policy of generating receipts disadvantaging those on the housing list, by generating more receipts for local authorities to reinvest it increases investment in social housing.

**Baroness Greider (LD):** My Lords, does the Minister believe that there is a crisis in this area, given that last year saw more homeless children than we have seen in a decade? Does he recognise that it is hard to believe that this Government see it as a crisis if expenditure is 79% on private housing and 21% on affordable housing? As he well knows, “affordable” is not really affordable for families on low incomes.

**Lord Young of Cookham:** The noble Baroness will know that, for any given sum of public investment in housing, you can build either more houses at slightly higher rents or fewer houses at slightly lower rents. In 2010, her party and mine decided to go for the higher-output option. That was the right decision at the time to make faster progress in adding to the stock of good-quality, permanent homes for rent. In October last year, the Prime Minister announced an extra £2 billion for affordable housing and made it clear that a big chunk of that should be redirected towards social housing, as the noble Baroness suggests. We have listened to the representations from housing providers. The £2 billion will be available for social rents as opposed to affordable rents, and by lifting the cap on what local authorities can borrow we are enabling local authorities to build more council houses.

**Lord Best (CB):** My Lords, the Minister knows that tens of thousands of affordable homes have been produced by requiring the housebuilders to include a

percentage of affordable housing in all their big new developments. He will also know that over recent years the housebuilders have found a loophole—the so-called viability test, a specious argument—to renege on those obligations. Can he reassure the House that the Government are going to close this loophole, which is just a scam to enable the housebuilders to get out of the agreements that they have already made and increase their profits?

**Lord Young of Cookham:** The noble Lord makes a valid point. We are concerned at the way in which certain housebuilders use the viability test to reduce the percentage of homes on their sites for social housing. We are reviewing the viability test with a view to increasing the original intention on these sites to have a fixed percentage of social housing units.

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I refer the House to my relevant interests in the register. Does the Minister agree that the loss of more homes for social rent, as outlined by the noble Lord, Lord Shipley, is making a difficult situation even worse, and that as people move into more expensive rental properties the taxpayer ends up paying more for the increased housing benefit bill for those tenants who claim that benefit at the higher cost?

**Lord Young of Cookham:** No, I do not agree, for the reason that I gave a few moments ago. Houses built on affordable rents are available at roughly 20% below market price, and of course housing benefit is available to help those on low incomes to pay the rent. As I said a moment ago, you have a choice to make: you can get either more houses at slightly higher rents or fewer houses at slightly lower rents. We went for the option to build more houses. On the noble Lord's final point, he keeps reminding us of his connection with Lewisham as an elected councillor of that borough. He might like to know what Sir Steve Bullock, the Mayor of Lewisham, said about our housing policies:

“This specific cash injection for affordable homes will allow the Mayor of London, boroughs and other partners to carry out and extend ambitious plans to properly tackle the capital's housing crisis”.

I hope the noble Lord agrees with his colleague.

## Brexit and the Labour Market (Economic Affairs Committee Report)

### Motion to Take Note

11.37 am

Moved by **Lord Forsyth of Drumlean**

That this House takes note of the Report from the Economic Affairs Committee *Brexit and the Labour Market* (1st Report, HL Paper 11).

**Lord Forsyth of Drumlean (Con):** My Lords, although the Motion stands in my name on the Order Paper, it was in fact my predecessor as chairman, the noble Lord, Lord Hollick, who shepherded the committee through much of this topic. Unfortunately, the noble

[LORD FORSYTH OF DRUMLEAN]

Lord cannot be here to speak in the debate on this, his final inquiry as chairman. I say as chairman that we miss him on the committee but I understand that he has been drafted into the report on artificial intelligence, for which he is very well equipped.

Before I introduce the report and its key conclusions, it is perhaps necessary to set it in context. The committee commenced this inquiry in January 2017, less than seven months after the EU referendum, which seems so long ago. Much excellent work was being undertaken by committees of this House and the other place on the impact of the referendum, which we aimed to complement. As we noted in our call for evidence:

“The vote to leave the EU presents the UK with an opportunity to restructure immigration policy”.

At that time, though, business anxiety remained high and, as we said:

“Some sectors ... have stated that continued access to migrant labour is crucial for the success of their businesses”.

The committee wished to examine the competing claims about EU migration and the labour market. Taking as a starting point that EU migration would be reduced, we set out to identify practical measures that government and businesses could take to mitigate the impact of this change.

The issue that emerged and threaded its way through much of our inquiry was problems with data underlying many assumptions about the UK’s reliance on migrant workers. One witness told us:

“Evidence-based policy-making needs data that is fit for purpose”.

It was a great surprise to me and others on the committee how unfit for purpose many of the immigration statistics were.

The headline immigration figure that we hear announced at regular intervals is that for annual net migration, and the most recently available numbers show that for the year to June 2017, net migration to the UK was 230,000. But where do these figures come from? The answer is Office for National Statistics workers interviewing 4,000 to 5,000 at 19 airports and some other points of entry. It will not come as a surprise that this survey-based approach has problems. Who is counted; who is not?

Professor Portes suggested that,

“when you come into the country as an immigrant”,

you might,

“have better things to do than stop and chat with an ONS official for 20 minutes”.

We know that those arriving on overnight flights are missed, as are those travelling across the Irish land border. Student departures are radically underestimated, and the definition of migrant means that only those changing residence for 12 months or more are captured, missing seasonal and short-term workers.

The committee examined other sources of immigration data to see whether they could assist in overcoming those deficiencies. The Labour Force Survey details workers’ nationality and country of birth, but cannot provide anything more than a broad-brush approach to the number of EU workers employed in each sector. Its methodology leaves out short-term and seasonal workers and those living in communal households.

National insurance numbers should provide an objective check: every overseas adult registering for a number is captured. But these, too, are limited: we know only how many are issued, not how many are in active use by workers.

The next obvious thought is: can we count people in and count them out? The Government have introduced exit checks and collect information on those entering and exiting the United Kingdom, but again, this is limited. The most recent report on exit checks is enlightening, but covers only non-EEA nationals and is limited to whether or not they obeyed their visa conditions.

We considered how this could be improved. The Government hold the necessary information about workers. National insurance numbers can be linked to passport data and tax and PAYE returns to show who is employed and where. The data should be married up to produce a coherent picture, but this will be a lengthy and painstaking process.

Another radical way mentioned in evidence to the committee is the introduction of a single method of national identification used by all. I am sorry that the noble Lord, Lord Campbell-Savours, is not in his place, and very much hope that the Senior Deputy Speaker will think it appropriate to look at this issue in a special Select Committee in the coming year.

These points are of interest not just to those poring over spreadsheets of economic data. They have a real impact on how future policy can be formulated. As we noted in our report, there is limited reliable data on how reliant businesses and industries are on EU immigration. Much of the evidence we heard is based on anecdote. I take one example that featured in our committee’s evidence sessions: the food and agriculture sector. How reliant is that sector on EU workers? How can it adapt to changes in labour laws? How many workers will be needed to ensure that Scottish raspberries are picked and that London workers can receive their morning coffee?

The most specific sector figures provided to us by the ONS suggest that 20,000 workers, or 5.7% of the workforce, in agriculture, forestry and fishing were EU nationals. The NFU supplied data suggesting that 115,000 EU nationals work in the agricultural sector alone—some 20% of the workforce. At the other end of the food chain, so to speak, Pret a Manger, the mainly London-based coffee and food shop, told us that one in 50 applications for jobs in its stores were British. Of its employees as a whole, 65% were from the EU.

The Government’s recently—and finally—released sectoral report for agriculture, relied on sources including the NFU and the British Veterinary Association for its analysis:

“The ONS estimate that 6 per cent of agricultural employees were from the EU in 2015. However, this likely ignores many seasonal workers (estimated at 67,000). Both a recent NFU report and the 2013 Migration Advisory Committee report suggest that the vast majority are EU migrants ... In addition, around 95 per cent of Official Veterinarians in the meat hygiene sector are from the EU”.

This is just one example of a problem that affects many sectors. Noble Lords will see from the report that there is quite startling evidence from the construction sector and others.

The Government seem to have recognised this issue. They have asked the independent Migration Advisory Committee to provide advice and evidence on the current patterns of EU migration and the role of migration in the economy. This wide-ranging analysis is expected to cover the labour market, looking at specific sectors, skills, and regions, current and future trends and the impact of a reduction in migration. The MAC is expected to produce this work by September this year. The Government indicated that they will be conducting their own,

“extensive programme of engagement and evidence gathering”, and will form a new immigration policy once that process is complete.

On the data side, the ONS is working to improve the data and has a programme in place to increasingly present information based on administrative data and to move to reliance on these sources by 2019. Again, all this is very welcome, but the UK is moving towards Brexit day, and there are some steps we recommend that can be taken now, while consultation is ongoing, to ensure an orderly transition to a new policy.

First, we must ensure a proper implementation period to give businesses time to plan and adjust. They must, the committee concluded, have proper notice—probably a number of years will be required—and this period may be different across sectors and regions. Secondly, we need to promote better use of the domestic workforce and encourage capital investment. As the committee is discovering in its current inquiry, technical training outside universities in the UK is confused, and something of a disgrace. Further, companies may need to increase the use of automation to fill gaps in labour, and perhaps financial and tax incentives should be encouraged.

I turn now to the final section of our report: how is the success of any policy to be measured? The Government have their own chosen measure: the commitment—interestingly, they avoided in evidence and in their written response the use of the word “target”—to reduce migration to sustainable levels. As the then Minister for Immigration told us, this means reducing it to the tens of thousands—in other words, below 100,000. This, once again, brings us to the data: this target—or commitment—falls squarely on the shaking shoulders of the International Passenger Survey. It is not fit to bear that weight. At the most basic level, as one witness pointed out, due to the large margin of error in the current net migration figures, the Government may never be able to say with certainty that they have hit the target. I quote the witness, who said,

“you might think you have got [net migration] down to 99,000, but actually you only had it at 140,000”.

If the commitment remains, the committee offered suggestions to improve it: count students separately and, above all, ensure that the target is flexible. The objective of having migration at sustainable levels is unlikely to be best achieved by the strict use of an annual numerical target for net migration. Instead, such a target runs the risk of causing considerable

disruption by failing to allow the United Kingdom to respond flexibly to labour market needs and economic conditions. The objective of reducing migration to sustainable levels should be implemented flexibly and be able to take account of labour market needs, particularly during the implementation period.

I hope the Government will listen to the voices of experience on the committee and expedite steps to, first, improve the data; secondly, provide certainty so that businesses can adapt to change; thirdly, invest in domestic training and capital; and, fourthly, ensure that policy is not straitjacketed by an inflexible commitment that overrides all other considerations. I beg to move.

11.51 am

**Lord Livermore (Lab):** My Lords, in the UK, as elsewhere, politics has taken a nativist turn, and the debate about immigration has become a conversation only about how far and how fast it should be controlled. There is almost no discussion about its benefits, nor about the nature and the extent of our economy’s need for it to continue. As a result, we have a political debate in this country that is failing to serve the interests of the public. Although there is continuing strong support among voters for reducing immigration, there is little or no consideration of the consequences of doing so for national prosperity, individual living standards, or specific sectors of the economy. Certainly, the debate about immigration during the EU referendum campaign strained the boundaries of acceptable public discourse. Nevertheless, the Government decided that it was central to the referendum’s outcome, and chose to make a red line for the negotiations not growth, jobs and living standards, but reducing immigration regardless of the economic cost.

This perspective—that the economic well-being of the nation matters less than the politics of control—has driven the Prime Minister to pursue the hardest interpretation of Brexit. Her argument is not that it will make Britain more prosperous but that controlling immigration is so important that it is worth pulling Britain out of the single market and customs union to achieve. So this report from the Economic Affairs Committee, of which I am a member, feels timely, both to scrutinise the Government’s intentions in the EU withdrawal Bill and as we await the much-delayed immigration White Paper.

It is right that we should ask whether EU migration has had the negative labour market consequences often claimed by its detractors, and it is right that we should examine the impact that reducing immigration would have—in particular, whether it would achieve the benefits that those who support Brexit claim. As we do so, it is vital that we proceed on the basis of facts, and I wholeheartedly endorse the comments of the Justice Minister, Dr Phillip Lee, when he said:

“The next phase of Brexit has to be all about the evidence ...there would be a serious question over whether a government could legitimately lead a country along a path that the evidence and rational consideration indicate would be damaging”.

He went on to say:

“It’s time for evidence, not dogma, to show the way. We must act for our country’s best interests, not ideology and populism, or history will judge us harshly”.

[LORD LIVERMORE]

So it is fitting that our report begins by voicing concern about the absence of facts and, specifically, the poor quality of the available migration data. We were astonished to hear witnesses repeatedly tell us how little accurate data is collected, how haphazardly it is done, and how great is the margin of error. As our report says, the data,

“fail to provide an accurate number of migrants entering or leaving the country ... The data, based upon flawed sample surveys, are wholly inadequate for policy making and measuring the success or otherwise of the policies adopted”.

Whatever your view about the levels of immigration, surely, as the chairman of the committee, the noble Lord, Lord Forsyth, said when our report was published, and again in his speech today, the Government must have reliable statistics before they formulate their new policy, otherwise they will be making crucial decisions of vital importance completely in the dark.

In this respect, the Government’s response to our report is disappointing. They describe the International Passenger Survey as,

“the best source of information to measure long-term international migration”.

We certainly did not meet many witnesses who agreed with that. Instead, our report calls for the reintroduction of counting those entering and leaving the UK and the better sharing of data, such as national insurance data, across departments.

What evidence, then, did we find to support the claim that EU migration has a negative impact on the UK labour market? I have always found it odd that anti-immigrant tabloid propaganda accuses EU nationals simultaneously of coming here to sit about on benefits and, at the same time, taking all our jobs. Presumably it would need to be one or the other. The more likely explanation of course is that it is neither. There was little evidence presented to us that foreign workers took jobs that British workers wanted. Many witnesses told us of an unwillingness among British workers to carry out particular types of work. We learned that only one in 50 applicants for vacancies at Pret a Manger, for example, is British, and the Agriculture and Horticulture Development Board told us:

“Attempts to fill vacancies with UK workers have proved difficult in the past”.

Neither does it seem that domestic workers have been priced out of the labour market. Professor Jonathan Portes from King’s College said that,

“the emerging consensus is that recent immigration has had little or no impact overall”,

while Stephen Clarke from the Resolution Foundation told us that it would be wrong to say that any negative effect had been large.

The evidence is scarce because—although it is one of the great unsayable truths of British politics—the fact is that immigration is good for our economy. The benefits are clear: it increases growth, provides more tax revenue and helps pay for an ageing society. By raising aggregate demand it creates new job opportunities, brings skills into our economy and makes us more competitive. Indeed, there is substantial evidence that reducing immigration would damage our economy and would, by lowering tax receipts, put great strain on our public services. The Office for Budget

Responsibility has shown that we would need to borrow an additional £16 billion by 2020 to make up for the reduced tax take from falling migration, with a further cost of £8 billion every year thereafter. The Government’s own secret Brexit impact analysis, leaked last week, sets out clearly the cost to the British economy of cutting migration from the EU.

Those who support the Government’s policy talk in delphic terms about how the economy will “adjust” and how businesses will “adapt”. Our report acknowledges that what this actually means is higher prices for consumers. But even we fail to say that these adaptations and adjustments will too often be reduced production, diminished competitiveness or increased mechanisation—in all cases meaning fewer jobs.

At a time when it is so vital for the UK to remain a globally dynamic economy reaching out to the world, the national interest requires politicians of all parties to speak the truth and to have the courage to make the positive case for immigration. This includes those who support continued membership of the European Union, as I do, who now need to make a strong positive argument for the continued free movement of people to and from the EU, rather than accepting the characterisation of this as a “price worth paying” for single market membership.

As a first and immediate step, our report calls on the Government to secure an early agreement on the rights of EU nationals currently in the UK in order to prevent an unwanted exodus from our country. Unfortunately, the “common understanding” reached in phase 1 of the negotiations fails to sufficiently protect Europeans in the UK and British people in the EU. Just last week, the Prime Minister again sought to play politics with people’s lives, claiming that she would not extend EU citizens’ rights in any transition period, when she knows full well that she will eventually have to back down to secure the transition she needs. Our report was equally clear that the Government’s target of cutting net migration to the tens of thousands is the wrong approach. We recommend that the Government refrain from setting artificial numerical targets for net migration because, as our report says,

“such a target runs the risk of causing considerable disruption by failing to allow the UK to respond flexibly to labour market needs and economic conditions”.

We also recommend that students should not be included in the net migration figures.

Much of the evidence we collected during our inquiry also suggests that making substantial cuts to immigration is not just undesirable but will prove extremely difficult to achieve. Several witnesses highlighted that there are large numbers of migrant workers who will not easily be replaced by domestic workers. Many parts of the UK are already experiencing significant levels of labour shortages and many sectors, such as hospitality and tourism, and farming and food processing, are already on a cliff edge. Our report therefore recommends that any new immigration system should not make an arbitrary distinction between higher-skilled and lower-skilled work on the basis of whether a job requires an undergraduate degree. We believe that British business must have access to expertise and skills in areas such as agriculture and construction

that would at present be categorised as lower-skilled occupations. We also ask the Government to acknowledge that, in order to achieve some of their other policy objectives such as their homebuilding target, continued lower-skilled immigration may well be needed to provide the necessary labour.

Taking all this together, it seems entirely possible that, as the economic consequences become clear, the debate on immigration may move from how we reduce it to how we ensure that it is sufficient for the needs of our country. This report is convincing in its argument that the Government's policy of reducing immigration will have many deeply undesirable impacts on our labour market and our economy—but it is the political impact of the Government's approach that could have many more far-reaching consequences. It remains the case that the greatest hostility to immigration, and the greatest support for reducing it, are to be found in those parts of our country where there are fewest immigrants. Despite politicians of both main parties advocating immigration control to solve the problems of these areas, the reality is that the problems will not be solved in this way, despite the promises made, because the problems were never caused by immigration in the first place. We will therefore damage our economy by leaving the single market, only to find that the supposed political dividend of control was itself a fiction. In this gap between expectation and reality, the politics of extremism lies in wait. There is now an urgent need to change the terms of debate, focusing not on offering false solutions or raising expectations that can never be met but instead on seeking genuine solutions to the very real problems that the people of this country face.

12.01 pm

**Lord Sharkey (LD):** My Lords, I have the privilege of being a member of the committee that produced this report under the chairmanships of the redoubtable noble Lords, Lord Hollick and Lord Forsyth. There were three areas of conclusions and recommendations in the report: the first was about net migration statistics; the second was about adapting the UK labour market; and the third was about the net migration target.

In the area of migration statistics, our report emphasised the very poor quality of the data available to inform decision-making, as the noble Lords, Lord Forsyth and Lord Livermore, have graphically illustrated. The obvious and real defects in our current measurement system do not provide a sound basis for any assessment of the success of government policy. Both the Government and the ONS acknowledge these defects. In the Government's case, this acknowledgment was rather in passing in response to our report. The ONS has done better and deserves some credit. It has published a timetable for the improvement of immigration statistics overall, so that by 2020 we may at last have reliable overall net migration figures, and it very helpfully published on 24 August last year new data on the number of non-EU students who actually stay on after finishing their courses.

We observed in our report:

“The objective of having migration at sustainable levels is unlikely to be best achieved by the strict use of an annual numerical target for net migration”.

Having such strict targets is a political error and a policy millstone, and is probably unworkable or economically disastrous or both: much better, as we recommended, to set an objective for migration that can be flexibly implemented and is able to take account of varying and variable labour market needs. This is an urgent requirement. Business and the public sector need clarity about their ability and need to recruit foreign workers once a transition period ends and need time to begin to adjust their businesses before the end of that transition period.

For example, we need to decide whether there should be caps by sector, how these caps should be arrived at and what their consequences might be. We also need to give early warning of thinking on these areas to allow time for employers to adapt to changes in the availability of both labour and skills, and we need to have a clear assessment of the differential regional impact of any new immigration control regime. We should think carefully about the capital needs of SMEs, especially in the agricultural sector, when they are faced with reductions in the supply of labour.

We will need better data than we currently have to do any of this. For example, last Tuesday the ONS published a report on labour in the agricultural industry, which explicitly recognised our inability to measure the number of seasonal workers, 99% of whom, according to the NFU, are in fact from the EU. If we are to have an immigration policy linked to industry needs, we must have this kind of sectoral data to drive it.

I believe that the Government accept that a new immigration regime will accelerate the need for upskilling in the UK workforce. In their response to our report, the Government pointed to T-levels, apprenticeships and lifelong learning as means of achieving this upskilling. Perhaps I could ask the Minister a couple of questions about this. The T-levels require three months of employment experience as a key part of the course. What evidence is there that a sufficient number of employers will be able to provide a meaningful three-month experience? As for apprenticeships, do not recent events suggest that the scheme needs a thorough overhaul? The actual take-up of apprenticeships dropped by an astonishing 61% from quarter 4 of 2016 to quarter 4 of 2017, and there is a huge delay in approving the standards needed before apprenticeship courses can even begin. As of last week, there were 305 sets of standards in the queue for approval, and Ofsted reports that around half of all registered apprenticeship providers inspected were inadequate or required improvement. If the Ofsted sample was representative, that means that we currently have 37,000 students being taught by inadequate providers. Ofsted also said that it did not have the resources to widen its inspection base. This is a pretty awful mess. Can the Minister say what is being done about all this?

In their response to our report, the Government said:

“We are working to understand the potential impacts of any proposed changes”—

to future immigration arrangements—

“on the economy and labour market. We will build a comprehensive picture of the needs and interests of all parts of the UK and look to develop a system which works for all”.

[LORD SHARKEY]

There is an obvious “as opposed to what?” response to that. But what the Government have actually done is to commission the Migration Advisory Committee to do this work. The brief was comprehensive and detailed, except in one vital respect. It contains no policy variants to test. This seems to me to be a fundamental mistake. It is surely obvious that policy choices should be influenced by their likely outcomes. The MAC has not been asked to consider this.

In July last year, the Home Secretary asked the MAC to report by September this year and for interim reports to be delivered. Can the Minister say whether there have been any interim reports? Can she tell the House whether these reports, interim and final, will be published as the Home Secretary receives them? Can she also say whether she is confident that the full report is in fact on schedule for September?

Timing is an absolutely critical consideration. On Monday, the chair of the EU Parliament’s Committee on Constitutional Affairs, Danuta Hübner, said that the EU Parliament would require to see a firm and reasonably fleshed out framework proposal for our future relationship by the end of October. It is hard to see how the Government can meet this timetable when it comes to immigration controls if the MAC report arrives at the end of September. It will be harder still if the report is delayed—and everything seems to be delayed, including the immigration White Paper.

The Minister also asked the MAC, on the same deadline, to report on international students. Our report dealt with this issue. We concluded that the Government should expedite measures to assess accurately the number of students who leave the UK at the end of their courses and to monitor the impact on local housing by asking universities to provide information on the accommodation provided to international students so we could assess the effect on local housing markets. We said:

“Once this information is available students should not be included in any short-term net migration figures for public policy purposes”.

We now have the first measure. We now know that the number of students who stay on after completing their courses is much lower than previously thought. In fact, in its August report the ONS concluded that, “there is no evidence of a major issue of non-EU students overstaying their entitlement to stay”.

Have the Government asked the universities for the accommodation data, as we recommended?

Our universities are among the most successful in the world. They form a vital part of our economy now and will play an even more important role in the future. They are a source of influence around the world and a source of a huge amount of world-class research. To make international students and researchers unwelcome or to make them feel unwelcome has been, and will continue to be, a very big mistake. I hope that the fact that the Prime Minister recently pointed to the success in closing down bogus colleges with bogus students and the fact that the number overstaying is so low may herald an imminent change in policy.

In a post-Brexit world, we will need a flexible immigration policy that allows our businesses and public services to operate without damaging constraints

and our world-class universities to continue to attract the very best students and researchers. For that to be possible, we need to know the shape of that immigration policy very soon.

12.10 pm

**Lord Turnbull (CB):** My Lords, this was a very difficult report to prepare, the main sources of difficulty being the unsatisfactory evidence base and confused policy objectives. The noble Lord, Lord Forsyth, has highlighted the deficiencies in the statistics. The main source of the figures is the International Passenger Survey, based on 20-minute interviews—which I do not think are compulsory—with a sample of passengers passing through 19 airports and ports. Of those, only 4,000 to 5,000 were identified as migrants. It is on that that this whole policy is based.

The data on those leaving is acknowledged to be especially poor. We go through airports and our passports are swiped. This, I believe, is part of a control measure so that the right people get on the plane; I do not think that as yet it forms part of the evidence base. We also have problems with the number of students and how long they stay. Therefore, not enough is known about why people come, what they will do, what skills they have and how long they will stay. If migration is such a high-priority issue, I too am left wondering whether the UK should reconsider its traditional hostility to registration of identity, regardless of whether it is embodied in a card.

The confusion extends into the policy objectives. We were told that the Government wanted to reduce net migration to under 100,000 per year from over 250,000 to 300,000 in recent years, although, as has been mentioned, the Government were unclear about whether to call this a target. It would have been better if the study commissioned from the Migration Advisory Committee, referred to in the Government’s response, had been undertaken before the figure of 100,000 had been plucked out of thin air.

Part of the justification for Brexit was the need to take back control of our borders. However, only control of migration from the EU would be enhanced by Brexit. This channel has accounted for just under half of the total, and its level has fallen significantly since we reported. So, even if EU migration were reduced to zero, we would still not achieve the target unless new measures were brought forward to tackle non-EU migration.

Two phrases came up repeatedly in the referendum: “regaining sovereignty” and “taking back control”. They sound like synonyms, but they are not. One can regain sovereignty—that is, the ability to make one’s own laws—but that may not improve control if it reduces the co-operation that we get from other countries. For example, we could tighten laws against inflows across the channel but find that we were getting less help from France. We should not lose sight of the fact that collaboration with other countries is one of the instruments for advancing our objectives.

The third problem with the target of less than 100,000 is that it is not rooted in the structure of the labour market. The evidence that we saw showed the extent to which some sectors have, over the last two decades, become extremely heavily dependent on

workers from overseas, notably health and care, construction, agriculture and food processing, and hospitality.

At this point, we need to recognise the difference between stocks and flows. Even if net migration were zero, there would still be about 5.6 million EU and non-EU nationals in the UK, of whom about 3.6 million or two-thirds are working. If we control net migration, there will still be a large stock of overseas labour to call on. Nevertheless, any attempt to reduce net migration rapidly has to take account of how fast employers would be able to train and recruit UK nationals or provide investment to mechanise production. The best example is housing. It is difficult to imagine that the Government's objective of increasing the number of houses being built from 200,000 to 300,000 will be achieved without any increase in overseas workers. It will require a massive increase in construction training to turn this around.

The issue of overseas students came up frequently, with many arguing that students should be excluded from the statistics. This muddles up two concepts: the statistics and how the policy target is specified. Students should be in the migration statistics because they are a component of the population and net migration is meant to measure the increment to the population each year. But they do not need to be in the metric used for designing policy. There are many examples of where we take a statistic as measured by the ONS, using agreed definitions, some of them international, but then modify it in setting policy objectives: for example, RPI minus X; the public expenditure planning total minus privatisation proceeds; CO<sub>2</sub> emissions excluding aviation and shipping. Students should not be in the metric used to measure the Government's progress in reducing immigration. Overseas students in our schools and universities earn foreign exchange; they are like click-and-collect exports, where the buyer comes to us rather than our sending the product abroad. Normally, we want to promote exports rather than constrain them. I think this is helpfully acknowledged in the Government's response. If student movement is outside the target, it will still need to be monitored. If it turns out that the rate of students staying on is significantly different from what was expected, then an adjustment to the target would need to be made.

Finally, there is one issue on which I agree with the Government's response. Our report, in an effort to produce consensus, said that there might be some merit in issuing work permits on a regional basis—for example, for Scotland or London. I always thought, and made the argument but lost, that this made no sense. Take a construction firm based, say, in Ealing. If there were London-only permits, does that mean that any of its overseas workers could work only inside the M25? Could British Gas engineers based in London service boilers in Windsor? What kind of apparatus would be needed to check that employers were deploying people only inside the designated region? We have a flexible labour market nationwide and issuing permits which bear no relation to travel-to-work areas makes no sense.

In conclusion, it would be ironic if, between the referendum in 2016, in which “taking back control” featured so prominently, and our exit in 2019, the net

EU migration figures fell to zero—I am inclined to bet that that might happen—rendering the whole exercise pointless. But then there would be crises in many areas of our economy: in public services, in the housing sector, in agriculture and in food processing. Supporters of Brexit should be careful what they wish for.

12.18 pm

**Lord Horam (Con):** My Lords, I too congratulate the Economic Affairs Committee on another good report. It is crisp, logical and even eminently readable. It is, therefore, rather the reverse of most government papers we have had in recent times, which have been remarkable for their impenetrability. In the case of Brexit, that may have been deliberate, for all I know.

The report starts by reviewing the immigration statistics. My noble friend Lord Forsyth expressed his surprise at the difficulties and problems here. Those of us who have followed this area of information are not at all surprised. It has been obvious for years that the collection of immigration statistics has been extremely faulty. That is why many of us have been extremely grateful for the efforts of the noble Lord, Lord Green of Deddington, who I am glad to see in his place. Migration Watch, which he started, was, for a long time, ahead of the Government in having a feel for what was actually happening in the area of immigration and emigration.

I am strongly in favour of a firm control of immigration policy, as I think are most British people. My main reason for being in favour of control of immigration is the quality of life in this country. My colleague the noble Lord, Lord Hodgson of Astley Abbots, produced an excellent document recently entitled *Britain's Demographic Challenge*, which I recommend to anyone who has not read it. In it he points out that England already is twice as heavily populated per acre of land as Germany and four times as heavily populated as France. On the current Office for National Statistics evidence projections, we will have 9.7 million more people by 2039 than we have now, raising the population to 74-75 million people. This will predominantly, I expect, come in London and the south-east and will affect the quality of life in our part of the world.

As an economist I hate to admit that quality of life is about not only economics but a whole range of other things and I am pleased that in recent months people have begun to question the validity of the gross domestic product as a measure of our standard of living. It has many elements other than the purely economic, and the press of numbers in the south-east of England, in particular, is a real problem.

Immigration undoubtedly causes problems of social cohesion. I was born and brought up in a northern textile town and over many years in my lifetime I have seen that work out in ways which are bad for the collective feeling in such towns.

When considering immigration we should not think only of ourselves in the United Kingdom. For example, I remember from a parliamentary trip to Botswana at the height of the AIDS problem in southern Africa the terrible issues there. I went to some of the hospitals and community centres which were trying to deal with this and hand out drugs to the affected people and

[LORD HORAM]

found that there was a shortage of nurses. I asked where these nurses were and was told that they were in England in the NHS—they could not keep them in Botswana. Recently I talked to a Jamaican politician who said, “How do you seriously expect us to build a modern country when over half our graduates disappear to America or Europe on graduation? How do you do it?” We have to look at migration on a big scale and from the point of view of other people in the world and not only through self-interest, which we too often do.

People in the UK were reasonably content with the immigration situation when it was in the tens of thousands. During the 1970s, 1980s, 1990s and most of my lifetime it was in the tens of thousands, and sometimes it was almost negligible. However, after the Labour Government came in in 1997 it climbed to six-figure levels and, in some cases, to big six-figure levels, and that alarmed people. Politically, it is one of the ironies of our time that it was precisely that level of immigration which fuelled the leave vote in the referendum, and then the Labour leaders at that time bemoaned the consequences of that. Frankly, it is a question of the biter bit.

Economically, as the report pointed out, the effect on business of having a large number of intelligent and sensible people available to deploy in its workforce was that we neglected the skills of our own people—a point made not only in this report but, presciently, in the economic affairs report in 2008 which predicted precisely that this was happening and would continue to happen. We have lost out in terms of automation, innovation and skills, as well as seeing an effect on wages. I therefore welcome the Government’s industrial strategy which focuses precisely on the areas of skills, automation, innovation and so forth, and I hope that they can get a cross-party consensus because they will certainly need it.

The curious aspect of all this is that we are exiting from the European Union and thus in effect doubling up on the economic challenge that this country faces. We would have to do a lot of this stuff anyway, but Brexit will make it even more important that we get it right. As the report rightly says, companies will have to adapt their business models to a new situation in which there will not be quite so much immigrant labour, and that will take time. My noble friend Lord Forsyth himself said that the implementation period or transition period—whatever you like to call it—will take quite a time, and indeed may take even longer than two years for some industries. That may well be the case and I certainly think that it will take at least two years to bring about the sort of effect that we need.

None the less, I think that we can get out of the situation we are confronting. In our debate on the industrial strategy some weeks ago, my noble friend Lord Willetts made the point that we have cracked this problem in a number of areas. The automotive industry is a hugely successful renaissance sector in this country now while not only finance but services more widely are doing very well. Britain has led in the mobile phone industry and telephony more generally. Medical research and the life sciences are an area of great promise and success for the UK. I would add to that we need a big export drive. There was a slogan after the Second World War: “Export or Die”. It is not

quite that, but by heavens it is going to be important as we face a trade deficit of considerable proportions and which may get worse in the immediate aftermath of Brexit. I remain optimistic but we need to get our act together, and this report shows us how we have to do it in relation to the labour market.

12.26 pm

**Lord Darling of Roulanish (Lab):** My Lords, I will not follow the noble Lord, Lord Horam, too far down the road of immigration. I too believe that immigration needs to be controlled, but we also need to look at the benefits that can come from it. To put it another way, if he is concerned about quality of life, as we all are, he should take a good look at a country like Japan which does not have much in the way of immigration and is now facing the serious problem of an ageing population without the workforce to support it. These things can cut in a number of ways.

I should draw the attention of the House to my entry in the *Register of Lords’ Interests*, in particular that I am a director of Morgan Stanley New York, which is of some relevance to this debate. I do not want to dwell too much on the wholly inadequate nature of the statistics with which we are faced because they were dealt with in detail by the noble Lords, Lord Forsyth and Lord Turnbull. Suffice it to say that if the Government have as their central policy on immigration the reduction of net migration but they do not know the figures on which it is based, then the policy does not add up to very much. We all know that the policy has not been met, and if George Osborne is right, no one in all the Cabinets that he served in prior to moving on to other things believed that it was realistic either. What was obvious from the evidence we heard is that we simply do not know with any degree of accuracy the number of people coming in or going out. That is extraordinary, given that most of us who travel in and out of the country are well used to producing our passports. Someone, usually an airline, knows when you left, and the Immigration Service certainly knows when you come back. It cannot be beyond the wit of this country to try to marry the two up in order to get an accurate picture of who has gone and who is coming back. That is particularly important if we really do want to measure what the net migration figure is.

I want to concentrate on the section of our report that calls on the Government to consult with business and to develop a strategy for what the labour market needs of this country will be post Brexit. That simply has not yet been done and the clock is ticking away quickly. What was obvious to us, as it is to anyone who looks at this subject, is that a number of people, particularly from the European Union, work in this country, contribute and pay their taxes. However, it is not only those with degree-level skills in higher-paid jobs that we should be concerned about because at the present time an awful lot of jobs requiring lower levels of skills are being done by EU nationals. Indeed, the evidence we had is that many of those people would simply not qualify under the non-EU scheme that this country currently operates if they were to apply to come to work here. For example, looking at skill levels, the figures we got show that some 32% of

EU nationals are working in lower to middle skills and 24% are working in jobs that would be described as low skilled.

When the Government develop their strategy they have to ask themselves: what does industry need across the piece? If we end up in a situation where after March next year many of these workers cannot come here or they choose to go back—an awful lot of them do go back for perfectly understandable reasons—and are not replaced, many of our industries could find themselves very exposed. It is not just agriculture, manufacturing and the academic world; all these areas depend to a substantial extent on having an adequate supply of labour from not just this country, but the EU. Dare I say it, having people come from different countries with different backgrounds and skills sometimes enriches the workforce. It adds quite a lot to it because we learn from each other.

That is why our recommendation that the Government should consult with business to ask what the skills requirements are is paramount. We simply cannot introduce the system that currently applies to non-EU nationals, where there are skill-level requirements and quotas, for two reasons. Partly, I do not think the Home Office could cope with it. It has struggled under successive Governments and over many years to try to operate schemes like this. All of us who have had experience of dealing with them will know that you sometimes get some extraordinary decisions that are very difficult to understand.

The second thing is that I find quite extraordinary the idea, particularly coming from a Conservative Government, that the state knows how many people we require, what level of skills are required and that it can adjudicate as and when business requirements change. Maybe I am being too new Labour here, but I do not think that that is the job of the state and I do not think it can do that. If that really is what is being proposed—I certainly read in the newspaper today, and I presume it is not fake news, that one of the things that was discussed by the Cabinet sub-committee yesterday was simply to transpose the non-EU regime and make it universal for people coming into this country—I can see all sorts of difficulties. Our economy is growing, but, as we all know, it could be growing an awful lot faster. My belief is that if we removed the threat of Brexit it would grow significantly faster. This is the last time at which we should be introducing uncertainty for manufacturers, farmers or whatever field as to who they will likely be able to employ in future.

This part of our report is one that the Government need to pay heed to given the cross-party nature of the Economic Affairs Committee and the different views on Brexit in that committee. The Government should draw from that the strong feeling that there needs to be a policy that is coherent and meets the skill requirements of people in this country.

I will say two things in conclusion. First, I want to see as many people in this country as possible employed in whatever their chosen field is. The Economic Affairs Committee is currently engaged in a study of the adequacy of our higher education, further education and apprenticeships. Without pre-empting our findings,

it is blindingly obvious to us so far that we have a long way to go, particularly for those people with lower and intermediate skills to get into the labour market. The idea that they can simply step into the gap that will be left by departing EU workers is fanciful.

Secondly, we must remember that this cuts both ways. There are about 1 million UK citizens in the rest of Europe, many of whom are working there. It would be very unfortunate if we got into a situation where we said that only people in Britain can work in Britain and only the French can work in France. That is simply unacceptable on so many different levels.

I hope that the Government will pay heed to that. I hope that they will recognise the need for us to improve the way we gather statistics, especially when immigration is such a contentious and sometimes poisonous issue in our politics. We need to have a basis on the facts, which are there to be found if we only have the will to do so. I hope that the Government will take this report seriously and add some clarity to a policy that at present looks anything but clear.

12.35 pm

**Lord Burns (CB):** My Lords, I too am grateful to the noble Lord, Lord Forsyth, for securing and introducing this debate, and to the noble Lord, Lord Hollick, who chaired the committee during much of our deliberation on this sensitive issue.

The UK labour market we see today is the result of adapting over many years to membership of the EU; we must not underestimate that. The emergence of the single market, the expansion of the EU to 28 countries and the increased rate of migration from the enlarged EU to the UK have all contributed to this. Such forces are evident in businesses that have flourished but also in those that have suffered—certainly, we can see it in the growth of certain industries where integrated supply chains are important; for example, the car industry. In other industries and services it is less evident, but we can see effects both positive and negative.

We have also seen a significant increase in the size of the UK population over this period, with increased demand for many services in both private and public sectors. Of course, the increased rate of migration to the UK has brought us workers who have filled many of the vacancies generated by such developments. One extremely welcome development is that increased migration has not created an unemployment problem, as many feared it might—the total number of people in work has risen and unemployment remains at very low levels.

The committee looked at a number of the impacts of this, although in many cases the evidence was really quite sketchy. We looked at whether wage levels in established activities had been held down. The evidence there was that it was possible, but the likelihood was that it was less than was often claimed. In other areas, migrant labour may have been willing to work for lower wages than would UK nationals and in the process have generated a new market for new kinds of services. As a consequence, in addition to increased migration of highly skilled workers, we have seen a sharp increase in the number of certain types of lower-skilled, lower-productivity services, particularly in the

[LORD BURNS]

hospitality sector but also elsewhere, a development which might well have had some impact on reducing the average levels of productivity in the economy.

In some other areas—for example, agriculture—it was pointed out that production may have continued, supported by low-paid workers, when otherwise the products might have been imported rather than be produced in this country. It was also suggested to us in evidence that the inflow of trained staff from the EU in some industries and companies may have meant less pressure on those industries to train additional staff in this country, and that it was having a significant impact.

We then turned our attention to the issue of how easy it would be following Brexit to unwind and possibly put into reverse such incentives, which have now been generated over a long period, and whether it could be done quickly and without considerable dislocation. The general view of the committee was that there were indeed many problems with anything that attempted to make us adjust too rapidly.

I support the view that it is impossible at this point to be precise about these forces or how quickly the labour market can adjust to life outside the EU. Now that it has been agreed that EU nationals currently in the UK will retain their right to remain here, some of the concern has been lifted, but in other areas there are still great uncertainties and there could be difficulties, as previous speakers have mentioned. Many of those sectors most reliant on EU nationals tend to be classed as lower-skilled, and there may a temptation to seek to design an immigration policy based on attracting the brightest and the best. The committee came to the conclusion that any new immigration system should not make an arbitrary distinction between high-skilled and low-skilled work; we should recognise that non-graduate skilled migrants might be just as important during the adjustment phase as so-called skilled workers.

The second problem is that many of the industries employing low-skilled workers experience very high rates of turnover. An either over-rigid or bureaucratic system of control will leave them in substantial difficulty. Just as the economy has adapted to the increased flow of migrant labour, it is possible to envisage that over time it would be capable of responding to a reduction in the flow: I do not want to be too pessimistic about that. Of course, not all the ways in which the economy will adapt will necessarily be welcome to everyone and in some respects it will require adjustments to government policy. We may see increasing pay and prices to the consumer in some sectors, which in turn will affect the demand for their products. Government will have to adapt. As speakers have pointed out, better training and retraining of the domestic workforce, particularly a better system of technical education, becomes even more urgent to provide some of the skills the economy requires.

The noble Lords, Lord Forsyth and Lord Darling, mentioned that our committee is now examining some of these issues. So far, what we have learned has not been encouraging: that is probably the best I can say. In a number of areas there will have to be substantial changes if we are to have a labour force capable of

taking these challenges on. I was pleased to read in the Government's response a recognition that this process of adjustment will take time: I hope that they really mean that. They have also agreed that shifting to a high-skill, high-productivity economy is important and that people should have access to training throughout their working lives. These are also things that are going to be important.

We have to be very cautious about the mechanisms that we use to seek to bring greater control over migration to the UK. I do not object too much to the notion that we should have a view about the sustainable rate of net migration. That seems a very sensible way to approach this policy, but the committee was very strongly of the view that any strict targets for numbers, particularly on a yearly basis, will quickly run into trouble and will probably be impossible to deliver. Like the noble Lord, Lord Forsyth, I am somewhat comforted by the language in the Government's response of a "net migration commitment" rather than a target. I would be grateful if the Minister confirmed this in her response.

One issue on which the committee came to an early agreement was that of reliable information. We have heard a number of speeches refer to this today. We were all very strongly of the view that a sensible migration policy will require much better statistics about those entering the country, those leaving and the total number of temporary migrants working here. The noble Lord, Lord Forsyth, dealt with this in detail and I will say only that I agree with him. I hope that people become much more aware of this problem as we come to the implementation of a net migration policy. The information we investigated clearly does not deliver this at the moment. The Government have responded and argued that the Home Office is already working with the ONS to develop better exit data and to improve the quality of data, but we cannot stress too strongly that the problems in attempting to design and implement an immigration policy in the absence of much more reliable data will be extraordinarily difficult. A number of us are still somewhat cautious, having seen what can be described only as the relatively lukewarm response of the Government in terms of the urgency of this issue.

Finally, whether students should be included in net migration figures has aroused a lot of debate. The committee came to the view that students should not be included in any short-term migration figures, for public policy purposes. I still support this recommendation; however, I note that it would be necessary only if the Government were tempted to put limits on the number of students able to study in the UK in order to reach the short-term net migration target, or if they sought to make it much more difficult for those wishing to remain in the UK for a period after completing their studies. I was given some hope from the Government's response that this is not their intention. It insists:

"There is no limit on the number of genuine international students who can come to study in the UK and the Government has been clear that it has no intention of imposing such a limit".

Can the Minister confirm that this means that no limits will be introduced, even in circumstances where the Government are having difficulty achieving their overall net migration objectives?

There is a slightly more threatening phrase afterwards in the response:

“so long as students go home at the end of their studies, it is perfectly possible to increase the number of international students in the UK without adding to net migration”.

My concern here is twofold. First, we have no accurate measure of whether students go home at the end of their study and, secondly, it can often be of considerable benefit to the economy for graduates to remain here after their period of study. If the Minister can confirm that the only reason the Government do not accept our conclusion that students should be excluded from the figures for the purposes of public policy is that they believe it is not necessary, universities can put to rest their fears that this might have an impact on the number of genuine international students having access to our universities.

12.45 pm

**Lord Suri (Con):** My Lords, I thank noble Lords who wrote this report. It has been an interesting read and there are plenty of important points to look at for the next round of the Brexit negotiations.

I was pleased to see the report call for a more pragmatic approach to foreign student numbers, something I have consistently advocated in this place. The public do not want students included in the immigration figures. Many senior Ministers do not. The other place would vote to liberalise it tomorrow, and yet we are stuck with a system that inflates numbers and does not enjoy public support. I find it hard to believe that an amendment to the relevant legislation will not soon be tabled to move towards this goal. In this stubbornness, the Government are needlessly setting themselves up for failure, and I hope they will be in listening mode as further Bills move through this House and the other place.

I wholeheartedly support the committee’s recommendations on establishing a better system for monitoring student numbers and working with universities. Much unnecessary friction has been created between university leaders and the political class of late, and moving forward on some areas of consensus would be welcomed by the sector. Let us continue to champion our world-beating universities.

I was also heartened by the recommendation to scrap the immigration target. The futility of trying to place such a fluid variable into a single block figure has never struck me as a sensible way of carrying out policy. In my business, the need for additional workers ebbs with the economy, and annualising the figures makes little sense. However, I agree that part of the referendum result was a call for lower immigration. It was about more than control; it was about numbers too. Numbers will have to be brought down, and the most effective way of doing so is to implement limited quotas for low-skilled workers. For too long, employers have relied heavily on a reserve force of easily mobile labour from Europe, which is very useful for them, but not for domestic workers.

I might find Members opposite agree that the lack of impetus to invest in workers to drive growth has caused some of our productivity slump. It is of course a complex matter, and there are a number of other factors, but this is important. The Minister for

Immigration makes a good point in paragraph 86 when she notes our low level of capital investment. I read many stories in the media about the plight of fruit or vegetable farmers who need seasonal workers, but it cannot be beyond the wit of man to create some way of fully or partly mechanising this process in less than a decade. Indeed, it can be a new arrow in the quiver of the industrial strategy, when that eventually comes before this place.

In addition, any strategy must take into account overall economic need as well as income. A nurse may earn less than another worker but be more structurally important to our overall economy. Does the Minister agree with me that migration policy should focus on our economic need as well as income?

12.51 pm

**Lord Lea of Crodall (Lab):** My Lords, the debate about Brexit is becoming a debate about what are settling down to be three broad options for the country. The first is a hard Brexit, by which I mean pulling up more of a drawbridge on migration. At the opposite end, the second is the status quo as near as possible. The third, which I would put somewhere in the middle, is the European Economic Area option, where you still have the four freedoms but with some degree of tweaking of the agreed criteria on migration. That is where there is at least a 50% chance we will wind up, as it is in our national interest—certainly our economic interest—for the reasons stated by every speaker, beginning with my noble friends Lord Livermore and Lord Darling, moving through to the noble Lords, Lord Burns and Lord Turnbull.

It has been said by many people that we need the flexibility we currently have. We certainly cannot overnight, say, treat all the Poles the same as those from the rest of the world. It would just be a catastrophe for the economy. There is a labour market in Europe, and I am a bit surprised that the report did not pay some attention to the nature of that market. One or two noble Lords spoke about this at the edges, saying that of course people may go back to Poland for whatever reason. Those reasons include the state of the Polish economy; for people from Portugal, it depends in part on the state of the Portuguese economy.

As for the trade union movement—I speak in the presence of a former general-secretary of the European Trade Union Confederation, my noble friend Lord Monks—we have European works councils in hundreds of firms, where we meet and discuss matters and people get to know best practice in all the different countries. I wish the report had paid more attention to the nature of the European labour market. The most obvious example, which everyone can understand, is the single factory floor in big component-supplying companies along with the final output in Rolls-Royce, Airbus and Jaguar Land Rover. Then there are logistical companies, as well as those dealing with food and pharmaceuticals and so on, for example Unilever. They are not only in one enterprise; they move around many of them all the time. We are having this debate against a background where even today a newspaper says that the majority of the Cabinet want a migration policy that would be the same for Europeans as for the rest of the world. I repeat that that would be a catastrophe.

[LORD LEA OF CRONDALL]

However, I do not think it will happen; reality will overtake it, and the Conservative Party will have to sort itself out.

There is a question over why we have so many problems in our own labour supply. People have mentioned education, but I would like to refer to the lax behaviour of British management in many of these questions. You get to do all sorts of things when you are a TUC official, and for some time I was secretary of the construction committee. I remember going one day to Canary Wharf, which was under construction, with the boss there, Mr Reichmann, and the secretary of the construction union, Albert Williams. Mr Reichmann said on an informal basis, as we admired the view of London from the top floor, “Mr Williams, I’ve got an issue. I’m short of spidermen”. Mr Williams said after a time, “Well, Mr Reichmann, we’ve had cowboys in the industry for many years. You can get these spidermen from the Rockies, so I don’t think there’s any problem if we have a few more Indians”. Perhaps that anecdote is not politically correct these days, but the reality is that there is an international labour market in different ways. Think of Toscanini, or someone who has transferred from Real Madrid to Manchester United—perhaps we need one or two more of those. That is another aspect of the labour market, and I am in favour of a greater degree of manpower planning in that area. I look forward to hearing the latest take on this from Migration Watch.

We have gone to the extremely liberal non-regulated end of the idea of having our own standards of obligation on training. We have a different situation now with the structure of our corporations; there was a letter in the *Financial Times* the other day from directors saying that we need new corporations to deal with PFI-type companies, with different stakeholders involved. The fact is that the likes of Carillion are not interested in the quality of the labour supply because they are not really a company at all in the old sense: there are those at the top who are earning a few bob, and below them are the actual construction companies. So, because of the obsession in the City of London with takeovers and mergers, we in this country have a company structure that is very much in need of reform. All these factors come into play.

Labour markets can give us a picture of where we are in the economy, so simply to stop it all up would be very ill advised. Take the Anglo-Irish labour market. We have known all our lives how that works and will have to go on working. I do not think there is any doubt about that. Indeed, we are now committed to it and the Government will have to get off their high horse and sign up to the formula that Michel Barnier has more or less written out. There is a flow backwards and forwards. When the Irish economy had its last boom—it is coming to another one now—more people wanted to go back to work in Ireland; more wanted to come this way on other occasions. Whether it is academics or conductors of symphony orchestras, we have to think of the European labour market.

Finally on labour standards, we had the Taylor report yesterday. There are posted workers within companies. We need to update the formula to deal with workers who cross frontiers, and we can do that

only if in some central areas we do not take back control but share sensible ways to determine an agreed policy. That is why we need to pay attention to this being, in many respects, a European labour market.

1.01 pm

**Lord Shipley (LD):** My Lords, we should be grateful to the Economic Affairs Committee for undertaking this work. As the noble Lord, Lord Forsyth, said, it has taken a while for the report to be debated in the Chamber, but there is an advantage in that, in that we can review the progress made by government and review Brexit as a whole in terms of the labour market. Yesterday’s revelations about lower forecast growth are deeply worrying, not least for my region, the north-east of England, which is very dependent on exporting to the European Union. The evidence of yesterday’s official report suggests that it might be helpful if the Economic Affairs Committee would consider doing some further work. This report began its life, I think, largely on the subject of migration. It has covered other things but actually, as the noble Lord, Lord Darling, pointed out, a much broader impact on the labour market now needs to be considered.

There are two specific recommendations in the report that I thought were particularly important. The first has been mentioned: it is the recognition that any new system for controlling immigration from the European Union must avoid the blunt definition of high-skilled work that the current system for non-EU migration employs. That is very important, because job skills matter, not just degrees.

Secondly, I was struck by the reference in paragraph 8 of the summary of conclusions and recommendations of the committee’s 2008 report on immigration which said that the employment of migrant workers could lead to businesses neglecting skills and training for British workers. This report says that the committee was prescient, and indeed it was. As the example of nursing highlights—there are many other examples—and as this report says, training for the domestic workforce needs urgently to be given a higher priority.

The aim of the British Government should be to employ more UK residents in better-paid jobs; that is our primary duty. Therefore, the Government are right to say in their reply to the committee in November that there needs to be,

“a genuine partnership between business and the government to unlock the potential of our young people and adults and deliver the skilled workforce that employers and the economy need”.

Indeed.

We would all agree with that, but I noticed a recent survey by the Lloyds Banking Group which says that more than two-thirds of construction companies are investing in staff development and just over half are setting up apprenticeship schemes. That begs an important question: what are the rest doing, given the labour shortage in the construction industry? I do not understand why apprenticeship starts have fallen by 25% in the third quarter of 2017 compared to the same period a year before. That skills gap must be plugged if we are to hit the construction target of 300,000 homes—which, I remind the House, is a net not a gross figure. We have

an ageing workforce in construction as fewer young people are trained; a third of British-born construction workers are now over the age of 50.

I heard on the radio this morning a discussion of the importance to tourism of inward migration from the EU. Our major areas of tourism in the UK are hugely dependent on EU nationals. It is the Government's objective to expand and grow tourism. When the Government produce their proposals on immigration, they must be clear how they will meet the labour needs of tourist areas, given that unemployment is very low in most of our major tourist areas and the higher rates of unemployment are far from those areas.

The report talks a lot about the problems faced by the health service, which I shall not repeat. Suffice it to say that we are hugely dependent on EU workers, and when the BMA tells us that nearly half of EEA doctors surveyed are considering leaving the UK we should be concerned.

I return briefly to construction. I was impressed by a report by the Federation of Master Builders which says that more than two-thirds of construction SMEs are struggling to hire bricklayers and 63% are struggling to hire carpenters and joiners, and that those are the highest figures since records began in 2008. It also says that the number of firms reporting difficulty hiring plumbers and electricians is very high at 48%, 46% have problems hiring plasterers and 30% have problems hiring floorers. Those are all at record highs. Noble Lords may visit the exhibition by the construction industry on the Committee Corridor. On one board, it says that the construction industry plans to expand by 1.7% every year for the next five years, which begs the question of where the labour force will come from.

I accept the logic of the submission of the Federation of Master Builders to the Government that, without skilled labour from the EU, the skills shortages that we will face will be considerably worse. Having said that, of course we need to encourage more young British people to train as construction workers. I think that the current apprenticeship system for construction is intrinsically flawed. It seems to favour 16 to 18 year-olds and to have a strong gender bias. That statement came from a report written after a conference held in Wales. There is an issue with the current apprenticeship system. Could we get the construction industry to work more closely with schools to encourage younger children to be attracted into an apprenticeship in construction? Would the Government also look at a further incentive for colleges to offer construction courses? Not all courses run by further education colleges cost the same to run, and construction is notoriously expensive.

Very briefly, I will make two points on immigration. I will not repeat what has been said about immigration and foreign students. The noble Lord, Lord Forsyth, said himself that we had to count such students separately, and indeed we do. There was mention earlier of regional immigration. In the absence of an immigration Bill, the Government have said that they will not introduce a regional immigration system for Scotland and London but that there will be a UK-wide immigration system taking account of the different parts of the UK. I hope that the Government will look a little further at that because the needs of London and Scotland may prove more complex. However, different parts of England,

Wales and Northern Ireland may have very specific needs. I hope that the Government will give greater clarity on this issue because it could matter, particularly in areas such as tourism, which I addressed a moment ago.

Finally, because we are debating Brexit and the labour market, there are issues around employment rights post Brexit. We need to protect the European working time directive, and I hope that the Government will confirm that not only EU-derived equality, employment, and health and safety standards will remain in place and will not be diluted in the future. Issues around health and safety standards, rights for parents and carers, and pay all matter profoundly and I hope Ministers will be able to confirm that those protections will stay in place.

1.11 pm

**Lord Green of Deddington (CB):** My Lords, I declare an interest as chairman of Migration Watch, a post that I have occupied on a voluntary basis for nearly 17 years. Indeed, it was in that capacity that I give evidence to the committee when it was preparing its report.

The noble Lord, Lord Forsyth, in his magisterial survey, stressed the weakness of the immigration statistics, as did a number of noble Lords. He is right that the statistics now are simply not accurate enough to bear the kind of analysis needed for an economically driven system, and I accept that. At the broader level, it is worth bearing in mind that they tie in with the annual population survey and with the census, except for a period in the 2000s when they failed to count east Europeans. It says that it has now dealt with that. What that means is that the overall net migration figure, which has averaged 250,000 in the last 10 years, and is still at that level, is roughly right. That in turn leads to the increasing population and the consequences that the noble Lord, Lord Horam, so eloquently described, and which the public in general are very concerned about, whether noble Lords like it or not.

I shall start with a word about the economics of migration, then the future framework for EU migration and finally, the immigration target, which many noble Lords have mentioned. The House will recall that this committee's landmark report of 2008 opened with the statement that,

"we have found no evidence for the argument, made by the Government, business and many others, that net immigration ... generates significant economic benefits for the existing UK population".

The immigration lobby has tried to ignore the central finding ever since. Yet surely it is at the heart of any policy on immigration and the labour market. Has new evidence emerged in the last nearly 10 years on this? What did the committee find? Apparently it did not find such evidence. The report includes, buried in paragraph 111, only a watered-down version of the earlier report. It says that,

"large-scale immigration, whilst increasing GDP, did not have the same effect on GDP per person".

That sounds like an endorsement, and it is about right.

I suggest to noble Lords that it is absolutely wrong to say that immigration is good for the economy. It is not. It is not in dispute that highly skilled immigration is indeed good for our economy but there is certainly

[LORD GREEN OF DEDDINGTON]

no evidence whatever for the UK—I stress the UK—that very high levels of migration into lower skilled or lower paid work over the past decade have enhanced either productivity or GDP. If anyone has that evidence, I would be most interested to see it. Meanwhile, in 2015, a report from the Bank of England concluded that large-scale inflows of cheap foreign labour may have put downward pressure on the pay of some low-paid UK workers. More recently, last month, Michael Saunders, a member of the Monetary Policy Committee made a very similar point.

The key to economic prosperity is not mass immigration but improved productivity. Indeed, UK productivity has barely grown since the recession, despite the overall number of immigrant workers increasing by more than 2 million and the migrant share of the workforce nearly doubling. That is not necessarily cause and effect, but I note that my noble friend Lord Burns touched on that point earlier. Better pay and the upskilling of UK workers are the keys to improving business models. Reducing immigration will add an important incentive for employers to take action in this regard. Certainly, their performance in the past decade has been frankly abysmal.

I turn now to the question of the future framework for EU migration. We can now expect an interim period of two years so that employers will have three years in which to make the necessary changes. Now that the status of EU citizens is almost settled, the Government should come forward soon with an outline of the immigration system that they propose for EU citizens so that business can make the necessary plans. The Home Secretary indicated, I think at the weekend, that unfortunately they do not plan to do this until the late autumn. That is bad news all round.

For our part, as Migration Watch, we have put forward proposals for such a system that would continue to allow businesses to recruit the best and the brightest from Europe, but which would also lead to a significant reduction in net migration from the EU. What we need is a work permit system that will sharply cut back the 80% of EU workers who are not in the highly skilled categories—that is, who would qualify if they were non-EU for a work permit. That is quite a high level, but if we cut those out, we could reduce net migration from Europe by something of the order of 100,000 a year from the record level. It may be necessary for a period to have work permits available for those with intermediate skills, such as construction workers. The noble Lord, Lord Shipley, was eloquent on that point, but they need to be time-limited. We believe that there should be an increasing annual charge on employers to encourage them to train local replacements. If there is not a financial spur, they will not do it. We have seen that for the last 10 years.

We should also encourage social and cultural links between young people. We should expand the youth mobility scheme to include young EU citizens, and allow them to stay for up to two years, but with no extensions and no access to public funds. Meanwhile, tourism has been touched on. Of course, ease of travel should be maintained for tourists, family visitors, business visitors and students who, in total, amount to 35 million passengers a year.

I will conclude with a word or two about the immigration target, which many noble Lords have mentioned. The committee's report concludes that sustainable levels of immigration, as many have mentioned, are,

“unlikely to be best achieved by the strict use of an annual numerical target for net migration”.

Clearly those words were very carefully considered, and in some respects it is hard to challenge them. In fact, there has been no such strict use of a target, except possibly for tier 2 visas, but, in general, there has not been a strict target because the complexities involved in the different routes simply do not permit it. That is part of their own argument. But the benefit of an overall target is that it provides a focus for many strands of government policy that contribute to net migration, and provides a yardstick, of course, for the public to judge the Government's performance. That, of course, is rather uncomfortable, if you are not meeting the target, but it is not a reason for abandoning it, particularly not when it is a major issue for a very considerable portion of the population, whether they vote for that side or this side.

If we drift into acceptance of the current level of immigration, we will, as the noble Lord, Lord Horam, said, grow by 10 million in the next 25 years, with serious consequences for our infrastructure and public services. For those who have ears to hear, public opinion is very clear—indeed, it was a major factor and arguably a decisive one in the outcome of the referendum that brought us to this point. Brexit now gives us the opportunity to put in place an immigration system that encourages the training of British workers, provides for the genuine needs of employers and, crucially, commands the support of the public.

1.20 pm

**Lord Balfre (Con):** My Lords, I draw attention to my entries in the register. I thank my noble friend Lord Forsyth for introducing the report. This reminds me of 50 years ago when we debated import controls—a subject that was well past its sell-by date when it was being debated, quite ferociously by, among others, a person who holds a senior position in the Labour Party today. When I read a lot of this report, I just think, “Sorry, the world has moved on”. We are in Europe; we are not in a siege economy. If the noble Lord, Lord Green, had been in charge when my father came to Britain, he probably would not have been allowed in. I certainly managed to complete my education without a single O-level, so I certainly would not have been allowed in. I wonder whether the Minister would have been allowed in, since she comes from the same country that my family came from. I like to think that she would, because she makes a great contribution to the public polity of this House—but I wonder.

**Lord Green of Deddington:** Is the noble Lord aware that there has been a common travel area with Ireland since 1920? You are entirely welcome to come from Ireland—there has never been a problem.

**Lord Balfre:** I am pleased that the noble Lord said that, because in his speech he talked about the European Union. Ireland is going to remain in the European Union, so maybe the noble Lord is indicating that

there is going to be a back door, and that those who speak Ireland's second language—namely, Polish—will be able to come into the United Kingdom in a very easy way by walking across the border. But let us wait and see.

I was struck—it has been mentioned already—by the state of the data, which are not in any shape to make any policy at all. They are,

“wholly inadequate for policy making and measuring the success or otherwise of the policies adopted”.

So we need to start off with some decent data. I would imagine that—if we work hard—we are looking at an annual net migration of 133,000 from the EU out of 250,000 overall. So roughly half of the problem that we are facing—if we define it as a problem, which actually I do not—is not covered by these proposals anyway. If we want to get the figures correct, I suggest that using national insurance and income tax data is probably the best way forward, because it is after all collected very rigorously, in that people—most people, anyway—pay their taxes.

To look slightly outside this report, since Brexit was decided I have travelled quite extensively and, wherever I go, whether it be Australia, Canada, the United States or Turkey, the common cry I get is, “If you want a trade agreement, we want an easier visa regime”. That was said to me by the Minister in Australia, by a very senior Canadian politician, by a number of people in the United States when I was there and by senior government officials in Turkey. They say, “If you want a trade agreement, we want a simpler visa regime”. I can tell noble Lords that the visa regime for people from outside the EU to get into the United Kingdom is absolutely horrendous, and certainly not fit for purpose.

On another point, the report rightly says that,

“24 per cent of EU nationals working in the UK are engaged in work considered to be ‘low-skilled’”.

But the 24% who are doing that work are not necessarily low-skilled. I know quite a few people who work in the city of Cambridge, where I live, and go to the same church as I go to who are doing low-skilled jobs, but they are certainly not low-skilled. Many of them are here to improve their English language skills to go back, or to make some money to go back—and, despite all our legislation, it is quite easy to work 60 hours a week in Cambridge in some of the lower-skilled jobs and to make money. So let us not confuse low-skilled jobs with low-skilled labour.

Of course, it normally falls to this side of the House to mention the demands of the TUC and the labour movement. The TUC evidence quotes from the government White Paper, which states:

“As we convert the body of EU law into our domestic legislation, we will ensure the continued protection of workers’ rights”.

That is a quote from the government White Paper, which we are all pleased to see. But I have two questions for the Minister. I shall quote from the TUC, which says:

“We take this to mean that all regulations (including employment related provisions) introduced under the 1972 European Communities Act shall continue to take effect”.

Will the Minister confirm that that is her understanding of that statement in the White Paper?

Secondly, the TUC says:

“In order to protect workers’ existing rights to equal pay, it will also be important to transpose Article 157 of the Treaty for the European Union which guarantees equal pay for work of equal value. It will also be important to ensure that valuable progress made through judgements of the European Court of Justice are retained as part of UK law”.

I hope that the Minister will also confirm that that is her understanding of matters.

There are a number of things that need looking at. The TUC rightly looks to the establishment of modern wages councils. It is not the first time in this House that I have raised the problem of domestic and care workers. You can talk about all the productivity improvements you like but you cannot change an elderly person's bathing regime by applying productivity. There are more people getting old; there is more need for care in the community—and one of the great neglected areas is protection for carers. The people who are standing at the bus stop at 7.30 in the morning and going from client to client, often unpaid for the journey, are among the least protected workers in this country, and they need looking after.

I pay tribute to the TUC for the Unionlearn programme, which of course could not survive without support from this Government, and it is a great credit to this Government that they have continued to support that programme, which indulges in training, literacy skills and other skills, particularly for migrant workers. They help them to become part of our society, which is extremely valuable and has to carry on.

Finally, we need to make sure that the national minimum wage and the Gangmasters and Labour Abuse Authority continues to be well funded. If we are going to have a migration policy, we have to protect the people who are most likely to be exploited.

I will close with one other point. It would be a shame to ask just my own Front Bench, so I also ask the spokesman for the Labour Party for an observation. The Institute of Employment Rights—situated, very appropriately, in Jack Jones House in Liverpool—points out that one advantage of leaving the EU is that the collective bargaining rights that have been undermined by recent cases in the EFTA Court and ECJ could be restored. Indeed, the last Labour manifesto promised to restore these, pointing out that this could be done when we leave the European Union. Will the noble Lord who will shortly speak for the Labour Party confirm that this remains a policy of the Labour Party? It is important that people who are looking for new collective bargaining rights know that the Labour Party is behind this particular policy—otherwise it would be a great shame.

I will conclude with this remark. I do not see why, when 60 or 70 years ago people came from Gateshead to London for a job, they should not now come from Gdansk to London for a job. I see the future of Europe in a way that is not in conformity with the Brexit referendum. We are all in it together and we have to build a European community, a European entity—and it will boil down to us all working together. I would, frankly, keep free movement, I would simplify the visa regime and I would look for ways forward that did not rely on what often seems—for me, personally, although I am not accusing anyone of anything—to verge on the xenophobic.

1.31 pm

**Lord Liddle (Lab):** My Lords, this has been a very interesting debate. I am not sure that I have that much to add to it, to be honest, but I regard it as a clarion call for improving the statistics in this area, so that we can have evidence-based policy-making when decisions are taken on immigration policy in the future. Given the way that the Government have been reluctant to disclose the evidence base for their policy-making in the rest of the area of Brexit, I should like assurance from the Minister, if possible, that the work that the Home Secretary has commissioned from the Migration Advisory Committee will be fully and publicly available as a basis for thinking about future migration policy.

Last night, I and some other noble Lords attended an interesting meeting that the Lord Speaker held with businesspeople on their concerns about Brexit. The noble Lord, Lord Forsyth, was there as well. The message that comes across all the time is, “You politicians are putting us in a position of impossible uncertainty—we need to know where we are going”. There has been a lot of controversy in the last weeks about the uncertainty over the degree of regulatory alignment we will have with the EU after Brexit. But there is a far bigger uncertainty for a lot of businesses, which is far more important to them, about what the Government’s immigration policy will be. Before too long, the Government really must face up to the clash between politics and the economic reality and needs of business, and give greater clarity about their long-term aims. Surely, we cannot remain committed in the long term to the idea of a target in the tens of thousands; it just makes no sense.

Like my noble friend Lord Livermore and my former noble friend, the noble Lord, Lord Balfe, I am a strong supporter of free movement. It is the right policy within the European Union and has been of great benefit to Britain. It is not just economic benefit; there is merit in diversity. I speak as chair of Lancaster University, and free movement enables many of our lecturers and researchers to come easily from the European Union. This is a tremendous plus in advancing knowledge and research. Free movement is a great benefit.

I also think that migration is one reason why our London schools have been so successful in improving their performance in the last decade and a half. We should therefore be willing to accept these things. I have three points on migration. I accept that there are serious problems of integration in certain parts of the country, as the noble Lord, Lord Horam, talked about, but in the main it is not a problem of EU migration but of non-EU migration. It is a serious problem for the country which has to be addressed. Secondly, the relationship between immigration and the leave vote in the referendum is complex. The fact is, most of the areas of the country that have seen the most immigration—I am sure the noble Lord, Lord Green, is aware of this—are areas such as London and parts of the south-east that voted to remain in the EU. I admit that there are some other parts of the country that have seen sudden increases in immigration, such as Lincolnshire, where there was a strong leave vote but, in my part of the world in Cumbria, where there was also a strong leave vote, there has been very little

EU migration. I suggest that, although people gave immigration as a reason for voting leave, what was in fact in their minds were deeper frustrations about life today, particularly the way our labour market has functioned in the last two or three decades. Migration is a consequence of weaknesses in our labour market structures; it is not the cause.

If I have a criticism of the report that the committee prepared, it is that I do not think it looked sufficiently at these structural questions in the labour market. I have, from the 1980s onwards, always supported the flexible labour market. I spent my youth working on questions of incomes policy and industrial democracy and trying to make us into a Nordic-model economy but, after 1979, it appeared that the only way that we could run ourselves was with a more flexible labour market. The Labour Government are owed credit for what they did to strengthen protections in the labour market through the Social Chapter and national minimum wage.

We have benefited from a flexible labour market, but we now ought to be thinking about what further changes we need to make in labour market structures. Certainly, the problem with skills results from deep problems in the British education system. You have to look at the whole system, not just ask, “How do we tackle the problem of the lack of construction skills?” We need to look seriously at maths teaching in secondary schools and at early years opportunities in areas of high deprivation. As I have said in this Chamber before, we need to consider seriously the gross regional imbalances in our economy, which result in the paradox that people cannot move to well-paid jobs, or to jobs in general, and the only labour that is available in London and the south-east is immigrant labour. We also need to look at whether we need to strengthen the balance of power in the labour market, and whether that should shift. That issue is of pressing concern but that is for another day. All those issues are important. If they were addressed and reforms were introduced, people’s worries about immigration would lessen.

I welcome this debate and hope that it is a clarion call to the Government to establish a clearer policy based on clearer evidence. I hope we will think much more about the structural issues in the labour market that need addressing, rather than attacking free movement as the source of all the problems.

1.41 pm

**Lord Reid of Cardowan (Lab):** My Lords, I wish to make three simple points. However, I have a feeling of déjà-vu as these issues were argued about, certainly internally, when the last Labour Government were in office. I confess that I lost on two of them.

First, I think it is right for the Government to take a view on immigration numbers and the level of immigration. I disagree with my noble friend Lord Darling: I do not see anything anti-New Labour in that. To find a middle way between the unfettered free market and central diktat is typically New Labour. Therefore, I welcome the Government’s intention in this regard, although I am not saying that I agree with any specific mechanisms. Incidentally, I have never understood why everyone accepts that it is correct to shape the flow of capital or investment through fixing

interest rates but somehow it is terrible to try to do the same thing with the flow of labour. I recall that within a week of becoming Home Secretary, I suggested that and merited an editorial in the *Guardian* accusing me of trying to impose a Soviet-style system on Britain. Unfortunately, that kind of extreme cliché mars this whole debate.

My second point on the value of immigration is equally simple. I for one do not doubt the value of immigration as a whole, at a macro level, to the country's GDP. The Treasury constantly argued this case throughout the tenures of different Governments. It found it too indelicate to mention publicly the fact that immigration also brought down wages hugely, but it always talked about the increase in GDP. The problem with that argument is twofold. First, you cannot estimate the value of immigration without weighing on the other side the social costs. Secondly, the value is always estimated at a macro level but the social costs apply at the micro level: they hit people and local communities. All other things being equal, an influx of large numbers of people reduces the services that local people get and their access to housing, a doctor, roads, flats and education. That cannot be wished away by branding people as somehow inherently racist. It is not a perception based on racism; it is based on people's own self-interest and their standard of living, which they see being reduced. Therefore, I have always believed that if you are to have even managed migration, you also have to have a managed differential distribution of resources to those areas where the largest numbers of immigrants arrive and live. That brings me to my third point because, to do that, you need to be able to measure immigration.

One of the phrases that has, unfortunately, stuck with me for the last 15 years is "unfit for purpose" as regards the immigration department of the Home Office. I am glad that it has at least stood the test of time, as I think the noble Lord, Lord Forsyth, used it four times when he referred to the lack of empirical data due to the flawed nature of the statistics. It is an area where I won an argument, along with colleagues in the Labour Government. Unfortunately, that was not followed up by the then leader of the Lib Dems, who, on coming to power, immediately abolished the system of ID cards—I might add, without paying compensation to those who had voluntarily paid to have them. I predict that the Government will not be able to manage, measure or operate an immigration system in the absence of biometric ID cards and biometric visas. This is not a case of surveillance being carried out on the population. It is not merely a mechanism to counter terrorism and theft or to protect individuals' identity, which is now the subject of increasing theft. It is an elementary mechanism for making sure that we have a managed and humane immigration policy that combines increasing the value to the country through immigrants and the skills they bring with maintaining services to individuals in their localities.

1.46 pm

**Baroness Smith of Newnham (LD):** My Lords, like other noble Lords, I thank the noble Lords, Lord Forsyth and Lord Hollick, for the report. I had intended to say that on many of the issues we appear to have considerable agreement. Then the noble Lord, Lord Reid,

spoke and brought in a range of issues on which we may not have quite so much agreement. The Liberal Democrats have not yet changed our minds on identity cards. We have not discussed that issue within the party for several weeks but I do not imagine that there will be any change in our position on that any time soon.

I was intrigued by the fact that when the Labour Party was in power the noble Lord, Lord Reid, had come up with an idea for controlling immigration and had been accused of seeking to adopt a Soviet-style system. I wonder whether the noble Lord, Lord Green, has ever been accused of adopting a Soviet-style approach given that his views may be somewhat similar.

The report contains some key lessons with which I think your Lordships all agree: namely, the fact that the data are not fit for purpose, it is very difficult to know who is actually in this country, we do not know who is working, or whether people are using their national insurance numbers or have claimed a number and perhaps gone back to their home country. That is an issue on which there is clearly some agreement. The Liberal Democrat Benches can certainly agree with two issues in the report: namely, taking students out of the statistics for the purposes of public policy, and getting rid of arbitrary targets.

In opening the debate, the noble Lord, Lord Forsyth, pointed out that the Brexit vote already seems a long time ago. I declare my interest as an employee of the University of Cambridge. Like other Members of your Lordships' House, I have always found that Brexit has basically been a job creation scheme for academics, lawyers, perhaps for trade negotiators, and certainly for Members of your Lordships' House and members of committees in your Lordships' House and in the other place. They seem to have produced so many reports on Brexit since June 2016, that one begins to wonder where all the evidence and the expertise was to be found before the referendum, and whether some of that work could not have been done before June 2016 rather than now.

I also have a brief secondary declaration in that in the past I have been the beneficiary of the right of free movement of people. In the 1990s I had a scholarship to be in Germany and I went back and forth; I was quite homesick, so I visited the United Kingdom on many occasions. I flew in and out of the country, and nobody asked me what I was doing or whether I was a student or working. It appears that the border agency of the 1990s was no better or worse than the situation we have now. If the Government can come forward with ways to improve the data, that would be enormously welcome.

We have already heard that there is a change in the number of EU citizens resident in the United Kingdom. The net numbers are already falling. As the noble Lord, Lord Turnbull, pointed out, perhaps we should be careful what we wish for. The impact on the labour force is significant and the vote to leave the European Union has created uncertainty in the minds of EU citizens resident in the United Kingdom, some of whom have already taken the decision to leave, others of whom may decide to leave, and many of whom are saying, "We are still not sure that the United Kingdom really wants us". The interim agreement made in

[BARONESS SMITH OF NEWNHAM]

December 2017 does not give the certainty that EU migrants need to ensure that they will remain in the United Kingdom. Therefore we are already seeing a loss of EU migrants. Is that really what we want? Not necessarily.

The report recommends that the Government provide, “a suitable implementation period during which businesses retain access to the European labour market”.

That would clearly appear to give certainty to businesses, and it has been welcomed across the House. However, what does an implementation period mean? In particular, the noble Lord, Lord Forsyth, and other noble Lords suggested that the implementation period might be for “several years”. So far, we have heard about an implementation period which Theresa May suggested would last two years, and which the EU 27 suggest would be 21 months. If an implementation period as regards access to the European labour market needs to be for several years, can the Minister explain to us how the Government might come forward with a policy on that? Will that be part of the proposed immigration White Paper and the immigration Bill, which we are likely to see later this year, or do the Government object to the idea that an implementation period of multiple years for access to the labour market is desirable?

**Lord Forsyth of Drumlean:** I suspect that I may be responsible for the confusion here by having used the word “implementation”. I was talking about the implementation of an immigration policy which took account of the needs of specific businesses, which is quite different from the transitional implementation period that is currently under discussion.

**Baroness Smith of Newnham:** I thank the noble Lord for that clarification. That raises two questions. What do the Government propose to bring in? If the implementation period for a new immigration policy was about access to the European labour market, there is still the question of what the Government propose to do. If the committee’s proposals are taken on board, is there a suggestion of having an interim period in which there are more liberal policies for EEA nationals than for third-country nationals? That might be welcome, but are the Government thinking about that? Also, are the Government willing to think about a wider range of implementation periods and transitional periods then we have heard so far? The use of the words “implementation” or “transition” suggests that the Government have a process and an idea of where they are going. So far, there is not a great deal of clarity on where the United Kingdom will be beyond 29 March 2019. The noble Lord, Lord Lea, would like us still to be in the single market, in which case many of these questions do not arise. However, assuming that the Prime Minister does not take on board the Chancellor’s idea that the United Kingdom should remain linked as closely as possible to the single market, what sort of immigration policy do the Government propose? To what extent are they willing to open up to the idea of having a policy that is based on the needs of the labour market, not on arbitrary targets? With the possible exception of the noble Lord, Lord Green, we are united in saying

that arbitrary targets are not necessary or desirable. Therefore, to what extent will the Home Office be flexible?

We on these Benches very much welcome the amendment moved by the noble Lord, Lord Forsyth, in Committee, which has therefore been brought forward in this report, on the situation of students and the idea that they should not be included in short-term immigration statistics for public policy. I know that the Minister will say, as her noble friend Lady Vere said on Monday in answer to comments on a Statement, that students have to be included in the numbers because that is what happens in the OECD. But for public policy purposes, other countries, including the United States, do not consider students in the migration statistics. The noble Lord, Lord Hannay, pointed that out again on Monday and got the stock answer from the noble Baroness, Lady Vere, and the same answer is in the Government’s response to the Economic Affairs Committee’s report. Can the Minister please think about giving us an answer today that goes beyond the stock answer and which recognises that students are important and benefit the UK economy? In addition, the standard answer we get is not correct. We keep being told that there is no cap on student numbers, but if there is a commitment to a figure of net migration, and all of a sudden we say, “We want another 100,000 students this year”, does that mean that there are 100,000 workers who cannot come?

1.56 pm

**Lord Kennedy of Southwark (Lab Co-op):** My Lords, I congratulate the noble Lord, Lord Forsyth, and the Economic Affairs Committee and thank them for this timely report on *Brexit and the Labour Market*. I am also pleased to see that we have had a response to the report from the Government, which is helpful for our deliberations today.

The report was published just over six months ago but the issues it contains are very much alive, and, as with much of the debate around Brexit, it does not feel as though the Government have come to many conclusions on the way forward. Whatever your view of Brexit, whether you were leave or remain, no one voted to make themselves or our nation poorer, but the attitude of the Government often makes it seem as if we are determined to make things as difficult as we possibly can for ourselves as a country.

The report focuses on three main areas. It looks at the reliability of data on migration and makes recommendations to improve the data, then sets out the consequences for businesses of a reduction in EU labour and recommends measures to help businesses adapt, and, finally, looks at the future of the net migration target. All these issues, which have been discussed in your Lordships’ House many times before, are still very much alive today.

The report identifies that there is not one simple measure of migration, that the picture of migration is built up from a number of sources and there is a considerable margin of error, and that we currently have no wholly reliable migration statistics, with UK migration measured through a series of surveys undertaken by the Office for National Statistics as well

as data published by both the Home Office and the Department for Work and Pensions. My noble friend Lord Livermore made reference to the poor quality of the data relied on by the Government.

The Government partly recognise this problem in the response to the report from Brandon Lewis MP, when he referenced the fact that the ONS has recognised that more can be done to improve migration data. However, I do not think there was a complete acceptance of the weaknesses of the data collected presently. That is disappointing, because if you are inputting or analysing data to inform your policy decisions and assess them, and if what you are using can be described as “flawed”, that is not a good place to be and does not give you the rich source of data that the Immigration Minister referred to in his letter.

It would be useful if the noble Baroness, Lady Williams of Trafford, could update the House, following on from the letter from Brandon Lewis in November last year, on what further action has been taken and on what the Government will do to improve the migration data collected, which is used to inform government policy and decision-making. In particular, can the Minister comment on the new exit data and on what more is being done across government to deliver this agenda? The noble Lord, Lord Sharkey, also made reference to the inadequacy of the data that the Government are relying on to inform their policy decisions.

I very much agree with paragraph 19 of the committee’s report. It expresses an opinion which is shared by others in the House and elsewhere: that the International Passenger Survey cannot bear the burden placed on it and cannot be relied upon to provide accurate estimates of net migration. The report goes on to call for the Government to prioritise plans for comprehensive data sharing across departments. That seems a very wise move, as it will give us a much better understanding of the movements of immigrants within the UK economy.

Paragraph 27 of the report identifies three specific sources of data which, among others, should be analysed. These are the matching of PAYE and national insurance number registrations, the matching of self-assessment records for self-employed migrants and sole traders issued with national insurance numbers, and using data on benefit claimants and tax credits to ascertain whether those with unused national insurance numbers remain in the UK claiming benefits. I believe that those are rich sources of data which could really help to inform this debate and government policy, and I hope that the noble Baroness can respond to this recommendation in her closing speech.

In Chapter 3, the focus moves on to adapting the UK labour market and addresses how a reduction in immigration from Europe will affect British businesses. It was interesting to note that the number of immigrants from either the EU or outside the EU was approximately 10% of the UK workforce. The number of EU nationals working in particular sectors and in London highlight the regional differences in the overall figures. The case study of Pret A Manger, which the noble Lord, Lord Forsyth, referred to, was very interesting. Having been a customer on many occasions, I was always clear that a large number of EU nationals worked there, but I

had no idea that only one in 50 of the people who apply for a job there is described as British. I found that amazing.

I agree with the committee that it is important to get an early agreement on the rights of EU nationals in the UK. The Government sometimes make progress on this, but the problems that the Government are clearly having in coping with the complexity of Brexit, the lack of a coherent position with conflicting views from Minister to Minister, the off-the-record briefings and the weakness of the Prime Minister mean that just when you think that we have made progress, the policy positions are undermined with a usually unhelpful intervention.

The report correctly identifies that the sectors estimated to be most reliant on EU nationals as part of the workforce tend to be those classed as requiring lower-skilled workers, with 24% of individuals working in jobs categorised as such. Tables 5 and 6 in the report highlight this fact in particular. I agree with the committee’s recommendation in paragraph 52 that the Government must address the needs of business and that any new immigration policy developed and implemented after we leave the European Union should not be based on this arbitrary distinction between higher and lower-skilled workers or whether a job requires a university degree. The noble Lord, Lord Shipley, made reference to this. The construction industry and the agriculture and hospitality sectors need to have policies in place from the Government that protect them and avoid the cliff-edge scenario that the hospitality industry, for example, fears. Similar problems will be faced by the social care sector and the health service if the Government do not get this right—and quickly.

The report also highlights the problems that some industries face in recruiting British workers, who do not see working in agriculture or parts of the hospitality industry as desirable. It points to the fact that replacing migrant workers with domestic workers will prove very difficult. The case study looking at seasonal workers in the agriculture industry was most informative in this respect, and I was not at all surprised at the findings. It is worrying when organisations in the industry cast doubt on the ability to grow, pack or harvest crops grown in Britain without this workforce. A solution needs to be found as higher prices, labour shortages and a reduction in our productivity are not good for anyone and not good for the UK. It will make us all poorer and it cannot be allowed to happen.

Clearly, having a skilled workforce is important. In the past we have been poor at delivering the technical skills that are required to produce a workforce ready to meet the challenges that the future will bring. The noble Lord, Lord Green of Deddington, suggested that the availability of EU nationals might have discouraged firms in some industries from investing in training. He also made reference to the committee’s 2008 report, suggesting that this could also be a possible consequence of immigration. However, I would contend that we have not been good at ensuring sufficient training for some considerable time. We have the examples of other countries. Germany, for example, has very similar challenges but has been much better than the UK at long-term planning to deliver a diverse and

[LORD KENNEDY OF SOUTHWARK]  
skilled workforce. The noble Lord, Lord Horam, made an important point about our collective failure to upskill our workforce.

My noble friend Lord Darling commented on the necessity for the Government to consult with business about its needs to ensure that we have the right skillsets post Brexit. I have visited Rolls-Royce in Derby and in Dahlewitz outside Berlin. There is great co-operation between the two factories, with workers and products moving back and forth between the two, but that will be at risk if we get Brexit wrong.

I also noted that the noble Lord, Lord Green, suggested that we should aim to be self-sufficient in most sectors. There is nothing wrong with that as an aim but it is much more difficult to make that objective a reality when you have to grapple with years of government policy, industrial strategy, the attitude of industry, the attitude of business and the skills of an underused workforce. However, it would be a tragedy if we ended up with the situation highlighted in the report of not growing certain crops in any great quantity but, instead, buying them from other countries in the European Union as companies adapt to the changing position.

The noble Lord, Lord Green of Deddington, made a number of points. As I said before, I can see no evidence of swathes of British workers wanting to work in certain industries—for example, picking cabbages in Lincolnshire, potatoes in Suffolk or strawberries in Kent. The same can be said of the social care sector, which, I contend, will need a significant injection of funds to significantly boost the pay of workers and attract more people. A huge number of vacancies are unfilled, with no stampede of workers wanting to work in this industry. Generally, this sector runs at a vacancy rate of 30%. I very much agreed with the noble Lord, Lord Balfé, when he spoke about the vulnerable position of these workers. He was absolutely right. It is clear to me that the noble Lord reads the Labour manifesto much more closely than I have ever done—which would not be hard. I assure noble Lords that it is not my usual holiday or bedtime reading.

I am very clear that the best place for Britain, for the British economy and for British workers is to remain in the European Union. When we leave the EU, we should seek to have the closest possible alignment with the institution and remain a member of the single market and the customs union. That would help us to protect standards across a whole range of issues. Anything else runs the risk of making us all poorer. There is no benefit for workers or any other group of people in the UK in having low skills, poor regulation and poor standards.

I agree with the section of the report on automation. It highlights the challenge that this will bring and the risk that migrant workers will be replaced not by domestic workers but by automation and mechanisation. This challenge will move from sector to sector quicker than we think. Industries with a high reliance on low-skilled labour will be affected as technology and processes improve, and that will challenge us all.

The implementation period for a new immigration policy, as detailed in paragraph 95, will have to be addressed by the Government. Moves to retrain and

upskill the British workforce will take time and cannot happen overnight. It would be good if the noble Baroness could address that point when she responds to the debate, along with the issue raised in paragraph 96—the challenge of other policy objectives, such as the building of 300,000 new homes a year. I have raised that many times at the Dispatch Box. If you do not have the workforce—the bricklayers, carpenters and plumbers—to build these much-needed homes, how will that target be achieved? Again, can the noble Baroness address that? It was raised by a number of noble Lords, including the noble Lords, Lord Turnbull and Lord Shipley.

The issue of students being included in the net migration figures has been raised many times in debates and Questions and it is raised again in this report. I know that the noble Baroness will say that there is no limit on the number of students who can come here to study from abroad, but the reality and how the situation is reported are often very different. Other noble Lords have called for the student figures to be taken out of the immigration figures. The Government's intransigence in this regard has caused real problems and has made this a less attractive place for students to come and study. As the noble Lord, Lord Forsyth, said, the target needs to be flexible to address the challenges that we face—a point made also by the noble Lords, Lord Sharkey and Lord Turnbull.

In conclusion, I thank the noble Lord, Lord Forsyth, and the committee for their report. It is an excellent document which has proved valuable in our ongoing debate.

2.09 pm

**The Minister of State, Home Office (Baroness Williams of Trafford) (Con):** My Lords, I join other noble Lords in thanking my noble friend Lord Forsyth for bringing this debate to your Lordships' House. It has been a very interesting debate and I shall endeavour to respond to as many questions as possible. At the outset, however, I will make a number of general remarks.

I thank the Economic Affairs Committee for its report, *Brexit and the Labour Market*, published last summer. The committee has done a great service by producing a thoughtful report which covers a number of key issues facing the Government as we prepare to leave the European Union. The Government produced a full response to the committee's report in the autumn, in the form of a letter from the then Immigration Minister, Brandon Lewis. I do not intend to repeat everything that was said in that document.

The noble Lords, Lord Livermore and Lord Darling, and my noble friend Lord Forsyth, asked about the net migration target and talked about immigration concerns not recognising economic issues and the national interest. The Government are clear that there are many benefits to immigration: economic, social and cultural. The noble Lord, Lord Reid, pointed out those and also the subtleties beneath them. But we must not underestimate the legitimate and real concerns of the public about the impact of unrestricted immigration from the EU on jobs, wages and public services. These concerns were clearly expressed during the referendum campaign and it would be remiss of us to dismiss them or to suppose that we know better.

**Lord Reid of Cardowan:** I am grateful to the Minister for giving way. I understand her awareness of the concerns of the public. But about a year and a half ago I asked her if the Government distinguished between the free movement of people and the free movement of labour. In other words, there are already existing provisions under the European Union regulations which allow the Government to take steps if people come here but do not work. Why have the Government never used those regulations?

**Baroness Williams of Trafford:** The noble Lord has a point—but nor did the previous Government use the regulations, and the concerns were growing at that time. But I take his point: perhaps we would be in a totally different place if successive Governments had looked at that.

On citizens' rights, I begin by emphasising the significant contribution that EU citizens make to our national life and that we want them and their families to stay. The Government have been very clear since the start of negotiations with the EU that protecting the rights of EU citizens living here, together with the rights of UK nationals living in EU countries, was their first priority. We have now delivered on that commitment and have reached an agreement with our EU partners on citizens' rights. The agreement will provide the millions of EU citizens living in the UK with certainty about their future rights and, most importantly, allows them and their families to stay. The noble Lord, Lord Livermore, said that the deal on citizens' rights reached in December did not provide certainty. They will be able to continue to live their lives broadly as now. We greatly value their contribution to the UK and hope that they will choose to do so.

I turn now to what happens after the UK leaves the EU. Carefully controlled economic migration benefits our economy and has a hugely positive impact on the social and cultural fabric of the UK. With that in mind, we want to ensure that we strike a balance between attracting the right mix of skills to the UK and controlling immigration from the EU in the national interest. Let me be clear: the Government recognise the valuable economic, social and cultural contribution that migrants make, but we must ensure that we are able to control immigration in the national interest, as my noble friend Lord Suri said.

The noble Lords, Lord Lea, Lord Shipley and Lord Kennedy, and others talked about the consideration of the economy as a whole, different EU and non-EU sectors, and areas of the country with high and low skills. There is a real mix in there. I agree that we must consider the economy as a whole and not just EU migration. That is why we explicitly asked the Migration Advisory Committee to do just that. We must take a holistic view of the whole labour market, all parts of the UK including tourist areas, high and low skills, and all sectors of the economy. We will do just that.

I understand the committee's concerns that we will need suitable time to implement the new immigration system. The Government recognise this and that is why the Prime Minister, in her Florence speech, set out a number of proposals for an implementation

period which will allow a smooth transition and provide certainty for businesses. The noble Lord, Lord Livermore, also talked about that. During this period, access to one another's markets should continue on current terms and people will be able to come to live and work in the UK. However, there will be a registration scheme, which is essential preparation for the future system. The Prime Minister set out that this points to an implementation period of around two years. She also made it clear that those arriving in this period will have different expectations about their ability to stay in the long term, as they will be arriving post Brexit.

I would like to reassure the committee on its recommendation that the Government should consult on the needs of business in any future immigration policy and ensure that businesses have access to the expertise and skills they need. The Government have always been very clear that we will make decisions about future arrangements following discussions with stakeholders, including with businesses and with the EU, and based on evidence.

The noble Lord, Lord Shipley, and my noble friend Lord Balfe talked about the important issue of protecting employment rights after the UK exits the European Union. The PM has been very clear that the Government will ensure that workers' rights will be maintained after we leave the EU, and indeed enhanced. My noble friend Lord Balfe mentioned the specific issue of equal pay. The Equal Pay Act was of course brought in before the UK became a member of the EU, and we intend to honour and enforce that Act. It is particularly pertinent in this week of the 100-year anniversary of women's suffrage and the Representation of the People Act that we have equal pay for equal work.

The noble Baroness, Lady Smith, asked when we will publish plans on the implementation period and whether it could be longer than two years. The PM proposed an implementation period of two years but we will keep that under review, not least as we discuss the implementation period with the EU. We will set out proposals for this period and future immigration arrangements over the coming months.

As my noble friend Lord Forsyth and other noble Lords pointed out, we have commissioned the independent Migration Advisory Committee—the MAC, as it is called—to report on the impact of the UK's exit from the European Union. These recommendations will play a vital role when the Government make any final decisions on the future immigration system. The noble Lord, Lord Sharkey, asked when the MAC report would be published and whether there would be an interim report in September. The MAC is independent, so I cannot formally answer a question on its behalf about an ongoing study—but its reports are always published, including interim reports, and that is what I expect it will do.

I welcome the report's suggestion that we should carry out a review and be satisfied about the administrative feasibility of a regional immigration system before we seek to implement one. The Government have been clear that we want an immigration system that takes into account the social and economic needs of all parts of the UK. However, it remains a reserved

[BARONESS WILLIAMS OF TRAFFORD]

matter and we will consider the needs of the UK as a whole. As I have said before, we are consulting businesses, industry, trades unions and many others from across the UK to ensure that we can do this and that it will complement the MAC's work. Indeed, the commission to the MAC explicitly asked us to include a consideration of impacts on different parts of the UK.

The noble Lord, Lord Sharkey, asked about the timing of a White Paper. Our first priority was to reach a deal on citizens' rights, which we did in December, and our focus now is on getting the right deal for the implementation period immediately following the UK's exit. We are considering a range of options for the future immigration system and we will set out initial plans in the coming months. We will of course consider how we can update the House as negotiations progress.

I am pleased that the committee welcome the Government's new ambitious modern industrial strategy, which sets out a clear vision for driving an economy that works for everyone and recognises that building the conditions for a competitive, leading centre for innovation, excellence and talent means focusing on developing people and skills in the various sectors. That is why, among other things, we are committed to raising investment in research and development to 2.4% of GDP by 2027 and announcing £725 million in our new industrial strategy challenge fund programmes to drive innovation.

My noble friend Lord Horam made the point that the economy will need to adapt to less EU migration and referred to the importance of skills and training for UK citizens. I agree with his broad sentiments and his welcome for the Government's strategy. We must continue to promote and develop our dynamic economy. His points about skills and training for UK citizens are important and that is why we continue to invest in schools, our world-class universities and vocational training such as apprenticeships, which are overwhelmingly working well, to ensure that our own citizens have maximum opportunities to develop their skills.

The noble Lord, Lord Sharkey, referred to T-levels and apprenticeships. There have been more than 1.2 million apprenticeship starts since 2015, providing more opportunities to people of all ages and from all backgrounds. We are ensuring that smaller employers understand the benefits of apprenticeship training for their businesses and we are encouraging them to take advantage of the support available. On T-levels, we launched a workplace pilot scheme in September 2017 to test different models and approaches, and this will include an evaluation organisation. The noble Lord criticised inadequate providers. It is important that provision is of the highest quality and seven out of 10 of our further education colleges have been graded as outstanding or good by Ofsted.

Most of the points made today were about the robustness of the migration statistics. These are published by the ONS, as noble Lords have pointed out, and it is confirmed that the international passenger survey continues to be the best source of information to measure long-term international migration. Additionally, the Home Office publishes a wide range of statistics

on the control of immigration and is already working with the ONS to analyse the new exit check data and other sources to provide a better understanding of migrant flows.

My noble friend Lord Forsyth talked about the different statistics from different sources, even for the same sectors, and I am glad he recognises the steps that both the Government and the ONS are taking to improve data. It is a complex area and we continue to work on it. That is why we have commissioned the independent Migration Advisory Committee and we look forward to its report in the autumn.

A number of noble Lords referred to the quality of data. We will continue to work with the ONS to improve the quality of data and this will include a variety of data sources, including administrative data from government sources. The ONS is independent of government and it is right to ensure that the public can have confidence in the objectivity of the statistics. We should not underestimate the generally extremely high quality of ONS data.

The noble Lord, Lord Burns, talked about the net migration target/commitment. We are committed to reducing net migration to sustainable levels. Whether it is described as a target, aim, objective or commitment, it is clearly what we want to do to address people's concerns about migration.

The noble Lord, Lord Darling, asked about Home Office capacity. The Home Office already issues millions of passports and other visas each year. I understand the concerns but we are working hard to improve services.

We have been clear about our commitment to reducing net migration but that does not detract from our determination to ensure that we remain an attractive option for those with the skills and expertise across all sectors of our economy and who play an invaluable role in making the United Kingdom better still.

I again thank my noble friend and all noble Lords who have participated in the debate.

2.26 pm

**Lord Forsyth of Drumlean:** My Lords, I am grateful to my noble friend Lady Williams for summing up what has been an excellent debate. It is a relief to have a debate on Brexit where we do not refight the referendum campaign but focus on the issues for the future. I am grateful to everyone who has participated and to the noble Lord, Lord Kennedy, for his constructive and supportive response to the committee's report. I was struck by a phrase used by the noble Lord, Lord Liddle, when he referred to the clash between politics and economic reality. That has been our experience in considering this matter in the committee.

This is a pretty well unanimous report. My noble friend Lord Lamont forced the first Division in the history of the committee at the first meeting of which I was chairman but we ended up with a unanimous report. This debate has illustrated that the way forward is complex but not impossible. I hope my noble friend Lady Williams and other members of the Government will take on board the recommendations, which are absolutely central to our future economic prosperity.

*Motion agreed.*

## Working Group on Independent Complaints and Grievance Policy

### *Statement*

2.27 pm

**The Lord Privy Seal (Baroness Evans of Bowes Park) (Con):** My Lords, with the leave of the House, I will now repeat a Statement made by my right honourable friend the Leader of the House of Commons in another place. The Statement is as follows:

“Thank you Mr Speaker. Today I am pleased to announce the publication of the report on an independent complaints and grievance policy. In this week of celebrating 100 years of women’s suffrage, it is right that we recognise the bravery of the suffrage movement and praise the great strides we have taken in our politics and in our society over the last 100 years. But we are also all too aware of the unacceptable level of intimidation and aggression being shown towards people in public life—often directed particularly at women, BAME and LGBT+ candidates. This behaviour clearly deters people from entering politics and threatens our democracy. When dealing with this very real issue, our Parliament must lead by example.

The working group was set up last November by the Prime Minister, and with the support of all party leaders, in response to the very troubling allegations of sexual harassment and bullying taking place on the Parliamentary Estate. We all recognised the need for robust procedures to change the culture in Parliament, and for this place to set the best example of a workplace that protects and supports all those working in it.

In my first Statement, I said urgent action would be taken and that was the case. The staff helpline was extended to include staff of Peers and others, with face-to-face counselling made available on the estate. Party codes of conduct were updated and published online and, since Christmas, interim HR guidance has been made available to Members’ staff.

However, it was clear from an early stage that there was a substantial amount to do if we wanted to create a sound working environment that properly supports the more than 15,000 people who work for or with Parliament. I am hugely grateful to all members of the working group for their time, consideration and indeed patience as we worked towards the publication of this report. Mr Speaker was clear that for the House Commission to take up the new scheme, the response to this had to be cross-party and, while there have been some challenging discussions, I am pleased that this is what we have been able to achieve.

The group took extensive evidence, both in person and in writing, from a wide variety of stakeholders including parliamentary officials, the staff of MPs and Peers, unions, academics, authorities on sexual violence and legal professionals. The group also conducted its own survey, which was open to a wide range of people and included a number of passholders who had not previously been asked for their experience of bullying and harassment. Many people have devoted a considerable amount of time to this over the last three months and, after more than 100 hours of discussion, consultation and consideration, I believe that we have proposed a set of policies that will fundamentally change the working culture in Parliament.

I would now like to turn to those proposals, which are as follows. First, Parliament will agree a shared behaviour code. It will apply to everyone on the estate or engaged in parliamentary business, regardless of location, and it will underpin the new policy. It will be consulted on and will make clear the behavioural expectations of everyone in the parliamentary community. Secondly, the new complaints and grievance procedure will be independent from political parties. Thirdly, it was acknowledged that sexual harassment and sexual violence are different from other forms of inappropriate behaviour such as bullying and intimidation. Therefore, separate procedures will be agreed for those looking to raise a complaint regarding sexual harassment from those with a complaint of bullying. This is an important distinction and while everyone has acknowledged the severity of complaints of sexual harassment, evidence from staff made clear that instances of intimidation and bullying are in fact more prevalent. Fourthly, MPs’ staff require proper HR advice, something that has previously been lacking and will go a long way towards helping to resolve workplace grievances.

Importantly, the new system will be based on the principles of equality, confidentiality and fairness to all parties, and it will be in line with the laws of natural justice. It must command the confidence of all those who will use it. The working group took advice at an early stage that rather than reinventing the wheel, we should work with and build on the many sound processes and systems that we already have in place.

For the benefit of Members, I will turn briefly to the process for making a complaint or raising a grievance against a Member of this House. As colleagues will appreciate, the process for raising complaints against other members of the parliamentary community such as Peers, Members’ and Peers’ staff, journalists and contractors will each differ according to their particular role. All the procedures are designed for the protection of staff and parliamentarians alike and have fairness at their heart. It is intended that the House authorities will procure two independent services, one to consider allegations of sexual harassment and violence and the other to consider workplace bullying and intimidation. Both avenues will provide support and, where needed, will investigate the complaint.

Where informal resolution is not possible and the complaint is upheld, it will be referred to the Parliamentary Commissioner for Standards in the case of a Member of this House. The working group proposes that the commissioner’s role will be expanded and reformed. She will have access to legal advice and will be able to impose a new range of lower-level sanctions that may include a written apology, mandatory training or future behaviour agreements. The commissioner will be able to review any finding by the independent investigator and, where she does so, she will ensure that her investigations are confidential, that both the complainant and the alleged perpetrator have access to all evidence and, crucially, that each has the right to representation or to represent themselves. These measures will ensure fairness.

In the most serious of cases the commissioner will refer her findings to the Committee on Standards. The committee can recommend to the House that an individual is suspended and the House will vote on the

[BARONESS EVANS OF BOWES PARK]

recommendation. It is through this route that the existing Recall of MPs Act 2015 could be invoked. The trigger for recall remains the same as it is now and there is no plan for changes to primary legislation. The working group fully recognised that those who work in this place are often in the media spotlight and that vexatious and malicious complaints are a risk. The new procedures will therefore ensure that checks and balances are in place to guard against such complaints.

Finally, I will briefly outline the next steps. A Motion will be brought before the House and a debate will take place in the first two weeks after the Recess. Any necessary equivalent steps will be taken in the other place. It will then be for the House Commission to instruct the House authorities to finalise the agreed processes and carry out their implementation. I am grateful to the Clerk of the House for confirming that the House authorities are ready to begin this work via a series of workstreams that will include: first, developing and consulting on a behaviour code for Parliament; secondly, procuring the two separate services required to support and investigate complaints of sexual harassment or bullying; thirdly, procuring an HR guidance service for Members' staff; fourthly, developing a staff handbook; and fifthly, identifying and drafting changes to the Standing Orders to finalise the amendments necessary to the procedures of the PCS and the Committee on Standards. The working group will continue as a steering group to oversee the work of the House authorities. It is our intention for the work to proceed at pace over the next few months. Finally, six months after the start of the new scheme, an appropriate body, covering both Houses and having direct staff representation, will review the operation of the new processes.

In conclusion, the working group was formed to bring about change. It is a right, not a privilege, to be treated with dignity and respect at work and this ambitious report is a major step towards a safer, more professional environment. I hope that honourable and right honourable Members across the House will welcome the report, which will, I am confident, ensure that our Parliament is among the best in the world, demonstrating our commitment to equality, justice and fairness. I commend this Statement to the House".

My Lords, that concludes the Statement.

2.36 pm

**Baroness Smith of Basildon (Lab):** My Lords, I thank the noble Baroness the Leader of the House for repeating the Statement, and certainly welcome the general point she made at the beginning of her remarks about the intimidation and aggression shown towards anyone who seeks to become involved in public life and expresses a view that someone else does not like. People who involve themselves in public life should be celebrated, not denigrated.

I said in response to the repeat of the Urgent Question last year that this is a human and workplace issue. It cuts across parties and clearly the actions have to cut across the parties as well. We have a duty to address any issues robustly and find mechanisms for advice, making complaints, seeking support and taking action. We are all agreed that the workplace should be somewhere where every individual feels that they can

give their best and no staff member or colleague should ever have to cope with or try to manage inappropriate behaviour. Further, no one should be frightened to speak up or make a complaint to do with any form of harassment, bullying or sexual intimidation.

I thank the committee for its work but I place on record because it is worth noting that, even during the time that this committee was working, leaks that were usually inaccurate were made to the press from the committee in an attempt to undermine its members. I know that the noble Baroness the Leader of the House had no responsibility for this—she was quite clear on that—but that one member of the committee should be targeted in national newspapers when everyone was trying to grapple with the problems and deal with them was something I found unacceptable. This was difficult and challenging to get right so I acknowledge, recognise and thank the committee for the care and commitment it and the staff who served it in its work showed in putting in place procedures and safeguards to deal with bullying, discrimination and sexual harassment at Westminster. It is an important first step, and we welcome the report.

At the outset, we called for the immediate establishment of an independent specialist adviser on sexual harassment and, although we would have preferred that to be done immediately, we welcome the fact that it is acknowledged in the report. We hope that the adviser will be put in place as soon as practicably possible. As the noble Baroness said, the scheme is to be underpinned by an advice service for MPs' and Peers' staff. I recognise that most Members of your Lordships' House do not have staff but obviously, even if the numbers are far lower, the same principles and expectations of behaviour still apply. Can the noble Baroness confirm that as well as advice for the staff of MPs and Peers, advice on HR issues will be available for MPs and Peers themselves? That could help to avoid inadvertent mistakes or misunderstandings. I welcome her acknowledgement of the need for a comprehensive culture change, and providing advice for all Members could be very helpful in that.

This new scheme has been no small undertaking. As the noble Baroness said, it will cover approximately 15,000 people working across the Parliamentary Estate and it is hoped that in addition it will form part of any contracts let for the building programmes. I think what I am looking for is an assurance that it will involve anybody who is employed by anybody on the Parliamentary Estate because a number of workers are not employed by Parliament but by contractors, whether they are cleaning, catering or building staff. I hope that they will be included and thus will be able to have the same expectations of behaviour.

I will ask a couple of questions. One is on the possible sanctions. Understandably there is a lack of clarity in the report and more work to be done, but my question concerns what sanctions apply in what circumstances. Inappropriate behaviour of any kind ranges from the relatively mild to the very serious. I hope that the commission has been involved in this. Was there any discussion with the commissioner prior to the report coming forward on how the Select Committee on Standards and Privileges as well as the House of Lords Commission could be involved in this?

I will also ask something about the role of the commissioner. I appreciate that this is a Commons Statement and any references in it probably refer to the Commons commissioner, but it says that the commissioner's role, which I took to be that of the Lords commissioner as well, would be "expanded and reformed". Has what form that will take been discussed with the commissioner? Will resources be made available for that and will the time of the commissioner be made available? I am concerned about any delays. Having spoken to colleagues who have had issues considered by the commissioner in the past, I know that they can take a long time to resolve. If we are expecting more from the commissioner we should make sure that the resources are there for that work to be undertaken.

I also raise trade unions; I have raised this before. There should be trade union recognition by Parliament. I may have missed it in the report and I apologise if it is in there—I have not had time to read every word in detail. There has to be the opportunity for staff to raise concerns and grievances collectively, not just as individuals. I know that there have been some issues around the anonymity clause in here—that if somebody is reported for bad behaviour they should remain anonymous. It is worth emphasising that in the environment we work in, where there might be one or two people working to an individual MP or Peer, to identify the person being complained about often identifies the person complaining as well. I would be very concerned if that was a barrier to somebody bringing forward complaints. In this instance it is entirely justified.

I am grateful that the noble Baroness acknowledges that this is not the end of the process. There are timescales for the various work streams because there is still a large body of work to be undertaken. Could I have an assurance that this work will be undertaken speedily to try to put in place these recommendations? Having the recommendation is all well and good, but we need action. I hope a progress report can be made.

As I have raised before, I am still concerned about how the mandatory training of Members will be enforced and what sanctions there will be if that training does not take place, but it is right that training is available for Members of your Lordships' House and to our staff on issues concerning consent, equalities and how to tackle bullying and harassment.

It is always worth saying that I am still of the view that, for most people, working on the Parliamentary Estate is a positive experience and one that they enjoy. Most of our Peers and MPs are good employers and they enjoy the relationship that they have with their staff, which is positive and productive. But that makes those who fall short of those standards even more culpable in many ways, because the culture should always be one of respect and one where we should aim for the highest possible standards. We have a duty as a Parliament to set the highest standards and, where people fall short of them, to ensure that it is dealt with appropriately.

There is still much to do to tackle pervasive prejudices and unacceptable behaviour. They must be tackled at every opportunity. This report is an important start,

but we need to continue to work across parties to ensure that we provide the best possible working environment for everybody who works in the Palace of Westminster.

**Lord Newby (LD):** My Lords, I too thank the noble Baroness for repeating the Statement and I thank even more the members of the working group who have worked very hard on an intensive programme to produce this report. I begin by associating myself with what the noble Baroness, Lady Smith, just said about the behaviour that we see from the majority of people who are Members of or work in these institutions. That is what we would expect. But the report underlines—as if we needed telling—that not everybody meets those standards. The number of people who claim to have been the subject of sexual harassment or intimidation and bullying is shamefully high.

Any of us who have been around Parliament for any length of time are not totally surprised, because the abuse of power that it is possible to use as a Member of either the other place or here is pretty considerable. If we search our memory, all of us can think of people who have abused that power for a number of unsatisfactory purposes. It is very good to see that at the heart of these proposals there are sensible and comprehensive ways in which people can complain and have those complaints dealt with.

As I said when we discussed this before, underpinning all of this and more important than the complaints procedure is improving the culture of this place. The complaints procedure is dealing just with what happens when things go wrong. The key thing is to ensure that things do not go wrong to the extent that they have in the past. For this, the Code of Conduct is absolutely key. We have seen how the Code of Conduct of your Lordships' House, which has been strengthened during my time here, has had a very significant impact on the way Members view their role and how they approach some potential conflicts of interest, for example.

The code and the importance attached to it are fundamental elements of these proposals. For example, I hope that all Members and members of staff will have to sign it in a somewhat formal way. In his last intervention in Parliament, Lord Callaghan wrote to the committee considering the Bill that was bringing together the Inland Revenue and HM Customs and Excise. He said that he hoped that the new merged department would keep the oath that all members of the Inland Revenue had had to sign on joining the department. He told how, as a young man, having formally to sign something that said "I will keep taxpayers' information confidential" and "I will be honest" had a profound impact on him. Although on one level it seems a small thing, formally getting people to sign something will be very important.

When things go wrong we have very sensible ways to start to deal with them, but like the noble Baroness, Lady Smith, I question the role of the commissioner here. The Statement says the Commons commissioner will,

"have access to legal advice, and will be able to impose a new range of lower level sanctions that may include a written apology, mandatory training or future behaviour agreements".

The idea of having future behaviour agreements for Members of your Lordships' House rather appeals to

[LORD NEWBY]

me, but it is quite a change. If we are to do it—this will no doubt be one of the things that we will discuss in our debate after Easter—we will need to make sure that the commissioner here has a very clear remit and that all noble Lords and staff are absolutely clear what that remit is and how it should be exercised.

There is also a question for us as to which body will be reviewing this on a regular basis. The idea of having a six-month review is great, but which committee will have this formally in its remit? I suspect it is the House of Lords Commission but I am not absolutely sure. Some body here has to own this policy or it will not be properly implemented.

However, these are largely questions for the future. Today, we must simply welcome the Statement and the substantive work that underpins it and commit ourselves to do whatever we can to make sure it is properly implemented.

**Baroness Evans of Bowes Park:** I am very grateful to the noble Baroness and the noble Lord for their comments. Although he is not in his place, I want to put on record my thanks to the noble and learned Lord, Lord Hope, who has played an important role in the working group and been extremely helpful. He has dedicated a lot of his time to it. I also echo the noble Baroness's thanks to the staff and the secretariat, who have worked incredibly hard on this important report.

The noble Baroness asked about advice for MPs and Peers. That is a key thing that the working group wants to make sure is available, as will be much more extensive training on a whole range of issues. On her question on sanctions, the working group did not propose any new sanctions for this House or the other place—this House already has the power to suspend or expel a Member who is guilty of misconduct—but the noble Baroness is absolutely right: there will be a range of sanctions at different points. As I mentioned, perhaps an apology will be enough; if not, sanctions will be graduated. As the investigations go through and the seriousness of the offence becomes clear, the sanctions available in relation to it will change.

Both the noble Lord and the noble Baroness asked about the role of the Lords Commissioner for Standards. She gave evidence to the committee and has been involved in conversations, as has been the Commons commissioner, and of course she will be involved in any developments going forward. Investigations, sanctions and the Code of Conduct will need be reviewed by our Commissioner for Standards and the Lords' Conduct Sub-Committee. The sub-committee will then need to make recommendations to the Committee for Privileges and Conduct. At the end of the process, the House will take decisions on what changes are necessary. Our commission will be involved in discussion and in helping set things in motion, but if changes are to be made to the Code of Conduct, we will of course go through the proper channels so that the House has the opportunity to accept and approve what may happen.

The noble Baroness might like to look at paragraph 84 in relation to trade unions, although I fear it will not go quite as far as she might like. But there is reference in there. I certainly agree with both the noble Lord

and the noble Baroness that work needs to move speedily. The noble Lord is right about the need for a culture change, which is why there is specific chapter in the report on that.

I thank noble Lords for their support and once again thank the noble and learned Lord, Lord Hope, for his help on the committee.

2.51 pm

**Lord Bew (CB):** My Lords, I thank the Leader of the House for repeating the Statement. I immediately declare an interest as chairman of the Committee on Standards in Public Life. Following our meeting this morning, our committee has already issued a warm statement of support for this document. There is a laconic reference in the Statement to “challenging discussions”. I indeed attended one such discussion chaired by the Leader of the House of Commons, Andrea Leadsom. I offer my personal congratulations to her. On 21 December, she made a Statement and then everything seemed to get stuck for quite a time. It is now unstuck; we now have real progress. I add to that my congratulations to all the other parties in the House of Commons, who after a vigorous debate have contributed to this agreement. The Speaker in the other place was quite right that there was no possibility of any real progress on this matter unless there was cross-party agreement. Yesterday afternoon, that finally materialised.

The great thing about this document is that it echoes the best practice of the best employers outside the House, which is what is so important about it. It is also important in that it strengthens the role of the parliamentary commissioner. I suspect it needs to be strengthened in other ways as well, but it could be seen as an important moment in that process.

Perhaps I may set out one final proviso, for which the committee has expressed support—points in that regard have already been made by the noble Lord, Lord Newby. I hope the noble Baroness accepts that much will continue to depend on the leadership culture in the House. These proposals are excellent, but they will depend on a continued transformation of the leadership culture in both Houses.

**Baroness Evans of Bowes Park:** I thank the noble Lord for his comments and for his evidence to the committee. I am sure we will work closely with his committee as we move this work forward. He is absolutely right about the need for leadership, which is why I hope, and am sure, that our House commission will play a role in helping to make sure we can oversee these changes. It is partly why the working group will become a steering group: to make sure that we see the rapid progress that the noble Baroness was talking about and that we continue to provide leadership and representation across both Houses to get these processes in place.

**Baroness Symons of Vernham Dean (Lab):** My Lords, as I am sure most noble Lords do, I welcome the report; it takes a difficult matter very seriously. However, there are a couple of points on which I would be grateful if the noble Baroness could provide us with some further information.

The Statement says that the working group recognised that those who work in this place are often in the media spotlight and that vexatious and malicious complaints are a risk. It goes on to say that procedures will ensure that checks and balances are in place to safeguard against such complaints. Can the noble Baroness say a little bit more about such checks and balances? It has perhaps been felt that once an individual is targeted, all sorts of other people will then say, “Yes, this dreadful thing also happened to me”. I am sure that is often entirely true, but on the point made in the Statement about vexatious complaints it would be helpful if the noble Baroness could say a little more.

My second point is about what we call “inappropriate behaviour”. As my noble friend Lady Smith said, it can mean different things to different people. It might be an inappropriate remark to somebody which is embarrassing or just plain silly. That is very different from bringing pressure to bear on an individual to respond to a sexual advance. Will the noble Baroness say a little more about the definition of what is really inappropriate?

**Baroness Evans of Bowes Park:** On the noble Baroness’s second point, about inappropriate behaviour, she is absolutely right, which is why we are procuring external experts, one with specific expertise in sexual violence and sexual harassment and another to look more at bullying and harassment. They will have the expertise and knowledge to help those who wish to complain work out what they want to do and to give them support and guidance. That is part of why we are going externally to deliver these services: to make sure we have experts who can help victims and complainants navigate the process.

On vexatious claims, the noble Baroness is absolutely right: it was a concern raised within the working group and by various people who gave evidence. Obviously, confidentiality throughout the process will be key. As the Statement made clear, we will also make sure that both victims and alleged perpetrators have access to the information available and to support, advice and representation if they need it. That way, we can make sure that everyone is able to put their case forward and that both parties can respect whatever decision is ultimately made and deal with its outcome, be it the perpetrator having a sanction imposed or the victim feeling that they have had their case properly heard.

**Baroness Barker (LD):** My Lords, like other noble Lords, I welcome the Statement and the report. The noble Baroness was very clear that the new procedure will apply to behaviour not just in this place but elsewhere—I think she referred to elsewhere in connection with a person’s role as a parliamentarian. Can she add some more information and detail to that? Also, how will people who believe themselves to have been victims of abuse elsewhere be enabled to access the new procedures, which, as I understand them, will operate largely within this building? How will people from outside access the new service?

**Baroness Evans of Bowes Park:** One issue that we were unable to resolve within the group because it was complex was around constituents and constituency offices. On that side of things, there is further work to

be done, because it was clear that it is a complex area. Obviously, underpinning all this is a new behaviour code which everyone will sign up to. That will be around behaviour within one’s role, which will obviously apply to behaviour outside Parliament.

**Lord Elton (Con):** My Lords, this may be a point for the later debate but it occurs to me that it might be useful to have a slightly more defined statement than that one of the sanctions might be apology. A private apology, a public apology and an apology in the House are three totally different things.

**Baroness Evans of Bowes Park:** My noble friend is absolutely right and that is why the Commissioner for Standards, the Lords’ Conduct Sub-Committee and the Privileges and Conduct Committee will be involved in developing what type of sanction, as my noble friend points out, is relevant and appropriate at various stages. Again, that is something that will then come back to the House if we need to make changes.

**Baroness McIntosh of Hudnall (Lab):** My Lords, I apologise for not having read every detail of the report but, going back to the answer that the noble Baroness gave to my noble friend Lady Symons, I am slightly puzzled by the role of the independent experts she mentioned. I can see that there is value in people who are thinking about making a complaint or have already gone some way towards doing so being helped to understand what the process would be for doing that, but is there, anywhere in the continuum envisaged, a role for mediation that would include both, as it were, complainant and complained against? I ask because I think it is a matter of fact in law that harassment is in the mind of the beholder. That is to say that it is not for the person doing the harassing to determine whether they have harassed somebody; it is in the first instance for the person who feels themselves injured to determine that that is the case. Sometimes, in order to resolve it, it is necessary for both parties to see their own behaviour differently. Can the Minister tell us how that is likely to work in practice?

**Baroness Evans of Bowes Park:** Yes, the noble Baroness is absolutely right. The intention is to procure two independent services, including one independent sexual violence adviser service and another workplace dispute resolution service. So there will indeed be opportunities for mediation and if that can solve the issue, that is fantastic. The services will also mean that if that cannot happen, the complainant can move forward and if worse things have happened, further sanctions can be involved. That is at the heart of what we want to do: we want to make sure, obviously, that everyone has a workplace in which they feel safe and valued.

## **Bermuda: Same-sex Marriage** *Statement*

3.02 pm

**The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con):** My Lords, with the leave of the House, I shall now repeat in the form of a Statement the Answer to an Urgent Question in the other place on same-sex marriage in Bermuda:

[LORD AHMAD OF WIMBLEDON]

“We are obviously disappointed about the removal of same-sex marriage in Bermuda. However, the Domestic Partnership Act, to which the Governor of Bermuda assented yesterday, does ensure that Bermudians who have been legally married in Bermuda since the Supreme Court decision will retain their married status and enjoy the same legal rights as those in domestic partnerships.

Less than a year ago, same-sex couples had no legal recognition at all under Bermudan law. While the Act withdraws the entitlement for same-sex couples to marry, it replaces it with a provision for domestic partnerships for all couples, regardless of gender. The intent of the Act is to provide domestic partners with the same benefits as married couples, including provision for pensions, inheritance, healthcare, tax and immigration.

After full and careful consideration in regard to Bermuda’s constitutional and international obligations, the Secretary of State decided that in these circumstances it would not be appropriate to use this power to block legislation, which can only be used where there is a legal or constitutional basis for doing so and even then only in exceptional circumstances. It is important to recognise that a regime for domestic partnerships, which Bermuda has implemented in its Domestic Partnership Act, can also meet the European Court of Human Rights requirement for legal recognition of same-sex relationships.

The Government are committed to promoting lesbian, gay, bisexual and transgender equality globally through projects, partnerships and persuasion. In engaging with the British Overseas Territories, we have to respect that they are separate, self-governing jurisdictions with their own democratically elected representatives and that they have a right to self-government”.

3.04 pm

**Lord Collins of Highbury (Lab):** My Lords, I thank the Minister for repeating the response to the Urgent Question. I also thank my right honourable friend Chris Bryant for securing it in the other place. I have a special interest in Bermuda. My grandfather spent his whole working life in the naval dockyards there and my father was born there, so I have a deep interest in the affairs of Bermuda and this is a terrible backwards step. It turns same-sex couples into second-class citizens just a year after winning equality through the courts. We are told by the Minister in the other place that these are not “exceptional circumstances” for the governor to withhold consent. Surely protecting the rights of British citizens are exactly the circumstances in which to act, especially when those rights have been affirmed by the courts. I remind the Minister that not so long ago, on the sanctions Bill, he outlined LGBT rights as being an exception for the Government to act. So I have two straightforward questions for the Minister. What steps will the Government now take to mitigate or reverse this decision? Will the Government give financial support to British citizens who may wish to launch a legal challenge on this matter?

**Lord Scriven (LD):** My Lords, I too thank the Minister for repeating the reply to the Question in the other place. This is clearly a backward step, not just

for LGBT rights but for human rights of LGBT citizens across the Commonwealth. Therefore, the Government are beholden to make a direct and forceful intervention in this situation. I have two questions for the Minister. First, what direct action did either the Prime Minister or the Foreign Secretary take to contact Bermuda’s Prime Minister or any other Minister of that area? Secondly, will the Government commit to ensure that this issue is now on the agenda of the Commonwealth Heads of Government Meeting this April so that it can be addressed as a human rights issue for every LGBT citizen in the Commonwealth?

**Lord Ahmad of Wimbledon:** My Lords, I thank both noble Lords for their questions. To add my own views on this, quite specifically, the decision that was taken is deeply regrettable and disappointing. The noble Lord, Lord Collins, asked what steps can be taken now. He will be aware that, after the election of the new Government in Bermuda, I raised this issue directly in my two meetings with the Premier of Bermuda. I can assure noble Lords that it will be an issue that I will continue to raise with him. I hope that we will move forward in a progressive way in Bermuda and in other overseas territories within the Caribbean region. On the issue of financial support for legal challenges, I am sure the noble Lord will accept that it would be inappropriate at this time for me to speculate on the nature of legal challenges and how they take place. Of course, if there are developments in that respect, I shall update him accordingly.

In answer to the question of the noble Lord, Lord Scriven, about raising this directly with Ministers in Bermuda, as I have already said I have raised it directly on two occasions with the Premier of Bermuda and will do so again. Our governor has been in regular contact with the Premier of Bermuda and we will continue to raise the issue. In all bilateral meetings we have expressed deep disappointment but as I said earlier, my right honourable friend the Secretary of State, in taking the decision not to block assent did so while considering very carefully both the legal and constitutional positions in this respect.

The noble Lord also asked about the Commonwealth Heads of Government Meeting which is due in April. I have spoken to various noble Lords, both bilaterally and within this Chamber. As all noble Lords will accept, the formal agenda has to be agreed by all now 53 members—as many noble Lords will know, Gambia has just joined the Commonwealth and we welcome it in—but we are looking at appropriate opportunities, which the Prime Minister is absolutely focused on, to raise these matters both bilaterally and through the different fora which are being held in the week leading up to the Heads of Government Meeting. Indeed, there is an acceptance and an agreement that the recommendations from those four fora—particularly the People’s Forum, where civil society groups will be present which advocate and strongly represent different LGBT interests—will be reflected through in the final status. However, I reassure all noble Lords that, whether it is in the context of our overseas territories or in the context of the Commonwealth, the issue of LGBT rights remains a priority and we will continue to raise it as such.

**Lord Cashman (Lab):** My Lords, it gives me no pleasure to engage on this question. I refer your Lordships to my interests set out in the register, particularly as an officer of the All-Party Parliamentary Group on Global LGBT Rights. I know the Minister is personally committed—and, for all I know, the Secretary of State is also committed—but in the end it is government action that matters, and it has failed. The Government could have taken action because the Bermudan law is in breach of the Bermudan constitution. On those grounds alone, action could have been taken to prevent assent. Is the Minister aware that the Government's credibility on the international stage on human rights and LGBT rights is now seriously damaged? This is deeply worrying, particularly in the run-up to the Commonwealth Heads of Government Meeting in April. Is the Minister also aware of the feeling of utter betrayal not only in Bermuda but in the wider international human rights and LGBT rights community?

**Lord Ahmad of Wimbledon:** I thank the noble Lord. We have talked about issues of LGBT rights in direct meetings and when I last met the APPG. I reiterate that we will continue to raise the rights of all LGBT people wherever in the world. In the context of the points he made on the Bermudan law, time will tell how that is tested. As I said earlier in the context of the ECHR, the test is that same-sex couples have legal recognition, which this new Act provides. On our future on the global stage, we have consistently raised human rights records across the piece, including LGBT rights. I assure the noble Lord as a Human Rights Minister that LGBT rights will continue to figure as a key priority whether in the Human Rights Council or elsewhere and we will continue to challenge discrimination in this regard.

### **Brexit: European Arrest Warrant (European Union Committee)** *Motion to Take Note*

3.12 pm

*Moved by Lord Jay of Ewelme*

That this House takes note of the Report from the European Union Committee *Brexit: judicial oversight of the European Arrest Warrant* (6th Report, HL Paper 16).

**Lord Jay of Ewelme (CB):** My Lords, I am very grateful for this opportunity to debate the report on the European arrest warrant. Time passes: the report was published on 27 July 2017, and we received the Government's response, for which I am grateful, on 23 November last year. With the passage of time the subject has lost none of its importance—indeed, rather the reverse.

In 2002, the European Union adopted the European arrest warrant to facilitate extradition between member states. The European arrest warrant seeks to ensure that individuals face prosecution for their crimes or serve prison sentences for existing convictions in the countries where those crimes are committed. Since the referendum on leaving the European Union in June 2016, the Government have frequently underlined the importance of the arrest warrant. The Home

Secretary, Amber Rudd, has paid tribute to the arrest warrant's effectiveness in delivering criminals to justice. Indeed, she has said that it is a priority for the UK to remain part of those arrangements once we leave the European Union.

During the course of the inquiry, we heard from our witnesses about the benefits that the arrest warrant has brought to the UK. Under the arrest warrant we send around 1,000 people a year to other member states while, on average, more than 200 people are sent back to this country. We should recall that the arrest warrant has brought very high-profile criminals back to the UK. They include the fugitive bomber, Hussain Osman, who attempted a terror attack in London on 21 July 2005 and was arrested a week later in Italy. So the advantages of the system are clear. After Brexit, there will continue to be an operational necessity to deport serious criminals from the UK quickly and effectively and to ensure that those who are wanted by the UK answer for their crimes here. Whatever else Brexit may achieve, it will not, I fear, lead to a reduction in crime.

The Government's intention to continue efficient extradition arrangements, as stated, for example, in the reply to our report, is welcome but appears to conflict with another of their stated aims: to remove the jurisdiction of the European Court of Justice in the UK. The committee heard, for instance, from Mike Kennedy, former head of Eurojust, that if the court is not to be a final arbiter on any instruments of mutual recognition between the UK and EU on future extradition matters, it is unclear how such instruments would operate in practice.

In this context, our report outlines, first, the pronouncements that the Government have made about the future role of the European Court of Justice and considers whether the Government's desire to remove completely the jurisdiction of the court can sit alongside a workable system of extradition. It then explores alternatives to the European Court of Justice for resolving disagreements between the UK and the EU. It looks in particular at the EFTA court as a possible, if limited, model, but that, in my view, deserves further study. It also questions whether the EU 27 will be willing to agree to bespoke arrangements solely to accommodate the UK's negotiation objectives. The final section of the report asks whether alternatives to the European arrest warrant are possible and considers the agreements reached between Norway, Iceland and the EU on extradition and the 1957 Council of Europe convention. It concludes that the Norway-Iceland agreement's dispute resolution mechanism would indeed be compatible with the Government's desire to end European Court of Justice jurisdiction. However, those states are members of the European Economic Area and participate in the Schengen agreement; their bespoke European arrest warrant arrangements took some 10 years to negotiate and are still not operational, so it is not ideal, and nor was the Council of Europe convention.

The committee also considered possible transitional arrangements for extradition. We stress in the report that even a transitional arrangement that simply extended the EAW in its current form would be difficult to secure. In leaving the European Union, it is the Government's intention that the UK will no longer be

[LORD JAY OF EWELME]

party to other EU arrangements with a bearing on extradition arrangements. They include the European Charter of Fundamental Rights, a suite of EU directives governing criminal procedural rights, EU data protection laws and laws on EU citizenship. The committee also came to agree with witnesses who said that any such arrangement would be likely to include accepting, at least in part, the jurisdiction of the court. That is because any alternative to that jurisdiction would itself take time to negotiate and agree, time that is already at a premium in the run-up to 29 March 2019.

As successive Home Secretaries have said, the European arrest warrant is strongly in our interest. There is no obvious alternative to it, no plan B which would serve our security interest. Or is there? The Government now talk about a security treaty with the European Union which would cover justice and home affairs questions. The details are elusive, although your Lordships' EU sub-committee will start an inquiry into the proposed treaty shortly. It would help us enormously if in replying to this debate the Minister could tell us more of the Government's intention and reiterate the Government's belief that the European arrest warrant is essential and that its substance must be preserved.

Finally, I want to say a word about Ireland and the European arrest warrant. I was in Ireland last week with the European Union Committee, visiting Dublin, Belfast, Londonderry and the borders. The progress since the signing of the Good Friday agreement was palpable, but so was the concern about the future and about the potential impact of not having the European arrest warrant. The Police Service of Northern Ireland outlined the crucial role the arrest warrant has played in fighting crime and terrorism in Northern Ireland and how it has contributed to effective and important co-operation between the two police services operating on the island as a whole. Indeed, the chief constable of the Police Service of Northern Ireland saw the potential loss of the European arrest warrant as his number one concern. I draw attention here also to his interview in the *Guardian* today.

The chief constable was surely right that extradition arrangements between the UK and the remaining EU member states are already beginning to unravel. Only last week, as we returned from Londonderry, the Supreme Court of Ireland refused for the first time a European arrest warrant issued by the UK on the grounds that the individual concerned would not complete his custodial sentence until the UK had left the European Union. I should add that the Irish court has sought a Court of Justice opinion on the matter, which will reply shortly under its expedited procedures. None the less, coming on top of the Police Service of Northern Ireland's evidence to the Select Committee last week, these are extremely worrying developments.

So as we await the start of negotiations on transition and after that the negotiations on a final relationship between the UK and the EU—equally elusive—I hope the Minister will spell out in his reply the Government's plans for ensuring that the substance of the European arrest warrant remains in place during and after the transition period. The security of the people of this country and of the Irish border deserve nothing less than that. I beg to move.

3.22 pm

**Baroness Kennedy of The Shaws (Lab):** My Lords, it is a great privilege to take part in this debate. I thank the noble Lord, Lord Jay, for the wonderful work he did when the chairman of the European Union Select Committee was ill. He stepped into the breach and chaired the committee wonderfully, and I thank him for all his hard work. I also thank him for opening the debate so succinctly. I have great concerns about the loss that there could be for law enforcement if we do not find an adequate way of having judicial oversight of the European arrest warrant.

I will start by reminding noble Lords of why we have it. I have practised at the Bar long enough to be able to tell your Lordships that one of the great problems with extradition to places outside Europe is how long it takes. The procedures are such that people often wait for a very long time in custody. The process often involves delay—sometimes, it is alleged, deliberately. The procedures were never very efficient or effective. The Euro warrant was created for that reason: to make collaboration across Europe more effective.

When it was first introduced I posed questions and was anxious to be sure that it would operate with due process. But I have come to see its operation as being of huge significance in answering international cross-border crime. My heart has been changed in many ways by seeing how it has worked. The underbelly of the market, as we all know, is the black market. We have seen all the things that have benefited from the creation of markets, globally and of course across Europe. We have all the business of the electronic transfer of money and all the things that ease the connections that enable markets and trade to operate well.

However, I am afraid that there is also an awful lot of trade in bad things, including arms and drugs. There has been a much greater amount of this coming before our courts than there was when I was a young woman starting at the Bar. There are a large number of cases now that are being dealt with using the Euro warrant, for example involving trafficking across Europe in human beings, including women and children for different purposes. The trafficking is not just in arms and drugs but in extraordinary things such as fissile material, human eggs and babies for adoption. All manner of things happen involving cross-border crime.

Last year, for us, it involved 200 requests and returns of people here to stand trial, and one of the cases was a very significant trafficking case. But we have also had it in the other direction, in that we are able to get rid of people who are international criminals. This is one of the things that the general public have expressed concern about. There are people here who are criminals from other parts of the Europe, and this is an effective way of returning them to places where they can be brought to book for serious crimes. If only the general public had some sense of how important this has been, and of our collaboration with Eurojust. It is another of those issues. I have seen cases come up where someone is arrested in Germany and decisions are made very closely about whether it might be better to prosecute here or in that country, depending on whether evidential reasons mean the case might be

better suited to Germany's criminal justice system or ours. Those mutual arrangements that operate across Europe depend on reciprocity.

I would hate to think that we would have to recreate this in treaties with 27 countries, but putting it in place without having, at the apex, a place to which you can go when there is a dispute would be problematic. I received the Government's response to the report today—it was a long time coming—which recognises that there is a challenge for the Brexiteers. What do they do about that? Everyone says, "Bring it all home"—but you cannot bring home things that depend on reciprocity. There has to be a court that is not of one or the other side in a dispute. What kind of court can it be? They are talking about all manner of arbitration systems, tribunal systems and so on, but we are dealing here with the liberty of the subject—something more pressing than trade arrangements or disputes where you fall out with your trading partner because they do not deliver the goods. This is about crime, and the consequences of crime are that people are put on trial and end up being sent to jail. So high standards come to bear in such cases, which is why you need a proper court.

I chair the European Union Justice Sub-Committee. We had before us recently the former president of the EFTA Court, who had just stepped down. I know that we have been looking at the possibility of the EFTA Court and having some docking arrangement that would mean that we could somehow make use of the facilities of the EFTA Court. But we should be clear that the EFTA Court does not deal with the Euro warrant, Eurojust or any of these criminal matters: it deals purely with trade disputes. The president made it very clear that that was absolutely not within the remit of the court. I asked him, as a very distinguished judge of many years' experience dealing with matters across Europe—mostly trade disputes—what his view was about whether it would be possible for us to still have the benefit of being party to Eurojust and the Euro warrant without being part of the European Court of Justice. He said that in his view it was not going to be possible.

So I give a warning to those who are negotiating on our behalf that this is one of those problems where drawing a red line was absolute folly. It cannot be said strongly enough that we are not going to be able to get an agreement on this without accepting that the European Court of Justice is essentially the best arbiter for this when there are disputes, because it goes to the difficult question of states taking people's liberty away from them. When we are dealing with high-level crime, where we want collaboration, we want to see people who are guilty of those crimes ending up in jail.

I emphasise to the House how important this issue is, and I hope that a message will be taken back. I think a prize for creative writing should go to whoever drafted this response; it contains a lot of blather but not an awful lot that is solid on what we are going to do about this problem. It is a wicked and difficult problem, and I am sorry that the Minister is going to have to reply to this because I am sure that he will not have the answer. I am telling your Lordships that the only answer is a proper court at the apex—and we already have one, and it is doing its job very well.

3.30 pm

**Baroness Ludford (LD):** My Lords, it is a privilege to follow the noble Lord, Lord Jay of Ewelme, and the noble Baroness, Lady Kennedy of The Shaws, and I completely agree with everything that they have said. I will speak nonetheless. This debate is timely, as the Cabinet's Brexit committee was scheduled to have a discussion on Brexit-related security issues. Can the Minister tell us more about that?

The Government face a conundrum on security as difficult as that which concerns the Irish border: how to have seamless operations while standing outside EU structures and measures. The Government have fully recognised the value of the European arrest warrant. Their response acknowledges that, as did the Prime Minister in her Florence speech and indeed when as Home Secretary—with a great deal of pressure from her Liberal Democrat coalition partners, notably from the police and parliamentarians in this House—she opted back in three years ago to a range of law enforcement measures. The current Home Secretary has called the European arrest warrant an,

"effective tool that is essential to the delivery of effective judgment on ... murderers, rapists and paedophiles",

and stresses that it is a "priority" for the Government, "to ensure that we remain part of the arrangement"—[*Official Report, Commons, 6/3/17; col. 550.*]

that is, the EAW arrangement. The Director of Public Prosecutions, Alison Saunders, has pointed out that up to 150 extraditions to the UK in recent years would not have been possible without the European arrest warrant system. She added:

"It's three times faster to use an EAW and it is four times less expensive for us to be able to do that as well".

The protocol 36 decision three years ago on the mass opt-back-in that I have just referred to was explicitly taken in the context of an acceptance of the jurisdiction of the European Court of Justice, so it is something of a mystery why this has become such a symbolic problem for the Brexiteers—one that, unfortunately, has been taken over by the Government. There are numerous problems in departing from the European arrest warrant. Going back to a 60 year-old Council of Europe extradition convention would mean much lower processes based on diplomatic procedures and political decisions. Even that assumes that other member states would be willing to resurrect this old convention; some may have rescinded it in their national laws. It would bring back the danger of political exceptions and difficulties in extraditing terrorist suspects. The noble Baroness, Lady Kennedy, referred to the need for reciprocity. We cannot unilaterally amend the Extradition Act 2003 to designate EU countries as Part 2 countries rather than Part 1, because you cannot do things like that just on your own.

The Norway/Iceland agreement with the EU is often cited as a prototype, but that took years to negotiate and is still not in force. Sir Francis Jacobs, former advocate-general of the court, told the committee that that was less than satisfactory and may be difficult to attain. The EFTA Court has been mentioned but, notably, its jurisdiction was not extended to that agreement because it does not have a criminal-law focus or expertise. The Norway agreement refers to CJEU case law when

[BARONESS LUDFORD]

there is a duty to keep it under review, but even that does not provide the same guarantee of consistency as supervision by the Luxembourg court. So there are question marks over any kind of bilateral extradition agreement with the EU, even assuming that the UK could negotiate one.

I do not need any reminders of the flaws in the European arrest warrant. When I was MEP for London I dealt with the case of Andrew Symeou, and there have been some huge abuses in his case. There used to be a lot of problems with EAWs for minor offences, notably from Poland, but I think there has been great progress and considerable reform. My last act as an MEP was to do a report calling for the reform of the EAW, and I am sorry the European Commission has not thought fit to follow it up. Some of the changes that we wanted, such as a test of proportionality before an EAW was issued and the ability to decline execution in the receiving country on the grounds of a breach of the Charter of Fundamental Rights, have been put into the European investigation order—I shall mention this later—so those reforms have been taken up in that future measure. The EIO itself takes some of the strain off the European arrest warrant because it can call for evidence—for instance, a witness statement, possibly by video—without extraditing the person.

The government response, which has been referred to, appears guilty of muddled thinking because it says that,

“disputes can be resolved fairly and efficiently”,

but it thinks about that in very much state-to-state terms, whereas another part of the response recognises the importance of the EAW on the basis of,

“mutual recognition of judicial decisions”.

That is the core difference between the EAW and international co-operation. It seems that the Government either fail or are unwilling to recognise that the nature of co-operation within the EU in the criminal and policing field is qualitatively different from diplomatic or political co-operation, which is why you need the judicial umbrella. An EAW is not a political process.

As the noble Baroness, Lady Kennedy, mentioned, the European arrest warrant and other crime measures bring into question the liberty of the individual, where the individual needs the opportunity to enforce their rights. They cannot petition the Government to take up the matter with another member state if their rights are infringed in that context. In evidence to the Justice Sub-Committee the noble and learned Lord, Lord Thomas of Cwmgiedd, said:

“It would be perfectly possible to agree an extradition treaty with the EU, but the European arrest warrant operates in a fundamentally different way. Unlike treaties, it is premised upon judicial co-operation. It is very difficult to see how, if an instrument operates on that basis, it can do so without some body at its apex to determine the rules by which it works”.

I think we all want to hear from the Government how they are going to square that circle.

The Government also need to tell us how they are going to ensure access to EU databases that complement cross-border judicial co-operation measures such as the EAW. For instance, the Schengen information system has a database of outstanding European arrest

warrants, so it is necessary to access that data. That is why the push is coming from many of us in this House for the Government not to ignore the Charter of Fundamental Rights, because it is crucial to get an adequacy decision from the European Commission.

The noble Lord, Lord Jay, mentioned the Irish case last week where the anticipated failure of the British Government to entrench the Charter of Fundamental Rights in domestic law was the reason for refusing to execute a British arrest warrant. The relevance of the charter is not just about fluffy issues of rights and justice—although some of us think those are essential—it is a matter of hard security. If we do not entrench rights and liberties, including the charter, in our domestic law, we will not be able to catch criminals. We will go back to having the *costa del crime*. Please will the Government spell out how they expect to secure a comprehensive agreement on security, law enforcement and criminal justice co-operation without subscribing to EU structures and rights, including the procedural rights to which the noble Lord, Lord Jay, referred, which are the foundations that strengthen the whole system of mutual recognition?

The Government say that they want to avoid compromising the security and safety of people in the UK and European Union, but at the same time they want to make the ECJ a red line. This is a circle which cannot be squared. As the noble Lord, Lord Bridges, told the Government last week in our debate on Second Reading of the EU withdrawal Bill, the Government have to choose. I suggest that for a Conservative Government to choose to be soft on crime would not be a happy place for them to end up.

3.41 pm

**Lord Hannay of Chiswick (CB):** My Lords, this House is no stranger to debates about the European arrest warrant. It is a great pleasure to follow the noble Baroness, Lady Ludford, because when, as the then chair of the Sub-Committee on Home Affairs, I worked with the noble Lord, Lord Bowness, on the issue of protocol 36 and the opt-out and opt-in, in which the European arrest warrant was the jewel in the crown, she gave me a lot of helpful advice from her then position on the Justice Committee of the European Parliament.

This House has been much involved. I believe it was the report produced by the Joint Committee that the noble Lord, Lord Bowness, and I chaired, endorsed by the EU Select Committee, which marshalled the evidence that showed just how crucial the European arrest warrant is to law enforcement in this country and thus to our internal security, and which gradually helped to convince an initially sceptical Home Secretary in the coalition Government, one Theresa May, that it was in the national interest to retain the European arrest warrant in operation here even if one had, as we then did, the right to opt out of it. Apparently, that remains the view of the present Government, faced with the prospect of Brexit, and that is welcome indeed. Late converts are often the most convincing of advocates.

Today's debate on the report of the EU Select Committee on judicial oversight of the arrest warrant, should Brexit take place, has been excellently introduced by my noble friend Lord Jay. It is remarkably timely,

as negotiations are about to get under way in Brussels tomorrow, as I understand it, which will require this issue to be addressed. It is also timely because judicial oversight is one of the most sensitive and knotty issues that we will have to resolve if the operation of the arrest warrant is to survive Brexit at all. It is sensitive, above all, as several noble Lords have said, because it will involve not only disputes between Governments but the rights of individuals to have recourse to a judicial procedure if they wish to contest a warrant.

Behind and underlying today's debate, it is important to remember, as has been stated, that if we leave without a deal, the European arrest warrant will simply cease to exist on that day. There is no plan B available here, as there is, for example, for trade in goods where, as we all know, there is the fallback of World Trade Organization rules. There is nothing for extradition other than a long, agonising effort to negotiate bilateral extradition rules that would, as the evidence we took in 2013-14 showed, replace an effective and rapid system with one that was slower, more costly and less effective.

Remember the years it took us to extradite from this country the terrorist who bombed the Paris Metro. Remember the fugitives from our justice system who lived in the style to which they were accustomed in the south of Spain, and the deeply politicised procedures that occurred when any attempt had to be made to bring terrorists in Ireland to justice. My noble friend Lord Jay spoke at some length about that so I will not go into detail, but it is a very important aspect of this issue. When the Banquo's ghost of no deal flits through this Chamber, as it will, probably quite a few times, during 2018, I hope that those who are talking about it will just remember some of these facts.

The Government's response to this report seems reasonably satisfactory as far as it goes, but frankly it does not go terribly far. One point on which I would be grateful if the Minister would speak is the following. On the standstill arrangements that the Government are about to start negotiating, which will follow immediately after our exit and will fill about two years after we leave, they seem to assume that this will automatically preserve the arrest warrant during that period. Will the Minister say whether that view is shared by the Commission? The many years it has taken to extend the European arrest warrant to Norway and Iceland, both third countries, seems to cast some doubt on that because, after March 2019, we too will be a third country.

The criticism of the Government's response for not going very far relates, above all, to the lack of specificity on the dispute settlement procedures that we could contemplate. There are a lot of words but not much substance, as the noble Baroness, Lady Kennedy, brought out. Why are the Government not prepared to say straightaway some of the approaches they may be prepared to contemplate? We have heard about the EFTA Court with a British judge sitting in that court. Could that be an acceptable route to follow? Perhaps the Minister can say whether there are acceptable routes, and if so, what they are. The excuse that we do not want to reveal our hand is really wearing a little thin, as the clock ticks on. In this context, I have to say that I suspect very strongly that the Government are

more concerned to conceal their hand from their own supporters, nurtured for many months on a diet of the demonisation of the European Court of Justice than they are to conceal it from their negotiating partners in Brussels. That cannot continue much longer.

Complex this issue may be, but there are matters of major importance at stake. I wish the Government well in their negotiations in this area. It is in all our interests that they succeed in preserving the European arrest warrant system from damage or impairment. Only those who believe in Brexit at any cost, as an article of faith, not a matter of choice, can think otherwise. The disappearance of the European arrest warrant system will be to lose control, not to take it back.

3.50 pm

**Lord O'Neill of Clackmannan (Lab):** My Lords, the referendum campaign, when it was not concerned with economic matters, dealt with such issues as freedom from Brussels and release from the Court of Justice yoke. The leave campaigners were concerned with reclaiming our ability to make our own laws, coupled with a reduction in immigration and a greater ability to expel foreigners who broke the law.

These slogans slipped easily off the tongue of the law and order brigade. The impression was created that the EU was somehow a source of lawless anarchy on the streets of Britain. Even allowing for the fact that much of this nonsense was believed by elderly voters, and the fact that the European Court of Justice had become the highest court of appeal, there was little to justify the claptrap that surrounded this issue—to the extent that it was considered at all.

However, the misguided strategies of the remain campaign resulted in little attention being paid to the benefits of EU membership in police co-operation, smoother jurisdiction processes and, in particular, the EAW. When this committee took evidence on the warrant procedure—I am indebted to the noble Lord, Lord Jay, for his succinct presentation of our findings—it became abundantly clear that it had been a great success. It enabled speedier repatriation of the accused from one member country to another. We were able to extradite accused prisoners from the UK and secure the return of others from other member countries more quickly. Put simply, we were able to get rid of the bad guys we did not want and get the bad guys we did into court as quickly as we could. In the past this process had taken months or even years, and now we were talking in terms of days and weeks.

There had to be safeguards, and the final one was the right to appeal to the European Court of Justice. But, in the eyes of the Brexiteers, this is a kangaroo court dominated by foreigners. It was against that background that the committee took evidence which informed our report. I have sat on Select Committees in both Houses of Parliament for the best part of 25 years, and I have to say that I have never been on a committee where the weight of evidence was so overwhelmingly in favour of the European arrest warrant. I have been on committees where the arguments were finely balanced and there were possibilities for debate—but here we had an almost frighteningly monolithic response to the questions that we were asking.

[LORD O'NEILL OF CLACKMANNAN]

What became clear was that, in the eyes of our witnesses, the EAW was a good thing, that something similar should be retained after departure from the EU, and that this was not going to be easy to achieve since the only two countries that had arrangements—namely, Iceland and Norway—had arrangements that had never been put into practice or really tested. Even then, those countries were members of the European Economic Area and part of the Schengen agreement; you might say that they were almost in the EU but not quite, and there was not the antipathy towards the EU that there could well be in a post-Brexit Britain. The fact is that the arrangements developed for Iceland and Norway took an incredibly long time and, despite the rigour of that process, have never been tested.

When we presented the report, we got a response from the Government that was, at best, Panglossian blind optimism and, at worst, convoluted obfuscation. It was quite appalling. In the rather more robust surroundings of the other end of the Palace, we probably would have had in the wretched civil servants who wrote the response to explain it to us—and, as we used to get in primary school English when I was in Scotland in the 1950s, “parse the following”. We would have had to get them to explain the convoluted nonsense. The fact is that there is quite a clear reason for this—because there is no easy answer, if there is an answer at all. We cannot have an acceptable set of legal procedures that sit easily alongside the Court of Justice but do not give the Court of Justice its due place in the eyes of the 27—or, for that matter, the eyes of the 29, because we are also talking about Iceland and Norway here.

If there is any issue on which the Brexiteers have now been shown to have no clothes whatever, it is this one—and, if they want to get dressed, they will have to move a long way and will have to reconsider their opposition to the European Court of Justice as the starting point. I look forward to hearing what the Minister has to say. Although I have great respect for him, I suspect that the text that he will have to read out today will be little better than the dreadful letter that we had in response to our evidence.

3.56 pm

**Lord Brown of Eaton-under-Heywood (CB):** My Lords, I have prepared a speech and shall deliver it, although what of any great value it will add to the series of outstanding speeches that we have already had—and it would be invidious to choose between them—may be doubted.

In the increasingly borderless world in which we live, it is really difficult, as others have said, to overstate the critical importance of the European arrest warrant to international criminal justice. The scheme, as your Lordships know, originated in a European Council framework decision in 2002 and was transposed into UK legislation in the Extradition Act 2003, coming into force on 1 January 2004. It immediately transformed extradition arrangements between EU states, making for an altogether swifter and more streamlined process. It was immeasurably an improvement on what had gone before; essentially, the 1957 Council of Europe Convention on Extradition was criticised variously as being,

“inefficient, cumbersome, slow (which resulted in long periods of pre-trial detention for suspects), expensive, technical, political, restrictive, containing a series of loopholes and subject to less judicial oversight”.

That is the description in the EU Committee report of 2013, paper 159, to which my noble friend Lord Hannay has already referred.

As your Lordships will know, under the Lisbon treaty the Government initially opted out of some 130 measures in the field of justice and home affairs and then, in December 2014, three years ago, opted back into 35 including, notably for our purposes, the European arrest warrant. This for the first time conferred jurisdiction on the CJEU or the ECJ in regard to our operation of the scheme. This opt-in occurred during a 15-month period in which the ad hoc Select Committee on Extradition Law of this House sat. I was privileged to be a member of that committee, under the excellent chairmanship of the noble Lord, Lord Inglewood. On 10 November 2014, we published a short interim report recommending that we should indeed opt back into the scheme. In our final report on 10 March 2015, we reiterated, with emphasis, that conclusion. Of course, we had by then indeed opted back in.

In preparing the interim report, we heard oral evidence from two witnesses: the noble Baroness, Lady Ludford, who supported the opt-in, and Mr Jacob Rees-Mogg, who advocated leaving the scheme on the basis that it was an unacceptable extension of European judicial influence. That was not a view that we accepted, nor, evidently, was it a view shared by the Government, who of course then opted in.

I should perhaps note that, during the pre-Lisbon operation of the scheme, and therefore before the European court had jurisdiction over its operation here, a number of EAW cases came before our courts, both in this House and then, after we were banished in 2009, in the Supreme Court. Indeed, I was involved in a number of them, including, shortly before I retired in 2012, a Mr Assange’s appeal—although, in the event, it appears to have taken him no further than Knightsbridge. Against that background, I assert some experience at least of the scheme in practice.

I believe that, both before and after we opted in, overall the European arrest warrant has operated admirably. Of course, as the noble Baroness, Lady Ludford, said, there have been flaws and obviously there remains room for further improvement. There have, however, been certain notable legislative amendments made to the 2003 Act that have undoubtedly helped; for example, the introduction of a forum bar, the effectiveness of which can be seen this very week in the Administrative Court’s judgment in the Lauri Love case, the computer hacker with Asperger’s who is not now to be extradited to the United States but who will, one trusts, instead be tried here for his alleged criminal activities. That was under Part 2, not Part 1, of the 2003 Act and is not therefore an EAW case, but the point is none the less well made.

Perhaps I should note in this connection that I in fact wrote the single judgment of the Appellate Committee of this House in the earlier case of McKinnon, where we unanimously dismissed Mr McKinnon’s appeal—a judgment that was then fully upheld in Strasbourg under the European convention. Of course, at that

stage there was no question arising at all as to Mr McKinnon's health. It was argued on an unarguable case by the noble Lord, Lord Pannick; he failed. Only later was Asperger's diagnosed and there was of course then executive discretion—which is no longer there—for the Home Secretary to bar extradition. Now, the position has improved under the legislation: there is a forum bar, and the court rather than the Executive will make the final determination on the merits of issues such as oppression.

Thus far, I have focused on the critical importance of the warrant scheme—as all your Lordships have, I think, emphasised—and the imperative need, as I see it, to maintain its operation in the post-Brexit era. Indeed, as I read the Government's response to the report, there is really no longer any doubt or dispute about its importance and the necessity of maintaining it. Rather, the remaining question is simply about how in future its operation should be judicially overseen. I say this simply remains the question, but actually, as other noble Lords have indicated, it is really rather difficult.

The Government's response, I think of December last, to this report, consistent with their published paper in September last, the future partnership paper *Security, Law Enforcement and Criminal Justice*, while asserting that they will,

“bring about an end to the direct jurisdiction of the CJEU in the UK”,

recognises that some form of supranational resolution mechanism will be required, certainly after the transitional implementation standstill period, during which, as I understand it, the Government are now ready to accept that they will continue to acknowledge the CJEU's continuing jurisdiction in this field. But what will then follow?

As I read the report, while indeed it acknowledges the need for some future international judicial process to be devised in place of the CJEU's direct jurisdiction, it gives, as others have pointed out, no real clues as to what precisely, or indeed even imprecisely, it currently envisages will fit the bill. For all the reasons set out in this admirable report, it needs to be a court, a judicial body, as opposed to some arbitral body. It needs to be available to individuals and not merely to states. It needs to enforce the scheme, I would suggest, in full measure, and not, for example, some alternative scheme, such as that devised in the case of Iceland and Norway, whereby those states are now entitled to refuse to extradite their own nationals, which under the EAW scheme is not a permitted restriction. Above all, it has to be acceptable to the other 27 EU states.

For my part, I cannot see how any replacement for the existing role of the CJEU would be an improvement on it. As I have said on other occasions, I greatly regret that the Government have demonised that court and, essentially on ideological or doctrinal grounds, are intent on ending its jurisdiction. I cannot think of a single instance of that court's rulings in this field which has caused the UK the least problem or, indeed, been regarded as in any way unsatisfactory. That court may on occasion be criticised for its integrationist approach and its bias towards ever-closer union, but no such tendency has the least application or relevance in this particular context, and to schemes

such as the EAW, and so too, indeed, in relation to other criminal justice measures which we opted back into.

I am conscious that I am taking up a lot of your Lordships' time, but it is perhaps worth mentioning that essentially the same point arises also with regard to a number of EU civil justice co-operative measures: the various Brussels Regulations, maintenance regulations and so forth, dealing with a host of important questions affecting our citizens and businesses, the recognition and enforcement of judicial judgments, family law disputes and so on. All these were the subject of an excellent report, and subsequent debate last December, led by the noble Baroness, Lady Kennedy of The Shaws. Frankly, the same problems of certainty, predictability and continuity were left at the end of that debate as I fear may be left at the end of today's debate too. I would dearly love the Minister to assuage my doubts and misgivings when he comes—as I understand it, comparatively fresh to this issue—to wind up. I just hope he can.

As a postscript, the one point on which I record my disagreement with the noble Baroness, Lady Ludford, is on the European Charter of Fundamental Rights. My mind of course, as always, remains open until I have heard the last word of the argument on both sides, but my present feeling is that the Government are right to discard that. I can see that it would add nothing whatever to the issue of the European arrest warrant.

4.10 pm

**The Earl of Kinnoull (CB):** My Lords, I apologise that I was not able to put my name down for the debate and am speaking in the gap; I was due to be an expert witness in a case today which has now been delayed at short notice. I declare my interests as a member of both the European Union Select Committee and of the EU Justice Sub-Committee, which is so ably chaired by the noble Baroness who spoke earlier.

I will make just a very few points. First, this is an excellent report. It is jolly hard to write a short essay; it is only 22 pages and it frames everything very well. I congratulate the noble Lord, Lord Jay, and his committee on that. Secondly, I was also on the four-day EU Select Committee trip to Ireland last week, and I sat through the eye-opening session with representatives of the Police Service of Northern Ireland. They made it very clear how important to the overall setup the European arrest warrant is. The key quote was:

“It is a critical part of our toolbox”.

I wrote that down on my papers, and it underlines the importance of achieving a solution here. It is also worth saying that, apart from that, we heard the same point made by politicians and by academics—it was not just a dry comment made by policemen.

My final point is about a comment made to me by an Austrian lawyer in January. He said, knowing what I do on the Select Committee, “I do hope something will be done about the European Union arrest warrant”. I replied, “I'm very surprised that that is the first thing you've had to say about Brexit”. I should say that I know this person very well. He said, “It is, because it is something which Austria uses a lot, and it's a very

[THE EARL OF KINNOULL] important feature”. Being me, I started looking up the statistics. I have here the at-a-glance infographic issued by the European Parliament about the arrest warrant. It is very interesting: Austria was in fact the sixth-biggest issuer of arrest warrants in the period covered by the statistics, which was 2005 to 2013. But more interesting is the data on incoming receipts. The country with the largest number was Germany, and the country with the second-largest number was Britain: in that period we received 32,100 arrest warrants. Germany received more than that. The country receiving the next-highest number of incoming arrest warrants—requests to perform an arrest in your country—was France, with only 6,420.

Those statistics show how important it is for European Union countries for their own justice purposes to continue to be able to exercise things for us, just as it is vital for us to be able to do it as well. For that reason, I feel very much that we are pushing at an open door. I always love listening to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, who laid out a very sensible way of trying to handle this issue, which I look forward to reading again. That seems to be where a solution could be found. I hope that the Minister will be able to give us some comfort that we are pushing at the open door.

4.14 pm

**Lord Marks of Henley-on-Thames (LD):** My Lords, I join others in thanking the noble Lord, Lord Jay, for his part in this excellent report and for the thoughtful and persuasive way in which he opened this debate.

I agree with the Prime Minister when, as Home Secretary in 2014, she said, in advocating our opting back in to the European arrest warrant, that our losing the EAW would turn the UK into,

“a honeypot for all of Europe’s criminals on the run from justice”.

The noble Lord, Lord Hannay, pointed out her support for the EAW system. When Naz Shah MP put the Prime Minister’s words to Nick Hurd, the Policing Minister, during his evidence to the Home Affairs Committee on 23 January, the Minister replied:

“The European Arrest Warrant is an incredibly important tool in the box. The data is quite striking. Prior to the implementation of the European Arrest Warrant in 2004, fewer than 60 individuals a year were extradited from the UK to any country, not just the EU. Between 2004 and 2016-17, EAW has enabled the UK to surrender over 10,000 individuals accused or convicted of a criminal offence to other member states. This has included those accused or convicted of murder, child sexual offences and terrorism offences. During that period, the EAW has been used to surrender over 1,400 individuals to the UK to face justice, so it is a very important tool”.

He went on to say that,

“we want to preserve that capability as close to the existing status quo as possible”.

Those words echo those of Amber Rudd, quoted in the introduction to the EU Committee’s report. The noble Baroness, Lady Kennedy, also spoke of the effectiveness of the warrant in combating serious crime across Europe, and all speakers have recognised the importance of reciprocity.

Day after day in this House we hear Ministers answering questions on Brexit topics by saying that the Government’s aim is to maintain our relationship

with the EU as closely as possible in its existing form. Those of us who believe that the whole project of leaving the EU is a disastrous mistake have every right to ask, “Then why are we leaving?”.

All speakers in this debate agree that it is crucial for this country to continue to reap the benefits of the European arrest warrant system. The noble and learned Lord, Lord Brown, stressed the remarkable superiority of the warrant system over other extradition systems as it has developed to mitigate the flaws that it had. However, the report highlights the serious difficulties in our retaining the system if we do not accept the jurisdiction of the CJEU. I understand that to be the central point made by the noble Lord, Lord Jay, in opening.

Why have the Government made breaking with the CJEU such an unyielding red line if they want to achieve a deep and special partnership with the EU? I see it more as an unbending rod for the Government’s back than a defensible red line. If the Government genuinely want this partnership, they must accept that in areas of European co-operation, whether on citizens’ rights, trade standards, the environment or cross-border security co-operation, European law will continue to hold sway, and its oversight is now and will remain with the CJEU or something very close to it.

In the legal and security areas, the arguments surrounding the European arrest warrant apply equally across the field. They apply to Europol, the EU agency for law enforcement, which is critical to the fight against serious organised crime, people trafficking, cybercrime and terrorism. It is an agency to which the United Kingdom has contributed greatly, not least through its energetic British director. The UK is probably the single largest user of Europol in the EU.

The arguments apply also to data sharing under the Schengen Information System—the vast database to which EU member states have access under the judicial oversight of the CJEU. They apply to Eurojust, the EU agency that promotes co-ordination and co-operation between EU investigating and prosecuting authorities, and to which the DPP has made it clear that she attaches great importance. My noble friend Lady Ludford stressed the DPP’s complete commitment to the European arrest warrant as well. They apply to protection for citizens under the data protection directive. In civil matters they apply to resolving choice of law issues, currently achieved by the Rome regulations; to dealing with issues of jurisdiction, recognition and enforcement in civil and commercial matters covered by the Brussels I regulation; and to the recognition and enforcement of judgments in family law, covered by the Brussels II regulation. In all these areas Ministers claim to want maximum co-operation, yet they insist on rejecting CJEU jurisdiction.

The noble Lord, Lord Jay, pointed out the difficulties already arising with the European arrest warrant, particularly on the island of Ireland. The noble Earl, Lord Kinnoull, made the same point. I would point out in that respect to the noble and learned Lord, Lord Brown of Eaton-under-Heywood, that it was the likely absence of the protection of the Charter of Fundamental Rights that caused the problem with Ireland. I urge him to consider that in the context of his opposition to it.

The Government's response to this report is typical. It explicitly recognises the need for a mechanism for dispute resolution. Although I cannot manage the eloquence of the language of the noble Lord, Lord O'Neill, on the subject of the Government's response, I will say that their proposals are uncertain and muddled: uncertain, because all they can say is that they are committed to a constructive dialogue; muddled, because they imply that post Brexit our law can diverge from EU law in all areas, which betrays a fundamental failure to appreciate that for international co-operation to work one law must govern the behaviour of both parties and that law must be binding.

In European arrest warrant cases individuals have a direct entitlement to have their rights under EU law protected by national courts. As the noble Baroness, Lady Kennedy, and my noble friend Lady Ludford pointed out, these are cases involving individual liberty. If the system is to retain the confidence of citizens and governments, there must be judicial oversight at a supranational level, which in this context means the EU level, and it must be binding on all parties. Why should the EU 27 be expected to accept a non-binding alternative arbitration system for the oversight of arrest warrants when they already have a functioning, efficient and binding system in place?

Much is said on the other side about the affront to UK sovereignty involved in accepting the direct application of EU law and the jurisdiction of the CJEU. Yet we accept the UN charter and the jurisdiction of the international court in The Hague, and we accept the jurisdiction of the European Court of Human Rights under the European Convention of Human Rights. Why not the CJEU? If Brexit is to proceed on the basis of continuing partnership, then on all areas covered by the partnership we need to reach agreement on a system of judicial oversight that is both binding and workable.

Although I do not necessarily share this view, one can see the argument that, if we leave the EU, the fact that the CJEU will no longer have a British judge and a British advocate-general would make the court appear one-sided. Well then, will the Minister explain why the Government do not seek to secure that areas covered by new partnership issues arising between the UK and the EU will be justiciable by a parallel court? Call it what you like, but effectively it would be a division of the CJEU but with a British judge and a British advocate-general. Has such an obvious arrangement even been considered by the Government?

This whole issue has been blown out of all proportion by the soundbites of ideologues. The UK has been a successful litigant before the European court. Research for the Institute for Government published in December demonstrated that the UK has the highest success rate before the court of any EU member state. These negotiations are difficult enough without red lines that are illogical, unnecessary and indefensible. If this whole sad enterprise is going to proceed, and if the Government are serious about partnership, then in this, as in all areas, will they please stop posturing and make proposals to our partners that have some chance of being agreed and are realistic and workable?

4.25 pm

**Lord Collins of Highbury (Lab):** My Lords, I too thank the noble Lord, Lord Jay, for his excellent introduction to this debate and all noble Lords on the committee for the excellent report. This has been a great debate. It has shown a great deal of consensus across the Chamber that the European arrest warrant has brought significant benefits to the United Kingdom. Each year around 1,000 individuals are surrendered to other EU member states under the EAW. According to the report, on average the UK issues more than 200 European arrest warrants seeking the extradition of individuals to this country.

In the debate we have heard about the fundamental contradiction of the Government's position. They have the stated priority that we remain part of the arrangement; however, in their White Paper on the UK's exit and the new partnership with the EU, they have also confirmed that they plan to bring an end to the jurisdiction of the CJEU in the UK, with case law developed post Brexit having no formal status in the UK.

As the report lays out, a lack of oversight and adjudication by the EU supranational institutions represents a practical barrier to co-operation between the United Kingdom and the EU 27 on criminal justice, which, as we heard in the debate, is reliant on the principle of mutual recognition of judicial decisions between member states. Fundamentally, restoration of the UK's full judicial sovereignty will make it very difficult, as my noble friend highlighted, to create a level playing field in criminal justice co-operation. In relation to areas of potential divergence, such as data protection, these complexities are exacerbated by the Government's refusal to incorporate into domestic legislation the fundamental charter.

A no-deal Brexit will make the challenge of continued co-operation that much harder. The default outcome would be to revert to the Council of Europe Convention on Extradition 1957 as the legal basis for extradition between the UK and the remaining EU member states. The noble and learned Lord reminded us of its history and the problems that that could bring.

On the report, noble Lords have referred to the fact that the witnesses giving evidence to the committee were clear that this was not an adequate substitute for the EAW and represented a cliff edge. Even with the amendments to the Extradition Act 2003 the result would be a significantly slower extradition process which represented a political rather than judicial approach to extradition and would have rule of law as well as security implications.

As the noble Lord, Lord Hannay, rightly pointed out, in a Protocol 36 decision in 2014 the UK Government had to decide whether to accept the jurisdiction of the CJEU in return for the continued use of tools such as the EAW. Now as then, the safety of the people of the United Kingdom should be the Government's overriding consideration. The report explores the possibility for a bespoke dispute resolution mechanism in the area of criminal justice co-operation. Evidence submitted suggested that for the enforcement of criminal judgments and the EAW this would have to be a court. Only a court can appropriately review decisions affecting the liberty of an individual, as my

[LORD COLLINS OF HIGHBURY]  
noble friend Lady Kennedy highlighted. A political resolution mechanism or arbitration will simply not be sufficient.

The noble Lord, Lord Jay, highlighted one possible template referred to by the committee: the EFTA court, with jurisdiction over states which are party to the EEA agreement. Although EEA agreement states exist outside the scope of the jurisdiction of the CJEU, the EFTA court guarantees sufficient homogeneity between the two systems to avoid significant disputes. But as my noble friend Lady Kennedy again pointed out, the EFTA system took many years to negotiate. It has never been applied to justice or home affairs issues, only internal market concerns, and applies to two European states moving towards EU membership that also participate in the Schengen area.

The report entitled *Brexit: Future UK-EU Security and Police Cooperation* concluded that,

“the most promising avenue for the Government to pursue may be to follow the precedent set by Norway and Iceland and seek a bilateral extradition agreement with the EU that mirrors the EAW’s provisions as far as possible”.

This model of harmonisation would require a duty of constant review of CJEU case law and a clear political dispute resolution mechanism. What we have heard throughout the debate is that the failure to co-operate will hamper the UK’s ability to combat crime, including organised crime, people trafficking and terrorism. The Government’s stated prioritisation of the EAW is incompatible with their plans to bring an end to the jurisdiction of the CJEU in the United Kingdom. The UK and the EU will need an agreed international body which effectively acts as a safeguard against unlawful warrant issuance. Only a court can appropriately review decisions affecting the liberty of an individual, and consequently this international body will have to be a court. It is very unlikely that the EU will agree to the jurisdiction of an independent judicial body that is distinct from the CJEU.

A no-deal Brexit will make the challenge of continued co-operation that much harder, and of course reverting to the 1957 Council of Europe convention is no answer either. Unlike the Government’s response, Labour would not only allow for continued jurisdiction of the CJEU to provide for continued co-operation with EU member states on extradition arrangements, it would work with international institutions to increase UK judicial oversight of this process. Doing so would provide the safeguards to balance effective extradition and the protection of basic rights and freedoms.

We come back to the fundamental issue here, which is the security of our people. This system works and the Government have imposed a red line that simply will not work. I know that the Minister is excellent at squaring the circle. In his response to the debate I hope that he will be able to do that, but I fear that he will fail.

4.33 pm

**Lord Young of Cookham (Con):** My Lords, perhaps I may take the opportunity first to thank the EU Home Affairs Sub-Committee for producing its report, *Brexit: Judicial Oversight of the European Arrest Warrant*. I am grateful to all those who have spoken in the

debate, and in particular to the noble Lord, Lord Jay, for securing it. The Government welcome the next inquiry, which he referred to in his opening remarks. The noble and learned Lord, Lord Brown, implied delicately that I am a newcomer to this subject and as such I welcome the clarity of the report, its sharp focus on the key issues, and the outline in the concluding paragraphs of a possible way forward. During the debate other noble Lords, including the noble Lord, Lord Marks, suggested their possible solutions and ways forward. However, I am a former Member of Parliament, and some of my constituents were on the receiving end of EAWs and occasionally sought my advice as to how they might possibly evade their reach, and of course as a member of the Cabinet I sat around the table when we opted back into the EAW in 2015, so I am not wholly unfamiliar with the issues raised today.

A range of views have been expressed across the Chamber, but I am reassured by the broad consensus across the House, first, that the EAW is the most effective means available to apprehend individuals wanted by other member states and to ensure that those who have fled the UK are returned to face justice; and, secondly, that the Government should look to sustain as close a partnership as possible with our EU neighbours on security, law enforcement and criminal justice matters after we leave the EU, and that effective extradition arrangements should form part of that new relationship. A number of noble Lords, including the noble Lord, Lord Jay, quoted the Home Secretary, who said that she regarded the European arrest warrant as “an effective tool” helping us to deliver,

“effective judgment on ... murderers, rapists and paedophiles”—  
[*Official Report*, Commons, 6/3/17; col. 550.]

and that it is a “priority” for the Government to ensure that we can maintain those arrangements. As the noble Lord, Lord Hannay, and others said, these are arrangements of major importance to the country.

In the future partnership paper that we published on 18 September last year, we indicate that we will look to reach an agreement with the EU that provides for practical operational co-operation, facilitates data-driven law enforcement and allows multilateral co-operation through EU agencies. We believe that such an agreement would be in the interests of the EU and its member states, as well as the UK. We are confident that our EU partners share our view on the importance of reaching an agreement that protects the safety and security of citizens and upholds justice in the UK and across the EU. The guidelines adopted by the EU 27 at the December European Council reaffirmed their readiness to,

“establish partnerships in areas unrelated to trade and economic cooperation, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy”.

Previous examples of the EU’s co-operation with third countries—which is what we would be post Brexit—on security, law enforcement and criminal justice have so far generally been limited to agreements covering individual measures, such as Europol or passenger name records, but our assessment is that other approaches are legally viable. The UK’s geographical proximity to its European neighbours, the volume of cross-border movements between the UK and the

EU—including, for the purposes of this debate, the volume of extraditions to and from the UK, which the committee highlights in its report—as well as the high degree of alignment in the scale and nature of the threats that we face, call for a new, more ambitious model for co-operation than those that currently exist.

With this in mind, the Government see a strong case for developing a new, dynamic treaty that provides a comprehensive framework for future security, law enforcement and criminal justice co-operation between the UK and the EU. This treaty would provide a legal basis for continued co-operation between the UK and the EU in this area.

To function properly we need dispute resolution, as referred to by many noble Lords during the debate. An arrangement along the lines that we have proposed will need to be supported by a means of resolving any disputes between the UK and the EU. It would be in the interest of both sides to ensure that the rights and obligations contained in the agreement can be relied upon, that both parties have a common understanding of what the agreement means, and that disputes can be resolved fairly and efficiently. This has been to some extent at the heart of the debate.

Dispute resolution mechanisms are common in EU third-country agreements and other international agreements, including those agreed by the UK. A number of examples are set out in the future partnership paper *Enforcement and Dispute Resolution*, which the Government published last August. They illustrate the range of ways in which the parties to international agreements, including the EU, have obtained assurances that obligations in those agreements will be enforced, that divergence can be avoided and that disputes can be resolved.

**Baroness Ludford:** I apologise for interrupting the Minister, but how is that relevant to an individual disputing the execution of a European arrest warrant? How does state-to-state dispute resolution apply in the circumstances of a judicial process?

**Lord Young of Cookham:** I will come in a moment to the distinction between how country-to-country agreements are enforced and how individuals enforce any rights they might have in the countries concerned.

One common feature of most international agreements, including all agreements between the EU and a third country, is that disputes are not resolved by giving the courts of one party direct jurisdiction over the other. Noble Lords will be aware that one of the Government's key commitments in leaving the EU, as set out in our future partnership paper *Enforcement and Dispute Resolution*, is that we will bring about an end to the direct jurisdiction of the CJEU in the UK. I know that that is particularly unpalatable to the noble Lord, Lord Marks, but it is a clear statement of government policy.

Previous examples of the EU's co-operation with third countries on security, law enforcement and criminal justice demonstrate that direct CJEU jurisdiction is not a requirement for such agreements. Even the more ambitious and strategic relationships that the EU has adopted—for example, the Schengen association agreements and the European Economic Area

agreement—do not involve direct jurisdiction of the Court of Justice of the European Union in those third countries.

There is no precedent, and indeed no imperative driven by EU, UK or international law, which demands that enforcement or dispute resolution of future UK-EU agreements should fall under the direct jurisdiction of the CJEU, or indeed that UK courts should have direct jurisdiction over the EU. However, I agree with the noble Baroness, Lady Kennedy, and others that if you do not have the CJEU, you need some other mechanism for resolving disputes. We will therefore look to engage constructively to negotiate an approach to enforcement and dispute resolution that meets the key objectives of the UK and the EU in underpinning the effective operation of a new partnership in this area. We do not underestimate the complexities involved in negotiating our future relationship with the EU, but we are confident that there is recognition on both sides of the importance of addressing them and reaching a robust agreement.

The noble Baroness, Lady Ludford, mentioned some of the problems with the EAW, and the noble and learned Lord, Lord Brown, touched on them. Noble Lords may recall that, in 2014, we reformed the operation of the EAW to make sure that it worked effectively and better protected UK citizens. As has been mentioned, individuals will not now be extradited where a case is not trial-ready or where it is disproportionate so to do.

The noble Lord, Lord O'Neill, put it graphically when he said that the EAW has enabled us to get rid of the bad guys we do not want and get hold of those we do. The EAW has enabled the UK to surrender more than 10,000 individuals accused or convicted of a criminal offence to other member states, including those accused or convicted of murder, child sexual offences, terrorism or, as the noble Baroness, Lady Kennedy, mentioned, human trafficking. During the same period, the EAW has been used to surrender more than 1,400 individuals back to the UK.

As the committee noted, we are a net contributor to the EAW system: for every one person arrested on a UK-issued EAW, the UK arrests eight on EAWs issued by other member states, so in the balance of trade of those under arrest, we are net exporters. For all these reasons, agreeing effective extradition arrangements will be an important part of negotiations and of mutual interest to both the UK and member states.

Perhaps I may touch for a moment on transitional arrangements, which the committee also raised in its report and were referred to in our debate. The Prime Minister was clear in her Florence speech that an implementation period should be based on the existing structure of EU rules and regulations, and that the UK would take part in existing security measures during such a period. The Prime Minister was also clear that we may start off with the CJEU still governing the rules we are part of for that period. We therefore do not anticipate the cliff edge that the committee was keen we should avoid and which was touched on during our debate. We hope that we do not see the ghost of Banquo, though I am sure he would be familiar with the panelled rooms of this stone building. That commitment was confirmed by the Minister for

[LORD YOUNG OF COOKHAM]

Immigration, Nick Hurd, when he gave evidence to the Home Affairs Select Committee on 23 January. As I said a moment ago, it is in the interest both of the UK and the EU to agree the precise terms of the implementation period as quickly as possible, and we are confident that we will come to an agreement on this in March.

On the case of O'Connor, I am somewhat limited in what I can say as this is a live case. We are monitoring what is going on and we cannot speculate on the outcome. My understanding is that the Irish Supreme Court has yet to formally refer the matter to the CJEU or, indeed, to determine what the question should be. We will continue to work with our counterparts in the EU to ensure that those who have fled justice in the UK return to face it.

A number of noble Lords mentioned the time it took to negotiate the extradition agreement between Norway and Iceland and the EU. With respect, we are starting from a slightly different position, in that they started from a position of total divergence whereas we are starting, in this case, from a position of total alignment. The starting point for negotiations will be different from that of either of those countries: we start, as I said, from a position of total alignment since we operate the same EU tool, the EAW, and that was not the case for Norway or Iceland.

The noble Baroness, Lady Kennedy, asked whether we would be able to get an agreement on this without accepting the CJEU as ultimate arbiter. I have made it clear that we do not think that that is acceptable and I outlined other scenarios where that was not the case. Indeed, the EU has extradition agreements with a range of third countries, as noted in the committee's report. None of those involves the CJEU having jurisdiction in those third countries, nor is there another common court between the parties, although I note that in our debate there was a very strong view that there should be some judicial oversight over how disputes are resolved.

Where agreements between the UK and EU give rise to rights or obligations for individuals—the case raised by the noble Baroness, Lady Ludford—those rights or obligations will be enforced by the courts in the UK, and ultimately by the UK Supreme Court. Individuals operating within the EU should similarly be provided with means to enforce their rights or obligations through the courts of the remaining 27 member states, with interpretation by the CJEU where that is appropriate. On facts and figures, table 1 in paragraph 10 has some key statistics, but if the noble Earl, Lord Kinnoull, wants more granularity I would be more than happy to provide that for him.

There was a comment about the Charter of Fundamental Rights. The noble Baroness, Lady Ludford, will have heard what my noble friend Lord Callanan said in winding up the debate on the withdrawal Bill last week. Our intention has always been that, in itself, not incorporating the charter into UK law should not affect the substantive rights that individuals already have, because the charter was never the source of those rights.

I should emphasise that the Government are committed to maintaining and strengthening the co-operation that keeps all European citizens safe, a point that noble Lords have made, and that the desire to do what is necessary to keep our people safe is not one-sided. My ministerial colleagues have spoken to their counterparts in other EU countries and I am reassured to hear that there is a shared understanding of the importance of effective, ongoing co-operation. For our part, we have made clear that the UK's responsibilities, as a good neighbour, for the security of European citizens as well as our own, will remain on leaving the EU. We will be looking for a future partnership that ensures that those responsibilities can be met.

We recognise the challenges around negotiating a new relationship, including those around designing a new mechanism for resolving disputes between the UK and the EU. The Government are grateful to the committee for its report and its observations about the complexities involved in negotiating new arrangements. We are committed to addressing them and ensuring that we can continue to uphold justice in the UK and across the EU. I reiterate my thanks to the noble Lord, Lord Jay, and to all noble Lords who have taken part in this afternoon's debate.

4.50 pm

**Lord Jay of Ewelme:** My Lords, I, too, thank all noble Lords who have taken part in this afternoon's debate. It has been a debate of real substance. I thank the Minister for rising to the challenge posed by the noble Lord, Lord O'Neill, and including topics of real substance in his reply. As the noble Baroness, Lady Kennedy, my noble friend Lord Hannay and other noble Lords said, this is an intractable problem, and I do not feel that we have reached a real solution to the problem of judicial oversight in this debate. I have no doubt that we will come back to it before 29 March 2019.

*Motion agreed.*

*House adjourned at 4.50 pm.*



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