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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

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

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

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

House of Lords

Monday 26 February 2018

2.30 pm

Prayers—read by the Lord Bishop of Salisbury.

National Child Obesity Strategy
Question

2.36 pm

Asked by ***Baroness Benjamin***

To ask Her Majesty's Government what plans they have for publicising a detailed evaluation of stage one of the National Child Obesity Strategy; and when a publication timetable for stage two will be produced.

Baroness Benjamin (LD): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and declare an interest as the co-chair of the All-Party Group on a Fit and Healthy Childhood.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, all reports and data published on progress in delivering our childhood obesity plan will be open to scrutiny. This includes all research evidence produced by the Obesity Policy Research Unit, which will be published as projects are completed, and Public Health England's assessment of progress on sugar reduction, which will be published in the spring. We will use this to determine whether sufficient progress has been made and whether alternative actions need to be taken.

Baroness Benjamin: I thank the Minister for that Answer but five year-olds are now eating their own body weight in sugar every year. Obesity is the second-largest cause of cancer and it reduces life expectancy by up to 10 years. Voluntary action cannot combat the obesity epidemic that the country faces. What is needed are mandatory reformulation targets for reductions in added sugar, fat and calories across all products, as well as common-sense policies directed at early years, which includes oral health initiatives. Can the Minister confirm that there will be a more robust mandatory element in future stages of the national obesity strategy?

Lord O'Shaughnessy: The noble Baroness is right to highlight the importance of this issue; we have seen more research today highlighting not just the prevalence of obesity among younger people but the catastrophic health risks that attend that. I would say, though, that the actions in the obesity plan—including the reduction of sugar by 20% by 2020, with a 5% interim target, and the sugar levy—have led to serious action. Fifty per cent of the drinks that would otherwise have been captured have now reduced their formulation, so we have seen action. We will see in the spring the evidence of whether that has had the desired effect and if it has not, we have left all options open to take further action if required.

Baroness Wyld (Con): My Lords, health visitors play a key role in helping parents to tackle and prevent obesity. Is my noble friend the Minister confident that all health visiting teams have the resources and the support they need to do this?

Lord O'Shaughnessy: My noble friend is absolutely right and as the noble Baroness, Lady Benjamin, said, it is about getting into families when children are young. My noble friend will I think be reassured, as I hope the House will, to know that not only are there more health visitors than ever but, as part of that, we have a healthy child programme looking at the prevention and identification of obesity. Health visitors are trained in critical elements such as promoting breastfeeding, nutrition and physical activity to encourage healthy babies.

Baroness Massey of Darwen (Lab): My Lords, have geographical variations been taken into account in the strategy? For example, London has much higher levels of child obesity than the rest of the country.

Lord O'Shaughnessy: Health inequalities and their reduction are a core part of it and in talking about them I would focus, to pick one example, on breakfast clubs. We know that having a good-quality breakfast—indeed, having any breakfast as some children go without it, which causes problems, too—is important. About £26 million is being spent on extra breakfast clubs in 1,500 schools in opportunity areas and disadvantaged areas.

The Countess of Mar (CB): My Lords, does the Minister consider that there is an elephant in the room? There are thousands of endocrine-disrupting chemicals that children and young people have been exposed to since they were in the womb. Nobody seems to be looking at the effects of endocrine disruptors on appetite and obesity.

Lord O'Shaughnessy: I must confess that I am not completely aware of the specific issue which the noble Countess talks about. I think I will have to write to her. It may be something that our obesity research unit can have a look at.

The Lord Bishop of Durham: My Lords, the relationship between childhood obesity and poverty is well evidenced. In the light of warnings by the Children's Society and others that 1 million children in poverty will miss out on a free school meal under the current proposals for changes to entitlement under universal credit, does the Minister agree that all children in poverty should receive a free school meal to combat child malnutrition by ensuring that they receive a healthy meal at lunchtime?

Lord O'Shaughnessy: We have a free school meal policy in this country. Indeed, the previous Government introduced free school meals for all children up to the age of seven, I believe, so we have made a significant impact in this area. I talked about breakfast clubs, which will also help, particularly disadvantaged children.

Baroness Brinton (LD): My Lords, the salt reduction strategy worked particularly well because all supermarkets came together and followed it. Two years ago, Sainsbury's

[Baroness Brinton]
chief executive asked the Government to introduce compulsory targets for sugar reduction, but we have not seen them yet. After the first year of the sugar tax in Mexico, there was a 17% reduction in purchases by poor people and a 12% reduction across the board. It works. If the supermarkets want it, why will the Government not follow?

Lord O'Shaughnessy: We are making good progress in reformulation and in reducing sugar in drinks, which I have talked about, and in other foods. However, we have to look at the impact. We will look at that and if progress is not made—let us face it, obesity levels are unfortunately continuing to increase—clearly other actions will have to be taken.

Baroness Jenkin of Kennington (Con): My Lords, last year I chaired the Centre for Social Justice's childhood obesity report. Until then, I had not appreciated how challenging and complicated it is, not least to keep representatives from the food industry and food campaigners in the same room. Amsterdam's healthy weight programme has helped to reduce childhood obesity by 12% since its launch in 2012. Will my noble friend confirm that the Government are studying carefully how that reduction has been achieved?

Lord O'Shaughnessy: I thank my noble friend for that and applaud the work that she has done in this area. The Amsterdam effect seems significant and is an area we are looking at as we consider further actions in future.

Lord Watts (Lab): Does the Minister agree that it would be a good idea to reintroduce domestic science into all schools so that people have a better mechanism for preparing and eating more quality foods than fast foods?

Lord O'Shaughnessy: I reassure the noble Lord that the national curriculum, through PSHE, includes elements around nutrition and healthy eating. Indeed, many schools offer the kind of classes he is talking about.

Lord Hunt of Kings Heath (Lab): My Lords, I refer the noble Lord to your Lordships' Select Committee on the Long-Term Sustainability of the NHS, which said that the Government,

"should not cite unwillingness to behave as a 'nanny state' as an excuse for inaction on the major public health issues, including obesity".

If the study that is being undertaken at the moment shows that outcomes are poor, will the Government move from their current voluntary approach to take more decisive action?

Lord O'Shaughnessy: The point here is that we know that these are difficult decisions and, of course, children have decisions made on their behalf by their parents, people in schools and others, so there needs to be a combined approach of statutory action and voluntary action. We should applaud the voluntary action that many people have taken—supermarkets, food producers and others—but clearly there is a continued role for the Government and I do not think questions of nanny statism come into it.

Private Rented Housing: Electrical Safety Checks

Question

2.44 pm

Asked by ***Lord Kennedy of Southwark***

To ask Her Majesty's Government what representations they have received, if any, opposing electrical safety checks in the private rented housing sector.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I refer the House to my relevant interests in the register.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, an independent working group has recommended legislating for mandatory electrical installation checks in private rented sector homes, and that other safety measures be encouraged as good practice, as set out in guidance. We must test wider opinion on the recommendations, to give stakeholders the opportunity to submit their views. That is why we have published a consultation on 17 February, to ensure that any regulation introduced is appropriate.

Lord Kennedy of Southwark: My Lords, the Housing and Planning Act 2016 received Royal Assent on 12 May 2016. The Private Rented Sector Electrical Safety Working Group reported last year, recommending electrical safety checks. Now we have a government consultation which closes in April, with a government response to follow but with no date given. That is two years. Instituting these checks will save lives. Can the noble Lord give me an assurance about when we can expect some action from the Government? Will I have to ask this Question again this time next year?

Lord Bourne of Aberystwyth: My Lords, I hope not. It is important that some of the recommendations which are left open are checked. For example, should it be a five-year, four-year or six-year period? These are important questions that people should be able to give their views on. In addition, some of the recommendations from the working party say it should be left to a volunteer approach. We need to test that more widely to see whether that is the appropriate way forward. That is why we are taking our time. I can understand the noble Lord's impatience, but it is important that we get this right.

Baroness Gardner of Parkes (Con): My Lords, can the Minister tell me what the position is with appliances? They are what have caused every one of these terrible fires that we have had. It is not the wiring, or the basic stuff which is covered by an electrical check; it is that appliance you buy. You may have a regular time for the other checks, but you can buy these dangerous appliances at any time. I too declare my interests in the register.

Lord Bourne of Aberystwyth: My Lords, my noble friend will be aware that BEIS has issued a response to the appliance product recall, and has created the Office for Product Safety and Standards. More widely, in relation to this particular consultation, the review body has suggested doing this on a volunteers approach. Whether that is the appropriate procedure is something that will be tested in the consultation.

Lord Tope (LD): My Lords, I declare my interest as a patron of Electrical Safety First. Is the Minister aware that Electrical Safety First and the Home Office have both produced data that show that white goods cause five fires every day in people's homes? Many people in the private rented sector rely on white goods supplied by their landlord. Is it the intention that, if and when mandatory safety checks are introduced—and I share the frustration of the noble Lord, Lord Kennedy, over the delay—they will cover white goods supplied by landlords?

Lord Bourne of Aberystwyth: My Lords, the noble Lord is probably aware that the consultation is on just that basis. The working party did not recommend mandatory checks but that this was best practice. That is one of the things that we are testing in this consultation, but it is certainly covered in the review.

Lord Campbell-Savours (Lab): My Lords, the Minister keeps using the word "volunteer". Who are the people on this working party who keep talking about a volunteering approach? What are they trying to protect? Do they have commercial interests that they think are going to be damaged in the event of it being mandatory?

Lord Bourne of Aberystwyth: My Lords, no, I do not think that is an appropriate conclusion at all. There is a balance of people on the working party: some are from tenants' organisations, some have a landlord background. It a very balanced review. What is suggested in the review is that this could be taken forward as best practice—so a voluntary approach to that extent. That is something that will be tested in the broader consultation that we are now undertaking.

Lord O'Neill of Clackmannan (Lab): My Lords, I draw attention to my interests in the register. Is the Minister confident that there are sufficient competent people to carry out these checks? My understanding is that local authorities have woefully few people working in building control inspection to carry out the kind of checks that would be required. If it were left to voluntarism, it would be highly dangerous. The issue should surely be to make the building regs inspectors' jobs more attractive and recruit more of them. These are the kind of people who should carry out this type of work, rather than leaving it to well-intentioned amateurs and volunteers.

Lord Bourne of Aberystwyth: My Lords, I encourage the noble Lord to participate in the consultation, but I note what he says and I share the view that it is important to ensure that we have sufficient people who are expert in this field who are able to undertake the work necessary. That is a broader consideration and something that the Government are certainly on top of. In the meantime, as I say, the reason why we are having this consultation is so that we can test some of the recommendations that have been made by a very well-balanced working party, but perhaps we need broader consultation.

Lord Shipley (LD): I remind the House of my interest in the register. I would like to ask the Minister about Grenfell Tower, given that the fire in that tower originated from a faulty electrical appliance. What steps are the Government taking to enforce stricter electrical safety checks in tower blocks across the UK?

Lord Bourne of Aberystwyth: My Lords, Grenfell is of course the subject of a very live criminal review, so it is important that I do not say anything that could prejudice that consideration. In general terms, though, a Green Paper relating to the social rented sector will shortly be forthcoming, and it will cover the area that the noble Lord is talking about.

Lord Roberts of Llandudno (LD): What steps have been taken to ensure that, when people from various other countries—refugees and so on—come here, the warnings on electrical facilities are in a language that they will understand?

Lord Bourne of Aberystwyth: My Lords, that throws open a much broader question. With another hat on, I can say to the noble Lord that he will appreciate that shortly we will be publishing our integration strategy. One key element of that will be how important it is that English language skills be made available to all those people who come from overseas where it is not a language that they speak freely, because otherwise there is a feeling of total isolation for those poor people.

NHS: Waiting Lists

Question

2.51 pm

Asked by ***Baroness Thornton***

To ask Her Majesty's Government what plans they have to reduce the waiting lists for consultant-led NHS treatment; and to what timetable they intend to carry out such plans.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, the joint NHS England and NHS Improvement plans for 2018-19, published on 2 February 2018, set out how £1.6 billion of funding announced in the Autumn Budget will be spent on additional elective surgery as well as ensuring that the four-hour A&E waiting times standard is met. The guidance refreshes two-year plans already in place to improve waiting times performance.

Baroness Thornton (Lab): I thank the Minister for that Answer. Waiting lists at the end of November 2017 stood at 3.72 million. The head of NHS England, Simon Stevens, says that at present waiting lists will grow to 5 million by 2021, and the Minister's Answer is inadequate in solving that problem. Does he agree with the findings of the Royal College of Physicians research that shows among other things that 45% of

[Baroness Thornton]
advertised consultants' posts remain unfilled, 82% believe that the workforce is demoralised and 74% are worried about their ability to deliver safe patient care in the next 12 months? What are the Government's plans to deal with this crisis in an NHS that is underfunded, underdoctored and overstretched?

Lord O'Shaughnessy: It is absolutely our goal and obligation to return to the referral-to-treatment standard. It is worth pointing out that the NHS has been dealing with an annual growth in demand of around 4%, which is extraordinary when looked at historically. What we have seen in the plan set out a few weeks ago are important steps to get a grip on that, including halving the number of 52-week waits, halting the growth in the waiting list and delivering more every year. Clearly that is an interim step and more needs to be done; the way to achieve that is by continuing to provide real-terms increases, which we have done and will continue to do, and by dramatically increasing the number of staff in the NHS, which again we have done. We have also increased the number of training places.

Lord Patel (CB): My Lords, does the Minister agree that imposing a mandatory time of up to 16 weeks for elective surgery, as it has recently been reported that many clinical commissioning groups are doing, is wrong, and that how long a patient should wait for elective surgery needs to be a clinical decision?

Lord O'Shaughnessy: The length of time to wait should always be a clinical decision; I completely endorse that. CCGs have responsibility to manage demand according to local needs, but in the end, it must be a clinical decision.

Lord Bassam of Brighton (Lab): My Lords, in a written reply to me, HL 5459, the Minister said that vacancy data was not available for doctors, nurses and consultants in hospital trusts in Sussex, Surrey and Kent, whereas local recruitment advisers suggest that there is a real crisis. Why cannot the human resources element of the National Health Service provide that basic data? As the noble Lord seemed to acknowledge earlier, our chances of our reducing waiting lists are much lessened if we cannot understand where the vacancies are and put people in those jobs.

Lord O'Shaughnessy: Vacancy data is available. If it was not available on the particular footprint that the noble Lord asked for, I would point him in the direction of data published last week by NHS England on vacancies, which is always a topic of much interest in this House. Over the past three quarters, that shows a slightly improving picture, but clearly there is a lot more to do.

Baroness Jolly (LD): My Lords, under the NHS constitution, no patient should have to wait more than 18 weeks for any treatment. However, there are no specific national standards for waiting times for CAMHS patients, only guidelines, except for under-18 year-olds with psychosis and those treated in the community for eating disorders. What proportion of those CAMHS patients are seen within the agreed times, when does the Minister expect we will see a significant improvement and is sufficient funding earmarked to achieve it?

Lord O'Shaughnessy: The noble Baroness is quite right to highlight this issue. There simply are not equivalent waiting times for CAMHS. As she mentioned, we have introduced the first waiting times for eating disorders and early intervention in psychosis. I think she will have been pleased to have seen in the Green Paper published before Christmas that a new four-week waiting time for NHS children and young people's mental health services will be piloted. That will be rolled out in the near future.

Lord Reid of Cardowan (Lab): My Lords, in the eight years before 2010, waiting lists and waiting times were brought down dramatically. In the eight years since 2010, waiting times and waiting lists have risen dramatically. What does the Minister think happened in 2010 to change that?

Lord O'Shaughnessy: I think we all know what happened in 2010, but it might be worth pointing out that 10 years ago, half of patients waited more than 18 weeks for referral to treatment and that is now only about 10%.

Baroness Finlay of Llandaff (CB): My Lords, given that many consultants report feeling demoralised and worn down by constant pressure from the number of clinical problems they are dealing with and the administrative pressures that they find themselves under, what discussions have the Government had with NHS England, and what discussions has NHS England had with trusts, on ways that consultants and their teams could have better administrative support and better ways to achieve upgrades in equipment that they may need to undertake specialised procedures? At the moment, they are having to apply and reapply for funding, which wears them down and takes away from clinical time.

Lord O'Shaughnessy: I shall write to the noble Baroness on what NHS England is doing about the specific issue. I think her real point is about morale. We know that NHS staff do an incredible job under a great deal of pressure, dealing with that rising demand. We are doing two things to try to alleviate that situation. One, which we have talked about, is increased numbers coming through training so that we can increase staffing. The other is pay. Getting rid of the pay cap and allowing for an Agenda for Change pay increase is a good way of saying thank you to those staff.

Baroness Hussein-Ece (LD): My Lords, in response to my noble friend Lady Jolly on child and adolescent mental health services, the Minister talked about reducing waiting times for young people and children to see a clinician as something to be addressed "in the near future". He must appreciate that for children and young people, time is of the essence to get treatment before the situation becomes acute and they reach a crisis. Could he not give a more satisfactory answer on that question?

Lord O'Shaughnessy: I said that only because I cannot give specifics and I do not want to hold out false hope. I can say that the Government are providing £1.4 billion extra so that another 70,000 children are seen every year. I think that is extremely welcome. Piloting a waiting time standard is all about making sure that we can reach the right clinical standard.

Northern Forest

Question

2.59 pm

Asked by ***Baroness Rawlings***

To ask Her Majesty's Government what progress they have made in establishing the Northern Forest.

The Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs (Lord Gardiner of Kimble) (Con): My Lords, as part of the 25-year environment plan, the Government have pledged £5.7 million to support the creation of a northern forest that will stretch 120 miles from Liverpool to Hull. We are now working with the Woodland Trust and five community forests to identify sites where the first trees, funded by government, will be planted next winter.

Baroness Rawlings (Con): My Lords, I am most grateful to my noble friend the Minister for his Answer, and I commend HMG for supporting this grand project, and all the many bodies involved, especially the Woodland Trust, which will oversee the planting of the 50 million trees, starting this March. Do Her Majesty's Government agree that this forest will be a huge plus for the environment in countless ways? As we have heard, the forest will stretch from Liverpool to Hull, and my point is that much of it is on Duchy of Lancaster land. Will the Minister consider supporting naming it the "Royal Northern Forest" in celebration of Her Majesty the Queen, who has ruled longer than any British monarch in our history?

Lord Gardiner of Kimble: My Lords, the northern forest will undoubtedly bring benefits for people, wildlife and the environment. Planting the right trees in the right places will reduce flood risk; help adapt to climate change; improve air quality, health and well-being; increase biodiversity; enhance landscapes; and, indeed, build resilience for our treescapes. I like my noble friend's suggestion, and will ensure that the Woodland Trust and England's Community Forests are aware of it.

Baroness Young of Old Scone (Lab): My Lords, I declare an interest as chairman of the Woodland Trust. I am delighted that the Government have embraced with such alacrity the concept we dreamt up, and I thank the Minister for the £5.7 million. However, it is a £500 million project, and is not just about trees. It will improve air quality in towns, mitigate flood risk, help to promote rural economies and deliver improvements in health and well-being, not only in the rural environment but in the urban environment. Will the Minister consider whether budgets that are focused at the moment on those wider benefits might be used in some way to help to promote and find the total cost of the northern forest?

Lord Gardiner of Kimble: My Lords, I congratulate not only the noble Baroness but the Woodland Trust for the great work that they are doing. In fact, we are in partnership with it on the tree-planting campaign in primary schools, for instance. I certainly think this will be a good example of a mix of public and private funding—the leverage of public funding and then charitable private funding. Indeed, Yorkshire Water has already pledged that it will plant 1 million trees as part of the northern forest on its landholding.

Lord Scriven (LD): My Lords, I will follow on from the previous question. The cost of the northern forest will be £500 million, which equates to nearly £20 million a year having to be found. If those sums are not found, predominantly by charities, what contingency plans do the Government have to ensure that the northern forest becomes a reality?

Lord Gardiner of Kimble: As I explained in my earlier reply, this will be a public and private enterprise. There will be a number of ways in which this can be done, including the woodland carbon sequestration fund. There are a number of public tree-planting funds, as well as public and charitable sources.

Lord West of Spithead (Lab): My Lords, the Minister will be aware that Admiral Collingwood was very worried about the northern forest and the loss of oak trees because so many had been used to build ships, and he used to walk around with acorns in his pockets. He, like Nelson, was also worried about the lack of frigates because our Navy had only 138 at the time. Does the Minister think that Admiral Collingwood would feel very pleased about the northern forest proposals, but not very happy about the fact that our nation now has 13 frigates?

Lord Gardiner of Kimble: My Lords, we have come some way from frigates being built from wood but, wherever we are, we want to plant more trees. The important point about the northern forest is that it is overwhelmingly in an urban area. We are going through all the cities of the north, which means that the environment in those great cities will be enhanced. The northern forest is in parallel with the northern powerhouse initiative, and is great news for all the communities along it.

Baroness McIntosh of Pickering (Con): My Lords, I congratulate my noble friend on the contribution that the Government are making to the northern forest. As a Yorkshire Water customer, I am delighted that it is planting trees in its own right. Will my noble friend agree that perhaps we should look at building ships from trees?

Lord Gardiner of Kimble: Well, my Lords, I think we should plant trees not just to supply the Royal Navy. It is certainly important that we are growing our own trees. That is why I am delighted that the trees planted on behalf of the Government will all be grown and sourced in this country. I think "Grown in Britain" is a very important feature of biosecurity.

Baroness Jones of Moulsecoomb (GP): My Lords, will the northern forest in any way compensate for the losses of ecology and biodiversity that we will experience with HS2? The National Trust says that over a dozen sites of special scientific interest will be affected and that we will lose 250 acres of green belt and more than 30—I have completely forgotten what I was going to say, but the point is that HS2 is going to be very damaging. I do not see how this northern forest can in any way compensate for the losses that we will experience from that.

Lord Gardiner of Kimble: My Lords, tree planting needs to take place across the United Kingdom. HS3 and the northern powerhouse will bring an improvement for all the communities of those cities. It is really important that we plant more trees and achieve our objective to increase tree cover across the country.

Baroness Jones of Whitchurch (Lab): My Lords, obviously we welcome this initiative but, following on from the noble Baroness's question, I point out the real challenge about protecting existing ancient woodlands. When I put a Written Question to the Minister a couple of months ago about how many trees were felled each year, rather than how many were planted, I was told that the Government did not keep that information. Is not there a need to have better protection for existing ancient woodland as well as the good initiatives that the Minister has described today?

Lord Gardiner of Kimble: My Lords, ancient woodland is clearly very important as part of the glories of our country. In fact, overall in England, the level of permanent ancient woodlands lost to other land uses was 57 hectares—0.02% between 2006 and 2015—but, actually, 13,481 hectares of planted ancient woodland sites have been restored since April 2011. We want to ensure protection, which is why Defra and other departments are working in terms of the National Planning Policy Framework, because we should cherish our ancient woodlands.

European Union (Withdrawal) Bill

Committee (2nd Day)

3.07 pm

Relevant documents: 12th Report from the Delegated Powers Committee, 9th Report from the Constitution Committee

Amendment 9

Moved by ***Baroness Thornton***

9: Clause 1, page 1, line 3, at end insert—

"( ) Regulations bringing into force subsection (1) may not be made until the Secretary of State has set out a strategy for seeking to ensure that any citizen of the United Kingdom or of an EU country, who requires health care in a different country of the EU or in the United Kingdom, will be treated as if they live in the country in which they require treatment, with the home country reimbursing the country where care was provided."

Baroness Thornton (Lab): My Lords, I rise to move Amendment 9 and speak to Amendment 11 in my name on the Marshalled List. Even since Committee stage began in your Lordships' House last Wednesday, the Brexit world has shifted again and is doing so even today. The Prime Minister has had her summit at Chequers and my own leader is posing a serious challenge to the Government. We have to wonder how many millions are following the detail of hard Brexit; soft Brexit; tariff-free access; managed divergence or even ambitious managed divergence; hard and soft borders; regulatory alignment; cake philosophy, which is something to do with cherry-picking and having your cake and eating it; the three baskets theory, which I understand is a bit like the cake philosophy, only it is three choices; transition or implementation; and, finally, a bespoke economic partnership.

The media is full of it. The Westminster bubble and the chatterati—from which I do not exclude myself—talk of little else. That is because it is important to our nation's future and our prosperity, or otherwise. However, I will propose one amendment, and speak to another, on matters which do not at present feature in the headlines or in the huge and momentous agenda being discussed in your Lordships' House, but which do affect millions of citizens in the UK and the EU, including every Member of this House. These amendments affect all who work and travel in Europe; who buy medicines and take for granted the supply and availability of the most up-to-date, clinically approved remedies.

Like millions of UK citizens, I have been on holiday and travelled all over the EU. Most often, my summer holidays have been in France with my children. Every year while my children were growing up we had at least one ear infection, sometimes a dose of tonsillitis and, one memorable year, an adult with Bell's palsy. The wonderful Dr Duterte in Brantôme came to know us quite well over 25 years. My son lived in Brussels for five years and, although mostly healthy, he and we thankfully did not need to worry ourselves about his access to healthcare. An important part of a stress-free holiday with a mother with chronic obstructive pulmonary disease was knowing, with confidence, that the oxygen supply would be waiting in the house—free, like in the UK. I tell these everyday stories precisely because they are so ordinary. It is the experience of millions of us: the package holidays; the weekends; the hen parties in Barcelona; the stag dos in Amsterdam and elsewhere; the conferences in all sorts of places. We and our fellow citizens are accustomed to travelling with ease and confidence. The ease with which people can do what they are used to doing is a matter which will colour how they judge whether Brexit is succeeding and whether it has been worth while.

Amendment 9 concerns the EU reciprocal healthcare arrangements which allow citizens of EU and EEA nations, as well as Switzerland, to access health and social care services while in any other of these nations, on the same basis as a resident of that nation would at no or low cost. The schemes include the EHIC, the European healthcare insurance card, which provides access to state-provided healthcare for short-term visitors; and the SI scheme, which, for example, allows ongoing access to health services for people working abroad and social care services for individuals such as pensioners

living abroad. This is important for workers, students, the retired and holidaymakers, and, as I said, it affects millions of us.

Post Brexit, the UK could lose access to these arrangements, depending on the final outcome of ongoing negotiations between the EU and the UK Government. So far, the two parties have agreed that UK pensioners already living in the EU will be able to use the SI and EHIC schemes post Brexit, but no deal has been reached on wider access to them. Losing access to these arrangements would have a significant impact in a number of areas. This is one area where some progress seems to have been made but, as with many other matters, there is some uncertainty about what will happen after Brexit. The latest joint EU-UK document on the Brexit talks in November said that citizens who live in another EU country on the day that the UK leaves will still be eligible for the same healthcare as citizens and will still be able to use the EHIC scheme when visiting another EU country. This includes citizens who work or study in another country or are retired there. However, agreement has not been reached on whether the EHIC would be available to those who travel to, or go and live in, another EU country after the UK has left the bloc. It would seem that the EU wants discussions on that to be included in the negotiations on the future relationship between the UK and the EU, which will come only after sufficient progress has been made on the divorce issues.

Our amendment seeks to prioritise the negotiation of continued access to existing EU reciprocal healthcare schemes, or the creation of comparable alternatives. We need to fully assess the impact which loss of access to the schemes might have on patients and health services. For the UK, this approach would ensure continuity of care for its citizens living abroad and ease of access for UK citizens visiting the EU or EEA and avoid increased demand on and costs for the NHS.

3.15 pm

For the EU this approach would secure access to reciprocal healthcare for EU citizens visiting or residing in the UK and maintain ease of travel for UK visitors to the EU, including holidaymakers. Should there be a failure to agree a withdrawal agreement by March 2019, access to reciprocal healthcare arrangements for UK citizens and residents within the EU and EU citizens and residents within the UK would end. This could lead to significant disruption for those individuals' healthcare arrangements, an increase in the cost of insurance and uncertainty regarding accessing healthcare abroad. Moreover, the NHS may face a drastic increase in demand for services, which would increase its costs and place greater pressure on doctors and clinical staff because the UK citizens living in, or visiting, the EU would be required to return to the UK for treatment or purchase expensive healthcare or travel insurance, thus increasing pressure throughout the whole system. This is an issue on which it is very important that there is certainty, and that we know what will happen in March 2019.

I turn to Amendment 11. For some time now, it has not been possible to develop a new medicine in one country. This is a global industry and you need to run your clinical trials everywhere. Patients in the UK can access EU-wide trials for new treatment, particularly for rare diseases and in relation to children. Should the UK find itself unable to access this network, there may be an impact on the high-quality research in which we get involved, to say nothing of the funding of that research at UK institutions. From the clinicians' point of view, participating in trials means that they get to know and experience the use of medicines under development. A lack of engagement, however, means that they can miss out and will know about the advantages and disadvantages only once an approval has been given. At present, gene therapies, cell therapies and all the oncology therapies are regulated at a European level. This is the cutting edge of drug therapy. For example, around 70% to 80% of the drugs under development are biologically based, and for many of those the work is often initiated here in the UK. We really are at the forefront of this work. Antibodies and DNA were discovered here but we cannot do clinical trials just in the UK because they require a larger pool of patients, particularly with rare diseases. It is important therefore that we have a wider network and the funding to keep those trials moving. As we negotiate our exit from the EU, all this seems in jeopardy.

The UK's strong science base, world-leading universities and an NHS which provides a huge patient database and source for trials mean that we could possibly try to go it alone. However, even if we develop and produce approved medicines on our own, it will be difficult for us to break into an EU market from a regulatory point of view. As we are not the largest market in terms of sales, and if we cannot ensure that we run trials, we will slip down the list of where companies want to do their work. Therefore, as the UK negotiates a new relationship with the EU, significant challenges must be overcome, not just to ensure the stability and continued growth of the UK's pharmaceutical industry but to ensure that patients can continue to access the medicines they need. Ensuring close co-operation on medicines and continued collaboration in clinical trials is crucial.

The clinical trials regulation—CTR—that the UK was heavily involved in developing will harmonise the assessment and supervision process for clinical trials via a central EU portal and database being set up by the European Medicines Agency. Implementation, however, has been pushed back because of delays in the establishment of the EU portal and database, meaning that it will be implemented in 2019 rather than this year. The CTR therefore will no longer be automatically captured by the EU (Withdrawal) Bill and the Government's planned response remains unclear despite what the Minister said in a letter to my noble friend Lady Hayter on 26 January, which provided some comfort in this area. We have tabled this amendment because we think it is vital that Ministers set out a strategy that will ensure the mutual recognition of medicines and clinical devices licensed in both the UK and the EU and will resolve the issue of the European Medicines Agency and the portal and database which will be so important for the development of these medicines. Like Amendment 9, this amendment seeks to ensure that the European Communities Act 1972

[Baroness Thornton]
is not repealed until the Secretary of State has set out a strategy for the continued mutual recognition of medicines and clinical devices licensed either in the UK or in the EU.

I am very grateful for the support that these amendments have received from across your Lordships' House and I hope that the Government will be able to provide sufficient certainty to put millions of our fellow citizens' minds at rest. I beg to move.

Baroness Jolly (LD): My Lords, I support the amendment on reciprocal health arrangements in the name of the noble Baroness, Lady Thornton, to which I have added my name. I cannot imagine what it must be like to go on holiday to the EU without packing my passport with my EHIC tucked in the middle for security and assurance. I think that I was luckier than the noble Baroness: my children managed to stay well throughout all their holidays.

I am also happy to support Amendment 353 in the name of my noble friend Lord Stephen, Amendment 11 in the name of the noble Baroness, Lady Thornton, concerning medicines and medical devices, and Amendment 205 on the EHIC.

I have Amendment 101 in this group, which is about over-the-counter medicines and devices—all the household names which we have grown up with and which could well be under threat if regulation is not sorted out well in advance of our departure from the EU, should that happen. The intention behind the amendment is to ensure that, on leaving the EU, the UK does not deviate from the existing rules for the regulation and licensing of over-the-counter medicines, medical devices and food supplements. These products are subject to the highest-quality standards and regulations, which the UK, as part of the EU, has helped to deliver over the last 40 years. They ensure that the healthcare products we use are appropriately safe and effective. This amendment seeks to ensure harmonisation and continued collaboration between EU and UK regulators with regard to consumer healthcare products, including hay fever tablets, cold and flu treatments and painkillers—the everyday items that we buy over the counter from our pharmacies and local supermarkets in taking care of our health and well-being to ensure that we continue with our day-to-day activities.

Throughout the manufacture and distribution process, consumer healthcare products face multiple checks and tests by highly skilled, qualified persons in various licensed facilities. They can cross multiple EU country borders throughout this process, yet, due to EU-wide collaboration on regulation, this is a seamless and streamlined process. Leaving the EU puts this process at risk. The UK imports an estimated £1.5 billion-worth of consumer healthcare products from the EU each year. Without harmonised regulatory standards within the EU and without agreeing to mutually recognised inspections and testing after Brexit, we risk having medicines held up at the border while they await retesting for release in the UK. Companies will have to set up new facilities to accommodate this, resulting in duplication, delays and disruption in the supply of basic healthcare products to UK shelves.

Without sufficient assurances that there will be no divergence from existing rules for the licensing and regulation of over-the-counter medicines, medical devices and food supplements, manufacturers will not have the certainty and stability to take action to guarantee the supply chain of these products. Companies have to take these actions now for products that are due to be on our shelves in two years' time so that there is no delay. Amendment 101 would prevent the Government deviating from these existing trusted regulations and standards. It would lay the necessary legislative groundwork for the regulatory harmonisation required ultimately to put in place the mutual recognition agreements that will guarantee that, post Brexit, we can still access the same consumer medicines, medical devices and food supplements as we can today.

The Government recently launched a campaign to drive more people to their local pharmacy to access self-care for minor ailments and self-treatable conditions. At a time of historically low rates of growth in NHS funding and annual cuts to public health and community pharmacy budgets, it is absolutely vital that public access to healthcare in the UK is not put at risk.

Will the Minister therefore commit to three things? First, will he commit to pursue regulatory harmonisation and mutual recognition agreements, not only for medicines but for medical devices and food supplements, as an objective of the phase 2 negotiations? Secondly, in the event of no deal, will he commit to ensure that UK regulators unilaterally recognise any decisions taken by EU regulators for the foreseeable future? Finally, in the event that there is regulatory divergence following withdrawal, will he commit to ensure that the industry is fully consulted on the period of time it will be given to adjust to the new arrangements, given that the sector body estimates that at least five years will be required to achieve all this? Then, and only then, will there be an assurance that, once the UK has left the EU, there will be no fewer consumer healthcare products on UK shelves and they will be no less safe than they are today.

Baroness Finlay of Llandaff (CB): My Lords, I will address Amendment 11, to which I have added my name. There are a large number of partnership agreements concerning medicines and clinical devices between the UK and Europe, and they are both formal and informal. They are important to our economy, as well as to the health and well-being of our citizens. Amendment 11 seeks to avoid these being ruptured. One of the most important of these international collaborations is of course the European Medicines Agency—the EMA—which provides and co-ordinates licensing, expertise and support for medicines and medical devices throughout the EU. For any pharmaceutical company seeking to license its product across Europe, the EMA is the body through which this is achieved. Our own domestic regulator, the Medicines and Healthcare products Regulatory Agency, operates as a crucial part of the EMA's regulatory network to ensure frictionless access to medicines for the NHS without delay.

As the Secretary of State for Health and Social Care told the House of Commons Select Committee

on Health on 24 January last year, we are one of the EMA's most important members, overseeing up to 40% of its testing and taking on,

"often the most difficult and challenging cases",

presented to it for testing and licensing. We have already lost the EMA's headquarters, and the 900 or so jobs it provided and the economic benefits that came with these, from London to Amsterdam. A greater concern is the potential loss of quality assurance that our membership presently guarantees. For example, the common trademark system allows parallel imports across Europe.

The Healthcare Distribution Association, which represents medicines and medical device suppliers in the UK, has warned that our departure from this framework risks medical shortages and potential increases in the cost of medicines. The Healthcare Distribution Association estimates that the current system saves the NHS more than £100 million a year. Its executive director, Martin Sawyer, has already warned MPs that, when it comes to drugs,

"we take the supply chain for granted",

and that Brexit could,

"throw a lot of cogs out of a very complicated machine".

It is a warning worth echoing in this Chamber.

Our current perilous predicament seems to originate from the Government's refusal to accept that appeals over licensing ultimately go to the European Court of Justice. But the EMA is not officially part of the EU, so there seems to be no constitutional justification for UK leaving it as part of Brexit. Indeed, this position has been put forward by the current chairman of the MHRA, Professor Sir Michael Rawlins, who in evidence to the Lords Science and Technology Select Committee last year stated that not only could the UK technically remain within the current system but that it may even be able to continue to influence new regulations and directives by doing so.

The sole reason that the Government have outlined for voiding their membership of the EMA is that it means accepting the jurisdiction of the European Court of Justice, which deals with legal processes such as licensing appeals. Having identified the jurisdiction of the European Court as one of their negotiating red lines, the Government therefore seem to believe that this renders the continuation of our membership untenable. In short, as is increasingly the case in a number of areas pertaining to Brexit, the Government would appear to be willing to jeopardise the security of our own medicines, drugs and medical devices for our citizens, and the prosperity of industry, for the sake of an ideological inclination.

3.30 pm

While both the Health and Social Care and Business Secretaries of State maintain that they would like to find a way to continue to collaborate with the EU in the interests of public health and safety, the Government have made it clear that they intend to leave the EMA post Brexit in the hope of securing a new regulatory alignment. One of the Government's outlines for this is in a policy paper on collaboration in science and innovation, published in September 2017, which stated that the UK would draw upon existing agreements between the EMA and third countries such as Switzerland or the USA to provide a precedent.

However, this is not the simple solution the Government make it out to be. In Switzerland, for example, regulatory processes mean that marketing approvals are agreed on average 157 days after EMA approval—in other words, almost six months after they otherwise would be under EMA authority. Both current and former heads of the MHRA have expressed concern that, given that the UK market is relatively small compared to that of Europe, America or Japan, drug manufacturers may not view obtaining a licence to sell in the UK as a priority. This apprehension has been restated in a report by the Government's own UK-EU Life Sciences Steering Committee, which admitted that, by leaving the EMA, the UK would, among other concerns, effectively become a "second priority" launch market.

The MHRA has stated that, rather than the sovereign authority the Government are so keen to impose on it, it wants a system of mutual recognition whereby the UK and the EMA abide by the recommendations of one another's regulatory systems. The Nuffield Trust has called for a single regulatory process across the two jurisdictions to enable pharmaceutical companies to approach either the MHRA or the EMA, with the resulting recommendation adopted potentially across both organisations. Such a situation would leave the UK outside the supervision of the European Court, even though the Commission and its decisions would remain within its domain.

That scenario may provide a best-case solution to the current predicament, but the Government must clearly commit to ensuring the mutual recognition of medicines and medical devices across the two areas to assuage present uncertainties. In realising their dream of escaping the oversight of the European Court of Justice, the Government, I fear, risk driving us towards a future which damages our life sciences sector and the global standing of the UK as a leader in this field, potentially jeopardising parts of our highly skilled workforce and risking delays in access to new treatments for patients.

Patients often ask about advances. They want to know about new-horizon drugs and trials. They willingly enter trials across many nations because they realise that that is the way to advance care, not only for themselves but for others. This applies particularly to people with rare conditions, where we will never have enough patients for a critical mass in this country to conduct the appropriate trials. So the mutual recognition of medicines and clinical devices across both the UK and the EU, as set out in Amendment 11, is essential for our scientific advancement and for our patients.

I will make one comment on Amendment 9. I fear that we may have a bureaucratic nightmare in trying to define who is or is not eligible, and the criteria for such eligibility, among people in our country—not only when we go abroad, as has been clearly outlined.

In answering, it would be helpful if the Minister could tell us exactly how much money is involved in cross-border billing at the moment and what the estimate is of the costs of the bureaucracy behind the processes that will have to be put in place in order that we can recoup funding for those people from Europe who happen to have an accident or fall ill while they are here.

The Earl of Clancarty (CB): My Lords, I apologise for not having spoken in the debate at Second Reading, but I was unable to be here on the first day. The amendments I am supporting for the most part try to deal with the obstacles put in the way of ordinary people, both young and old, who are on holiday, working or studying abroad. These include the amendments that seek to protect the European health insurance card scheme and Erasmus+, which is the subject of the next group. I have added my name to Amendment 9, moved by the noble Baroness, Lady Thornton, and I have my own Amendment 205 in this group which seeks specifically to retain the EHIC scheme and to which the noble Lords, Lord Judd and Lord Davies of Stamford, have added their names.

To focus on the holidaymaker's point of view, I am a great believer in the EHIC scheme. Like millions of others across Europe, I carry the card with me when I go abroad, and I certainly would not travel without it. It has been a help to me personally when I had a combination of a flu-like virus and asthma in Germany. It is also clear from the stories I have heard—ranging from needing stitches after a hotel poolside fall to pulled muscles and broken legs on the ski slopes—how extraordinarily helpful the scheme has been to others, and I have even heard about a case of amnesia. All these are situations where immediate medical attention is required. In those circumstances, the last thing people want to worry about when on holiday or on a business trip is having to book the next flight back to the UK or having to claim immediately on their travel insurance. Apart from the fact that treatment is free and comparable to what one would receive at home, the scheme reduces stress. In the case of a concussion that I was told about, it meant that the person could return to the hospital for monitoring without the worry of paperwork or bills. It also gives peace of mind to the many people who have not needed to use the card but carry it nevertheless—something which cannot be overestimated.

Once you have the card, it is a simple and bureaucracy-free system for the holidaymaker. It does not replace travel insurance, but works well in conjunction with it. I realise that my speech is an unashamed advert for a scheme which saves British people thousands of pounds in bills and reduces the claims and costs of travel insurance. The fear of course is that those costs will rise steeply if we lose the scheme. A replacement scheme or schemes might do all this, perhaps through agreements with individual countries, but presently the one card covers all the single market countries, the 31 EEA countries and Switzerland. Clearly, it would not be in our interests to adopt a scheme that is less comprehensive geographically, and retaining the scheme would be the easiest and most convenient option. If we stay in the single market in some form, there should be no problem.

It is worth noting that citizenship itself is not an aspect of the EHIC scheme; rather, it is based on country of legal residence so that British people living in France or Spain, for example, can apply for a card through their health services. It should not be forgotten that the scheme works for the benefit of British people living abroad as well as those from other countries living here. It is a properly co-operative system—a two-way street.

Accusations of health tourism always ignore what we as individual citizens get out of the system. A freedom of information question in 2015 revealed that in 2013-14, the treatment of ill British tourists in other countries of the single market cost more than five times that which European visitors cost the NHS. Perhaps the one improvement we can make here in the UK is to become better at recouping the moneys we are entitled to through the use of the scheme, and last year's Public Accounts Committee report, *NHS Treatment for Overseas Patients*, stated that the systems for cost recovery appear to be chaotic. Other countries recoup what is owed to them and there is no external reason why we cannot do so as well. But that does not invalidate a scheme that continues to work tremendously well for the benefit of millions of people throughout Europe, including millions of British citizens both here and abroad.

The process of leaving the EU has thrown light on a lot of the concerns of ordinary people that perhaps were taken for granted. The EHIC scheme is one of those areas. No one voted for higher travel insurance costs and no one voted for less healthcare support while they are on holiday. The Government should pledge to retain this scheme.

Lord Cormack (Con): My Lords, no one voted for insecurity. A very strong and powerful case has been made, particularly by the noble Baroness, Lady Finlay of Llandaff. This is a simple issue. Disease is no respecter of persons, boundaries or sovereignty. In chasing this mythical beast of sovereignty we seem to be prepared to lay so many things upon the altar that we need not lay.

It has been said in the course of this brief debate that we have no obligation to opt out of the EMA. My reading would support that. So why does a party that has always prided itself, for as long as I have been a member of it—for the last 60 years—on not being doctrinaire erect a doctrine and then seek every opportunity, regardless of the consequences, to jeopardise what exists and works perfectly well? It is a nonsense. I hope that there will be no vote on this amendment—it is a probing amendment—but I sincerely hope that, if the Government cannot accept the irrefutable logic of what has been said, we will return to it on Report and be well prepared to vote on it.

Baroness Blackstone (Lab): My Lords, I will speak on Amendment 11 and in support of what my noble friend Lady Thornton, the noble Baroness, Lady Finlay of Llandaff, and the noble Lord, Lord Cormack, said. I do so as the former chair of Great Ormond Street Hospital Foundation Trust, which I chaired for more than eight years until last summer. As many noble Lords know, it treats children with rare diseases and very serious illnesses. Much of its ground-breaking and innovative work, which is internationally renowned, is done as a result of, and based on, its research, much of which is carried out in collaboration with colleagues across Europe.

I will illustrate this in three different areas, which I think will bring home to your Lordships just how important it is that we do not abandon or neglect this issue. I will start with childhood cancer. Some 92% of

our most important clinical trials for children with cancer in the UK require international collaboration. In 30%, the UK is the lead country, co-ordinating the international collaborative trials. This leadership role would sadly change rapidly if we no longer followed the same regulatory framework for clinical research as the rest of the European Union.

I turn to childhood epilepsies. Children and young people with epilepsies that are resistant to current therapies represent, as a group, at least 137 rare diseases with seizures as a common symptom. Collaborative European multi-centred trials are, I stress, the only way forward in assessing new targeted treatments. There are simply not enough patients in these categories of the many different aspects of epilepsy to do this work in one country alone.

I turn thirdly to children with HIV infection. Trials in paediatric HIV infection over the last 25 years have all been international. The UK works in partnership and collaboration with trial centres throughout Europe, and in particularly close collaboration with Italy, France and Spain. HIV treatment is very fast moving. It is vital that medicines for children do not get left behind. Our important European collaborations, including EU funding of our network, training and capacity building, have ensured the timely availability of drugs for children, not only in Europe but worldwide.

I cannot overstate the concern of the consultants and research specialists involved in this work about the threat posed for them by leaving the European Union. I do not think it an exaggeration to say that, without such work, the lives of very sick children would be sacrificed. I hope we can think again about this.

3.45 pm

Lord Stephen (LD): My Lords, while I strongly support all that has been said about the continuation of the EHIC scheme, I want to speak to Amendment 353 in my name and thank my noble friend Lady Jolly and the noble Lord, Lord Warner, for adding their names to it.

The amendment would require the UK Government to make arrangements for an independent evaluation of the impact of the European Union withdrawal legislation and of Brexit on the health and social care sectors across England, Scotland, Wales and Northern Ireland. It is intended to be a simple, common-sense amendment. In the Brexit debate, a lot of attention is on trade and the economy, or, today, on the customs union, but our care services and our NHS will also be affected in a major way by our withdrawal from the EU. There will be many impacts on care and support for children and young people, for people with disabilities, for people with long-term conditions and for those with additional support needs. Not all these impacts are yet known or understood. It is clear, however, that many are likely to be negative. That is certainly the risk and it is why we must be vigilant and aware.

So the purpose of the amendment is to say, "Let's be concerned about these issues; let's give them a higher priority than at present, and let's monitor the situation very closely, because if we get it wrong, NHS services and the care of thousands of vulnerable people could be badly affected". The proposal is to review such issues not more than one year after Brexit takes place to see what has happened, to understand the impact and to allow the Government, local authorities and the NHS to take appropriate action. The intention is to involve in this independent process the devolved Governments, the staff of the NHS and our care services, charities, voluntary organisations and others.

The amendment was inspired by Camphill Scotland, which has many EU staff and volunteers living and working in its outstanding care communities. Camphill also operates in England, Wales, Northern Ireland and right across the EU, and now around the globe, but its very first community was on the Camphill estate in Milltimber, near Aberdeen in Scotland.

More than 50 charitable and voluntary organisations support the amendment. These organisations do not care about the politics of Brexit; they care about the vulnerable children, disadvantaged adults, older people and those with mental health problems or long-term illnesses to whom they give support.

I believe that the amendment will be strongly welcomed also by many people in the NHS, not all of whom were entirely convinced by the message on the side of the "Boris bus" during the campaign. Staff from right across the EU work in our NHS and in our care services. More than 10% of our doctors in the UK are from EU countries and, in total, more than 60,000 staff from the EU work in our British NHS, with many thousands more in the charitable and voluntary sectors. If Brexit means that we lose only some of these people, we could still have big problems. If it becomes more difficult to recruit new staff from EU countries, this could become a major crisis for our hospitals, our care homes, our special needs schools and many other vital services.

I ask the Government and the Minister to respond positively to the amendment. It is the sort of amendment that makes sense and can so easily be agreed to, with little to lose and a great deal to gain.

Lord Davies of Stamford (Lab): My Lords, I have put my name to Amendment 205, which has already been very ably explained by the noble Earl, Lord Clancarty. First, I want to say a word or two in support of the noble Baroness, Lady Finlay, who made a most impressive speech. I hope that, for once, the Government will listen to her; they certainly ought to because she has a very special position of respect in the medical world. The medical profession in this country has been, at least up to now, one of the leading professions in the world, and she has a great deal of experience behind her and behind the words she set forth just now.

On that matter, as the noble Baroness said, the decision to leave the EMA was completely gratuitous. There was no reason for it at all. It was going to be perfectly possible to carry on with full membership while we left the European Union. A lot of us did not want us to leave the European Union—your Lordships know that I am among them—but there is no point in throwing away the whole loaf if you can keep even 5% of the bread. In this case, there would have been no difficulty at all in our remaining part of the EMA. The

[Lord Davies of Stamford]
Government have given no explanation for this extraordinary move, which is a threat, a potential threat at least, to the advance of medical science and a certain threat to the position of the British pharmaceutical industry and to the willingness of companies to set up pharmaceutical operations and research and development operations in this country in the future—indeed, to the willingness of British pharmaceutical majors to remain as committed to this country as they have been up to now. It has really quite devastating industrial as well as medical effects.

The only reason we have ever heard for doing this is that we could not stay in the EMA because it involves some contact with the CJEU. That is quite extraordinary when this is a matter involving the health of the nation and involving one of the major industries in this country, of which we are all very proud. We do not have all that much in the way of successful manufacturing these days, but we undoubtedly do extraordinarily well in the pharmaceutical area, or have done up to now, and this industry is now to be handicapped for no better reason than one of theological fanaticism. It is incomprehensible to most of the world, either inside or outside this country. I hope that the Government will weigh very carefully the words of the noble Baroness and the representations that I know they have received from many branches of the medical profession and of the pharmaceutical industry, and for once just take account, soberly, carefully, thoughtfully and calmly of the values involved that are being thrown away and threatened by this extraordinary decision. I give an undertaking that I shall not gloat in any way if the Government do a U-turn on this: I shall congratulate them, sincerely and openly and I hope that they can find the moral courage to do what is right in this case.

I turn to Amendment 205, which was very ably set out by the noble Earl, Lord Clancarty. I shall not repeat what he said, but I want to talk about one section of the population that will be particularly affected by the abolition of the health insurance card in the European Union, and that is older people. Perhaps I should declare an interest here because I am certainly an older person, but I may be lucky because I have not so far been refused health insurance by anybody or charged exorbitant sums and probably, if I did have to pay a premium on my insurance policy to travel aboard, I would be able to afford to do so. A lot of people in this country, probably the majority, would not.

We all know that healthcare costs can be enormous, particularly in areas such as North America. One American friend of mine, who can actually afford to pay, was recently given a bill for more than $35,000 after a two-day stay in the Houston Medical Center. It involved a number of diagnostic tests, admittedly, as well as the board and lodging in the centre, but it gives an impression of the kind of costs that one can incur. There are countries in the world where you can get first-class medical care much cheaper than you can in Europe, let alone America, such as India, but not many. Countries tend to have medical care which is not up to the standards of North America, Japan or the European Union, or the costs are quite exorbitant, or in many cases both. Switzerland is another example, like the United States, where it is both.

For people who are older or have some particular medical record which makes them a bad insurance risk, underwriters will want to charge a very strong premium for insuring them at all. It is already quite difficult for them to travel outside the European Union. Many of us know people, friends of ours, who for that reason will not now travel outside the European Union. They will not even go and visit their family in the United States or Canada. They hope their family will come and visit them here, of course, but they simply cannot take the risk of falling seriously ill outside the European Union.

If the Government have their way and we go down this road that they have set out for us, the effect will not be just that people cannot go outside the European Union; they will not be able to go to Calais, Amsterdam, Berlin, Dublin, Copenhagen or Stockholm. That is the most terrible restriction of the horizons of a very large number of people. People may not have much time to travel when they are younger. They have business and professional commitments and a lot of strains on their budget because they are bringing up children and so forth. A lot of people look forward to being able to travel when they have retired, and the Government are saying to them, "When we have got this Bill through, you guys will not be able to travel at all—ha ha! You will be stuck here in this country", which of course will be wonderful because we will have had Brexit and paradise on earth will result. That is a terrible—indeed, devastating—piece of news for a very large number of deserving people in this country. Once again, I hope the Government will have second thoughts.

Lord Wigley (PC): My Lords, I will speak to Amendment 353 in the name of the noble Lord, Lord Stephen. I thought I had appended my name to it but clearly it had not quite arrived. I also support the comments made on the other linked amendments. I particularly identify with the comments of the noble Baroness a moment ago about Great Ormond Street Hospital, whose brilliant services we as a family had to avail ourselves of some decades ago. I cannot speak too highly of it and I hope that the points that were so well made are noted.

This group of amendments touches on one of the most sensitive areas of public policy: health and social care. There is a widespread unease in Wales—as there is, no doubt, throughout the rest of the UK—about the potential impact of Brexit on these vital services. On one level, one might not expect changes in our trading relationships to impact this sector as severely as, say, manufacturing or agriculture, but in fact there are already discernible effects on that key component of healthcare: the availability of a skilled workforce with adequate resources. A totally unnecessary uncertainty has been created, both for the existing NHS workforce, many of whom have come to the UK from EU countries, and with regard to recruiting potential new staff from those countries.

First, I have heard from those involved in healthcare—in Wales and in England, as it happens—about skilled staff employed in the NHS now actively seeking similar posts in other EU countries, just in

case they feel forced to leave at a later date, perhaps for professional or social reasons. They fear that others will do likewise and that the available jobs will then dry up and they will need to move quickly to look for them. Secondly, I heard from a very authoritative source that EU-based specialist staff are currently holding back from applying for jobs in the UK because of the uncertainty caused by Brexit. Incidentally, this is not impacting just hospital services but university medical research and manufacturing companies in the healthcare sector.

The potential reduction in the number of key workers available to the NHS needs to be very carefully monitored. If we are to go for a soft Brexit in which we will agree the free movement of those coming for specific jobs and guarantee no dilution of their employment rights, that is all well and good; we might not need the amendment. But at this stage we just do not know what sort of Brexit awaits us. If it is a hard Brexit, with no agreement, we most certainly do need the review mechanism contained in this group of amendments, and we need it for a purpose because in a no-deal scenario we may need to make alternative plans to import key workers from other parts of the world—if we can find them—and to do so quickly. For these reasons I support the amendment.

4 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): Let me first thank noble Lords very much indeed for bringing this important topic before the House today. I reassure them that the Department of Health and Social Care is actively supporting my department in its negotiations with the EU, including forming part of the negotiation team where the topic is of direct relevance to healthcare. It is also working closely with its arm's-length bodies, the territorial offices and others across government in preparing for EU exit under all eventualities.

I will address this group of amendments now but I note that the noble Lord, Lord Warner, who I think is not in his place at the moment, has also tabled an amendment on health to Clause 6. This will be responded to formally when we reach that group and I note his specific interest in the subject.

Amendment 11, in the name of the noble Baroness, Lady Thornton, would delay the repeal of the European Communities Act 1972 until such time as the Secretary of State has set out a strategy for ensuring the mutual recognition of medicines and devices between the EU and UK. The Government have already set out a very clear offer to the EU for the UK to continue to work in partnership in the area of medicines. It is in the interests of patients and the life sciences industry for us to find a way to continue UK-EU co-operation on medical regulation, even if our precise relationship with the EU will by necessity change. Discussions are ongoing and the outcome will form part of our future relationship with the EU. We cannot and should not delay commencement of this Act until those discussions have concluded. The UK's medicines and medical devices regulator, the MHRA, is a strong leader that will continue to ensure that medicines and medical devices are safe and effective, regardless of the outcome of negotiations and any agreement on recognition in this area. Indeed, it is currently recognised globally as an authority in its licensing and inspections.

In response to the questions from the noble Baroness, Lady Finlay, and the noble Lords, Lord Cormack and Lord Davies, I can be extremely clear that the UK's preferred outcome is to find a way to continue to co-operate on medicines regulation with the EMA. We have made that extremely clear to the EU. Even though our relationship with the EMA will have to change as we leave the EU, it is in our mutual interests to continue to co-operate and share scientific expertise. We believe that desire is shared by the EU.

Baroness Thornton: Can I ask for some clarification from the Minister about his statement about the preferred outcome? What exactly does that mean? If we do not achieve what we want to in that preferred outcome, what exactly happens and what do we do next? What is the timescale for this? That is why the amendment is framed in the way it is.

Lord Callanan: It is obviously difficult for me to speculate on what happens if we do not achieve the outcome that we want. As I said, we strongly believe that since we contribute an awful lot of work through the MHRA—something like 40% of the EMA's work is contributed to by UK authorities—it is in our mutual interests to continue to co-operate. If that is not possible, we will set out an alternative course of action but we believe that it is and should be.

Baroness Jolly: We have a window of about two years in which to get this right. I was talking to the trade bodies for over-the-counter medicine last week and they were saying that a change to make all over-the-counter medicines UK-based would need about a five-year timescale. It is just not doable, so there is an absolute imperative to get these regulations sorted out in pretty short order.

Lord Callanan: The noble Baroness makes a powerful point. It is one of our priorities. We have a number of priorities in the negotiations but it is important that we get this one right. The MHRA already licenses nationally 90% of all medicines available in the UK but there is a small percentage regulated abroad, so we need to reach a mutual agreement on that.

Amendment 101, tabled by the noble Baroness, Lady Jolly, would prevent the Government making changes to the licensing or regulation regimes for over-the-counter medicines, to which she just referred. The Government will need to correct deficiencies arising from withdrawal in relation to the regulation regimes for over-the-counter medicines, self-care medical devices and food supplements where the UK's exit from the EU would result in the retained EU law which governs the regimes being deficient or not operating effectively and where manufacturers of these products would have to adapt to divergent UK requirements, potentially leading to a temporary or permanent withdrawal of their product from our market.

The noble Baroness asked a number of specific questions. The Government have already made it clear that we wish to retain a close working relationship after exit. The Government have been engaging with industry and research charities through the ministerial

[Lord Callanan]
and industry co-chaired life sciences group, and we will continue to work with that group and industry to ensure adequate notice and sufficient time to implement any changes necessary.

Whatever the outcome of negotiations, the principles which will underpin post-Brexit regulation for this sector will be that patients should not be disadvantaged, that innovators should be able to access the UK market as quickly and simply as possible, and that we will continue to play a leading role in Europe and the world in promoting public health. Over-the-counter products will continue to have an important role in relieving pressure on health professionals and promoting consumer choice to improve public health.

In the event that it is not possible to reach a deal that secures ongoing, close collaboration between the UK and Europe, we will set up a regulatory system in the UK that protects the best interests of patients and supports industry to grow and flourish. I hope that my comments will provide the noble Baronesses, Lady Thornton and Lady Jolly, with the reassurance they need not to press their amendments.

Amendments 9 and 205 were tabled by a number of noble Lords, including the noble Baroness, Lady Jolly, and the noble Earl, Lord Clancarty. The Government recognise how important reciprocal healthcare is to the 190,000 UK pensioners who currently benefit from it, to UK tourists who use the European Health Insurance Card scheme and to EU nationals visiting and living in the UK. This point was powerfully made by the noble Lord, Lord Davies. We want to protect reciprocal healthcare arrangements and have made important progress towards this in this first phase of negotiations. It is the intention of the UK and the EU that the final withdrawal agreement will protect reciprocal healthcare rights for UK citizens resident in the EU on exit day and vice versa on a reciprocal basis.

Lord Adonis (Lab): The Minister said that important progress has been made. Will he tell the Committee what that progress is?

Lord Callanan: The important progress was announced in the agreement reached in December in the first phase of the negotiations. Reciprocal healthcare benefits were guaranteed for existing UK residents in the EU and for existing EU residents here. The next phase is what happens in the future.

Lord Davies of Stamford: The points I raised related not to the important matter of residents, whether continental residents living here or British residents living on the continent, but to travellers—people who may want to travel for a short period for tourism, family reasons or what have you. Has any progress been made on that front? If not, are the Government proposing to make any progress and, if so, what progress?

Lord Callanan: That will be for the next phase of the negotiations. We have guaranteed the right of existing residents from the EU in the UK and for UK residents in the EU. The next phase of the negotiations is for people who will travel there in future.

The Earl of Clancarty: Is the Minister saying that the Government intend to retain the EHIC reciprocal agreement or is he talking about something else?

Lord Callanan: We would like to retain an arrangement similar to the EHIC if possible. We cannot give any guarantee about what might happen in the next phase of the negotiations.

We welcome the progress made, but we are clear that we want a wider agreement on reciprocal healthcare. I am sure that noble Lords will appreciate that this is not something we can simply legislate for in the withdrawal Bill, but must be negotiated with the EU, which is what we have been doing. We are very clear that we want to protect reciprocal healthcare arrangements.

On 8 December, the UK and EU Commission reached an agreement which delivered on the Prime Minister's number one priority: to safeguard the rights of people who have built their lives in the UK and EU.

Baroness Finlay of Llandaff: I asked the Minister for information about billing across borders to date, because that information must have been available to the Government before they started negotiating over the travel arrangements.

Lord Callanan: I will need to write to the noble Baroness with the exact amount of billing, as I do not have those figures in front of me at the moment.

I turn to Amendment 353, tabled by the noble Lord, Lord Stephen. The Government already keep NHS performance and health outcomes constantly under review, including through the NHS outcomes framework, which measures a number of health indicators intended to form an overarching picture of the current state of health and care services in England. We are committed to positive and productive engagement with the devolved Administrations going forward as we seek a deal that works for the entire United Kingdom.

The Secretary of State for Health and Social Care also publishes an annual assessment on the performance of NHS England, including how it has met its mandate from the Government, as well as an annual report on the overall performance of the health service.

Lord Wigley: As the Minister has confirmed that there is in fact ongoing, detailed monitoring of these matters, can he confirm that we are losing National Health Service staff returning to the European Union and are having greater difficulty in recruiting from Europe to fill the vacant spaces?

Lord Callanan: I am not sure that is the case. Obviously there are people returning to the EU all the time, and different people coming to the UK to take up job offers. We can get into detailed figures, but I do not think there is any large-scale exodus of health service staff.

For the reasons I have set out, this amendment is both unnecessary and risks creating unwelcome new burdens at a time when that is least appropriate. I hope I have been able to provide noble Lords with sufficient reassurance.

Lord Cormack: My noble friend is batting on a difficult wicket. We understand that. He has my total personal sympathy for the plight in which he finds himself, but what he has said this afternoon just ain't good enough. It is important that he takes on board what has been said during this debate, particularly by the noble Baroness, Lady Finlay of Llandaff, and that when we come to this on Report, he has some substantial and detailed specific progress to report to your Lordships' House.

Lord Callanan: I thank my noble friend for his comments. A lot of these matters are still to be negotiated in the next phase. We made substantial progress in the first phase, and we will endeavour to ensure that we make good progress to achieve a good working relationship with the EMA and to guarantee the rights of travellers through a system similar to the European health insurance card for those travelling in future. I hope to be able to provide more information on Report.

Baroness Finlay of Llandaff: Following on from the comments of the noble Lord, Lord Cormack, could the Minister provide us with data in writing on the numbers of EU staff who have applied for jobs in healthcare in the last 12 months and the numbers of EU staff who have left? We need to have the data rather than bald statements about what is happening based on anecdotes, because it may well be that the Minister is hearing a quite different set of anecdotes from the ones the rest of us are hearing.

Will the Minister also confirm, or not, my interpretation of his comments on the outcome if there is no agreement? Here I return in part to Amendment 11, but to others as well. If there is no agreement with these regulations, will the Government then simply adopt European regulations de facto? I cannot see any other way for our pharmaceutical and biotech industries to continue to function. We need them for our economy, quite apart from needing them to ensure that there is a supply of medical and biotech advances for our patients. It is particularly important because biotech is an emerging field in which to date, within Europe, the UK has been the leader. I should declare an interest here because my son is a senior lecturer in bioengineering and cardiology, so he is involved in some of this ground-breaking work.

It would be helpful for us to know that and whether, in the context of there being no deal, the Government are already establishing dialogue between different Ministers in the devolved Administrations. As the noble Lord, Lord Wigley, has pointed out, there are very real implications for Wales, particularly west Wales—I declare my interest as someone who lives and works there—because we know there are large gaps there. We have to know how the Government intend to behave in the event of there being no deal at all.

4.15 pm

Lord Callanan: The noble Baroness has made some valuable points. On the question of data on EU staff applying to jobs in the UK, if that information is available then we will certainly share it with her.

She asked what happens if there is no agreement. As I said, the MHRA already issues national licences for some 90% of medicines on the UK market. If we are no longer co-operating with the EMA on the regulation of new novel medicines, the UK will ensure that our own procedures do not lead to any delay in patient access to new medicines and are no more burdensome to industry.

The noble Baroness's point about working with the devolved Administrations is a good one and we will ensure that that happens.

Baroness Thornton: My Lords, I thank the noble Baroness, Lady Finlay, who as always is much more qualified than me and indeed most of the House, for her support. I respectfully suggest that the Minister needs to actually talk to some of these bodies about how complicated, difficult and costly it will be if we do not reach an agreement. That needs to be taken into account.

I thank noble Lords for their support across the House for this suite of amendments. The amendment from the noble Baroness, Lady Jolly, is important and—like my own, I hope—very practical. This is about what medicines people buy over the counter, what health supplements they have access to and whether those will change post Brexit.

The noble Earl, Lord Clancarty, tabled Amendment 205, and I thank him for his support for my amendment. He and I want the same thing: we want this scheme, which protects people's right to healthcare, to continue, and as the noble Lord, Lord Cormack, said, its current form would be the easiest form for it to do so. It is often the case that the noble Lord, Lord Cormack, makes the observation that you wish you had—in this case, about disease knowing no boundaries. He is absolutely right.

My noble friend Lady Blackstone made an eloquent point about cutting-edge research and the importance that that has for children and the rare diseases that they experience.

I do not deny that the amendment from the noble Lord, Lord Stephen, is important. It will be very important that we know what the impact of Brexit has been, not just a year later but ongoing. However, the argument that we are having on the earlier part of this suite of amendments is about what happens in the negotiations and what happens if they fail. It is about the action that we take now.

The noble Lord, Lord Wigley, is quite correct about the uncertainty that has been created for NHS staff in terms of their retention and recruitment. In fact I asked a Question of the Health Minister about precisely that not so long ago. Those figures have been collected by organisations such as the Royal Colleges so we know that the number of nurses coming from Europe in the last year has fallen by, from memory, around 80%. That is a huge drop in the number of nurses prepared to come and work in this country from Europe.

I say to the Minister that we understand—I agree with the noble Lord, Lord Cormack—that this is a difficult time and the Government are in the middle of negotiations. However, it is a long time since the referendum and we are a short time away from falling

[Baroness Thornton]
off the edge of the Brexit cliff, and issues of licensing of medicines and access of citizens to healthcare can none of them brook a two or three-year negotiation after Brexit because of the suffering that would cause and the impact it would have. That is what the amendments concern.

I hope that, between now and the next stage of the Bill, we will make some progress on both those issues. If we do not, we shall return to them. I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10

Moved by ***Lord Hunt of Kings Heath***

10: Clause 1, page 1, line 3, at end insert—

"( ) Regulations bringing into force subsection (1) may not be made until the Secretary of State has set out a strategy for seeking to remain a member of, or a strategy seeking to maintain equivalent participatory relations with, Erasmus+ and Horizon 2020 and Horizon 2020's successor programmes."

Lord Hunt of Kings Heath (Lab): My Lords, we now come to an amendment which concerns two EU programmes which are clearly at risk as a consequence of the Brexit withdrawal. The first is Horizon 2020, which is a major funder of research, principally in our universities. One cannot talk about this funding programme without making reference to the impact on the UK economy.

I remind the Minister that the Government's industrial strategy sets a goal for the UK to have the world's most innovative economy. It states that we are recognised as a global leader in science and research but that neither the Government nor the private sector are investing enough in R&D. As the Government's paper points out, we spend 1.7% of GDP, compared with 2.8% in the US and 2.9% in Germany. Commendably, the Government have set the goal to raise total research and development investment to 2.4% of GDP by 2027. They state their intention to work with universities and research institutes to increase global investors and R&D activities taking place in the UK. That is highly commendable but also challenging in the context of Brexit.

There are a number of factors in this. First, I hark back to our previous debate on regulation. The Minister says that because 90% of medicines in use in the UK are licensed by the MHRA, we should not worry if there is no deal, and the MHRA becomes a stand-alone regulator. That misses the point that any medicines licensed by the MHRA in this country can then be taken to be licensed throughout the EU. The reason is that we play by the same rules. Unless we reach a mutual recognition agreement with the EU, it is absolutely clear that pharma's investment in research in the UK will fall dramatically. It is not just regulation, it is funding, it is multicentre research collaboration, it is research policy and it is movement of researchers.

At the moment, many of those research programmes are at risk, none more so than Horizon 2020. This is a programme which funds major research in our universities. Rather like the UK's general research position, we have a hugely impressive number of universities engaged in high-quality research. We know that despite the relatively low share of global investment in R&D, UK research accounted for 50% of the world's most highly cited research articles. Part of that success has been in attracting more than £1 billion from overseas every year, with £840 million coming from the EU in 2015-16. Horizon 2020 is the biggest EU research and innovation programme and the UK has done very well out of it. It is the second in order of recipients of that programme within the EU. Around 15% of funds allocated from Horizon 2020 have gone to the UK. Indeed, Cambridge, UCL, Imperial and Oxford universities are the top four recipients to date. Other universities, including Edinburgh, Manchester and Birmingham have also done well.

Clearly, the question is: what will happen with withdrawal from the EU? At the moment, the position is that UK researchers will remain fully eligible for EU funding for at least the next 17 months. The Government have given a guarantee to pay out any funding applied for and awarded before we leave. But, of course, the question is: what happens post 2020? The Government's position on that is non-committal. We have had positive messages from the Prime Minister in her Lancaster House and Florence speeches, and in the Government's science and innovation discussion paper, but since then, there has been no clarification at all of the UK's status in relation to this funding after Brexit.

Of course, the worry is that simply the loss of funding will have a big impact on our research capabilities and also collaboration with European universities. My amendment would ensure that we either remain a member of, or seek to maintain some kind of participatory relations with, Horizon 2020 and its successor programmes. I should say that part of the problem is that if academics do not know, it is very difficult for them to plan research collaborations with European universities going beyond the due date. Any week lost in terms of uncertainty is sure to put some of those programmes at risk.

I propose a similar approach in relation to the Erasmus+ programme. I should have thought that, post Brexit, the need to encourage young people from the UK to maintain and develop links with the rest of Europe is self-evident if we are to avoid drifting apart from the continent. Yet our withdrawal from the Erasmus+ programme could make that more difficult. This EU-funded scheme has enabled 600,000 people from the UK to go abroad to study, train or volunteer over the last 30 years. It is open to education, training, youth and sports organisations across all sectors of lifelong learning, including school education, further education, adult education and the youth sector, as well as higher education, for which I suspect it is most well known. For young people, this has had a hugely positive impact, leading to better job prospects and lower unemployment. The British Council, which oversees it, reports that young people who participate in international opportunities return with increased language and intercultural skills.

The programme is not just about the EU—it has enabled UK universities to develop new or to reinforce existing partnerships with universities in Asia, Latin

America and the US. The British Council believes that the UK should seek to remain in a successor Erasmus+ programme, and I very much agree with that. If we do not, the UK will have to set up numerous bilateral relationships which will be time consuming and costly, and frankly, I doubt the capacity of government to be able to do it any time soon. Here we have an entirely positive programme, enabling young people from this country and other countries of the EU to enjoy fulfilment and open their horizons. I should have thought that at least in this programme, it would have been possible to agree our future participation. I hope the Minister will be able to confirm that. I beg to move.

4.30 pm

Baroness Garden of Frognal (LD): My Lords, I have added my name to Amendment 10, tabled by the noble Lord, Lord Hunt, and have Amendment 163 in this group in my name and those of my noble friend Lord Storey and the noble Earls, Lord Clancarty and Lord Dundee. The noble Lord, Lord Hunt, has set out clearly why we feel that assurances on Erasmus+ and Horizon 2020 are essential if our world-leading universities are to retain their reputation and our students are to be given the best opportunities to broaden horizons.

Does the Minister recognise the benefits of scientific research—including, as the noble Lord, Lord Hunt, has set out, for the economy? In particular, can he provide some clarity on how the UK Government intend either to remain in or replace the range of EU funds as we leave the European Union? Of course, it is not only the funding. Crucial to research is collaboration. Working with other European researchers and academics has resulted in work of benefit to the UK, the EU and, indeed, worldwide. As a recent CBI report set out:

"With science and innovation increasingly becoming globalised, the UK's role as a leading global scientific power is at risk without an agreement".

What a loss it would be if we were to walk away from these EU programmes.

Horizon 2020, as we have heard, is the biggest EU research and innovation programme, with nearly €80 billion of funding available over the seven years of 2014 to 2020. In addition to Horizon 2020, there is a range of other EU-based funding, which has included, for instance, valuable support for environmental science and the environment, whose future must also be carefully considered by the Government. Protecting the environment is best done in collaboration. We believe that these funds are key.

Horizon 2020 is a highly important source of funding for research in the UK. There are other funds such as Interreg and Life, which support applied research in the UK and are instrumental in turning academic research into public policy and maximising its benefits for society. As for the Erasmus exchange programme, it has been described as one of the greatest culture and character-building programmes that you can have in your whole life. The Liberal Democrats have long wholeheartedly supported Erasmus. It is heartening to hear that wholehearted support coming from the Labour Benches—it would be even better to hear it from the Government Benches, and not just for the niggardly couple of years that Ministers have mentioned so far but as an ongoing and enduring commitment.

Erasmus is aimed at cross-border co-operation between states to aid the growth of international studying, international understanding and fostering good international relations—and my goodness we will need all those in spades, if and when we leave the European Union. With over 4,000 students involved in the programme at any one time, it offers an excellent chance of experience abroad, which, we know, is highly valued by employers. Those from disadvantaged backgrounds can be helped by the Erasmus+ EU grant to help cover the travel and subsistence costs incurred in connection with their period of study abroad.

Erasmus has been of life-changing importance to so many young people from all walks of life. It would be an act of folly not to continue this scheme for our young people. I hope the Minister will respond favourably to these two amendments, in the interests of students, researchers and the greater good of the country.

Lord Patel (CB): I support this amendment and will go a bit further. As we have heard, the UK is a major player in research and innovation in European countries and worldwide. A recently published document, *Building a Strong Future for European Science: Brexit and Beyond*, is Wellcome's recommendation from the future partnership project, based on a survey of 200 institutions and top scientists in Europe. It might form the framework based on which the Government may wish to negotiate beyond Brexit.

If nothing were to change and we were to remain as we are, there would be no problem—the UK would remain a major player in science and innovation. But on the basis that we will have to negotiate post Brexit, I would say, as the document says:

"Brexit presents the UK and EU with choices about their future relationship on research and innovation".

European nations, including the United Kingdom as a major player, have developed,

"a world-leading location for research and innovation".

The EU and associated countries—there are countries which are not part of the EU but are currently associated with Erasmus and other EU research programmes—

"should accelerate and deepen development of the European Research Area (ERA), to help Europe and EU Framework Programmes capitalise on the strengths and talents of a wider group of nations".

Each of these nations, including the UK, contributes heavily to these programmes. We have to find a way to continue, both for Europe and for us.

An EU-UK research and innovation agreement for Brexit could be possible:

"Evidence and views gathered through the Future Partnership Project showed the importance of finding a way for the EU and UK to maintain their important partnership".

There was a strong view, both from scientists and research organisations in Europe, outside the UK, that they would like this partnership and strong relationship to continue.

As to funding, as has already been mentioned:

"The EU's Framework Programmes are the most effective multilateral funding schemes in the world".

The UK needs to be part of this, so:

"The UK should therefore secure Associated Country status in an excellence-focused Framework Programme 9"—

[Lord Patel]

that will follow programme 8—

"as this would be the best way to participate in European research. To achieve this, the UK should be pragmatic about the cost of a good deal to access FP9, and the EU should be pragmatic about the terms of FP9 association for the UK".

There are benefits for both sides, which the science community certainly recognises.

There will, of course, have to be some alliance with regulation and research policy. A later amendment in my name relates particularly to clinical trials, which are important for the life sciences industry in this country. It is important, therefore, for,

"the UK to participate in the EU's harmonised clinical trials system",

including the new system that will come. The report states:

"A research and innovation agreement should promote dialogue on areas of research policy where the EU and UK can provide global leadership, for example on open research … A research and innovation agreement should support full researcher mobility between the EEA and UK".

Proposals of this kind, which have come from Wellcome and the Royal Society, could be the framework for future negotiations, particularly on research and innovation.

The Earl of Dundee (Con): My Lords, as has been said, that our current advantages from international student mobility might now be under attack is clearly of great concern.

In 2014-15, it was estimated that international students contributed around £25.8 billion in gross output to the United Kingdom economy. There are also the considerable social and cultural benefits to which they contribute, not least the United Kingdom's soft power overseas.

Yet recently, and unfortunately, those heartening figures and prospects have got worse, with our market share slipping against rival English-speaking countries such as Australia, New Zealand and Canada, as well as against European countries, which now offer more courses in English.

These amendments seek to prevent further decline by protecting continuing UK participation in the Erasmus and Horizon 2020 schemes. As we know, the Government have guaranteed participation for the next three years.

Nevertheless, does my noble friend the Minister agree that, as other noble Lords have urged, by far the best plan is to negotiate with the EU to stay within these very effective education initiatives, while at the same time doing all we can to support and work with our universities to increase international student mobility both in Europe and elsewhere?

Baroness Royall of Blaisdon (Lab): My Lords, I too support the two amendments in this group. I have a special interest in Oxford University, which benefits exponentially from Horizon 2020, and our students also benefit from Erasmus. As my noble friend said, Oxford, Cambridge, UCL and Imperial are the top four recipients to date. This has been invaluable in achieving their status in global league tables. However, my concern is about not just Oxford but our higher education sector as a whole. We often repeat the mantra that we are global leaders, and we are: our higher education system is the envy of the world and that is a matter for celebration. But too often we forget that some of our research and innovation success derives from the funding and, often more importantly, the collaboration that we enjoy as part of Horizon 2020, which built on its predecessor framework programmes. The partnerships that have enabled our universities to thrive are now being undermined by Brexit.

We are assured that our UK researchers will remain fully eligible for Horizon 2020 support for at least the next 17 months, but I have to tell the Minister that the reality is sometimes quite different. In many cases we are no longer considered the lead partner in a project because there is so much uncertainty about the future relationship. I fear that we will find, more and more, that we simply do not win the bids. As for the future, what are the Government's intentions? Will our universities continue to be leading players in the successor to Horizon 2020, which will start in 2021—a programme over which, I regret, we will have little or no influence?

How are our universities supposed to plan, especially at a time when there is great uncertainty about the future funding of the sector as a whole? University staff and lecturers are under the cosh, facing pension cuts and living with the uncertainties caused by Brexit. Louise Richardson, vice-chancellor of the University of Oxford, said in a recent article that we must remember:

"Universities are engines of social mobility, drivers of the economy and generators of new ideas".

I am sure that the Government agree, yet the lack of commitment in relation to the next EU research and innovation programme will undoubtedly make it more difficult to retain and recruit the best researchers—the very people who generate the new ideas and find solutions to the problems of today and the challenges of tomorrow.

Many facts and figures have already been given but I remind noble Lords that, in terms of research, development and innovation activities, in the last seven-year financial framework, the UK contributed €5.4 billion to the EU and the EU contributed €8.8 billion to the UK. The UK is not only the most active participant in Horizon 2020 but our institutions co-ordinate about 20% of the projects that have been funded so far. In Germany it is a mere 11% and in France 9%, to name just two partners. Our influence and collaboration are extraordinary. I fear that without full participation in Horizon 2020, that will diminish.

Last year, we celebrated the 30th anniversary of the Erasmus programme. It is important to note that a higher proportion of those who study abroad achieve a first-class or 2:1 degree compared with those who stay in one place, and have improved employment prospects. It is not only our students who benefit, and have benefited, from this culture and character-building programme but all the public, private and voluntary associations in which the young people later find work. The experience of a year abroad gives them language and communication skills, sometimes provides professional experience, nurtures confidence and builds resilience. As the world of work undergoes a profound change thanks to new technologies, artificial intelligence and the pressures and opportunities resulting from globalisation, these skills are needed much more, not less.

Erasmus students who come to the UK are an important part of the international student community in our universities and communities. They also make an economic contribution to the UK. However, as has been mentioned, perhaps the soft power is of greatest benefit. Erasmus funding is also available to support staff mobility, joint master's courses and collaborative projects. Many assume that student exchanges relate only to modern languages, but many law students, engineers and biochemists, to name but a few, also benefit from the arrangements. The UK National Agency for Erasmus+, a partnership between the British Council and Ecorys UK, remains wholly committed to the Erasmus+ programme and its benefits. The agreement reached in December between the UK and the EU confirmed that we will be able to participate in EU programmes, including Erasmus, until the end of 2020.

But what then? Will the Government continue to pay for participation in this excellent programme? Students starting university this September will want to be sure that they can participate in Erasmus, and students applying for university in 2018-19 must have certainty so that they can make informed choices. Labour's position is absolutely clear, and always has been: we will continue to pay, and I warmly welcome that. I look forward to the Minister's reply, in which I hope that he will also tell your Lordships how the Government are continuing to shape the next Erasmus+ programme so that it is more efficient, more inclusive and has an even greater impact.

The amendments before us today are probing but I trust that the Minister will be able to give a positive response to my noble friend; otherwise, I hope that further amendments will be tabled on Report. In his response, I trust that the Minister will also provide assurance that the Government's lack of future commitment to date has nothing to do with the way in which the concerns of Brexiteers are being assuaged. I presume that they too would be in favour of maximising research funding and collaboration with European partners that leads to excellence, as well as enhancement of the skills and experience of our students.

4.45 pm

The Earl of Clancarty: My Lords, I have added my name to both the amendments in this group. I have tabled Amendment 204, which will be discussed later in Committee, on maintaining rights and opportunities for young people, and Erasmus+ is a part of that amendment.

If we lose our programme membership of Erasmus, it will be a huge blow not just to our young people, which would certainly be bad enough, but to the whole higher education sector, which benefits from the many projects that Erasmus has to offer, including not only the student exchange scheme but staff exchanges and projects involving the institutions themselves. The exchanges also include work placements, which can provide much experience of other work environments for British students. This is of course not just about experience and learning in the narrow sense; it is about the reciprocation of ideas, the effect of cultural exchange, and the knowledge that British students gain of other cultures and of how things are done elsewhere—and indeed vice versa, as there is also an extremely important soft power element in the creation of so many UK alumni across Europe.

Student exchange schemes embody an open-mindedness—even an open-heartedness—which is a far cry from the attitudes taken by some sections of the British press, which are currently crowing about the number of EU nationals leaving our shores.

There are some who say that, instead, we should develop independent arrangements with universities further afield. The fact is that we are developing relationships further afield anyway. For example, my nephew is at Northern Arizona University for a year, where he is studying American history as part of a degree course at Swansea University, with which Northern Arizona has an agreement. In a poll two years ago, 42% of students said that they were interested in travelling to non-Anglophone countries, some outside the EU. It should not be a case of either/or. To close down or risk closing down these wonderful educational opportunities for young people on our own continent would be perverse and a giant step backwards. Nothing in Erasmus says that one thing precludes the other.

The Government guarantee our current membership only up to 2020. There needs to be something much more concrete. Jessica Cole, head of policy at the Russell group said this month:

> "We are expecting the European Commission to put forward proposals for the next Erasmus programme later … this year. There is an opportunity now ... for the UK to help shape that programme ... The UK Government needs to be engaged in this important process, especially whilst we still have a seat at the table".

She goes on to say that,

> "it should be a priority for the UK Government to secure continued UK participation from 2021 onwards ... the Prime Minister should indicate whether the UK intends to negotiate participation at the earliest opportunity".

I ask the Minister: when will this indication be made?

On the wording of the amendments before us, one thing that we need to be careful about is the status of membership. It is possible—probably very likely—that we will retain membership technically, but there is a huge difference in the actions possible between programme membership, which we have presently, and partner membership, where we will be effectively left out in the cold. The phrase "on existing terms" in the amendment of the noble Baroness, Lady Garden, is crucial. We need absolutely to maintain the existing level of participation.

It needs to be said that, if we do leave the single market, we risk losing our programme membership. Witness what happened to Switzerland, which was expelled from the programme membership of Erasmus and from Horizon 2020 following a referendum that allowed a policy which compromised its own free movement deal with the EU. Switzerland has now realised what it was in danger of losing, and has since re-joined Horizon 2020 and is likely to re-join Erasmus+ properly in 2021.

In this and in so many other instances, it is wrong to think only of how the EU is treating us. We have enjoyed access to these programmes through our

[The Earl of Clancarty]
membership of the EU—at the very least, through being part of the single market. They have been an integral part of the deal, which has always been a two-way street. We should instead be asking ourselves: do we really want to risk losing access to programmes which have been, and still are, so beneficial to our young people, the higher education sector and research development in the UK—and, therefore, to the country as a whole?

Lord Cormack: My Lords, it is some 500 years since the great humanist scholar Erasmus came to this country to visit his friend, Thomas More. I always thought it was particularly appropriate that this programme, which has come to dominate today's debate, was named after that extraordinary European. Whatever our nationality and identity, we are all European.

I should declare an interest, in that I was a visiting parliamentary fellow and have for many years been a senior associate member of St Antony's College, Oxford. I have therefore seen at first hand how crucial it is that highly intelligent young people from different countries get to know each other. The programme has done untold good for this country, because so many from that particular college have gone back to their countries to occupy high positions in government and the civil service, and sometimes the highest position of all as head of state.

I have raised the Erasmus issue a number of times in your Lordships' House and I have never been reassured by the answer I have been given from the Front Bench. A guarantee for 17 months is no good at all. As has been said already in this debate, those who are in charge of academic programmes, be they scientific or in the humanities, need to be able to look ahead. I have two granddaughters who are undergraduates—one will graduate this year and the other in two years' time—and they may just benefit from this, but there is no absolute guarantee. Yet I know that their studies and their outlook on life would be immeasurably enriched by their having the opportunity to travel and to study abroad, in particular to study on our continent of Europe.

It really is important that we continually make the point that we are Europeans. No act of this Parliament or any other can alter that fact, and nor can any referendum result, be it on 23 June 2016 or on 23 June in some other year.

There has been much talk about a deep and rich partnership, and of course we want that, but we have to start now to be specific. One thing we can be specific about is this: here is a magnificent programme from which students and university staff have, over the past 30 years, benefitted enormously.

A couple of weeks ago, I was at a 21st birthday dinner at the University of Lincoln, a university that has risen spectacularly in the tables. It regards its 10% of foreign students as enormously important, and the chance its students have to study abroad as enormously important.

We know that there are countries outside the EU that benefit from Erasmus: so what, in the name of goodness, is holding back the Government from saying, "We are making an unequivocal commitment to continue this"? There is no reason why we cannot; there is every reason why we should. We are in an unfortunate position at the moment, with no clarity, much confusion and contradictory statements being made by different members of the Cabinet. I am told they are at one now, following their outing in Chequers last week, and I hope that is right.

However, we could make things so much better by making a number of pledges and commitments. We are part of this and intend to remain part of it because, if this country is to flourish after Brexit, it will depend, perhaps more than anything else, upon the quality of our education and, particularly, of our university education.

Those who are Brexit orientated should particularly remember that there is no doubt that the vast majority of young people in England, Scotland, Wales and Northern Ireland wanted to remain part of the EU. I deeply regret that we are not going to, but we can hang on to some of the best aspects of it, and this is one.

Lord Deben (Con): My Lords, I declare an interest in that I am chairman of the Committee on Climate Change, which means that I depend considerably on the relationships between universities doing the kind of research that is necessary. I also have a daughter who had an Erasmus scholarship and I therefore care about this issue considerably.

I listened with great care to my noble friend's response to the previous debate about medical matters. I emerged little the wiser as to where the Government were, intended to be, might be, would have been, thought they could have been, may in the future be if this or that might happen. We cannot go through 10 days or more in Committee—this will go on for some time—in which that will be the answer to every question put forward. There have to be sensible answers to sensible questions. This is a sensible question to which there is only one sensible answer. He is on a strong wicket on this occasion because he does not need to think any harder than deciding that doing both of these things will in no way interfere with the negotiations we have with the European Union. When we come to discuss everything else, it will not make a jot of difference if we have been sensible about these two things because they are clearly issues in which both we and the rest of Europe have a common concern and understanding.

On the research position of our great universities, we would be foolish to imagine that that happens by accident or that it is an eternal verity which will go on forever despite anything we may do. One of the reasons—not the only one—that our universities have been able to maintain and improve their position has been their openness to the rest of Europe, both in terms of the people with whom they work and the universities and institutions with which they can be the lead in so many of the occasions supported by Horizon 2020. The Government need to think carefully about the ease with which we can slip back down that list of leadership if we do not take the right decisions.

The Government must also not be blinded by a fear that anyone who disagrees with anything in this Bill is somehow or other perpetuating an anti-Brexit position. Everyone knows that I am entirely anti-Brexit and

shall go on being so; that is absolutely true, but I am talking about something quite different. It is a simple matter concerning our universities and our young people. My daughter was one of the 300,000 people—a huge number—who have enjoyed this experience and she now speaks a little Catalan as a result, which is a useful skill at the moment.

This is a wonderful opportunity for my noble friend because what he could do now is make the Committee feel that the Government are genuinely listening to genuine discussions. I do not want to embarrass anyone, but a number of people in this House are dedicated Brexiteers but on this particular matter they are on our side. That is because it ain't something about Brexit; it is about the sensible way forward. I therefore ask my noble friend this: why not accept this very sensible amendment? In case he is not apprised of this, let me tell him why he has been told not to do so. The rule is that nothing must change based on the argument that if anything changes, it will all be too late and we will not get it right. This is one thing that can be changed and will make no difference whatsoever to the timetable, so that argument will not wash. However, no doubt it is on his list of responses, but if I have said it, perhaps he will not say it himself.

The second reason that my noble friend will no doubt put forward is that it is all part of the negotiations. "We are working very hard to get closer to the rest of the European Union". I can tell you how to stay close to the European Union, and that is not to try to leave it. If you are not going to do that, do not tell us that the Government are working hard to get closer when this is a way to do it. Just say, "We want to stay in the Erasmus programme and in Horizon 2020. We will play our full part and we will work with the Union in the way it wants us to. We are not going to be silly enough to say that this is just another item in the long list of things that we are going to discuss with the rest of Europe".

I say to my noble friend that here is a chance for him to shine. Here is an opportunity for him to show that he has a mind of his own and say the obvious thing, which is yes.

5 pm

Baroness Coussins (CB): My Lords, I rise to speak briefly in support of Amendment 10, with particular reference to the Erasmus+ programme, for two specific reasons. First, if we were no longer part of Erasmus+, there would be adverse consequences for the employability of our young people in general. Secondly, Erasmus+ is an essential part of the pipeline for modern foreign language teachers, where there is already a significant shortage. Uncertainty over our continued participation in Erasmus+ is one of the reasons for the continued decline in university applications to study modern languages. Over the past 10 years, applications have dropped by 57% and more than 50 universities have now scrapped some or all of their MFL degree courses.

Of course, Erasmus is not just for linguists and I cannot emphasise strongly enough how important Erasmus+ is for employability prospects across the board. Not only does the Erasmus year abroad help to improve language skills, it also helps to develop an international mindset and a cross-cultural attitude to work. We know from British Academy research and from a recent US study that employers rate these skills in some cases even more highly than expertise in the STEM subjects. We also know that graduates who have spent their year abroad under the Erasmus+ programme are 23% less likely to be unemployed than those who have not done so.

So, as others have said, it really is not good enough for the Government to commit to funding Erasmus+ only to 2020. That is no help at all to people in their first year of university now, whether they are linguists or studying some other discipline, who do not know whether they will be able to spend their third year abroad. It is of no help to sixth-formers or those coming up shortly into the sixth form who might be thinking about keeping up a modern language.

We need a clear commitment to be part of Erasmus+ beyond 2020 in exactly the same way as Norway and other non-EU countries, including Macedonia, Iceland, Liechtenstein and Turkey, which are all full programme partners. We would certainly be cutting off our nose to spite our face if we do not do this, not least because the European Commission is planning to double participation in Erasmus+ by 2025 by extending opportunities for exchanges and placements to school pupils, which, it is very easy to see, might turn out to be a critical factor in encouraging the continued take-up of modern languages at A-level and university. At the moment, we are simply not producing enough graduate linguists to meet the needs of teaching, business or the body of interpreters and translators working in international organisations such as the UN.

The other element of self-inflicted backlash if we ditch Erasmus+ would be to turn our backs on a vital part of the supply chain for modern language teachers. The Department for Education estimates the current shortage to be 3,500 if the Government are to meet their EBacc target. This shortage risks getting worse and more precarious post Brexit because such a significant proportion of MFL teachers and language classroom teachers are non-UK EU nationals. If they are not guaranteed residency status post Brexit, language teaching in our schools will become very precarious indeed. I implore Her Majesty's Government to exercise a massive amount of enlightened self-interest and ensure that the UK remains a full programme partner and a full member of the Erasmus+ programme in the long term.

Lord Wallace of Saltaire (LD): My Lords, I will talk about two aspects of Horizon 2020. One is the question of certainty and the other is how this links with freedom of movement. I declare two interests. My wife has been on some of the advisory committees concerned with the definition of Horizon 2020 and what happens beyond it. British participation in defining research priorities across the European Union has been high in the last two or three exercises. That is not something that has been imposed on us and it is one of the things that we will lose.

My second interest is that I have a son who is a mathematical biologist and who spent his graduate and postgraduate years—up to 10 years—in the United States and came back to this country under an EU-funded scheme to bring bright young researchers back to Europe. He had his two-year Marie Curie fellowship

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and was advised not to apply for European Research Council fellowship, which would have naturally followed on, because we were perhaps leaving the European Union and that would make it difficult for him. The uncertainty is absolutely there. Happily, he now has another grant. He was persuaded to return to the University of Edinburgh by an Italian professor who led a multinational team there. That is how British universities work. I have been to many universities in other European countries where the overwhelming majority of staff and students come from that country or, in one or two countries such as Belgium and Spain, from that region. Those universities are not of the same quality or calibre.

I sometimes fear that there are hard Brexiteers in this country who think that we have too many foreigners in our universities already and that it would be much better if we went back to being proper British universities again, which would be much more in tune with the British national spirit.

As a mathematical biologist, my son is currently in Paris for six weeks at the Institut Pasteur, having spent some weeks last year in Heidelberg, because the sort of work you do in the life sciences is multinational and naturally collaborative. That requires easy movement, short term and long term. Anything which raises difficulties of travel in and out of this country, which is part of the intention of leaving the European Union, will make it much more difficult for our universities to go on being quite as good as they are. So I stress that, as we leave the European Union, we have to ensure that we remain internationally competitive and, in our universities, this matters.

Since the Government intend to leave the European Union in 13 months' time, we need some rapid certainty on Horizon 2020. I suggest to the Minister that, well before the Bill leaves this House, the Government should have a clear answer, highly relevant to the Bill which takes us out of the European Union, on what the implications are of leaving and on which bits we are not leaving. Please may we have an answer?

Lord Patten of Barnes (Con): My Lords, I will not only say that I will be brief but will be brief. I shall not pursue what has been said about Erasmus, with which I strongly agree—Erasmus must have been very grateful for all we have said about him today, although I think he would have some doubts about the present state of rationality in some of our political debate in this country.

I will instead follow the point made so well by the noble Baroness, Lady Royall. I declare an interest, which is not financial. As the noble Lord will know, I was chancellor of a Russell group university in the north-east of England. I am chancellor today of another Russell group university. Perhaps just as significant, when I ceased to be a European Commissioner, I was asked to chair the committee which established the European Research Council. It did so on the basis of the recommendations in particular of Lord May, one of the greatest contributors to the debate about research and about universities in this country.

We established the research council on the basis that it would distribute funds by peer group review—not according to what individual countries had contributed but according to the research capacities of those countries and of particular institutions. And guess what? It demonstrated that we have the second-best higher education system in the world and arguably the best higher education system in Europe: we did extraordinarily well out of that research budget. As the noble Baroness pointed out, we get a great deal more back from the European budget than we put into it, which indicates how good our research community is in this country.

I realise that there are constraints under which the Minister has to operate—he has our sympathy and our prayers as he moves forward. I agree with what my noble friend Lord Deben said earlier: we do not expect him to do wonders. I am not sure that he will be able to tell us now what the Government's intentions are in relation to the European research community. I do not blame him if he cannot do that, because I do not think that anybody in the Government has the faintest idea—certainly, I do not know anybody in Europe who has the faintest idea of what we want to happen—but I hope that, at the end of the day, as right reverend Prelates might put it, we will still be members of that research community.

So I do not expect the Minister today to be able to spell out precisely what arrangements we will have in the future—whether they will be similar to those which Switzerland has today, whereby it is part of the community but takes no management decisions about it. Israel is in a similar position. However, I hope that, even if he cannot tell us exactly what the relationship will be, he will at least give us one simple guarantee—and I am sure that the Chancellor of the Exchequer would want to stand over this very strongly.

When we leave the European Union we will lose the considerable surplus that we have at the moment in research spending—as I said, getting back more than we put in. Will the Minister guarantee this evening, even if he cannot give us any details about our future relationship with the European research community, that any shortfall in that funding after we leave the European Union will be made good by the Government?

5.15 pm

Lord Wigley: My Lords, I support Amendments 10 and 163 on the need to ensure that the immense benefits of the Erasmus+ programme continue to be available to students throughout these islands and that the Horizon programme will continue to be funded. I have a particular attachment to the Erasmus programme from the early days, now decades ago, when a very good friend of mine and, I believe, a friend of a number of colleagues in this Chamber tonight, Hywel Ceri Jones, in his work in the European commission helped to pioneer the Erasmus programme. In fact, our parliamentary secretary in another place, Heulwen Huws, became one of his first administrators. I very much want to see this programme survive for those and many better reasons. The one point I want to impress upon the Committee is that the Erasmus programme has a very large input from the UK: it is not some programme being imposed upon us and owned by other people, it is something that we have a shared ownership of and we want to make sure the shared benefit continues for our young people.

The higher education sector in Wales has been a major part of the growing Welsh economy: 50,000 jobs in Wales depend upon it. Much of the success can be attributed to European investment, both structural and research-specific. Bangor University—I declare my interest in that university—has benefited over the last decade from about £100 million of funding. Swansea University's Bay Campus has benefited from a similar level of EU funding. Incidentally, Swansea has benefited from £60 million of European Investment Bank funding. It would be interesting, although it may be outside the ambit of this short debate, if the Minister addressed that: the question of continued eligibility for European Investment Bank funding for our universities is one that could well do with clarification.

If we are in danger, in the event of a hard Brexit, of losing EU funding for higher education purposes and projects, I impress on the Government, as have a number of colleagues, the need to set up some alternative source of funding to ensure that vital work undertaken in our universities goes forward. We need a UK convergence strategy that will reproduce the European principle of equalisation and provide equivalent funds on a needs basis. This will enable universities, in Wales and elsewhere, to compete on the higher education world stage and continue to educate and innovate, as it currently does thanks to EU funding. Will the Minister clarify what the Government's objectives are for these purposes as they enter the detailed negotiations? Do they aspire to some ongoing eligibility for access to cross-border and transnational funding programmes? Seeking single market participation is certainly the aim in the Welsh White Paper, but if the Government have rejected single market participation, as seems to be the noise coming out, can they guarantee, with no ifs or buts, that all the present levels of EU funding will be replaced, as was promised at the time of the referendum in 2016? This is particularly important for research funding: the Horizon 2020 programme has been a vital source of funding for universities throughout the land. So far the Government have refused to provide any statutory guarantee that these funding levels will be maintained. Will the Minister now take the opportunity to do so?

Baroness Brown of Cambridge (CB): My Lords, I support these two important amendments and I apologise to the Committee for having being unavailable to speak at Second Reading. I therefore take the opportunity to declare my interests as chair of the Henry Royce Institute, a member of the Committee on Climate Change and chairman of the Adaptation Sub-Committee of the Committee on Climate Change. As we have heard from many noble Lords, the Horizon 2020 and Erasmus+ programmes are critical to our world-class academic institutions, to research and to our students. I will not take up any time by repeating the arguments but I remind the Committee that historically UK students are some of the least internationally mobile in Europe, particularly young people from less advantaged groups. If we are to compete ever more widely on the international stage after leaving the EU, ensuring that UK students from all backgrounds have the kinds of experiences that are enabled by the Erasmus+ programme should surely be a national priority.

We have not heard much about what Horizon 2020 does outside our outstanding academic institutions. It is a key funding source for industrial collaboration, supporting important initiatives such as helping Rolls-Royce develop new generations of more efficient and environmentally friendly aero engines. It also plays a key role in supporting innovation and entrepreneurship schemes, such as the knowledge and innovation communities, with a great example at Imperial College: Climate-KIC, which has already seen a number of new entrepreneurs with low-carbon technologies start to develop businesses in the UK.

In my own area of interest, Horizon 2020 supports environmental research. The UK wins around £147 million per annum for environmental research. Sadly, that rather dwarfs the £5 million investment in the new northern forest. Other EU funds, such as Interreg and LIFE, are important not only for environmental research but to cross-border collaboration on the island of Ireland; for example, supporting shared environments through the cross-border Loughs Agency, as well as other types of cross-border community projects. This is hugely important work that the House of Lords EU Select Committee was able to see and hear about at first hand on our recent visit to both sides of the Irish border. It is a really important element of the peace settlement on the island of Ireland.

These funding mechanisms play a critical role in our economic growth, as we have heard; in cross-border relations and well-being in Ireland; and in helping the Government achieve their stated aim to leave nature in "a better state" for the next generation. For these reasons, the amendments have my very strong support.

Viscount Trenchard (Con): My Lords, I would not wish to disagree in any way with all those noble Lords who have said how excellent the Erasmus+ and Horizon 2020 programmes are. Undoubtedly, the United Kingdom contribution to them is very significant, just as the United Kingdom's gains from being a participant in them are hugely beneficial. Nevertheless, one thing that has not been said by any noble Lord is that after Brexit we will have considerably more money to spend on important programmes than we have while we are making net contributions to the European Union of £10 billion to £12 billion a year. I have never been one to use the £350 million a week figure because that was the gross contribution, but the net contribution is about half that.

My noble friend Lord Patten pointed out that our contribution to the Horizon 2020 programme is about £5 billion but we receive £8 billion back. Presumably, this means that the organisers of the Horizon 2020 programme appreciate that the United Kingdom knows better than some other participants how to use the money wisely. Indeed, we continue to use the money from such programmes extremely well. Furthermore, if one looks at the participants in Horizon 2020, there are 17 countries which are not EU members. The European Commission website makes it clear that non-members participate on exactly the same terms as members. Therefore, I see no reason at all why we should not be welcomed as a continuing participant in Horizon 2020.

Lord Hannay of Chiswick (CB): Does the noble Viscount not understand that if we participate from outside the European Union, instead of getting more back than we put in we will get exactly the same back as we put in?

Viscount Trenchard: I hear what the noble Lord says but I am not sure whether that follows at all. As far as the Horizon 2020 programme is concerned, presumably our contribution would still be assessed and valued in the same way that it is now. The deservability of the programmes for which we seek support would also be considered on the same basis as now, so I do not see why it should make any difference. But overall, we will have a considerable amount more money to spend, not less, because we will not be making the very large net contributions to the European Union budget that we make at present.

Lord Patten of Barnes: Can I clarify for my noble friend the position of countries from outside the European Union sharing in the European Research Area? I am sure he is aware that while some of them participate—I mentioned Switzerland and Israel– they play no part whatever in managing the programmes. They do not determine the priorities or what the money will go on. We could negotiate membership of the research council, I guess, although it would be with the financial consequences that the noble Lord, Lord Hannay, mentioned and the additional consequence that we would have no say in managing the programmes.

Lord Kakkar (CB): My Lords, it is a great pleasure to follow the noble Lord, Lord Patten of Barnes, and in so doing I remind noble Lords of my declared interests at Second Reading.

This has been an important debate because it has highlighted the vital contribution that European Research Council funding, in the Horizon 2020 programme and others, has made to our national research effort—both the research effort delivered by our universities and, more broadly, the research undertaken through industrial and SME participation in such research programmes. It has also identified the invaluable contribution we have made as a nation to the delivery of those programmes by the European Union. The leadership provided by UK institutions has ensured strong delivery by those programmes and the global impact of that research effort.

In that regard, it is vital that Her Majesty's Government are able to identify a way forward for our continued contribution to the development of the programmes that follow Horizon 2020. That is a matter of negotiation currently and the discussion takes place at a sensitive time, with Horizon 2020 coming to the end of its life and a new framework programme 9 being established. It would be useful for Her Majesty's Government to identify how they are currently participating in that negotiation. How are they trying to influence that agenda while they define their final position on our future participation as a nation?

For instance, coming together at this moment is UK Research and Innovation, which will bring together our research councils and our national innovation structure. What role will UKRI potentially play in focusing our national research contribution with regard to those ongoing negotiations? Can Her Majesty's Government confirm that they will not only secure funding for our research base beyond departure from the European Union but ensure that that funding can be directed towards continuing collaboration in European networks? It is the network participation, as much as the quantum of funding available, that has provided the strong base for our research effort and the high-quality outputs that we now enjoy.

There is very deep anxiety about this question because if we are unable to make an appropriate contribution to framing future programmes and ensuring the priorities that those programmes will address, then whether or not we participate in future the value of our own national contribution and the ability of our nation to benefit from that participation will be diminished. That is a question beyond the final disposition of our participation in those programmes, which is of course a matter of broader withdrawal negotiations.

5.30 pm

Lord Turnberg (Lab): My Lords, I will be brief. I support these amendments, and I apologise for not speaking in the Second Reading debate for reasons which are too painful to burden your Lordships with tonight. Having listened to the debate, to me it seems that accepting the amendments is a no brainer, and I hope that the Minister agrees. Way back in the past century when I was dean of a medical school and the Erasmus programme and the predecessor of Horizon 2020 were introduced, we welcomed them with open arms. They were marvellous initiatives. They opened up research potential across Europe in a way which we had not had until then and the value to our students of being able to go abroad became pretty obvious. We loved, it, we welcomed it and it has continued in the same vein ever since. It has never faltered. It has grown from strength to strength, so why on earth would we want to jettison something that works so well and try to introduce something which will undoubtedly be more bureaucratic, will probably be more costly and which will not be nearly so valuable to our research effort or to the competitiveness of the UK? I hope the Minister will take note.

Baroness Altmann (Con): My Lords, I support Amendments 10 and 163 and declare my interest as a governor of the London School of Economics. I echo many noble Lords across the House, including my noble friends Lord Deben, Lord Cormack and Lord Patten. This is another example of what appears to be an ideologically driven, irrational decision that is pretty impossible to justify. I cannot think of any rationale for risking our position in the Horizon 2020 and Erasmus programmes. This is not required as a result of the EU referendum. The British public surely would not support the UK failing to secure ongoing participation beyond 2020 in these programmes.

Research is a vital investment in our future. Horizon 2020 is open to all and simple. It reduces red tape and allows researchers to launch projects and get results quickly. These programmes allow knowledge exchange and collaboration on innovation and research. Horizon helps entrepreneurs scale up businesses rapidly to establish a global leading position and to improve our

industrial base. This is a flagship initiative designed to secure improved global competitiveness. Is this not exactly what we need for our future growth and success with or without Brexit?

This goes beyond funding. It is the spirit of co-operation and leadership that is so important. It gives our students, graduates and entrepreneurs the opportunity to exchange ideas and research collaboratively with other countries. There is no need for the UK to go it alone. There is obvious strength in collaboration. I hope the Minister will take careful note of the strength of feeling across the Committee, including on his own Benches, that we must not countenance whatsoever and under any circumstances turning our back on these programmes. The future of our country, our young generations and our world-beating research and academic institutions must not be put at risk. The UK has far more to lose than the EU if we are no longer a leading participant in these programmes. I hope my noble friend will return on Report with his own proposals to commit to ongoing participation beyond 2020.

Lord Bilimoria (CB): My Lords, the mere fact that we require these amendments is shocking in itself. UK universities receive an additional 15% in funding from the European Union. Academics will now struggle to co-operate on research projects. The change in the visa regime that takes place may deter high-calibre academics from joining British universities. That is happening already. When European universities have a chance to collaborate they already think twice before collaborating with a British university, and that is shameful.

The Erasmus programme is 30 years old. Are we going to throw away 30 years of that wonderful initiative? Hear what the Europeans say:

"'The absence of physical mobility after Brexit would take us apart', said João Bacelar, executive manager at the European University Foundation. 'Student exchange is kind of the antidote to the malaise of Brexit. It is profoundly unfair if young people would pay a price for something they didn't want'".

Employers value the Erasmus brand. More than 200,000 British students have benefited from Erasmus. We have heard that other countries that are not part of the European Union can be part of Erasmus. Let us beware of what happened with Switzerland. When Switzerland voted to restrict European migration, it was taken out of the Erasmus programme. It has had to spend extra money to put a new programme in place. Do we want to go through all that? I do not think we should.

The best thing about Erasmus is that it is for everyone. It allows students who cannot afford it to study abroad in a variety of subjects. My noble friend Lady Coussins spoke about language skills. Erasmus involves 725,000 European students annually—a huge number. We do not want to be left out of it. We are the third most popular destination; 30,000 students want to study in Britain and 40,000 of our students are over there. These are huge numbers. If that mobility goes, we are going to suffer.

Will the Government keep their promise to maintain and protect all funding streams for EU projects in the UK? Will they ensure that there is no cliff edge for funding for scientific research at the conclusion of the Brexit negotiations? Will the Government confirm that British researchers must be able to continue to participate in an unrestricted manner in current and future EU science initiatives? Will they never prevent highly skilled scientists coming into this country? I would like that assurance from the Minister.

We have heard time and again about our funding and research power. We have 1% of the world's population but produce 16% of the most highly cited research articles. That is how good we are. Every committee—including the House of Lords Science and Technology Committee and the House of Commons committee—is saying that this would be damaging for the UK. A recent YouGov survey showed that 76% of non-UK EU academics are already considering leaving the country. What are we doing?

There are two messages here, one about collaboration and the other about funding. As the noble Lord, Lord Patten, said, we get more than we put in. We are asking the Government for a guarantee that we are going to get that funding. But more important than the funding is the power of collaboration. As chancellor of the University of Birmingham, I am proud that it received a Queen's Anniversary Prize last week. When I was in India, we cited an example of the power of collaboration between the University of Punjab and the University of Birmingham. The University of Birmingham's field-weighted citation impact is 1.87. The University of Punjab's is 1.37. When we do collaborative research, it is 5.64. When the University of Birmingham does collaborative research with Harvard University it is 5.69. Its impact in collaboration is three times greater than it is as an individual university, and that applies to all the collaborations that we carry out with programmes such as Horizon.

Finally, this is about universities and our youth. This is depriving them of their future. I speak at schools and universities regularly, and I ask students every single time how many of them, if they were given a choice, would choose to remain in the European Union. Without exaggeration, almost 100% of the hands go up. There are two years' worth of 16 and 17 year-olds who did not get a say in the wretched referendum two years ago, and this is their future, in which they will want a say. That is what this amendment is about: the future of our youth through Erasmus and Horizon 2020. We cannot take that future away from them. We have to go through with these amendments, and it is most likely we will end up remaining in the European Union.

Lord Liddle (Lab): My Lords, I was not intending to intervene in this interesting discussion, not because I do not care deeply about these issues—as chair of Lancaster University, I realise how much we benefit from both Erasmus and the Horizon programme—but because I had not realised until I heard this excellent debate what a cliff edge these important programmes now face. This really is a very serious matter that has come out this afternoon.

There are two reasons for the cliff edge. First, the European Union, in the Commission, will now be thinking about the next framework programme, which will come in at the start of 2021. It will be devising its priorities and working on the assumption that Britain is not part of the next Horizon programme. That is a very serious point. Secondly, when the Select Committee

[Lord Liddle]
went to see Mr Barnier last week in the Commission and he set out to us how the Commission envisages the Brexit negotiations, he put dealing with what he calls "future co-operation" in one of the four treaties that are to be negotiated after we have left. That is when he is assuming that these negotiations will start: in March next year, after we have left. One is on foreign policy, one is on security questions, one is on trade and the other is this basket of future co-operation. This is really serious. Unless we set a higher priority, more quickly, to sorting these questions out, we will end up with a lot of loss of initiative and of partnership, and networks in which we are involved no longer being sustained. We have to do something.

What are the Government proposing to do? It occurs to me that the Government, first of all, must make clear now that they want to continue to participate fully in both these programmes. They must make clear now that they are prepared to put a substantial sum of money on the table so that we can continue to participate in these programmes. They should also say, without equivocation, that for anyone from an EU country who has a place at a British university as a student, researcher or lecturer, or at a research institute, there will be no question of there being any additional immigration barriers to them taking up those places after Brexit. Why can that declaration not be made? The money, the free movement, the determination to participate—why can that not be said now? Why can the Government not, in this area, try to speed up Mr Barnier's timetable by actually tabling their own text of the agreement that they want to reach? I hope the Minister can provide a satisfactory answer to these perfectly reasonable points.

5.45 pm

Lord Kerr of Kinlochard (CB): Exactly. I strongly support what the noble Lord, Lord Liddle, has just said. I would like to be helpful to the Minister—it is my main purpose in life. I detect that this debate is at present all going one way, although I do not know if the Minister agrees with me on that. If he is a cynic, he might say that that is not altogether surprising, as the collective noun for a group of chancellors, vice-chancellors and university chairmen is the House of Lords.

It is important that the Minister should listen to the Cormack-Deben advice. It really would not do to answer this debate with the same answer he started off with to the last debate about medicines and Amendment 11—where, as I recall, his line was that publishing a strategy would introduce an unwelcome, undesirable and impossible delay to commencement. I may have misunderstood him, but it seems to me that the time when we need such a strategy—the strategy that is called for in this amendment—is now. We need it to be helpful to the Minister because if on Report we do not see a strategy, there is absolutely no doubt how the House would vote. This debate has made very clear, from all sides of the House, that continued membership or a close relationship with the research framework programme and with Erasmus is seen as sine qua non. If the Government do not give us the strategy which they think may achieve that, I am confident we will vote for these amendments.

The strategy would have to contain a little more than a declaration of intent. In relation to Erasmus, it would, as the noble Lord, Lord Liddle, said, have to include something about visas. I think it would also have to include something about fees. It is relatively easy to see what one would have to say. On the much bigger issue of research, it would have to include something from the Treasury. If the sensible suggestion from the noble Lord, Lord Patten, was accepted by the Treasury, that would be excellent. But it seems to me that the Treasury is going to have to accept a lesser commitment, which is that when it is pay as you go—which is what it is going to be, as my noble friend Lord Hannay has pointed out—we will pay for whatever we get. That seems to me to be a sine qua non.

It is of course the case that we will not be taking the decisions or laying down the policy anymore. But it will still be essential for our universities to have access to these networks. This would not just be helpful for the Minister on Report and in the negotiations in Brussels, where such a Cormack-Deben voluntary offer would go down extremely well, but also be something to deal with the uncertainty problem which the noble Baroness, Lady Royall, drew attention to. We are no longer desirable partners in research networks, because it is assumed that we will be country cousins or non-players.

We are no longer receiving the same demand from foreign students to come here to research. We are damaging the sector now—this is an area where the damage of Brexit precedes the deed. So in three contexts, it would be helpful to the Minister if he would say that he will take this away and think about producing a government strategy in both areas before Report.

Lord Adonis: My Lords, I agree with every word that the noble Lord, Lord Kerr, has just uttered. The noble Lord, Lord Patten, said that we were not expecting miracles from the Minister. I think even the Minister's most ardent admirers do not credit him with miraculous powers, and he is not going to able to produce any rabbits out of a hat for us this evening. But it is not miracles we need here: all we need is a continuation of the status quo. This is one of those areas we come back to time and again—we had it in the long debate on Euratom last week: all we need to do is to avoid massive, self-inflicted damage.

There is no need to create whole new programmes and ways of working. We have Horizon 2020 and Erasmus; the latter has been going on for the best part of 30 years and is a highly successful programme. When you are doing something well, the usual trick is just to keep on doing it. There are so many things that do not work that the idea that Parliament and Government should be spending their time dismantling things that do is clearly crazy. What we want to hear from the Minister is simply that he is open-minded to continuing with the present arrangements. The sooner the Government are prepared to say that, the better.

The most telling contribution to this debate came from the noble Baroness, Lady Brown of Cambridge. In the higher education world, there is—I shall choose my words slightly diplomatically—a pronounced air of self-congratulation on how excellent everything is in this country and how brilliantly we do it, and if only

the rest of world copied us then they would be a great deal better off. In many areas that is true, but in one we have a very poor international record: the propensity of our students to study abroad. According to the Erasmus figures, twice as many European students come to Britain as Brits go abroad. The noble Baroness was right to say there is a big problem with students from poorer backgrounds studying abroad. When I was preparing figures for this debate, I found that it looks as if Singapore, a country less than one-tenth the size of the UK, has about as many students studying abroad as we have in our entirety.

The fact is that we do not have nearly enough of our students studying abroad. When I visited Singapore as Minister for Schools, they were aiming—by about now, so maybe they have achieved it—at requiring all students at the National University of Singapore, regardless of their course, to spend at least six months, one semester, studying abroad. Can your Lordships imagine if we had anything like that commitment here? It might be a good thing if in due course we did. The great irony is that one of the great slogans to emerge from this Brexit policy as it has developed is "Global Britain"—but how can there ever be a global Britain unless far more of our students go and see the rest of the globe and spend time studying there? The first requirement for that is that we should not make the situation worse than it currently is.

The noble Lord, Lord Kerr, was right that what we seek from the Minister is not a miracle; we are clearly not going to get that from the present Minister. We simply expect a commitment to continue with the current programmes, and it is absolutely within the scope of the Government to say unilaterally that the negotiating position of Her Majesty's Government now, in 2018, is that these programmes will continue with full British participation after 2020. If the Minister does not say that, he is staring at near-certain defeat on this issue on Report.

Lord Callanan: My Lords, I thank noble Lords for another excellent debate. I thank the noble Lord, Lord Hunt, and the noble Baroness, Lady Garden, for their Amendments 10 and 163, which respectively seek clarification on the Government's future membership of the Erasmus and Horizon 2020 programmes. I am particularly grateful to my noble friends Lord Deben and Lord Patten for their helpful attempts to rewrite my notes for me before I started.

At the December European Council last year, the Prime Minister confirmed that UK students will continue to be able to participate in the Erasmus student exchange programme for at least another three years, until the end of the current budget period. She welcomed the opportunity to provide clarity to young people and the education sector, and she reaffirmed our commitment to the deep and special relationship that we want to build with the EU.

In response to my noble friend Lord Cormack, I say that the Government have made it clear many times that we value the Erasmus+ programme and international exchanges more generally. Cultural exchange helps to build important business, political and diplomatic bridges around the world, not to mention lifelong friendships.

Lord Cormack: I am grateful for that, but if that is the case then why do we not carry on beyond the three years?

Lord Callanan: If my noble friend will have some patience, I will come to that in a second. Supporting young people to study, work, volunteer, teach and train abroad, and supporting their schools, youth and sports organisations to build transnational partnerships, helps us to create a new generation of globally mobile, culturally agile people who can succeed in an increasingly global marketplace.

In response to the noble Baroness, Lady Royall, I say that the UK has a strong offer to EU and international students, with four universities in the world's top 10 and 16 in the top 100. In fact, as the noble Lord, Lord Adonis, pointed out, we received many more students under Erasmus than we sent. Erasmus is an important programme, but it represents only about half the student exchange programmes we have in the UK.

Our young people get first-hand experience of different cultures, helping them to broaden their horizons and their ambitions. Students who have spent time abroad as a part of their degree are much more likely to achieve better degree outcomes, improved starting salaries and stronger employment prospects, as noble Lords have pointed out. This is especially the case for students from disadvantaged or less represented backgrounds.

In response to the noble Earl, Lord Dundee, no decisions have yet been made about post-2020 programme participation as the scope of that programme has not been agreed. We look forward to the Commission's proposal, which we expect to be published in May. Participation in the successor to the Erasmus+ programme, which we think is valuable, will form part of the negotiations.

The UK fully participated in the mid-term evaluation of the current programme and we reached broadly the same conclusions as the Commission: the programme works well but there is room for improvement and simplification, especially for smaller applicants. UK respondents to the mid-term evaluation made many detailed comments and criticisms, but few suggested that radical change was needed. The proposal for the next programme will be published in May, as I said, and we are currently shaping the debate and looking forward to further discussions with the Commission about that.

We see future co-operation in education programmes as an area of mutual benefit to both the EU and the UK, provided that we can agree a fair ongoing contribution.

Baroness Royall of Blaisdon: My Lords, what reassurance can the Minister give to students who are beginning their courses in September this year or September next year? Will they be able to participate in Erasmus or does that depend on whatever decisions the Government take after May? Is that not too late for certainty?

Lord Callanan: They will be able to participate in the existing Erasmus scheme up till 2020, should they wish to do so, and, as I said, we will see what the next programme will be. We await the proposals from the Commission in May, and we will discuss our participation in that with them.

[Lord Callanan]

As I said, we see future co-operation in education programmes as an area of mutual benefit to both the UK and the EU, provided that we can agree a fair ongoing contribution. We are giving this matter careful consideration as we negotiate the UK's exit and are listening to the views of the sector.

As many noble Lords are aware, we have proposed a time-limited implementation period based on the current structure of rules and regulations. Looking to the future, we recognise the value of international exchange and collaboration in education and training as part of our vision for the UK as a global nation. That is why we said in our science and innovation policy paper, published in September, that we would discuss with the EU future arrangements to facilitate the mobility of researchers, academics and students engaged in cross-border collaboration. The UK and EU agreed in December that UK entities' right to participate in current EU programmes for their duration will be unaffected by withdrawal. This includes the Horizon 2020 framework programme for research and innovation.

A number of noble Lords—the noble Lords, Lord Hunt and Lord Wallace, the noble Baroness, Lady Royall, the noble Earl, Lord Clancarty, and my noble friend Lord Deben—have asked me about the future of the Horizon programmes. Horizon will be succeeded by the ninth framework programme, as the noble Lord, Lord Kakkar, reminded us. This programme is also still being developed by the European Commission, and we are participating in discussions on that. The UK has declared that it would like to reach an ambitious science and innovation agreement with the EU that would include future framework programmes. It is too early to speculate on whether the UK will seek to associate to framework programme nine which, as I said, is still being developed.

The Government are deeply conscious of the importance of the Horizon 2020 and the future framework programmes to research in the UK, in which we have an international reputation. We are working hard to secure a research and innovation agreement with the EU that will take effect after Brexit.

6 pm

Lord Wallace of Saltaire: The Minister says it is too early to decide whether we will co-operate. Can he tell us in what circumstances we will decide that it is not in the national interest for the UK to participate in the next Horizon programme?

Lord Callanan: I very much expect that it will be in our interest to participate in it. As I said, we are taking part in discussions. We have not yet seen the detail of how it will be financed, but, given a fair ongoing contribution, I suspect that we will want to participate. But they are a matter of negotiation. It is fine for us to say that, yes, we would like to take part; we need the EU side, the other side to the negotiation, to say that, yes, they would like us to take part as well. It is a negotiation. We can give a commitment that we would like to; we cannot give a commitment that we will be accepted.

As part of the new deep and special partnership with the EU, we will recognise our shared interest in maintaining and strengthening research collaboration. The UK will seek an ambitious agreement, one that promotes science and innovation across Europe now and in future. For the avoidance of any doubt, in response to the many questions that have been asked, let me say that we support Erasmus, we support Horizon 2020, but, contrary to what many noble Lords have suggested, these are EU programmes. The UK cannot adopt a unilateral stance; there has to be bilateral agreement on them. That agreement depends, first, on understanding the shape of the Erasmus programme in May and framework programme nine, when it is clarified by the Commission, and finding a mutually acceptable financial arrangement. Subject to those conditions, we would be very happy to be able to participate in both those programmes in future.

Lord Hannay of Chiswick: My Lords, I am not sure whether the Minister is drawing to an end, but he has not managed so far to say anything about the movement of researchers and students. Why can he not state categorically that we will not introduce any new impediments to students or researchers offered places in our universities? That would be entirely consistent with the introduction of a work permit scheme, because neither of those two categories come to our universities without a work offer. Why can he not say that now? Mobility is crucial in this area, but he has not said a word about it.

Lord Callanan: I totally agree with the noble Lord that mobility is crucial. I am fairly certain that we would not want to introduce restrictions on mobility in these areas—we want as many students to come as possible—but, as I am sure he is aware, this will be a matter for the Home Office to decide in the immigration policy that will be discussed shortly.

Lord Green of Deddington (CB): Indeed so. I was hoping that the Minister would say that there is not now, and never has been, any limit on the number of genuine students who can come to the UK. I would have thought that that is bound to continue: this is a false issue.

Lord Callanan: Yes, we have been a proud recipient of and destination for thousands of international students in the past. They are welcome in this country, they contribute greatly to our education services and I am sure that we will want that to continue in future, but I cannot speculate on what a future immigration policy may look like.

Lord Deben: If this is a non-issue, why cannot my noble friend say very simply: "There will be no additional stops or impediments on students"? Does he not understand that constantly saying how wonderful everything is but that he cannot actually tell us anything is very difficult for anyone trying to plan their future and very unfair on young people?

Lord Callanan: As I said, I am fairly certain that we will want to continue to welcome as many students and researchers as want to visit this country in future, but, as I am sure the noble Lord will understand,

I cannot speculate on what a future immigration policy might be before it has been announced by the Home Office and published by the Government.

Nevertheless, let me say for the avoidance of doubt that I have heard the message from all parts of the House and I will certainly reflect on these matters before we come back to the issue on Report. I understand that there are very strong feelings from all parts of the House about these issues and we will certainly see what we can do about that.

Lord Hunt of Kings Heath: My Lords, first, let me say that I welcome the Minister saying that he will reflect on this debate, because I think it is the first chink of light from him on any of these important debates in Committee. It has been a remarkable debate. We have heard from many noble Lords about the importance of the Erasmus programme. I agree with my noble friend Lord Adonis: the noble Baroness, Lady Brown, speaking from huge experience as a former vice-chancellor of Aston University of the impact that Erasmus has had on the students who go to Aston and the way it has widened their horizons, is for me one of the most important illustrations of why future participation by the UK in Erasmus is so important.

On research, again, my worry is that the Government are hugely complacent about the UK's position. Consider the consequences of uncertainty over Horizon 2020, which is having an impact on universities at this very moment in terms of collaboration on future research bids. Even where European Union universities will still collaborate with UK universities—and it is by no means certain that they will continue to do so in every case—they are reluctant for UK universities to be in the lead. Added to the uncertainties about the movement of both academics and students, we are entering a hugely uncertain position for a very important sector.

I listened with care to what the Minister said. To be fair, he has said that the Government value both Erasmus and Horizon 2020 and he repeated the Prime Minister's comments, particularly in relation to Horizon 2020. He then said that while he values these programmes, the EU is working out the next stage of both Erasmus and Horizon 2020, that the UK is part of some discussion about that but they will form part of the negotiations and that there is nothing more he can say.

I think there is something more that the Minister can say. I think it is without question that it is in our national interest that we continue wholeheartedly to take part in those programmes. Thinking about the negotiations and the UK Government's tactics, this niggardly, churlish approach does not seem to be getting us very far. This Government would attract a hell of a lot of good will if in relation to just these two programmes they said, "Whatever, we are going to stick with it, and we will make good any deficiency in UK university research programmes if the price of sticking with it means that we will get less than we did in the past".

The whole Committee—almost all Members—really wants these programmes to continue. We will obviously come back at Report. The Minister has kindly said he will reflect on it. I very much hope that he will do so. I beg leave to withdraw the amendment.

Amendment 10 withdrawn.

Amendment 11 not moved.

House resumed.

Syria: Humanitarian Situation

Statement

6.09 pm

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, with the leave of the House, I would like to repeat the Answer given by my right honourable friend the Secretary of State for Foreign and Commonwealth Affairs, in response to an Urgent Question asked in the other place today. The Answer is as follows:

"Mr Speaker, I am grateful to the honourable Member for Barrow and Furness for raising this vital issue.

In seven years of bloodshed, the war in Syria has claimed 400,000 lives and driven 11 million people from their homes, causing a humanitarian tragedy on a scale unknown anywhere else in the world. The House should never forget that the Assad regime, aided and abetted by Russia and Iran, has inflicted the overwhelming burden of that suffering. Assad's forces are now bombarding the enclave of eastern Ghouta, where 393,000 people are living under siege, enduring what has become a signature tactic of the regime, whereby civilians are starved and pounded into submission. With bitter irony, Russia and Iran declared eastern Ghouta to be a 'de-escalation area' in May last year and promised to ensure the delivery of humanitarian aid. But the truth is that Assad's regime has allowed only one United Nations convoy to enter eastern Ghouta so far this year, and that carried supplies for only a fraction of the area's people. Hundreds of civilians have been killed in eastern Ghouta in the last week alone and the House will have noted disturbing reports of the use of chlorine gas. I call for these reports to be fully investigated and for anyone held responsible for using chemical weapons in Syria to be held accountable.

Over the weekend I discussed the situation with my Turkish counterpart Mevlüt Çavuşoğlu, the Turkish Foreign Minister, and Saad Hariri, the Prime Minister of Lebanon. Earlier today, I spoke to Sigmar Gabriel, the German Foreign Minister, and I shall be speaking to other European counterparts and the UN Secretary-General, António Guterres, in the coming days. Britain has joined with our allies to mobilise the Security Council to demand a ceasefire across the whole of Syria and the immediate delivery of emergency aid to all in need. Last Saturday, after days of prevarication from Russia, the Security Council unanimously adopted Resolution 2401, demanding that,

'all parties cease hostilities without delay',

and allow the,

'safe, unimpeded and sustained delivery of humanitarian aid',

along with,

'medical evacuations of the critically sick and wounded'.

The main armed groups in eastern Ghouta have accepted the ceasefire, but as of today, the warplanes of the Assad regime are still reported to be striking targets in the enclave and the UN has been unable to

[Lord Ahmad of Wimbledon]
deliver any aid. I remind the House that hundreds of thousands of civilians are going hungry in eastern Ghouta, only a few miles from UN warehouses in Damascus that are laden with food. The Assad regime must allow the UN to deliver those supplies, in compliance with Resolution 2401, and we look to Russia and Iran to make sure this happens, in accordance with their own promises. I have invited the Russian ambassador to come to the Foreign Office and give an account of his country's plans to implement Resolution 2401. I have instructed the UK mission at the UN to convene another meeting of the Security Council to discuss the Assad regime's refusal to respect the will of the UN and implement the ceasefire without delay.

Only a political settlement in Syria can ensure that the carnage is brought to an end, and I believe that such a settlement is possible if the will exists. The UN special envoy, Staffan de Mistura, is ready to take forward the talks in Geneva and the opposition are ready to negotiate pragmatically and without preconditions. The international community has united behind the path to a solution laid out in UN Resolution 2254, and Russia has stated its wish to achieve a political solution under the auspices of the UN. Today, only the Assad regime stands in the way of progress. I urge Russia to use all its influence to bring the Assad regime to the negotiating table and take the steps towards peace that Syria's people so desperately need".

My Lords, that concludes the Statement.

6.13 pm

Lord Collins of Highbury (Lab): My Lords, I thank the Minister for repeating the response to the Urgent Question. Since the UN resolution, we have seen continued indiscriminate bombing of civilian areas, the targeting of hospitals and medical centres and the use of starvation as a weapon of war. There can be no impunity for those responsible for what are quite clearly war crimes. I hope the Minister will agree with that.

The Government have said that they will convene another Security Council meeting to discuss Assad's refusal to accept the ceasefire. It appears that, by excluding military action against terrorists, Assad and his allies have used this to justify continuing their assault against the jihadist armies in eastern Ghouta. An hour ago, the BBC reported that President Putin had ordered a pause in the assault, starting on Tuesday, and to include the humanitarian corridor. The pause is from 9 am to 2 pm local time—a pause that simply is not good enough. Does the Minister agree that, to stop the assault on eastern Ghouta, the UN should be clear that there must be a temporary cessation of all military action within Syria?

Lord Ahmad of Wimbledon: My Lords, I agree totally with the noble Lord. The perpetrators who are committing these acts need to be held to account. Indeed, that sentiment was aired by the Foreign Secretary in the delivery of the Statement. I also remind noble Lords, in answer to the specific questions raised by the noble Lord on the issue of the Syrian regime's continued bombardment of eastern Ghouta, it is notable that the main armed groups there, including Jaish al-Islam and Faylaq al-Rahman, have both accepted the terms of the ceasefire. I agree again totally with the noble Lord on the announcements in the news media from the Russian President, although I have not heard the full announcement yet. Having a small window to bring aid and critical medical assistance to the suffering people of eastern Ghouta is not good enough. The resolution stressed, as did the discussions in the Security Council, the need for a 30-day ceasefire, and that is what we are continuing to press for. Indeed, that is why we have asked the Security Council to reconvene.

Lord Campbell of Pittenweem (LD): My Lords, the Government have done everything available to them to try to bring these matters to a head. We should not be surprised at the starvation, barrel bombs and the use of chlorine gas. These are jointly and severally war crimes, and they appear to be being committed without any consideration of the consequences for those who are subject to them or the possible legal consequences to those who are presiding over them. I do not know how many more dust-caked children emerging from the ruins of their homes we have to see before President Assad can be persuaded. The harsh and unpalatable truth is that only Russia is in a position to persuade him. Were Russia to withdraw its support, Assad's position, and that of the Syrian Government, would be substantially weakened. I hope that when the Foreign Secretary meets the Russian ambassador, he impresses on him the responsibility that will attach to Russia if it does not take action to get Assad to call the dogs off.

Lord Ahmad of Wimbledon: The noble Lord raises a very important point and, indeed, the key to the solution. The Assad regime has persisted with its bombardment because of the cover provided by Russia in particular. Let us not forget that Security Council Resolution 2401 was unanimously accepted, and we are now asking Russia to stand by the commitment it gave in that international forum to ensure that we have a ceasefire, not for a few hours—as the noble Lord, Lord Collins, said—but for the 30 required to do what is necessary for the long-suffering people of Eastern Ghouta.

Lord Hannay of Chiswick (CB): My Lords, will the Minister be so kind as to explain why it was that, when President Macron and Chancellor Merkel intervened with President Putin over the weekend and pressed him to give effect to this resolution, which as the Minister said, was unanimously accepted, the Prime Minister did not join that démarche? Are we behaving now as if we have already left the European Union?

Lord Ahmad of Wimbledon: We will continue to have strong relations with both France and Germany. I applaud the efforts of both Chancellor Merkel and President Macron, but equally, as I have already said, Britain has been doing its part. We have been working with partners—European partners—and, as I said in the Statement, there are other players, including Iran and Turkey, that have an interest. We are continuing to raise these concerns with them as well. We will work with all like-minded partners, and explore every avenue to resolve this conflict, which has been going on for far too long, and the human suffering

that goes with it. We will continue to work with all partners, including our European allies to ensure that happens.

Baroness Falkner of Margravine (LD): My Lords, normally in the seven years of this Syrian civil war, when there has been a siege there have been attempts to broker not just a ceasefire but an evacuation of the civilians of that particular geographical location, leaving aside the fighters—whereby, afterwards, that fight may resume. It does not seem evident to us this time why the civilians have not been prioritised for evacuation, as we have sought the ceasefire, which I very much welcome—and I encourage the conversation with the Russian ambassador to express all the sentiments that the Minister has expressed.

Lord Ahmad of Wimbledon: I assure the noble Baroness and the House that we are looking specifically at the humanitarian situation. She will recall from a similar Question last week that there are about 700 people acutely in need. We have implored all agencies—and I alluded earlier to the proximity of the UN relief which is available—and it requires that dedicated action to ensure that that corridor can be opened up. Of course, evacuation of those who need the most essential medical assistance will be prioritised.

Lord Cormack (Con): My Lords, from the very beginning we derecognised the Syrian regime and have refused to have anything to do with it. It is a civil war at this stage and, to try to bring to an end the unspeakable barbarity that is going on, can we not at least have a temporary diplomatic mission in Damascus? It would make every sort of sense and give us some influence.

Lord Ahmad of Wimbledon: I do not agree with my noble friend, for the practical reason that I have already highlighted—that the biggest influence on the Assad regime is that of the Russians. We have been working extensively with other European partners and other allies and directly with the Russians to ensure that we get the ceasefire that is required. It now needs Russia to be true to its word at the Security Council to ensure that we can sustain, retain and ultimately deliver the peace that is required to the conflict. As for the Assad regime itself, we believe that there needs to be a transition to a new Government who can protect the rights of all Syrians, and we will continue to work in Geneva in that respect.

Lord Browne of Ladyton (Lab): My Lords, as previous interventions and the Statement itself have made clear, Russian influence is crucial in this situation. As we await the meeting between our Foreign Secretary and the Russian ambassador, in the meantime what contact are we having at any level with the Russians, or have we nothing to add to the pressure that must be being put on them by our European partners to get them to influence the Assad regime in the way we want? If we do not achieve that—and we cannot subcontract it to anyone else—there is no possibility that the ceasefire will hold.

Lord Ahmad of Wimbledon: As I have said, the role of the Russians is essential—I agree with the noble Lord—to the ceasefire, which is not even holding, in that it has not started effectively. I am sure that many noble Lords heard as I did on the radio this morning the gentleman who was in the basement and who went out and first described the chilling atmosphere that was very quickly interrupted by bombing and then artillery fire. Clearly, the ceasefire has not happened.

On the noble Lord's specific question, of course we are working at all levels with Russian officials. Indeed, we work very extensively with them in the UN Security Council, and it was as a result of us working together with our partners in tandem—not by contracting out but by working in unison—that we got the desired result of a unanimous resolution at the Security Council, supported by the Russians.

European Union (Withdrawal) Bill

Committee (2nd Day) (Continued)

6.24 pm

Amendment 12

Moved by ***Lord Wallace of Saltaire***

12: Clause 1, page 1, line 3, at end insert—

"( ) Regulations bringing into force subsection (1) may not be made until the Secretary of State has laid before both Houses of Parliament procedures agreed with the EU for continued coordination of foreign and security policy, including association with the EU's military staff and the European Defence Agency, and these procedures have been approved by a resolution of each House of Parliament."

Lord Wallace of Saltaire (LD): My Lords, the Minister argued in winding up on the first group of amendments that we should be talking about the Bill and not about the issues raised by the amendments, which seemed a very ill-judged remark. This Bill is about a very wide range of policy areas—economic, constitutional and international—on which the Government are asking us to give them extensive powers, on trust, without telling us what they intend to do. The question for many of us is that we cannot trust the Government so far in giving them all those additional powers, unless they tell us rather more clearly what they intend to do.

These amendments deal with the implications of leaving the EU for British foreign, security and defence policy, and with the management of those policies when we withdraw. As we withdraw, which is what this Bill is about, we will also withdraw from the structures of common foreign policy and the common security and defence policy in the Treaty on European Union, as specified in a large number of articles. So what will we do then? The leave campaign never addressed this in the referendum, so there is no way one can say, "Well, it's the will of the people, we can't stand in their way". The leave campaign denied that the EU was ever concerned with anything to do with security, foreign policy or defence. We were told when we joined that it was just about the common market, and now it has turned into something else. Anyone who has read Edward Heath's 1968 Harvard lectures, what he said when he became Prime Minister and what Sir Alec Douglas-Home said as Foreign Secretary, what Jim Callaghan did as Foreign Secretary and what the noble Lord, Lord Carrington, followed through on, including his London report on strengthening the

[Lord Wallace of Saltaire]
mechanisms of common foreign policy, and what Geoffrey Howe achieved, would know that Britain was absolutely at the heart of forming common foreign policy procedures in the European Union. I remember writing something about it for publication in a Chatham House journal in the late 1970s and being briefed very helpfully in the Foreign Office by the official who co-ordinated our input to common foreign policy, whose name was Pauline Neville-Jones. One or two Members of this House may, indeed, be familiar with the name. I also recall the noble Lord, Lord Forsyth, who sadly is not in his place at the moment, insisting even after the referendum that the EU had nothing to do with British or European security—and I gave him an annotated copy of the 2015 security and defence review with chapter 5, which is entirely about European defence co-operation, marked for his benefit.

Last September, the Government finally published a position paper on common foreign and security policy, which said, remarkably, that,

"the scale and depth of collaboration that currently exists between the UK and the EU in the fields of foreign policy, defence and security, and development",

is such that we need,

"a deep and special partnership"—

a familiar phrase—

"with the EU that goes beyond existing third country arrangements".

It goes on to point out that the UK was a founding member of the EU's CSDP and takes part in all 15 common security and defence policy operations and missions and concludes:

"The UK would like to offer a future relationship that is deeper than any current third country partnership … This future partnership should be unprecedented in its breadth, taking in cooperation on foreign policy, defence and security, and development, and in the degree of engagement that we envisage".

Well, that was interesting. Nothing was said for months afterwards—and, finally, the Prime Minister last week gave her speech in Munich in which she went into a little more detail about what she at least, if not the rest of her Government, seems to envisage. She said:

"The EU's common foreign policy is distinct within the EU Treaties … So, there is no reason why we should not agree distinct arrangements for our foreign and defence policy cooperation in the time-limited implementation period, as the Commission has proposed. This would mean that key aspects of our future partnership in this area would already be effective from 2019".

In that case, it is about time the Government started to educate the population on what arrangements they propose to make with the European Union. I hope, at least, that someone has told the European Union the sort of things that we might like to envisage. She then goes on to talk about our: joining the European Defence Agency and the European Defence Fund; contributing to the European Union's common development policy, but on the condition that we also play an active role in formulating future European Union defence policy—I am not entirely sure how we do that, as an outsider—co-operating in cyberspace and space; and dealing with a whole range of issues including, on internal security, a new bilateral treaty between the EU and UK.

6.30 pm

We need to know, before this Bill is passed, what sort of things that implies. We cannot entirely take on trust what the Government have said, partly because we know that they are confused and contain many disagreements within themselves. The Foreign Secretary made another speech last week. I looked very carefully through it; it is longer than the Prime Minister's. There is one sentence in it about future co-operation with the Europeans. It says:

"It makes sense for us to continue to be intimately involved in European foreign and security policy".

After that, he goes on to make a number of jokes about what British tourists do in Thailand, Doggerland and other such places, and does not return to the subject at all. One can conclude only that the Foreign Secretary is not of the same mind as the Prime Minister on how far we should continue to collaborate. I was even more interested to note—I am sure the noble Baroness, Lady Deech, will have noted—that the two-page article in the *Sunday Times* the Sunday before last about "Brains for Brexit" said that, far from the European Union being an asset in security terms, it has been responsible for more conflicts than any other international institution in the last 20 or 30 years. That is a quite astonishing comment which I think means that the European Union was responsible for various wars in Yugoslavia, among other matters. That at least suggests that the hard Brexiters, of whom the noble Baroness is one perhaps, see the European Union as something with which we should have no security relationship.

The purpose of the amendment is to say that, before the Bill is passed, the Government should be more coherent and clearer—with different Ministers saying the same thing—about what sort of deep and special partnership we wish to have. We will clearly not continue to command EU common deployments, as we have done in Operation Atalanta, but if we are to contribute, there has to be a very clear framework. I am conscious of this from what I had to do as a junior Minister in the coalition Government. There were those then—Liam Fox above all—who were happy to co-operate with the French and others in Europe, provided we did not tell the newspapers about it. When I suggested that we might, perhaps, invite the press up to Northwood to see the rather magnificent joint command for that operation, he agreed that ambassadors from other EU states could be invited but certainly not the British press.

The Government are incoherent on this issue. We therefore have the right to demand clarity before the Bill becomes law. The Bill takes the UK out of the European Union. The Prime Minister has just said that she wants us to stay in many of its foreign defence and development activities. How will that happen and how far are the Government prepared to commit themselves to it? I beg to move.

Viscount Hailsham (Con): My Lords, my purpose in adding my name to Amendment 12 is to enable the Government, through my noble friend, to explain what arrangements they intend to put in place before Brexit, in order to ensure that the United Kingdom is a full participant in the formulation of foreign and

security policies which inevitably will be of great and enduring consequence to us all. The absence of such arrangements would be a conclusive argument against leaving the European Union. Noble Lords should be clear about this: if we wish to punch above the weight that naturally attaches to a country of relatively modest resources, it is because we are part of and not outside the structures of the European Union.

For five years, I had the good fortune to serve in the Foreign Office under the overarching authority of Douglas Hurd. It is much to be regretted that he is not able to participate in this debate. His authority within the diplomatic and international community was great. This was due in part to his patience, his personal integrity, the temperate language that he always employed and his willingness to compromise. He never sought to promote himself by appealing to the wilder fringes of any political party. My noble friend was a model of a Foreign Secretary and I commend his example to all his successors. I digress for a moment and say that I very much regret that this House does not have the opportunity of hearing from Mr Jack Straw and Sir Malcolm Rifkind, both of whom would have made a valuable contribution to this debate.

When working under Lord Hurd of Westwell, I had immediate departmental responsibility for a number of important areas: the collapse of the former Soviet Union; central and eastern Europe, most especially the war in former Yugoslavia; and the turmoil, then as always, in the Middle East. We did, of course, have distinctive political policies on all these matters and we have distinctive bilateral relations with the relevant countries and institutions. But looking back on my time in the Foreign Office I am sure it is true that we made a real difference when we were able to work with our European colleagues and within the framework of collective European policy.

Collectively within the European Union, the United Kingdom was more influential than it would ever have been standing alone. This is not the age of Lord Palmerston or Don Pacifico. If one looks forward to the major international problems that we now face, that judgment remains good. Consider the ambitions of Russia; the ever-increasing power of Asia, especially China; the fact that America is once again detaching herself from the rest of the world and, most notably, Europe; the risk of war on the Korean peninsula; international terrorism; the problems posed by climatic change; the instability in the Middle East and the rise of militant Islam. In respect of all these matters, a collective approach is infinitely more effective than the individual policies of a middling power such as ourselves.

There are also some specific problems to consider. What of our permanent seat at the Security Council? As a member of the European Union, our permanent seat was less controversial than it might have been. Outside the EU, our status as a permanent member will be under increased pressure and, in any event, the status of France will be greatly enhanced.

What about Gibraltar and the Falkland Islands? Outside the councils of the European Union we will not be able to rely on the automatic support of our European neighbours. Further, on any view, our role as America's principal interlocutor with the European Union will cease. These considerations, by themselves, leaving aside all others, are a good and sufficient argument against leaving the European Union: that is my considered position. However, for the purposes of this debate, these concerns should cause this House to put questions to Ministers. We are repeatedly told by the Prime Minister and others that while we are leaving the European Union we are not abandoning our close ties. The noble Lord, Lord Wallace of Saltaire, usefully summarised our position paper, whatever it actually meant. We need more detail. We do not want bland reassurance. "Brexit means Brexit" is a quite meaningless phrase. It is not a policy or even an indication of a policy. Indeed, it is conclusive evidence of an absence of policy. Therefore, I say to my noble friend that this House is entitled to know in detail what arrangements will be put in place before we leave the European Union to ensure that the United Kingdom is a full, active and influential partner in the policy decisions that will certainly affect the lives of our fellow citizens for years to come. I doubt that this House will get a clear answer. I suspect that we will be none the wiser when the Prime Minister makes her long-awaited policy speech at the end of the week.

If decisions were made at last week's meeting at Chequers, that is welcome. It is almost, though not wholly, true that any decision is better than no decision. However, we are entitled to ask why on earth such strategic decisions were not taken before we triggered Article 50 and not now, with but 12 months or so to go. The absence of any arrangements and procedures of the kind identified in these amendments is by itself a good reason—there are many other good reasons—to reject the policy of leaving the European Union. Therefore, I look to my noble friend to give clear guidance on what procedures and arrangements the Government propose to put in place. This House is entitled to clear and precise answers to these questions, for they are fundamental in character. This is not a time for indecision, fudge, weasel words or lack of clarity. Having our cake and eating it is not an indulgence now available to us.

Baroness Deech (CB): My Lords, I had not meant to intervene but since the noble Lord, Lord Wallace of Saltaire, has speculated on my views, I wish to put some things in context. Obviously one seeks clarity but I think there is a certain note of hysteria going around. Only a few moments ago, we had a question and answer session showing just how impotent the EU, and, indeed, any of us, have been in relation to Syria. The EU does not even manage to pay its subscriptions to NATO and has been impotent in relation to Russia's behaviour recently. However, our own performance as a permanent member of the Security Council, a position from which we cannot be dislodged unless one entirely rips up the charter, has been admirable. If we want to continue to be an interlocutor between the continent of Europe and America, it is not a good idea to shoot ourselves in the foot by being even more uncivil towards President Trump than is absolutely necessary. As far as foreign policy and security are concerned, we are members of the Five Eyes group, which, from what I have read, is rather more efficient in its actions than what is going on in the EU. While we of course want clarity, there is no need to panic. We have to consider what the EU

[Baroness Deech]
has done historically in relation to foreign policy. Over the last 40 years, it has had as many failures as successes whereas our record has been pretty good.

6.45 pm

Lord Judd (Lab): My Lords, like the noble Viscount, I had the privilege of serving in the Foreign Office back in the 1970s. I underline his comment that it is a great shame that Lord Hurd no longer sits in the Chamber as he certainly was a very effective and powerful Foreign Secretary. One of the reasons he was successful was that he listened to people and adopted a reasonable approach to finding solutions.

There is no greater responsibility for a Government of the United Kingdom than to look after the well-being and safety of their people. At the moment there is a total dereliction of duty. We are about to abandon ways in which we have worked to protect the well-being of British people, while having absolutely no convincing indication of what is to replace our current methods of co-operation. Defence and security are inseparable and cannot be contained within national frontiers. They both require international solutions and co-operation. We also know, and debate it often in this House, that our armed services are very fully stretched; some would say overstretched. They cannot possibly do all that it is necessary to do on their own; they have to work with others. We have devised means whereby we can successfully co-operate in the interests of the British people. How on earth can we, with any sense of responsibility at all, say that we will withdraw from the existing arrangements without knowing exactly how we will fill the gap and maintain that indispensable co-operation?

This amendment, so ably moved by the noble Lord, Lord Wallace, is absolutely crucial and I am therefore very glad to have added my name to it. It does not apply just to this sphere, of course. We are being asked to buy a pig in a poke in too many areas. However, we cannot defend the British people by buying pigs in pokes, but by having absolutely convincing, watertight arrangements in place. There can be no interregnum between one regime and the next; we have to undertake this in time. Will the Government please this evening begin to give us some indication of precisely what the arrangements will be and what resources will be put into them?

Lord Hannay of Chiswick (CB): My Lords, I was urged by my noble friend Lady Deech to be more polite to President Trump, so I will respond to that by thanking him extremely warmly for having brought home to us the value of the European Union's common foreign and security policy. In the year he has been in office, he has singlehandedly illustrated why our national interests in a number of areas are much closer to those of our European partners than to those of his Administration: for example, as regards the nuclear deal with Iran, the rather unfortunate decision to move the US embassy to Jerusalem, his very lukewarm support for NATO, his withdrawal from the Paris climate change agreements and his trade policy. In all these areas he has brought home to us why this debate and this amendment, which I support, are vital to our future national interests. I hope that when the Minister responds, she will be prepared to go a bit further than generalities.

As others have already said, there is a complete lack of specificity in what the Prime Minister has said—she has, quite laudably, set out in very firm terms her desire that this should be a major pillar of the new partnership—about what the Government have in mind. It really is time that we saw more. The Prime Minister has spoken about a new treaty. We are in a negotiation. Normally, if you are in a negotiation and make a proposal, you table it. I have not seen the treaty. Has anyone seen it? I do not think that anyone has. Does it exist? I suspect not because, judging from the rather lukewarm attitude of the Foreign Secretary, he might not be able to produce much of an input into it.

This really is getting important now. We are only a year away from dropping out of all the complex machinery which makes the common foreign and security policy work. I have to say to my noble friend Lady Deech that her caricature of common foreign and security policy is bizarre. For example, the idea of a nuclear agreement with Iran originated in the European Union, and it was followed up, rather belatedly, by the United States. Therefore, I do not think that we should belittle such co-operation. In any case, the Prime Minister is firmly of the opinion that it matters and that we need to work very closely with the EU. I wonder whether it would not be better to say here and now—perhaps the noble Baroness the Minister replying to this debate could do so—that our co-operation in this area of common foreign and security policy is not subject to the rubric "Nothing is agreed until everything is agreed" and that it is, as we are trying to say but have been rather hesitant about saying, completely unconditional.

Lord Cavendish of Furness (Con): My Lords, is the noble Lord aware that the phrase "Nothing is agreed until everything is agreed" came from President Tusk, not us?

Lord Hannay of Chiswick: It was not only President Tusk; it was part of the agreed conclusions of the first part of the negotiations—that is, we subscribed to it too.

As that first stage did not cover common foreign and security policy, all I am suggesting is that, now we are moving into that field in the negotiations, we should make it clear that our proposals—including the proposal for a new security treaty—are not subject to "Nothing is agreed until everything is agreed" but will be put forward to the mutual benefit of all parties. That would make a huge difference, because there is a lot of misunderstanding and a certain amount of suspicion that we are approaching this in a spirit of transactionalism—that we are trying to trade off one part of the negotiations against another. That would be a mistake in the field of common foreign and security policy. If it is to be pursued after we have left the European Union, it can pursued on a basis of mutual benefit only and not by a transactional approach.

Therefore, I hope that when the Minister replies to this debate she can give a little more clarity on what the Government are seeking and that she can state in absolute terms that the unconditional nature of what we are pursuing here is our policy.

Lord Adonis (Lab): My Lords, I have four amendments in this group, which, following on from what the noble Lord, Lord Hannay, has just said, seek to maintain British membership of the EU's Political and Security Committee, the EU's common foreign and security policy, the EU Foreign Affairs Council and the EU Intelligence Analysis Centre.

First, I warmly welcome the noble Baroness to the Front Bench and to our debates. We have very high hopes of her and her response to this debate because she is not the noble Lord, Lord Callanan. We regard her as the more accommodating face of Her Majesty's Government. We think that, while the noble Lord, Lord Callanan, is not on the Front Bench at the moment, she has an opportunity to make all kinds of very sensible statements of government policy which can then go on the record and we can move on from there. This is a golden opportunity for her to do so in respect of foreign policy.

The noble Lord, Lord Wallace, made a very powerful speech on why it is important that we remain thoroughly engaged in the security apparatus of the European Union and he spoke about the big dangers that face us as we leave. I do not think there is any point in my repeating those remarks or those of the noble Lord, Lord Hannay. I just want to make two comments.

The first relates to the only speech that the Prime Minister gave, on 25 April 2016, in the debate on the referendum, where she weighed the arguments for remaining in the European Union. What is so remarkable about that speech is how much emphasis—it was an almost exclusive emphasis—she placed on the security aspects of the European Union and the dangers to our security of leaving. Clearly, given her experience in the Home Office, she was particularly concerned about some of the Home Office dimensions of that, and we will cover those in a later group. However, she also raised the broader security issues.

If one looks at the words that she used in that speech, it is very clear that she regarded membership of the multilateral institutions of the EU, particularly in foreign policy and security co-operation, as being of huge importance to the Government and to this country. She said:

"If we were not members of the European Union, of course we would still have our relationship with America … But"—

these are the key words—

"that does not mean we would be as safe as if we remain".

As the noble Viscount, Lord Hailsham, said, we will be leaving all these institutions in one year, and I believe it is incumbent on the Government to give the House some sense of what their policy will be in respect of those institutions. That is hugely important.

My second point is to consider the course that we now appear to be set on. It is what has become known as "hard Brexit", which is leaving not just the security institutions of the European Union but the economic institutions—the single market and the customs union. I am a novice to international security policy. I have spent most of the last 15 years trying to reform public services at home and, like many other noble Lords, I have had to get to grips with these issues. One of the most important and, for me, influential books that I have read while I have tried to understand what this might mean for the future of Britain in Europe and globally is by Professor Brendan Simms at the University of Cambridge. He has written a quite brilliant book called *Britain's Europe: A Thousand Years of Conflict and Cooperation*, which charts our whole relationship with Europe during the last millennium.

Professor Simms makes a quite obvious point, the significance of which becomes greater and greater as we appear to be heading towards leaving not only the security but the economic institutions of the European Union. The basic but fundamental point he makes is that countries which are engaged in trade conflicts and trade wars find it that much harder to co-operate on security issues. To my mind, in terms of the security of the United Kingdom going forward, the most alarming development at the moment is that, as we appear to be in an ever more tense and potentially conflictual relationship with France and Germany in particular over the future of our trade policy, and if we are to start engaging in tariff wars and setting up rival customs arrangements and things of that kind which could lead to quite significant trade conflicts, that can only weaken our security co-operation with them over the medium to long term.

Those of us who are in favour of remaining in the European Union are often accused of carrying out what is called Project Fear, but I recommend to the Minister and to noble Lords the Prime Minister's speech of April 2016. She draws a direct parallel between the instability of relations between European powers before 1914 and what could happen if we start to fracture those relations today. That came from her, not me. Therefore, what we look for from the Minister while she is able to make positive statements about Europe in the absence of the noble Lord, Lord Callanan, is some indication that she appreciates the need for very close co-operation with our European partners on trade and economic matters, not least because that will tend to promote close alignment in foreign and security policy.

Lord Cavendish of Furness: My Lords, does the noble Lord not realise that those of us who advocate leaving believe in free trade, which has been a great source of peace, rather than conflict, throughout history? He belongs to the side that wants tariffs.

Lord Adonis: My understanding is that it is the policy of Her Majesty's Government to put in jeopardy the free trade we currently enjoy in the European Union. If the Government were in favour of free trade, we would stay in the customs union and in the single market. These are straightforward, obvious propositions. The policy of the Government tends only towards reducing free trade with the single biggest set of trading partners that we have at the moment.

Lord Lamont of Lerwick (Con): How is the noble Lord just about the only person in this House who does not know that the Government have stated over and over and over again that they want a free trade agreement with the European Union?

Lord Adonis: My Lords, the best free trade agreement to have with the European Union is the one that we are currently in. That is patently obvious. When you

[Lord Adonis]
have an existing set of satisfactory arrangements, the idea that the policy for improving them is to undermine them is total nonsense.

I hope the noble Baroness will give us some assurance that she understands the significant security dimension that is at stake in our leaving the European Union and the importance of having close alignment on trade, not least so as not to weaken our collective security with our European friends and allies.

7 pm

Lord Stirrup (CB): My Lords, I will speak briefly to Amendment 12. The issues which it raises are of crucial importance to a post-Brexit UK, but they have only recently begun to achieve any prominence in the Westminster debate and have had very little visibility at all on the wider national stage.

EU Sub-Committee C of your Lordships' House has recently concluded an inquiry into sanctions policy after Brexit and is currently conducting an inquiry into the UK's future relationship with the European Union in the fields of security and defence. In both cases, the Government have expressed an intention to act in close concert with our European partners—the Government; not the movers of this amendment—but they have not so far explained how this is to be done.

There are some very clear difficulties. The EU's policy regarding specific sanctions regimes and its common security and defence policy are agreed at ministerial level within the Foreign Affairs Council. However, the arguments through which final proposals are hammered out take place at lower levels, in the engine rooms of the EU. If one is not present in the engine rooms, one has no influence over the formulation of policy proposals. This means that if the UK wishes, post Brexit, to act in concert with the EU in particular sanctions matters, or if it wishes to participate in common security and defence missions—for both of which it has expressed some enthusiasm—it risks having to do so on the EU's terms. It would have to do so having had no input to the formulation of policy, and with little or no input to subsequent strategic direction. This is not a position with which I, for one, would feel very comfortable.

The question, therefore, is: what arrangement can the UK reach with the EU that would allow it a suitable degree of influence in these matters? Why should the EU be interested in such an arrangement at all? Perhaps because in those areas in particular, the UK brings capabilities which, in scale and nature, are of an order that few, if any, other European countries possess. However, that does not alter the fact that a non-EU member is unlikely to be given the kind of locus in decision-making that is available to a member. The position of current non-members that align with the EU in these matters is not one that, in my view, would be appropriate for the UK. We need to argue for a separate, tailored arrangement.

Sanctions policy and common security and defence missions are, of course, offshoots of wider foreign policy. If we wish to have a close relationship with the EU in these specific areas, then we will need some mechanism for discussing and agreeing with it in advance the wider international issues and objectives involved. We need an architecture that brings the UK and the EU together to formulate foreign policy in pursuit of shared objectives, and that places UK personnel in those engine rooms of the Union where the specific proposals on individual issues are debated and evolve. We need to agree a modus vivendi for these people that protects the status of EU members while providing for outcomes that are in the best interests of the Union and ourselves. That is a very tall order, and all the more reason, then, for pursuing such an outcome much more vigorously and urgently than has been the case so far.

Amendment 12, and indeed several associated amendments, calls for such arrangements to be not just negotiated but approved by both Houses of Parliament before the provisions of the current Bill are implemented. I do not go so far: I do not believe that the amendments as set out should be agreed. However, I do believe that they provide welcome exposure to issues that are of crucial importance to this nation, that have been largely ignored for far too long and that should at last be accorded the priority they deserve. I hope that the Government will now act accordingly.

Lord Campbell of Pittenweem (LD): My Lords, it is always a pleasure to follow the noble and gallant Lord, Lord Stirrup, who speaks with great clarity and directness.

It may surprise the noble Baroness, Lady Deech, when I say that I have some sympathy for her in putting forward the notion that the European Union has not really paid up sufficiently for its defence. One of the so-called advantages of President Trump's arrival and his apparent dismissal of NATO has been to cause a much greater degree of realism. The old arguments about burden sharing now take a very practical effect, and NATO countries have agreed on a minimum of 2% of GDP. As far as I can see, all NATO countries are now moving, as far as they can and as quickly as they are able, towards reaching that level.

I support the amendment moved so ably by my noble friend Lord Wallace of Saltaire. I have one advantage over him—as indeed does the noble Lord, Lord Kerr of Kinlochard. We were both present at the Munich Security Conference and heard how the speech was delivered, as much as understanding the content. It was an interesting speech in this sense. The first half was exemplary. The Prime Minister extolled the virtues of the existing security arrangements in Europe and rightly pointed to her role in continuing to ensure that the United Kingdom remained a participant in the application of the European arrest warrant and an active member of Europol when, on the Back Benches of the other place while she was Home Secretary, quite a lot of people in her own party would have departed from both these positions without a backward thought.

Munich is regarded, perhaps over-grandly, as the Davos of defence, and there is no doubt that the Prime Minister's speech got pretty substantial billing. That is why I and many others found the second half so disappointing, provoking as it did an American listener—whom I believe to have had Republican sympathies—to say, "Where's the beef?". The truth is that the Prime

Minister had nothing of substance to say in addition to the paper that was published by the Government last September.

There was no hectoring from the Prime Minister, but there was certainly a degree of lecturing. In a sense, what she said can be summed up as: the security regime of the European Union is extremely good, but we are leaving it, we want you to help us replace it with a treaty, and, if you do not agree to what we want—and here is the lecturing to which I referred—you will bear the responsibility. That is hardly the way to win friends and influence people in a gathering of experts and people with enormous experience in the realms of security and defence.

There was one element of the Prime Minister's speech that has not, so far, received sufficient consideration. She said that,

"when participating in EU agencies the UK will respect the remit of the European Court of Justice".

I thought that the whole purpose of Brexit was to have nothing to do with the European Court of Justice. If that is not now the Government's position, it might be argued that the door of the ECJ has been opened, if only slightly. Perhaps it was too Delphic a sentence to attach much significance to, but it has not been the subject of further explanation.

As has already been hinted at, the consequence of leaving is that the United Kingdom will become, in European Union terms, a third country. That is relevant to the issue of participation in Europol and the European arrest warrant. It raises a number of questions—some of which are being legally disputed—about whether or not the kind of arrangement the Government appear to wish to achieve would necessarily involve the role of the European Court of Justice. There are strong arguments on both sides, but the matter remains uncertain.

Before I move on to the question of defence, perhaps I may make one last point on security. Everything in these debates seems to end up around Ireland in some way or another. Ireland is a foreign policy issue because the treaty is an international treaty lodged with the United Nations—and it is also an issue to which we must have regard in considering the question of security. As I understand it, the Government are considering the creation of a virtual border based on electronic means. At the same time, they are telling us that cybercrime is on the rise and is one of the principal issues which may have an impact on our security. If people can get inside the computer system of the Pentagon, I doubt they will find it too difficult to get inside any electronic border that we may create between Northern Ireland and the Republic.

On defence, it is quite true—unassailable—that NATO is the bedrock of our defence. But it is also true that in NATO and the European Union there is a more considered determination to provide much more co-operation. The two institutions had their head offices at the same time in Brussels and for years they would not speak to each other. Now, at the very centre of the policies of NATO and the European Union is a determination that there should be a higher degree of co-operation.

There has been discussion about the common defence and security policy but, although it now becomes an important element in the consideration of these matters, no one has yet mentioned PESCO. This is not a junior form of a place where you can buy your groceries but—I have reservations about the language—Permanent Structured Cooperation. Essentially, it is the countries of the European Union concentrating on co-operation on defence matters so as to ensure that collectively they might make a more substantial contribution to NATO. We are not members of PESCO—recently formed—and if we leave the European Union we will cease to be present at meetings of EU Defence Ministers and Foreign Ministers. We will no longer be involved in the decision making of the common defence and security policy. As a third party, our participation in operations will be at the discretion of the other member states. I see that as a highly deficient alternative to what we presently enjoy.

The security and defence consequences of our departure, as has been pointed out, were never properly discussed—any more than the political consequences. But this evening we are concerned with security and defence and there needs to be clarity. If the noble and gallant Lord, Lord Stirrup, had any responsibility for it, I am sure that we would have clarity. The reason there is no clarity is that no decisions have been made. That is why, when the Prime Minister at Munich said that this was an urgent matter and we must get on with it, it did not receive the kind of ready welcome she might have expected.

The amendment is essential if we are to cause—to force, if you like—the Government to come clean on what their proposals are: to go beyond the document published last September and to set them out in detail. It is a matter on which the European Union is anxious to have detail and I see no reason why it should not be public rather than private. That is what the amendment is designed to achieve and why it should be supported.

7.15 pm

Lord Kerr of Kinlochard (CB): My Lords, I agree with the assessment of the noble Lord, Lord Campbell of Pittenweem, of the Prime Minister's speech in Munich—it is exactly right—but he forgot one thing: at least the Prime Minister did not set out to insult the conference as the Foreign Secretary had the year before. Things are getting a lot better.

I rise to support Amendments 12 and 185 and to say why I cannot support Amendment 166 and therefore Amendments 164 and 165. Amendment 166 states that we should remain in the Foreign Affairs Council after we have left the European Union. We have to be realistic—that is not possible. If we decide to leave the European Union, we will not have a seat in any of the councils of the European Union. That is a fact. We may be able to negotiate some kind of seat in the directing bodies of agencies; if we are operating alongside the European Union in, say, a defence deployment, we may be able to arrange some joint command structure for that particular operation, but the direction of common foreign, security and defence policies and PESCO will be set by the 27 and we will have no say in the decisions they take. This, I fear, is undeniable.

Lord Patten of Barnes (Con): Will the noble Lord concede that at least European Ministers after they

[Lord Patten of Barnes]
have had their discussions and made their decisions will be sure to tell us afterwards what they had decided?

Lord Kerr of Kinlochard: I suspect we will find out. To me personally, this is an extremely sad moment. When I was ambassador to the European Union I found that the things I was allowed to suggest as policy prescriptions were taken seriously in Brussels, partly because it was assumed that if the EU followed the British prescription, the British would ensure that the Americans came in behind it. When I was ambassador in Washington I found the same. Access to and influence on the President was a function partly of the perception that, on a foreign policy issue, the British could call the shots in Brussels.

I am glad that this discussion started with a tribute to Lord Hurd of Westwell, who was the exemplar of how to handle common foreign and security policy. I am glad too that it started also with a tribute to Lord Carrington. The original EPC was, in many ways, a British construct. CFSP as it emerged, with the strong support of the Healeys and the Callaghans, was Douglas Hurd's construct. The European External Action Service was a British proposal. We punched more than our weight but we have to accept that when we leave the European Union, if we do, that is all gone and we should not pretend that we will have the same influence from outside. What should we do?

Lord Cavendish of Furness (Con): Can the noble Lord explain to us why it is not in the interests of our European partners—100% in their interests—to co-operate as we have always co-operated before?

Lord Kerr of Kinlochard: I am coming to that. I agree entirely that co-operation is in everyone's interests. This is one of the areas of negotiation where we are not talking about a zero-sum game; rather, we are talking about a common interest, so I agree with the noble Lord. The point I am making is that we are in the next room. We are not in the room where the decisions are taken. We need an offer and an architecture for the next room. We need to come forward very soon and say, "We are prepared to consult on everything in the area of the common foreign and security policy. We are prepared to consult before every great debate at the United Nations. We would like to consult about every conflict area where Europe should have a view and possibly a presence. We would like to go on contributing our analysis and our intelligence. We would like you, o European Union, to build an annex to the Council—the room next door where we, who we hope will be your closest partner in co-operation on foreign policy, will be consulted by you and will consult you".

A moment ago the noble Lord, Lord Liddle, made the point that the timing is very important. If we leave the European Union in March 2019, we will leave the Council and there will be no such structure in existence. I should think that something will be invented in the end, but there will be a period of hiatus when we will do the best we can. It would be much better if the United Kingdom were now to put forward an offer and an architecture. It would be much better if there had been a third section to the Prime Minister's speech in Munich in which she had said, "This is how we envisage it working". I do not see, particularly on the common foreign and security policy, why we should leave it to the European Commission. There is no great expertise on this in the Commission. It seems that it would have been better on a number of the dossiers in this negotiation if we had actually decided to play at home rather than play on their turf. It would have been better if on every issue we had not waited for the other side to make a proposal.

This is the locus classicus. This is the area of our greatest reputation in Europe. We invented the existing structures in this area, which we are now going to walk away from. This is the area par excellence where the other countries would like to co-operate with us. Why do we not put forward a proposal now? That is why I can support very happily Amendments 12 and 185, but I fear that there is no point in pretending that we can remain, on particular issues, a member of the club. We will have left the club, so the best we can do is try to be its closest partner on the common foreign and security policy.

The Earl of Sandwich (CB): My Lords, following on from what my noble friend has just said, I should like to ask a favour of the Minister. I am not going to make a speech because I had my chance at Second Reading. My request is that she will respond to the question of international development. The noble Lord, Lord Wallace of Saltaire, mentioned it, but it was not in his amendment. However, it is very connected. I am thinking in particular of Kosovo at the moment as an example of the bridge between security, defence and international development. It is still going on. At this moment the Prime Minister of Kosovo is in the House of Commons seeking our support in the context of the European Union, of which we are still a member. This is something that is happening now. I hope that the Minister can respond on that subject and I will probably table an amendment at the next stage.

The Earl of Listowel (CB): My Lords, we will come to the issue of children's rights later in the Bill: the right to education, the right to contact with both parents and the right to rehabilitation from abuse and torture. While listening to the debate I recalled my mother's experience of losing her younger brother when he was one or two years of age. They were in an air raid shelter that was cold and wet. He contracted, I think, meningitis. I was also thinking of the Anna Freud National Centre for Children and Families, which is a centre of excellence for helping children and young people. Originally it was known as the Hampstead War Nurseries. It was set up by Anna Freud during the Second World War to care for children dealing with the trauma of bereavement as a result of losing their parents in war. I hardly need to say to your Lordships that this is a very important matter. We need only to look at what is happening to children in Syria, so we must take the most constructive and proactive course possible.

We can keep this country safe, but other countries rely on our strength to keep them safe and secure, and help their children to lead stable and secure lives. I am

sure that the Minister will want to make a constructive response to this debate and I hope that she will be as sympathetic as possible to the concerns raised.

Baroness Hayter of Kentish Town (Lab): My Lords, I will be brief because most of the points have been made. I am grateful to the noble Lords who tabled this amendment and have thus ensured that this important issue is being discussed today. As has been said, the Prime Minister's speech in Munich did rehearse the case that,

"our security at home is best advanced through global cooperation, working with institutions that support that, including the EU".

We also had a welcome reminder from my noble friend Lord Adonis of the Prime Minister's earlier, pre-referendum speech on the same issue. In Munich, she went on to outline her desire for an ambitious post-Brexit EU security relationship, talking about a security treaty as part of the "deep and special partnership" with the EU that she wants to see. However, as we have heard from most speakers in this debate, there was a curious lack of detail, or "beef", in what she said.

As with last week's amendments, these issues are integral to how we leave the European Union and indeed to the vote which will take place in this House in due course over the withdrawal deal, with its framework for our future relationship with the EU. As has also been mentioned, there is clearly a relationship between trade and security, as my noble friend Lord Adonis reminded us. I hope, therefore, that when the Minister answers the various points of the debate, she will do so in the spirit of these being an integral part of what this Bill is looking at, which is the method by which we leave the European Union. Given that our role in defence is most probably the main defence power in the EU and the only one already hitting the 2% target, our departure will have a significant impact on the defence and foreign policies of Europe and will therefore affect our other relationships with it.

Indeed, we should be mindful that, while the UK possesses full-spectrum military capability—although a little stretched, as my noble friend Lord Judd reminded us, and no doubt my noble friend Lord West would if he was in his place—and an extensive diplomatic reach across the globe, we should note that our hard and soft power has been greatly enhanced by our membership of the EU. That is why, as we have heard, Mr Callaghan as he was then focused on this and why the last Labour Government helped to launch the common foreign and security policy and the common security and defence policy. So while the Government have rightly indicated that they will seek to continue our participation in, for example, EU missions and interacting with relevant EU bodies, what we need is for the Minister to outline how the Government envisage this happening and on what terms—a point made by the noble and gallant Lord, Lord Stirrup. This is needed with a degree of urgency since, as my noble friend Lord Judd said, there simply cannot be an interregnum or hiatus, to use the words of the noble Lord, Lord Kerr, before something is put in place. We have a year and a month to go.

I will take a moment to pose a different question to the Minister. Given the demands at the weekend by Spain's Foreign Minister for joint management of Gibraltar's airport after Brexit, could she confirm that at every step of the way the Government of Gibraltar are being informed and consulted on the Government's evolving position on these and other issues, and that nothing will be agreed to jeopardise Gibraltar's future—mindful, of course, of its worries arising from paragraph 24 of the EU's negotiating mandate?

7.30 pm

I recognise that some of these amendments are probing at this stage. Nevertheless, we strongly support the principles behind them, particularly their call for greater detail and specificity from the Government, as was called for and demanded by the noble Viscount, Lord Hailsham, and by others, and even for the clarity required by the noble Baroness, Lady Deech. Continued co-operation with the EU is vital for our security and our wider interests, and to ensure that we can continue to make a positive impact abroad, as well as maintaining our reputation as an outward-looking nation. These issues are important, and we look forward to hearing what I hope will be a positive and detailed response from the Minister.

Baroness Goldie (Con): My Lords, I thank you all very much indeed for contributing to a genuinely extremely interesting and useful debate. I thank the noble Lord, Lord Adonis, for his very warm words of welcome. I fear that it is inappropriate to say this to someone bearing the name Adonis, but I fear I may be doomed to disappoint him. I will try to deal as best I can with the various points that have been raised.

The Government share with this House the objective of building a close and co-operative relationship with the EU on issues relating to defence and security, as referred to by the noble Lord, Lord Wallace of Saltaire, or to foreign affairs, security and intelligence, as referred to by the noble Lord, Lord Adonis. These are indeed vital matters. The continued security of Europe and of our citizens is paramount to us. It would just not be in our interests to see that co-operation diminish.

The purpose of the Bill is, I suppose, mechanical and rather tedious, but it is a mechanism to try to ensure that the UK statute book continues to function after we leave the EU and that it is not riddled with gaps and holes. That is what this Bill is all about. Amendment 12, as proposed by the noble Lord, Lord Wallace of Saltaire, is about the future relationship with the EU and securing it. That is vital—nobody disputes that—but it is of course inevitably, and I am sorry to use the platitude, subject to the current negotiations. Given that the Government have already committed to providing Parliament with a meaningful vote on any final deal, I respectfully suggest to the noble Lord that perhaps this Bill is not the appropriate forum to raise these concerns. I still think that the debate is an appropriate forum in which to articulate them.

Lord Kerr of Kinlochard: Could the noble Baroness reassure me that there is a negotiation going on on the future relationship between the UK when it has left and the common foreign and security policy of the EU? Is there a negotiation going on? I have the impression that there is not. I was trying to say that we should start one by making a proposal now.

Baroness Goldie: The noble Lord will understand that I am a very lowly mortal and that I am not privy to the detail of the negotiations. What is clear from what the Prime Minister has said is—just as the noble Lord, Lord Adonis, very helpfully identified—how extremely important these issues are to the Prime Minister. I am absolutely certain that, within the holistic forum of the negotiations, these matters are certainly being discussed and looked at.

Baroness Hayter of Kentish Town: The noble Baroness has said, and it keeps being implied, that these are not issues for this Bill. I am sure that she knows the Bill far better than I, having read it more often, but I remind her that on page 7, Clause 9(1) says that the use of regulations is,

"subject to the prior enactment of a statute by Parliament approving the final terms of withdrawal of the United Kingdom from the European Union".

We know that, under Article 50, those final terms of withdrawal have to include the framework for our future relationship, which is almost bound to affect and comment on issues such as this. Although on many occasions Ministers may not want to answer, there is reference in the Bill to the withdrawal deal and surely it is appropriate for us to bring to the Government anything that might be in that.

Baroness Goldie: Yes. My position that I advance to the noble Baroness—I was just going to come to this in my speech—is that there will be a subsequent opportunity for Parliament to look closely at whatever the withdrawal agreement is and its implementation. In addition, the Government have committed already to providing Parliament a vote on the final deal. Parliament will be given the opportunity to scrutinise the future relationship between the UK and the EU. That is why I submit that the Bill before us is essentially of a mechanical nature. That is what it is: it is trying to ensure, as we leave the EU, that we make sense of transferring the necessary laws, enactments and regulations, whatever they may be, into the statute book of the United Kingdom. The noble Baroness is quite correct that Parliament should have that right to scrutiny, of understanding what the agreement is and questioning how the implementation will take place; I am pointing out that these opportunities will be there. Parliament will not be denied that opportunity.

Lord Campbell of Pittenweem: Will the noble Baroness give way? I shall be very quick.

Baroness Goldie: My Lords, I would be happy to give way later, but I am quite anxious to make progress. Important points have been raised. I want to try to keep the theme running as to how I will respond to them.

The noble Lord, Lord Adonis, referred to the Prime Minister's speech in Munich. She gave a very important speech because she detailed further how the UK envisages future collaboration with the EU on internal and external security. She reiterated our unconditional commitment to European security. I turn to a very important point raised by the noble Lord, Lord Hannay, and echoed by the noble Lord, Lord Adonis. I say without equivocation that we remain absolutely committed to ensuring European security and developing this deep and special partnership. Our desire for a close working relationship on foreign and security policy is not conditional on other areas of the negotiations. I hope that that reassures the noble Lords.

Lord Campbell of Pittenweem: We have, effectively, a willing buyer and a willing seller when it comes to security and defence. Why not take the opportunity of concluding that bargain? It would be much easier to do than, for example, the trade agreements that we hope to deal with in the future.

Baroness Goldie: This is like the fair in Paisley: things coming from one side, interventions coming from the other side and voices from behind me. I am not sure that I entirely agree with the analogy. It is the case that explorations are taking place, if you like, between a buyer and a seller—that is what a negotiation is—but these are sensitive negotiations. I am trying to make clear in the course of my speech—perhaps if I can make a little progress it might become more apparent—just how committed the Government are to addressing the issues raised by your Lordships. They are issues of real concern and are certainly of vital importance. That is because our shared values—those values between the United Kingdom and the EU—are manifest and universally acknowledged. I hope that universal acknowledgement understands that we do not need the text of the Bill to explain to everyone that it is there. I hope that everything that we have done as a member of the EU and all that we are doing in the conduct of the negotiations, particularly as made clear by the Prime Minister's remarks, will reassure all just how serious we are about these matters.

We have proposed a bold new approach to security co-operation with the EU, including a comprehensive framework for future security, law enforcement and criminal justice co-operation, and for future co-operation on foreign and security policy. I say to the noble Lord, Lord Wallace of Saltaire, that, as we leave the EU, of course our consultation on the CFSP will change, as it inevitably has to do. With considerable justification, many of your Lordships—the noble Lords, Lord Wallace of Saltaire, Lord Judd, Lord Hannay and Lord Campbell, my noble friend Lord Hailsham and the noble Baroness, Lady Hayter—were anxious to get some idea of what the post-Brexit position would look like in relation to these issues of critical importance.

I say by way of preface to all of this that, as a Government Whip for the Foreign and Commonwealth Office and for Defence, I have regularly found myself at this Dispatch Box outlining positions on foreign affairs and defence which are UK derived. They are positions that we have reached by ourselves and as a consequence of our NATO membership—which is very important, as acknowledged by the noble Lord, Lord Campbell—as part of our P5 position on the United Nations Security Council or as a consequence of discussions with our global allies. We do that now on our own account. I make that point to explain that, while we value the relationship that we have had with the various agencies in the EU, there is another territory out there that is also extremely important to the future security not just of this country and the EU but of our global partners.

Lord Browne of Ladyton (Lab): It is crucial that we understand that the Prime Minister proposed in Munich a treaty for what was referred to as "internal security", which is internal security within the European Union. It would be a treaty which had plenty of detail and clearly reflected co-operation with the existing institutions of the European Union—that is where we get into discussion about the European Court of Justice. But for external security, there would be co-operation. Why this difference? Why a treaty for internal security, and why just co-operation on global security, with a clear indication that we would leave the European Union's foreign policy on the date of Brexit?

Baroness Goldie: There seems to be an inescapable distinction between these two positions. In relation to the internal security of the EU, there can be a meaningful discussion about what we can do to assist and support that, but when it comes to external security and just as I have outlined, there is a multiplicity of other positions, agencies, alliances, relationships and partnerships which govern what we do. I can see that what would be appropriate to deal with one scenario might not be appropriate to deal with another, but I say that without prejudice to whatever the negotiations are currently covering. I am not privy to the detail of the negotiations, but there seems already to be evidence that constructive dialogue is taking place. From what we have heard from the Prime Minister and her absolute and unqualified commitment to security and to trying to embark on as close and harmonious a relationship as we can get with the EU post Brexit, there is no doubt about her conviction on these matters.

We have to work as closely as we can with the EU post Brexit. The Prime Minister has made that crystal clear and is right to do so. The UK is not without influence. As the noble Baroness, Lady Deech, noted, it enjoys a status in relation to these matters—I refer again to our P5 position on the United Nations Security Council. One area in which people have been sceptical is in their asking why the UK should be treated differently from other third-country partners as we try to negotiate new arrangements with the EU. Taskforce 50 noted in its presentation on external security that the EU would lose one of its two permanent members of the Security Council when the UK leaves. Taskforce 50 recognises that this could merit a specific dialogue and consultation mechanism with the UK.

Perhaps I may return to a very legitimate question posed by a number of your Lordships: what is all this going to look like and is there any sort of shape to it?

7.45 pm

Lord Davies of Stamford (Lab): The Minister has just mentioned the matter of our withdrawing from the permanent membership of the United Nations Security Council and that our withdrawing from the European Union will mean that there will be only one EU permanent member. Will that not be a wonderful day for France, which will be able to speak in the councils of the United Nations as representing the EU as a whole, and will no doubt do so?

Baroness Goldie: I am sorry, I think that I may have been misunderstood. I did not talk about the United Kingdom withdrawing from being a P5 member of the United Nations Security Council. I said that when we withdraw from the EU, the EU will be left with only one member, which is France. The position of the UK in that respect is powerful and influential, and I am pointing out that Taskforce 50 thought that it could certainly merit a specific dialogue and consultation mechanism with the UK.

It is pretty clear, particularly when there are many in this Chamber much more knowledgeable than I am about these important and technical matters, that to underpin our future co-operation we will seek regular institutional engagements, including specific arrangements on secondments and information sharing—that would seem to be at the heart of constructing any relationship. The nature of the threats that we face mean that we should seek a framework that could be scaled up in times of crisis. One needs a relationship which can be tested against need if situations arise when the partnership, agreement or whatever it is to be has to swing into action.

The United Kingdom intelligence community already works closely with other members of the EU. The heads of the German BND, the French DGSE and the UK secret intelligence services issued a joint statement at the Munich security conference committing to close co-operation and stating that cross-border information sharing must be taken forward on themes such as international terrorism, illegal migration and proliferation of cyberattacks after the UK leaves the EU. We want to do all that. I am trying to explain to your Lordships that there is straw with which to make my bricks. I am not just clutching it out of the air; I am trying to indicate that there are substantive matters that can be the foundation for something very firm and enduring.

Perhaps I may try to deal with one or two particular points raised. The noble and gallant Lord, Lord Stirrup, raised the important matter of sanctions. We have just passed a sanctions Bill which will provide the UK with the powers to implement our own independent sanctions regime, but we would delay these powers coming into force if we could agree arrangements with the EU concerning sanctions co-operation during the implementation period. On sanctions, as with co-operation on foreign and security policy more generally, we seek to consult and develop a co-ordinated approach before decisions are made. To enable such co-operation, we will need consultation mechanisms; for example, regular sanctions dialogues. I was very struck by the contribution from the noble Earl, Lord Listowel, who raised real and poignant issues. Nobody would disagree with that, which underlines why we need close co-operation on these vital issues.

On Amendments 164 and 166 tabled by the noble Lord, Lord Adonis, the Political and Security Committee and the Foreign Affairs Council are of course bodies of the EU. They are attended by member states and are intended for the development of the EU's policy.

We are leaving the European Union and are not seeking to participate in these meetings on the same basis as EU members. The noble Lord, Lord Kerr of Kinlochard, identified these problems. But, given our historic ties and shared values, we are likely to continue sharing the same goals and we will therefore want to co-operate closely on a common foreign policy. The noble

[Baroness Goldie]
Lord, Lord Kerr, said very cogently that we are not talking about a zero-sum game. It was racy language for the noble Lord, Lord Kerr, but I totally agree with him. We are not talking about a zero-sum game: well established and good relationships already exist which will not just evaporate. We will seek to bind these and tie them in to our new post-Brexit relationship. We want to establish an enhanced partnership with the EU that reflects the unique position of the UK. This will include close consultation in a variety of fora. Attending the Political and Security Committee and the Foreign Affairs Council, however, is not the only means by which we can achieve that.

Amendment 165 was also tabled by the noble Lord, Lord Adonis. This amendment seeks to bind the UK—"bind" is the important word—to follow the EU's foreign policy objectives regardless of our own views. This would limit the UK's ability to respond independently to developments in the world post Brexit, and such a restriction would be profoundly undesirable. Of course, on many foreign policy issues the UK and EU will continue to share the same goals and will want to co-operate closely, whether that is by continuing to support the Middle East peace process or by tackling the threat of piracy off the Horn of Africa—but, again, I do not think we need texts and primary legislation to underline what are already our shared values and beliefs.

Amendment 185 was also tabled by the noble Lord, Lord Adonis, and refers to the EU Intelligence Analysis Centre. I reiterate the Government's unconditional commitment to European security. In the exit negotiations we will work closely to ensure that the UK and EU continue to co-operate closely, including through the sharing of information, to safeguard our shared values and to combat common threats, including threats of terrorism, organised criminal groups and hostile state actors. The precise modalities and arrangements to enable this partnership will be decided in the negotiations. I do not expect this to satisfy the noble Lords, Lord Adonis and Lord Wallace of Saltaire, but I hope that it will provide them with sufficient reassurance of the Government's commitment to continue close co-operation with the EU and its agencies and that, in these circumstances, they will see fit not to press their amendments.

I will say in conclusion—I reiterate it because the noble Lord, Lord Hannay, raised the point—that the Government have been clear that the UK remains unconditionally committed to European security. In the exit negotiations we will work to ensure that the UK and EU continue to co-operate closely to safeguard our shared values and to combat common threats, including terrorism. A partnership where we can build on the existing structures and arrangements—because it is not a zero-sum game—to improve processes will enable us to go further to respond to the reality of these. I hope that this will provide your Lordships with sufficient reassurance of the Government's commitment to continue close co-operation with the EU and its agencies.

Lord Kerr of Kinlochard: Before the Minister sits down, perhaps I may say to her that she will have responded to this debate admirably if she can think of a way of conveying to the Foreign Secretary—it might be relatively easy since he is here—that there are at least some in this House who believe that the right way of advancing the dossier of co-operation with the EU that we have left on a common foreign and security policy would be for us to put forward a draft treaty now—not waiting for the other side, not waiting for the Commission, the expertise of which is not on foreign policy, but putting forward a treaty drafted by the Foreign Secretary, with all his detailed, forensic skills.

Lord Wallace of Saltaire: My Lords, of course I shall withdraw the amendment, but I shall make a couple of comments. It is clear that we will have to return to this at the next stage if the Government do not provide any more detail. First, on the role of the Lords in considering Bills such as this, the noble Baroness said—as the noble Lord, Lord Callanan, said on a couple of occasions—that this is a largely mechanical Bill. Well, it is a mechanical Bill that gives very wide discretion to the Government to design our future relationship with our most important security, political and economic partners. So a House that concerns itself not with whether the principle of the Bill is correct but with the detail is entirely in accord with its role to ask for detail on what that discretion will be used for.

It would be easier to accept that this is a mechanical Bill and not to raise these difficult questions one after another if we had some confidence that the Government actually know what they want in these areas. Part of our problem is that many of us have no such confidence. I do not think that the Foreign Secretary has a clue about what he wants by way of a future relationship with Europe: I doubt whether he has really thought about it for more than three or four minutes. He is too busy thinking about the next anecdote he is going to tell or the next joke he is going to make. His speech last week was a disgrace for a Foreign Secretary: the Prime Minister's was of an entirely different quality. For a Conservative Party that has always prided itself on its commitment to a strong foreign policy, it must be a real embarrassment that we still have someone in place who is incapable of giving a serious speech on foreign policy. So this House is fulfilling its proper role in asking for detail on the implications of the Bill.

Secondly, I take up what the noble and gallant Lord, Lord Stirrup, said: the engine room is important.

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, I think it is against the rules and the spirit of this Chamber to criticise a Member of another place by name. I hope that the noble Lord will see fit to moderate his comments accordingly.

Lord Wallace of Saltaire: I apologise for being perhaps a little stronger than I should have been in this respect. On the engine room—I wanted to return to the noble Earl, Lord Howe, on this—much of the business of multilateral organisations, be it NATO or the EU, is done in working groups and committees. The common foreign and security policy structure has some 40 working groups and committees, including a military committee that has

been chaired by a British officer. If we are not in any of those working groups, we will miss out on formulating policy.

There are other details that matter a great deal. I remember the noble Earl, Lord Howe, saying on one occasion, when some of us were following the noble Lord, Lord West, and asking, "Where are you going to find the frigates to make up the carrier groups that we need?" The noble Earl said, if I remember correctly, "They do not necessarily have to be British frigates". I took him as meaning that they might be Dutch, French, Belgian or whatever. Well, that also needs a certain structure, with certain training mechanisms and certain multilateral commands.

Lord Hamilton of Epsom (Con): Would the structure not be NATO?

Lord Wallace of Saltaire: The noble Lord may not know, but, as I have quoted, we have been involved in some 15 EU operations, some of which have been naval. Had he visited Operation Atalanta at Northwood, he would have known that that is an entirely naval operation, commanded by the British with ships from a number of different nations. Operation Sophia in the Mediterranean has also involved British frigates working with others on the whole question of migration. So some operations are NATO, some are the EU.

I have said quite enough. Of course I am going to withdraw, but we, along with many others, do not know enough about this area to be able to give the confidence to the Government that we want—that is the whole problem with this "mechanical Bill". I beg leave to withdraw the amendment.

Amendment 12 withdrawn.

8 pm

Amendment 13

Moved by ***Baroness Ludford***

13: Clause 1, page 1, line 3, at end insert—

"( ) Regulations bringing into force subsection (1) may not be made until the Secretary of State has laid before both Houses of Parliament procedures agreed with the EU for continued UK participation in measures to promote internal security, police cooperation and counter-terrorism and these procedures have been approved by a resolution of each House of Parliament."

Baroness Ludford (LD): My Lords, the Prime Minister's speech in Munich 10 days ago, which was cited in the previous debate, was encouraging as far as it went. The Prime Minister spoke of wanting to participate in Europol, the Schengen Information System, the European arrest warrant and the European investigation order, which is a sort of European arrest warrant for evidence. But aspiration is not enough. Cross-border co-operation on law enforcement is premised on an assumption that all member states share similar standards of fundamental rights protection. Mutual recognition is rooted in mutual trust. I am afraid that successive British Governments have not really understood this sufficiently and have been more or less reluctant to sign up to the protective measures alongside the measures on police powers.

It is really strange that the UK has had such an ambivalent relationship with EU justice and home affairs over the past 20 years because it is possible to say, without being arrogant, that our record on the rule of law and the quality of our lawyers, judges and police stand comparison with any other in Europe and should have put us at the centre of EU developments in civil as well as criminal justice. But successive Governments have insisted on opt-outs and optional rather than full-hearted participation. That has not stopped the merits and value of our weight and experience and our personnel in justice and home affairs being recognised. We have the director of Europol—I think he has been there for the best part of 10 years—Rob Wainwright, who is on the brink of retiring. Of course, the European Commissioner for Security, Sir Julian King, is British. Two former presidents of Eurojust are British. That is the body of prosecutors which ensures that cross-border investigations and prosecutions are carried out smoothly. Indeed, the noble and learned Lord, Lord Thomas of Cwmgiedd, was president of the European Network of Councils for the Judiciary—the network of judges—which supports and encourages an independent and qualified judiciary.

You cannot do cross-border co-operation unilaterally. It has to be a reciprocal arrangement based on legal agreements which are enforceable in respecting individual rights as well as the rights of national authorities. There are two foundations of mutual trust within the EU: first, the possibility of recourse to the European Court of Justice to ensure a level playing field in the application of EU law; and, secondly, the rights and principles in the European Charter of Fundamental Rights, the right to protection of personal data being of particular relevance in this context.

On the resolution of legal disagreements, in her Munich speech the Prime Minister proposed two principles: first, respect for the sovereignty of the UK's legal order; and, secondly, respect for the remit of the European Court of Justice, at least when participating in EU agencies. I think there is a lot of head-scratching about how those two principles are going to be reconciled. I am hopeful that the Minister will be able to explain to me precisely how that is going to work. Can he also flesh out what a security treaty would look like in incorporating what the Prime Minister called a mechanism for,

"independent dispute resolution … in which both sides can have the necessary confidence"?

How will the full exchange of data be secured under the auspices of such a treaty? About three years ago Denmark voted to leave Europol. Since then, it has negotiated very limited access to data in Europol—and it is a full member of the EU, the Schengen area, the European Court of Justice and the Charter of Fundamental Rights. What makes the Government think we will get better access to Europol than Denmark? We might well get observer status but we will have no vote on the work programme or the direction of Europol's work.

We will discuss the Charter of Fundamental Rights fully later but it is highly relevant to the exchange of data so I must mention it now. The relevance of the Charter of Fundamental Rights is why the trade body of the British tech industry, techUK, has urged the

[Baroness Ludford]
retention of the charter in domestic law. It is interested mainly in the commercial exchange of data for the digital economy but the same applies to the exchange of personal data for the purposes of law enforcement. The tech sector is very well aware of the long-running problems over transatlantic data transfers after the Snowden revelations in 2013, leading to years of political wrangling and litigation, including the ECJ blocking the so-called safe harbour agreement before the privacy shield was agreed—and there had to be changes in US data protection law to achieve that.

Whether or not the UK seeks a formal adequacy decision in the context of our future trade and security relationship, we can be sure that there will be a wide and deep assessment of data protection in this country, not least by the European Parliament, and the possible invalidation by the ECJ of any agreement which fails fully to adhere to EU standards. It seems ill judged for the Government to prejudice that trade and security relationship with the EU by jettisoning the charter. The fact that they insisted on weakening the privacy protection for immigration data in the Data Protection Bill may also turn out to be unwise.

The Prime Minister wanted continued participation in the European arrest warrant and the European investigation order. The extradition agreement with Norway and Iceland took 13 years to negotiate, is still not in force three years after agreement, and does not include surrender of own nationals. How do the Government propose to do better than Norway and Iceland? The 1957 Council of Europe convention would be a step backwards in extradition practice and in any case would require not only the UK but individual European countries to change their legislation. What prospect is there of them doing that?

On the European arrest warrant, the Government will of course be aware that the Irish courts have refused the extradition of a person to the UK and have referred the case to the Luxembourg court because they are afraid that if they return someone to the UK and they are in detention beyond March next year, they will not get the protection of the European Charter of Fundamental Rights. So it is already affecting extradition co-operation. The European investigation order—the other measure the Prime Minister mentioned—has been implemented in UK law, as I have had cause to raise with the Government, by substituting reference to the charter with a reference to the European Convention on Human Rights, which of course is not an EU measure. That seems a rather petty thing to do and, again, does not seem very sensible if it is a flagship measure mentioned by the Prime Minister but it has not been properly implemented in UK law.

To conclude, can the Government tell us, given their limited acceptance of ECJ jurisdiction and their rejection of the charter, exactly what terms—and under what structures, as was just mentioned—they expect to get in a security treaty, and will they submit a draft for our enlightenment before too long? I beg to move.

Lord Cormack (Con): My Lords, I added my name to the noble Baroness's amendment for two reasons. The second was that I was encouraged by what the Prime Minister said in Munich and I very much hope that we are going to have the closest possible co-operation for all our security. But the first reason that I put my name on the amendment was that I had the honour, until the unfortunate general election of last year, of serving on the EU Home Affairs Sub-Committee of this House. After the general election I was summarily dismissed because I had not voted with the Government during our debates on the triggering Bill last spring. But there we are: it did not shut me up and certainly will not shut me up tonight because we took evidence from Rob Wainwright, the head of Interpol.

On that committee, I used to sit next to Lord Condon. I am very sorry that he has retired from your Lordships' House because he made an extremely important contribution, based on vast knowledge. I was impressed by his pride in what Rob Wainwright had achieved as a Brit leading that extremely important organisation. I was impressed, too, by the searching questions that Lord Condon asked of not only Rob Wainwright but a number of other expert witnesses who came before us. The conclusion that one had to come to after those various evidence sessions was that the measure of success of our negotiations would be determined by how close we had come to replicating what already existed.

There is no point in rehearsing all my misgivings about where we are, because we are where we are. But I hope that my noble friend on the Front Bench can reassure the Committee that the Prime Minister, following her Munich speech, really is committed to coming to close arrangements with our European friends and neighbours to ensure that the measure of security which we enjoy—and which the people of this country enjoy—will not be damaged by an imperfect relationship with Interpol. I would like to see a proper membership of Interpol and, frankly, I am not persuaded that it could not happen. I hope it will because what matters more than anything else to the people of our country, almost a year away from the terrorist outrage which hit us here in Westminster last March, is that they feel secure. That feeling of security is encouraged if they know that there is the closest possible co-operation and exchange of information with our European friends and neighbours. One other thing that came out during our evidence sessions was the very real importance of the European arrest warrant. I hope that in building upon what the Prime Minister said in Munich, we can ensure that there is again a similar arrangement after we leave the European Union.

Those were the reasons why put I my name to the amendment and I am glad to support it. I do not want to sound offensive in any way because I have a high regard for my noble friend, who has a very difficult job to do, but I hope we will have a reply to this debate of real substance, in view of what the Prime Minister said in Munich a couple of weeks ago.

Lord Hannay of Chiswick: My Lords, perhaps I might carry on after the noble Lord, Lord Cormack, because I too served on your Lordships' Home Affairs Sub-Committee. I chaired it some years ago, when we were going through what could be described as a dry run for our debate tonight. That dry run was on protocol 36, the opting out and then opting back in;

the current Prime Minister played a notably positive role in that, particularly so far as the European arrest warrant was concerned.

The first point, which cannot be made too often and which I hope the Minister will recognise, is that in this area of EU policy there is no safety net. It is not like trade, where the WTO rules are, I would argue, inadequate but nevertheless are there as a safety net if all else fails. There is no safety net for justice and home affairs. If we do not make watertight arrangements by 29 March next year, we will be walking on thin air. On this, I would like to ask a specific question: are the Government confident that the arrangements for a standstill transition or implementation—whatever they like to call the period that immediately follows 29 March 2019—will be applicable to these justice and home affairs matters when we are a third country? It would be good to have that answered.

8.15 pm

Secondly, while I welcome very much what the Prime Minister said in Munich, which was remarkably positive on this matter, can the Minister just confirm that we are all talking about the same things: the European arrest warrant; the European Criminal Records Information System; the Schengen Information System; the passenger name recognition directive; the Prüm convention; Europol, Eurojust and the European investigation order? I apologise if I have left anything out but the list is rather long anyway. Is that what the Prime Minister was talking about when she said that she wanted effectively to remain in replicas of these matters? The question then is: how on earth is that to be done and structured?

The Prime Minister also said some slightly delphic but nevertheless helpful things about the jurisdiction of the European Court of Justice in this field, which I welcome because that could be a major obstacle if it is treated as a no-go area. But it is particularly important in this field because the European arrest warrant is not about the dealings between one Government—that of the United Kingdom—and the European Union of 27. It is about the rights of individuals to due process and is therefore a crucial issue.

Lastly, there is an Irish dimension to this debate and we really must not forget it. The introduction of justice and home affairs legislation was one of the things which enabled issues such as extradition and other matters on the island of Ireland to be depoliticised. For many years, as everyone in this House knows, those matters were highly politicised and it was almost unthinkable that we could have extradited somebody from Ireland to face justice in Northern Ireland for crimes committed there. That has changed but this puts all that at risk, so there is a really serious Irish dimension here. It is quite different from the trade matters we have discussed—although those are crucial too—because if we found ourselves walking on thin air, then I am afraid the re-politicisation of those issues on the island of Ireland would follow quite quickly. We should just remember that when the Irish ratified the European arrest warrant, they removed their link with the extradition provisions of the Council of Europe, so there is nothing there.

I hope the Minister will be able to say something at the end of this debate about these points. Above all, the call is for greater specificity regarding the Government's plans. The Prime Minister seemed to set out down the right road towards that in Munich, but they remain shrouded in a good deal of mystery.

Baroness Kennedy of The Shaws (Lab): My Lords, there cannot be anyone in this House who does not agree that the security of this country is vital and that collaboration in fighting crime is really important. We have to remember that international cross-border crime is one of the real challenges that we face. It has been made easier because of developments in recent times, such as the electronic transfer of money, the ease of travel and the whole business of communicating by cell phones, email and the like. Just as that makes it possible for us to trade, it makes it much more possible for illicit trades to take place, too, so international cross-border crime is something that we really have to contend with in a way that was not the case 50 years ago.

Countering cross-border serious crime, whether it is terrorism, the transportation of drugs, the importation of firearms or all manner of illicit products or trading in human beings, involves incredibly important collaboration and co-operation, so like other noble Lords I welcome the fact that the right noises are being made about future co-operation in policing and security matters, particularly because of the real complexity of this stuff. I was with a group of recently retired senior counterterrorism police officers and someone who was about to retire last Thursday talked about the invaluable nature of these collaborations and the ways in which the European arrest warrant, Eurojust and the things on the list that was read out by the noble Lord, Lord Hannay, are so vital in countering this really serious level of crime. If you can penetrate the dark web, it shows just how active this criminality is.

I strongly support Amendment 13, tabled by the noble Baroness, Lady Ludford, and other noble Lords, but it raises an issue. The issue is that, if we are going to use something like the European arrest warrant, it involves something different from the need for arbitration or for some supranational tribunal to deal with trading disputes, as the noble Lord, Lord Hannay, said. This is of a different order. When we are dealing with something like the European arrest warrant, we are talking about the liberty of the subject. We are talking about people being arrested, kept in custody and transported from one place to another. The rights of the individual there are so significant that we have to have a court with highly trained judges at the apex of any legal system because people resist the possibility of being transferred for criminal trials to proceed.

I want to reiterate what the noble Lord, Lord Hannay, said about the old days. It would be a frequent occurrence that attempts would be made to extradite people and it took years. People were able to resist extradition for years. I see the noble Lord, Lord Thomas of Gresford, in his place. Once, many years ago, he led me in a case that involved lengthy extraditions and had gone on for years. The arrival of the arrest warrant put paid to that. The difference it has made has been considerable. The UK has extradited 1,000 people to other parts of Europe to be prosecuted for serious

[Baroness Kennedy of The Shaws]
crimes and has received some 200 individuals from other places for serious crimes. I urge the Committee to think through the consequences of that. We need to have a court at the apex of this, and the court that is sought by the rest of Europe is the European Court of Justice, which already exists and knows and understands the nature of these processes. What do we do? Do we create some new court which has all the same powers and just give it a different name in order to appease those who do not like the European Court of Justice, or do we recognise that for this area there has to be the jurisdiction of the European Court of Justice?

A number of amendments in this group are tabled in my name, and I want to refer the Committee to them. Amendment 99 relates to the protection of "protected persons". This may be something that noble Lords are not really aware of, but we adopted the European protection order directive in 2014. This relates to difficulties which are faced mainly, but not exclusively, by women who are stalked or victimised, often by former partners, and who go to live in other parts of Europe. Across Europe we have developed victim protection orders which involve mutual recognition so that, if someone stalks someone to somewhere else but we have created a protection order in the UK, it can be immediately made effective in another country where someone has pursued the person who is the obsession at the end of their malign intent. Such victim orders are used not just in relation to domestic violence and the stalking that happens in relationships but in relation to other forms of stalking, for example, in witness protection issues or in trafficking. It is an area in which I have particular experience, and these orders are going to be vital in providing protection for people in different jurisdictions. I really hope that, in seeking to create the right kind of regime for us to operate across Europe in relation to these criminal matters, we also protect the victim protection order regime—the European protection order regulations—as well.

The other matter on which I have put forward an amendment, in which I am supported by the noble Lord, Lord Paddick, and my noble friend Lord Judd, relates to justice and home affairs measures. I know it is the Government's objective that some of these processes continue after departure. We are most concerned that there is a serious understanding of what mutual recognition means. There is some concern being expressed in other parts of Europe that we do not use the terms mutual recognition and harmonisation in quite the way that is intended when it comes to this collaboration on criminal and civil matters. I have spoken about this before in the House. It is about the fact that it is not enough to introduce European law into the UK, as some of these regulations require reciprocity of a very deep kind. It means that we will respect orders made in other countries and that they will respect orders that we have made here.

Think of the difference that it makes to a woman whose family are in Germany and who takes her children there to visit them, but who after a divorce is being harassed and stalked by her previous husband. She can get an order in her local court and know that when she goes to visit her family in Germany, the order will operate there too if she is pursued by her former—abusive and violent—partner. We know that this also happens in relation to matters such as access to children, where people can get maintenance orders in the local court: you can go down to the court in Bromley, get your order and it will be made effective in another country in Europe. It is so important that people do not have to instruct lawyers in other places, when they could ill afford to do so and thereby secure justice in the circumstances they find themselves in.

The mutuality there is of a very deep kind. Just introducing European law into our system and legislating for it will not be enough. What we really require is something that creates a regime that continues what has been established with great care over very many years.

Baroness Massey of Darwen (Lab): My Lords, Amendment 209, which is in my name, follows directly from the remarks of my noble friend Lady Kennedy, so I thank my noble friend Lord Adonis for allowing me to slightly skip the order.

The amendment echoes the concerns of others, notably the noble Lord, Lord Hannay, and my noble friend Lady Kennedy about the UK's access to and participation in Eurojust, Europol, ECRIS and the European arrest warrant. This also includes the database of the Schengen Information System II and the European protection order—I think we must have covered them all between us. I want to look at this from the perspective of child protection. This amendment has implications for a huge area that includes child trafficking, child abduction, forced migration, sexual exploitation, criminal proceedings, online abuse and missing children—a long list of concerns, also mentioned by my noble friend and the noble Lord.

8.30 pm

In the many excellent House of Lords committee reports on the impact of Brexit on our systems, we have tended to refer to children's issues mainly just in passing, if at all. I want to focus on the importance of considering children at the heart of our discussions. I was involved in several of those reports, including the Home Affairs Committee report on crime and police co-operation mentioned by the noble Lord, Lord Cormack, who was much missed after his—what shall I say?—disappearance, removal or whatever. In that report, the committee concluded that the UK has been a leading protagonist in shaping the nature of co-operation with the EU in police and security matters. The fear is that we will lose the platform from which we have been able to influence and help set agendas.

I am aware that the Prime Minister has made reassuring statements, but concerns still remain, and the impact on children could be enormous. We need collaboration and co-operation on matters affecting children. We must speak out for children who cannot, or have not been asked to, speak out for themselves. We have limited detail on these implications. This amendment would require the Government to put a strategy before Parliament to ensure that children, among others, are kept safe and supported when it comes to cross-border crime. This strategy should be subject to parliamentary approval, as set out in Clause 9.

I salute the many children's organisations, both in the UK and in Europe, that have formed a coalition to ensure that children are considered in Brexit arrangements. They point out that many crimes affecting children are increasingly complex and have international implications—for example, child trafficking, where there is often a crossover with the transportation of refugees.

Crimes conducted online also cross borders. Child abuse material and pornography are produced and disseminated across borders, and research shows that 60% of such material is hosted in Europe. Being able to tackle such crimes effectively demands that police forces, the National Crime Agency and legal professionals need a structure for cooperation. About 40% of Europol's work is linked to initiatives that are either provided or requested by the UK. Will joint investigation teams continue to exist post Brexit? In 2016 the UK received the most funding of all EU member states to set up these teams—32 of them in total. Operations include Operation Golf, which tackled child trafficking and was highly successful in identifying and investigating a Romanian organised crime network which had links in the UK and other EU countries. A joint investigation team of the Metropolitan Police, the Romanian national police and Europol used personnel and databases to deal with the problem successfully.

As my noble friend Lady Kennedy said, the European arrest warrant was used nearly 200 times between 2010 and 2016 to extradite suspected child offenders. Before the introduction of the arrest warrant, it took an average of 12 months to transfer offenders across the EU. It now takes less than two months. What assessments have been made of the UK's need to remain part of these cross-border agencies for the purposes of safeguarding children? What assessment has been made of the impact which the loss of co-operation with such agencies would have on safeguarding children? We cannot leave children across Europe vulnerable to crime and exploitation, which can destroy young lives and divide families.

Lord Deben (Con): My Lords, one of the themes that has come through in the debates on many of the amendments so far is that the Government are enthusiastic about where we are, keen on continuing the links and determined that we shall not in any way fall out from those, but unwilling to commit themselves to the obvious solutions. We have heard in this debate tonight an exact repetition of what we have had before.

In other words, some of us are saying that these things were achieved with great difficulty. The European arrest warrant caused enormous argument and could be a really dangerous thing if it were not properly protected by the European Court of Justice. Like everyone else, when I became a Member of your Lordships' House I was asked what subjects I was particularly going to speak on. The first was the environment, the second was Europe and the third was human rights. Therefore, when the legislation that we are now part of was going through in its various forms, I was very concerned that it was properly protected. However, I was very aware, as is the House, that crime does not know any borders, particularly the type of crime that the noble Baroness, Lady Massey, was talking about.

We need the protection that the warrant gives. When we were kids and we read stories of derring-do, we all knew that the first thing that people would try to do was to get across the channel because then they would be out of the reach of British law, and indeed of the law in many ways. I believe strongly that first of all we have to recognise that what we have we did not get easily and did not arrive simply. To suggest that somehow or other we can produce a different system and call it something else, because that would be convenient to the people who are ill informed enough to want to leave the EU, seems extremely dangerous. We should recognise that this took a lot of doing.

The second point, which has been made very interestingly, is about the nature of mutual recognition. Very often we are divided by not understanding the words that we use. There is an attitude in Britain that suggests that we get it right and other people do not, and therefore they had better do it our way because we know best. That has been our besetting sin throughout the period of our membership of the EU and, if we leave, we will get even worse at it. In other words, we are very keen to teach other people but not frightfully good at learning from them. One of the things that we have learned—I think by accident; certainly not by design—in having to co-operate on these issues is that we have understood much more clearly the problems, difficulties and solutions that others have had in our European home. We have to recognise that understanding mutual recognition is not easy, and the idea that we can suddenly create a different mechanism for doing it is very far-fetched.

On my third point, I have great admiration for the Prime Minister. I do not understand how every morning she wakes up and thinks, "God, I've got another day of this", and deals with some of the people that she has to deal with—I will not list them but we all know which ones I mean. However, it is not good enough to have good intentions and show generalised support. My noble friend who is answering for the Government has given us a great deal of good intentions and noble views but no actual support for real policies and actual determinations. This is not something that we can pass off by merely having good intentions, because it is very hard and we have to be tough about it. We have to say to our friends, "We actually want, and will have, exactly what we have today on these matters because there is no alternative that is better and there is no way that we are going to invent one", because crime will not wait.

This is a rather important amendment. All it says is that the Government have to move from intentions to reality before they can move. That is not an unreasonable thing for the House which is responsible for our constitution to ask.

I hope that my noble friend is not going to say how important all these things are, how valuable they are, how much the Prime Minister is in favour of them, but that just at the moment, because it is all part of the negotiation, he cannot go further than that. If he does, perhaps for all our debates he might just turn on the recording. That is evidently the answer we are going to have on everything, because that is the answer we have had so far today on everything. If it goes on like this, this House will have to ask whether the Government

[Lord Deben]
intend to have a debate or discussion about things that matter, about the future of our nation and our people. Are they going to have a discussion about the things that protect our people, the policing which has to cover areas beyond our borders? Above all, are they going to have a discussion about how this affects Ireland? We have for too long taken for granted the fact that the Irish situation is, at least to a large extent—much less so than the newspapers would have us believe, but still to a large extent—peaceful. We must none of us forget that.

I have to tell my noble friend that it will become increasingly difficult for the Government to uphold their position unless they are prepared to take seriously this House's demand that they tell us what they want. How can you negotiate with people unless you can say very clearly what you want on crucial issues, and what could be a more crucial issue than this?

Lord Judd: My Lords, at the end of all these proceedings, some months down the road, there will be a vote in Parliament. At that time, it will be essential that we know exactly what we are voting for. That is why the speech by the noble Lord, Lord Deben, is so important. There is a fundamental difference between good intentions and concrete policy, there to be implemented. As in our previous debate, the issues are too big; there is no room for an interregnum or period of doubt. We must be able to move from what we have to what is necessary overnight. We must have firm policies and firm decisions that follow from them.

I served on the Home Affairs Committee under the chairmanship of the noble Lord, Lord Hannay, when we were having that dry run, and very interesting it was, too. What I found very telling was that virtually every witness working in the field, when the question, "Will your work become more difficult if we leave the European Union than it is at the moment?" was put directly, said unequivocally yes, they needed the European Union to meet the challenge of the job. Forgive me if I repeat myself, but it is terribly important. Crime is international; it does not recognise frontiers. That is true of trafficking and, as my noble friend said, of drugs. It is true of terrorism. These things do not know national frontiers. Therefore, you must co-operate and work closely with others who face the same difficulties.

The other point I want to make is that, more recently, serving on the Justice Sub-Committee under the chairmanship of my noble friend Lady Kennedy, it has become very clear that we have underestimated—it is rather tragic that the British people have not understood, or begun to understand—how much British lawyers and British legal expertise have been contributing to the strength of European law, which is in all our interests. British lawyers have made a terrific contribution and they are very much respected. In taking evidence from practitioners in this sphere—the chairman is here to strike me down if I am misquoting—they told us over and over how the law is improving under the present system. The overriding authority of the European Court is crucial, however, because it provides a context in which everyone can have confidence in the necessary reciprocity. These amendments are very important, and I hope the Government will take them seriously.

8.45 pm

Lord Inglewood (Con): My Lords, it is two or three years ago now, but I had the privilege of chairing a House of Lords ad hoc Select Committee on extradition law. Of course, extradition law, as far as the European Union is concerned, is the question of the European arrest warrant. I can say with confidence that the conclusion we reached, on the basis of the evidence before us, was that the system seemed essentially to satisfy all the parties concerned. It was working well, not only from this country's point of view but from the point of view of other countries in the European Union. Of course, the reality is that a deep and special relationship will not inhibit criminals coming to this country. In a world where there is ever greater mobility, we will have our fair share of criminals from elsewhere and no doubt other countries will have their fair share of our criminals. We have to deal with that problem.

The other thing that was pretty apparent from our work was that most of the criticism of the system was hung up on the European Court of Justice. It was a criticism not of what the European Court of Justice on the whole decided was appropriate, but of it not being exclusively comprised of British citizens. We need to be absolutely clear about that. We are talking about a system, the generality of which worked extremely well and in everybody's interests. Therefore, I ask my noble friend the Minister whether he can give the Committee an assurance that, whatever arrangement may come into being after Brexit, they will work as well as the existing arrangements.

We have heard a number of speeches this evening that have been a trifle philosophical in tone, and I do not want to criticise anybody for that. I want to make a purely pragmatic point: if the system is not as effective as the one we have now, there will be more criminals on the streets of this country. Do the Government wish to bring that about? Equally, more of our criminals will no doubt be enjoying their ill-gotten gains in relative security on the Costa del Sol. Is that what the Government want to bring about?

We have heard about Ireland and I need say no more about that. It is terribly important to be clear about the pragmatic, nuts-and-bolts, on-the-ground implication of scrapping this procedure because there is every risk and likelihood, if we are not careful, that we will degrade the system of justice in this country.

Lord Thomas of Gresford (LD): My Lords, I follow the noble Lord, Lord Inglewood, in a plea that we do not go back to the system before the European arrest warrant was introduced. The noble Baroness, Lady Kennedy, referred to the case that we did together some years ago when the extradition proceedings, which lasted some four and a half years, were ended by the 12th application for habeas corpus being turned down by the noble and learned Lord, Lord Woolf, which he may remember. What he may not remember is that my client went back to the country demanding his extradition, where the prosecution accepted a plea of guilty to one out of 32 charges, and was given a sentence that resulted in his immediate release. That was the old system; the system we have had since the introduction of the European arrest warrant, with all the agencies that have come into being, started I think

by Mr James Callaghan when he was Prime Minister, developing under the European Union banner, has been extremely good and effective.

In the Queen's Speech debate on 27 June last year, it will not surprise your Lordships to know that I asked the Government what they were going to do about this whole area—about all the agencies to which the noble Lord, Lord Hannay, referred. What was going to happen? After that, there was complete silence. I wondered what was happening. These discussions and negotiations are as urgent as any to do with trade. They deal with the security of this country and the possibility that, if nothing is put in place, this country will become a haven for criminals, as opposed to somewhere the law is properly administered. But nothing happened—and so it was with considerable interest that I read the speech of the Prime Minister in Munich a week last Saturday. What was she going to say? She proposed a treaty. Who is negotiating that treaty? Who is in charge? Is it Mr Johnson? That is a bit unlikely. Is it Mr Fox or Mr Davis? Who are they negotiating with? The noble Baroness, Lady Goldie, in her reply to the last debate, said that she knew that there was a dialogue going on. What dialogue? I have not heard of any dialogue, and I am interested in this subject. Where are we?

The noble Lord, Lord Hannay, also asked the very pertinent question of what happens after March next year. Do the extradition warrant system and all the other bodies concerned with co-operation in criminal matters continue, or not? If they do not continue, the treaty to which the Prime Minister referred must be in place. As the noble Lord, Lord Judd, said a moment ago, we cannot have an interregnum—a period when nothing is happening. Something has to be put in its place, and nothing I have seen or read suggests that there is a dialogue or treaty in any form, draft or anything else ready to come into operation when we leave the European Union.

So specific questions on this issue can be asked of the Minister. What negotiations are happening? Who is doing them? When will there be a result? What is in the treaty? How are you going to put all these things together in a period of months to ensure the continuation of co-operation in this extremely important field? If there are no answers to those questions and the Minister just chuckles his way through, as he occasionally does—if he will forgive me—the security of this country is at risk, and we risk becoming that haven for criminals that would be a blight on our whole country.

The Earl of Listowel: My Lords, my name has been added to the amendment in the name of the noble Baroness, Lady Massey of Darwen, and I support every word that she said. Of course, she was chair of the All-Party Parliamentary Group for Children for many years, and had to give up that job because of her new responsibilities in Europe for the welfare of children. So I am sure the Minister will want to pay very close attention to what she has said.

I have a specific question for the Minister. Many foster carers in this country are from continental Europe. We do not know exactly how many, but the European Criminal Records Information System is very useful in ensuring that those interested in preying on children do not move from one country in Europe to another or from continental Europe to this country. The Minister will be aware of recent concerns that people interested in preying on young people in the developing world have been joining charities, for instance. Will he provide the Committee with as much information and detail as possible, given the concerns raised around the Committee this evening on these issues?

I was pleased to hear of the Prime Minister's speech in Munich. I also recall that two or three years ago, as Home Secretary, she brought in the human trafficking Act, which was an important step forward. I look forward to the Minister's response.

Lord Hogan-Howe (CB): My Lords, until a short time ago I was Commissioner of the Metropolitan Police, having served for nearly 40 years making arrests and prosecuting people, which I quite enjoyed. I will say a few words about the importance for police officers, in particular in the investigation process, of some of the things that Europe provides and which need to be accommodated in the new arrangements. I worked in South Yorkshire, Merseyside and London and also served as one of Her Majesty's inspectors looking at serious and organised crime. The Met led the extradition process for the United Kingdom—and still does—and also counterterrorist units, both in this country and with an international dimension, with 50 officers based in embassies around the world.

Many things remained constant in the 40 years that I was an officer, but some things have changed. One of the big changes is the mobility of people across our borders. In London particularly, a high number of foreign national offenders were arrested. The Met still arrests around 225,000 times a year. That is not 225,000 people, because many are arrested more than once. That is probably about 1 million people around the country and one in three of them is a foreign national offender—a very significant proportion of those arrested. Not everybody who is investigated and prosecuted is arrested. Of those in London, 55% are Europeans and 45% are from elsewhere. Both proportions are significant and have to be accommodated.

The ratio which I have described for London differs around the country. In some of our more rural areas there is a very high percentage of foreign national offenders. It varies by part of the country and seasonality. Different times of the year lend themselves to different types of migration. The police investigate very serious offences and more minor ones, but all demand the same level of proper investigation. The process that follows arrest or any investigation is usually similar. The first part is to confirm the identity of the suspect and the second to gather the available criminal intelligence about them. The third is to gather their criminal convictions, where they are recorded, and the fourth is to check on any forensic evidence that might be available for them. Together with the evidence, this forms a substantial part of the case.

One challenge for any investigating officer is that, where there is an arrest, an investigation is time limited. Some 90% of investigations are concluded within 24 hours of an arrest. This can be extended to 36 hours by a superintendent, but the majority of offences are investigated and concluded in the first 24 hours. It is, therefore, vital to gather the four things I have just

[Lord Hogan-Howe]
mentioned fairly quickly. The arrangements we have had with Europe have been substantially better than those we had in the past. When you are investigating an international suspect it is not always easy to gather all that information quickly, but it is often vital that it is gathered before they are released.

For example, if someone has been arrested for rape and has on three previous occasions been arrested for rape in another country but not charged, you would want to know that information before you came to a conclusion about whether there had been consent as regards this particular offence. That is just one example of why this is important.

9 pm

In terms of the DNA, fingerprints and, increasingly, the facial recognition that is now available through Prüm—it has been available only more recently; for many years it was not available through Prüm—again it is vital that the samples are checked not only against the known database but against samples from scenes where the offender was not identified to find out whether the arrested person is linked to any previous offence. Therefore, the system obviously has to be efficient and effective.

I speak as someone who supports Brexit. I was misquoted during the previous debate, when it was said that I did not support the European arrest warrant. That is not what I said. I believe that the new arrangements the Government will make will have to replicate the best of what Europe offers us now. Noble Lords may not necessarily support that view and they have explained why, but clearly we have to strive to get these things in place. Clearly, the European arrest warrant is vital, as is the exchange of criminal intelligence and conviction data. The extradition warrant needs to replicate the existing provisions and to be simple, consistent and quick. The existing system is not perfect but it has led to some notable achievements in the past. Noble Lords will remember that after 21/7 one of the suspects was found in Italy and quickly returned. That is just one example of how these things can work well.

In conclusion, there are probably two major reasons why I think that we ought to achieve this agreement with Europe. First, examples were given of where there is not a perfect arrangement—Denmark was mentioned. However, Norway is not a member of the European Union but is a member of Europol and seems to enjoy many of the benefits that European Union members obtain. Secondly, although it is true that we do not want to become a Costa del Sol for criminals, neither does any other country want to receive our criminals. There is no great benefit for our country in seeing our rapists walk free in other countries, or in seeing their armed robbers walk free in the UK—so it would be hugely mutually beneficial to achieve speedy transit between all countries, and it ought to be possible to achieve some kind of reciprocity that would at least mimic the benefits of our present system. That is vital for the operational work of police officers in the ways that I hope I have described.

Baroness Kennedy of The Shaws: How do you make that effective if you do not have the European Court of Justice at the apex?

Lord Hogan-Howe: The noble Baroness is in a far better position than I am to talk about the law, so I am not sure that I am able to say that. We have an extradition treaty with America and many other countries where that type of arrangement is not in place, so I would need to understand why the American model and that of other countries works without the arrangement mentioned by the noble Baroness, and why it has to be in place in Europe. There may be a reason, but I am not aware of it.

Lord Hamilton of Epsom: My Lords, before my noble friend the Minister winds up this debate, I would like to address the problem of him being constantly accused of not spelling out the Government's position. We are mid-negotiations. Surely, if you are negotiating with the EU, it is very difficult to reveal your negotiating position. Our experience of dealing with the EU is that when we start to reveal our negotiating position, it immediately laughs at us and tells us that it is absolutely ridiculous for us to think that we are going to get these concessions, and that we are cherry-picking and want to have our cake and eat it and all this sort of thing. It seems to me that the Government are in a very difficult position. They have to hold this debate because we are processing the Bill through Parliament, but simultaneously we are trying to negotiate with the EU. We cannot reveal our position. The overall position is that nothing is agreed until everything is agreed.

Lord Lamont of Lerwick: I totally agree with what my noble friend is saying. It is very important that that point is made: it is not made often enough and could be made every time on every amendment. Does he agree that the most absurd question of all, which we have had several times on previous amendments, is for the Government to be asked what their fallback position is? How on earth can someone in a negotiation say what their fallback position is?

Lord Hamilton of Epsom: My noble friend is absolutely right. Of course, the EU is watching all this extremely closely because it is desperate to try to snarl up the whole process so that we cannot leave. The fact that a referendum involving a democratic vote was held on this is regarded by most people in the Commission as a sign of weakness. I think it was President Macron who said the other day that if a referendum were held on whether France should pull out of the EU, the leavers would win, but of course he was not going to allow a referendum. I am sure that that will go down in history along with other French expressions such as "Let them eat cake".

Lord Adonis: My Lords, I have six amendments in this group. They refer to the United Kingdom having continued access after withdrawal to passenger name records, to the Schengen Information System, to the European arrest warrant, to membership of Europol, to the European Criminal Records Information System, and to the fingerprint and DNA exchange with the EU under the Prüm Council decisions.

The questions put to the Minister by the noble Lord, Lord Thomas, went to the heart of the matter—that is, given that the Prime Minister said in her Munich speech that she wishes to see a treaty replace all these

elements of the existing arrangements, the Minister should simply tell us the process by which we will be negotiating the treaty. This debate, as with many others, gives the complete lie to the ridiculous assertion that no deal is better than a bad deal. Let us be clear: if there is no deal on 29 March next year, the current arrangements to which the noble Lord, Lord Inglewood, referred, painstakingly negotiated over many years, for the European arrest warrant and the very high levels of engagement between the member states of the European Union—which the noble Lord, Lord Hogan-Howe, said were so important to his work as Commissioner of the Metropolitan Police—all fall.

Is the Minister going to tell us that the security of this country will be as safe as it is now if all those arrangements fall? I assume that he is not, in which case the United Kingdom leaving the European Union with no deal at the end of March next year would be a complete abdication of the national interest. We need to get that firmly established. As we have more of these debates and see the precise benefits of the EU—which, after all, are the reason we went into the European Union—it becomes clearer and clearer that leaving with no deal would be a dereliction of the national interest.

Lord Deben: Before the noble Lord leaves that point, does he also agree that asking the Government to explain how this treaty is being discussed and by whom cannot have any effect whatever on the negotiations between the Government and the European Union? Is it not true that several of the questions asked have had nothing to do with the negotiations? We would just like to know where the Government are on matters which are unconnected with those negotiations.

Lord Adonis: I entirely agree, and I hope that the noble Lord will say that to the noble Lord, Lord Lamont, who is sitting right next to him. It provides a devastating response to the noble Lord's intervention just a moment ago.

We are asking the Government simply to declare the policy of Her Majesty's Government in the negotiations that are taking place. Since one assumes that our European partners are being told what we are seeking to negotiate—it is quite hard to negotiate something if you do not tell the other side what you are seeking to negotiate—I cannot see that there is any damage to the public interest in telling this House and the public. These are very straightforward questions. The noble Lord, Lord Hamilton, says that we should not declare our hand midway. Are we or are we not in favour of keeping the European arrest warrant after 29 March next year? If we are, that is a clear negotiating objective of the Government. It will require a straightforward continuation of the current arrangements, and people like me will say all the way through that it is yet another argument as to why we would be much better off staying in the European Union in the first place and not having to go through this hugely complex and difficult process of attempting to replicate arrangements so that we do not end up with a worse situation, when there is every likelihood that we will.

The devastating response to and commentary on all these matters come from the Prime Minister herself—both in her Munich speech, in which she made it very clear that she would regard it as damaging to the national interest not to have a treaty at the end of March, and in her speech on 25 April 2016 before the referendum, in which she was even clearer on these matters. In that latter speech, in which she sought to argue why we should stay in the European Union, she went through in great detail the benefits that the European arrest warrant, the Prüm arrangements and so on gave to the security of the United Kingdom. Those are all points that the noble Lord, Lord Inglewood, has raised.

The noble Lord, Lord Hogan-Howe, seems to want to will the ends without the means. I understand that he has not had to negotiate these issues himself, but just says, on a wing and a prayer, that he wants these objectives to be secured and is sure that our negotiators in Brussels will be able to do it. If the noble Lord had had any systematic engagement with the Ministers responsible, I do not think he would necessarily have so high a degree of confidence in their capacity to negotiate his objectives.

The Prime Minister herself gave the devastating response to the question of why we should stay in the European Union in respect of these security and justice issues. In her speech of 25 April 2016, when referring to the European arrest warrant and the passenger name record directive, she said that these show,

"2 advantages of remaining inside the EU … without the kind of institutional framework offered by the European Union, a complex agreement like this could not have been struck across the whole continent, because bilateral deals between every single member state would have been impossible to reach".

Let us be frank: that is why we are in the European Union, why it serves our national interest and why we have a very high degree of co-operation when it comes to justice and home affairs.

We are talking about very large numbers. The Prime Minister herself gave the figures, saying that in the five years prior to her speech—2011 to 2016—5,000 people had been extradited from Britain to Europe under the European arrest warrant, and 675 suspected or convicted wanted individuals were brought to Britain to face justice. She said:

"It has been used to get terror suspects out of the country and bring terrorists back here to face justice".

Just as the noble Lord, Lord Thomas, gave his extraordinary statistics about how long it used to take to get extradition proceedings under way, the Prime Minister said:

"In 2005, Hussain Osman—who tried to blow up the London Underground on 21/7—was extradited from Italy using the Arrest Warrant in just 56 days. Before the Arrest Warrant existed, it took 10 long years to extradite Rachid Ramda, another terrorist, from Britain to France".

These issues are of the utmost gravity and we need an assurance from the Minister that, in the negotiations for the treaty that the Prime Minister referred to in Munich, we will seek to maintain arrangements that are in every respect as good as those we currently have. If we do not have those in the treaty she presents to Parliament at the end of the year, many of us will say that this whole Brexit process has seriously damaged the security of the United Kingdom.

Lord Liddle (Lab): Does my noble friend accept that the reason the Government will not disclose their negotiating objectives is not that this would somehow

[Lord Liddle]
prejudice their position but rather that they do not know what those objectives are? The truth is that this is an issue of real sensitivity to the Brexiteers. The question is whether these arrangements are intergovernmental or involve the institutions of the European Union and the supervision of the European Court of Justice.

I know all about this because, as an adviser to the then Prime Minister, I went through many iterations of this issue. When justice and home affairs first became a subject of the European Union, and a pillar of the Maastricht treaty, it was all at an intergovernmental level. Gradually, it became more communitised, as it were, for the simple reason that that was the way to make it work. We could not make it work as an intergovernmental mechanism. We could not get the degree of co-operation needed to make something like the European arrest warrant work without having some judicial supervision mechanism, so the Labour Government agreed to it—somewhat reluctantly because some of the people involved were not the greatest supporters of civil rights in many respects, but they agreed to it.

What is happening in Brussels at the moment is that the member states are discussing among themselves what framework they are going to set for the negotiations for the rest of the year. That will be coming out at the end of March.

9.15 pm

Baroness Goldie: Is the noble Lord, Lord Liddle, making an intervention? I want to be clear what the order of speaking is.

Lord Liddle: I was responding to my noble friend's point.

Baroness Goldie: I think your noble friend thought that he had been usurped.

Lord Adonis: My noble friend's intervention is excellent and gives the Minister more to respond to. I know he is short of points to deal with at the end of this debate.

Lord Liddle: This is Committee stage. We are allowed to go back and forth. What are the Government saying to other member states at the moment about the nature of the agreement on this that they are prepared to contemplate? Are they saying to our current partners that they are prepared to see judicial supervision in these arrangements or not? I hope the Minister will answer that very simple point.

Lord Paddick (LD): My Lords, I apologise for not speaking at Second Reading; I took the view that I was unlikely to add anything new, bearing in mind the number of speakers. However, I have a few new things to add as a result of today's debate. I had more than 30 years of service in the Metropolitan Police Service—which pales into insignificance when you consider the experience of the noble Lord, Lord Hogan-Howe—but I have also been briefed by the National Crime Agency lead on Brexit and by the director-general of the National Crime Agency on these issues.

It might be considered a technical point, but there is a difference between counterterrorism intelligence exchange and law enforcement. The counterterrorism intelligence tends to be of such a sensitive nature that it is exchanged on a bilateral basis and therefore is nothing to do with the European Union. When sensitive data, for example, are shared by the United States with the United Kingdom, the United States would not do that if it was on the basis that the United Kingdom would then share all that intelligence with the EU 27. However, there is a technical difference between counterterrorism in terms of intelligence and counterterrorism in terms of bringing terrorists to justice, and here we are talking about bringing people to justice using these various mechanisms.

My noble friend Lady Ludford referred to the European Court of Justice and the Charter of Fundamental Rights as two important mechanisms which allow this co-operation to take place within the European Union. In her Munich speech, the Prime Minister tantalisingly mentioned the European Court of Justice and the potential for a role for it after the UK had left the European Union in relation to things such as the European arrest warrant. The noble Baroness, Lady Kennedy of The Shaws, made the point that this is not about relationships between two sovereign nations, it is about individual rights in terms of whether an individual is going to be moved from one country to another. Perhaps the Minister can give us some clarity on the Government's position on the European Court of Justice by explaining what the Prime Minister meant in her speech.

The noble Lord, Lord Cormack, talked about the need for the closest possible co-operation, which is what the National Crime Agency would say, and that the measure of the success of the negotiations would be how closely we can replicate the existing arrangements. I believe that the Government's position is that they want to replicate all of these things as far as possible, and that is what I took from what the Prime Minister said. So to say that the Government cannot give away their negotiating position by saying what the objective is going to be is not, I think, true in this particular case. Perhaps the Minister will tell us that what the Government seek to achieve is as close as possible to the arrangements we have, but that is not the question. The question is how the Government are going to secure those arrangements; that is the critical question, not what they are seeking to achieve, but how they are going to do it. That is because there seems to be a contradiction between not wanting to have any jurisdiction of the European Court of Justice on the one hand and yet wanting to participate in things such as the European arrest warrant on the other.

The noble Baroness, Lady Kennedy of The Shaws, helped the House to introduce the very important issues around protected persons. For example, the victims of domestic violence have the protection of orders that are made in one country enforced in another, which brings a new dimension to the importance of these arrangements. The noble Baroness, Lady Massey of Darwen, and the noble Earl, Lord Listowel, talked about the importance of the protection of children through the European arrest warrant and the other measures, in particular the European Criminal Records

Information System, which enables law enforcement to quickly check the antecedents of people who are suspected of these sorts of offences. These are extremely important issues in terms of bringing people to justice and in terms of protecting citizens not only of the United Kingdom but of other European states. We have heard from my noble friend Lord Thomas of Gresford how extradition can take years—four and a half years in the case he mentioned—whereas under the European arrest warrant justice can be brought far more swiftly.

For me, the essential question is not what the Government want the end position to be, because that is quite clear—and it is certainly what the National Crime Agency and other law enforcement officers want, and indeed what the noble Lord, Lord Hogan-Howe, has also said. The question that the Government need to answer is this: how on earth is this going to be achieved, bearing in mind their apparent contradictory stances on other issues such as the European Court of Justice?

Baroness Hayter of Kentish Town: My Lords, as we have heard, these amendments relating to reciprocal issues are key to continuing to protect and assist British citizens after Brexit, including children and protected persons, in ways that hitherto our EU membership and cross-border agreements have provided. In particular these are the European arrest warrant, the mutual recognition of family court judgments, information exchange, Europol and Eurojust.

The Government's approach to these issues must be agreed in principle with the EU in time to be included in the framework part of the Article 50 requirements and form part of the withdrawal agreement, so a satisfactory approach to these will be key to the future vote on that deal. However, as we have heard from speakers tonight, there seems to be an extraordinary lack of urgency, especially if there is any chance—I am not sure whether this is what the noble Lord, Lord Hannay, hinted at—that a standstill transition agreement could not cover these issues. That would make it even more urgent.

I ask in particular about the Government's urgency, or lack of it, as I began asking Written Questions on this a year ago. The noble and learned Lord, Lord Keen, will remember it very well: it was on St Valentine's Day last year—I do not think he chose it to be that day, but never mind—that he answered some of my questions on matrimonial and maintenance proceedings. It was very reassuring: he said that the Government,

"recognises the importance of the issues".

Wow. There was no more than that then, nor indeed on civil judicial co-operation and cross-border disputes and family law when he replied to a similar Written Question in August. I worry about the lack of progress since then.

As the Prime Minister has remarked and others have repeated, keeping our citizens safe is the first mission of any Government. Therefore, like others, I welcome that she used the Munich speech to reiterate her desire to negotiate continued, and in some cases enhanced, co-operation with EU nations and particularly with these bodies and schemes. As we have heard, the amendments cover the Schengen Information System, the European arrest warrant, the European Criminal Records Information System, Europol and Eurojust. Given what we have heard today and in earlier debates, the Minister will recognise the importance of our continued participation in all of those, but also the challenges that that will bring to them in negotiating.

While we heard from Munich the desire for this comprehensive agreement, it is time for the Minister to offer a bit more detail and clarity sooner rather than later. It is about the direction of travel or the objectives. It does not undermine any negotiations for us, not just our Parliaments, to know what the Government want to do. As the noble Lord, Lord Deben, said, it is time for the Government to move from intention to reality. These issues, as has been touched on just now, are partly held up by an obsession with red lines around the ECJ. They cannot be allowed to stand in the way of some logical and sensible solutions to these problems. These issues are too important to be left to a divided Cabinet. At the moment I see a pantomime horse, or Dr Dolittle's pushmi-pullyu, being pulled in two different directions, mostly about red lines that are immaterial to the issues we have been discussing. I hope we can hear about some direction and some practical steps from the Minister, particularly on how these negotiations are taking place.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): I thank all noble Lords and noble Baronesses who have contributed to what has been a fascinating debate. I reiterate the Government's commitment to ensuring that the outcome of our negotiations with our partners in the EU delivers continued close co-operation on internal security matters.

There are parallels between the effect of Amendment 13 in the name of the noble Baroness, Lady Ludford, and that of Amendment 12 in the name of the noble Lord, Lord Wallace of Saltaire, which was debated previously, in so far as they both seek to discuss the future relationship with the EU, which is, of course, subject to the negotiations. The noble Baroness's amendment seeks to prevent the Government from bringing regulations into force until agreed procedures for continued participation in EU internal security measures have been approved by both Houses. The Government have already committed to providing Parliament with a meaningful vote on any final deal. This will give Parliament the opportunity to scrutinise the future relationship between the UK and the EU in all these areas. For this reason, it is our view that the amendment is not needed.

I must come back to the points made by my noble friends Lord Hamilton and Lord Lamont. Many noble Lords have pushed me and asked for further detail and clarification on the negotiations. This Bill is negotiation agnostic; it is not concerned with the negotiations. I understand why people want clarification in all those areas, but, of course, when we have reached an agreement, it will be the subject of future legislation that noble Lords will no doubt want to comment on in great detail. However, I will attempt to answer as many questions and go into as much detail as I can. I suspect that the noble Lord, Lord Adonis, may be a little disappointed yet again, but I will do my best.

9.30 pm

I turn to Amendments 207 and 209, tabled by the noble Baronesses, Lady Kennedy and Lady Massey. In our view, both these amendments are unnecessary. They would place in the Bill objectives that the Government are already committed to pursuing and compel them to lay before Parliament a strategy which is already available, and which I will come to later.

Amendments 175 to 180 in the name of the noble Lord, Lord Adonis, would prevent the Government making regulations under the power in Clause 9 in relation to a range of internal security tools until they had laid before Parliament a strategy for reaching agreement with the EU on continued co-operation across a range of internal security measures. The future partnership paper that we published on 18 September 2017 set out how we aim to go about securing those aims and, therefore, it is the Government's view that this group of amendments is not needed.

As many noble Lords have referenced, the Prime Minister has proposed a bold new security partnership with the EU, including a comprehensive agreement on our future security, law enforcement and criminal justice co-operation. She elaborated on the Government's proposals in this area in her speech in Munich earlier this month, making it clear that Europe's security is our security and that the United Kingdom is unconditionally committed to maintaining it. Her speech built on the future partnership paper that the Government published on 18 September 2017, which set out how we are seeking an overarching treaty that provides for practical operational co-operation and facilitates data-driven law enforcement and multilateral co-operation through EU agencies such as Europol and Eurojust.

Lord Adonis: Can the Minister answer the question put by the noble Lord, Lord Thomas, as to which Minister is taking the lead in the security negotiations?

Lord Callanan: I will come to that later in my speech, but I will answer that question.

In that same paper, we made it clear that we value the operational benefits that we derive—I was struck by the comments on this from the noble Lord, Lord Hogan-Howe, and on how valuable many of them are. The noble Lord, Lord Hannay, referred to many of them, too, including the passenger name record directive, the second generation Schengen Information System and the European arrest warrant. There is also ECRIS, referred to by the noble Earl, Lord Listowel, and all the various acronyms that go with many of these JHA matters. They are all to do with the systematic exchange of information with our EU partners—for example, on criminal records—which helps to deliver fair and robust justice. I hope that reassures the noble Lord, Lord Cormack. He referred to Interpol. I assume that he meant Europol, but, for the avoidance of any doubt, I should say that we continue to co-operate in the same way with Interpol.

We made it clear that we want to agree future arrangements in this area that support co-operation across a range of EU measures and agencies, and to avoid operational gaps for law enforcement agencies and judicial authorities in the UK and the EU. The level of co-operation that we want to sustain goes beyond the specific tools and measures highlighted by the noble Baronesses, Lady Kennedy and Lady Massey, and the noble Lord, Lord Adonis. We have described the legal instruments here as a "toolkit" that can provide cumulative benefits. We have also indicated that we want our future partnership with the EU in this area to be dynamic, allowing us to co-operate if necessary in new ways in the face of evolving threats.

The amendment tabled by the noble Baroness, Lady Kennedy, highlights the respective roles of domestic courts and the CJEU. We made it clear in our future partnership paper on security, law enforcement and criminal justice that a future agreement in this area would need to provide for dispute resolution. Let me give a little more detail on that.

On leaving the EU we will bring to an end the direct jurisdiction of the CJEU in the UK. There are a number of existing precedents where EU agreements with third countries provide for close co-operative relationships without the CJEU having direct jurisdiction in those countries. The UK will engage proactively to negotiate an approach to enforcement and dispute resolution that meets the key objectives of the UK and the EU. We also published a separate future partnership paper on enforcement and dispute resolution last August, addressing many of those points and setting out the Government's approach to these issues.

The House has of course debated this issue on a number of occasions, particularly earlier this month, on 8 February, in the debate on the EU Committee's report on judicial oversight of the European arrest warrant. The withdrawal agreement and implementation Bill will implement the withdrawal agreement in our domestic law. In addition, the Government have already committed to provide Parliament with a meaningful vote on any final deal. This will give both Houses of Parliament the opportunity to scrutinise again the future relationship between the UK and the EU. We need to be able to work with the EU to respond quickly and effectively to the changing threats we face from terrorism and serious organised crime. In negotiations, we will be seeking to agree the best possible way to continue our work alongside our European partners in support of our common goals and shared interests. We are absolutely committed to securing the close relationship that the noble Baronesses, Lady Ludford, Lady Kennedy and Lady Massey, and the noble Lord, Lord Adonis, want to see—and on that basis I hope that they will not press their amendments.

Amendment 99, also tabled by the noble Baroness, Lady Kennedy, would prevent regulations made under Section 7(1) of the Bill from diminishing the protections in relation to "protected persons" set out in Part 3 of the Criminal Justice (European Protection Order) (England and Wales) Regulations 2014. As I understand it, the amendment seeks to ensure that the relevant authorities in England and Wales will continue to recognise and act upon European protection orders made in remaining member states after exit day, whether or not those states act on ours.

The EPO regime, established by an EU directive of the same name and implemented in England and Wales under the cited regulations, which came into force in 2015, is essentially a reciprocal regime. It requires the relevant designated authorities in the different

member states involved to act and to communicate with each other in the making of an order and in its recognition and enforcement—and also, indeed, in any modification, revocation or withdrawal of one. It is not possible for us to regulate from here to require the relevant authorities of remaining member states to act in any particular way. As such, if we are not in a reciprocal regime we will no longer issue EPOs to remaining member states, since it would be pointless to do so, and nor will the authorities in those member states issue them to the UK, for the same reasons.

In short, absent our continued participation in the EPO regime, or in some proximate reciprocal arrangements in its place, these regulations will be redundant; they do not work unilaterally. This amendment therefore pre-empts the outcome of the negotiations, potentially requiring the retention of redundant legislation. It would not be right to create a false impression by retaining redundant legislation. I am happy to be clear, however, that if the forthcoming negotiations produce an agreement to continue access to the regime established under this directive, or something like it, appropriate steps and legislation will be brought forward to implement it at that time. This will encompass the protections for protected persons. We will, of course, consider that at that stage. Meanwhile, for now, there is no practical point or purpose in having such an amendment or these provisions.

I shall answer some of the other points that were made. The noble Baroness, Lady Ludford, asked me about the O'Connor case and about extradition to the UK from Ireland. I am sure that the House will understand that I am somewhat limited in what I can say on this matter; it is a live case at the moment. Suffice it to say that we are monitoring it closely, but it would be wrong to speculate on its impact before the case is concluded. Once it is, we will be happy to do so.

The noble Baroness, Lady Ludford, and the noble Lord, Lord Paddick, I think it was, asked how we could reconcile the principles set out in the Prime Minister's Munich speech, first on UK sovereignty and secondly on the ECJ. As the Prime Minister said:

"The Treaty must preserve our operational capabilities. But it must also fulfil three further requirements. It must be respectful of the sovereignty of both the UK and the EU's legal orders. So, for example, when participating in EU agencies the UK will respect the remit of the European Court of Justice. And a principled but pragmatic solution to close legal co-operation will be needed to respect our unique status as a third country with our own sovereign legal order".

The noble Lord, Lord Hannay, asked about justice and home affairs in the implementation period. We welcome the EU's position that the UK should continue to participate in existing justice and home affairs measures where it has opted in. We also want to ensure that the UK and the EU can take new action together against unforeseen incidents and threats during that period. For those reasons, we want to be involved in new measures introduced during implementation where that is appropriate. He also asked about the Prime Minister's speech in Munich. I confirm that she was talking about all the justice and home affairs measures he mentioned—the EAW, ECRIS, Europol and all the other appropriate acronyms.

The noble Baroness, Lady Ludford, asked about the European arrest warrant and about the chance of a successful outcome compared with Norway. We value our co-operation through the EAW as it provides a faster and cost-effective way of handling extradition and helping us tackle cross-border criminality. With regard to Norway, our starting point for negotiations on future co-operation will be different from that of either Norway or Iceland, where a bilateral agreement is also in place. Of course, our starting point is different from theirs in so far as our extradition arrangements will be fully aligned with those of the EU at the point of our exit since we operate the same tool. That was not the case with Norway and Iceland when they joined.

The noble Lord, Lord Thomas, asked where we are in the negotiations and who is doing them—which the noble Lord, Lord Adonis, was also interested in. The Secretary of State for Exiting the EU is responsible for conducting negotiations in support of the Prime Minister. He is supported by the core negotiating team, which is made up of senior officials from a range of government departments. In response to his question about contacts, officials are engaging now and constantly with EU counterparts on a range of issues—but I come back to my earlier point that it would not be appropriate to give a running commentary on these discussions. We approach the next round of negotiations with optimism.

Lord Thomas of Gresford: Can the Minister tell us if the European Union has appointed anybody to represent the 27 other countries in conducting the other side of treaty negotiations?

Lord Callanan: Michel Barnier is the EU chief negotiator. I thought that that was fairly obvious.

Finally, the noble Lord, Lord Adonis, asked about no deal. Of course, we approach these negotiations not expecting failure but anticipating success. We are confident that continued practical co-operation between the UK and the EU on law enforcement and national security is very much in the interests of both sides, so we approach these negotiations anticipating success. We do not want or expect a no-deal outcome. However, a responsible Government should prepare for all potential outcomes, including the unlikely scenario in which no mutually satisfactory agreement can be reached. That is exactly what we are doing across the whole of government. The UK uses and benefits from a range of international information-sharing tools in the area of security and law enforcement, which are by no means limited to EU mechanisms but include bilateral and multilateral channels, including Interpol and the Council of Europe.

I hope I have answered all the questions—

Lord Thomas of Gresford: Do I understand the Minister to be saying that the people conducting the trade negotiations will deal with the security stuff as well? Is that what he is saying? Are there no lawyers on the other side to conduct the negotiations on behalf of those 27 other countries? What is the situation?

Lord Callanan: There are lead negotiators on each side but they are supported by a whole range of officials and Ministers from various departments.

[Lord Callanan]
David Davis is our negotiator, Michel Barnier is the EU's negotiator, and they have different members in each of the teams—

Lord Thomas of Gresford: But is the withdrawal agreement the same thing as the treaty or are they separate?

Lord Callanan: No, the treaty will be a separate piece of legislation when we negotiate it. I hope I have tackled most of noble Lords' questions and they will be able to withdraw or not move their amendments.

Lord Pannick (CB): May I just ask the Minister about his comments on the European Court of Justice? Is there anything in the case law of the ECJ that justifies the Government's reluctance for it to continue to be the dispute resolution procedure for the matters we are discussing?

Lord Callanan: We have been clear that respecting the Brexit vote means delivering on having control of our own laws. Our Supreme Court will be the ultimate arbiter of our own laws and it would not be appropriate to submit ourselves to the jurisdiction of a foreign power.

9.45 pm

Baroness Ludford: I should briefly like to thank all speakers in this extremely valuable debate, especially the co-signatories to my amendment, the noble Lords, Lord Cormack and Lord Judd, and my noble friend Lady Smith of Newnham. It was evident that, almost without exception, there was very strong support for staying in these crucial law enforcement measures. I am not so sure we got what the noble Lord, Lord Cormack, asked for, which was a reply of real substance. We certainly did not get the clarity that my noble friend Lord Paddick asked for on the ECJ. Quite honestly, that was an extraordinary response to the noble Lord, Lord Pannick. As the noble Lord, Lord Hannay, said, there is no safety net in this area. The WTO is not much of one but it exists.

Lord Mackay of Clashfern (Con): Is the noble Baroness talking of the European Court of Justice as though there would be no change in its constitution as a result of our leaving the European Union?

Baroness Ludford: There obviously will be a change, in that there will not be a British judge or British Advocate-General. What we want to know is how we will plug into what the Prime Minister asked for in Munich: to have respect for the sovereignty of the UK's legal order—the Minister really emphasised only that—but also respect for the remit of the ECJ, at least when participating in agencies. That raises the question: will we also respect the remit of the ECJ when it rules on the individual rights of people who challenge, for instance, a European arrest warrant? We have no answer to that question but the people who are nationals of those countries will want to know exactly what the jurisdictional regime is. I am afraid we are no closer to knowing that. As my noble friend Lord Paddick said, however, we do have clear negotiating objectives in this area—this is perhaps unique in Brexit—as the Prime Minister has set them out and the Minister has just confirmed them. What we are utterly in the dark about is how the Government propose to secure the arrangements, structures and mechanisms for continuing effective and efficient cross-border law enforcement co-operation.

The Minister said that we will have a meaningful vote on the withdrawal agreement, which is supposed to give us an opportunity to scrutinise at the end of the process, and hence that this amendment is not needed. But that is not enough; we want a purchase and input into those negotiating objectives. The Prime Minister makes a speech in Munich and tells us, "These are the objectives", but the Government do not deign to tell us how on earth those objectives are to be secured. Like me, the Minister is a veteran of the European Parliament. We found there that the European Commission, the member states and the Council learned the hard way that unless you bring the European Parliament, in that case, into your confidence about your negotiating objectives and how you are going to secure them, the danger is that at the end of the process the deal will be rejected because it has not been kept informed along the way. The lesson in Brussels was to front-load the process by keeping the people who might be in a position to block the deal informed of how it was to be secured.

I am afraid the Minister did not convince me, at least, that we are any further forward than we were with the future partnership paper, because that paper did not set out how we are to achieve these objectives. It said what the Government wanted to achieve. That has been repeated by the Prime Minister and the Minister, but we are none the wiser about how these measures will be replicated when we no longer have the structures and mechanisms of the EU. I fear that we will have to come back to this in all seriousness at future stages but, for the time being, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendment 13A

Moved by ***Lord Goldsmith***

13A: Clause 1, page 1, line 3, at end insert—

"( ) Regulations bringing into force subsection (1) may not be made until the Secretary of State has laid before both Houses of Parliament proposals for arrangements for the continued application of the Charter of Fundamental Rights to retained EU law under sections 2, 3 and 4."

Lord Goldsmith (Lab): My Lords, we now come to the first group of amendments that deals with the exclusion from the Bill of the European Charter of Fundamental Rights. A number of amendments relate to the exclusion of the charter and to its specific provisions, so this may be a convenient place to debate the general principle of what the Government are proposing and the issues to which that gives rise. I shall therefore speak also to Amendments 14, 20, 25 and 34. Amendments 46, 47, 333 and 347 are consequential and I apprehend that there will be no need to say anything more about them.

The starting point for these amendments is the Government's decision to exclude the European Charter of Fundamental Rights from the carryover into domestic law of existing EU law that the Bill is otherwise designed to achieve. As noble Lords know, and as the Government have been at pains to point out, the purpose of the Bill is to maintain legal continuity, certainty and stability for businesses and individuals by incorporating EU law as it stands into UK law. As the Prime Minister said in her foreword to the White Paper, the purpose is to ensure that:

"The same rules and laws will apply on the day after exit as on the day before".

The White Paper goes on to explain that it will then be for democratically elected representatives in the UK, in this Parliament and the devolved Administrations, to decide whether to change that law after full and proper scrutiny and debate. This decision to bring EU law into UK law at the moment of exit is an essential part of the plan to provide clarity and is necessary, it is said by the Government, to bolster confidence and planning as the Brexit process comes into effect. The noble Baroness the Lord Privy Seal said at Second Reading that this is,

"about ensuring that people's rights are maintained. It is vital to a smooth and orderly exit from the EU".—[*Official Report*, 30/1/18; col. 1374.]

However, there is one glaring and deeply troubling exception to the proposal to bring EU law into domestic law so that it is the same the day after exit as it was the day before: the exclusion of the charter, in its entirety, from this exercise.

In another place, the Solicitor-General described the exercise as downloading EU law into domestic law, but what is not being downloaded is the charter. In another place, Sir Keir Starmer noted that although thousands of provisions of EU law are being converted into domestic law, and may have to be modified in some sense after that exercise, only one provision in the thousands on thousands of provisions of EU law is singled out for extinction, and that is the charter. That gives rise to a conundrum.

Lord Lamont of Lerwick: Is the noble and learned Lord going to come on to explaining why it was, when he was Attorney-General and working with Tony Blair, he worked so hard to try to get the charter excluded from the Lisbon treaty? Indeed, they thought they had achieved such an opt-out from the treaty until it was overruled subsequently by the European Court of Justice. Surely what we are doing now is trying to fulfil the objective that he himself had in mind.

Noble Lords: Oh!

Lord Goldsmith: I can see noble Lords opposite are all very well briefed. I predicted this at Second Reading. I will come on to that, but let me make some progress on the arguments which matter.

Noble Lords: Answer!

Lord Goldsmith: No, I will make some progress on the arguments which matter. As the Constitution Committee of this House said at paragraph 119 of its report, the conundrum is this:

"The primary purpose of this Bill is to maintain legal continuity and promote legal certainty by retaining existing EU law as part of our law, while conferring powers on ministers to amend the retained EU law. If, as the Government suggests, the Charter of Fundamental Rights adds nothing to the content of EU law which is being retained, we do not understand why an exception needs to be made for it. If, however, the Charter does add value, then legal continuity suggests that the Bill should not make substantive changes to the law which applies immediately after exit day".

I want to examine the reasons that are put forward for not including the charter. The more I look at the arguments, the more convinced I become that the Government have got it wrong. I will not deny that there are issues as to the best way to bring the charter into effect in domestic law, and there are other amendments which will debate that, but Amendment 13A would require the Government to bring forward proposals for its continued application and the route by which the charter can be given effect.

Viscount Hailsham: Would the noble and learned Lord tell the Committee whether he is contemplating that the charter should be incorporated into domestic law as a statute, and as such be capable of amendment?

Lord Goldsmith: I am suggesting that the charter is brought into domestic law in the same way as all the other provisions of EU law will be brought into domestic law by this Bill, if it is passed. That means that they will be subject to the powers in the clauses that will be passed for amendment through orders, if this House and the other place approve that way of doing it. They will also, of course, as always, be subject to amendment by primary legislation. I will come on to this, but it is interesting that special protection is given to the ECHR through the Human Rights Act to protect it as we go forward, but there is no protection provided at all for the rights which underlie the charter. That is one of the deficiencies that are not taken account of in the Government's proposal.

Baroness Deech: Does the noble and learned Lord accept that perhaps we are being tied in knots by his argument? The nub of the charter, and why it is different from the European Convention on Human Rights and our Human Rights Act, is that the charter says that judges can set aside, invalidate or nullify our Acts of Parliament. That is the nub of it and is why it does not sit with the rule of law and parliamentary sovereignty. If you incorporate it in domestic law, you are in a real tangle, because if you try to repeal it, judges could set that aside. You end up in a vicious spiral.

Lord Goldsmith: I am grateful to the noble Baroness for the intervention. Of course it is not the charter which provides that, in certain circumstances, our courts have the ability to disapply domestic law; it is EU law and its ability to override Parliament. That is not what the charter has created; it is EU law that has created it. That is something which this Bill is intended to remove.

I want to get back on to the reasons why. The first reason put forward—this is the nub of the question put to me by the noble Lord, Lord Lawson—is that the charter merely codifies existing rights and principles.

Noble Lords: Lamont!

10 pm

Lord Goldsmith: I apologise to both noble Lords. The proposition is that the charter does no more than codify existing rights and principles, so it is not necessary to bring it in. It has been said, for example, by the very distinguished and independent Bingham Centre for the Rule of Law that that proposition is demonstrably not correct. It sets that out in a detailed report that I commend to noble Lords. An opinion of Queen's Counsel obtained by the Equalities and Human Rights Commission concludes that in fact this would lead to a significant weakening of human rights protection in the United Kingdom. Against those independent statements, it is no wonder that many NGOs and many members of civil society are deeply troubled about the exclusion of the charter. It is not just civil society that is concerned about that, as the noble Baroness, Lady Ludford, noted in the last debate, but industries such as the tech industry.

One can find examples of rights that are not protected in the report, which I also commend to noble Lords, by the Joint Committee on Human Rights. In its right-by-right analysis it identifies which rights are already included in our law and which are not. For example, on the very first item in the charter—Article 1 on the protection of human dignity, which many people would regard as the most fundamental human right and the basis of all others—the Government's right-by-right analysis gives two reasons for saying that that would be continued: first, an unincorporated treaty, the Universal Declaration of Human Rights, which does not have enforceable effect in this country at all; and, secondly, as a general principle of EU law—but, as noble Lords will know, this Bill seeks to prevent general principles of EU law being given effect or creating any enforceable rights. That is an aspect that we will have to come back to later in the debates on the Bill.

Lord Faulks (Con): The noble and learned Lord identifies the fact that certain rights are no longer protected adequately because the charter contains rights that are not there in the European convention or, presumably, otherwise provided for by law. Could he tell the House why the Human Rights Act was not expanded to take into account the protection of these laws? At no time from 1998 to the time when the Labour Government lost power was there any attempt to include these rights that he now says are a central part of our law.

Lord Goldsmith: They were, because the charter provided for them. The Human Rights Act incorporated one set of provisions only, the European Convention on Human Rights, which goes back to just after the Second World War and which provides the classic political and civil rights. The other rights that we find in the charter, which is a much longer document and refers to socioeconomic rights, were not included in the Human Rights Act because they were not included in the European Convention on Human Rights.

The right-by-right analysis demonstrates which of these rights are not included. Given that the Government's objective, as stated by the Prime Minister, is to ensure that the protections for people in this country are the same the day after exit as the day before, I respectfully suggest that it is not for me to identify why that is not right; it is for the Government to demonstrate why it is. When we have substantial independent bodies such as the Bingham Centre and independent opinions from QCs demonstrating that actually it is not the case that the protections remain the same, the Government need to explain. I shall come on to that further.

Obviously there are examples of rights in the charter that reflect precisely other rights that we have within our law. In particular, there are a number of rights in the charter that are explicitly based on the European Convention on Human Rights; they are the same. Indeed, during the negotiations I went to some pains to try to ensure that they were phrased in the same way so as to prevent lawyers from saying, "It's written differently so it must mean something different". However, those are not the only rights that are there. As I noted at Second Reading, the charter is based not just on the European Convention on Human Rights but on principles of EU law and on principles that are commonly accepted by the member states, and those are in a different position from the ECHR rights.

Lord Brown of Eaton-under-Heywood (CB): Just take one of the rights that is precisely mirrored in the convention. Is it suggested that henceforth, the wise complainant who faces primary legislation here which is incompatible with that right should therefore sue under both the charter and the convention because, lo and behold, under the convention, despite the constitutional arrangement whereby the court's powers are limited to a declaration of incompatibility, he can disapply the primary legislation? Is that to be the consequence: that in a case where it matches, the convention trumps the constitutional settlement we arrived at, to which the noble Baroness, Lady Deech, referred?

Lord Goldsmith: That will depend on the shape of the Bill when it is completed—in particular, what is said about the provisions which deal with primacy of EU law—but at the moment, as the noble and learned Lord will know well from the cases he sat on, people have been bringing cases by reference to both the charter and the convention. One reason for that is that the protection under the charter is more powerful. In future, if people want protection of human rights, they will want the more powerful protection, and if that remains available after the Bill is enacted, they will look to it.

Baroness Deech: So if that protection is more powerful, the entire British structure relating to human fertilisation and embryology, which is very liberal and go-ahead, could be wiped out by the application of Article 3. It is very fortunate that the bodies opposed to our progress in reproductive rights have not cottoned on to that. It talks about the prohibition of eugenics, whatever that is, and selection of persons. By interpretation, it would stop us doing mitochondrial research, selection of embryos to screen out disease and a whole host of other things. Another article ensures continuing freedom of movement. Surely we do not want that.

Lord Goldsmith: The noble Baroness raises two different points. Some of the rights in the charter plainly do not continue after exit because they are dependent on our membership of the EU. Those include freedom of movement, which is based, as the explanations of the charter plainly show, on the rights that currently exist. There are others, such as the right to vote in European elections, which will not apply.

Let me make this point now, because it is one of the objections raised to keeping the charter in. As with many other provisions of EU law, there will need to be changes—I think they are described as deficiencies in the Bill; defects. For example, other provisions of EU law refer to bodies to which we will no longer belong or to supervising agencies with which we will no longer be concerned because we will have left the European Union. That is what the provisions of the deficiency orders are intended to deal with. So, too, they can deal with matters under the charter which no longer have effect for that reason.

The noble Baroness's first point was a different matter, which was to do with the ambit of Article 3. I am sure that she has it clearly in mind, but the explanations of Article 3 make it clear that:

"The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court".

I do not doubt that the noble Baroness would be as opposed to those provisions as the rest of us would be. In relation to reproductive cloning, which may be what she had in mind, the explanations talk about being against reproductive cloning, but that is not the same as therapeutic cloning. We can have debates about that if need be.

Let me move on, if I may, because I have only started to deal with one aspect of the issue. In terms of the substantive protections that the charter provides but the ECHR does not, although it covers many of the same, reference has been made already to the case of Mr David Davis himself and Mr Tom Watson. I say this not because it is amusing to point the finger at Mr Davis, in his current position, having relied on the charter, as we know he did, but because it is illustrative of something significant. As a Back Bencher, he and Mr Watson brought a case against the provisions of the Data Retention and Investigatory Powers Act—DRIPA. Mr Davis was concerned that they would impinge on the ability of MPs to have confidential communications from their constituents. In his argument, he and his lawyers relied on the charter, and they were successful in doing so. The court agreed that the charter was relevant.

Another example of new rights, developed rights or rights that have emerged through the dynamic approach of the charter is in the Google Spain case in which the right to be forgotten arose as a result of an examination of Articles 7 and 8 by the Court of Justice of the European Union. So, there are a number of examples where the substantive protections will be different. I have made it clear that there are many examples where the substantive protections are the same, but the purpose behind the Bill is to make sure that the protections for people are the same the day after leaving as the day before.

It is not just the substantive protections. There are different remedies, one of which has been referred to already—the ability to disapply legislation if that is where the Bill ends up at the end of the day. That is a more powerful remedy than the Human Rights Act. That was demonstrated in the Benkharbouche case when the State Immunity Act was disapplied so that foreign employees of an embassy could bring claims, which they would not otherwise be able to bring, so as to produce a more just situation.

The Government's position on the substantive protections appears to have changed. I understood that the Government said that the protections would be the same, but now the formula that appears to be being used is that there will be no significant loss of substantive protection. That is not the same thing. No significant loss of substantive protection means that there is some loss of substantive protection, though someone takes the view that it is not significant. That is not the same as the principle the Prime Minister's foreword set out.

Will the Minister respond to the following questions? First, will he confirm that the Government no longer contend that disapplying, excluding the charter, will lead to all the same existing substantive protections, or do they accept that some of them will not exist? If so, will he tell the Committee either now or subsequently what those are? Secondly, I referred to the phrase "no significant loss of substantive protections". Does the Minister agree that that leaves aside the question of whether procedural or other protections will be excluded as a result of excluding the charter from this protection? I ask the Minister to identify what the differences are and whether he accepts that there will be a loss of protection, even though the Government wish to say that it is not significant, so that the Committee can judge. Also, he will need to say, please, why that meets the objective the Prime Minister set in her foreword to the White Paper.

10.15 pm

The second objection that is put forward to including the charter is that there are provisions that cannot apply. I have already dealt with that point, because there are provisions such as the right to participate in the EU elections, which, of course, will not apply because we will not be a part of the European Union—but there is nothing dangerous in including them because, as is the case with many other EU instruments which are brought over, there will need to be adjustments or they simply will not apply.

The third argument that is raised is a reference to the fact that the scope of the charter is spent because it applies to member states only,

"when they are implementing Union law".

With respect, that argument does not prevent the charter being important; on the contrary, it makes it invaluable. Although we will cease to be bound by new Union law after we leave, we are bringing on to the statute book, through this Bill, the existing Union law—and our country will be acting within the scope

[Lord Goldsmith]
of that Union law and implementing it or, to put it another way, the charter will apply to retained law. There is a series of retained laws in Clauses 2, 3 and 4 of this Bill, and the charter will have an important and invaluable role to play, not just interpreting those but in ensuring that they are applied in a way that satisfies human rights considerations.

There is a further problem—

Lord Brown of Eaton-under-Heywood: I promise that I will not intervene again—I loathe intervening. But does the noble and learned Lord agree, although he proposes the domestication of the charter, it will still be necessary in future to decide what is within the ambit of what used to be EU law, because that is where the operation of the charter is presently confined—or does he suggest that now it opens up and encompasses all UK law, so that it is a wider application than it was originally? Are we going to have to go again through the impossible exercise, notoriously uncertain in application, of having to decide what is specifically and directly within the ambit of EU law in future as well?

Lord Goldsmith: I am grateful to the noble and learned Lord and I know that this is a point that troubles him, but he should bear in mind that what we have in Clauses 2, 3 and 4 of the Bill are provisions to bring specific aspects of EU derived legislation and EU direct effect legislation into UK law. That is the Union law that will continue, and that is what is defined as retained EU law—and it is to that retained EU law that the charter will continue to have effect under the scheme that I advocate to your Lordships, not to anything else or more broadly UK law.

Lord Brown of Eaton-under-Heywood: So the right to dignity would exist in the context of EU law, but not otherwise? Is that really how it is intended to work? Can the noble and learned Lord give an illustration of a case that will succeed under the right to human dignity in future—I mean, there has not ever been one in the past that has succeeded under that—when otherwise it would fail?

Lord Goldsmith: The noble and learned Lord knows that I took Article 1 as an example only because it is the very first article in the charter. I have respectfully invited noble Lords to look at the Joint Committee on Human Rights report, where the committee goes through each of the articles and through what the Government have said in relation to them, and identifies where they find place already in existing, enforceable UK law, and where they do not. It is where they do not that we are concerned with, and where they do not that there will be the very gap that the Prime Minister has said should not exist.

There is the further problem that, even if the rights survive, they will survive without the enhanced status and protection that they currently have. They have an enhanced status at the moment because of the 1972 Act and because of EU membership, but from the date of this Act they will only survive in a delegated form and be amendable by delegated legislation. They are not protected from being amended or removed by delegated legislation.

Compare the position in relation to the ECHR and the Human Rights Act. The Bill says in three places—in Clauses 7(7)(e), 8(3)(d) and 9(3)(d)—that the Human Rights Act is protected from amendment or revocation. The classic civil and political rights, but no more, which are, rightly, protected by the HRA, are protected from being amended other than by primary legislation to which this House and the other place have specifically agreed after proper scrutiny. However, none of the rights underlying the charter will be protected in that way, unless they find themselves within the ECHR, which is only some of them. That is unacceptable for many people.

Lord Hope of Craighead (CB): I find this very difficult to understand. If you look at the charter, you find reference to the Union in item after item. It begins with a series of rights, but as soon as you penetrate further you find that it is closely related to membership of the Union and things that are guaranteed by its law. If I understood the noble and learned Lord correctly, he wants the charter to be brought in and protected against that kind of amendment in the same way as the Convention on Human Rights. This charter will have to be largely rewritten if we introduce it into our law, but it is not designed for the kind of situation we are facing after Brexit. It is designed for use within the Union and to be interpreted by the CJEU. I simply do not understand how the system is intended to work if it were brought into our law in the way the noble and learned Lord is suggesting.

Lord Goldsmith: The noble and learned Lord will recall that, whenever he opposed me with that argument from his position in the House of Lords or Supreme Court, I did my best to try to explain why there is an error in his thinking. With respect, I do the same here. If one takes, for example, one of the rights in the charter which does derive from Union law, is it to be said that although it is going to be transposed into our law as an EU retained law, it will no longer be subject to any of the protections that it has at the moment through being subject to the charter? It does not mean, as the noble and learned Lord, Lord Brown, suggested, that all UK law will be subject to this protection. It does mean that that law which is currently subject to that protection will continue to be so unless and until it is amended. That is the way that one gives effect to the intention that the law should be the same the day after Brexit as the day before.

I want to underline that we are talking about the extent of substantive protections; other protections and their extent; and the lack of enhancement of rights. These are all distinct points. I will also refer to the loss of the effect of charter principles. Noble Lords who have studied the charter will know that as well as rights there are principles. The principles are more aspirational, but they guide the legislator and that is a useful thing to have. Even leaving that aside, the other items I identified—the substantive protections, their nature and their enhancement or lack of it—are all things which mean we will not have the same protections after exit day as we have at the moment.

Lord Faulks: Is the noble and learned Lord telling the House that these principles are going to be actionable on their own?

Lord Goldsmith: The noble Lord knows that that is not the position in relation to the principles: they are guidance and aspirational. I am not spending a lot of time on them, although some of the NGOs have. I will give one example. There was a case in which the EU's proposed legislation in relation to plain packaging of tobacco products was challenged in the courts on the grounds that it contravened freedom of expression. One of the things that the court looking at that noted was that the charter provided for a high degree of public protection in terms of health. I hope that all noble Lords agree with that sentiment, whether or not they agree with the result of the case. That is an example of where the principles come into effect.

Lord Lamont of Lerwick: I apologise for interrupting the noble and learned Lord a second time. We have listened to what he has said with great care. He has spoken for 34 minutes. He said that he would answer the question I posed at the very beginning of his speech—namely, why he had altered his mind when previously he had tried to keep the charter out of the Lisbon treaty, when he then said that it ought to have no direct domestic effect. Why has he changed his mind?

Lord Goldsmith: My Lords, I was about to come to that and I am grateful to the noble Lord.

Noble Lords: Oh!

Lord Goldsmith: I said that I would come back to it, and that is what I intended to do. A number of things have happened since the charter was drafted, as I said on Second Reading. The courts have referred to provisions of the charter and have given them effect. The decision was made to give the charter legal effect, which was not the way we started the negotiation. That is what happened in the Lisbon treaty, but that was not the original intention. That is what we argued against at the time, precisely so as to avoid the situation in which the courts were in a position to give effect to rights that we had not expected them to give effect to. That is what changed. That is why we now have a situation, where, as I have said, in a number of cases the courts have said that the charter has an effect and provides enforceable rights to individuals.

I conclude. The Joint Committee on Human Rights considered that the Government's decision to exclude the charter, while effectively retaining nearly all other EU law, was taken without having undertaken a comprehensive analysis of the implications for the protection of rights. I cannot say whether that is right, but this amendment would require a focus to be given to that so that we can see what the correct analysis is and what the right way to proceed is. I beg to move.

Viscount Hailsham: My Lords, I wish to speak to Amendments 14A, 20A and 25A in this group, which stand in my name. I apologise for the absence of my noble friend Lord Bowness, who has put his name to a number of amendments but cannot be here because of weather conditions. He has asked me to apologise to your Lordships for his absence.

The purpose of the three amendments standing in my name is to ensure that the terms of the charter, if incorporated into domestic law, are capable of amendment by Parliament. This may be implied by the other amendments, but I think not. I listened very carefully to the noble and learned Lord. While there is a capacity to remedy deficiencies by regulation, there is no capacity to enable Parliament to mount a careful scrutiny and amendment of the charter. Therefore, the purpose of my amendments is to make it explicit that the charter, if incorporated into domestic law, is subject to parliamentary scrutiny and amendment.

I do not want to say very much by way of a general justification for the need to incorporate the charter; I am conscious that the noble and learned Lord who has spoken has much greater expertise than I. I know that the noble Lord, Lord Pannick, will probably speak. He, too, has much greater knowledge of this than I. I am but a journeyman lawyer and I have never had to wrestle with the charter's significance in domestic terms. However, I noticed last week in the *Times* that Professor Bogdanor made a very powerful case for not scrapping the rights. The important thing that your Lordships need to keep in mind is that the charter provides a number of rights and remedies not found elsewhere in our domestic law. That point was made by the noble and learned Lord.

10.30 pm

I am deeply concerned at the growing strength of what I regard as the extremes of political debate on the left and right of the spectrum. It seems that the centre ground, where I have always tried to position myself, is giving way and is in retreat, and I believe that we need all the reinforcement we can get. Some of your Lordships will know that my father wrote about the elective dictatorship—a view that I have always shared. I do not believe and have never believed that Parliament is a sufficient protection for the rights and liberties of the citizen. If a political party is captured by extreme elements, is elected into office and can retain the loyalty of its MPs, it can do very much what it pleases. The damage that could be done to our rights and liberties in short order could be very great and might be irreversible. That is why most sophisticated democracies—in this context the United States is probably the most significant—have incorporated protection for rights and liberties in Bills of rights. The charter, if incorporated into domestic law, would go some way to fill the void. It goes beyond the rights and protections afforded by the European convention, as the noble and learned Lord rightly said.

Perhaps I may give a concrete example that may trouble your Lordships. As I understand the policy of Mr Corbyn and his colleagues, it is to nationalise a number of public services and utilities, and he asserts that this can be done at nil cost. This implies either no compensation for the owners of the assets or compensation that is calculated in a wholly derisory way so as to produce nothing or near to nothing.

Lord Lamont of Lerwick: The reason that the Labour Party says that nationalisation of the railways would cost nothing is that the shadow Chancellor thinks that financing things by bonds is costless. That is what he has said.

Viscount Hailsham: Yes, I know that is what he has said but I ask noble Lords to think about the impact on those who will lose their assets. That is the point I am making. I agree with my noble friend but my point is: what about the position of those who lose their assets?

Lord Faulks: My Lords—

Viscount Hailsham: I am just going to finish this point and then I will give way. It is at that point that Article 17 of the charter comes into play. As the Committee will know, Article 17 provides that property is to be protected and, furthermore, that rights of compensation are to be paid. This is the protection that this House would be very chary about giving away. I give way to my noble friend.

Lord Faulks: My noble friend will know that Article 1 of the first protocol of the European convention does precisely the same thing.

Viscount Hailsham: So there is an overlap, and the question is one of remedies. As my noble friend will know, the remedies under the charter are probably more effective than the remedies under the convention, and that is the point that the noble and learned Lord was making.

Lord Blencathra (Con): My noble friend seems to be saying that we need to incorporate this into British domestic law to protect ourselves from an extremist, wicked Government, but surely if such a Government were elected, one of the first things they would do would be to scrap this law using their parliamentary majority.

Viscount Hailsham: That would have to get through both Houses, which would be at least some check on the process. The point I am making is not quite the point that my noble friend has interpreted. I am saying that, if the charter is to be incorporated into domestic law, it has to be the subject of parliamentary scrutiny and amendment, and that is the only basis on which the charter should be incorporated into domestic law.

I accept the noble and learned Lord's point that a number of aspects of the charter are entirely irrelevant and are hinged on our membership of the Union. Articles 44, 42, 43 and 39 are examples of that. There are also articles in the provision of the charter that many of us would disagree with. The noble Baroness, Lady Deech, has indicated that she does not like many of them, and I happen to agree with her. I heard my noble friends Lord Howard, Lord Lamont and Lord Blencathra chuntering away, and I agree with them: there are many things in the charter with which I disagree. But I am saying that if it is to be incorporated, it should be incorporated in such a way as to enable this House to scrutinise each and every one of its provisions and amend as appropriate.

I remind the Committee that one reason many noble Lords and others wish to withdraw from the European Convention on Human Rights is that the judge-made interpretation of the text is incapable of amendment by Parliament. I wish to avoid that criticism being made of the charter if it is to be incorporated. The suggestion in my amendment to make the charter, if incorporated, subject to parliamentary scrutiny and amendment is perhaps the only example in this sorry business of being able to cherry pick, or to have your cake and eat it.

Lord Pannick: My Lords, may I respond to some of the objections that have been raised to the points made by the noble and learned Lord, Lord Goldsmith, with whose speech I agree entirely?

Many of the objections—those raised by the noble Lord, Lord Lamont, are typical—are to the content of the charter or to its implications. The Committee should appreciate that that is not the Government's position. The Government's position is not that they seek to exclude the charter because its contents or implications are objectionable. Their position is very clear indeed. If noble Lords read the debates in the House of Commons or look at the report of the Constitution Committee, they will see that the Government's position is simply that we do not need the charter in this Bill because its contents and implications are already contained in the retained EU law that is being read across through this Bill. So many of the objections that the Committee is listening to are simply beside the point: they are not the Government's objection to the charter. The Government's objection to the charter—it is unnecessary because its contents are already part of retained EU law—is, I am afraid, simply unsustainable. I will not take up time on this, because the hour is late, but if any noble Lords are doubtful about it, I simply suggest they read the helpful opinion by Jason Coppel QC, in which he clearly sets out the equality and human rights position. That is the first point.

Turning to the second point, I am always reluctant to disagree with my noble friend Lady Deech, because she taught me law at Oxford, but I have to disagree with her on this occasion. Her objection, as she explained it, and I hope I do not misrepresent her, is that she is concerned that the charter will enable the courts to overturn legislation enacted by Parliament—she is nodding. But I am sure she appreciates that that is inherent in this Bill. The whole point of the Bill is to read across as retained EU law the content of existing EU law that is applicable to this country and to give it—see Clause 5—supremacy. Supremacy means that it takes priority, as in the Factortame case, over anything enacted by Parliament which is inconsistent. So the suggestion that we must oppose the charter because it gives courts that power is simply inconsistent with what the Bill does.

Turning to the third objection, my noble and learned friend Lord Brown of Eaton-under-Heywood was concerned about whether the inclusion of the charter would, in some way, give a power that expands the role of the charter further than under EU law. My simple answer to that is no, of course it does not. The charter is being read across only because it is part of existing EU law, and it comes across as retained EU law. It will not have any greater force than it already has as part of EU law.

Lord Brown of Eaton-under-Heywood: In those circumstances, does my noble friend agree that the result of that is that we are henceforth, instead of

treating retained EU law as part of domestic law—having discarded the separation and shed the notion that it is a distinct body of law—still going to have to wrestle with all the difficulties inherent in distinguishing operations or actions pursued in the ambit of EU law from those that are not? Will that problem continue into the distant future?

Lord Pannick: My answer is very simple: yes, of course. The whole point of the Bill is to read across the EU law which currently applies to this country and for it to continue to apply. That is the Government's objective. It is their objective because they—very sensibly, in my view—wish to ensure legal certainty and clarity on exit day. That is exactly the legal position. It is not my idea; it is the Government's intention in this Bill.

As to all the concerns about what the charter might or might not do, one should bear in mind that the charter has been applicable in the courts of this country for many years. No one has suggested that there is some case or principle which is so objectionable that we need now to make an exception for the charter, when the Government's intention in the Bill is to read across all retained EU law to ensure a functioning statute book that preserves the legal position and ensures clarity, certainty and continuity. That is what this Bill is about.

Lord True (Con): There is, I think, a fourth question. As a layman, I have been listening for 51 minutes to extensive legal argument on these questions—and who am I to judge, in a sense?—and I was persuaded by the distinguished arguments of two former Law Lords that I heard. The noble Lord, Lord Pannick, referred to three arguments but there is surely a fourth argument which has not been adduced by any of the noble and learned Lords who have spoken, and that is that 17.4 million British people voted to leave the European Union, and that means coming out from under the jurisdiction of entities which are not subject to the Crown, Parliament and UK law.

The noble Lord, Lord Pannick, smiles and laughs. All the arguments that we have heard in this Chamber over the past two days in Committee come from those who do not wish that to happen, but the fact is that the British people sought a future in which they and their Parliament will make UK laws, and UK judges, under the Crown, will judge those. We have no need of any charter which has been made outside, something that the noble and learned Lord, Lord Goldsmith, argued for repeatedly when he was Attorney-General.

Lord Pannick: I am grateful to the noble Lord. The reason I am smiling is that he clearly has not read this Bill. The Government's Bill reads across the entire content of EU law that applies as at the exit date; it becomes part of our law. It is the whole point of the Bill.

Lord True: If I may—

Lord Pannick: I am sorry; let me complete the point. The noble Lord has made a point and he is simply wrong. The Government's Bill reads across the whole of EU law. It removes the jurisdiction of the European Court of Justice—I do not suggest to the contrary—and the amendment of the noble and learned Lord, Lord Goldsmith, has absolutely nothing to do with the role of the European Court of Justice. It will be the role of our courts and our judges to decide from now on the meaning and effect of the retained EU law which this Bill reads across. It will then be in later legislation for Parliament, as it sees fit, to amend or repeal that law. But as the noble and learned Lord, Lord Goldsmith, indicated, the Prime Minister said that this Bill is not an occasion for changing the law, it is an occasion for ensuring that on exit day we have a workable, certain, continuing system of law. The real question is why this Bill should make an exception for one element of European Union law, the charter. There is no justification for that whatsoever.

10.45 pm

Baroness Deech (CB): My Lords, it does the opposite of what my brilliant former pupil the noble Lord, Lord Pannick, has said. The inclusion of the charter brings with it uncertainty. It is a Trojan horse because if you carry on applying it, its meaning depends on the evolving case law of the ECJ, which has an objective of bringing further integration and other objectives to do with Europe that are not our objectives. Our judges have said that they want certainty after Brexit, but to include the charter, which is evolving all the time, without our scrutiny will give our judges sleepless nights because they will have to follow the twists and turns in EU law. I come back to the fact that the nub of this is that it will plainly give our judges the right to set aside and invalidate UK law. The noble and learned Lord, Lord Goldsmith, mentioned with approval the Benkharbouche case, where part of our sovereign immunity law was set aside by the Supreme Court on the basis of charter supremacy. That was actually dangerous because if other countries start setting aside immunity law when dealing with our diplomats, we will be in a very difficult situation indeed. I would not assess the Supreme Court by the outcome of what it says; we assess courts by the way they are appointed and the integrity of our judges. The retention of the charter is a recipe for confusion, uncertainty and the setting aside of British law according to ECJ judgments.

Lord Pannick: I am sorry to say to the noble Baroness that that is exactly what this Bill achieves in relation to all other retained EU law which is read across. This will be under the control of British judges. Under the Bill it is entirely a matter for them what weight, if any, they choose to give to judgments of the European Court of Justice. The charter of rights is no different from any other provision of EU law in that respect. The noble Baroness mentioned certainty. What I think provokes uncertainty for judges is the approach in this Bill. It is not simply that the charter of rights is excluded by Clause 5; the clause goes on to say that undefined,

"fundamental rights or principles which exist irrespective of the Charter",

are retained. There is a conflict in the approach taken on this issue. I suggest to noble Lords that the correct approach is that which has been recommended to the Committee and to the House by your Lordships' Constitution Committee: that there is no justification

[Lord Pannick]
whatever for distinguishing between the charter of rights and all other aspects of retained EU law. I support the noble and learned Lord, Lord Goldsmith, in what he said.

Lord Wigley (PC): My Lords, I rise to speak to Amendment 35 standing in my name and that of the noble Baroness, Lady Jones of Moulsecoomb, which would leave out subsections (4) and (5) and insert the words as set out in the amendment. The objective of Amendment 35 is to retain the charter rights in UK law and afford them the same level of protection as those in the Human Rights Act. It has similar objectives to some of the other amendments that have been proposed. I must admit that I address the House on these issues with some trepidation because I am not a lawyer, although I have taken the advice of lawyers in drafting this amendment.

The amendment provides for what I hope is a sensible and responsible approach to Brexit that respects the referendum decision but does not sacrifice rights and protections on the altar of ideology. Removing the European Charter of Fundamental Rights from EU retained law runs counter to the stated purpose of the Bill, which is to facilitate the wholesale transfer of EU law into the domestic statute book. It also contradicts the Government's assurances that the same rules will apply on the day before exit as on the day after. The Government's justification for this anomaly is to claim that the charter is unnecessary and that its omission will not result in any loss of substantive rights protections.

In an attempt to support their public assurances to that effect, the Government have since published a right-by-right analysis that they say demonstrates that each right can be found in domestic law. The analysis is unpersuasive. According to Liberty and Amnesty International, it is perfectly possible to retain the charter and deal with any redundant sections after exit just as with the rest of retained EU law, as has already been mentioned. The Equality and Human Rights Commission has obtained the opinion of senior counsel Jason Coppel QC on the Government's analysis of the charter. His advice is that the loss of the charter will lead to a significant weakening of human rights protection in the UK. This is because, first, there will be gaps in protection, for example in relation to children's rights, data protection and non-discrimination. Secondly, many rights will no longer be directly enforceable, leading to further gaps in protection. Thirdly, many remaining rights could be removed by Ministers exercising delegated powers.

A particular concern that I would like to highlight is that Brexit will remove any children's rights and safeguards currently offered by the European Charter of Fundamental Rights, which imposes a constitutional obligation on member states to adhere to children's rights standards when implementing EU law. The EU's Court of Justice now routinely refers to the charter when adjudicating on cases involving children.

Baroness Deech: I am reluctant to interfere. My noble friend Lord Listowel, who is sitting next to me, knows more about child law than anybody. I must point out that the protection given to child law in the charter is very crude indeed compared with decades-old jurisprudence in this country. Very recently, the Children and Families Act 2014 and the Children Act before were a nuanced and balanced approach to the protection of children, their education and their rights to contact with both parents. They are infinitely more subtle and pay more attention to their welfare than this kind of sledgehammer approach from the charter.

Lord Wigley: I hear what the noble Baroness says. All I would say is that by ensuring that we incorporate things into UK law, we then have an opportunity, democratically and in an accountable fashion, to make modifications as may be necessary. The danger is that we will throw out babies with bathwater.

Again, the Government have stated that the removal of the European Charter of Fundamental Rights from UK law,

"will not affect the substantive rights from which individuals already benefit in the UK".

The White Paper notes that many of the rights protected in the charter are also found in UN and other international treaties that the UK has ratified, including the UN Convention on the Rights of the Child. However, in a centralised context there is no specific statutory provision requiring respect for children's rights in lawmaking, nor a general requirement to safeguard and promote the welfare of children in the UK.

Furthermore, this particular argument has a specific Welsh angle. Stronger protection for children's rights exists in the devolved nations, specifically in Wales. The Rights of Children and Young Persons (Wales) Measure 2011 imposes a duty on Ministers to have due regard to children's rights as expressed in the UNCRC when exercising any of their functions. To achieve that obligation, since 2012 the Welsh Government routinely undertake child rights impact assessments on proposals for Welsh law or policy that will affect children directly or indirectly.

The withdrawal Bill will limit the scope of the devolved nations to alter law within the current devolution settlement and brings competence on matters that have been arranged under EU law back to Westminster. This would prevent the devolved nations from exercising their powers to withstand or amend legislation from Westminster, even where this contradicts their own commitments to children's rights. I submit the amendment to the Committee as a contribution to the debate on these most important considerations.

Baroness Jones of Moulsecoomb (GP): My Lords, I rise as a co-signatory to Amendment 35. I usually come to these debates feeling that I understand all the issues involved and, within minutes, I am confused by contradictory legal opinions and by arguments from across the House on issues that are not even relevant to the Bill. So can we go back to basics? I feel like the woman on the Clapham omnibus who is just seeing common sense. The fact is that the Government promised to bring over all EU law and are choosing to exempt this aspect of it. I do not understand that; they break a promise at their peril, because people out there will not understand.

I could not do better than repeat some of the things said by the noble and learned Lord, Lord Goldsmith, about the Equality and Human Rights Commission. Let me read again what it says:

"The simplest and best way of achieving the Government's intention that substantive rights should remain unchanged and ensuring legal certainty is to retain the Charter rights in UK law".

I do not understand why the Government do not see that as well. The legal opinion produced for the Equality and Human Rights Commission by Jason Coppel QC, which we have heard of already, states that failing to keep the charter will result in,

"a significant weakening of the current system of human rights protection in the UK".

Why is that not accepted? It is a legal argument. Have the Government read that opinion? If so, will they re-read it and give us a considered response to it? It clearly has a validity that I doubt the Government's position has.

The noble Viscount, Lord Hailsham, spoke about being on the centre ground, which I did not entirely agree with. I feel that I am on the centre ground; I feel that I, here, can at least express things that I hear out on the street. Out on the street, people think that the Government are going to keep all EU law and then amend it when it comes. That was the promise, so why are the Government refusing to fulfil it?

Lord Kerslake (CB): My Lords, I want to speak in favour of Amendment 34 and in support of the other amendments in this group that seek to retain the EU Charter of Fundamental Rights in UK domestic law. I did not speak at Second Reading, in good part out of recognition of a long list of speakers. I hope that the Committee will accept my apologies and my contribution this evening.

The key question here is not whether one was for or against leaving the European Union, nor is it whether one agrees with every aspect of the charter; neither of those points is relevant to this debate. It is whether there are sufficient grounds to exclude the charter from being transposed into UK law in exception to every other law being so transposed. In my view, there is no argument that, if we exclude it, we will see a weakening of our rights. That is very clear from the analysis that we have had from the commission and others.

There is no doubt that excluding the charter will lead to confusion and uncertainty in the law—that, too, is made clear in the analysis by other lawyers. So the question one has to ask is: are the grounds for excluding the charter compelling? I have not been persuaded that they are.

When Ministers say that something is not necessary, I get nervous. It usually means that it really is necessary but they do not want truly to state the reasons why. That is the reality here. The hard truth is that people speaking against the charter's inclusion do not like it. That is a perfectly reasonable position to take but, if they do not like the charter, that is a debate for further legislative change in the future; it is not a reason for accepting it now.

The public expect us to act with integrity and to do what it says on the tin in relation to this Bill. The two things that have been very clear right from the off on this Bill are that it will not see a diminution of rights and it will not try to change legislation from the EU but will transpose it, followed by a proper debate in this House about where change is needed. Unless those advocating the charter's exception can come up with compelling reasons why it cannot be incorporated, the balance of argument must be for it to stay and be transposed into UK law.

I say to the Government: when you are in a hole, stop digging. This should be agreed; it is a straightforward amendment that we can make in this Parliament. It does not, mercifully, await the outcome of the deal or anything related to it; it is a simple matter of integrity in the process that we are carrying out through the Bill. We should support the amendment.

11 pm

Lord Cashman (Lab): My Lords, I speak as a co-signatory to Amendment 63A, which is also in the name of the noble and learned Lord, Lord Wallace of Tankerness. I will be very brief, especially in a room full, it seems, of Law Lords and lawyers. I come to this in perhaps a very different way from others. As a 67 year-old man, I have spent most of my life not having equality before the law or the equal protection of the law; that is, as a gay man. Most of my rights—the equality I now enjoy—have been achieved largely by dragging legislative changes forcefully from Governments who did not want to give them to us or to many other misrepresented and defamed minorities. When it comes to human rights and civil liberties, you can never have enough belt and braces. Therefore, I do not understand why the exception to the carryover of EU law is solely in relation to the European Charter of Fundamental Rights and the general principles.

I promised to be brief and brief I will be. Tonight has illustrated to me more than any arguments that have come from a swathe of NGOs, such as the Bar Council, the Law Society, the Royal College of Nursing and others, that we cannot bring forward a change of such magnitude as this in a Bill that is supposed to retain all the EU law and then amend it afterwards. If we are to change the European Charter of Fundamental Rights, it should be done with full public scrutiny by both Houses, through primary legislation and the full engagement of civil society.

Let me finish on this. I talked about the rights that I and others have achieved that have had to be dragged. I want people to have easier access to the courts. If the Charter of Fundamental Rights in some way, through one clause or another, achieves that, I will go to wherever I go when I lay my head finally with great peace and rest. Why? Because the European Union was born out of the ashes of the Second World War—the ashes from crematoria that were dotted across Europe because people were taken there because of their difference, their perceived difference. Homosexuals were worked to death in concentration camps alongside trade unionists and many others. Yes, it is emotional but when you are denied and deprived of your human rights, it strikes at the very core of your being. When you are not given the equality that others have under the law, it strikes at your very existence.

These rights have been achieved and enumerated not only in conventions. Sadly, I have heard laughter rained upon people who have tried to defend the charter and the concept of human rights tonight, and I do not take that lightly. These rights that have been achieved have often been forced back against those

[Lord Cashman]
who have sought them. They have been achieved, often, against the will of Governments and across the sacrifices of generations. Do not put them aside lightly. I urge noble Lords to support this group of amendments. If we are to change anything, let us do it through primary legislation or, at the very least, in the same way that we amend other retained EU law.

Lord Faulks: My Lords, I am sure that the Committee will be greatly moved by what the noble Lord, Lord Cashman, has said. Everyone is concerned to protect human rights but we must not fall into the trap of saying rights are good and therefore, more rights are better.

The role of the Charter of Fundamental Rights in our law has been an uncertain one. The noble and learned Lord, Lord Goldsmith, has had a great deal to do with it and knows a great deal about its creation; he played a part in its drafting. He got his retaliation in first at Second Reading and today, knowing that it was going to be pointed out to him that he was not initially an enthusiast for the charter because of the apparent disorder it might create in the rights architecture of our law. There is nothing wrong with changing your mind. It is quite a fashionable course for the party opposite to take at the moment. My difficulty is not with the change of mind but the fact that I agreed with his original stance, which was that adding the charter, which was designed for an entirely different purpose, ran the risk of undermining the clarity and cogency of our law.

I have some experience of the way rights are played in court. I was part of the Commission on a Bill of Rights, together with the noble Baroness, Lady Kennedy, who is in her place. I was also a Minister with responsibility for human rights. I have considerable experience over the past 20 years, following the incorporation of the European Convention on Human Rights by the Human Rights Act, of acting for public authorities which have been sued for alleged violations of those rights. Rights are very difficult to interpret, whether they come from a declaration, a charter or a convention. Inevitably they tend to be expressed in general terms and leave a great deal to individual judges to interpret and try to make practical sense of.

Most of the rights contained in the charter—obviously, some of them are inappropriate—are not controversial in what they seek to protect. What is far more controversial is how these rights should be interpreted. My right may be in conflict with your right. The protection of my right may have to be sacrificed or modified by the need to protect others' rights or the powers that the state may inevitably have which affect or modify those rights. Of course we need to protect children, the disabled and the vulnerable in society, as a number of noble Lords have pointed out. Most of what we do in Parliament is concerned with the definition of circumstances in which individuals' rights should be protected. A number of noble Lords have identified the right to dignity as being important since it is not reflected precisely in the European convention. We can all agree that it is important that citizens are treated with dignity but how does one translate that into anything meaningful in terms of the courts providing remedies?

The difficulty is that rights are now regarded as trumps and if we are to retain the charter, as seems to be the purport of the amendments in this group, we will have the rather strange situation of existing domestic law, whether it comes from the Human Rights Act or elsewhere, being supplemented by the charter, which will have a particular status. As the Government have made clear, the charter was never supposed to be a source of rights per se but a reflection of the rights that are generally protected by the European Court of Justice. It would be peculiar for our courts to continue to rely on the charter, which was designed to apply to EU institutions in interpreting the scope of EU law, after we have actually left the European Union.

The Advocate-General has occasionally made remarks about the charter. At its highest it has been described as "soft law". If we need to protect or further protect rights, is that not a matter for Parliament or even judges interpreting the common law? Are we really so impotent as a Parliament that we have to rely on the relatively recent EU charter to provide such protection? Some of the amendments seek to turn soft law into hard law with application after we have left. This Bill is surely to provide clarity and coherence in the law after we have left the EU. Retaining the charter will do precisely the opposite.

I regret that I do not agree with various observations made at Second Reading that the Human Rights Act provides only for declarations of incompatibility. It does in fact provide damages for violations of the convention. I suspect the reason the charter has attracted such vigorous support is the rather egregious way it has been singled out for attention in the Bill. The reason it has been so singled out is the uncertainty of its application by the courts so far, and the Government's desire to be absolutely clear that in the difficult task of interpreting the law that the judges will face, the charter can safely be ignored.

My amendment, which I come to in conclusion, is an attempt to provide some clarity as to what role, if any, the charter may have in the future. In so far as the charter is part of retained law—I appreciate that the definition of retained law is also the subject of debate—there seems no harm in it having some continued existence, in so far as it is necessary for the interpretation of that retained law; hence my amendment. What I find wholly unconvincing is the argument that it should somehow remain, as a non-native species, providing a free-standing source of rights—as in the Goldsmith amendment—or that it should be grafted on, subject to amendments to the Human Rights Act, as in the Wigley amendment. Who will benefit if the charter remains part of our domestic law after exit day? I fear it will not be those whom we rightly wish to protect; it will be the lawyers, and surely we do not want that.

Baroness Kennedy of The Shaws: My Lords—

Lord Wallace of Tankerness (LD): My Lords, may I speak to Amendment 63A?

Baroness Kennedy of The Shaws: I stood up before the noble Lord, Lord Faulks, sat down as I knew he was coming to an end. He mentioned, and I accept entirely, his position that the Government may have excluded the Charter of Fundamental Rights because

of uncertainty. But for many people it is an indicator of something else: that Conservative Party manifestos over a number of years have promised that the Human Rights Act would be removed. On many occasions, we have heard leading Conservatives say that we should remove ourselves from the European Convention on Human Rights, too. The absence of the Charter of Fundamental Rights from the Bill suggests to many that this is part of a journey taking us out of any international arrangements dealing with the protection of human rights, and that that is the real purpose.

Lord Faulks: The Government's position has been made quite clear: they have no intention of repealing the Human Rights Act. It is perfectly true that the previous Government said that they would consult on the question and bring in a British Bill of Rights, which would not mean departing from the European convention. Of course, I understand that there are those who are suspicious of this Government's motives—I do not speak for the Government—but if a Government were hell-bent on getting rid of human rights, they would of course be able to get rid of the charter as well. I do not accept the sinister interpretation of the noble Baroness. The intention is simply to achieve clarity; that is what the Bill is about.

Baroness Lister of Burtersett (Lab): The Conservative manifesto said:

"We will not repeal … the Human Rights Act while the process of Brexit is underway but we will consider our human rights legal framework when the process of leaving the EU concludes. We will remain signatories to the European Convention on Human Rights for the duration of the next parliament".

When the Minister replies, can he give us an assurance about the long-term commitment of the Conservative Party to the Human Rights Act?

Lord Faulks: No Parliament can bind its successor; one would expect every Government to consider human rights as an ongoing process, and how best to protect them.

Lord Wallace of Tankerness: My Lords, I will speak to Amendment 63A, which is in my name and has already been spoken to with great passion by the noble Lord, Lord Cashman. He gave an excellent antidote to a debate that has otherwise been an important but nevertheless cerebral examination of the legal position of the European Charter of Fundamental Rights.

11.15 pm

In his immediate response to the remarks of the noble Lord, Lord Cashman, the noble Lord, Lord Faulks, said that we should not fall into the trap of thinking that more rights are always better. It is important to make it very clear that what my amendment does and what I think the other amendments seek to do is not to give more rights but rather to ensure that the rights that are already there continue after exit day. My amendment makes it very clear that the Charter of Fundamental Rights has the same effect in relation to the interpretation and application of retained EU law on and after exit day as it had immediately before exit day.

As the noble Lord, Lord Pannick, made perfectly clear, we are trying to help the Government. The Government said in their Explanatory Notes to the Bill that Clause 5(5),

"makes clear that, while the Charter will not form part of domestic law after exit, this does not remove any underlying fundamental rights or principles which exist, and EU law which is converted will continue to be interpreted in light of those underlying rights and principles".

That is the Government's stated aim in the Explanatory Notes, but we have already heard that by expressly excluding the Charter of Fundamental Rights the Bill does not deliver what the Government say they want to do. We have heard reference to the opinion for the Equality and Human Rights Commission of Jason Coppel QC, which identifies some ways in which it fails to deliver on that. There is also a position where, as I understand it, for example under convention rights and the Human Rights Act, it has to be the victim who brings a case, whereas, under the charter, others who can establish an interest but who are not necessarily victims can bring forward a case. There are other situations where there is reference to the charter in existing European Union law—and if we have expressly excluded the charter, how are those provisions going to be interpreted?

We know full well that quite properly the courts will look at what is in the Act and not at what is in the Explanatory Notes, and the Act will have expressly excluded the charter. It will not be unreasonable for the courts to ask what Parliament really meant by that and say that it must have had some intent if, when everything else was continued into retained EU law, the charter was expressly excluded. That is why it is important that we hold the Government to what they say in their Explanatory Notes. As the noble Lord, Lord Pannick, indicated, the Prime Minister indicated that she intended that there should be continuity. The provisions we have before us in the Bill do not produce that continuity and this set of amendments tries to ensure that that happens.

The specific amendment that I have tabled—I am grateful to the noble Lord, Lord Cashman, for signing it—ensures that the provisions which the noble and learned Lord, Lord Goldsmith, proposed, which relate to Clauses 2, 3 and 4, extend to Clause 6(3) and (6), encompassing EU case law and retained general principles. We believe that applying the amendment to Clause 6 neatly fits in with the purpose of Clause 6, which is about the interpretation of EU retained law.

There is no reason why the United Kingdom should not be able to continue to apply the rights in the charter to retained EU law. If, as has already been said in this debate, at any future stage it is thought that the rights go too far, that is a matter for Parliament, in the normal process of primary legislation, to change. What we seek to do in this case is to ensure that on the day after exit the law is the same as it was on the day before exit. It is what the Government say they want to do, and that is why I encourage the Government to accept the spirit and the letter of these amendments.

Lord Lamont of Lerwick: My Lords—

Lord Davies of Stamford: My Lords, I do not think I am going to give way to the noble Lord because I have been trying to speak. In the course of this debate, we are not actually going—I shall give way to the Chief Whip.

Lord Taylor of Holbeach (Con): It is the turn of my noble friend.

Lord Lamont of Lerwick: My Lords, I shall speak to Amendment 14, the effect of which is to retain the charter as part of domestic law and to retain EU law under which claimants would be able to have domestic legislation struck down on the basis of incompatibility with the charter. Some noble Lords have expressed the view that they were baffled by the exclusion of the charter from this legislation, but I felt that the arguments were put very simply and cogently by the noble and learned Lord, Lord Brown of Eaton-under-Heywood, at Second Reading when he simply pointed out that the charter is only one part of our extensive framework of human rights, that there would be a risk of confusion because of conflict with the ECHR and that what this was doing was complicating the situation to no good purpose.

Furthermore, the Secretary of State for Exiting the European Union has produced a memorandum showing how existing rights are being provided for in the legislation and in retained law. He has also gone further and said that if anyone can provide specific examples of rights that are not provided for, he will give the matter due consideration. Various people have suggested various things that may or may not be suitable for inclusion, but they will no doubt be considered by the Secretary of State and could be considered for primary legislation.

I asked the noble and learned Lord why he had changed his mind about the incorporation of the charter, which he and Prime Minister Blair strongly opposed in the Lisbon treaty. I do not want to go over that, as I think I made my point, but I suggest to the noble and learned Lord that he had very good reasons for excluding it, and that now is an opportunity—

Lord Goldsmith: In fact, this country accepted that the charter would become part of EU law in the Lisbon treaty—it is the opposite of what the noble Lord said.

Lord Lamont of Lerwick: Against the noble and learned Lord's will. There was also an attempt to get an opt-out, which the European Court of Justice said was not valid. I see that the Minister is agreeing with me. I believe that is a correct account of what happened. It was struck down. The case in which it happened was, I think, Aklagaren v Hans Akerberg Fransson.

Lord Pannick: Would the noble Lord accept that there are many areas of EU law which this country has opposed but which have nevertheless become part of EU law? This Bill seeks to exclude none of them from retained EU law, other than the charter. Why is that?

Lord Lamont of Lerwick: That is very much my argument. For reasons that I wish to develop, I agree very much with the noble Baroness, Lady Deech, and what was said by my noble friend Lord Faulks about the confusion and conflict that this will cause between the role of the European Court of Justice and our own courts. The President of the Supreme Court has already called for further clarification of the relationship the Supreme Court will have with the European Court of Justice. It seems to me, for reasons I am about to give, that this would be made even worse if we incorporated the charter into the Bill and into UK law.

The retention of the charter would lead to real problems of uncertainty and confusion. Above all, retaining the charter would give the ECJ even more continued influence over our courts. I accept what the noble and learned Lord has said, that there is going to be a relationship for a while with the jurisprudence of the ECJ, but incorporating the charter will give much more opportunity for what people have called judicial adventurism from the European Court of Justice, as it continues to expand the interpretation of the charter. This is not an obsession of Conservatives. I draw the Committee's attention to what the late Lord Bingham, I think, said in evidence to the House of Lords EU Committee in 2016. He said that although,

"the European Court of Human Rights is a very benign institution … the European Court of Justice in Luxembourg has predatory qualities to it that could be very inimical to some of our national practices".

That is a reference to the expansionist activities of the ECJ. The charter, as many people know, is extremely loosely worded. The risk of leaving the charter in place is that it allows the ECJ, while it still has jurisdiction over us and our Supreme Court, to expand the charter into new areas. I am not suggesting that the rights we have are frozen for ever or should not be expanded, but merely that that is something that should be decided in this country by our Parliament.

I am also concerned, because of this and the expansion of activities of the ECJ, that if the charter were incorporated our courts would acquire the power to strike down statute on the basis of incompatibility with the charter, which is the point that the noble Baroness, Lady Deech, was making. The noble Lord, Lord Pannick, referred to the Factortame case, which was a notorious example where an Act of Parliament was actually struck down. We do not want to create another situation in which domestic courts can strike down Acts of Parliament.

It is the European Court of Justice that interprets what the charter means within the European Union, so if the charter is incorporated into law, what relationship is then going to exist between the Supreme Court and the ECJ? As the ECJ continues to develop its interpretation of the charter, we would be on a road where we had to take it more and more into account. On the basis of what has been said, we must avoid that confusion.

If there are gaps in the rights, we have an opportunity to incorporate them with primary legislation. For example, people have been saying in some of the debates that there are various matters relating to the environment that are not covered. However, we will have a new environment Act and a new environment agency. That seems to me to be the way to cope with any rights that are not fully covered, and it is far better to avoid the confusion of incorporating the charter into UK law.

Lord Davies of Stamford: My Lords, I am being persistent this evening because I want to point out the glaring contradiction in the views that have been put forward in support of the Government and of the Bill as it currently stands. The noble Baroness, Lady Deech, says the Charter of Fundamental Rights is a pernicious and dangerous document—"dangerous" was her word—that would lead to courts in this country setting aside laws that they did not like, which would be scandalously contrary to British traditions of constitution and law. On the other side, we have had people, and the noble Lord, Lord Lamont, is the latest example of this, saying the reason why we cannot have the Charter of Fundamental Rights in the Bill and transferred into English law is that it is unnecessary and would be confusing because all the rights are there and some of the rights are already in the corpus of British law. Noble Lords must make up their minds: they cannot say something is a radical and pernicious measure with substantial negative consequences but at the same time say that it has no effect at all and is merely otiose. There is a fundamental contradiction there. The noble Lord, Lord Pannick, noticed the same thing but was not quite so explicit about it as I have been.

Lord Pannick: I did my best.

Lord Davies of Stamford: There is a confusion in this country that comes up quite frequently. We like to think—we are brought up to think it—that we do not have a written constitution in this country and we do not have constitutional laws. That is totally untrue: the Bill of Rights is a constitutional law; in my view the Bill that we are now trying to repeal, the European Communities Act, is a constitutional law; and the Human Rights Act is certainly a constitutional law. By "a constitutional law", I mean a law that is generally regarded as foundational and is prayed in aid before the courts and referred to in court judgments across a whole range of subjects. Because of that contradiction, we do not really recognise what is going on and we get ourselves into a frightful confusion.

Unlike the noble Baroness, Lady Deech, I am not shocked and offended by the idea that a court could put aside a Bill that was contrary to existing law. The remedy, of course, is quite simple: Parliament can change either the existing law or the previous one. The noble Viscount, Lord Hailsham, my Lincolnshire neighbour, came out with the right solution when he said that the check and the important constitutional protection against a Government with a parliamentary majority acting entirely irresponsibly or even tyrannically is that any Bills they put forward would have to go through both Houses. In that context, one hopes that the House of Lords would act as a guardian of the constitution and be prepared to stand up to the Government and wait for them, if necessary, to bring in the Parliament Act to override it. That would be a considerable check and balance, and it is a very important role of this House that we are there as a long-stop in such circumstances. The noble Viscount, Lord Hailsham, came up with the right solution and I am sorry that I did not sign his amendment, but I certainly approve of it very much, and if he comes forward with something like it at Report, I shall be happy to support it.

11.30 pm

The Earl of Listowel: My Lords, it is very late and I shall be brief. My noble friend Lady Deech is absolutely right: we can be very proud of the children's legislation we have in this country. The Children Act 1989 is an outstanding Act for children. We are good at many things: we have great lawyers, great scientists and great soldiers in this country. Unfortunately, we do not do so well at implementing the law. I am particularly concerned here about children's rights. Let me quickly give some examples.

I have talked to families with a disabled child trying to get access to early years education for their child. They get turned away again and again because the setting does not have the right equipment or staff to deal with them. Look at what is happening in the family courts. They are being overwhelmed by children being taken into care. Year on year, the number of children taken into care increases. Lord Justice Munby, the President of the Family Division, recently said that that is accelerating and that the family courts cannot deal with it. The All-Party Parliamentary Group has looked carefully at why that is over the past two years. It is because there just are not the resources in local authorities to support vulnerable families to stop their children being taken into care.

It is very interesting for me to read Article 24 on the rights of the child:

> "Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests".

That right is being compromised day by day in this country. Children are being removed from their families because those families have not had the support they needed to make a go of looking after their child.

This is very difficult and the Government have very difficult choices to make, but if you talk to social workers and academics, you find that this right is being compromised day by day. I know that the Conservative Party, in particular, is concerned to see that families are strong and integrated. I am sure that the Minister will tell me on this article that there are already strong protections in British legislation to ensure that the best interests of the child are maintained and their families are supported to prevent this happening. What is happening on the ground, however, is that because social workers wish to safeguard the children, and because the threshold of access to a social worker is so high, they are getting to see the family when it is in crisis, when things have got to a terrible pass and they think that the interest of the child lies in removing the child from this terrible situation.

If we applied this principle properly, we would be intervening earlier to support those families. We see great examples of that. For instance, the family drug and alcohol court, which is expanding across the country, is supporting parents to get them off drugs and alcohol so that they can keep their children.

A number of important protections for children are laid out here: access to education and so on. I will have a look at the Joint Committee on Human Rights report to see what is exempted here. There is lots of good legislation for children in this country, but when I look at what goes on on the continent in terms of

[The Earl of Listowel]
security of tenure in housing or quality of professional care for vulnerable children, I fear that so often they do so much better. My prejudice is that we need this sort of thing.

I worry about the elective dictatorship. We get small groups of very wise and intelligent people leading this country from the way we work constitutionally, and the breadth of experience, the people who get left behind, those just managing families, get forgotten about in the drive to do one or other very good thing which eclipses every other consideration. Being as explicit as one can about the rights of children and the protection for families can be very helpful. We will come back to this, and I look forward to debating it further, but on that specific article, I should be grateful for reassurance as to how it will be protected in future.

Lord Newby (LD): Before the noble Lord sits down, I know how concerned he is about the rights of children, but I wondered whether he had read the joint submission from the Children's Rights Alliance for England and Together (Scottish Alliance for Children's Rights), which argues forcefully and at length, with many details, and gives many examples of why they wish to have the fundamental charter retained. Why does he disagree with them and wishes it not to be?

The Earl of Listowel: I am sorry; it is late. I would like in principle to retain the charter. The UN Convention on the Rights of the Child is not part of British law, and the charter has been a means of channelling the principles of the UNCRC into British law. We need that. The minimum age of criminal responsibility in this country is 10 years old; we can lock up children of 10 years of age. Even in Turkey—with respect to Turkey—it is 16, and 14 around the continent. We are really harsh with our children and we need such protections.

Lord Blencathra: My Lords, as the tail-end Charlie in this debate, I too shall be brief. I believe that there is nothing fundamental about this so-called charter. It was a political wish list cobbled together by the EU in the year 2000, incorporated into the Lisbon treaty in 2009, and opposed by every Labour Government Minister. In fact, Gordon Brown would not even go to Lisbon on the first day to sign it. He wanted to distance himself from it. It includes such meaningless waffle as the right to "physical and mental integrity", and such wonderful new rights as the right to marry and the right to freedom of thought. As the noble and learned Lord, Lord Brown of Eaton-under-Heywood, so cleverly exposed, my right to freedom of thought seems to apply only to the 20,000 EU laws. If I am thinking about any other UK laws, the charter does not seem to apply.

Of course, the charter contains the fundamental right to a fair trial. Well, 803 years ago, this noble House put the right to a fair trial in Clause 39 of the Magna Carta. That is the most important fundamental right of all, which we have had for more than 800 years. The Magna Carta was also known as the "Great Charter of Freedoms" and the late Lord Denning called it,

"the greatest constitutional document of all times—the foundation of the freedom of the individual against the arbitrary authority of the despot".

That is what our predecessors in this House did—not the King, not a foreign court but this noble House.

Lord Davies of Stamford: Does the noble Lord recall that the Magna Carta was in 1214, and that the first Parliaments began to sit in the 1270s?

Lord Blencathra: The Magna Carta was imposed on King John by the Barons, as I understand it—the Barons being Members of this noble House. The House did not exist in that form, but it was imposed by the Lords and the Barons. The House of Commons passed the Bill of Rights 350 years ago and imposed it on the sovereign, guaranteeing our rights to free elections, no taxes without parliamentary approval and free speech. The Bill of Rights passed 350 years ago by this Parliament formed the basis of the United States Bill of Rights and Bills of rights of other countries around the world.

Then just 70 years ago, we used our unique experience to write the European Convention on Human Rights—largely written by British lawyers. We wrote that for countries which had no history of our fundamental freedoms and had suffered the evils and degradations of National Socialism. What I am saying is that the worst indictment I make of the EU is that it seems to have destroyed the belief among parliamentarians, noble Lords and Members of Parliament that we are capable of governing ourselves and writing our own law.

There is nothing of any value in the Charter of Fundamental Rights which is not already covered in UK law or the European convention. If we find some great new right in the future and decide that freedom of thought must become a law, are we incapable in this House, in the other place and as British parliamentarians of drafting that? Are we so enfeebled and incapable that we cannot do it? If the Barons could do it 800 years ago, Members of Parliament 350 years ago and the British Government and parliamentarians did it for Europe 70 years ago, are we so incapable that we cannot do it now?

The people of this country voted to bring back control of our laws because they believed that Parliament was capable of making better laws than the EU. They believed that we are better at deciding on our essential rights than an ECJ judge from Bulgaria who has a law degree in Marxist-Leninist law—I have checked on that, and he has got a degree from Sofia on Marxist-Leninist law.

I happen to agree with the British people. I see the incredible wealth of talent in this House, with noble and learned Lords and Law Lords, and I trust our courts. We do not need nor want this charter. Let us wear once gain the mantle of our predecessors in the Lords and Commons, who gave us every freedom that has been worth fighting and dying for for the last few hundred years. We need the courage of the electorate, who trusted us to make our own laws once again. We should not let them down.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords—

Noble Lords: Minister!

Baroness Ludford (LD): My Lords—

Noble Lords: This side!

Baroness Ludford: There are several more speakers, I am afraid, including me.

Baroness Whitaker (Lab): My Lords, in briefly supporting those amendments that seek to retain the charter, I owe your Lordships an apology. I ought to have declared that I am a member of the advisory board of the British Institute of Human Rights at Second Reading, but I forgot.

I am not a lawyer, but I respectfully submit that law is not primarily for lawyers, any more than water is for water engineers—it is for people to implement the central values of our democracy on their behalf, and the deprivation of rights and access to justice causes harm, unfair poverty, unfair unhappiness and, in some cases, unjustly shorter lives. That is the sort of thing we should be thinking of when we look at these amendments.

I shall just give three quick examples, much humbler than those of Mr David Davis. The general principles and the charter ensured that Mr John Walker could challenge and end pension inequality for same-sex couples. The charter and the general principles supported the recent case in the Supreme Court, which found employment tribunal fees implemented by the Government were unlawful. And the charter enabled the recognition of the importance of health as a fundamental right—not in our law—when tobacco companies challenged regulations to introduce plain packaging of cigarettes.

It seems extremely clear that dropping the charter will do away with protective rights and drop safeguards that have ensured justice in individual cases of injustice. It is individuals who we ought to be thinking about, and rights that would not otherwise exist that we ought to safeguard in the charter.

Baroness Ludford: My Lords, the Benches opposite have been well filled to harry the noble and learned Lord, Lord Goldsmith, about fundamental rights. Sadly, they were not here for the previous debate to speak up for achieving a fundamental right to safety and security.

I fear that parts of this debate have displayed a fundamental misunderstanding about the EU Charter of Fundamental Rights. There has been evidence of some quite muddled thinking. The charter is not a tool that extends the remit of EU law or promotes further integration; it protects citizens and businesses from abuse of the powers that EU laws confer on EU institutions and—I have to say to the noble Lord, Lord Faulks—on national Governments when they are implementing EU laws. So it is not just about all the EU institutions that we might leave; it is about achieving legal certainty and continuity. Deleting the charter means discontinuity by making substantive changes to the EU law that is retained in domestic law.

11.45 pm

I have to say to the noble Lord, Lord Blencathra, that his was a very entertaining speech but, I am afraid, he fundamentally misunderstood the whole purpose of the Bill, which is to retain EU law. In the Bill's treatment, not only of the charter but also of the general principles of EU law, which the Government propose to allow no right of action on, human rights laws are an exception—different from any other sector. This is entirely at odds with the stated purpose of wholesale transfer of EU law on to the domestic statute book and completely undermines the government assurance that the same rules will apply on the day before exit as the day after. It is completely at odds with the stated aim of taking a snapshot of the current body of EU law.

The Government have been entirely inconsistent over time about the charter, as the noble Lord, Lord Davies, said. In the context of this Bill, they say: "Oh, it adds nothing", while at other times they bemoan the fact that it adds an undesirable extra layer of rights. If we keep EU law but not the charter it is like "Hamlet" without the Prince—and I am sure we would not want that. There would, no doubt, need to be some housekeeping on the Bill once the principle of retention had been secured. There has been some support for the amendment in the name of the noble Viscount, Lord Hailsham, but that bridge can be crossed once the principle has been secured.

In response to the noble Lord, Lord Lamont, the Brexit Secretary, David Davis, who was an original party to the so-called Watson case on DRIPA, relied on the charter; he must have found something in it that was not in existing data protection law. In one of those "couldn't make it up" moments, I read that Jacob Rees-Mogg has said that EU sanctions for UK breach of an agreement with the EU—an entirely reasonable proposition—would be,

"against the EU's own Charter of Fundamental Rights".

So we have Jacob Rees-Mogg, the chairman of the so-called European Research Group, joining David Davis in finding it useful.

Time does not allow me to mention other cases. Earlier I mentioned the European arrest warrant, which would not work without the charter. Data transfers are the same. There was another speech this evening by a junior Trade Minister assuring the tech industry that there would be frictionless, seamless data flows after Brexit. That will not happen without the Charter of Fundamental Rights in domestic law. As the noble and learned Lord, Lord Goldsmith, said at Second Reading, wanting to make the Bill fit for purpose is not putting a spanner in the works: it is making the Bill actually work.

Baroness Lister of Burtersett: I will make one brief point that no noble Lord has yet made about Northern Ireland, which I know is of concern to many Members of this House. At Second Reading, citing the Bingham centre and Lady Hermon, I asked the Minister to explain how the requirement in the Good Friday agreement for an equivalent level of human rights protection in Northern Ireland and the Republic would be maintained if the citizens of the former could no longer look to the charter. In his helpful letter to

[Baroness Lister of Burtersett]
Peers, the Minister pointed out that the agreement preceded the charter and, as the charter is therefore not referenced in the agreement, the Bill should not affect our obligations to it. But the point is about equivalence. If the charter now applies in the Republic and not in Northern Ireland, with the loss of various rights in the latter, I ask again how that equivalence is to be maintained.

Baroness Deech: I will make a point that has not been made before. The charter has never been scrutinised by this House. If it had been, we would not have this lack of clarity. I have more confidence in the ability of our Supreme Court to protect us than I have in the ECJ. Bearing in mind what the noble Lord, Lord Cashman, said, what a failure the charter has been across Europe. The Roma are being persecuted, migrants are not getting proper treatment, the leaders of Catalonia are being locked up and extremist, right-wing parties are on the march. Freedom House is marking down European countries; they are sliding away from human rights. I am not proud of the charter; it has not worked in Europe. We are much better off with something home-grown and administered by our Supreme Court.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, if I appear faint in my defence of the Bill it is due to a lack of food rather than a lack of enthusiasm. I am grateful for the opportunity to respond to this important debate and set out the Government's position. I will start by making it clear that we are listening carefully to the debates on this issue, and will continue to do so.

The Government agree that protecting our rights and liberties as we leave the EU is of critical importance and it is only right that every detail of our approach is scrutinised. This has been a wide-ranging debate about human rights after exit, but it is worth remembering that the amendments before us relate specifically to the charter and the question of what role, if any, it should have in domestic law when we are no longer a member of the EU.

I maintain that the approach in the Bill to the charter as a document is absolutely right, and that the Bill in this respect is in no need of improvement. However, as many noble Lords have pointed out, that approach cannot be separated from the Bill's approach to the general principles of EU law, including fundamental rights. In response to the strength of feeling conveyed not just in this House but in the other place, the Government are looking again at these issues. These are highly technical issues in some respects but they are undoubtedly important, so we will look further at whether this part of the Bill can be improved in keeping with some of the concerns that have been expressed. Indeed, my noble friend Lord Lamont referred to an observation made by the Secretary of State himself that, if there were specific examples of rights which were not otherwise covered, we would examine them to ensure that the rights were not lost. However, that is not the case. On the specific question of whether the charter should be kept, our view remains that not incorporating the charter into UK law should not in itself affect the substantive rights from which individuals already benefit in the United Kingdom. This is because the charter was never the source of those rights.

The noble and learned Lord, Lord Goldsmith, anticipated that he might be reminded of his previous remarks on the matter, and I see no reason to disappoint him. In 2008, when this House debated the then European Union (Amendment) Bill, he was absolutely clear that,

"the charter was never intended to be applied directly to member states in dealing with those matters that member states have the competence to deal with. It was always intended to constrain the European Union institutions … the United Kingdom's position, like my position, has always been that the charter affirms existing rights, it does not create any new justiciable rights in any member state and does not extend the power of the courts. Moreover, in many cases the charter rights are based on national laws and practices and so they must mirror the extent and content of those national",—[*Official Report*, 9/6/08; cols. 426-27.]

laws.

The noble and learned Lord observed that he had nevertheless then encountered the incorporation of the charter into the Lisbon treaty in 2009. Perhaps that was a game changer. I remind him of his evidence to the European Scrutiny Committee in 2014. At that time he referred back to his previous statements and publications with regard to the charter and went on to say that, as he had there explained, the fundamental point was to provide a clear and accessible statement of existing rights and therefore constraints on the power of the EU to legislate.

As the noble and learned Lord's previous remarks help to make clear, the charter is only one of the elements of the UK's existing human rights architecture. It reaffirms rights and principles that exist elsewhere in the EU acquis, irrespective of the charter, and the Bill sets out how those rights and principles will continue to be protected in UK law after exit.

The noble and learned Lord referred to a number of issues, such as the case of Benkharbouche in 2017 in the Supreme Court. In that case the court found that there was a breach of Article 6 of the convention but it also referred to Article 47 of the charter in the context not of rights but of remedies. One has to bear in mind the distinction between rights and remedies.

The noble and learned Lord posed three questions in the context of previous observations about the charter. First, he talked about there being no loss of substantial protection. It is inevitable that leaving the EU will result in changes to the current arrangements, but certainly we do not accept that this in itself will result in a loss of substantive rights.

Secondly, he referred to the procedural protections that will be excluded. When we leave the EU, a person can still rely on sources that are reaffirmed in the charter. I emphasise "reaffirmed in the charter", as he himself observed in 2008 and 2014. Procedurally there may be differences but we do not consider that that can be a basis for incorporating the charter into domestic law. Indeed, we absolutely stand by what has been said by the Prime Minister: it is not necessary to retain the charter to ensure that rights are protected.

The noble and learned Lord also referred to the body of the charter, beginning with Article 1, and suggested that these rights were contained only in the charter. I simply observe that on 5 December last year

the Government published a very detailed paper setting out, as it were, a comparison of the rights in the charter and where they can be found elsewhere—in the convention, in the principles of EU law and in our own common law. The noble and learned Lord referred to Article 1, which concerns the right to human dignity. I remind him that there is a long series of case law both from the ECJ, as it then was, and from the European Court of Human Rights going back to 1995 in which, for example, the convention court emphasised that the very essence of the convention is respect for human dignity and human freedom. That has been repeated in a whole series of cases since then. These are well-established rights and they were well established when they were brought together into the charter.

I want to reassure noble Lords that substantive rights protected in the charter are, and will continue to be, protected elsewhere in UK law after we leave the EU, most notably in convention rights, in retained EU law, in the common law and via specific statutory protections such as those in our own equalities legislation. I have already mentioned that the Government published a detailed analysis providing guidance about how substantive rights found in the charter would be reflected in domestic law after exit.

Reference has been made to various legal opinions and that of Jason Coppel QC, who has had a number of name checks this evening. I can only implore noble Lords to look at the very detailed analysis the Government have produced. I also note that some of the references to Mr Coppel's opinion involve references to his concern that Ministers might change rights, for example, or that the procedures will be affected. However, that is not to say that the fundamental rights underlying the charter are not found elsewhere.

Baroness Hamwee (LD): My Lords, the noble and learned Lord quite rightly draws our attention to the distinction between rights and remedies, but he will agree that rights are not helpful unless there are remedies. If we were scrutinising the charter and the source of its rights to establish whether we were satisfied that the rights and remedies could still apply, we might, for instance, have noted that the sources of Article 1 mentioned in the analysis would not confer an enforceable right on individuals after exit day. That is the JCHR's analysis of the analysis.

I hope that the Minister can answer the question asked, in particular, by the noble Lords, Lord Pannick and Lord Kerslake, about why we have combined the two debates—one about the charter, its rights and wrongs and whether it is good or bad, and the other about the mechanisms. We have heard so often from the Government Front Bench that this Bill is about mechanisms. Why are the Government not using the mechanism they have themselves designed to give them the opportunity, and to give the Committee the opportunity, to consider the substance calmly after the chimes of midnight?

Midnight

Lord Keen of Elie: Quite simply because, as I indicated earlier to the Committee, the rights underpinning the charter exist elsewhere than in the charter and it is not necessary to incorporate the charter into domestic law in order to find those fundamental rights in our domestic law after we leave the EU.

Baroness Lister of Burtersett: I am sorry to interrupt, but the analysis by the Joint Committee on Human Rights to which the noble Baroness referred, which is an analysis of the Government's analysis, identified a number of rights that are not there other than in the charter. Does the noble and learned Lord reject the JCHR's analysis?

Lord Keen of Elie: We have considered that analysis, and that is why I indicated that we were still looking at this. As I said, if rights are identified which are not in fact going to be incorporated into our domestic law in the absence of the charter, we will look very carefully at ensuring that those are not lost.

Clause 5(5) makes it clear that, notwithstanding the non-incorporation of the charter, retained EU law will continue to be interpreted by UK courts in a way that is consistent with the underlying rights. I hope that addresses to some extent the issue raised by the noble and learned Lord, Lord Wallace, in that context. Interpretive provisions will retain a means by which we can look at these rights in the proper context.

With regard to those who have expressed concerns about this Bill resulting in a loss of substantive rights, I repeat—as the noble and learned Lord, Lord Goldsmith, has done, at least prior to his recent Pauline conversion—that it is not necessary to retain the charter to retain those fundamental rights. If we see that there is a potential loss of such fundamental rights, we will address that, and that is what we have indicated.

Lord Pannick: I put it to the noble and learned Lord that there is no other area of retained EU law where the Government have carried out this exercise or said that we do not need to read across a particular provision because it is already in domestic law. Why are they making an exception of the charter?

Lord Keen of Elie: Because this is the only case in which we have identified that situation. There is no other reason for proceeding in this way except for that.

Lord Wallace of Tankerness: If, as the noble and learned Lord said on numerous occasions in his reply, the rights established in the charter are already there in our domestic law, what is lost by keeping the charter? If those rights are already there, the Government cannot be worried about anything if they retain the charter.

Lord Keen of Elie: I must compliment the noble and learned Lord on his second sight. As I was about to say, the next argument put to us is that if we say that the charter is not adding anything, what is the problem with keeping it? I hope that is a fair summary of the noble and learned Lord's intervention. With respect, this argument simply fails to take account of how the charter applies at present. The charter and the rights that it reaffirmed have a limited application. They apply to the EU institutions all of the time, but apply only to member states acting within the scope of EU law. We will no longer be a member state and so we

[Lord Keen of Elie]
will be no longer be acting within the scope of EU law. Simply retaining the charter would not reflect the realities of leaving the EU. It cannot be right that a document called the *Charter of Fundamental Rights of the European Union* could continue to be used as the justification to bring cases that would lead ultimately to the striking down of UK primary legislation after we leave the EU. Outside our membership of the EU, it is simply not appropriate to retain the charter.

There are also practical questions to consider. It would be no simple matter to say that we are keeping the charter. The amendments in this group all attempt, in various ways, to solve the riddle of how an instrument inherently linked to and constrained by our membership of the EU could apply purely domestically. They each highlight the complexity involved in such an exercise.

In Amendment 13A, the noble and learned Lord, Lord Goldsmith, requires the Government to lay a report on how the charter will continue to apply to retained EU law after we leave the EU. However, his other amendments are far from clear on precisely how he intends the charter to have effect domestically after exit. They would remove the exclusion of the charter provided for in Clause 5, presumably with the intention that it would now form part of retained EU law. I note that one of his amendments would excise the definition of what the charter is from the Bill, despite going on to say that this undefined, unclear thing will continue to have effect in relation to retained EU law under Clauses 2, 3 and 4. What would our courts make of that? Many articles of the charter set out principles, not rights, which can be relied on directly by individuals. How would these have effect after exit? Eight articles of the charter constitute rights intrinsically linked to EU citizenship—for example, the right to vote in an EU parliamentary election. Of course, they claw at the air—we appreciate that—but they do nothing.

Let us pause again on the fact that the charter applies to member states only when acting within the scope of EU law. Presumably, if retained under the Bill, the charter would then apply only when we were acting within the scope of retained EU law, which I believe is the elaboration that the noble and learned Lord made in response to the noble and learned Lord, Lord Brown of Eaton-under-Heywood. Over time, our domestic law will evolve and new laws will be made by this sovereign Parliament and the devolved legislatures that will start to replace and supersede this category of retained EU law. We would be retaining the charter, in whatever capacity the noble and learned Lord intends, only for an ever-diminishing proportion of our law. This further risks incorporating complexity and confusion into our domestic statute book.

We should not overstate the accessibility of the current rights regime, which relies on citizens knowing—

Lord Beith (LD): The noble and learned Lord is right in that assertion, but it does not follow that retained European law should not be read across in the form of the charter as well as its other features on exit day. Lots of things will change over time. Parliament will no doubt amend retained European law so that it ceases to be retained European law, but the Bill is about legal continuity and what the situation is on exit day. For this purpose, surely the Minister should accept what is being proposed.

Lord Keen of Elie: I entirely agree with the noble Lord as to what this Bill is about. With regard to the charter, the point is that it does not bring anything over on its own. We already have these rights and obligations, as established by the principles of EU law, convention law and the common law.

As to a concern that something is omitted at the end of the day, as I indicated, we would address that to ensure that all rights are brought across. However, with great respect to the noble Lord, Lord Cashman, I do not believe that you can never have too many belts and braces. If you have too many belts and braces, eventually you cannot stand up. It is therefore important that we approach this issue with a degree of proportionality, if I may use a European term.

Following on from the point I made earlier, retaining the charter for what will become a fluid and changing category of law risks legislatively binding us to a document that would bring the illusion of clarity in the short term but serve only to undermine it in the longer term. Indeed, the other amendments in this group raise similar issues to those put forward by the noble and learned Lord, Lord Goldsmith.

My noble friend Lord Hailsham has tabled amendments that seek to build on the amendments put forward by the noble and learned Lord, Lord Goldsmith. They seek to assign the status of primary legislation to the European Charter of Fundamental Rights. For reasons that we will go into in a later group, the Government believe that the question of assigning status to retained EU law is complex and should be approached with caution. I hope that we can come back to this question when we have concluded our debate on the approach to rights protection and to status more generally. I will not seek to take up time on that issue at this stage.

I suspect that the amendment tabled by the noble Lord, Lord Wigley, would also add to the confusion. Seeking to afford charter rights the same level of protection as convention rights under the Human Rights Act 1998 is fraught with difficulty. Charter rights do not correspond exactly to ECHR rights and apply in different ways. The charter also contains non-justiciable principles as well as rights, and it is unclear what status these would have in domestic law under his amendment. Moreover, it does not deal with how explanations to the charter articles should be treated or how certain sections of the Human Rights Act would apply to charter rights. I appreciate that we are in Committee and that the noble Lord is entitled to say that he will look more carefully at the form of the amendment and perhaps elaborate upon it in due course, but there are fundamental difficulties with the approach he is attempting to take in simply trying to incorporate the charter when, as indeed the noble and learned Lord, Lord Goldsmith, himself observed, the expression of rights in the charter does not coincide precisely with the expression of rights in the convention.

I would like to emphasise again that we remain committed to listening to this House and indeed to working constructively to ensure that we have a

functioning statute book which maximises legal certainty. I understand the concerns expressed by some about whether some rights would somehow be left behind, but if we can and do identify a risk of such rights being left behind, we are entirely open to the proposition that we have to address that by way of amendment to the Bill, and we will seek to do that. I wish to reassure noble Lords on that point.

Lord Adonis: My Lords, can the noble and learned Lord give us any indication of when he thinks that that exercise will be completed?

Lord Keen of Elie: The potential answer is no, and the note says that my time is up. Nevertheless, and be that as it may, we will endeavour to address these issues as soon as we can. Clearly it will require us not only to consider the position we have adopted already in the document published in December last year but to take into consideration the concerns expressed by other lawyers and in this Committee in the course of the debate. We will look at those and we will want to address them at the next stage of the Bill; of that, I am confident.

At this stage I appreciate that there are some questions which I have not directly answered in the course of my response and it may be difficult to do so in the time remaining. Perhaps I may say that I endorse entirely the observations of the noble Baroness, Lady Deech, and of the noble and learned Lords, Lord Hope and Lord Brown of Eaton-Under-Heywood, with regard to the potential difficulties of simply drawing the charter over into domestic law. I am not going to elaborate on the consequences of doing that, but they can be summarised as confusion, uncertainty and difficulty, and ultimately could prove to be counterproductive. In these circumstances, I invite the noble and learned Lord to consider withdrawing his amendment.

Lord Goldsmith: My Lords, I am very grateful to all noble Lords and noble Baronesses who have taken part in the debate. It has been wide-ranging, as we anticipated it would be. I am grateful to the noble and learned Lord for his remarks. I shall obviously not spend long on what I say now, given the hour. As we approached midnight, I was looking around the corner to see whether a pumpkin would arrive with horses. I was not sure whether it would be for me or for the noble and learned Lord opposite.

12.15 am

I have three points in conclusion. I am grateful that the noble and learned Lord said that the Government are still looking and will continue to look at these issues. He has heard strong expressions of opinion from a number of noble Lords that there is a problem with what the Government are doing and they should think again about it. I urge that to be done. Secondly, he suggested that the way to do that would be for others to identify omissions from the protection that the Bill provides and present them to him or the Government. With respect, that is the wrong way to deal with it. The Government themselves have set about this by saying that they will incorporate the entirety of EU law on exit day and then change it through the processes provided in the Bill or through the possibilities in this House. That is the approach we strongly recommend that the Government should follow. It is what the Prime Minister said would happen and it is what ought to happen. That will allow debate and scrutiny to take place. But, thirdly, if it helps in getting to that position for us to sit down with the noble and learned Lord and his officials to go through some of these technical issues, which there are, I am very happy that we should do that. Having said that, I beg leave to withdraw the amendment.

Amendment 13A withdrawn.

Debate on whether Clause 1 should stand part of the Bill.

Lord Adonis: My Lords, we have been debating Clause 1 for 18 hours and three-quarters. That is probably enough, so I shall not prolong the debate any longer.

Clause 1 agreed.

House resumed.

House adjourned at 12.16 am.