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PARLIAMENTARY DEBATES
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HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

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

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House of Lords

Monday 26 March 2018

2.30 pm

Prayers—read by the Lord Bishop of Chester.

Nigeria
Question

2.36 pm

Asked by ***Baroness Cox***

To ask Her Majesty's Government what is their assessment of recent developments in Nigeria, with particular reference to attacks on civilians by Boko Haram and the Fulani.

The Minister of State, Foreign and Commonwealth Office (Lord Ahmad of Wimbledon) (Con): My Lords, we welcome the news that some of the Dapchi girls have been released and offer condolences to the families of those reported to have died. We call for an immediate release of all those abducted. Such attacks are abhorrent and must stop. We are also deeply concerned about ongoing clashes involving pastoralists and farmers, and have raised the issue with the Nigerian authorities. We urge the Nigerian Government to bring the perpetrators to justice and implement longer-term solutions.

Baroness Cox (CB): My Lords, I thank the Minister for his reply. Is he aware that, last time I was in Nigeria, I visited four Christian villages in Plateau state that had been attacked by the Fulani herdsmen, stood in the house where they had murdered the pastor, visited the homes which had been destroyed and saw Fulani cattle grazing everywhere? This situation has been multiplied many times, with the murder in recent months of hundreds of Christians and the destruction of their villages by increasingly well-armed and aggressive Fulani. Will Her Majesty's Government therefore make rather stronger representations to the Government of Nigeria to fulfil their obligations to ensure the protection of all their citizens, especially given recent developments of Christians being deliberately targeted?

Lord Ahmad of Wimbledon: Let me assure the noble Baroness and all noble Lords that wherever in the world we find minorities being targeted, we raise that as part of our prioritisation of the freedom of religion and belief. I assure her further that we have raised the issues of the current and recurrent clashes between the herdsmen and the local farmers. We welcome President Buhari's commitment to assist the affected communities. I agree with the noble Baroness that this has had a devastating impact on lives and communities, as well as on the general safety and security of all citizens. We are engaging with the federal and state Governments to encourage them to work with all parties, so that we can develop safe solutions for all communities in that part of Nigeria.

Lord Collins of Highbury (Lab): My Lords, clearly a key issue is that these herdsmen have been affected by changes in the law. Surely there must be a way forward that understands their needs, as well as ensuring that communities are not affected by the violence outlined by the noble Baroness. What are the Government doing to work out a way forward by supporting civil society initiatives that will enable the herdsmen to carry on living the life that they so desire to live?

Lord Ahmad of Wimbledon: Of course the role of civil society is important, but if we look at the conflict in Nigeria, we estimate that more than 20,000 people have been killed and more than 70 million affected. The current crisis is not just one of religion; in some parts, the herdsmen are Christians while the farmers are Muslims. It is the likes of Boko Haram, particularly in the northern part of the country, which have driven the herdsmen into territories that they were not previously occupying. So it is more complex than it is sometimes painted, which is as a particular issue between two faiths. It is not; it goes far deeper, and Boko Haram is driving these herdsmen south.

Lord Chidgey (LD): My Lords, Mrs Hamsatu Allamin, founder of Maiduguri Allamin Foundation for Peace, claims that members of Boko Haram are ready to drop their weapons, but government stakeholders benefiting from the insurgency are deliberately prolonging the terrorism. Mrs Allamin says:

"Illiterate, hapless and hopeless boys drawn from communities by Boko Haram leader Abubakar Shekau perpetrate violence. While others benefit, thousands have been arrested in Maiduguri and disappeared".

What are the outcomes of DfID's £92 million security and justice budget in 2017 for the region, and what impact has been made specifically in conflict prevention?

Lord Ahmad of Wimbledon: As the noble Lord will be aware, because of the challenges within Nigeria, much of the support that DfID presents has been spent on important issues such as sanitation, food provision and providing safety and security to children going to school. The noble Lord mentioned Boko Haram putting down their arms. Let us be clear: the ideology that drives the likes of Boko Haram is a perverse ideology. It is not there to make peace but to break the peace. Indeed, the Islamic State of West Africa group, which has different tactics, is also inspired by the same ideology. The important thing is that we have seen the Nigerian Government take some punitive steps against them and, where they can, bring the criminals to justice.

Lord Howell of Guildford (Con): My Lords, is it not the position that our fellow Commonwealth country, Nigeria, which is one of the world's largest nations, is confronting enemies of pure, undiluted evil? Is it not possible to think beyond representations to ways in which, through training and technical assistance or direct military assistance either under the aegis of the Commonwealth or directly, we can begin to tackle what is really a very straightforward situation of undiluted evil that must be overcome and resisted?

Lord Ahmad of Wimbledon: Certainly the Commonwealth is a force for good in looking at tackling some of these issues. As my noble friend will be aware, the United Kingdom and Australia funded the Countering Violent Extremism unit within the Commonwealth. We are working on areas such as building training and support for the Nigerian authorities and will continue to build their capacity to deal with such issues.

Lord Alton of Liverpool (CB): When the Minister next meets his Nigeria counterparts, will he address two of the causes of the growth of the Fulani militias and Boko Haram and ask him why, in defiance of the Nigerian constitution and Article 18 obligations, sharia law has been imposed in 12 states, providing impunity during the displacement of hundreds of thousands of people, abductions, land seizures, murders and violence such as the shooting in the mouth of a female choir singer, and how the Nigerian Government will address the fertile breeding ground for recruiting sergeants such as the kleptomania of corrupt leaders that has led the Nigerian Economic and Financial Crimes Commission to state that some $360 billion has been stolen, while in the impoverished north where these groups have been growing some 70% of children never go to school?

Lord Ahmad of Wimbledon: The noble Lord is right to raise this. Corruption is part of the reason that we see various challenges. It is very prevalent in certain parts of the country, which drives other causes and results in groups such as Boko Haram and the Islamic State of West Africa coming to the fore. Those vacuums exist and need to be filled. On the issue of sharia law being imposed on communities that do not adhere to sharia, it is against all principles, it is against the Nigerian constitution and—I will also add—against Islam itself. They need to wake up and smell the coffee, because they are perpetrating heinous crimes against humanity and are nothing to do with any constitution or religion.

Benefits: Two-Child Limit

Question

2.44 pm

Asked by ***The Lord Bishop of Durham***

To ask Her Majesty's Government what specific measures they are taking to monitor the impact of the two-child limit policy in the child element of Child Tax Credit and Universal Credit on the well-being of children.

The Minister of State, Department for International Development (Lord Bates) (Con): My Lords, the Government are committed to supporting child well-being, and keep all our child welfare policies under review. We provide a range of support for children, including child benefit, that continues to be paid for each child in a household. Since 2010 there are 1 million fewer people in absolute poverty, including 300,000 fewer children.

The Lord Bishop of Durham: I thank the Minister for that reply. Given that the Government's impact assessment argues that the two-child limit would have a positive impact on overall family stability, and that the policy would increase financial resilience and support improved life chances for children, what current evidence does the Minister have to support the claims that the policy will have a positive impact on overall family stability and improve life chances for children?

Lord Bates: I pay tribute to the work that the right reverend Prelate does as an advocate for children among the Bishops and his consistent interest in this. The change in policy that he is referring to in effect came in at the beginning of April last year. We have said we will look at the statistics as they are gathered over a period of time and keep them under close review, particularly in relation to the exemptions, and will publish information on that. Ultimately, in the short term, the key message that we want to send is that the heart of the policy was built on the principle that work should always pay and that people should always be better off if they are working. The fact that we have near-record levels of people in employment, which is continuing to happen, is some evidence that the policy is working, but we need to keep the specific effect of this particular change under review, and we will.

Baroness Lister of Burtersett (Lab): The policy is affecting those in work in particular. The Government claim that their policy-making gives primary consideration to the best interests of the child, in line with the UN Convention on the Rights of the Child. Can the Minister explain how the policy fulfils that principle, when all the independent analysis indicates that it will worsen child poverty significantly in addition to the increase in relative child poverty among larger families, particularly among certain ethnic minority groups and those in paid work?

Lord Bates: The benefit applies to those in work and those who are not. However, we were also seeking to introduce an element of fairness. People on very low incomes, in the low £20,000s , who may not have any children are forced to make very difficult decisions that impact upon themselves financially when they are about to have a child, and they will do so without any support—certainly child benefit, but also in terms of any additional support from the state. We feel it is only fair to them that other people ought to be in similar positions when considering whether to have a third or subsequent child.

Baroness Thomas of Winchester (LD): My Lords, what is the effect of this policy on families with a disabled child? It is estimated by the Government themselves that around 100,000 disabled children could be affected, meaning that a family could lose around £1,400 a year, with transitional protection protecting only those already on universal credit, not new claimants.

Lord Bates: The noble Baroness is absolutely right to say that there are elements for disability and for severe disability regarding children, and those need to be protected. We maintain the assessment of the effectiveness through a number of different means,

such as the households below average income survey, the universal credit data that we collect and the data on the benefits cap. As I said in answer to the right reverend Prelate, some very vulnerable people are impacted by this change, and we want to monitor it very carefully to make sure that they are protected.

Baroness Hayman (CB): My Lords, the Minister mentioned exemptions in one of his answers. Many of us all around this House thought an exemption had been made and an assurance given in the case of kinship carers. We were therefore very surprised and distressed to learn of the case of a young woman who became a carer for her bereaved siblings and then later had a child herself, and became a victim of this policy. In the House on 11 December, the noble Baroness, Lady Buscombe, said this case,

"and this policy is being considered as we speak".—[*Official Report*, 11/12/17; col. 1374.]

Could the Minister give us an update on that consideration?

Lord Bates: In respect of the kinship carers, that was a decision of your Lordships' House when the legislation was going through, and of course we uphold that principle. However, here we are talking about cases where there is a third or subsequent child and the initial two places have been taken by either their own children or other children. The noble Baroness is shaking her head and obviously I respect the approach that she is taking. If we could talk about the specifics of the case afterwards, I will certainly make sure that it is taken up with colleagues.

Lord Skelmersdale (Con): My Lords, I remember when the replacement ratio—the number of children per couple to maintain a stable population—was 2.7. What is it now, and has this had any bearing on the decision that we are discussing?

Lord Bates: The Office for National Statistics says that the average family size in the UK is 85% with two or fewer children and 87% for lone parents. Those are the statistics that we are currently working to.

Baroness Sherlock (Lab): The right reverend Prelate's Question asked how the policy will improve family stability, mentioned in the Government's impact assessment, which stated:

"Encouraging parents to reflect carefully on their readiness to support an additional child",

could help family stability. The Government argued strongly when the Bill was going through that in the case of tax credits, it would not apply the two-child limit to children who had been born before last April, because parents did not know that the policy was coming in when they had those children. However, they are applying it precisely that way to universal credit. From next February, when universal credit opens out to big families, if you make a new claim and have children born before this policy was ever dreamed of, you will not get support for the third and subsequent children. Can the Minister explain how that is fair?

Lord Bates: That is the provision under the legislation, but it needs to be placed in the context of what we are doing to ensure that families are protected. There are 3 million more people in work and 4 million people are paying less tax as a result of our tax changes. The national living wage has meant an extra £2,000 for families over the past two years alone. We have doubled the amount of free childcare available to three and four year-olds. This Government are doing a lot for families, but we need to be cognisant of those who may be caught by particular rule changes and ensure that they are helped as they should be.

Immigration: International Students

Question

2.51 pm

Asked by ***Lord Holmes of Richmond***

To ask Her Majesty's Government whether they will now consider removing international students from the net migration statistics.

Lord Holmes of Richmond (Con): My Lords, I beg leave to ask the Question standing in my name on the Order Paper. In doing so, I declare my interest as set out in the register.

The Minister of State, Home Office (Baroness Williams of Trafford): My Lords, migration statistics are produced by the independent Office for National Statistics, which follows international best practice. The Government do not intend to seek to influence this. There is no plan to limit the number of genuine international students who can come to the UK and, in 2017, the number of university-sponsored visas issued rose by 6%.

Lord Holmes of Richmond: My Lords, international students contribute well over £20 billion to the economy —an economic boon for Britain. Currently, more than 50 Heads of State or Prime Ministers were educated in UK higher education. Show me a more successful piece of soft power. In light of this, will my noble friend consider the pilot for named UK universities for visas and going back to the department and reconsidering removing international students from the net migration figures?

Baroness Williams of Trafford: My noble friend is nothing if not consistent. I am very pleased to tell him, as he mentioned the pilot study, that a further 23 institutions have been selected on the basis of having a consistently low visa refusal rate for their region. The pilot means that universities are responsible for eligibility checks, so students applying for their visa can submit fewer documents alongside their visa applications. The pilot also helps to support students who wish to switch to a work route and take up a graduate role by extending the leave period following the end of their study by up to six months.

Lord Faulkner of Worcester (Lab): My Lords, in congratulating the noble Lord, Lord Holmes of Richmond, on his Question and supplementary, with which I agree totally, does the Minister agree with Dame Julia Goodfellow, president of Universities UK, who says that,

"it is important to remember that international students also enrich our campuses and the experience of UK students, both academically and culturally Many return home having built strong professional and personal links here that provide long-term, 'soft power' benefits for the UK".

I declare an interest as Her Majesty's Government's trade envoy to Taiwan, which, I am happy to say, sends the UK more than 16,000 students a year.

Baroness Williams of Trafford: I am very happy to agree with both the noble Lord and, of course, my noble friend. We absolutely acknowledge that international students enrich the economy and, indeed, this country. We have no plans at all to cap the numbers—in fact, we encourage them, hence we are expanding the pilot.

Lord Hannay of Chiswick (CB): My Lords—

Lord Green of Deddington (CB): My Lords—

Noble Lords: Hannay!

The Minister of State, Ministry of Defence (Earl Howe) (Con): My Lords, it is an invidious choice between the noble Lords, Lord Hannay and Lord Green, but I think the noble Lord, Lord Green, was attempting to rise to his feet earlier.

Lord Green of Deddington: I am grateful to the noble Earl, and I hope that I may also be nothing if not consistent. Is the noble Baroness aware that the number of foreign nationals in the UK who arrive to study is, according to the Labour Force Survey, 1 million? In that case, is it not surely essential that they should be included in the migration statistics, as the ONS intends and as the Royal Statistical Society has recommended? It is a question not of who is allowed in but of counting them as they come and go.

Baroness Williams of Trafford: The noble Lord is absolutely right. Earlier this year, the Royal Statistical Society agreed with that approach and said that,

"we believe it is imperative for due attention to be paid to the international definitions of migration, which lead to the inclusion of students in the figures".

Lord Hunt of Kings Heath (Lab): My Lords, is it not a fact that the combination of Home Office measures has had a dampening impact on overseas recruitment and we are losing market share? Coming back to the issue of statistics, the Minister's own department's official statistics in August last year showed that 95% of international students coming from outside the EU were fully accounted for, either by leaving to go back home or by receiving an extension of their leave to be here because they are extending their studies. What is the problem with the Home Office in coming to a sensible resolution of this?

Baroness Williams of Trafford: The noble Lord is absolutely right that 95% of students—I thought it was slightly more—are compliant. However, I dispute his point about discouraging students. As I said in reply to the original Question, student numbers were up 6% this year. However, if people come here and require services such as housing or other sorts of public services, those figures have to be considered in all sorts of ways when planning for the population that is resident here.

Baroness Hamwee (LD): My Lords, will the Minister consider that what may be gained in the numbers is lost by the message as it is heard: foreigners are not welcome, and the British do not understand the international nature of learning?

Baroness Williams of Trafford: My Lords, the message that is going out appears to be from your Lordships' House and is not being heard internationally. Much has been made of applications from India. Last year, the numbers granted increased by 28%. I dispute that students are not feeling welcome in this country. They are applying in their droves.

Lord Cormack (Con): My Lords, my noble friend will acknowledge that this House has repeatedly discussed this issue in great detail and with near unanimity. What is the real obstacle to separating the students from those who are coming indefinitely? Doing so would be sensible; it would encourage our universities; and it would give a message that the doors really are open for students throughout the world.

Baroness Williams of Trafford: My Lords, I think I have explained that, given the increases in visa applications and grants that have happened in the last 12 months—in fact, since 2010—students are not deterred from coming to this country to gain a world-class education. I think I have explained, too, that if students were not counted, we may not be able to plan accordingly for some of the vital services that people who live here use.

HPV Vaccinations

Question

3 pm

Asked by ***Baroness Altmann***

To ask Her Majesty's Government, in the light of the recent decision to offer HPV vaccinations to gay men, whether they plan to provide HPV vaccinations to all boys; and if so, when.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, following a consultation, our expert group, the Joint Committee on Vaccination and Immunisation, is reviewing the evidence for vaccinating adolescent boys against HPV. We are awaiting its final advice, and it is important not to pre-empt the decision of the joint committee.

Baroness Altmann (Con): I thank my noble friend for his reply. HPV-related oral cancers are the fastest-growing type of malignancy and affect thousands of men each year. Recent studies suggest that the vaccination of boys is cost effective, and I congratulate the Government on their decision to vaccinate gay men. Does not my noble friend agree, however, that the only way in which to protect men directly is to vaccinate them before they become sexually active, as they already do in many countries, including Australia, Canada, Austria or the United States? Would he also agree that we have a duty and responsibility to protect these boys, rather than leaving them vulnerable to potentially fatal cancers when it will be too late for them to do anything about it, because we neglected them when young?

Lord O'Shaughnessy: My noble friend makes an important point, that vaccinations against the HPV virus brings wider health benefits beyond defending against cervical cancers. It is important to state that it is not my judgment that matters here but that of our expert group, and in its interim advice it did not recommend an extension of the HPV programme to boys as being cost effective, not least because of the high levels of immunity and uptake among girls, with the indirect benefit that that has. But that was its interim advice; the final advice is being considered at the moment, and I can tell the House that that advice and the underlying assumptions on cost benefit will be published when the decision is made.

Baroness Wheeler (Lab): My Lords, last year's interim statement referred to by the Minister mentions referring the issue of equality of access to the HPV vaccine to the Department of Health for consideration. Has that referral been made? Given that the clinical benefits of gender neutrality have been so widely advocated by top medics over a very long period, is the department treating this with urgency? When is a response expected, and has any legal advice been taken on whether the current situation of only directly protecting girls and gay men constitutes discrimination by gender or sexual orientation?

Lord O'Shaughnessy: The noble Baroness is quite right that equality is an issue, and an equality analysis will take place. That can be completed only once we have the final advice from the joint committee. I can also promise her that we will publish that analysis, so that will be able to be scrutinised. As for legal advice, it is subject to threats of judicial review at the moment, so I cannot go any further than that, but I can promise that equality considerations are very high on the list of the issues that we are dealing with.

Baroness Jolly (LD): My Lords, we welcome the decision to vaccinate gay men in England, but sex and relationships are no respecter of national borders. Has NHS England had any conversations with the NHS in Northern Ireland, Scotland or Wales to ensure that gay men are protected right across the UK?

Lord O'Shaughnessy: We are beginning a national rollout of the programme for men who have sex with men in terms of the provision, because of course they are not necessarily getting the indirect benefits from the girls' immunisation programme. I do not have the details of the working relationships with the devolved Administrations, but I shall write to the noble Baroness with details.

Lord Patel (CB): My Lords, I am glad that the Minister said that the committee looking at the benefits of immunisation to boys recognises the wider benefits of immunisation for both boys and girls. However, he did say that it was not convinced about the cost effectiveness. Is that cost effectiveness merely for the cost of the programme if instituted now or the long-term benefits?

Lord O'Shaughnessy: The committee has to take a number of considerations into account—the public health benefits, short-term and long-term, and cost effectiveness—just as NICE does when approving medicines. It has to make a judgment about whether the incremental pound spent could be better spent across the entire health system, where, of course, there are many competing demands. But it is up to it to make that decision, and that will inform its final advice.

Baroness Gardner of Parkes (Con): My Lords, is the Minister aware that oral cancer is very largely due to the papilloma virus? As a dentist, and on behalf of the dental profession, I strongly support immunisation, but there will always be people who do not attend to have it, even when it is introduced. So it is also important to be aware that dentists are usually the first people to detect oral cancer. For many years I have proposed that, when people go into accident and emergency for anything, someone should take one minute to see if there was any abnormality in the mouth which could be referred on at that stage. Could this even be included in a questionnaire when people go in for treatment? It would be a way of picking up oral cancer, which has increased by 23% in the last 10 years.

Lord O'Shaughnessy: My noble friend is quite right to highlight the link between HPV and oral cancer. The growing evidence base is one of the things which the JCVI is taking into consideration. There is absolutely no doubt that HPV causes around 99% of cervical cancers. The link to other cancers, such as the one my noble friend mentioned, is not quite the same and is still disputed, but it is one of the issues being considered.

Baroness Finlay of Llandaff (CB): My Lords, given that the Government have recognised the importance of HPV, do they also recognise that some boys who are having a homosexual relationship will not come forward and may, therefore, be at very high risk prior to being offered immunisation? Boys also act as a reservoir for HPV among girls. There may be girls whose parents do not consent to them having immunisation but they are particularly at risk because 70% of cervical cancers are caused by HPV.

Lord O'Shaughnessy: Yes, of course. Among the technical issues which the JCVI has to take into account is the risk profile of boys at different ages and with different sexual behaviours.

European Union (Withdrawal) Bill

Committee (10th Day)

3.06 pm

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

Clause 11: Retaining EU restrictions in devolution legislation etc.

Amendment 305

Moved by ***Lord Tyler***

305: Clause 11, page 7, leave out lines 37 and 38

Lord Tyler (LD): My Lords, on behalf of the noble Lord, Lord Blencathra, and at his request, I will move Amendment 305 in his name and speak to the other amendments which he has tabled in this group.

The noble Lord is chairman of the Delegated Powers and Regulatory Reform Committee, on which I also serve. He is involved today in important discussions in Edinburgh in that capacity and very much regrets this clash of commitments. He had anticipated that the group would be reached last Wednesday but it was not to be. My role as the nominee from the substitutes' bench enables me to emphasise two points in support of the amendments. First, although they may seem primarily concerned with the devolution implications of the Bill in its current form, and the noble Lord, Lord Blencathra, might have referred to his Scottish connections, these issues are in fact of more general UK constitutional significance. As a Cornishman and fellow Celt, I agree with him. Secondly, his request to me—I hope other members of the DPRRC enthusiastically endorse his suggested amendments—underlines the unanimity with which this non-partisan, cross-party committee advises the House on these important issues.

Although the amendments in this group refer to the proposed treatment of retained EU restrictions in devolution legislation in Clause 11, and to executive competence in Schedule 3, it is the strong contention of the noble Lord, Lord Blencathra, and the DPRRC, that wider constitutional precedents are in play here.

To reinforce these points I refer Members of your Lordships' House to the main arguments we advanced in our third report of this Session, but since it was published as long ago as September 2017 and others may not recall all the detail, I wish to refresh some memories. The Government's delegated powers memorandum described Clause 11 as a transitional arrangement to provide certainty after exit day and allow intensive discussion and consultation with devolved authorities on where lasting common frameworks are needed. As regards the power to prescribe exceptions by Order in Council, the memorandum asserted that its purpose is to provide an appropriate mechanism to broaden the parameters of devolved competence in respect of retained EU law. It adopts a similar approach to established procedure within the devolution legislation for devolving new powers: for example, Section 30 orders in the Scotland Act 1998. Without the power, it would be necessary for the UK Parliament to pass primary legislation to legislate the consent Motions from the relevant devolved legislatures in order to release areas from the new competence limit.

Our committee doubted the validity of those precedents and whether that was the best way to deal with them in any case. We said in our report at paragraph 54:

"We doubt whether the powers in clause 11 and Schedule 3 are analogous to existing procedures in the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006 (as amended in 2017)".

The lists of reserved matters in the devolution enactments are, for the most part, relatively straightforward, but this is not the case with the concept of retained EU law, which is defined in Clause 6, as follows:

"anything which, on or after exit day, continues to be, or forms part of, domestic law by virtue of section 2, 3 or 4 or subsection (3) or (6),

of Clause 6,

"(as that body of law is added to or otherwise modified by or under this Act or by other domestic law from time to time)".

I think all Members of your Lordships' House will agree that that is complex, obscure and something of a moving target in view of the words in brackets at the end of that definition. Therefore, there may well be significant potential for disputes after exit day between the UK Government and the devolved Administrations about what does or does not constitute retained EU law. It might ultimately require resolution by the Supreme Court. There is a warning note for us all.

The committee was also puzzled by the memorandum's description of Clause 11 as a transitional provision. It is not drafted in those terms and could remain indefinitely. The Government in their advice to the committee and to the House appear to envisage that the Order in Council procedure will distribute competences returned from the EU to the devolved institutions, following negotiations with them, but the memorandum gives no convincing explanation as to why it is considered appropriate to implement any agreement following these negotiations by delegated legislation rather than by primary legislation—a separate Bill. Revisions to the three devolution settlements in the light of EU withdrawal will be of considerable constitutional significance. The committee anticipates that both Houses of Parliament would wish to closely scrutinise proposed legislation amending the settlements and to have the opportunity to amend it, as has happened with all major changes to devolution since 1998.

I quote paragraph 59 in full. It states:

"On an issue as important as this, we regard it as unacceptable for Parliament to be presented with a draft Order in Council and given a simple choice of 'take it or leave it'. The Government should instead bring forward a separate Bill. It is, of course, not for us to express a view as to which competencies returned from the EU should be devolved to Belfast, Cardiff or Edinburgh. We are concerned only with the issue of whether it is appropriate for this to be done by delegated powers. In our view, it is not".

Then our recommendation at paragraph 60 states:

"The Order in Council powers in clause 11 and Schedule 3 are inappropriate and should be removed. Separate Bills should be introduced in Parliament to provide for the conferral on devolved institutions of competencies repatriated from the EU".

The noble Lord, Lord Blencathra, has been forthright in arguing the case presented by the Delegated Powers and Regulatory Reform Committee. He asked me to say:

"I am totally committed to the amendments and my absence should not be regarded as any lack of support for them … whatever the powers are then they should be in primary legislation as were all the devolved settlements".

I beg to move.

3.15 pm

Lord Lisvane (CB): My Lords, I endorse everything that the noble Lord, Lord Tyler, has said in moving Amendment 305 in the unavoidable absence of the chairman of the Delegated Powers Committee, the noble Lord, Lord Blencathra. I know, the noble Lord being absent on parliamentary business, how much he regretted the unavoidable clash of commitments at this time. The noble Lord, Lord Tyler, was much too modest in his mention of the substitutes' bench a moment or two ago.

In their delegated powers memorandum the Government have sought to make comparisons with procedures already established in the devolution legislation. I can be very brief, given the conspectus that the noble Lord, Lord Tyler, has given us. The sweeping effect of Clause 11 and Schedule 3 is to reserve to Westminster all returning competences unless the position is changed by Order in Council. The Delegated Powers Committee distils the problem effectively in paragraph 31 of its later, 12th report. The Government have said that the purpose of the Order in Council procedure is to provide an "appropriate mechanism"—there is that word "appropriate" again—to broaden the parameters of devolved competence in respect of retained EU law. However, as the noble Lord, Lord Tyler, made clear, the concept of the definition of retained EU law is anything but straightforward. The fundamental point is that something as important as the distribution of competences should not be left to take-it-or-leave-it statutory instruments. This is something for primary legislation and the much-enhanced scrutiny that it would receive.

Lord Mackay of Clashfern (Con): My Lords, I sought to explain in reference to the amendment I moved last week my belief about the simplicity of the real issue in this area. It seems absolutely clear that all the devolved Administrations—and the UK Administration themselves—are subject to EU law. However, on Brexit day that will all disappear and there will be the powers—these are the ones I am particularly interested in—that were kept to the EU. I said last week, and nothing I have heard since has persuaded me to change my mind, that all the powers which are effectively exercised within a single devolved area should be devolved immediately. That is the result of the EU no longer being in charge of our procedures. In addition, those powers the EU has which to be effective require to operate in more than one of the devolved areas should go to the UK Parliament. I thoroughly believe that that is the only way in which this can be properly accomplished. The idea of doing it with some form of legislation other than primary legislation is doomed to failure. So far as I am concerned, for example, the amendment tabled by my noble and learned friend Lord Hope, which we will come to later, relates only to the idea that something of this kind can happen by statutory instrument. There is no power which creates statutory instrumental authority for this kind of thing. Therefore, what has happened is what Bishop Berkeley once said about the philosophers:

"We have first raised a dust and then complain we cannot see".

That may have affected other areas of our national life.

This is a simple matter, and the simpler it is, the better what we are trying to do will be understood by ordinary people—the people who read the papers. Otherwise, we will be arguing away about what I certainly cannot understand and I venture to think that, if I cannot understand it, it is likely that one or two others will not understand it either.

Lord Morgan (Lab): My Lords, this is one of a number of issues where it seems that the Government have created extraordinary difficulties for themselves—a quite unnecessary threat to the cohesion of the union in the long term—as well as the other problems introduced by this legislation.

I am a member of the Constitution Committee; the chairman of that distinguished body is sitting behind me. I am not speaking on behalf of the committee, but for myself. The committee has already noticed that the provision about EU-derived measures is quite inappropriate. It ignores the devolution settlement. As the noble and learned Lord, Lord Mackay, explained, these powers should automatically go to the devolved legislatures—where they belong—but they are given no powers of redress or scrutiny. There seems to be very little consultation. I do not understand why such a high-handed and frankly colonial attitude is being adopted toward the legislators of Scotland, Wales and Northern Ireland. Needless complications are being caused. In Wales, which has had a growing accretion of reserved powers under the Government of Wales Act, unnecessary animosity that is not relevant to the Act is being created. It is a form of centralism that goes against the spirit of recent legislation and the consensual spirit in which this has taken place. Much of that consensus is owed to the noble Lord, Lord Bourne. It is comforting to see him sitting on the Government Benches; I hope he can suggest the reversal of this.

Lord Cormack (Con): My Lords, I join in the tributes to my noble friend Lord Bourne. One thing I hope he will take on board is that the amendment was tabled by my noble friend Lord Blencathra—it has been explained why he cannot be here, and we completely understand—but it was moved, most eloquently, by the noble Lord, Lord Tyler. Nobody could accuse them of being on the same side of the Brexit argument, which underlines the fact that, as our Constitutional Affairs Committee said in its report, the Bill is deficient and the deficiencies are recognised equally by those on both the remain and leave sides. I hope that this will command unanimous support among your Lordships and that there will be no need to put the amendment

[Lord Cormack]
to a vote at a later stage. I hope that my noble friend Lord Bourne will take on board the virtual unanimity of concern here and give us an encouraging answer.

Lord Wigley (PC): My Lords, I apologise for taking my seat after the noble Lord, Lord Tyler, started but I heard most of what he said from outside the Chamber. I add my voice in support of the comments that have been made. There is an old saying in Wales: you can lead a Welsh workforce through hell and high water but once you start driving them, woe betide. I think we should bear in mind the psychology of this situation. If these amendments are made to the Bill, I do not think that they will undermine the main purpose in any way. I hope the Government can look again at the Bill between now and Report.

Lord Elystan-Morgan (CB): My Lords, I respectfully agree with the sentiments articulated by the noble Lord. In relation to Wales, a totally new attitude has been taken toward reservations. The noble Lord, Lord Tyler, suggested that reservations were somewhat limited on the whole in devolution legislation. That is not so; in the Wales Act there are 197 separate reservations, believe it or not. Some are massive; some apply to sovereign powers that should belong to the mother Parliament; others are very trivial. For example, dangerous dogs, sharp knives and axes, prostitution and half a dozen similar situations are included. Why they were ever included in that context I know not, but there they are. Therefore, the area that has been reserved regarding Wales is massive and comprehensive.

Baroness Hayter of Kentish Town (Lab): My Lords, I rise only to make it clear that the unanimity comes also from the Front Bench. My noble friend Lord Morgan may not be on the Front Bench but on this occasion we are absolutely as one with him.

It would perhaps be helpful if the Minister feeds back what he has heard from the devolved Administrations in his discussions with them on these amendments.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): My Lords, I thank noble Lords who participated in the discussion on these amendments. In opening, let me say that I fully understand the absence of my noble friend Lord Blencathra. I am very grateful for his careful consideration of the Bill and that of the Delegated Powers and Regulatory Reform Committee, which he chairs.

I apologise to the noble Lord, Lord Tyler. I knew that my noble friend Lord Blencathra was not going to be here and I tried in vain to find out who would be his substitute so that I could have had a word with them earlier. However, I am very happy to meet the noble Lord afterwards at any convenient juncture to discuss this. In fact, I had heard at a previous stage that the substitute would be the noble Lord, Lord Thomas of Gresford, so I encourage him to ignore the several messages he has received from me.

I will respond first to the general points made and then pick up some of the specifics. I want to make it clear that the amendment that the Government have tabled to change how the Bill deals with devolved competence would, as part of that change, remove the Order in Council procedure from Clause 11 and Schedule 3. In the light of this, my noble friend's amendments would no longer be necessary on that specific point. However, I will address the substantive point that my noble friend Lord Blencathra sought to make, and which has been made by the noble Lord, Lord Tyler, in his stead, on the modification of the devolution statutes—namely, the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006—by secondary legislation.

I understand the point made by the noble Lord, Lord Tyler: that the Order in Council powers contained in Clause 11 and Schedule 3 are unsatisfactory substitutes of those contained in Section 30 of the Scotland Act and Section 109 of the Government of Wales Act. I accept that there is merit in my noble friend's argument that there may be a difference in the function of these powers and that we may wish to consider the need for a different procedure. As I said, I am very happy to discuss that point with my noble friend Lord Blencathra, the noble Lord, Lord Tyler, and others.

I do not agree that it necessarily follows that secondary legislation can never be used to modify devolved competence or the devolution statutes more widely, and that this should only ever be achieved through primary legislation. For example, we used the procedure in 2013 to amend the Scotland Act 1998, and we used an order in 2007 to amend the Government of Wales Act 2006. There are previous examples and, more recently, we saw the Treaty of Lisbon (Changes in Terminology) Order made under Section 2(2) of the European Communities Act. It has sometimes been a convenient way to proceed, by consent of the devolved Administrations.

I am grateful to the noble Baroness, Lady Hayter, for raising the point that she did. We have been discussing these issues with the devolved Administrations and continue to do so in a perfectly constructive way. I have to say that there is no agreement yet, but we are looking at how this should be used going forward.

I will pick up some of the particular points made. I appreciate that the noble Lord, Lord Tyler, was making general points, but, as I say, the specific issue mentioned will not arise in the light of the amendments we have put down. However, I appreciate that it was, as he said, the unanimous view of the Delegated Powers and Regulatory Reform Committee. I thank the committee for its third report and constructive and dispassionate work on these issues. I served on that committee for a time and I know it looks at these issues constructively.

3.30 pm

I thank the noble Lord, Lord Lisvane, for lending his heft to the argument. I know he has done a great deal of work to find a way through these difficult issues, as has my noble and learned friend Lord Mackay of Clashfern. I thank him for all the work he has done in this area, both in the Chamber and, unseen, away

from it. I would be pleased to take his views on board and discuss this further with him. I am happy to engage on some of the general points.

I thank the noble Lord, Lord Morgan, who has been firm and passionate about devolution. I agree that Wales has acquired additional powers. They are reserved powers which, under the Act, will come into force on 1 April. However, the noble Lord, Lord Elystan-Morgan is right about the extensive list of reserved powers and I thank him for giving examples. Some of them are somewhat blood curdling but I take his point. I hope this is not high-handed and colonial; it is certainly not the intention. I would not say that much of it is mundane but it is done on a consensual and agreed basis in the way that most of devolution legislation proceeds these days. I take seriously the point about making sure that we get this right and I am willing to engage in further discussion.

I thank my noble friend Lord Cormack. He is right that this is more of a devolution issue than a Brexit issue; I appreciate that point. I am aware that there are sensitivities in relation to Wales and Northern Ireland—and in Scotland, by extension—and, as I said, I will be happy to engage constructively on these points.

I thank noble Lords for a useful discussion on this issue but, in the light of the undertakings I have given about the specific and the generality, I appeal to the noble Lord, Lord Tyler, to withdraw the amendment at this stage.

Lord Tyler: My Lords, I apologise to the Minister that the news that I was the nominated understudy on this occasion did not reach him. I thought I had informed everyone who needed to know.

The noble Lord, Lord Blencathra, will be delighted not only by the views expressed by other noble Lords but by the fact that the Minister is listening regarding the way this important matter should be treated. I am particularly grateful to the noble and learned Lord, Lord Mackay. Given his experience and expertise, when he says that something is so complex in this sensitive area that it is doomed to failure—I think I quote him correctly—his colleagues on the Government Front Bench should listen carefully to that advice.

The Minister accepts that there is some merit to the Delegated Powers and Regulatory Reform Committee's argument. The committee will welcome that and the noble Lord, Lord Blencathra, and those of us on the committee will be pleased to enter into discussions on the issue. However, we need to do it quickly because the matter should be dealt with on Report: we do not want it dragging on to Third Reading. All parts of the House want these matters to be considered carefully and quickly so that the other House can see where we are taking this important issue in the context of devolution, as the noble Lord, Lord Cormack, said.

There is unanimity in the House, as there was in the Delegated Powers Committee. I am grateful for the responses today—not least from the Minister—and in the meantime I beg leave to withdraw the amendment.

Amendment 305 withdrawn.

Amendment 306 not moved.

Amendment 306A had been withdrawn from the Marshalled List.

Amendment 307 not moved.

Amendment 308 had been withdrawn from the Marshalled List.

Amendment 308ZA not moved.

Amendment 308A had been withdrawn from the Marshalled List.

Amendment 309 not moved.

Amendments 310 to 310B not moved.

Amendment 311

Moved by ***Lord Wallace of Tankerness***

311: Clause 11, page 8, line 41, at end insert—

"( ) This section and Part 1 of Schedule 3 will cease to have effect after the end of the period of two years beginning with exit day."

Lord Wallace of Tankerness (LD): My Lords, at the request and with the consent of the noble Lord, Lord Foulkes of Cumnock, I shall move Amendment 311. For clarification, the noble Lord, Lord Foulkes, did not wish me to move Amendment 310 because he felt it had been superseded by our discussions last week. I shall be brief in moving Amendment 311 because a number of amendments were grouped for our wider debate on Brexit and devolution issues last Wednesday that related to sunset clauses, and this is another example.

It appears that here, as in a number of other areas of the Bill, particularly when powers are to be conferred on United Kingdom Ministers, a sunset clause is attached to them. However, for those in relation to devolution and the exercise of powers by UK Ministers in respect of making orders on the devolved settlement, there is no such sunset clause. As has been said by others, not only in regard to this Bill but on other occasions, there is nothing as permanent as a transitory provision. Although this is intended to be just a temporary move pending the solution of the arrangement between the powers that will go directly to Cardiff, Edinburgh and Belfast and those where we may wish to follow up on what was debated last week with regard to the UK frameworks, it nevertheless appears that there should be some incentive to get on with it and have a time limit.

We debated these issues last week, particularly whether the period should be two, three, four or five years, which is a matter for further discussion, and it is fair to say that this is more about the principle of having a sunset clause. When we debated it last week, the noble and learned Lord, Lord Keen of Elie, helpfully indicated in his reply that the Government's mind was not closed on this matter and there could be an opportunity to put in some form of sunset clause in relation to this and the other amendments that we look forward to seeing on Report. I hope this amendment allows the

[Lord Wallace of Tankerness]
Government to give further thought to what was said in our debate last week, and I would certainly encourage that positive thinking with regard to a sunset clause. I beg to move.

Lord Wigley: My Lords, I shall speak to Amendment 313 in this group, which is in my name. The amendment again returns to the question of making progress by consent. The words in the amendment in the context of Wales provide that the relevant provisions will not come into effect until,

"the National Assembly for Wales has passed a resolution approving the provisions in subsection (2)".

The convention of gaining legislative consent is of course flawed since it is held to be just that—a convention and no more. This amendment attempts to rectify that flaw, albeit just for one clause of what is in so many ways a problematic Bill. None the less, given our debates earlier this afternoon and last week, it appears that the Government are starting to become a little more sensitive to these issues and may be thinking of finding a way to bring people together on them.

As I say, the proposed new subsection would require the UK Government to seek consent from the devolved legislatures before implementing Clause 11, which may help to break the negotiations deadlock. It may help the devolved legislatures to regain some trust, and this is very much a question of trust. It could go a long way towards proving to Wales and Scotland that their voices matter in these issues.

There are clear constitutional problems with the Bill, which over recent months have been raised vociferously by both the Scottish and Welsh Governments. The UK Government have conceded that the Bill inevitably overrides the devolution settlement. I understand that in the conceptual context, but it is only right that the sitting devolved legislatures are given a statutory legislative opportunity to sign off the final product. The UK Government have rationalised our leaving the EU with the unforgettable soundbite "Taking back control". Surely to deny the sitting devolved legislatures their fair say on Clause 11 goes against that very reasoning.

Lord Morgan: My Lords, I agree entirely with what the noble Lord, Lord Wigley, said. This might appear to introduce a somewhat belligerent note in the discussions between the devolved Assemblies and the Westminster Parliament, but it has been forced upon the devolved legislatures. They have been so excluded while these debates have been going on that it is essential for them to have a failsafe mechanism for asserting their views. Again, as I remarked a moment ago, it is very sad to see an element of discord needlessly introduced into what has been a very fruitful period of collaboration quite recently. It is important for the Assembly in Wales, the Parliament in Scotland and the authorities in Northern Ireland to have this power. If they do not, devolution will be flouted. We will be turning our backs on now nearly 19 years of history, which I do not believe anyone wants to do. In that spirit, it is essential and necessary for the devolved legislatures to have the powers included in the amendment.

Lord Elystan-Morgan: I support and agree with everything that has been said. After all, devolution is not a dainty little sympathy; it is a fundamental right accepted as part of the constitutional inheritance of all the people of the United Kingdom. On that basis, the words spoken are the very heart of truth and common sense.

Baroness Goldie (Con): I thank noble Lords for their contributions to the debate. I also thank the noble and learned Lord, Lord Wallace of Tankerness, for speaking to the amendments tabled by the noble Lord, Lord Foulkes. I appreciate the intention behind the noble Lord's Amendment 311 in seeking to apply a "sunset" to the Clause 11 arrangements. I recognise the aim to provide a clear guarantee that those areas in which frameworks are not needed will pass into devolved competence. In fact, the effect of Amendment 311 would no longer be required if we take the kind of approach adopted in the amendments to Clause 11 that we debated last week. The noble and learned Lord, Lord Wallace, was good enough to acknowledge that.

As we indicated on our amendments, we think it preferable that those areas where we know that frameworks are not required will never be subject to the constraint at all. I hope your Lordships will also be reassured by the proposal of a power to repeal the effects of Clause 11 to make clear that it is a temporary means to limit competence where we are considering the need for a framework, not an ongoing mechanism for altering that devolved competence. We have proposed an obligation to report to Parliament every three months on the progress we had made towards repealing the restrictions and implementing the new arrangements where needed. As has been acknowledged, this will increase the impetus behind the frameworks processes. Following last week's debate on Clause 11 and the extent to which this interconnects and relates, I urge the noble and learned Lord not to press Amendment 311.

I will briefly address the amendment in the name of the noble Lord, Lord Wigley, which would enshrine in law a requirement for the Government to seek legislative consent Motions from the devolved legislatures. We have said, and I shall say again, that we want to make a positive case for legislative consent for this vital piece of legislation and to work closely with the devolved Administrations and legislatures to achieve that. We have put very considerable effort into securing agreement on the changes to Clause 11. I hope that the amendments we tabled for debate last week show the extent to which we have moved to address the concerns raised by the clause. I want to reassure the noble Lords, Lord Wigley and Lord Morgan, about that.

I regret that we have not yet been able to secure that agreement. It is important to remember that we have sought legislative consent for the Bill. The amendments that we have tabled and the ongoing dialogue are reflections of the Government's sincere intention to secure that consent. I hope that, with good sense around the table, agreement can be reached. The noble Lord, Lord Morgan, said eloquently that we do not want to turn our backs of 19 years of devolution history. Having been part of that history in Scotland, I could not agree with the noble Lord more.

3.45 pm

With regard to legislative consent more widely, the Government have already explicitly recognised the importance of the Sewel convention in the Wales Act 2017 and the Scotland Act 2016. I reassure your Lordships that we are committed to the devolution settlements and the conventions that we have established. We continue to believe in the importance and necessity of this Bill, which is in the interest of the whole United Kingdom, and we will work to deliver it with the devolved Administrations. I reassure your Lordships that we shall follow usual practices and we expect to seek legislative consent for new frameworks legislation that invokes the convention.

Ensuring certainty, both for our statute book and our internal market when we leave the EU, is of paramount importance to all parts of the UK. We want all parts of the UK to come together in support of this legislation. It is vital to securing a smooth and orderly exit for the whole UK. In these circumstances, I urge the noble Lord, Lord Wigley, not to press his amendment.

Lord Campbell of Pittenweem (LD): What is the Government's view of the proposed continuity legislation, from both Wales and Scotland?

Baroness Goldie: My understanding is that that legislation has been enacted by the devolved Administrations for what they perceive as a necessary protection of their positions. The Government hope that we can supersede that legislation by coming to good sense around the table and hammering this out—which I think is what all parts of the United Kingdom want.

Lord Wallace of Tankerness: My Lords, I thank all who have taken part in this short but important debate, and the noble Baroness, Lady Goldie, for responding. I think it fair to say that in all our debates that have touched on devolution, reference has been made to the importance of securing the agreement not just of Ministers but of the devolved legislatures in Scotland and Wales. One prays for the time when it will be the case also in Northern Ireland. That was reflected in the first report of the Scottish Affairs Select Committee of this Session, which recommended that,

"the UK and Scottish governments continue their efforts to secure agreement on those clauses of the Bill which affect devolved areas of responsibility".

It is important that we reiterate the importance of that. The Minister has indicated that the Government are seized of that, but there is no harm in reinforcing it. She referred to the import of the Sewel convention into both the Wales Act 2017 and the Scotland Act 2016. As we know from the decision in the Miller case in the Supreme Court, the convention is just that: it is a convention and does not have the force of the law. It is important that we reiterate the need to get agreement.

On the proposed sunset clause to which I spoke on behalf of the noble Lord, Lord Foulkes, the Minister seemed to suggest that, once the new proposals come through, this might not be necessary. I tabled a very similar amendment last week, which I had thought of attaching to the amendment brought forward by the noble Lord, Lord Callanan. When I discussed it, I was assured that it was not necessary because, due to the way in which the Bill was set out, it would not have been superseded by pre-emption even if the noble Lord's amendment had been accepted, so such a clause is still pertinent. It is important that some time limit be set, even for establishing the frameworks. The noble and learned Lord, Lord Mackay, made some interesting and constructive proposals as to how the frameworks might be achieved. While the return of many of the powers at the so-called intersects would be pretty imminent on exit day, a number would still have to be resolved. Therefore, I encourage some positive thinking with regard to a timeframe within which that might be done. On that basis, I beg leave to withdraw the amendment.

Amendment 311 withdrawn.

Amendments 312 to 313 not moved.

Amendment 313A had been withdrawn from the Marshalled List.

Clause 11 agreed.

Amendment 314

Moved by ***Lord Hope of Craighead***

314: After Clause 11, insert the following new Clause—

"UK-wide frameworks

(1) A Minister of the Crown must lay before each House of Parliament proposals for replacing European frameworks with UK ones.

(2) UK frameworks may be proposed only if they are necessary to—

(a) enable the functioning of the UK internal market,

(b) ensure compliance with international obligations,

(c) ensure that the UK can negotiate, enter into and implement new trade agreements and international treaties,

(d) enable the management of common resources,

(e) administer and provide access to justice in cases with a cross-border element, or

(f) safeguard the security of the UK.

(3) Ministers of the Crown may create UK-wide frameworks only if they have consulted with, and secured the agreement of, the affected devolved administrations."

Lord Hope of Craighead (CB): My Lords, although we have left Clause 11, this amendment is closely related to the topics we discussed in the two previous groups. It seeks, first, to require a Minister of the Crown to lay before each House of Parliament proposals for replacing the European frameworks with UK frameworks, and it lists the particular items which are thought to be the subject matter of the frameworks that are needed. More importantly, proposed subsection (3) of the amendment seeks to provide that:

"Ministers of the Crown may create UK-wide frameworks only if they have consulted with, and secured the agreement of, the affected devolved administrations".

[Lord Hope of Craighead]

So the issue of consent, perhaps more narrowly focused than in the previous discussion, is raised by this amendment as well.

The amendment was drafted some considerable time ago, when what was on offer in Clause 11 referred to the creation of these measures by Order in Council and made no mention of either consent or consultation. What we had before us, until it was withdrawn, was an amendment which reformed the machinery that Clause 11 is to provide by referring to the need to lay a draft of a statutory instrument containing the regulations under the section after consultation with the Scottish and Welsh Ministers. That is certainly a step forward, but what is sought by the amendment is one step further, which is the need for consultation.

In the discussion on Amendment 305, moved by the noble Lord, Lord Tyler, the noble and learned Lord, Lord Mackay of Clashfern, made the point that the safest way to deal with UK-wide frameworks is by primary legislation. I find it quite hard to understand how a UK-wide framework can be created by using the Section 30 power in the Scotland Act or the Section 109 power in the Government of Wales Act. Those are powers that are designed for dealing with the devolved Administrations separately, whereas the UK-wide framework of course involves the entirety of the United Kingdom, and I entirely agree with the noble and learned Lord that primary legislation would seem to be the proper way to go about it. Of course, if we are presented with primary legislation, the Sewel convention will apply and my point about consent will be satisfied simply by the machinery that has been used to create these frameworks.

We are of course dealing with something that is work in progress and we do not know quite what further discussions are going on in darkened rooms up and down the country where these matters are being debated. However, if by any chance the decision is that that has to be done by statutory instrument—I take it that this is not by Section 30 powers or Section 109 powers but by a UK statutory instrument—then the issue of consent is again raised, because the Sewel convention does not apply. I would like an assurance from the Minister that the principle behind Sewel will apply whichever mechanism is created. Of course, as I said a moment ago, the primary legislation will bring Sewel with it, but it would seem very odd if, by resorting to delegated legislation, the Government can bypass the Sewel convention. I do not believe that that is really what the Government want to do. I hope they will be prepared to say that they will be looking for consent as the mechanism which would precede the framing of any delegated legislation if it is decided to go down that road. But I stress that I agree entirely with the noble and learned Lord, Lord Mackay of Clashfern, that the proper way to create a UK-wide framework, which is what my amendment is talking about, is by primary legislation, in which case the issue of consent does not arise. I beg to move.

Baroness McIntosh of Pickering (Con): My Lords, I am a cosignatory to Amendment 314 and I associate myself with the eloquent comments made by the noble and learned Lord, Lord Hope, in moving it, and, in turn, the comments made by the noble and learned Lord, Lord Mackay. In the debate at the conclusion of business last Wednesday, a number of us put this specific point to the Minister, the noble and learned Lord, Lord Keen, which could have ended the concern that certainly I still have that we should proceed, for the reasons given, by primary legislation and that it would be inappropriate to proceed by delegated legislation.

I would also like to raise the timing of the framework agreements. In summing up the debate on Wednesday, the noble and learned Lord, Lord Keen, said:

> "It is the table that identifies 24 areas where it is considered there will have to be some temporary ring-fencing so that we can establish the next stage of the process for the single market—the framework agreements that will then form the basis for that single market".—[*Official Report*, 21/3/18; col. 403.]

It has been very firmly expressed by the Law Society of Scotland and others that there should be a timeframe for how long this arrangement will last. I pray in aid farm policy, which I understand is one of the 24 areas that have yet to be agreed, and point out that 85% of Scottish land currently has "less favoured area" status and attracts specific European grants accordingly. I also understand that Wales receives 10% of the farm funds. There is a concern that once we come back to having only a UK single market, both Scotland and Wales will receive less in farm support. My understanding is that Scotland would like to see a framework created and the powers devolved immediately, whereas the Government wish to take control to create the framework and then devolve it subsequently. So there are very real issues in specific policy areas over the timing and content of these framework agreements.

That brings me to this question of consent that keeps coming up. The noble and learned Lord, Lord Keen, said:

> "Can we just remove that dichotomy of consultation or consent?".—[*Official Report*, 21/3/18; col. 404.]

The problem we face is that the devolved Administrations clearly feel that currently they have consent at three levels. One is through the Sewel convention. The second is that when EU policy is agreed at the level of the Council of Ministers normally it is the Farming Minister who attends, accompanied by the Ministers of the devolved Administrations. The third level is when the devolved Administrations, in their own devolved legislation, implement the directives in the form they think most suitable.

We are very grateful to the noble and learned Lord, Lord Mackay, for setting this out so clearly. It appears so straightforward that our starting point is that in future the UK Parliament legislates for all matters relating to the single market of the United Kingdom. As the noble and learned Lord, Lord Mackay, said on Wednesday, it would be best for this to be implemented by agreement wherever possible. We seem to be edging towards that. In response to the earlier debate, the noble Baroness responded that there is not yet agreement but we are getting close to one.

When we take our oath and are introduced here, we swear allegiance and we are told that we have a voice. My concern regarding this amendment and Amendment 318, which was debated earlier, is that the voice of the devolved legislatures will simply not be

heard in that interim between the framework agreements being agreed and subsequently devolved. That is why I support this little amendment and would like to hear more about why we could not proceed along the lines that the noble and learned Lord, Lord Hope, has set out in Amendment 314.

4 pm

Baroness Finlay of Llandaff (CB): My Lords, I added my name to this amendment and I am grateful to my noble and learned friend Lord Hope for the way that he introduced it and for the remarks which have subsequently been made. It is very important that we follow up on what the noble Lord, Lord Tyler, said: we must find a way forward by the time we get to Report.

In previous debates, we have discussed common frameworks and there was the suggestion of creating a new schedule to the Bill—indeed, I said that I would try to draft one—to clarify the intersection between EU law and the devolved legislative competences. There are, though, areas that remain for dispute. Like the noble Baroness, Lady McIntosh, I suggest that there is not simply a dichotomy between consultation or consent, but that there is a phase of needing negotiation and trying to reach agreement between the Governments concerned. I refer the Government to a Welsh government document which I do not think has been referred to previously in our debates, *Brexit and Devolution*. It was produced some time ago but it has a section on what happens,

"if agreement cannot be reached at all through normal procedures",

and lays out the need to recognise,

"a backstop arrangement as part of the overall operating procedure",

and that it may need "independently managed arbitration".

The noble and learned Lord, Lord Mackay, has proposed a very elegant potential solution to move forwards. Some reservations were expressed about that last phase, which was that if there could not be an agreement reached there would be another problem linked to that: that there needs to be an overall responsibility for a UK-wide market and governance responsibility for the way in which things are conducted. Ultimately that will have to rest with one person, who I venture to suggest will be the Prime Minister because that is the overall and overarching point of responsibility. That does not mean that we would go from one to the other without many stages of careful negotiation in between and on the way.

The contents of this amendment were referred to in annexe A of a letter that was sent to me, and I think to other Peers, by the noble Lord, Lord Bourne of Aberystwyth, on 21 March, signalling a wish to move forwards. Following the question about the continuity Bill, I would like to put it on record that I received a letter on 23 March, last Friday, from David Rees, the Assembly Member who chairs the External Affairs and Additional Legislation Committee. He says in that letter:

"We appreciate the UK Government's willingness to propose a solution to the impasse we currently face on the treatment of devolved areas of competence once EU law restrictions are lifted from them".

He goes on to point out,

"the failure to acknowledge a role for the Assembly in the control of powers for which it is responsible".

That was a problem but, he says:

"We note that the amendments were debated before being withdrawn or not moved in the House of Lords on 21 March … and hope that further progress can be made in the coming weeks".

I wanted to quote from that letter because there is an atmosphere of good will and a recognition that there needs to be a way forward. I hope that this amendment will contribute towards the Government's move—it was debated at some length last week when we debated the frameworks—and that we can find a way forward, but it will need dispute resolution processes to be clearly laid out because, even though the EU competencies may fall centrally or to the devolved legislatures, there will still be difficulties at the intersection of many of those broad headlines. We have already had the very helpful table set out by the Government following the deep drives into the legislation but, with all due respect to everyone looking at this, I suggest that we should formally consider laying out some form of dispute resolution so that we do not revisit the impasse we had.

Lord Thomas of Gresford (LD): My Lords, I strongly support the call by the noble and learned Lord, Lord Mackay, that primary legislation should be used to form the necessary frameworks. I made that point at Second Reading when I suggested that Clause 11 and all devolved matters should be taken out of the Bill altogether. It might then not have required any consent from the Scottish Parliament and the Welsh Assembly, the whole matter would have been considerably simplified and the focus could have been put on the very difficult issues that arise with devolution. The original architecture which the Government put forward, which of course they have changed now, was that the powers that were to come back from Brussels—or, as the noble and learned Lord, Lord Mackay, said, the restraints upon the devolved Administration, which is a simpler way of looking at it—should go to the UK Government and then be parcelled out and conferred upon the devolved Administrations. Which powers and when—the timing and the nature of those powers—would be virtually at the whim of the Minister who would decide what was appropriate. It would be done by secondary legislation, either statutory instruments or Orders in Council. We have had debates about that.

The conferred powers model has never been used in relation to the Scottish Parliament. It has always been reserved powers. That is to say that in specific cares of policy, all those powers go to the Scottish Parliament, save those that are named, enumerated and held back—reserved—by the UK Government. Precisely that reserve powers model is about to be employed in Wales under last year's Wales Act. It is to commence in April. To come forward with a scheme in which, in effect, powers are conferred not by the UK Parliament but by a Minister merely by statutory instruments, which cannot be amended, or by Orders in Council, was clearly inadequate and has given rise to a great deal of difficulty and angst, certainly in Wales.

I shall quote from the evidence that appears in the report of the Committee on the Constitution. It was given by Professor Richard Rawlings of University

[Lord Thomas of Gresford]
College London, who has given very valuable advice, in Wales in particular, on devolution issues. What he said about the original architecture was that,

"this process does not establish positive duties on the part of the UK Government to devolve. Legally-speaking, suggested 'transitional' elements could so easily become permanent features".

That is the which and the when. He continued:

"Nor need one be an expert in game theory to appreciate the way in which clause 11 stacks the cards in favour of the centre when negotiating the different design choices with common frameworks".

If the devolution of powers is simply within the control of the Minister of the UK Government, then the Scottish Parliament and the Welsh Assembly have lost their bargaining power in the creation of frameworks. The point was made that while UK-wide frameworks will be necessary in a number of policies, they should be agreed on a parity-of-esteem basis between the Governments and legislatures of the United Kingdom, not imposed by the UK Government even on a time-limited basis.

I hope that indicates what the real, critical matter is. It is not just Welsh, Scottish and possibly Northern Irish people whingeing or seeking to stand up for their own individuality—it is nothing like that. It is that they should have equal bargaining power with the UK Government in the construction of the UK frameworks, which everyone agrees are necessary. I wholly support the amendment.

Lord Liddle (Lab): I have listened with great attention to these debates on devolution and found them extremely interesting. However, I have to say that the longer I have listened, the more concerned I have become about the threat that Brexit poses to the unity of the UK. There is a lot of glib talk about processes, agreement and consent, but in fact we are dealing here with some highly political issues that were not greatly controversial as long as we were members of the EU, but could become of considerable controversy between the nations of the UK, given the different political balance in each of those nations.

I shall make three points to illustrate what I think the threat is. First, the European single market is not a complete single market; it is the deepest single market in the world but it is not complete. One of the differences is that tax rates vary between member states. There has never been a completely harmonised tax system; customs vary, as do business taxes. Once we start talking about a UK single market, the debate will be raised to a new level: about whether tax rates can differ in areas where they presently do not between the nations of the UK. That raises fundamental political choices—between those who believe in higher taxes and higher public spending, and those who do not—and you get people going in different directions.

Secondly, issues such as competition, state aid and public procurement will become highly political and divisive, and it is quite likely that the Welsh and Scottish Governments will wish to take a different approach to these issues from a Conservative-led UK Government. That would lead to a lot of tension. Thirdly, in the area of trade, the beef farmers in the north-east of Scotland and Welsh hill farmers who export their sheep, for example, will be greatly alarmed that the UK Government are prepared to sacrifice these interests in order to complete trade agreements with the rest of the world, and they would have no say whatsoever in those agreements. So on all those grounds I believe we are dealing here not just with processes but, potentially, with highly difficult political questions. Consent is absolutely fundamental. The idea that the solution to these problems could be imposed by a UK Government runs the risk of leading ultimately to the break-up of the UK.

My final point is that a lot of these problems—some 90% of them—would not exist if we stayed in the European single market. That is what many of us on these Benches want to do. The simplest way to prevent these divisive issues that threaten the unity of the United Kingdom is to stay in the single market, where we all stick with a set of common rules.

4.15 pm

Lord Morgan: My Lords, I respond with considerable enthusiasm to what my noble friend Lord Liddle just said—and, if I may say so, with considerable pride, because a long time ago I once had the privilege of teaching him. Everything he said about introducing possible discord is profoundly true. I just make two points. This is trying to impose a static uniformity on a United Kingdom whose pluralism has increasingly been made manifest. It is simply the wrong approach: a heavy-handed, imperial approach which is inappropriate. We heard so much during the campaign about "take back control". Well, control for whom? It was established in the courts by that courageous lady, Mrs Gina Miller, that it should be control for Parliament, because ours is a parliamentary democracy, but the clutch of issues we have been discussing this afternoon raises the additional point of control being vested not merely solely in the Executive, but in the Executive in Westminster, in a situation of pluralism and partnership. At this time, with other tensions emerging all over the European continent, it is very important that the Government get this right.

Lord Mackay of Clashfern: My Lords, it is important to remember that this debate is about a fairly limited matter. No doubt it has consequences, as the noble Lord, Lord Liddle, said, but my principal concern is to get a procedure which is adequate and reasonably simple. As for differences in taxation, the noble Lord will know that for taxpayers in Scotland, there are differences already and even more to come—which may not altogether suggest that he should come to live in Scotland.

This committee has started looking at individual areas of devolved policy. It has come up with a tremendous number and has tended to look at them from that point of view. We now gravely need to look at things from the point of view of the ultimate result. The framework agreements are described in the documents as intended to promote the single market, and that is how I see them—trying to ensure the continuation of the single market which presently exists in the United Kingdom and which everyone, as far as I can see, would like to continue.

That approach has led to people saying, "This area is okay. You do not need a framework"—because of minute descriptions which I shall not attempt to recite—"but if you need a framework, the United Kingdom Government must create some form of control which enables them to lay out such an agreement". That is the idea of the power to select 24 areas where statutory framework agreements were necessary; and there is another group where memoranda of understanding were thought to be necessary.

That way of looking at it is bound to be complicated, and you have to have some power to hold the devolved area that is to be subject to the single market requirement in order to put the single market requirement into effect. That is the purpose of this rather remarkable proposed new clause: giving Ministers power to hold for a time that particular policy area. Once that happens, I can see that some form of time restraint will be necessary, because you do not want to be waiting too long.

My suggestion, which I put forward in relation to my amendment last week, is that you forget all that and remember that the areas of devolution are defined by the areas which are presently controlled in Europe but which can effectively be legislated for in one of the devolved areas. Scotland cannot legislate for Wales, much as it might like to, and nor can Wales legislate for Scotland. Scotland can legislate only for itself, so it cannot set up by its own legislative authority a single market. Therefore, if the single market is to be legislated for, it has to be done by the Parliament of the United Kingdom—and all devolved areas are appropriately represented in the Parliament of the United Kingdom. We must not forget that.

I suggest that the committee should be defined as a group in the way that I have sought to set out, looking for consent for all the necessary provisions to enable a single market, as far as it is agreed to be required, in the United Kingdom. I sincerely hope that that will be agreed because, as I told your Lordships last week, when I spoke to the Minister from Scotland, he was very insistent that the chances of reaching agreement were very high—so I am working particularly on that assumption. It does not absolutely need to be fulfilled, for a reason that I will come to in a moment, but I certainly hope that it can be. That is why I think we should have a group in which the four different countries—three of which are devolved—should be more or less equally represented. That is what the proposed group is for—it is proposed only for this special purpose. I am not seeking to incorporate this into the Government of the United Kingdom for the future, as some people have suggested. I am thinking only of a group to solve this present problem, which is quite urgent, quite important and not too difficult.

We should remember that a single market exists in the United Kingdom already, so we do not have to invent it all. We may need to make modifications, but there is a kind of plan available to look at—so I think the chances of this group reaching agreement are very strong. If so, what I believe should then happen is that the things they have agreed should be incorporated in a United Kingdom statute. If they are all agreed, the sole convention should provide that there be statutory consent. I see no need for any kind of system for dealing with disagreements at that stage. The United Kingdom Parliament has a responsibility and will have to deal with it on its constituents.

I have also tried to make sure that the group is as united as possible, so I have provided that, where there is a disagreement, it should state precisely, in an agreed form, what it is, so that the Parliament of the United Kingdom—if it had to come to that—would have only that question to determine. I think that this is a better system than anything that starts from the bottom and seems to come up. Consent would come in the group right across the whole field and, if that works, as I hope it will, there is no difficulty whatever. If there is any difficulty, the Parliament of the United Kingdom will have to try to solve it and then the Sewel convention will apply to that United Kingdom Parliament. That is my solution—and, of course, the amendment of the noble and learned Lord, Lord Hope, would then not arise. That is a much better system than trying to work up from the individual in 24 areas, or whatever it is.

Lord Wigley: My Lords, I am glad to follow the noble and learned Lord, Lord Mackay, again. I welcomed very much the points that he made last week with regard to looking for a mechanism. We can split hairs about the detail of it, but the need for a mechanism to be there is clear.

I thank the noble and learned Lord, Lord Hope, for proposing this amendment and, particularly, for proposed new subsection (3), which states:

> "Ministers of the Crown may create UK-wide frameworks only if they have consulted with, and secured the agreement of, the affected devolved administrations".

I personally believe that it is much easier to look at an issue like this if one looks at a specific aspect and asks oneself how it would work out in practice. I referred in an earlier debate in this Committee to agriculture, which is one of the areas which at present is under the common agricultural policy at a European level, but with devolution with regard to the working of agriculture in Wales and Scotland.

The nature of agriculture in Wales—I think that the noble Lord, Lord Liddle, mentioned this—is different because of the sheep meat regime. We have 12 million sheep in Wales—four times more sheep than we have people. The sheep meat regime is massively important in Wales, and more important relatively than it is in other parts of the United Kingdom. Within the European context it has been possible to find ways of enabling Wales to follow its own policies in some regards within the overall framework of the CAP for Europe. Indeed, at times there have been opportunities for Welsh Ministers to speak in Brussels on behalf of the UK, when there was something relative to a specialist interest in Wales, such as sheep, on the agenda.

The fear in Wales now is that, if the power over agriculture is in London primarily, the ability to fine-tune and develop new policies in Wales that has been exercised up to now will become more constrained—things such as the agro-environmental schemes that have been developed in Wales, for example. The fear is there because the nature of agriculture in England, and the dominant role of those interests in England, are very

[Lord Wigley]
different to those in Wales. Therefore, if one is trying to secure a single market within the UK, which is obviously common sense, there has to be some mechanism of give and take. It may be all right for a regime in Wales to work in a way that gives added benefits to the Welsh sheep farmers, provided that is bringing them up to the overall level and not giving them unfair competition in the marketplace over other people—but the initiatives for those will need to be developed in Wales, within the context of Welsh circumstances.

That is why I believe that it is essential, whatever the final Bill contains, that it has this element not only of consultation but of agreement. My belief is that, with most things, there would be immediate agreement—and, if there is no immediate agreement, another problem will come and hit us down the road in a year or two, which will build up the type of tensions to which the noble Lord, Lord Liddle, referred. It is far better that we have this model working by agreement between the devolved Administrations, and it might come as a considerable surprise to find how willing people were then to work together.

4.30 pm

Lord Kerr of Kinlochard (CB): To follow on from what the noble Lord, Lord Wigley, has said, I am tempted by the reverse approach of the noble and learned Lord, Lord Mackay, and the mechanism that he has described. I have just one point to add to the debate: I am worried about the emphasis on the single market—the internal UK market. There was a debate in Europe, following the Cockfield White Paper 30 years ago, about how much uniformity was needed in a single market; how much you could rely on mutual recognition; how much you did not need to standardise at all and how much you could harmonise. Noble Lords will remember that that debate became quite controversial at times. Some of us argued that the Commission took a more expansive view of the need to harmonise and standardise, rather than to recognise diversity. In my view, devolution inherently means a recognition of diversity. I do not agree with the noble Lord, Lord Morgan, that the Government have an evil, malign intent here. However, the way that this dossier has been handled has created suspicions in Scotland and Wales of such an intent.

Looking at the criteria set out in the amendment tabled by the noble and learned Lord, Lord Hope, there is no difficulty with a common framework in areas necessary to,

"safeguard the security of the UK",

or,

"provide access to justice",

or,

"enable the management of common resources",

or,

"ensure compliance with international obligations",

obviously. I pause on,

"new trade agreements and international treaties",

because there are suspicions that the fox might get into the hen house. The real suspicion arises over the first item:

"enable the functioning of the UK internal market".

I do not think "enable" is a transitive verb. As all noble Lords recognise, "ennoble" is, but "enable" is intransitive. However, that is not the main reason that I object to this section of the amendment. The phrase,

"the functioning of the UK internal market",

could be interpreted very widely, and there are those in Scotland and, presumably, in Wales who assume that the Government might want to interpret it widely.

We do not have a single market in the UK now; it is variegated, as are the views on the extent to which it needs to be further harmonised or advanced. I wonder whether it would not be better if the Government could drop from their presentation on this dossier, on Brexit and devolution, the references to the UK internal market. There would be very few areas where it needed to be used and they would all be covered by one of the other criteria in the noble and learned Lord's amendment.

Lord Wallace of Tankerness: My Lords, I will pick up what the noble Lord, Lord Kerr of Kinlochard, has just said. The criteria set out in this amendment—and in one tabled by the noble Lord, Lord Griffiths of Burry Port, to which the noble Lord and I both put our names but which was not moved—reflect a set of principles for common UK frameworks agreed at a Joint Ministerial Committee on EU Negotiations last October. They are certainly a basis for moving forward and already have a buy-in from the United Kingdom Government and the devolved Administrations in Scotland and Wales.

When creating United Kingdom frameworks, we do not want to find a situation where, when we come out of the European Union, there is something which impedes a Scottish beef producer freely selling their beef in Wales or a Welsh sheep producer selling lamb in Belfast. These benefits predate our entry into the European Common Market. It is also important to remind ourselves that the restrictions on the Scottish Parliament relate not only to reserved matters or EU law, but to what is in Schedule 4 of the Scotland Act. That specifically constrains the Scottish Parliament from doing anything which modifies Articles IV and VI of the Union with Scotland Act 1706 and the Union with England Act 1707. If one reads these two articles of the Acts of Union, drafted 280 years before the Cockfield report, one finds not a bad model, in the language of its time, for a customs union and a single market which have served us well over three centuries.

I also note that as well as the criteria that have been agreed, the Scottish Government themselves, in their legislative consent memorandum to the Scottish Parliament in September last year, said at paragraph 19:

"The Scottish Government has made clear, repeatedly, its willingness to negotiate UK frameworks in certain areas previously covered by EU law. This could be, for example, to support the functioning of UK markets, or to facilitate the management of common environmental resources".

Therefore, I believe there is a basis for reaching agreements here, but it is important that these are not imposed.

In giving evidence to the Scottish Affairs Committee in the other place last year, the Secretary of State for Scotland, Mr Mundell, stated at paragraph 21 of that committee's first report of Session 2017-19:

"The Secretary of State for Scotland agreed that any common frameworks should be agreed with the devolved administrations, stating:

A UK framework is not a framework that the UK Government imposes; it is a framework that is agreed across the United Kingdom".

It is important that we approach this issue with that in mind. That is why I think the amendment suggested and spoken to by the noble and learned Lord, Lord Mackay, is helpful. Indeed, that Select Committee went on to recommend that:

"Any common framework must require the consent of the governments of Scotland, Wales and Northern Ireland, where relevant".

It is important to have a dispute resolution mechanism, as referred to by the noble Baroness, Lady Finlay of Llandaff, because there is potential for some disagreement in setting up these frameworks—I hope not as much as is sometimes thought—for which a dispute resolution mechanism is required. One assumes that once these frameworks are established—that goes beyond the ambit of this Bill—they will not be static but will develop. It might be useful at some stage—not in this debate or in this Bill—to get an indication from the United Kingdom Government as to how they see these frameworks working after they have been established. Do they want to see common standards apply across the United Kingdom, but have diversity within that as to how they are implemented in Scotland, Wales and Northern Ireland, or in England through the United Kingdom Parliament? That too will require some form of dispute resolution mechanism. The Select Committee, to which I have referred, recommends that,

"the UK Government and the devolved administrations agree a mechanism by which disputes can be resolved in the event that common frameworks cannot be agreed".

I think that that is a two-stage process. First, there is the establishment of the common frameworks, where the amendment of the noble and learned Lord, Lord Mackay, is very pertinent, and, as we move forward, there is the issue of how we look at the operation of the common frameworks, which I believe will also need some form of dispute resolution mechanism. However, it is important that we move forward with the common frameworks. The amendment in the name of the noble and learned Lord, Lord Hope of Craighead, certainly reflects agreements that have already been reached between the United Kingdom Government and the devolved Administrations.

Baroness Hayter of Kentish Town: My Lords, I wish to add a couple of points. First, are discussions progressing on the possible inclusion in the Bill of a schedule detailing these areas of concern? Secondly, the noble and learned Lord, Lord Wallace of Tankerness, said that a solution should be agreed, not imposed. We should heed those words. I again ask the Minister: as regards reaching agreement on these issues, to what extent does he have in mind involving the legislatures rather than just the devolved Governments?

The Minister has had notice of my next point. I would like to correct something that the noble and learned Lord, Lord Keen, said in the House last week. He said that there were,

"about 153 areas in which, upon our leaving the EU, competences will return and touch upon areas of devolved competence. These are areas that the devolved parliaments and assemblies previously had no engagement with because they lay in Brussels".—[*Official Report*, 21/3/18; col. 334.]

I have since written to him because that it not completely the case. As it works, the memorandum of understanding provides that, in matters of devolved competence, the UK Government consult the devolved Administrations to agree a common UK position on matters before the Council of Ministers, and then defend that position in the Council. Indeed, as we just heard, occasionally devolved Ministers will do that and represent the UK. However, whether it is a UK Minister or a devolved Minister there, they speak in this case for an agreed UK position, not just a UK government position. It may therefore be helpful if the Minister confirms that understanding, which is undoubtedly how the devolved Governments see it. What has been said is right: the spirit to reach accord is there. However, perhaps for clarity, it would be good if that could be confirmed.

The Parliamentary Under-Secretary of State, Northern Ireland Office and Scotland Office (Lord Duncan of Springbank) (Con): Perhaps noble Lords will forgive me for a moment or two while I stretch my back, which is just a little bit tight. Now I am fighting fit. I point out to the noble Lord, Lord Adonis, that it is because I am carrying the heavy weight of Brexit on my shoulders.

I thank the noble and learned Lord, Lord Hope, for bringing forward this amendment, and all noble Lords who have introduced some interesting debate into the discussions today. It will be useful for us to begin by looking at the deep-dive process itself, whereby the devolved Administrations together with the UK Government have pored over the various 150 or so areas to which my noble and learned friend Lord Keen referred. They have been guided, as the noble and learned Lord, Lord Wallace, noted, by a suite of agreed principles, which indeed from time to time make reference to such concepts as the UK market itself, trade and various other obligations. I understand that each of your Lordships should have had in their postbox or email in-tray a series of emails from my noble friend Lord Bourne which set out the principles themselves and the areas in which they intersect with the policy matters.

It may be useful if I give a flavour of that. It struck me, as I was discussing with various officials in my department and others, that we have perhaps not done that before to give your Lordships a sense of the sheer scale and magnitude of the engagement thus far undertaken. There is a certain sense sometimes that we are quite dismissive of the devolved Administrations, when nothing could be further from the truth. To give your Lordships just a flavour of that, in the area of fisheries there have been six full days of discussions between the devolved Administrations and the UK Government—17, 18, 23 and 24 January, and 6 and 7 February. On environmental quality, to take another example, there was a whole-day discussion on ozone-depleting substances and fluorine gases on 31 January, and two full days at the end of January were spent examining chemicals and pesticides. It is useful to recognise that this approach is unprecedented. Its purpose is, again, one of respect. I can see that the noble and learned Lord, Lord Wallace, is ready to jump up. He is welcome to do so—it will give me a chance to sit down.

Lord Wallace of Tankerness: What the Minister is saying is encouraging. For the sake of argument, let us take fishing. Have any of these meetings between UK officials and officials from the devolved Administrations involved members of the Scottish Fishermen's Federation? Stakeholders obviously have a practical view on where some common arrangements are useful and where they are not.

Lord Duncan of Springbank: I wish I could answer that question in the affirmative, but the answer is no. Before each meeting the devolved Administrations, with the UK Government, have engaged in direct consultation with stakeholders. However, the stakeholders have not been inside the room. None the less, what they bring to the table is very much understood. I develop upon these parts because, as the noble Lord, Lord Wigley, pointed out, it is important that when we consider the question of agriculture there is no suggestion that, although agriculture itself is one of the headings, everything in agriculture will remain part of that. To some degree, what noble Lords had in their in-boxes, which was simply entitled "Agricultural funding", was a little unhelpful. Underneath that rests each of the areas where there is expected to be a necessary common framework, and indeed a whole range of areas where there would not need to be a common framework because it would be fully devolved from the get-go. To some degree, there can be a result of some misunderstanding contained in that approach. Again, that is why it is imperative that we examine every single aspect when we have these deep dives, which are ongoing; they have not finished yet.

4.45 pm

As the noble and learned Lord, Lord Keen, pointed out last week, when these common frameworks move into the next stage, on a case-by-case and Bill-by-Bill basis, they will form part of the Bills that must then undergo the process whereby they are examined by the devolved legislatures and the devolved Administrations and will be "Seweled", if I can use that as a verb in this context. We have to secure a legislative consent Motion. The purpose of that is to make sure that this is done, as far as possible, by the consent we have established and the practice we have taken forward. It will be critical to move forward on that basis.

I understand that the fisheries White Paper, for example, is imminent. It has been so for about six months but it is none the less imminent and will come. There will be a common framework in it and, by necessity, in the framework will be the agreement required from the devolved Administrations affected by it to ensure that the elements of common necessity are taken forward to create a functioning common framework. That is critical. To revert to the point made by the noble Baroness, Lady Hayter, it will not be imposed; that is the process whereby we will move legislation forward through the traditional established consent procedure.

It is not for me to correct the noble and learned Lord, Lord Keen, but as a former Member of the European Parliament I can happily confirm that each of the devolved Administrations is fully consulted and engaged with directly on matters as they move towards the legislative process in the European Parliament. As the noble Baroness will be aware, devolved Administration leaders often lead those discussions, depending on the circumstances. That has always been done on a basis of serious engagement. Perhaps the most serious of all has often rested on fisheries; towards the end of each year, there is a December Council—as the noble Lord will be aware—where real-time engagement and having the devolved Ministers there is needed for the necessary toing and froing, so that everyone is a participant and has broadly bought into the outcome, whether it is to be celebrated or not. I would be happy if he would accept, on behalf of the noble and learned Lord, Lord Keen, that modest correction of his earlier statement.

I hope that I have given noble Lords some sense that, as we go forward with our approach to common frameworks, it is our endeavour to do so not just on the basis of a dismissive, quick flash of legislation as we move it towards the other place. That is not our intention at all; again in reference to the third subsection of the new clause proposed by the noble and learned Lord, Lord Hope, this will be fully consulted on, as per the established procedures, which we will take forward. I suspect that I should make reference to the useful intervention of the noble and learned Lord, Lord Mackay. I know that last week the noble and learned Lord, Lord Keen, heard what was said and will reflect on it. I hope that has given coverage to all the key issues we have raised.

Baroness McIntosh of Pickering: Can my noble friend confirm that it is the Government's intention that this should happen by primary legislation?

Lord Duncan of Springbank: Yes, that is the intention. We will move forward with this through primary legislation in each of the common framework areas. On that basis, I hope that the noble and learned Lord, Lord Hope, will feel able to withdraw his amendment.

Lord Hope of Craighead: My Lords, I am extremely grateful to all noble Lords who have contributed to the debate and to the Minister for his few words in his response. Of course, legislation may contain enabling powers but we do not know yet what the legislation he is promising will look like. If it is simply a Bill with a lot of Henry VIII powers in the area concerned, it will not advance the argument at all.

I am grateful to the noble and learned Lord, Lord Mackay of Clashfern, for enlarging on the points he made last week. I am glad that my amendment has given him the opportunity to emphasise again the points he has made and his valuable contribution to our debate. He said that if his approach is correct then my amendment ceases to have any purpose. Of course, he is right, because my amendment does not look at primary legislation; it looks at the procedure that would be followed if the mechanism to be used is to be by delegated legislation, in which case we are talking not about the consent of the legislatures but of the Administrations—that is, of Ministers. At the moment, we have in the amendment that was before us last week—the amended form of Clause 11—a promise for consultation. Many noble Lords who have spoken in support of my amendment have emphasised the importance of consent, which is the crucial matter. As

the noble Lord, Lord Liddle, said after his careful analysis of what we are really talking about: consent is fundamental. That is the background to what I am submitting.

There are one or two scattered points which I might mention. On the contribution of the noble Lord, Lord Kerr of Kinlochard, the noble and learned Lord, Lord Wallace of Tankerness, was absolutely right. Proposed subsection (2) of my amendment is based on an agreement reached in October last year at the Joint Ministerial Committee on EU Negotiations. The wording is exactly as it was framed in the agreements, and that is the point from which we are moving forward. One could debate the language, but I think that the time for doing so has passed.

I thought that the contribution of the noble Lord, Lord Wigley, about the attitude of the sheep farmers was very helpful, and we have heard similar remarks about the position as regards fishing. I do not think that the position of the hill farmer in Scotland is very different from that which was described by the noble Lord. However, there could well be differences in the way that sheep are managed in England and the way that they are bred and moved south in Scotland and east in Wales—they are moved across the United Kingdom before being exported somewhere else. I can see, therefore, that there could be detailed disputes about what the Welsh, Scots and English would want in framing a UK-wide market for the handling of sheep stock. To attempt to create uniformity in areas as sensitive as this may be a mistake, and it may be that that is where the sticking points are in the discussions. I hope very much that one can get to the point where these matters can be agreed without resorting to dispute resolution.

As the noble Lord, Lord Wigley, also pointed out, in a few years' time, when we move beyond the Clause 11 procedure and the time limit has disappeared, we do not want to have to start these arguments all over again. We want to resolve this at the beginning in the creation of the market.

It is difficult to take the point further because we do not really know the detail of the disagreements before us. However, I suggest to the Minister that it would be a great help if, before Report, a letter could be passed to those who have taken part in the debate explaining the procedure that the Government intend to use in the creation of these frameworks. I would be very pleased if they were to adopt what the noble and learned Lord, Lord Mackay, has suggested, and it would be very helpful to know that that is what they propose before we start looking at this again on Report. If they do not propose to do that, we need to know what the alternative is and how consent is to be built into it. In the light of the very helpful response from the Minister, and of what I have said so far, I will leave the matter there for the time being. I beg leave to withdraw the amendment.

Amendment 314 withdrawn.

Amendment 315

Moved by ***Baroness Butler-Sloss***

315: After Clause 11, insert the following new Clause—

"Saving of acquired rights: Gibraltar

(1) Nothing in this Act is to be construed as removing, replacing, altering or prejudicing the exercise of an acquired right.

(2) Any power, howsoever expressed, contained in this Act may not be exercised if the exercise of that power is likely to or will remove, replace or alter or prejudice the exercise of an acquired right.

(3) In subsection (2) a reference to a power includes a power to make regulations.

(4) In this section an acquired right means a right that existed immediately before exit day whereby—

(a) a person from or established in Gibraltar could exercise that right (either absolutely or subject to any qualification) in the United Kingdom; and

(b) the right arose in the context of the United Kingdom's membership of the EU and Gibraltar's status as a European territory for whose external relations the United Kingdom is responsible within the meaning of Article 355(3) TFEU and to which the provisions of the EU Treaties apply, subject to the exceptions specified in the 1972 Act of Accession.

(5) Nothing in this section prevents the use of the powers conferred by this Act to the extent that acquired rights are not altered or otherwise affected to the detriment of persons enjoying such rights.

(6) In this section, reference to the "1972 Act of Accession" is reference to the treaty concerning the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community."

Baroness Butler-Sloss (CB): My Lords, I declare an interest as a vice-chairperson of the All-Party Group on Gibraltar. I add that the noble Baroness, Lady Hooper, who has attached her name to the amendment, is very sad not to be here but she is currently on business in Geneva.

I tabled this amendment just after Second Reading, at a time when I was particularly concerned about the potential threat of Spain's veto over Gibraltar—Spain was discussing exercising its veto over the transition period. Some weeks before I tabled the amendment I asked a supplementary question at Oral Questions about Gibraltar and the threat from Spain and received a rather surprising reply from the Minister that it was most unlikely that Spain would exercise its veto because Spain and the United Kingdom were on good terms. That answer caused astonishment both in the House and particularly, as one can imagine, in Gibraltar. So although I was aware of the helpful discussions continuing at that time between the United Kingdom Government, the Gibraltar Government and, in particular, the Department for Exiting the EU, I tabled this amendment as a precaution. Now I am glad to inform the House that there have been fruitful discussions between the UK Government and the Gibraltar Government and the situation has changed significantly.

The Gibraltar Government are now entirely happy with the reassurances they have received and believe that the progress made is substantial, that the United Kingdom Government are engaged in good faith, that the transition period is now protected, and that it is the unshakeable objective of the United Kingdom Government to ensure the seamless continuation of the existing market access into the UK and to enhance it where possible.

Lord Foulkes of Cumnock (Lab): I received a copy of a letter from the representative of the Gibraltar Government which indicated that they wanted the noble and learned Baroness to withdraw her amendment. I was surprised at the nature of the comments in that letter. All they seemed to be concerned about was internet gambling and maintaining their rights to provide it to the United Kingdom. If there is one thing many of us would not want them to maintain, it is the right to internet gambling. They did not seem to be concerned about the rights of workers in Gibraltar going over to Spain or workers in Spain coming into Gibraltar, of people travelling, tourists or anything else. I wonder whether the agreement the noble and learned Baroness is lauding is of benefit to ordinary people in Gibraltar or of benefit only to the internet gambling syndicates.

Baroness Butler-Sloss: I have a feeling that the noble Lord, Lord Wigley, has not seen as many of the documents as I have.

Lord Foulkes of Cumnock: The noble Lord, Lord Wigley, is many things, but he is not a ventriloquist.

Baroness Butler-Sloss: I apologise. I was looking one seat further to the right. However, I feel that the noble Lord has not seen as much of the documentation as I have. I have the strong impression that the Gibraltar Government are extremely concerned about the movement of people, particularly between La Linea and Gibraltar. The agreements between the United Kingdom and Gibraltar Governments on the transition period go far beyond gambling—I am not the least bit interested in gambling—and include all the other areas of interest to the ordinary people of Gibraltar, including education. One of the agreements between the United Kingdom Government and the Gibraltar Government enables Gibraltarians who want education in this country to have it on the same terms as they have always had it and to be treated as if they were UK citizens. That is the kind of thing which is going on.

Lord Wigley: It really is me now. The noble and learned Baroness mentioned market access, which links in to the point the noble Lord, Lord Foulkes, made a moment ago. Can the assurances she has got be projected as single market access/participation? If so, does that not necessarily run way beyond the links between Gibraltar and Spain and into the generality of our relationship with the European Union?

5 pm

Baroness Butler-Sloss: I do not know the answer to that because what I have been told by Gibraltar House, in particular by Fabian Picardo, the Chief Minister, is that there have been careful discussions with various Ministers, particularly the Minister for Exiting the EU, and that there will be protection during the transition period. There are also careful negotiations between Gibraltar and the UK on what happens after Brexit takes place. Those are not finalised, but the Gibraltarians are confident that they will get what they want because the Government have said that they wish to ensure the seamless continuation of the existing market access into the UK and to enhance it where possible.

Perhaps I may move on. The UK Government have been clear and insistent in stating that they are negotiating for the whole of the UK, including Gibraltar, and are standing shoulder to shoulder with the Gibraltarians in their unswerving commitment to the UK/Gibraltar relationship. However, I would add that the threat from Spain is real and continuing. Only in the past week or 10 days, another threat came has come from Madrid about the exercise of the veto. However, the Gibraltar Government have accepted the assurances of the United Kingdom Government that the existing market access arrangements between the UK and Gibraltar will not be affected by the exclusion of Gibraltar in any sort of veto exercise by Spain during the transition period. Moreover, as I have said, there are continuing discussions about the position post-Brexit and there remains, I have to say, a continuing threat from Spain. Perhaps unlike the noble Lords across from me in the Chamber, I would like to congratulate the Government on their approach to Gibraltar and how they are working with the Gibraltarians.

Gibraltar is a strong and faithful friend of the United Kingdom—it is important to remember that—and it deserves to be looked after properly. I can assure the Committee, however, that everything I have seen leads me to believe that the United Kingdom is acting entirely fairly and correctly. It is doing its best, and it is a good best, to make sure that the arrangements for Gibraltar during the transition period—

Lord Hannay of Chiswick (CB): I am most grateful to the noble and learned Baroness for giving way. I shall speak in support of the amendment before it is withdrawn, but if I have understood the noble and learned Baroness rightly—I have also received a letter from the representative of Gibraltar in London—everything she has said relates solely to the relationship between Gibraltar and the United Kingdom. I have to say that that is not the heart of the matter. The relationship between Gibraltar and the United Kingdom has existed for 350 years and is not affected one way or the other by our membership of the European Union, so the Government are generously giving the Gibraltarians back what they already have.

What I should like to know is whether the noble and learned Baroness, because she is much better informed than I am on this matter, is aware of what has been agreed for the transitional period and the period beyond on the relationship between Gibraltar and the rest of the European Union.

Baroness Butler-Sloss: I can be corrected on this, but I think I am right in saying that much of what was arranged between Gibraltar and the United Kingdom on the business between the two countries was directed by the EU, and consequently it is important that the arrangements between the United Kingdom and Gibraltar make it absolutely clear that all trade between the two countries would continue unimpeded. I know no more about what is being said about Gibraltar and the EU than, I suspect, anyone else in the Chamber other than the Minister, because I assume that all of this is subject to the negotiations. But the United Kingdom Government have promised that they will stand by

Gibraltar and that they will make sure that they are negotiating for Gibraltar as well as the whole of the rest of the United Kingdom.

I am not in a position to say any more than that, but the amendment was necessary when I tabled it. It is clear that it is not necessary now, but I was not asked to withdraw it. I would not have dreamed of accepting such a request. I was told that it was not necessary for it to go to a vote and that the Gibraltar Government would prefer us not to vote on it, for perfectly obvious reasons. If relations between Gibraltar and the United Kingdom Government are as good as I am told they are, I do not have the slightest desire to rock the boat. I do not propose to take this amendment any further beyond Committee. I beg to move.

Lord Chidgey (LD): My Lords, I added my name to the amendment after Second Reading, as Members will realise. It has been fascinating listening to some of the debate so far, but I go back to what Amendment 315 would do. It would make it clear that the EU (Withdrawal) Bill does not permit the,

"removing, replacing, altering or prejudicing the exercise",

of Gibraltar's acquired rights with reference to the 1972 Act of accession. That is what the amendment says. Some of the comments made so far have been very interesting, but they are not soluble.

The amendment has been tabled because, sadly, it became necessary following Spain's repeated verbal aggressive claims, and not just those relating to the EU (Withdrawal) Bill. Those of us who have studied Gibraltar's interests over the years will know that it is a repeated problem in our dealings with Spain over Gibraltar's rights. It has become necessary because of that behaviour from Spain, particularly the claims to which the European Council and Commission have given unwarranted credence and encouragement. There is no legal validity to paragraph 24 in the European Commission's Brexit guidelines, proposing a right of veto for all 24 EU members on negotiations over Gibraltar. The inclusion of paragraph 24 in the guidelines detracts from driving a good result for all of the EU and for the UK with Gibraltar. This is why we have tabled the amendment.

In the meantime, I agree with the noble and learned Baroness, Lady Butler-Sloss, that it is quite right that a wide package of measures has been agreed by the joint ministerial council of the UK and Gibraltar that covers university fees, health, transport, the environment and fishing—much the same as exists already. The noble Lord, Lord Hannay, made that point very well. The agreement also includes guarantees on continued reciprocal rights for Gibraltar's citizens on accessing key services.

As a member of the All-Party Group for Gibraltar for more than a decade and a previous vice-chair, I share the view that Gibraltar must be included in the implementation and future agreements, not just in the negotiations. Over the years, the people of Gibraltar have demonstrated how much they cherish their British sovereignty, which has been well deserved for more than 350 years, as the noble Lord, Lord Hannay, mentioned. In response to correspondence from the chair of the All-Party Group for Gibraltar, the Prime Minister has given her assurance in writing that the Government are forthright and resolute in their support for Gibraltar. They are determined to defend the interests of the people of Gibraltar in their negotiations with the EU. But it is early days. As many people keep saying about the EU (Withdrawal) Bill, nothing is agreed until everything is agreed. Amendment 315 seeks to reinforce in every way the resolve of our Governments and our Parliaments.

Lord Foulkes of Cumnock: Will the noble Lord give way?

Lord Chidgey: How could I resist the noble Lord, Lord Foulkes?

A noble Lord: Easily.

Lord Foulkes of Cumnock: Very easily. I have been listening to the noble Lord very carefully about the assurances from our Prime Minister. How do they change in any way the claims and the challenges by Spain, which will continue? Do they reduce them in any way whatever?

Lord Chidgey: My Lords, who can say? That is the point of this amendment: to try to protect the interests of the United Kingdom and Gibraltar within the framework of the EU withdrawal Bill. It would put down a marker that we are not giving away those rights by virtue of the withdrawal Bill.

Lord Foulkes of Cumnock: All that the noble Lord and the noble and learned Baroness, Lady Butler-Sloss, spoke of were agreements between the United Kingdom and Gibraltar. They are easy to get, but they do not deal with the continued claim and challenge from Spain. As I understand it, there are those outwith Spain in the European Union who would support Spain on that. How would the amendment make the problem of Gibraltar in coming to a final decision on Brexit any easier? It does not seem any easier because of this agreement.

Lord Chidgey: I can only say to the noble Lord that it is quite obvious that we have a long way to go to reach an agreement between the United Kingdom and Spain. It is worth remembering that the issue of the sovereignty of Gibraltar, which is with the UK, has been set in stone and not necessarily agreed by Spain. The offer of any talks about Gibraltar's future with Spain are set in stone to be entirely dependent on the agreement of Gibraltar. However, further than that we have not gone.

Lord Hannay of Chiswick: My Lords, I declare an interest in this matter because I was a part of the accession negotiating team rather a long time ago and responsible for the conditions that related to Gibraltar. Subsequently, in the early 1980s, I was sent to Madrid by the then Foreign Secretary and the Minister for Europe, Lord Hurd of Westwell, to ensure that the Spanish Government opened the border before they tried to get the British Parliament to ratify their treaty of accession. So I have had a little bit of experience of this.

[Lord Hannay of Chiswick]

We should be absolutely clear that Gibraltar's status depends automatically from our membership; it was not negotiated or negotiable, because Gibraltar was a European territory for whose foreign affairs we were responsible. There is no question of it being negotiated—I have to admit that it was slightly easier that Spain was not a member of the European Union at the time we joined. Where we wished not to apply the treaty as it was drafted in 1956 to a European territory for which we were responsible—namely, the sovereign base areas in Cyprus—we had to negotiate an opt-out because, otherwise, they would have been automatically included in all the provisions of our accession treaty.

It follows from this, I think, and this is where I turn to the Minister, the fount of all wisdom, that on the day we leave—not the end of the transitional period—Gibraltar's status within the European Union must cease. It will no longer be a European territory for whose external relations a member state is responsible, because, if the Government have their way, the United Kingdom will not be a member state of the European Union on 30 March 2019. I support the amendment because it is still pretty necessary, but can the Minister tell us how the transitional provisions, which relate to a United Kingdom outside the European Union—that is the determined wish of his Government—will be affected from 30 March? Which provision in the agreement on the transitional period reached in Brussels last week—a very welcome agreement—will cover Gibraltar, which is the dependent territory of a country which is outside the European Union?

Going slightly wider, we have to look beyond the relationship between Gibraltar and the UK, important as that is and welcome as the Government's assurances to the Government of Gibraltar are—they are extremely welcome—to the relationship between Gibraltar in the future and the European Union as a whole. That will not be easy, frankly. Anybody who thinks it will be easy to negotiate ain't seen nothing yet: it is not going to be easy, it is going to be very problematic.

5.15 pm

I do not think that expressions of anger, rage and so on from some of the noble Lord's colleagues in the other place about any attempt to raise Gibraltar are the best way to approach the Government of Spain, who have a very strong position in this matter. What does not seem to be quite appreciated is that the border between Gibraltar and Spain at the moment is an internal border of the European Union; it is between two member states and as such it comes under the full jurisdiction of the Court of Justice and the Commission. It is that that has, more or less, ensured that the Spanish authorities do not monkey about too much with the border crossing. On the day we leave and Gibraltar ceases to be a European territory which is the responsibility of a member state, it becomes an external border of the European Union. Because there is no European legislation that applies to this and it is the responsibility of each nation state—we were very insistent that that should be the case, because we have never wished, probably rightly, that our immigration policy should be handed over to the European institutions—it will be a matter for Spain to decide what happens on that border, untrammelled by European obligations.

That is a pretty serious prospect, frankly. I would like to hear from the Government how they believe that Gibraltar is at least protected during the 21-month transition period. Which provision in that agreement—which paragraph, please—means that Gibraltar is so covered? Much more importantly, how do the Government intend to go about ensuring the sort of outcome for Gibraltar that all of us want, which is to see that its access to the 27 European Union countries, as well as to us, is kept as close as possible to how it is now?

Baroness Northover (LD): My Lords, I support this amendment, which focuses on the acquired rights of those in Gibraltar. They, of course, voted overwhelmingly to stay in the EU and their desire to remain part of the United Kingdom is also extremely strong. I am glad that the United Kingdom has now apparently made a commitment to protect Gibraltar's acquired rights. I am glad also to hear that the Government have promised what the noble and learned Baroness, Lady Butler-Sloss, and the Gibraltar Government have described as "a seamless continuation of UK market access". Maybe that seamless market access model should also be applied to the north and south of Ireland.

However, there are other rights that those in Gibraltar risk losing if Brexit occurs. These have not been satisfactorily addressed by the Government, and they must be—the noble Lord, Lord Foulkes, is absolutely right. I realise that the Government of Gibraltar may fear fighting on several fronts and this is reflected, possibly, in the letter that several of us have received. They may fear upsetting the apple cart of the arrangement they may have reached with the United Kingdom. We have to recognise that Gibraltar is in a very weak position. It has less vocal support than has Northern Ireland. Thank goodness that Ireland, north and south, has that support. Less has been heard about Gibraltar, but it needs that support just as much as Ireland does. Gibraltar's status, as we heard from the noble Lord, Lord Hannay, has been assisted by both Spain and the United Kingdom being inside the EU. Now the EU is likely to support Spain, as a member state, not the UK if it leaves the EU. That leaves Gibraltar's position very precarious.

The UK agreed principles of joint sovereignty with Spain in 2002 but dropped these after the referendum in Gibraltar. Spain still seeks either sole sovereignty or joint sovereignty with the UK over Gibraltar. The European Commission has stated:

> "After the United Kingdom leaves the Union, no agreement between the EU and the United Kingdom may apply to the territory of Gibraltar without the agreement between the Kingdom of Spain and the United Kingdom".

That would still seem to imply a Spanish veto.

Therefore, in some ways the easier part—the UK guaranteeing Gibraltar's rights vis-à-vis the UK—seems to have been tackled, but nothing has yet dealt with Gibraltar's position of having a border with the EU, as the noble Lord, Lord Hannay, pointed out. How is this to be managed when so many pass back and forth easily every day? How are disputes to be settled? It is

all very well saying that Gibraltar has continued access to the UK's banking system but suppose the UK's own banking arrangements with the EU are seriously curtailed—what are the implications for Gibraltar? Gibraltar's ability to passport its financial services to the rest of the EU through the UK, and directly as part of the single market, would be affected. What is more, nearly a third of the jobs in its financial sector are held by workers who cross the frontier. In fact, 40% of jobs in Gibraltar are filled by "frontier workers"—people who cross the border from Spain to work there. What happens to that ease of movement?

The UK Government are not proposing that the UK should seek to stay in the single market. This means that after Brexit, unless there is a specific agreement on the border, free movement will not apply between Spain and Gibraltar; Spain will be able to close the border and establish border and passport controls. How is this being addressed? Some 95% of Gibraltar's goods come from Spain. How is that being addressed? Then there is the airport. The isthmus on which the airport is built is part of Spain's sovereignty claim. Spain asserts that it was not ceded to Britain under the Treaty of Utrecht. This position has been an obstacle to the adoption of EU aviation legislation and Gibraltar's airport is currently excluded from EU air liberalisation measures. Spain has signalled that it would block UK access to the EU's single aviation market unless the terms exclude Gibraltar International Airport. Can the Minister say what conclusions were reached at the summit on Friday? Does he think that the position of Gibraltar will need to be resolved before any deal is agreed between the EU and the UK?

The statement on Friday from the European Council indeed says that,

"nothing is agreed until everything is agreed".

Actually, that immediately follows mention of Gibraltar and,

"the territorial application of the Withdrawal Agreement",

here as elsewhere. I asked the Library to find out what was said at the summit on Friday. It has reported to me that it has been unable to find any further mention of discussions relating to Gibraltar in the European Council's account of the meetings on 22 and 23 March. That does not sound like Gibraltar was a high priority.

The acquired rights of those in Gibraltar may have been secured with the UK but many more of their rights are under challenge. I look forward to the Minister's reply and hope that he does not say simply that this is all up for negotiation. As I say, it does not sound as if Gibraltar was even mentioned on Friday. There needs to be a proper plan and we do not have that yet.

The Lord Bishop of Leeds: My Lords, I do not want to repeat what has been said but the noble Lord, Lord Hannay, seems to have asked the key question. Amid all the detail perhaps we might precis the fundamental question.

I was here when the members of the Government of Gibraltar were sitting in the Chamber when Gibraltar first came up on our agenda. It seemed that promises were being made by the Government which were not in the Government's gift to make. This is still the heart of the question that is being raised here. Can the Minister clarify what is in the UK Government's gift and what is not, in order that we do not make promises that cannot be fulfilled? It seems to me that we can make promises in relation to the UK's relationship with and commitments and obligations to Gibraltar but not those of the EU. That is where the fault line lies, which seems as clear a fault line as that between Northern Ireland and the Republic.

Lord Luce (CB): My Lords, I declare an interest as a former Governor of Gibraltar. I support very much the amendment moved by the noble and learned Baroness, Lady Butler-Sloss, and supported by the noble Lord, Lord Chidgey. I find myself in total agreement with all the speeches that have been made so far.

Without any doubt, the people of Gibraltar have as a whole been suffering great anxiety over the last several months about their future. It is essential that we find ways to assure them of their future. Let us remind ourselves that during the referendum, 96% of them voted in favour of remaining in the European Union. Why? Because it enabled them to expand their financial services through the passporting system and, through the internal border, the Commission could give some form of protection to a smooth flow—in so far as there has been one—across that border. But under Brexit, as the noble Lord, Lord Hannay, so rightly said, it would immediately become an external border with all the consequences which would flow from that.

A very important element is that 90% of Gibraltar's business with the EU is with the United Kingdom, principally in financial services. It is essential that they have that reassurance so they can retain that access, making it easier for them to do business with the United Kingdom. Hence this amendment, which is designed to give reassurances to the people of Gibraltar about their acquired rights as corporations and individual citizens.

Events have moved in a better direction in the last couple of weeks, and the verbal assurances given by Ministers have been transformed into a concrete package, which was announced on 8 March as a result of the joint ministerial council meeting. It assures Gibraltar of continuity with the United Kingdom, with mechanisms which are now in place to secure trading and commercial links with the United Kingdom until the end of 2020—that is to say, for the transition period. But as the noble Lord, Lord Hannay, pointed out, it is not clear whether this transition period applies to Gibraltar's relationship with the whole of the European Union. I hope the Minister will give a clear answer on that question at the end of the debate.

My concern then flows to the post-Brexit period for Gibraltar, and I agree entirely with the comments that have been made. As far as the United Kingdom is concerned, there have been assurances and very important commitments to design a modernised agreement based on high standards of regulation and enforcement. That means further regulatory alignment between Gibraltar and the United Kingdom. There are long-term commitments to have growing market access for financial services to the United Kingdom and strengthened relationships on the health services, environment and

[Lord Luce]
transport. As I am Chancellor of the new University of Gibraltar, I am very glad of its commitment to develop reciprocal relations between students in Gibraltar and the United Kingdom.

Lord Adonis (Lab): Does the noble Lord know whether the Government of Gibraltar are in favour of a referendum on a final withdrawal treaty and, as a former Governor of Gibraltar, does he think that is a good idea?

Lord Luce: I am not going to be drawn on that but, if I may, I will end my remarks by emphasising the need for words not just of caution but of hope. On caution, I refer to clause 24 of the European Union's negotiating procedures, which gives Spain a right of veto. That remains a matter of profound anxiety regarding the negotiations that are going to take place in the next six months. It is in the hands of Spain whether it handles Gibraltar like Catalonia, or in a more sane fashion. I can say only that in terms of hope, what is required is a sustained dialogue between the UK and Spanish Governments, which I hope is now taking place, involving very strongly the Government of Gibraltar. The purpose should be to work in a positive and statesmanlike fashion to achieve an agreement on economic co-operation across the border between Gibraltar and Andalusia, being in mind that 13,000 people a day cross that border—40% of the workforce of Gibraltar. It would be profoundly to their mutual advantage to achieve that, if Spain has a positive attitude, but beyond that Spain has got to be positive about its future long-term relations with Gibraltar. There is still a long way to go.

5.30 pm

Lord Cormack: My Lords, we are extremely fortunate to have in this House the noble Lord, Lord Hannay, who has such intimate knowledge going back over 30 years and more, and my noble friend Lord Luce—I must call him that as we sat together in the other place—who was such a distinguished Governor of Gibraltar and who still maintains his interest as Chancellor of its new university.

I do not want to be at all critical of the noble and learned Baroness, Lady Butler-Sloss, who made a very generous speech, but we have to be careful about the epistle that we who are reckoned to be friends of Gibraltar all received. It was, effectively, a written sigh of relief that at least the UK Government had stepped up to the mark and said that that they were committing themselves to Gibraltar. That commitment is clearly crucial and it is equally very welcome, but it does not solve the problem about which the noble Lord, Lord Hannay, and my noble friend Lord Luce have spoken so eloquently. As the noble Baroness, Lady Northover, said, it is in effect a Northern Ireland situation in miniature, because this is the other border between UK territory and the European Union. People have talked about 350 years, but it is not 350 years, as it is since the treaty of Utrecht in 1713, just over 300 years ago, that we have had this commitment to and legal possession of Gibraltar, which has been continually—or perhaps I should say intermittently—challenged by successive Governments of Spain.

In his speech a few minutes ago, my noble friend Lord Luce made graphically plain what is at stake for the people of Gibraltar. Obviously, I hope that when he replies my noble friend the Minister will reiterate the agreements referred to in the letter we all received, but I hope he will go further and indicate that the UK Government will not sign up to any final agreement that leaves unprotected the people of Gibraltar: nothing is agreed until everything is agreed—the mantra that is repeated again and again. A country should be judged by how it treats its weakest citizens, and by how it treats those parts of its territory which are wholly dependent upon it. The people of Gibraltar are wholly dependent upon the Government of the United Kingdom. There must be no agreement with our European friends and partners—I hope and pray that there will be an agreement—that puts Gibraltar in a precarious, indeed dangerous, position after the end of the transition period.

We talk fairly glibly about the transition period. Of course it is necessary, and we all welcome the progress that was signalled last week and about which we will hear a little more when the Statement is made to your Lordships' House later this evening; but we are not there yet, and we are a long way from being there over Northern Ireland and Gibraltar. Let us, of course, support the withdrawal of the amendment tonight. I am very glad that there have been no votes in Committee during the long hours we have been debating this Bill, but we may well have to consider another amendment on Report, unless we are utterly confident that there is no question at any time of a sell-out over Gibraltar.

Baroness Ludford (LD): My Lords, the debate this afternoon has amply demonstrated why in today's Statement the Prime Minister refers to the particular challenges that Brexit poses for Gibraltar. Staying in the single market would mitigate some of those challenges, particularly the economic ones, but there would still be the risk of political problems from Brexit itself.

There has been much talk from Brexiteers about global Britain and even Empire 2.0, which is pretty gruesome, but the damage to Ireland and Gibraltar—I fully agree with the noble Lord, Lord Cormack, and others who have drawn an analogy there—from Brexit belies the claim that Brexit is not focused on a rather little-England perspective and instead has a broad and internationalist one. It would be a terrible betrayal of Gibraltar as well as Ireland if the Government do not have those territories in the forefront of their mind.

The Government of Gibraltar told the House of Lords European Committee that Brexit presented,

"few opportunities worthy of mention",

and that losing access to the single market in services would be a "severe blow" to Gibraltar's economy—reflecting the fact that it has been a fundamental tool in Gibraltar's economic development. It is therefore no wonder that, as others have said, 96% of Gibraltarians voted remain.

The point has been strongly made that Gibraltar depends on the free movement of workers. I was very interested to hear that the noble Lord, Lord Luce, is chancellor of the University of Gibraltar, because it gave evidence to the EU Select Committee inquiry and

said how valuable the free movement of staff and students across the border with Spain is to it. It also said that the social welfare system is significantly dependent on the income tax paid by cross-border workers in Gibraltar—and a related point is that Gibraltarians will potentially lose access to healthcare facilities in Spain. So there are so many areas of damage to Gibraltar and the residents of the Gibraltar.

Tourism is another element in its economy that would be profoundly harmed by any border problems. The European arrest warrant was described by the Government of Gibraltar as,

"a blessed relief because it took the sovereignty dispute out of the equation of extradition".

As it involves mutual recognition between judges, it does not depend on Government-to-Government agreement.

The Government of Gibraltar are particularly worried about the possibility of no deal and a cliff-edge scenario. I believe that the Brexiteers have been cavalier in envisaging this possibility. I have to reproach the Minister in this respect, because he mentioned it again last week to the committee—as did his colleague in the other place Robin Walker. Reviving the "no deal" prospect is breathtaking in its irresponsibility to a territory such as Gibraltar. The Government of Gibraltar suggested that it could result in their frontier being severely disrupted or even closed, which would be "potentially disastrous". It might mean the UK Government having to step in to support Gibraltar's economy, as they did in the Franco era. I wonder whether British voters have been told about such a possibility, given that they know, or at least have been told, that Britain's economy is set to deteriorate if we leave the single market—the Prime Minister has said that—and their incomes might well be squeezed. So there could be quite interesting political problems for a Government defending subsidies to Gibraltar.

Lastly, as has been pointed out, Brexit means that Gibraltar will depend on the good will of Spain. It will no longer have EU law there. That law has not been perfect and there are still some issues, but Gibraltar has looked, with justice, to the EU to arbitrate and defend it in disputes with Spain. But it will not have that protection if we Brexit, and the onus will be on the UK to take action. So, like other noble Lords, I think this is a very important issue and I look forward to the Minister telling us exactly how the Government are going to look after Gibraltar, in the same way that there is huge feeling in this House about the maintenance of no internal border in Ireland. I think that the Government have a lot of explaining to do.

Lord Collins of Highbury (Lab): My Lords, we have had an excellent debate. I appreciate the comments from the noble Lord, Lord Luce. He has initiated debates in this Chamber about Gibraltar, separate from Brexit, and although I did not speak at Second Reading of this Bill I have spoken in a number of those debates. The noble Lord, Lord Hannay, is absolutely right about the process, and the history lesson that has been given is quite important for understanding the way forward. I did not act as governor-general in Gibraltar like the noble Lord, Lord Luce, but I was a union official there representing workers in a period when the border was closed. In fact there were 6,000 Moroccan workers operating in Gibraltar. They were housed in the old naval dockyard barracks in conditions that we would not find particularly acceptable, but it certainly gave them gainful employment in a way that helped their families in Morocco.

In Spain's accession process we were able to reach a practical accommodation that served the economic interests of Gibraltar and the people who lived around it, particularly in the Andalusia region of Spain. I have to declare an interest or two here: my husband is Spanish and from Andalusia. The fact is that the people of Andalusia know very well that Madrid does not have them very high up on its agenda either, so these are really important issues to understand. The reason why 96% of the people voted in favour of remaining in the EU is that they know full well that the political and economic conditions that prevailed with membership of the EU are vital to their continuation as a viable society.

The Opposition support the amendment and understand the need for it. Several noble Lords have spoken today, particularly the noble Lord, Lord Hannay, who posed very specific questions. We believe that at the end of the day the question that will determine the survival of Gibraltar will be the UK Government's efforts to ensure that it is able to continue to have a relationship with the rest of the EU. That is the question that we want answered but we know full well that we are not going to get one today.

5.45 pm

Lord Dykes (CB): In that conjunction of events and facts, was the noble Lord, like colleagues in the other place, disconcerted by the very aggressive and jingoistic references to Spain that were made by some people there—unnecessarily so, because there was no question of the UK abandoning its total support for Gibraltar? The tone adopted on Spain was really rather unacceptable, including by some Members of this House. I think I remember the noble Lord, Lord Howard of Lympne, saying we might have to go to war with Spain, and even Daniel Hannan, a right-wing Tory MEP, refuted that. Does the noble Lord, particularly because he has declared his interest of a Spanish husband, which was a very interesting point, feel that the balance was right or that there should have been more intelligent access to the ideas of Spain, bearing in mind the pressures that it has over Catalonia?

Lord Collins of Highbury: To be clear, the Opposition believe—as do I personally, as someone who has worked in Gibraltar over the years—that the position of Gibraltar should be a matter for the Gibraltarians. There should be no doubt about that, and we are committed to it. They have had a referendum and we will completely stick to that.

I was about to come on to my comments relating to what the noble Lord, Lord Luce, said. At the end of the day, we want to ensure that we make economic relationships and economic development a high priority. I do not think we should restrict this to comments about the viability of Gibraltar; we should be focused on how we can support a friendly country in developing an economy in the south that has been so difficult to

[Lord Collins of Highbury]
establish over many years. British tourism has been very important to that, but it is also in terms of new industries and finance sectors that could be expanded and developed. I like the proposal by the noble Lord, Lord Luce, that we should be talking positively about economic development in relation to Gibraltar and to how important that is.

To be frank, we cannot rely on Madrid. We should understand the nature of the Spanish psyche here: no matter what the terms of the Treaty of Utrecht were, there is a claim by the Spanish nation over sovereignty and, whichever political party is in power in Spain, socialist or conservative, this issue unites them across the political spectrum. I do not think we are going to resolve that—we cannot tell the Spanish what their views should be—but we can give very clear commitments to Gibraltar and its people, and we should maintain those commitments. What we need to hear from the Minister today is that it is not simply about commitments regarding Gibraltar's relationships with the UK but that the Government are committed to ensuring that Gibraltar can have a positive economic relationship with the rest of the EU, and that in any final appendix or agreement to the transitional period Gibraltar's needs are properly considered and there is a positive case. Not only would closing the border be a disaster for Gibraltar but, as people have said in this debate, it would be an incredible cost to this country as well.

In the 1960s we had a very big MoD base in Gibraltar and there was employment. That is not the case any more. It is a different sort of industry and employment that we have to address.

Will the Minister answer the question of the noble Lord, Lord Hannay, about what is next under the transitional agreement? What will Gibraltar's relationship economically be with the rest of the EU? To take up the point made by the noble Lord, Lord Luce, what commitments will we give for a positive relationship with Spain to ensure the economic future of Gibraltar and its people, and the people of Andalusia?

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): Let me first agree with the noble Lord, Lord Collins: it has indeed been an excellent debate on an extremely important topic. I also thank the noble and learned Baroness, Lady Butler-Sloss, for raising the issues, but we do not believe that the new clause is necessary. It posits the need to protect the rights of persons and businesses either from or established in Gibraltar operating in the UK, but none is directly affected by the Bill.

As I begin, I say that we are steadfast in our support for Gibraltar, its people and its economy. Let me directly address the issue put to me by the noble Lords, Lord Hannay and Lord Luce, and by the noble Baroness, Lady Northover, about the implementation period.

The territorial scope of the draft withdrawal agreement, including for the implementation period, explicitly includes Gibraltar. That is right, and consistent with our view that we are negotiating on behalf of the whole UK family. We want to get a deal that works for all, including for Gibraltarians. The noble Lord, Lord Hannay, asked me to be specific, and it is in Article 3, section 1, paragraph (b) of the draft agreement.

In legislating for the United Kingdom, the Bill seeks to maintain, wherever practicable, the rights and responsibilities that exist in our law at the moment of leaving the EU, and the rights in the UK of those established in Gibraltar are no exception to that. We respect Gibraltar's own legislative competence and the fact that Gibraltar has its own degree of autonomy and responsibilities. For example, Gibraltar has its own repeal Bill.

We are committed to fully involving Gibraltar as we prepare for negotiations to leave to ensure that its priorities are taken properly into account. As has been mentioned, we are working closely with Gibraltar, including through the dedicated Joint Ministerial Council on Gibraltar EU Negotiations.

The Bill, however, is not the place for legislation about Gibraltar. The Bill does not extend to Gibraltar, except in two very minor ways: that, by virtue of Clause 18(3), the powers in Clauses 7 and 17 can be used to amend the European parliamentary elections legislation, which of course covers Gibraltar; and the Bill repeals some UK legislation that extends to Gibraltar.

However, we understand the concerns being expressed through the amendment tabled by the noble and learned Baroness, Lady Butler-Sloss. In response to those concerns, I hope that I can reassure the Committee that access to the UK market for Gibraltar is already protected by law, and my ministerial colleague at the Department for Exiting the EU, Robin Walker, agreed a package of measures at the last Gibraltar JMC on 8 March that will maintain, strengthen and indeed deepen UK-Gibraltar ties.

In financial services, where UK-Gibraltar trade is deepest, this is granted by the Financial Services and Markets Act 2000 (Gibraltar) Order 2001 on the basis of Gibraltar's participation in EU structures. We have agreed that the UK will guarantee Gibraltar financial services firms' access to UK markets as now until 2020, even in the unlikely event of no deal being reached. We will design a replacement framework to endure beyond 2020 based on shared high standards of regulation and enforcement and underpinned by modern arrangements for information-sharing, transparency and regulatory co-operation.

Obviously, I always hate to disappoint the noble Lord, Lord Foulkes, but when it comes to online gambling, the UK has provided assurance that gambling operators based in Gibraltar will continue to access the UK market after we leave the EU in the same way as they do now, and we are working towards agreement of a memorandum of understanding which will enable closer working and collaboration between gambling regulators in Gibraltar and the UK. This work is already under way, so we consider that the amendment is unnecessary.

In this way, we will deliver on our assurances that Gibraltar will enjoy continued access to the UK market for Gibraltar business, based on the Gibraltar authorities having already agreed to maintain full regulatory alignment with the UK.

We will of course keep Parliament informed of progress. Gibraltar is regularly discussed in Questions

and in debate: for example, in Oral Questions on 30 January and on Second Reading of this Bill on 31 January.

I hope that I have addressed the noble and learned Baroness's concerns, and I urge her to withdraw the amendment.

Lord Cormack: Before my noble friend ends, could he assure the Committee that it will be an absolute aim of negotiations to ensure that Gibraltar continues to enjoy commercial intercourse with the rest of the European Union?

Lord Callanan: I am very happy to assure the Committee of that. As I said, we are working closely with the Government and people of Gibraltar. They are at the forefront of our consideration; they are our fellow citizens and our allies. We are working with them, we are co-operating with them and of course, alongside the rest of the negotiations, that will be one of our priorities.

Lord Foulkes of Cumnock: Perhaps the Minister will give way. He mentioned online gambling and financial markets, perhaps looking after the interests of people who are already quite well off. What about the workers who travel across from Spain to Gibraltar and vice versa? What about the tourists? What about ordinary people? There seem to be no guarantees. It all seems to have been done to look after the financial interests of the gamblers and the financial markets.

Lord Callanan: I am sorry that the noble Lord has a retrograde opinion on these matters. It may shock him to know that many ordinary people take part in online gambling and indulge in financial services. In fact, many of the workers that he refers to work in those areas, so perhaps he should not apply to everyone else the same prejudices that he has. They are successful industries that employ a lot of people. They are perfectly legal and people have a right to engage in them.

Lord Foulkes of Cumnock: I do not know whether the noble Lord sits in on any of our debates other than those on the Bill. I have been sitting in at Question Time and other debates—it is good to see three Bishops here today—where concerns have been expressed about online gambling and the effect that it has on ordinary people who get caught up in and become addicted to it. If the noble Lord does not understand concerns about that, he is missing an awful lot of the debates that go on in this House.

Lord Callanan: Of course I understand those concerns and why the industry needs to be properly regulated. That is being done and we are working with Gibraltar to ensure consistent regulation across the two territories. But of course that is not a matter for the Bill, I am pleased to say.

I hope that, with those reassurances, I have addressed the noble and learned Baroness's concerns—

Lord Hannay of Chiswick: I am most grateful to the noble Lord for giving way, but he has left us—and, through us, the Gibraltarians—in a degree of uncertainty. I imagine he will have difficulty replying to this, but presumably he does not think we can negotiate better terms for Gibraltar's access to the EU 27 than we negotiate for ourselves. That would be a pretty startling victory for the Government, which might just be beyond their powers. If that is so, and as the Prime Minister admits that our access to the European Union 27's market will be less good after the end of the transitional period than it has been while we are a member, presumably Gibraltar will have to take a hit too.

The second question, which the Minister has not addressed at all, concerns the movement of people across the border between Gibraltar and Andalusia. What does he envisage for that? Presumably, the immigration Bill, which may one day cease to be a mirage floating out there, always several months away from us but never quite attained, will one day be sitting on our Order Paper and will have to regulate how Gibraltar treats migrants or other people crossing that border who currently and during the transitional period are covered by free movement. What are the Government's plans for that?

6 pm

Lord Callanan: I will give the noble Lord the answer that I have given when he has asked similar questions previously. This is a matter for the Immigration Bill. Of course, we will need to discuss the matter of the frontier between Gibraltar and Spain with the Spanish authorities, which we will do in full consultation with the people of Gibraltar. We will be sure to let the noble Lord know when we have an outcome to those negotiations. I hope that the noble Baroness will feel free to withdraw her amendment.

Lord Elystan-Morgan: Have Her Majesty's Government given any consideration to a matter that I understand was raised about 15 years ago—granting dominion status to Gibraltar? Dominion status is so supple, varied and wide that it could legitimately and properly encompass the constitutional aspirations of Spain, the United Kingdom and the Gibraltarians themselves.

Lord Callanan: I am not an expert on the legal ramifications of dominion status, so if the noble Lord will forgive me, perhaps I may write to him on that.

Baroness Butler-Sloss: My Lords, I thank all those who have taken part in this debate and the Minister for his partial reply. I recognise that nothing is decided until everything is decided. I concentrated on the business arrangements between the UK and Gibraltar because they are one of the major concerns. Of course, there are many other major concerns for Gibraltar, which is stuck in a very difficult position, but the one thing it has is good trade relations with the United Kingdom and a lot of business. That needed to be in at least the first stage of what would be done. It is not just gambling; it is also education, tourism and the other things that the noble Lord, Lord Luce, set out in his speech today.

It is good that, at least as between the United Kingdom and Gibraltar, there are clear guidelines and Gibraltar has protection. We know—I am very grateful to other speakers for having raised these issues—that the position of Gibraltar is extremely precarious vis-à-vis

[Baroness Butler-Sloss]
the EU. In relation to migrants, I understand that Gibraltar wants as many as come across the border daily, mainly from La Línea, to work. It is up to Spain whether it lets them come through. It is not up to the Gibraltar Government, who welcome them. As has been said, I think by the noble Lord, Lord Luce, 13,000 people a day go through, 10,000 of whom are from Andalusia and are Spanish workers. It is very much to the detriment of Spain if it does not allow them through. It was, of course, La Línea and the southern part of Andalusia that really suffered when Spain closed the border for some 15 years.

So, there are reasons why Spain might be sensible. One hopes that the positive discussions that go on may have a good effect. However, as the noble Lord, Lord Luce, and I have said, there are dangers of the threat to Spain. All of us enjoy Spanish holidays and many of us have Spanish relationships, as the noble Lord, Lord Collins, has, so we want to be fair to Gibraltar. Gibraltar is part of us but we want to continue to have good relations with Spain. I very much hope that, having got to the first stage—business relations, education and other relationships between Gibraltar and the United Kingdom—we will continue to battle on behalf of the whole of the United Kingdom, including Gibraltar, in whatever arrangements happen during Brexit. Having said that, I beg leave to withdraw the amendment.

Amendment 315 withdrawn.

Amendments 316 to 318E not moved.

Schedule 3: Further amendments of devolution legislation

Amendments 319 to 321 not moved.

Amendment 322 had been withdrawn from the Marshalled List.

Amendments 322A to 330C not moved.

Amendments 331 and 332 had been withdrawn from the Marshalled List.

Amendment 332A not moved.

Schedule 3 agreed.

Clause 14: Interpretation

Amendment 333 not moved.

Amendment 334

Moved by ***Baroness Hayter of Kentish Town***

334: Clause 14, page 10, line 40, leave out from "means" to end of line 41 and insert "such day as a Minister of the Crown may by regulations appoint (and see subsection (2));"

Baroness Hayter of Kentish Town: My Lords, it is worth the wait. We need to be clear that these amendments—which return to the Bill its original flexibility over exit day—are not about overturning the decision to leave. They are about removing the straitjacket the Government inserted at the behest of some ardent Brexiteers more anxious to earn their spurs than help the Government in their delicate negotiations. Importantly, the amendments enable the Bill to fulfil the task set for it: to provide a functioning statute book and legal certainty as we withdraw from the EU.

A fixed, immutable date undermines this, which even the Government acknowledge as the Bill contains a get-out in Clause 14(4)(a). The two drawbacks of the fixed date are: first, it undermines the transition period, which is rather vital for our departure; and secondly, it undermines the Government's negotiating strength. Indeed, it appears to make it illegal, without the use of Clause 14(4) for the UK to extend the Article 50 negotiations period by even a single minute—even if the EU 27 unanimously agreed to do so, and even if it were in our country's best interests.

With regard to the transition, assuming it will be on current terms, the ECJ would continue to have some hold under those. Therefore, triggering Clause 6(1) to end its jurisdiction on 28 March next year is a nonsense. This needs to be delayed until the end, not the beginning of the transition phase, or, in the case of EU citizens, whom we have promised can access it for eight years, a later date, as may also be needed for our continued participation in Euratom or other agencies.

Turning to the negotiations, as our EU Committee says:

> "The rigidity of the Article deadline of 29 March 2019 makes a no deal outcome more likely. For the Government to compound the rigidity of Article 50 by enshrining the same deadline in domestic law would not be in the national interest".

Lord Adonis: My Lords, does my noble friend not agree that it is a question not just of rigidity but of parliamentary sovereignty that Parliament should not agree the date of withdrawal until we see the withdrawal treaty? The flexibility to which she refers in Clause 14(4) is flexibility only at the behest of the Government because they have to move an amendment to the date, whereas it should be Parliament in the driving seat. Parliament should not agree a Brexit date until we see and have approved the withdrawal treaty.

Baroness Hayter of Kentish Town: I think that that is what the amendments seek to achieve and, as this House has said again and again, the whole idea was meant to be to bring back decision-making to Parliament.

Viscount Hailsham (Con): The noble Lord, Lord Adonis, is right about this, because the noble Baroness's amendment would give power to Ministers by regulation to extend or vary the exit date. What the noble Lord, Lord Adonis, is saying, and what I must say I agree with, is that the power should be in the hands of Parliament and that Back Benchers should have the opportunity to trigger the process.

Baroness Hayter of Kentish Town: There is a series of amendments in the group, and I hope that when we get to Report we will have one that does exactly what is clearly felt will be needed. The importance of our amendment is to get rid of this absolute fixed date that is there at the moment—and not in the original Bill. It was introduced in one of the few amendments made in the Commons, not for the national interest but for a slightly more partisan reason.

Article 50 provides:

"The Treaties shall cease to apply … from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification"—

unless, of course, the 27 agree to extend the period. Thus the UK would not automatically leave after two years if, for example, the final deal had not yet come into force.

It could be that that itself sets a later date; it could be because the European Parliament had vetoed the deal in January. What would happen in that eventuality? I think it unlikely, but the Government always tell us that we must be prepared for any eventuality, and we should be prepared for that, given the red lines that the European Parliament has been setting down. Guy Verhofstadt told Andrew Marr on television that it meant that, if it did veto the deal, we would leave with no deal—in other words, as we have all said a number of times, trading on WTO terms, with no transition and no safeguards for citizens.

I doubt very much that, should the European Parliament decide that it did not want to agree with the deal, the Governments of the 27, let alone the Government of the 28th, would simply settle for that and say, "We give in—come out on WTO terms, with no concern for EU citizens". My guess is that there would be rapid and rather complicated negotiations, which is particularly important given that in January next year we know jolly well that when it comes to our customs at Dover, our procedures for registering EU nationals, new VAT forms, agreements on aviation and the export of live animals, and checks on foodstuffs and all manufactured goods, none will be ready by the time of March next year—let alone the situation in Northern Ireland being resolved.

So undoubtedly at that stage, if the European Parliament did vote it down, we would definitely need a period of breathing and talk to get things back on track. If just another week or two would make a difference, surely that should be possible without having to live with the date written into the Act. What could also happen, even without the European Parliament, is that discussions could be going on and agreement could be very close—just days away—and we surely would not want the Act to stop those discussions taking place. Setting that date in stone must be unhelpful to say the least.

The Government think that they can agree the substance of our future partnership with the EU before October this year, but the report from the other House from the exit committee said that,

"it is difficult to see how it will be possible to negotiate a full, bespoke trade and market access agreement, along with … other agreements, including on foreign affairs and defence",

by October. It suggested that,

"the Government should seek a limited extension to the Article 50 time to ensure that a Political Declaration on the Future Partnership that is sufficiently detailed and comprehensive can be concluded",

before we enter the transition period. The same report states:

"If a 21-month transition … period is insufficient time to conclude and ratify the treaties/agreements that will establish the Future Partnership or to implement the … technical and administrative measures along with any … infrastructure at the UK border, the only prudent action would be for the Government to seek a limited prolongation to avoid unnecessary disruption",

and that the withdrawal agreement should therefore,

"allow for the extension of the transition … period … with the approval of Parliament".

We can do that only if the date is in our hands and not fixed in the Bill.

The noble Lord, Lord Kerr, who is not in his place, has said that saddling yourself with deadlines is crazy. Had he been here, I would have said that it was not as crazy as writing Article 50 itself—but, as he is not here, I clearly would not say that. The date was put in the Bill to satisfy some Back Benchers who had no involvement with these detailed talks or with the task of implementing the final deal. So let us get it out of the Bill now, untie the Government's hands and give them a better chance of negotiating a satisfactory way of extraditing ourselves from what is otherwise, I fear, a looming nightmare. I beg to move.

6.15 pm

Lord Hannay of Chiswick: My Lords, I support this amendment, which is my name, too, and also Amendment 343, which contains more of the same objective. The purpose of the amendment, as the noble Baroness, Lady Hayter, has said, is to remove from the Bill the date of 29 March 2019 for its entry into force. Putting that date in the Bill is neither necessary nor desirable—and that, clearly, was the view of the Government when they tabled the Bill because, as the noble Baroness said, there was no mention of that date in the Bill at all when it was tabled last April. It was subsequently inserted—for reasons that I shall not dwell on, because I do not particularly want to speculate about dealings within the Government's party; they were clearly something to do with that—only at a later stage, at which point there was a lot of rejoicing from those who believe that leaving the European Union at any cost is a good and noble objective. The formulation was then watered down a bit by the House of Commons before it sent it to us—but I suggest that it should be removed altogether.

The Government have basically dealt with the issue of whether the date is necessary. It is perfectly clear that it is not necessary, otherwise why did they table a Bill without it? But is it desirable? On desirability, I would argue strongly against it, as has the noble Baroness, Lady Hayter. For one thing, it risks closing off one option that exists under Article 50 and will exist all the way through to 29 March: namely, that the EU 27 and the UK might, by common accord, wish to prolong the two-year cut-off date from the time of notification of our intention to withdraw. I do not intend to speculate under what circumstances such a wish might arise, because they are manifold. It could be for a very short period of a purely technical kind due to an absence of time to conclude all the work that needed to be done, or it could be for a longer period, which would obviously have rather more important implications. The Brexit committee in the other House has raised that possibility; it has canvassed it and I do not think that it is wise for us to put in this Bill something that contradicts it.

[Lord Hannay of Chiswick]

The point at issue is not whether such a postponement of the two-year deadline might or might not be in the national interest. We will only know that when the debate on it takes place. I argue that to foreclose the option now, so as to make it difficult—probably impossible—to proceed in that way is not sensible; rather, it is irresponsible. I have no doubt that the Minister will tell us that the Government have no intention whatever of making use of the postponement option. Her script can be easily imagined—and it is of course the Government's entire right and privilege to say that. However, that is different from trying to bind Parliament to say it, which is what they are seeking to do with this provision: to lock us all into the Brexit tower and throw the key out of the window. That is never usually a very good way of proceeding.

So I hope that, on further consideration, the Government will agree. All they are being asked to do is revert to the original form of the Bill which they themselves introduced last July and to have no reference in it to the date of 29 March.

The Duke of Wellington (Con): I support Amendment 334, a cross-party amendment to which I have added my name, and which goes with Amendment 343. As other noble Lords have said, it is a modest amendment which simply restores the original wording of the Bill. As has also been said, here and in the other place, the Bill is about process not outcome. The amendment makes no attempt to delay the date on which we leave the EU. I believe that we will be told by the Government that one justification for putting the date in the Bill is to remove uncertainty. There are many uncertainties ahead of us, post Brexit, but there is surely no uncertainty about the date on which we leave the EU. It is clear that, under Article 50, we leave the EU on 29 March 2019 unless it seems at the time to be in the national interest for the Government to request a limited extension or delay in order to complete the process of withdrawing.

It could be that the withdrawal and implementation Bill has not yet passed through both Houses of Parliament. The European Parliament may not yet have passed it. There could still be matters to negotiate. There could be various reasons, but the point is that it could be in the national interest, at the time, to seek a delay. I am sure that a small delay would be granted by the other 27 member states if we were near the end of the process. I am aware that an amendment tabled in another place by Sir Oliver Letwin gave Ministers the power to change the exit date. However, I believe it is right—this is the fundamental point of the amendment—for this House to ask the other place to think again about the necessity of putting the date in the Bill. Is that necessary? Is it expedient? This amendment and the related amendments are intended to give the Government, and Parliament, greater flexibility. I hope the Government will accepted them in the spirit in which they are intended.

Lord Adonis: My Lords, the noble Baroness needs to be very cautious about taking on the Duke of Wellington in a debate. I hope that she will be able to agree with her ducal colleague. There are two key points here: one is fundamental, the other pragmatic. The noble Duke made the pragmatic one, which is compelling. There could be reasons, perhaps to do with the final ratification processes, why it is in the public interest to delay and we should not put obstacles in the path of that. There is also a reason of fundamental constitutional principle why we should not agree to this. We are being asked to agree to a date for leaving the European Union, and to put it in statute, before we know what we will be doing after we leave. Until we have the withdrawal treaty, we will not be aware of what the terms of withdrawal are—

Lord Liddle: I do not think we are going to know what the terms of withdrawal are even when we get that treaty. All we are going to get is a political declaration. It is clear that everyone in Brussels thinks that the British Government want to fudge that as much as possible because that is the only way the Prime Minister, Mrs May, can get an agreement through the House of Commons and her own party.

Lord Adonis: My noble friend makes very good points, which will be a subject for discussion when we see the proposed withdrawal treaty. However, this is all the more reason why Parliament should not commit itself now to a date in advance of knowing the basis on which we are going to withdraw. The arguments for taking the date out of the Bill are compelling. It is not sufficient that only a Minister has the power to change the date. It is crucial for Parliament itself to be in charge of setting the date, once it has agreed the terms of departure.

I am always an optimist in these matters. The noble Lord, Lord Hannay, did the noble Baroness on the Front Bench a great disservice when he said that he knew in advance what she was going to say. We know that the noble Baroness is highly emollient and listens to debates in the House. She is not her noble friend Lord Callanan, who just reads from the script and is totally unresponsive to the mood of the House. We have great confidence that the noble Baroness will say that she has listened to the compelling arguments which have been put to her, particularly from her ducal colleague; that she is going to depart from the words in her script; that Her Majesty's Government will consider this matter on the basis of the overwhelming weight of arguments which have been put in this Committee and that she will be delighted to accept the amendments on the Order Paper this afternoon.

Viscount Hailsham: My Lords, I will speak briefly to Amendments 344 and 346 in my name. First, however, I find overwhelming the arguments in favour of Amendment 334 which have just been articulated by the noble Lord, Lord Adonis, my noble friend and other noble Lords. It is a grave mistake to put the exact date of departure into statute. I note that the noble Lord, Lord Hannay, rightly said that that was not the Government's original position. Amendment 346 is brought forward with a rather different motive and is broader in its purpose. Not only do I want to give Parliament the decisive say on the exit date; I want to give Back-Benchers the decisive ability to trigger that process. I simply do not trust the Front Benches on

this matter. If Back-Benchers in the House of Commons want to stop a hard Brexit; if they want to stop Brexit; if they want to stay in the European Union—which is my position—I want to enable them to put down a resolution which requires a debate on precisely those terms. That is why Amendment 346 expresses, perhaps clumsily, the idea that at least 150 Back-Benchers could table a Motion requiring the holding of a debate on exit. My purpose is simply to enable Parliament to say no to Brexit if that is its wish. By giving this decision on the date to Parliament, we are strengthening the arsenal available to parliamentarians to stop this unhappy process coming to the final end of Brexit. I believe that is a national disaster and Parliament should be able to stop it. It is in that sense that I speak to the amendments in my name.

6.30 pm

Lord Wigley: My Lords, I wish to speak to Amendment 335 in this group, which stands in my name. I agree wholeheartedly with the comments of the noble Viscount and, indeed, of other speakers in this debate.

My amendment would leave out,

"29 March 2019 at 11.00 p.m.",

and insert,

"the day concluding any implementation period or transition period agreed between the UK and the EU".

The question that arises is: why was 29 March put in in the first place? The only justification, other than the party political ones, is to give some certainty. That certainty disappears by virtue of the fact that we now have an amendment to the Bill that can change this date in any case. Businesses and others may take 29 March 2019 at 11 pm as gospel, and take decisions on that basis. They would clearly be wrong to do so, and we would mislead them by including that time and date in the Bill. It would be far better to have the flexibility afforded by one or other of these amendments.

I have referred to the,

"implementation period or transition period",

for a specific reason: either those words mean something or they do not. The concept of an implementation period means that implementation is at the end of that period, which means that is the point at which we would leave all the institutions of Europe, the treaties and their implications, and all the rest. Transition means the same thing. If it does not mean that, what does having those periods mean? The Government's intention needs to be clarified. When it comes to the final decision, Parliament should be aware of as many of the details that have come out of the negotiations as possible, so that taking a decision is as clear-cut as it can be. However, we will not know that until the very last moment, perhaps because nothing is agreed until everything is agreed. We know how some of the negotiations in Brussels have gone on. It could be the 23rd hour when that decision comes together. Flexibility must be built into the Bill by one or other of these amendments to enable Parliament to take the final decision.

Baroness Wheatcroft (Con): My Lords, I support this group of amendments, particularly Amendment 345 in my name.

My noble friend Lord Bridges, who I am glad to see in his place, told the House, when he was no longer the Minister for exiting the European Union, that entering a transition period could risk stepping off the "gangplank into thin air". He is right. To reach 11 pm on 29 March next year and exit the EU without being fully aware of where we are going is foolhardy in the extreme. Advocates of the transition period—I guess we have to believe that "transition period" means transition period—claim that it gives business the certainty it craves, but the exact opposite is the case. Businesses would be left hovering in the thin air to which my noble friend referred, without any idea of where to go afterwards. The status quo would be preserved for a few months longer, near enough, but what would come next? Therefore, I support these amendments with their option of extending the Article 50 period while negotiations continue. That way, once the final terms of exit are clear, the country would not be forced off that gangplank come what may, as others have already said. Parliament would have the choice whether to take that course of action or not. It could simply revoke the Article 50 notice. These amendments are about Parliament taking back control of the Brexit process. That has to be desirable. We should not endorse the Government slamming the stable door before the horse has even entered.

Lord Wallace of Saltaire (LD): My Lords, I very strongly support these amendments. I stress that we are locking ourselves into leaving the European Union on a specific timetable which is coming up very soon, given that nothing much will happen in the summer and that it will take some time to get ratified whatever interim withdrawal agreement is agreed by this October. We are up against a very short deadline. The reasons why this is a mistake include that the Government lost a great deal of time unnecessarily in negotiations within government and the Cabinet, and with their own right wing, before they got down to the detail of the negotiations to which they are now committed.

As the Government negotiate, we are discovering a substantial shift of tone. The Prime Minister's Mansion House speech made it clear that she wants to stay associated with a very large number of European Union agencies. There is talk of a large and ambitious new security treaty between the UK and the European Union, and Commons committees and committees of this House have said that it is absolutely in Britain's interests that we remain associated with Europol, data sharing and a whole host of other things which only EU membership gives us.

Lord Dykes: Is the situation not actually worse than that? The noble Lord referred to the Government's position after the election but, of course, I am sure he would agree that the Government completely lost their mandate to pursue these negotiations anyway in that election result, due to the effect of the result coupled with a dodgy alliance with the DUP. Does he agree?

Lord Wallace of Saltaire: I am not sure I would say that the Government completely lost their mandate. They emerged from the election a good deal weaker than they were before. Unfortunately, I am not sure that anyone else had a mandate at the end of it, either. I give way to my noble friend, I should say.

Lord Forsyth of Drumlean (Con): I am most grateful to my noble friend. On that basis, did the Liberals lose their mandate to call for a second referendum?

Lord Wallace of Saltaire: I have indeed said that none of us gained a mandate from the election. That is precisely the position in which we all find ourselves. We should therefore be modest and moderate in the way in which we attempt to interpret the confused and disengaged opinion of the British public, with which we now struggle.

In the Statement the Prime Minister has just given in the Commons, which is about to be repeated in this House, I was very struck by the warmth it attaches to our co-operation with our European partners, the solidarity we gain from other members of the European Union with whom we have "shared values and interests", and the assumption that we need to continue to co-operate with them on major issues from resisting President Trump's tariffs and Russian threats to a range of other areas from which we will absent ourselves in March 2019 under the current arrangement. Therefore, as these negotiations move on, we need to continue this process of discovering where our interests lie, how we will continue to co-operate with our neighbours and partners if and when we leave, and not to leave until we are sure that we have a worthwhile alternative arrangement agreed.

We know why this measure is in the Bill: the hardliners in the Conservative Party and the Government have reached a point where they are prepared to accept all sorts of concessions that the Prime Minister may make to the European Union so long as we leave. The most important thing for them is that we leave what they consider to be the hated domination of the European Union. They have no thought of shared values and interests because they want to be out of the European Union. They want to be out even if we have a transition period of a further 21 months in which we continue to accept and follow all the rules and regulations of the European Union without being present around the table.

It is absolutely against the national interest for us to leave the table until the end of the transition period or to do so until we know—and Parliament has agreed—what our future relationship with the European Union will be in a range of economic, foreign policy, defence and internal security areas. We must not be stuck, as other Members said, because we have a fudge in October and a general political agreement without much content, and, following the Foreign Secretary saying to us, "You're all too pessimistic about this. Let's just be optimistic", we then jump in, splash, and hope that the water is deep enough.

Lord Tugendhat (Con): My Lords, this is the only intervention I will make in Committee, and I shall do it rather less contentiously than my old friend, the noble Lord, Lord Wallace of Saltaire. However, I agree with the underlying thrust of what he said, just as I agreed with the noble Lord, Lord Hannay, and the noble Duke, the Duke of Wellington.

At the heart of these amendments is a matter of trust. Initially, the change was put into the Bill, as a number of noble Lords said, because there were people in this party and in the Government who doubted the Prime Minister's and the Government's resolve to take us out of the European Union. I do not think that anybody can doubt her resolve on that point now, or doubt the resolve of the Government. The negotiations are moving ahead, and, whether or not one is quite as optimistic as Mr Davis was on television yesterday, clearly they are moving ahead better than many people at one time expected, and a deal looks a likely outcome. Therefore we do not need to worry about giving credibility to the Government's ambition; we need to worry about making sure that we are in a position to secure the best deal we possibly can.

Anybody who has been involved in a negotiation, whether international or commercial, or to buy a house, knows that if one puts a gun to one's head, one puts oneself at a great disadvantage. It seems extraordinary that we should be confronted with the proposition in a Bill of this sort that puts our negotiators at a disadvantage. Then there is the other point, which my noble friend Lord Hailsham and others have raised, on parliamentary sovereignty. The Bill takes the decision out of the hands of Parliament, because the curtain comes down at a particular point. Again, that makes it harder than it need be for us to secure the best possible deal.

There has been a large element of unanimity in this debate. Although I recognise that my noble friend on the Front Bench is no doubt operating within tight guidelines, I hope that she will be able to indicate that, having heard the contributions to this debate and having registered the unanimity, she will be able to undertake to go away and think about it and try to find some means to ensure that we do not put a gun to our negotiators' heads.

Lord Bowness (Con): My Lords, I will speak briefly to the amendments in this group, particularly Amendment 343, to which my noble friend the Duke of Wellington has already spoken.

The Government frequently tell us from the Dispatch Box that they require flexibility in the negotiations, despite at the very beginning having ruled out the customs union, the single market and anything to do with the Court of Justice. Almost every single day brings to the forefront new problems that have not been recognised to date. Whether it is Gibraltar, Northern Ireland, the motor trade or pharmaceuticals, the difficulties are enhanced by our inability to contemplate the arrangements that we have already ruled out. I fear that the Government still refuse to tell people that the method of executing what they apparently see as a binding instruction to leave is deeply flawed. It would be possible to leave and remain in the customs union and the single market and recognise the Court of Justice for certain purposes. Indeed, this is being recognised in the proposed transition or implementation agreements which are being talked about.

6.45 pm

I say to my noble friend on the Front Bench that this amendment seeks to remove yet another self-imposed fetter on our ability to operate in the interests of the country. We have heard that this arbitrary date was

added, and we all know the reasons for it. However, the interests of people whose main interest appears to be our exit in almost any circumstances, however disastrous, must not be allowed to determine what is in the Bill. If the date is removed, it will give the Government the flexibility that they constantly claim they want in these matters. It does not threaten the Bill and it is not designed to thwart the will of the people but to ensure that the Government may act in the best interests of the country and the people rather than the interests of a small number of anti-EU ideologues.

Lord Dykes: My Lords, I will briefly add words of support for this bunch of amendments. It is no surprise that there is a large collection of amendments on this subject, because of the importance of making sure that there is flexibility on the date. In that context, I also particularly commend the last amendment on the list, which contains the proposed new clause tabled by the noble Viscount, Lord Hailsham, in considerable detail, and particularly the possible linkage between the decisions of the House of Lords and those of the House of Commons in proposed subsections (5) and (6) of that new clause. I welcome proposed subsection (2), which states:

"A motion for a resolution for the purposes of this section may be made in the House of Commons only if … 150 Members of the House of Commons are signatories of the motion".

I agree with those who keep saying in these debates, but particularly in this one, not just on the date, that because so much of the content of the negotiations has been different from what we expected—not least, for instance, the proposed adhesion of the Government to a number of important EU agencies, and a number of other things—and because of the scope and nature of the transitional period, which certainly was not anticipated as such in the way it has now materialised, once we know the detailed outcomes of the negotiation we should as a Parliament be entitled to have the final say, which of course also means rejecting it if it is an impossible deal. I very much agree with the powerful words of the noble Viscount, Lord Hailsham, who said that the whole thing is a national tragedy anyway, and one has to keep saying that in the background. I know that the Bill deals with the technicalities, but it is important to repeat that thought as an ominous forewarning of what will happen when these difficult decisions are made. After all, we remind ourselves that the 2016 referendum was a judgment on a Government as if in an election, but without knowing what the Opposition were suggesting, and the Opposition have gradually made more suggestions as time has gone on.

The whole atmosphere and background and the detailed content thereof in British politics have changed enormously as time has gone on. That therefore affects the flexibility on the date, and the Government need to be laying out all the options as time goes on from now on. I have little confidence that they will be able to do that successfully, therefore we have to stick to our last on this matter of insisting that, with its renewed sovereignty, Parliament—which decided on the Second World War, joining NATO, having the atom bomb and the UN, all of which happened without referendums—insists on a proper flexibility on time.

Viscount Ridley (Con): It seems from what the noble Lord is saying that the purpose behind these amendments is to keep open the possibility of preventing or reversing Brexit, which is very different from the purpose that my noble friend Lord Tugendhat outlined, of getting a better deal for Brexit. Will he clarify that difference?

Lord Dykes: All the amendments are designed, rather like the noble Lord, Lord Tugendhat, inferred, to improve the technicalities of the Bill, despite people having different views on our future membership or not of the European Union. There may be a stronger content in, for example, some of the suggestions made by the noble Viscount, Lord Hailsham, which I fully support, but that is perhaps the only such example in that cluster.

Lord Cormack: My Lords, I have one simple message: do not tie the hands of those negotiating on your behalf.

Lord Lamont of Lerwick (Con): Will my noble friend at least acknowledge that if his concern is that the Government will be boxed in, he should be aware that the Bill allows Ministers to extend the date by order?

Lord Cormack: Yes, but it is therefore contradictory to have a specific date written in the Bill because the Government are answerable to Parliament and Parliament is sovereign, as we have said many times over the past few weeks; it seems like an eternity. The one message we should convey is that we should not seek to tie the hands of those who are negotiating. We will do so if we put a particular date in the Bill. Failure to reach agreement by that date will then be trumpeted abroad as a failure. None of us wants that. There must be flexibility.

Lord Forsyth of Drumlean: With respect, my noble friend has not dealt with the point made by my noble friend Lord Lamont. He says that Parliament must have sovereignty but the House of Commons amended the Bill to allow Ministers to change the order if necessary. That would require the approval of Parliament, so what is he talking about?

Lord Cormack: Very simply, I am talking about the fact that the Bill, as it is before the Committee, has a specific date in it. The purpose of these amendments—tabled by my noble friend the Duke of Wellington and others—has been to give the flexibility that the Bill does not allow at the moment. I am surprised if my noble friend cannot see that. I am not arguing against the prudent and excellent speech made by my noble friend Lord Tugendhat. He made the point as effectively as anybody could. Therefore, let us try to unite on Report around an amendment that will give the additional flexibility that changes in the other place have not given.

Viscount Hailsham: Does my noble friend assent to the proposition that Back-Benchers in the House of Commons should be able to trigger the process, as well as Ministers?

Lord Cormack: Parliament must have that ability and most Members of Parliament are Back-Benchers, so it is axiomatic that that is the case and I hope that we will come to an agreement on Report that will, in effect, satisfy the purpose of these different but complementary amendments.

Lord Newby (LD): My Lords, as a co-signatory to Amendments 334 and 343, I support them and the thrust of the debate. It can be summarised in a sentence from the noble Lord, Lord Hannay, who said that it was neither necessary nor desirable to have 29 March in the Bill, which was why that date was not in the Bill in the first case.

Noble Lords on different sides of the argument have suggested why there may be a need to be flexible at the end. Can the Minister help me to understand the draft agreement, published last week, which seems to admit of one of them? In Article 168—entry into force and application—a paragraph is printed in yellow, which means that the negotiators have agreed on the policy objective. So, the Government have agreed the following policy objective:

"This Agreement shall enter into force on 30 March 2019. In case, prior to that date, the depositary of this Agreement has not received the written notification of the completion of the necessary internal procedures by each Party, this Agreement may not enter into force".

That seems to admit of two possibilities. One is that there is a slight delay until the depositary has received the necessary notification of all parties to the agreement, including the European Parliament as well as this one, having gone through those procedures. The other potential meaning—I cannot believe that it is the meaning but it is not clear—is that if by, say, 1 April the European Parliament has not notified its agreement to the agreement, the agreement would fall. I cannot believe that that is the meaning. I thought that the meaning must be that if the formalities of the parties of the agreement have not been completed, the agreement is in abeyance until they have been. It raises the interesting subsequent question as to how the two-year period in Article 50 is interpreted. Can the Minister attempt to explain that position and what the Government understand by the meaning of Article 168 to me?

The bigger point I seek to make is that there are a number of reasons why it may be in everybody's interests to slightly change the date on which our exit is triggered. The way in which the Bill has been amended does not facilitate that process and it should therefore revert to its original drafting.

Baroness Goldie: My Lords, I first thank all noble Lords who have participated in an interesting and very spirited discussion. I know that the issue of exit day in the Bill is important to many in this House. That was certainly the case in the other place, where—as a number of your Lordships have mentioned—multiple alterations were made to the original drafting of the Bill. I hope noble Lords will indulge me in a bit of scene-setting.

Initially, the Bill gave full discretion to the Government on the setting of exit day for the purposes of the Bill, subject to no parliamentary scrutiny procedure. It was also technically possible for Ministers to set multiple exit days for different purposes. Indeed, the noble Lord, Lord Hannay, referred to that. For some parliamentarians, this mechanism was not acceptable because it gave rise to uncertainty as to whether the exit day appointed by the Bill would correspond to the day that the UK actually leaves the EU at the end of the Article 50 process, which had always been the Government's intention. Therefore the Government brought forward amendments to set exit day in the Bill as 11 pm on 29 March 2019. That was to bring the Bill in line with the calculation of the estimated date and time of exit under Article 50.

However, as the Bill progressed through the other place, some Members highlighted that our first set of amendments did not fully represent a technical alignment with our legal options under international law. To align fully, we would have to provide a mechanism for exit day in the Bill to change, corresponding to the detail of Article 50.3 of the Treaty on European Union. Let me make clear to your Lordships that this is a mechanism that the UK does not have any intention of using. None the less, this anomaly had been highlighted, so a technical amendment to the Bill was tabled that allows the Government to change exit day as defined in the Bill, but only if the date at which the treaties cease to apply to the UK changes from its currently envisaged moment on 29 March 2019.

Any such regulation changing this date in the Act would be subject to the affirmative procedure. I stress that the Clause 14 power does not have access to the "made affirmative" procedure, so the normal timetabling process would apply to any regulations made to amend exit day. That is where we are now with the drafting of the Bill, and I suggest to your Lordships that there are a number of reasons why this position should not change.

First, this issue has clearly been scrutinised heavily in the other place. Indeed, it was possibly one of the most politically salient areas of the Bill, and certainly one of the most amended. Secondly, a sensible, mutually agreeable position was reached in the other place. It was not earmarked as an issue to come back to; it was a settled policy position and it commanded a comfortable majority. Finally, and most importantly, the Bill now matches the reality of the UK's position under international law. This is the key point: exit day within the Bill should not be significant in and of itself, as it merely mirrors the actual moment at which we leave the EU under international law. Importantly, exit day is the clearly defined pivot on which this Bill turns. With the greatest respect to noble Lords, I therefore cannot support the amendments that seek to alter or undo the compromise reached in the other place.

Let me now try to analyse and comment on the specific amendments.

7 pm

Lord Hannay of Chiswick: I am most grateful to the noble Baroness for giving way. She seems to have overlooked the fact that the Government will be perfectly capable of putting a date into the implementation Bill, which they have told the House will be brought forward before 29 March and which will be after the conclusion of the negotiations, and that will not present the same problems as doing it now. She also, if I may say so, has

not dealt with the fact that it is frankly irrelevant whether, when the Government tabled the Bill, the non-mention of 29 March left it all to Ministers or left it all to Parliament. What is relevant is that the Government did not see the need to put 29 March in the Bill at all.

Baroness Goldie: Turning to the last point first, I have, for the sake of the noble Lord, tried to clarify where the Government were—as he rightly indicates—where they went, and why they went to that position. I cannot add to that: that is why we are in the position that we currently are. I will cover his other point about the connection with the implementation Bill, and I hope he will show me forbearance and let me deal with it.

I turn to Amendments 334 and 343, tabled by the noble Baroness, Lady Hayter, which seek largely to bring the Bill back to the state of its original drafting. However, as I have already set out, the Bill was not acceptable to the elected Chamber in that state. Instead, an acceptable compromise was reached that does two things: it simultaneously diminishes the power of Ministers in exercising delegated powers and increases the role of Parliament. It also introduced flexibility in varying the date, if required. It is not the case, as the noble Baroness suggested, that it is a straitjacket. That fear of rigidity and inflexibility was echoed by the noble Lord, Lord Hannay, in relation to the hypothetical extension of the Article 50 period. If that were to happen, exit day would then be linked to when the treaty ceased to apply, and the flexibility to vary the date is then expressly provided for in the Bill.

The noble Baroness, Lady Hayter, was worried that the insertion of a specific date in the Bill would somehow prejudice the Government's ability in the negotiations. However, it is the very flexibility that is now in the Bill that enables the Government to respond sensibly and responsibly to whatever the negotiations may produce. That was also a fear on the part of my noble friend Lord Tugendhat and others, but the Government argue that, far from the flexibility prejudicing the negotiations, it facilitates and provides elasticity in the conduct of the negotiations. Given that, I regret that I am unable to support the noble Baroness and the Opposition Front Bench in attempting to overturn the existing provisions of the Bill. We believe that what emerged from the other place strikes the right balance.

I understand that there are concerns regarding the interplay between the implementation period and exit day. However, as I will reiterate shortly, this is not a Bill designed to legislate for the implementation period.

I move now to Amendment 345A, tabled by the noble Lord, Lord Adonis, which would remove part of Clause 14(4)(a). It always distresses me to disappoint the noble Lord, Lord Adonis, but not only am I not departing from my script—as he was speaking, I was busily adding to it. With his amendment, if the date at which the treaties cease to apply to the UK is different from the date we have put in the Bill, Ministers could amend the definition of exit day to any new date and not just the new date on which the treaties will cease to apply, as the Bill currently prescribes. The Government are conforming to international law, and we want to keep the Bill in line with that position. That is why we are unable to accept the noble Lord's amendment.

Amendments 344 and 346, tabled by my noble friend Lord Hailsham, take a different approach, including seeking to insert a new clause which would make the exercise of powers under Clause 14(4) subject to a parliamentary resolution. Paragraph 10 of Schedule 7 already provides explicitly for a parliamentary vote on any changes to exit day. This was part of the compromise reached in the other place and is, I suggest, an appropriate level of scrutiny.

Amendment 334A, tabled by the noble Lord, Lord Adonis, attempts to shift the setting of exit day into the statute enacted for the purpose of Clause 9(1) of this Bill. I understand the noble Lord's amendment to mean that he wishes exit day to be set in the withdrawal agreement and implementation Bill—something to which the noble Lord, Lord Hannay, referred a moment or two ago. With respect, I think we are familiar with the sentiments of the noble Lord, Lord Adonis, when it comes to leaving the EU, and I appreciate that within this House he is not alone. However, with regards to Clause 14, the failure to set an exit day for the purposes of this Bill has no bearing on whether or not we leave the EU, but such a failure certainly affects the manner in which we leave. If we cannot set an exit day, many functions of the Bill which hinge upon it—such as the repeal of the European Communities Act and the snapshot of EU law—would simply not occur. That would render the Bill largely redundant, preventing us from providing a fully functioning statute book and creating a void leading to total legal uncertainty when we leave—but we shall still leave.

Amendment 335, tabled by the noble Lord, Lord Wigley, attempts to set exit day at the end of the implementation period. I can appreciate the argument made here, which has been mirrored by some of the contributions made today. However, it is not the role of this Bill to legislate for the implementation period; that is for the forthcoming withdrawal agreement and implementation Bill. To do so in this Bill would link its operation inextricably to the ongoing negotiations, which is not the intention of this Bill. This Bill is intended to stand part and is—I have used the phrase previously—a mechanism or device whereby we avoid the yawning chasm which would occur if a huge bundle of very important law disappeared into a black hole. We cannot allow that to happen.

I accept that Amendment 345, tabled by my noble friend Lady Wheatcroft, is well intentioned. However, I suggest that it is unnecessary. I believe that the intention behind this amendment is to ensure that exit day can be changed if Parliament resolves to instruct the Government to request an extension of the Article 50 process—this was the point to which the noble Lord, Lord Hannay, referred. But as I pointed out earlier, if the Government were to make such a request, and that request was granted, the power would be engaged by virtue of subsections (3) and (4) anyway, so it is covered. I also reiterate a point made in an earlier debate that, fundamentally, it is our belief that we should not extend the Article 50 period and that this Bill is not the vehicle to raise questions of whose role it is to act on the international plane.

I finish by quoting directly from the Constitution Committee's report on the Bill, which I know we all hold in high regard. It said that, on exit day:

[Baroness Goldie]

"The revised definition of 'exit day' in the Bill sets appropriate limits on ministerial discretion and provides greater clarity as to the relationship between 'exit day' as it applies in domestic law and the date on which the UK will leave the European Union as a matter of international law. It also allows the Government a degree of flexibility to accommodate any change to the date on which EU treaties cease to apply to the UK".

I realise that I may not have persuaded all of your Lordships of the Government's position but I would at least hope that noble Lords will have some regard to the committee's assessment of this issue. On that note, I hope the noble Baroness will agree not to press her amendment.

The noble Lord, Lord Newby, asked a pertinent question. He said that the Government have indicated in the draft agreement published recently that certain provisions apply, and he referred to a particular paragraph. I merely remind him that the Government have said before that nothing is agreed until everything is agreed, and the exit day power gives the Government the flexibility to reflect whatever is agreed in the final text of Article 168.

Lord Newby: I am grateful to the noble Baroness for that. I agree that nothing is agreed until everything is agreed, but that document states on the front of it that the Government have agreed the policy in it when it is marked as a yellow paragraph. Given that the Government have agreed that policy—there is no trick here—I want to work out what it means.

Baroness Goldie: It is a statement of very healthy and good intention. Nothing is agreed until everything is agreed, but it is certainly a signpost as to where we hope to go.

Baroness Hayter of Kentish Town: My Lords, one of the questions asked earlier was: what would happen if the European Parliament refused to give its consent? I have a note here from the European Parliament—it advises me that it is not legal advice and is not binding—which certainly says:

"if Parliament"—

that is, the European Parliament—

"refused to give its consent to a draft agreement negotiated by the European Commission, the Council would not be able to conclude the agreement with the withdrawing state".

That is quite a serious thing to be reminded of.

Someone said earlier that there have been strong views across the Committee on this issue. As the noble Viscount, Lord Hailsham, said, it would be a grave mistake to put the date in statute. However, I disagree with him that the purpose of the amendment—certainly from our point of view—is to halt or up-end everything that is going on. Its purpose is to help the Government to get a better deal. The noble Duke, the Duke of Wellington, put it very pragmatically: he said that we may not be ready for this yet. He also said that we might not yet have got through what I call the "Withdrawal (No. 2) Bill". However, we have not yet had the immigration Bill, the fishing Bill, the agricultural Bill, the customs Bill or the trade Bill—and there may be a VAT Bill as well. We may find ourselves in a position where we are not ready as a Parliament by the date written into the Bill. That is not a sensible way forward.

The noble Lord, Lord Wallace, said that we should not leave until a worthwhile arrangement has been agreed. This is all about giving us time to do that—and that is certainly what we have been looking to do.

Lord Wallace of Saltaire: I reinforce what the noble Baroness has said. We may well face a legislative logjam in both Houses in the autumn of this year. Given the number of Bills that are waiting to come into this House and the possible complexity of an implementation Bill, one of the problems we may face is a simple lack of parliamentary time. Perhaps the Leader of the House might, at some point in the near future, give a preliminary statement on how she thinks we will manage the number of Bills on which we still have to provide scrutiny.

7.15 pm

Baroness Hayter of Kentish Town: I am grateful to the noble Lord. I am not sure whether the back of the noble Lord, Lord Duncan, or my voice will give up first if we have to deal with all those Bills and we are here all night. We will take money on that one, I think—but there is a real problem there.

The noble Lord, Lord Tugendhat, who I think knows more about negotiating than some people, said that we need to be able to secure the best deal we possibly can and that putting a gun at one's head puts us at a disadvantage. I am sure no one wants to do that. Others used different language. The noble Lord, Lord Bowness, said that we must remove this self-imposed fetter and that if we can get the date off the Bill the Government will have the flexibility that they say they want.

I wish to make two other points. First, on the issue raised by the noble Lord, Lord Lamont, that we should not worry about this because Ministers could change the date if it proved necessary, at that stage it would be obvious all round Europe that we had had to do it, which does not look like strengthening our hand. Technically, of course, he is correct, but I am not sure it would be the best way forward in PR terms.

The Minister said that fixing the date provides elasticity in negotiations. I do not understand how that would work. To fix a date would take elasticity away. I am also not persuaded by her view that it could not be put into the second Bill, as the noble Lord, Lord Hannay, said. The words "exit day" could be in this Bill, but the specific date could be put in once we know what the withdrawal deal is. We will also know how many hurdles we have to get over and how much extra legislation we might need. I do not think that I am the only one who is not persuaded but, for the moment, I beg leave to withdraw the amendment.

Amendment 334 withdrawn.

Amendments 334A to 336 not moved.

House resumed. Committee to begin again not before 8.16 pm.

European Council

Statement

7.16 pm

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

"Mr Speaker, before I turn to the European Council, I am sure the whole House will join me in sending our deepest condolences to the families and friends of those killed in the appalling terrorist attack in Trèbes on Friday. The House will also want to pay tribute to the extraordinary actions of Lieutenant Colonel Arnaud Beltrame who, unarmed, took the place of a hostage and gave his own life to save the lives of others. Son sacrifice et son courage ne seront jamais oubliés.

Just last week we marked the first anniversary of the attack on Westminster and remembered the humbling bravery of PC Keith Palmer. It is through the actions of people like PC Palmer and Lieutenant Colonel Beltrame, that we confront the very worst of humanity with the very best. And through the actions of us all—together in this Parliament and in solidarity with our allies in France—we show that our democracy will never be silenced and our way of life will always prevail.

Turning to the Council, we discussed confronting Russia's threat to the rules-based order. We agreed our response to America's import tariffs on steel and aluminium, and we also discussed Turkey and the western Balkans, as well as economic issues including the appropriate means of taxing digital companies. All of these are issues on which the UK will continue to play a leading role in our future partnership with the EU after we have left. And this Council also took important steps towards building that future partnership.

First, on Russia, we are shortly to debate the threat that Russia poses to our national security—and I will set this out in detail then—but at this Council I shared the basis for our assessment that Russia was responsible for the reckless and brazen attempted murder of Sergei and Yulia Skripal in Salisbury and the exposure of many others to potential harm. All EU leaders agreed and, as a result, the Council conclusions were changed to state that the Council,

'agrees with the United Kingdom Government's assessment that it is highly likely that the Russian Federation is responsible and that there is no alternative plausible explanation'.

This was the first offensive use of a nerve agent on European soil since the foundation of the EU and NATO. It is a clear violation of the Chemical Weapons Convention and, as an unlawful use of force, a clear breach of the UN charter. It is part of a pattern of increasingly aggressive Russian behaviour and represents a new and dangerous phase in Russia's hostile activity against Europe and our shared values and interests. I argued that there should be a reappraisal of how our collective efforts can best tackle the challenge that Russia poses following President Putin's re-election.

In my discussions with President Macron and Chancellor Merkel as well as with other leaders, we agreed on the importance of sending a strong European message in response to Russia's actions, not just out of solidarity with the UK but recognising the threat posed to the national security of all EU countries. The Council agreed immediate actions, including withdrawing the EU's ambassador from Moscow. Today, 18 countries have announced their intention to expel more than 100 Russian intelligence officers from their countries, including 15 EU member states as well as the United States, Canada and Ukraine. This is the largest collective expulsion of Russian intelligence officers in history.

I have found great solidarity from our friends and partners in the EU, North America, NATO and beyond over the past three weeks as we have confronted the aftermath of the Salisbury incident. Together we have sent a message that we will not tolerate Russia's continued attempts to flout international law and undermine our values. European nations will also act to strengthen their resilience to chemical, biological, radiological and nuclear-related risks as well as bolstering their capabilities to deal with hybrid threats. We also agreed that we would review progress in June, with Foreign Ministers being tasked to report back ahead of the next Council.

The challenge of Russia is one that will endure for years to come. As I have made clear before, we have no disagreement with the Russian people who have achieved so much through their country's great history. Indeed, our thoughts are with them today in the aftermath of the awful shopping centre fire in Kemerovo in Siberia. But President Putin's regime is carrying out acts of aggression against our shared values and interests within our continent and beyond, and as a sovereign European democracy, the United Kingdom will stand shoulder to shoulder with the EU and with NATO to face down these threats together.

Turning to the United States' decision to impose import tariffs on steel and aluminium, the Council was clear that these measures cannot be justified on national security grounds and that sector-wide protection in the US is an inappropriate remedy for the real problems of overcapacity. Last week, my right honourable friend the Secretary of State for International Trade travelled to Washington to argue for an EU-wide exemption. We welcome the temporary exemption that has now been given to the European Union, but we must work hard to ensure that it becomes permanent. At the same time, we will continue to support preparations in the EU to defend our industry in a proportionate manner, in compliance with WTO rules.

Turning to Brexit, last week the Secretary of State for Exiting the European Union reached agreement with the EU Commission negotiating team on large parts of the draft withdrawal agreement. These include the reciprocal agreement on citizens' rights, the financial settlement, aspects of issues relating to Northern Ireland such as the common travel area, and, crucially, the detailed terms of a time-limited implementation period running to the end of December 2020. I am today placing copies of the draft agreement in the Libraries of both Houses and I want to thank the Secretary of State and our negotiating team for all their work in getting us to this point.

The Council welcomed the agreement reached, including the time that the implementation period will provide for Governments, businesses and citizens on both sides to prepare for the new relationship we want

[Baroness Evans of Bowes Park]
to build. As I set out in my speech in Florence, it is not in our national interest to ask businesses to undertake two sets of changes, so it follows that during the implementation period, they should continue to trade on current terms. While I recognise that not everyone will welcome a continuation of the current trading terms for another 21 months, such an implementation period has been widely welcomed by British business because it is necessary if we are to minimise uncertainty and deliver a smooth and successful Brexit. For all of us, the most important issue must be focusing on negotiating the right future relationship that will endure for years to come. We are determined to use the implementation period to prepare properly for that future relationship, which is why it is essential that we have clarity about the terms of that relationship when we ask the House to agree the implementation period and the rest of the withdrawal agreement in the autumn.

There are of course some key questions that remain to be resolved on the withdrawal agreement, including the governance of the agreement and how our commitments to avoid a hard border between Ireland and Northern Ireland should be turned into legal text. As I have made clear, we remain committed to the agreement we reached in December in its entirety. This includes a commitment to agree operational legal text for the 'backstop option' set out in the joint report, although it remains my firm belief that we can and will find the best solutions for Northern Ireland as part of the overall future relationship between the UK and the EU. I have explained that the specific European Commission proposals for that backstop were unacceptable because they were not in line with the Belfast agreement and threatened the break-up of the UK's internal market. As such, they were not a fair reflection of the joint report. But there are many issues on which we can agree with the Commission and we are committed to working intensively to resolve those which remain outstanding. I welcome that today we are beginning a dedicated set of talks with the European Commission and, where appropriate, the Irish Government, so that we can work together to agree the best way to fulfil the commitments we have made.

We have also been working closely with the Government of Gibraltar to ensure that Gibraltar is covered by our EU negotiations on withdrawal, the implementation period and the future relationship. I am pleased that the draft agreement published jointly last week correctly applies to Gibraltar, but we will continue to engage closely with the Government of Gibraltar and our European partners to resolve the particular challenges that our EU withdrawal poses for Gibraltar and for Spain.

Following my speeches in Munich and at Mansion House setting out the future security and economic partnerships we want to develop, the Council also agreed guidelines for the next stage of the negotiations on this future relationship which must rightly now be our focus. While there are of course some clear differences between our initial positions, the guidelines are a useful starting point for the negotiations that will now get under way. I welcome the Council restating the EU's determination to,

'have as close as possible a partnership with the UK',

and its desire for a 'balanced, ambitious and wide-ranging' free trade agreement, for I believe that there is now an opportunity to create a new dynamic in these negotiations.

The agreements our negotiators have reached on the withdrawal agreement and the implementation period are proof that with political will, a spirit of co-operation and a spirit of opportunity for the future, we can find answers to difficult issues together—and we must continue to do so. Whether people voted leave or remain, many are frankly tired of the old arguments and the attempts to refight the referendum over the past year. With a year to go, people are coming back together and looking forward. They want us to get on with it and that is what we are going to do. I commend this Statement to the House".

My Lords, that concludes the Statement.

7.28 pm

Baroness Smith of Basildon (Lab): My Lords, I thank the noble Baroness for repeating the Statement. We fully endorse her comments about the extraordinary bravery of police officers both in the attack in France last week and here at home as we commemorated last week. We recognise the bravery and commitment of those who have lost their lives and we will never forget their actions, which are truly heroic. We should also pay tribute to the police officers and members of the other emergency services who never know what danger they may face on any and every day. They and their families live with the knowledge that they always have to be prepared to ensure that we are safe.

I turn to the security issues outlined in the Statement. We welcome the recognition of the necessity for co-operation. Specifically on Russia, we were grateful for such swift and strong support from President Tusk and the EU 27 following the Salisbury attacks. Even in the midst of what are obviously very tough negotiations, our EU partners have not hesitated to offer both solidarity and action, which emphasises our shared values. Action has now followed across the world, with the announcements today of Russian diplomats being expelled from European and North American countries. We look forward to further updates on the detail of future security arrangements, but is the noble Baroness able to provide any information on discussions regarding UK participation in vital schemes such as the European arrest warrant?

The Government have been reluctant in the recent past to take action to protect the British steel industry, so we welcome that the Secretary of State for International Trade has now joined in representations to the US Government against US-imposed tariffs on EU steel. But we have to ask: would he have been able to achieve this on his own, without the support of the other 27 nations? I wonder whether we might now see a conversion by the Secretary of State to the benefits of joint and co-ordinated action by the EU in all our interests. The exemption that has been achieved, while positive, is only temporary. With talks ongoing between the EU and US, I hope the noble Baroness will confirm that the Secretary of State will provide an update through a Statement in the House of Commons in due course.

Turning to Brexit and the discussions on key issues, the noble Baroness will know that we have been calling for an agreement on a time-limited transitional period and we welcome the Government's recognition of the necessity of this, not least for the British businesses that lacked certainty on their ability to trade with the EU after March next year. But although I understand the noble Baroness's and the Government's reluctance to use the word "transition", labelling it as an "implementation period", as in the Statement, is pushing it a bit when it then says it is an implementation period to "prepare properly" for the future. Surely an implementation period would be to implement what has been already been agreed, rather than to allow more time for Ministers to plan for the future.

As we heard in the debate this evening, the Government seem yet again to accept being tied into an absolute cut-off date. It seems a little like watching the sand run through an egg-timer and when it gets to the end, that is it. Does the noble Baroness accept that once the principle has been agreed that there is to be a time-limited period, as it now has been, there is a need for a little flexibility beyond having to return to Parliament? Such flexibility has no impact on the effect of the Bill and, as we heard in the last debate, it would be helpful and useful to the Government. I was sorry to hear the Minister, who is in her place at the moment, rejecting building such flexibility into the legislation. The Prime Minister has already discovered the pitfalls of setting firm deadlines when she rushed over to Brussels to announce the phase 1 agreement only to find she had not properly squared off the DUP. A couple more days were needed. Such flexibility would avoid that kind of embarrassment.

The Statement is clear that the issue of the Northern Ireland border remains to be resolved, but it seems that the Statement misses the crucial point. It talks of,

"how our commitments to avoid a hard border … should be turned into a legal text".

That is part of the issue, but the fundamental point is not about the legal text and the language to be used, but is about the policy agreement, the practicalities of delivering the frictionless border we all want and maintaining our commitment and operation of the Good Friday agreement. In her Mansion House speech the Prime Minister outlined her vision of a technological border, despite her Brexit Secretary's previous description of these proposals being as an example of what she called "blue sky thinking". If the Government insist that it is now just a matter of a legal text, can the noble Baroness tell us how the Government will give practical effect to the commitment that there should be no hard border in Northern Ireland?

I have two final points on clarity. Last week, this House passed two significant amendments on Euratom in the Nuclear Safeguards Bill. This issue was flagged up in the Prime Minister's Mansion House speech and is one of vital importance to the country. Can the noble Baroness clarify whether the Government will accept those amendments when they are considered in the Commons, and/or bring back alternatives in the withdrawal Bill?

My final request for clarity is on the position of UK nationals. The noble Baroness is aware that I have raised this numerous times in this House before, including on the previous EU Council Statement from the PM that said that the Government had protected the rights of UK nationals. I raised then that unless the issue of onward movement is addressed the Government will have disadvantaged UK nationals, but will have protected just some of our rights. I ask her to look at two documents. The first is the withdrawal agreement of 28 February. I thought it was clear, if, to me, unwelcome on this point. Article 32 says:

"In respect of United Kingdom nationals and their family members, the rights provided for by this Part shall not include further free movement to the territory of another Member State".

Then we had the updated document from last week. There is a mystery. Apart from the mystery that the noble Lord, Lord Newby, tried to raise earlier about what had been agreed and what had not, which the noble Baroness, Lady Goldie, was not able to answer, we have Article 31 on the development of law and adaptations of Union acts, but I looked for Article 32 and it has gone. It has disappeared. We move straight to Article 33. Where is Article 32 about the rights of UK nationals when we Brexit? What will happen to them? It has mysteriously disappeared. It is a blank piece of paper. If the noble Baroness can explain the missing article, where it has got to and whether it means the Government have now come to the negotiating table to protect the interests of UK nationals it would be extraordinarily helpful.

Lord Newby (LD): My Lords, I too thank the noble Baroness the Leader of the House for repeating the Statement. I echo her condolences to the families and friends of all those who died in Trèbes, particularly those of Lieutenant-Colonel Beltrame. On security, the Prime Minister is clearly to be congratulated on securing a co-ordinated EU response. To have 18 EU member states expelling Russian diplomats is clearly a major achievement. However, I wondered whether the noble Baroness would agree with the assessment from the noble Lord, Lord Ricketts, of why such an agreement is possible. He said:

"Those who weren't keen on nailing the Russians were brought along by the powerful instinct for consensus that develops over a long summit discussion. It will be much harder to get that amplification of a UK position from outside the EU".

It really is important to be in the room. Could the Leader say anything about how the Government will seek to replicate that ability to be in a room with other EU leaders when vital matters of our national security are being discussed in future?

More generally on our response to the Russian incident, when we debated this on the Prime Minister's previous Statement, a number of suggestions were floated by the Government about further action being taken against individuals. Could the noble Baroness tell us what further action the Government now contemplate?

On Brexit, I absolutely agree with the noble Baroness the Leader of the Opposition about the use of the word "implementation". It implies that there is something to implement. This is a standstill agreement or transition agreement; it certainly is not a period during which any agreement is being implemented. The process that has led to this agreement has been very instructive on the Secretary of State for DExEU's negotiating strategy. It seems to follow the following rules. First, make a

[Lord Newby]
series of extremely bellicose statements. Secondly, have no meetings whatever with your main interlocutor for three months. Thirdly, wait to see what the Commission's proposals are, having made no detailed proposals of one's own. Fourthly, just accept them all: the customs union, the single market, a £40 billion payment and the European Court of Justice having a rule during the transition period. These were all things that the Government were ruling out at the start.

On the most intractable issue of all, the Northern Ireland border, if I were the DUP I would be seriously worried about the UK's agreed fallback position of a customs union down the Irish Sea. The only alternatives that it has put forward are widely accepted as completely unsustainable and unworkable. The draft agreement applies the EU's solution—that is, of the border down the Irish Sea—unless and until another system is agreed, yet detail of another system there is none. There is a curious passage in the Prime Minister's Statement on which I would be grateful for the Leader's clarification. It reads:

"I have explained that the specific European Commission proposals for that backstop"—

that is, the border down the Irish Sea—

"were unacceptable because they were not in line with the Belfast agreement and threatened the break-up of the UK's internal market. As such, they were not a fair reflection of the joint report"—

that is, the December report. But they were in the December report. What has changed to make them unacceptable now when they were in the December report which the Government signed? I find that a remarkable statement.

On the agreement, most of it is in green, which is agreed, or in yellow, which is agreed in principle, but probably the biggest section in white, which is not agreed, is on ongoing police and judicial co-operation in criminal matters. This is a crucial element of the whole deal and of our relationship with the EU. What were the problems that have meant that we have not reached agreement in principle on the policy in that area? We have been able to reach agreement in principle on the policy on virtually everything else.

As for the future, the Government have so far produced no detailed proposals. Can the Leader give us some idea of whether the Government plan to do so at any point and whether Parliament might have an opportunity to discuss them?

The Prime Minister concludes:

"With a year to go, people are coming back together and looking forward".

Well, they are looking forward, but the emotions which that forward glance fill them with vary. The Prime Minister said that,

"many are … tired of the old arguments and the attempts to refight the referendum over the past year".

What does the Leader say to the majority of voters, including the majority of Conservative voters, who according to recent polling now believe that they should have a vote on any Brexit deal? How does the mantra of respecting the views of the British people sit with ignoring the views of the British people in respect of approving any final Brexit deal?

Baroness Evans of Bowes Park: My Lords, I am grateful to the noble Baroness and the noble Lord for their comments. I agree with them about the solidarity shown by our EU allies, for which we are extremely grateful.

At the Council meeting, the PM shared with our EU colleagues the basis of our assessment that Russia was responsible for the attack in Salisbury. It was that, along with our shared concerns with our EU partners, and of course more internationally with the United States, Canada and Ukraine, that led to today's action. The European Council President, Donald Tusk, said today:

"As a direct follow up to last week's European Council decision to react to Russia within a common framework … 14 Member states have decided to expel Russian diplomats. Additional measures, including further expulsions … are not to be excluded in the coming days and weeks".

As the Statement mentioned, we will return to this issue in the June Council meeting, as we see how things develop.

On steel, I can confirm to the noble Baroness that we will of course keep the House updated on discussions with the United States. We remain concerned about the impact of tariffs on global trade and will continue to work with the EU on a multilateral solution to the global problem of overcapacity. We have also played a leading role in other fora such as the G20 Global Forum last November in securing agreement on tackling unfair trading practices which harm steel producers. We are using all our international negotiations and diplomacy to make sure that we advance our arguments.

On the negotiations, there is flexibility within our approach. As the Statement said, we have reached agreement with the Commission negotiating team on large parts of the withdrawal agreement and aim to reach a final agreement on a legal text by October alongside the framework for our future relationship.

On Northern Ireland, which both the noble Lord and the noble Baroness mentioned, the Statement was clear: we have recognised that some key questions are outstanding, of which of course Northern Ireland is one. We are clear that we are committed to the joint report in its entirety, including reaffirming the Government's commitment to the Good Friday agreement, which needs to be protected in all its parts. We are committed to agreeing in the withdrawal agreement operational legal text for the so-called "backstop option" set out in the joint report. It remains our belief that we can and will find the best solutions for Northern Ireland as part of an overall future relationship. We are beginning a dedicated set of discussions with the European Commission and the Irish Government. We have been resolute in our commitments on Northern Ireland: no physical infrastructure at the border; putting the protection of the Belfast agreement at the heart of the negotiations, and protecting Northern Ireland's place in the UK internal market. We will continue to be so.

On the noble Baroness's question about Article 32, I am afraid I am not familiar with the detail, so I will have to investigate further and write to her.

We will bring forward primary legislation to implement the final agreement with the EU, which will be the withdrawal agreement implementation Bill, so there

will be ample opportunity for both Houses to discuss and consider it. Once we leave, the withdrawal agreement will be followed by one or more agreements covering different aspects of the future relationship, which may require further legislation.

Both sides have been clear that justice and home affairs co-operation is in the interest of both the EU and ourselves. We have so far focused on withdrawal issues and now move to the next stage of negotiations, where we anticipate a strong partnership on these issues. They are important to all of us, as recent events have shown.

7.46 pm

Lord Lamont of Lerwick (Con): My Lords, I welcome the progress on Brexit made at these negotiations. Yet again, when people said that no progress was possible, some significant progress has been made. On the basis, as has been said, that nothing is agreed until everything is agreed, if there is no trade agreement in the autumn, does that mean that no money will be paid to fill the gap in the EU budget, or at least no money will be paid until there is an agreement?

Baroness Evans of Bowes Park: As my noble friend said, we have been very clear that nothing is agreed until everything is agreed, but we are confident on the basis of developments so far that we will reach a positive relationship with the EU. On the withdrawal and implementation Bill, we will look at publishing the future framework for our relationship with the EU. Our offer in relation to the financial settlement was made in the spirit of our future partnership and depends on a broader agreement being reached, which we are confident it will.

Lord Liddle (Lab): My Lords, I congratulate the Prime Minister on her success in mobilising our EU partners at the Brussels summit on the Russia question. It was notable. The question is how we replicate it in a year's time.

Following up the question asked by the noble Lord, Lord Lamont, will the Leader confirm that what we will be faced with in the autumn is a framework of principles for the future and not a precise, clear trade agreement, which will take several years to negotiate after we have left the European Union—in other words, that we will be signing up to the withdrawal and implementation agreement without any real knowledge of what our future economic relationship with the European Union will be and that there is no question of being able to link the money that we are paid with that future relationship?

Baroness Evans of Bowes Park: The noble Lord is right that when we discuss the primary legislation on the withdrawal agreement and the implementation period, we will be doing so alongside a framework for the future partnership. We have been very clear, however, that we are committed to an ambitious future economic partnership, which we are confident we will achieve. We also believe we will develop a comprehensive security partnership. That is what we are doing now, moving into this phase of the negotiations.

Lord Marlesford (Con): My Lords, do the Government recognise that, on Russia, we probably face the same challenge this March as we did 72 years ago? In March 1946, the great Foreign Secretary, Ernest Bevin, denounced the Soviet system and all its works and a few days later George Kennan sent the famous "long telegram" to America to say that the choice was either to contain the Soviet Union or to confront it. The decision two years later, setting up NATO, was of course to contain. Do the Government favour containing or confronting Mr Putin?

Baroness Evans of Bowes Park: I think the actions today of our European partners and friends, in addition to those that we have taken, show that we will stand firm in the face of what has happened and Russia's reckless behaviour. Unfortunately, the Salisbury incident is part of a pattern of increasingly aggressive Russian behaviour and represents a new and dangerous phase in its activity. That is why measures have been taken now and why the Council has agreed further measures and to come back to this at the next meeting in June, with Foreign Ministers being tasked to report back ahead of the next Council. Once again, we are very grateful for the support, not just of our European partners but the United States, Canada and Ukraine, who have also taken action today.

Lord Campbell of Pittenweem (LD): My Lords, is not the hard fact that the key question for the Government is which do they regard as more important: the Belfast agreement or being out of the customs union?

Baroness Evans of Bowes Park: No, I do not think that is the question. As I have said, we are committed to the Good Friday agreement and to ensuring no hard border between Ireland and Northern Ireland.

Lord Dykes (CB): My Lords, I thank the Leader of the House for repeating the Statement today. A month ago, there was a previous Statement with the same amount of self-deception in it, which the Prime Minister issued in the Commons three days after her Mansion House speech. I agree with one of the sentences at the top of the conclusions page:

"We cannot escape the complexity of the task ahead".

Later, in conclusion, the Prime Minister said that,

"foremost in my mind is the pledge I made on my first day as Prime Minister: to act not in the interests of the privileged few, but in the interests of all our people, and to make Britain a country that works for everyone".—[*Official Report*, Commons, 5/3/18; col. 28.]

How on earth is that possible if we leave the European Union?

Baroness Evans of Bowes Park: It is perfectly possible and we have a very bright future ahead of us. That is why we want to work with the EU to have as close a partnership as possible and to have a balanced and wide-ranging trade agreement; that is why we are going out into the world to develop new trade partnerships. We have already opened 14 informal trade dialogues with 21 countries, from the United States to Australia and the UAE, and we have a presence in 108 countries. We are looking forward to the opportunities now and we will be working with our friends and partners in the EU to make sure we continue to have a strong and positive relationship with them.

Lord Bridges of Headley (Con): My Lords, I very much welcome the progress that has been made and I congratulate the Prime Minister and her negotiating team on what has been done. I am especially pleased by the passage in the Statement about the relationship we are seeking, which states that,

"it is essential that we have clarity about the terms of that relationship when we ask the House to agree the Implementation Period and the rest of the Withdrawal Agreement in the autumn".

Therefore will my noble friend clarify and confirm that the Prime Minister will not accept any withdrawal agreement that does not set out clearly how the processes at the Irish border will operate, and therefore will be ruling out in that withdrawal agreement the backstop option, but will be putting in an option that the Prime Minister finds satisfactory?

Baroness Evans of Bowes Park: We have been very clear that we believe we will find a satisfactory position on the Irish border. We are clear about that and we believe it is bound up with the discussions around our future relationship. Noble Lords will have ample time and opportunity to discuss that in more detail when the Bill comes to the House.

Lord Adonis (Lab): Will the noble Baroness say why the December agreement between Britain and the European Union referred to full regulatory alignment between the Republic of Ireland and Northern Ireland but not full regulatory alignment between the Republic of Ireland and the United Kingdom?

Baroness Evans of Bowes Park: As I have said, we remain committed to what was in the agreement. We will be working with the EU to move forward and to make sure that we get the proper and correct situation on the Irish and Northern Irish border that we are all seeking.

Baroness Smith of Newnham (LD): My Lords, the Prime Minister suggested that many are, frankly, tired of the old arguments. I confess that my heart sank slightly when the Leader suggested that there would be the opportunity to discuss all these issues all over again in the withdrawal agreement and implementation Bill. Clearly we have many opportunities to keep rehearsing the same issues, but surely the point is to move forward. One point that the Prime Minister made, which seemed so important, was that she had found great solidarity from our friends and partners in the European Union—and, admittedly, from our NATO allies—over the situation with Russia. What are Her Majesty's Government doing to work through how we retain close relations with the EU 27 assuming we leave on 29 March, or whenever, in 2019? It is by being in the room, discussing and getting to know our partners, that we have been able to get the sort of response that we achieved last week.

Baroness Evans of Bowes Park: These are exactly the issues we will be discussing in the next phase of the negotiations now that we have the EU guidelines and have set out our position.

Lord Forsyth of Drumlean (Con): My Lords, further to my noble friend Lord Lamont's question, I am just not clear on the position. Will my noble friend indicate—are our future payments to the EU dependent on achieving a satisfactory trade deal or not?

Baroness Evans of Bowes Park: As I have said, this offer is made in the spirit of our future partnership and depends on a broader agreement being reached.

Lord Lea of Crondall (Lab): My Lords, will the Leader confirm that our aspiration is to continue to have the sort of relationship we have with the European Council on all these interesting questions, such as on Russia and all the other things in the Statement? Does not continuing to have such a relationship depend on being part of a club that has rules? How does the Leader visualise squaring that circle in our future relationship?

Baroness Evans of Bowes Park: I think we will continue to have strong relationships because it is in all our interests. We work with our EU partners, with NATO and through the UN: we are involved in a whole array of international organisations. Other issues were discussed at the Council that have not yet been raised—our approach to Turkey and Afrin and issues around Cyprus, for example. We work with all our international partners in a whole range of areas. We bring a lot to the party, so do they, and we want to continue to do that. I see no reason why we cannot.

Lord Howell of Guildford (Con): My Lords, may I just explain something to your Lordships about the Northern Ireland border and the customs union? I do not think it is very widely understood. Of course, I spent considerable time there. There is a border and there are enormous differences between the jurisdictions of the Republic and Northern Ireland. They extend to education, health services, minimum wages, aspects of labour laws, excise duties and personal taxation. All these things are different so there has to be a controlled border. Furthermore, at the moment only 4% of the goods coming into the EU through Britain are checked by the customs authorities—HMRC. In the case of the Republic, only 1% of goods coming from outside the EU are checked by the Republic. What I am saying is that this is a tiny problem. It is mostly concerned with animals and animal welfare; it can all be done by pre-checking and online arrangements. The idea that it should be built up into a major issue of challenges about the whole customs union is completely disassociated from the facts of the situation on the ground.

Baroness Evans of Bowes Park: I agree with my noble friend that there are obviously issues that we overcome now without a hard border and we want to continue to do that. We believe we can achieve a deep trading relationship between the EU and the UK that means specific measures in relation to Northern Ireland are not necessary. We have also been very clear that we will ensure that the specific circumstances of Northern Ireland are recognised. That is what we will be working on intensively over the next few weeks.

Lord Wallace of Saltaire (LD): My Lords, I am sure we all wish to congratulate the Prime Minister on the active engagement she continues to have as a member of the European Council—but of course there will be only three more, or at most four more, European Councils in which she will be able to be an active participant before we leave. It is interesting to see that there is a commitment to,

"review progress in June, with Foreign Ministers being tasked to report back ahead of the next Council"—

we have great confidence that Boris Johnson will succeed in doing that—and that the Secretary of State for International Trade will,

"continue to support preparations in the EU to defend our industry".

If, after we leave, we plan to have some sort of institutional arrangement with the European Union in which we will participate, when will the Government start to explain to their public—including that section of the deeply divided British public which reads the *Daily Mail* or *Daily Telegraph* every day and does not believe that we ought to have any continued structural arrangement—what sort of arrangement they propose we should have? Over the past few months the Government have not explained to their public, except on the rare occasion of the Prime Minister's Mansion House speech, what sort of relationship they begin to envisage. We read about it in Commission documents but do not hear about it from our own Government. Is it not time that the Government began to spell out to us what sort of future relationship they see we might have?

Baroness Evans of Bowes Park: The European Council has just agreed its guidelines for negotiations. We have been very clear through the Prime Minister's speeches—Munich on security and Mansion House on economic partnerships, as the noble Lord mentioned—about the kind of relationship we want. We will now be putting flesh on those bones. The noble Lord made the point himself that the relationship between the UK and the EU will remain strong because we do want to work together in these international fora and we do face common threats and challenges. We can perfectly reasonably develop relationships in order to do that. We have shown that we are stronger together and that is what we will continue to be.

Viscount Waverley (CB): Did solidarity extend to the Prime Minister dissuading President Macron from attending the St Petersburg economic forum in May—or does the Leader anticipate that he will press on with his plans? Separately, is the Leader aware of the considerable disquiet that exists on the island of Anguilla regarding the reliance of its economy on the market of the EU countries of Dutch and French Saint Martin? Is she able to send a clear message to the people of Anguilla to allay their concerns following Brexit?

Baroness Evans of Bowes Park: I certainly can reassure the people of Anguilla. We are intending to negotiate on behalf of the entire UK family and our dependencies, and we will certainly do that. France has stood shoulder to shoulder with us. There was the statement from President Macron, Chancellor Merkel and President Trump, and today France has ordered four Russian diplomats to leave.

Lord Cavendish of Furness (Con): My Lords, I am much encouraged by the progress on the Brexit negotiations and congratulate the Government. Does my noble friend agree that being prepared for no deal provides our best chance of achieving a good deal?

Baroness Evans of Bowes Park: On the basis of what we have achieved so far, we are confident that we will achieve a deal—but, as any responsible Government would, we have to prepare for all scenarios. But on the basis of what we have achieved so far, we are confident we will come to a good deal.

Lord Kilclooney (CB): My Lords, when the United Kingdom leaves the European Union, will Northern Ireland still be part of the United Kingdom?

Baroness Evans of Bowes Park: We have been very clear that it will. We want to make sure that there is no hard border between Northern Ireland and Ireland and we will work to achieve that.

Lord Hope of Craighead (CB): My Lords, it seems to be agreed that the European Court of Justice will have a continuing role during the implementation period. Has any thought been given to whether the United Kingdom should continue to have representation on that court after exit day?

Baroness Evans of Bowes Park: The noble and learned Lord is absolutely right that during the implementation period there will continue to be a role for the ECJ. We will be leaving the jurisdiction once we leave the EU, although of course EU law and the decisions of the ECJ will continue to affect us; for instance, it determines whether agreements the EU has struck are legal under the EU's own law. But we will be leaving the jurisdiction.

Lord Whitty (Lab): My Lords, does the Leader recognise that in one respect and for key sectors of British industry, the Statement on Brexit negotiations is seriously misleading? It talks about the details of the so-called implementation period being settled when they are not fully settled, and about continuing to trade on current terms. But key sectors of industry will be excluded from the agencies of the EU that deal with the way in which they trade. That includes sectors that the Prime Minister herself has recognised, such as aviation, medicines and chemicals, where the EU's position is that we will be excluded from March next year. Will the Leader please ask her colleagues to issue an additional, revised statement explaining to those sectors and others, such as food and the nuclear industry, how the implementation period will actually mean that they will continue to trade on current terms—because in my view it will not?

Baroness Evans of Bowes Park: The implementation period will be based on the existing structure of EU rules and regulations. But, as was made clear in the previous Statement I repeated, we are working in the negotiations with the EU to look at the agencies that we would like still to be involved in, and those will be part of the discussions we have going forward.

Lord Thomas of Gresford (LD): Perhaps I might ask the Leader to answer the question that was put to her by the noble and learned Lord, Lord Hope. If we remain subject to the jurisdiction of the ECJ during the transition or implementation period, will we retain a British judge on the European Court of Justice, as we have hitherto had?

Baroness Evans of Bowes Park: As I have said, obviously we will continue to be under the jurisdiction of the ECJ during the implementation period. After that, we leave the ECJ.

Lord Thomas of Gresford: I am sorry, that does not answer my question. Will we retain a British judge on the European Court of Justice, as we have now, if we are still subject to its jurisdiction?

Baroness Evans of Bowes Park: That will be part of the negotiations.

8.07 pm

Sitting suspended.

European Union (Withdrawal) Bill

Committee (10th Day) (Continued)

8.17 pm

Amendment 337

Moved by ***Lord Jay of Ewelme***

337: Clause 14, page 10, line 41, at end insert—

""final terms of withdrawal" means the same as "withdrawal agreement";"

Lord Jay of Ewelme (CB): My Lords, Amendments 337 and 341 are in my name. They have a simple aim: to ensure that if there is a breakdown in the negotiations leading to a no-deal Brexit, the position should be fully and properly considered by Parliament before any final decision is taken.

I am encouraged by all that the Government have said about their intention to ensure that there should not be a breakdown in the negotiations. The noble Baroness the Leader of the House has just reiterated that position to us this evening and I noted in particular that David Davis said, over the weekend, that it was "incredibly probable" that a deal would be reached—an odd formulation, but we get the general drift. As I say, I have absolutely no doubt about the Government's intention to seek a deal which is in the interests of the United Kingdom. But a breakdown of the negotiations cannot be excluded, whether because the Government toughen their position to the stage where the European Union breaks off the negotiations or the European Union toughens its stance to the point where the Government break them off, or because both sides simply run out of time.

The implications of no deal are potentially extremely serious, as the EU Committee of your Lordships' House recognised in its recent report, *Brexit: Deal or No Deal.* Much attention has rightly been given to the implications of no deal for our trading relations, for the impact on cross-border supply chains and on specific sectors, including financial services, agri-foods and aviation. Just as serious would be the impact of a breakdown in negotiations and a no-deal scenario on UK-EU co-operation on issues which are vital to our national interest and national security: counterterrorism, police, justice and security matters; nuclear safeguards; and aviation. The noble Baroness, Lady Ludford, has set out clearly this evening the potential implications of no deal for Gibraltar. Even more immediate and perhaps more serious would be the effect on British citizens living in the EU and EU citizens living in the UK. With no deal, the agreements reached so far, which are so enormously important to British citizens living in the EU and EU citizens living in Britain, would, as I understand it, fall away.

The implications of no deal, however slight such a prospect is, would therefore be extremely serious. It is surely inconceivable that an outcome of such gravity would not be put to Parliament before it becomes a reality. This is not least because when reality begins to dawn on people, one of the first questions they will surely ask is: "What was Parliament's view and to what extent has Parliament taken responsibility?" Taking back responsibility seems to me to be as important, and more difficult, than taking back control. I simply cannot see that the argument that the electorate had, or should have had, all this in mind when the referendum took place would carry any weight at all when the consequences of no deal became apparent. These amendments therefore seem essential and I very much hope that the Government will be able to accept them. I beg to move Amendment 337.

Baroness Ludford (LD): My Lords, I strongly support this amendment, to which I have added my name. I fully agree with everything said by the noble Lord, Lord Jay of Ewelme. Perhaps being a mere politician, I am a little more cynical than he is. The February 2017 White Paper on leaving the EU contained statements that gave considerable comfort, including an assurance of the Government's strong intentions to get a deal. They said, for instance:

"Our fundamental responsibility to the people of the UK is to ensure that we secure the very best deal possible from the negotiations … The Government will then put the final deal that is agreed between the UK and the EU to a vote in both Houses of Parliament".

When the Government gave their assurance in the other place in February last year, at about the same time as the White Paper, the Minister of State for Exiting the EU said,

"the vote will cover not only the withdrawal arrangements but also the future relationship with the European Union'.—[Official Report, *Commons*, 7/2/17; col. 264.]

As we know, there is an issue about what that actually means. It will not be any more than a political declaration.

All this sounded quite reassuring. The trouble is that in the year since then, we have heard too many threats of no deal—not that, as the Brexit Secretary David Davis said over the weekend, it is like an insurance policy, in that you have to be aware that it could happen, but the overwhelming likelihood is a deal. That sounded quite benign, but I am afraid that we have had a rather more celebratory approach to the prospect of no deal from other personalities in the Government. They think that threatening it is good negotiating tactic. Many of us think that that is not

the expression of a committed partner. I do not recall that when the United States was negotiating a possible TTIP agreement with the EU, it kept stressing that it might instead have no deal. It might have made all kinds of comments about the adequacy or otherwise of the EU offer, but we did not hear that sort of rhetoric, and we are not used to it in a trade or political negotiation. These statements have come too often. They are perhaps fewer now, but they still come sometimes and with too great a frequency for there to be total trust in the Government. As the noble Lord, Lord Tugendhat, said earlier in another context, there is a fundamental issue of trust as to what the Government's intentions might be. Therefore, it is necessary to try to dot the "I"s and cross the "T"s on this matter.

The first amendment in this group might have been inspired by my noticing that in one context, the phrase used was "final terms of withdrawal" but in another it was "withdrawal agreement", which raises the question of whether the Government mean exactly the same thing with those two phrases. That accounts for Amendment 337, in which we say yes, they mean the same thing.

Amendment 341 says that "withdrawal agreement" also means the absence of a withdrawal agreement. It is necessary to spell that out because I am afraid the Government have not always given full grounds for total confidence and trust in their intentions. We need to close off any nefarious options that might still be floating around and make absolutely sure that we pin down the Government on what Parliament will supervise, and that there are no nooks and crannies through which they can duck and weave. That is what the amendments are about: total clarity in order to ensure that the Government act with total trust and in good faith.

Baroness Wheatcroft (Con): My Lords, I put my name to these amendments because I believe it is essential that Parliament should have a chance to consider a "no deal" scenario. As others have said, that is not the likely outcome; there is every reason to believe that the Government are doing their best to pursue a deal. However, we have to be prepared for all eventualities. We have heard that no deal is better than a bad deal and that no deal has to be considered, so it is important that we avoid any ambiguities. As the noble Baroness, Lady Ludford, has just spelled out, there are sufficient vagaries about the terminology for it to be important that we now try to clarify that Parliament should have a role in considering a "no deal" scenario. As the noble Lord, Lord Jay, said, it is time for Parliament to reclaim its responsibilities, and looking after the country is surely the responsibility of Parliament.

The noble Lord referred to the problems that will be faced by those companies with cross-EU supply chains. Privately those companies are voicing their fears, but it is not surprising that publicly they are loath to speak out about the horrors that lie before them should there be no deal. Their supply chains will be in tatters, but they are not going to go public right now shouting that it may be the case in a year's time that their supply chains will break down and they will not be able to fulfil orders,. That would not really do wonders for their business at the moment; the orders would just not be put. So at the moment they are making their fears known privately, and I hope the Government are listening to them. For them, it is essential that a good trade deal is established, and quickly. That is why I support the amendments. I do not think there is anything more to be said, but I wish them well.

8.30 pm

Lord Hannay of Chiswick (CB): My Lords, I am in favour of the amendment. I shall also add a bit of history that has not been mentioned so far. This time last year we were considering the Article 50 triggering Bill. An amendment was moved by a number of us that was designed both to produce a meaningful process for the end of the negotiations and to include within it the circumstances in which there was no deal. That amendment was passed by a very large majority in this House. It was sent to the other place where it was rejected in a pretty perfunctory way by, of course, the Parliament that was sitting before the general election, and in which the Conservative Party had an overall majority. So it is no good saying the Government are not opposed to a parliamentary statutory decision-making process if there is no deal. They are opposed to it; they opposed it only a year ago. So if this amendment is being brought forward now, it is because the Government have form on this matter.

I would like the Government to recognise that, having lost the vote on the meaningful process in the other place to Mr Dominic Grieve's excellent amendment, it is more sensible to accept the statutory process for dealing with any outcome to the negotiations, whether that be a deal or no deal or whether it is the case, as I rather suspect now, that the Government have stood their mantra on its head and are now saying a bad deal is better than no deal. But whichever way we look at it, let us be quite sure that Parliament has its say. That is why I support the amendment.

Baroness Hayter of Kentish Town (Lab): My Lords, I think the noble Lord, Lord Jay, was a little modest, because it was he who was chairing the European Union Committee at the time when it produced its excellent analysis of what it would mean for there to be no deal and for us to leave on WTO terms. We would have to rapidly set up customs posts around our market. Indeed, as he said, it would also mean no protection or continuation of residence, work or health rights for UK citizens living in the EU or, indeed, for EU citizens resident here. In the latter case, of course, we could pass domestic legislation to safeguard their position but we could not do the same to help UK nationals abroad because no deal would also mean no transition period.

I am sure that for business, as the noble Baroness, Lady Wheatcroft, has just spelled out, that would be a catastrophic outcome. It would mean that in addition to what it would mean for their order books—a rush to set up customs, VAT and all the other stuff that goes with that—I maintain that it would entail a jolt to our economy that would make 2008 look like a kiddies' party. So a decision to depart from the EU in those circumstances is one to be taken by Parliament, not by

[Baroness Hayter of Kentish Town]
the Prime Minister nor even by her Cabinet. The amendment is aimed to ensure that any such decision—coming out without a deal—would be made by Parliament, and bring the no deal scenario within the ambit of the amended Clause 9(1).

We accept that the Government are working very hard to ensure that we do not depart without a deal, and I trust that in those circumstances, they will accept the amendment.

Viscount Waverley (CB): Does the noble Baroness share a concern regarding UK citizens on the continent? She mentions transition. Does she recognise that there may be a problem for Parliament? The Dutch Government have appealed against a ruling by a Dutch court on 7 February to refer a case regarding a UK citizen to the ECJ. The ECJ agreed to take the case, the Dutch Government then appealed and the ECJ is waiting for confirmation whether it will be put back to them. The problem is that if the ECJ takes its fast-track route on adjudication, it will be a four-month process; if it takes the normal time for the ECJ to consider the issue, it will be 15 months, which potentially plays havoc with the issue of UK and EU citizens and their acquired rights within the European Union. Does she recognise that problem?

Baroness Hayter of Kentish Town: My Lords, I absolutely recognise that. There are a number of issues which we hope will be part of the agreement. In business, there are what are called goods already on the market, which I believe the transition agreement will cover. There is the arrest warrant. A number of countries forbid any of their nationals being extradited to a non-EU member state, so we could find that if someone who commits murder here hops off to a member state, unless we have this all agreed in the transition deal, they would be free. I understand that the negotiations will say that where a case has started on its track towards the ECJ, let it finish.

There is a raft of things where, if we come out with a bump in the night, and wake up on 30 March with no deal, it will not just be a fall from the bed, it will be a substantial disadvantage. That is why I am confident that we will have a deal, but therefore I am confident that the Minister will accept the amendment.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, I thank the noble Baroness for her contribution.

I have presumed for the purposes of this response that the amendments tabled by the noble Lord, Lord Jay, are intended to ensure that a statute, specifically that provided for in Clause 9(1), is required to approve a situation in which the UK fails to negotiate a deal with the EU.

With the greatest respect, the amendments do not achieve the desired outcome. The statute specified in Clause 9(1) is intrinsically linked to the exercise of the Clause 9 power, which is itself dependent on the existence of a withdrawal agreement. Therefore, in a no-deal scenario, the Clause 9 power and all provisions within it would be unavailable, because there would be no withdrawal agreement.

The amendments would also leave other areas of the Bill inoperable. For example, Clause 7(7)(d) sets out that the power cannot be used to implement the withdrawal agreement. Changing the definition of withdrawal agreement to include the absence of an agreement would therefore leave us unable to use Clause 7 in a no-deal scenario. Vital corrections could not be made in that case and we would be left with many inoperabilities on our statute book.

Of course, I remind the House that, as the noble Baroness, Lady Hayter, and others have said, we are confident that the UK and EU can reach a positive deal on our future partnership—

Baroness Hayter of Kentish Town: If the Minister is saying that the amendment does not technically achieve what they want, if we can word it in a way that they want, will the Government then accept it?

Lord Callanan: I cannot give the noble Baroness that commitment. I am explaining the amendment and will come to the other implications in a second.

Lord Hannay of Chiswick: Perhaps the Minister can give an easier commitment, which is that the Government will use the period between now and Report to draft a provision which has that effect and catches a no-deal situation. I am sure we should be delighted. He has a whole team of draftsmen at his beck and call, so perhaps he could make good use of their Easter recess.

Lord Callanan: I am delighted to hear that I have all these people at my beck and call; it seems to have escaped my notice.

I remind the Committee that we are confident that the UK and the EU can reach a positive deal on our future partnership, as we believe that this is in our mutual interest. However, a responsible Government must be prepared for all possible outcomes. To invalidate the Clause 7 power in the absence of an agreement would eradicate a crucial part of our preparations. Putting the issue to one side, I respectfully disagree with the intention of the amendment—that parliamentary approval should be required to leave the EU without a deal. There should be one fundamental fact sitting behind all these debates: the UK is leaving the EU. As noble Lords have heard me say before in Committee, and on which I have been questioned at length, the decision to hold a referendum was put to the electorate in the 2015 general election. That decision was then put into statute in the European Union (Referendum) Act. The referendum was held and delivered a majority in favour of leaving the EU. Parliament then consented to act on that verdict through the European Union (Notification of Withdrawal) Act.

I do not normally read the *Observer*, but as Keir Starmer had given an interview I thought it would be appropriate for me to read what he had to say on behalf of the Labour Party. It had some interesting quotes. He said:

"Article 50 was triggered a year ago. It expires in 52 weeks and a few days, and I don't think there is any realistic prospect of it being revoked".

Baroness Hayter of Kentish Town: Article 50 also says that there will be a withdrawal deal which will include the framework for our future arrangements. Article 50, which we triggered, does not say that we are giving notice that we are leaving and that we are leaving without a deal.

Lord Callanan: We are giving notice of our withdrawal. The title was in the Bill that we passed to trigger it. Keir Starmer also said:

"Having asked the electorate for a view by way of the referendum, we have to respect the result".

I agree with him.

I say again only to remind noble Lords so that they can understand my point of view that there has been a legitimate process, marked at intervals by the consent of both Parliament and the electorate. As I said in an earlier debate, amendments that could be perceived as a means to delay or disregard the referendum result carry with them their own risks—people's faith in their democracy and its institutions. With that in mind, I do not think that it would be right to add an express mechanism within this Bill which might prevent the referendum result being acted upon.

The Prime Minister has been very clear: we are leaving the EU at the end of March 2019. That is not a question of domestic legislation; it is now a question of the EU treaties. While the detail of our future relationship with the EU has yet to be negotiated, I believe that remaining in the EU is the only outcome which cannot be reconciled with the decision taken in the referendum. I do not think that it would be in the interests of either the EU or the UK to open the door to an ever-continuing negotiation process with no certainty that the UK will ever reach a new, settled relationship with the EU. I was going to finish there but I see that the noble Baroness, Lady Ludford, is itching to ask a question.

Baroness Ludford: I thank the noble Lord for anticipating my question. He referred to there being a problem with Clause 7(1), which says:

"A Minister … may by regulations make such provision as … appropriate … arising from the withdrawal of the United Kingdom from the EU".

If it is "may", it could also mean "may not". If there are no regulations to be made because there is no deal, and therefore there are no deficiencies in retained EU law to remedy, and that is the Government's position, that subsection does not need to be invoked.

That is surely different from Clause 9. I do not see the parallel. Clause 9(1) refers to the parliamentary enactment of whatever the final terms are. We are talking about a scenario where there is no deal. As was said by the noble Lord, Lord Hannay, if you are maintaining that it is unworkable in this situation, the Government need to come up with something that they consider a workable formula. The Minister must surely understand that the point is to make sure there is not wriggle room over where parliamentary responsibility and rights reside, and not to be able to dodge Clause 9(1) by saying, "Well, it's not really final terms of withdrawal because we are crashing out without a deal".

Lord Callanan: We hope not to crash out without a deal, as I have said. If we do not have a withdrawal agreement, there is nothing to implement in Clause 9—therefore, Clause 9 would not be necessary. As I have said many times before, our position is that we are leaving the European Union on 29 March 2019, because that was what was authorised by Parliament when it authorised the Prime Minister to submit the notification under Article 50.

8.45 pm

Baroness Altmann (Con): Does my noble friend truly believe that the British people voted to leave the EU with no deal, with all the implications that that has for the livelihoods and business prospects of this country? That was not on the ballot paper. We have respected the British people's vote by triggering Article 50 and negotiating with the EU but, if it comes down to the point where we cannot get a deal, surely Parliament must be in control of what happens to the interests of our country in that scenario.

Lord Callanan: I believe that the British people voted to leave the EU and we are trying to negotiate the best possible deal to ensure that we leave the EU. To go back to our original argument for all the reasons against the amendment, I hope that the noble Lord, Lord Jay, will consent to withdraw it.

Lord Jay of Ewelme: My Lords, I am grateful to those who have spoken in this short debate. I am grateful to the Minister for his reply and for reciting the history, but I simply disagree on the substance of the issue. There is no question of these amendments seeking to countermand the result of the referendum; they are simply to reaffirm the role of Parliament and what I and others believe would unquestionably be the desire of the British people in the event of no deal—that Parliament should take its responsibility and consider these issues before the final decision is made.

There is perhaps a difference of nuance between some of us who have spoken on the likelihood of no deal. I think that David Davis spoke of no deal as a sort of an insurance policy, in case there was a no deal. But I do not think that there is any disagreement among those who have spoken tonight on the consequence of no deal, with the exception of the Minister, or of the need for Parliament to be consulted. I have no doubt that we shall return to this issue at Report, but meanwhile I beg leave to withdraw the amendment.

Amendment 337 withdrawn.

Amendments 338 to 345A not moved.

Clause 14 agreed.

Amendment 346 not moved.

Schedule 6 agreed.

Clause 15: Index of defined expressions

Amendment 347 not moved.

Clause 12: Financial provision

Debate on whether Clause 12 should stand part of the Bill.

Lord Adonis (Lab): The debate that I seek to initiate is on the ability to increase fees and charges by delegated or sub-delegated powers. It is a straightforward matter of proper parliamentary oversight that that should not happen.

Having said that, my role in this debate is one which I am now performing regularly in this Committee—to act as John the Baptist to my good noble friend Lord Lisvane, who is probably the greatest expert in the history of Parliament on the procedures which are adequate and necessary for raising fees and charges. I now make way for the authorised version to be given to the Committee.

Lord Lisvane (CB): My Lords, there are few better warm-up men than the noble Lord, Lord Adonis, but I fear that I will disappoint your Lordships. As the Question formally before the Committee is whether Clause 12 shall stand part of the Bill, I will speak to Amendments 348 and 349 rather than moving Amendment 348. The amendments are in my name and those of my noble and learned friend Lord Judge, my noble friend Lord Pannick and the noble Lord, Lord Tyler. I can be very brief, even at this refreshingly early hour of the evening, as the issues in both amendments have already been considered by the Committee in one way or another. It may indeed be that we have had a sneak preview of the Minister's response on both issues.

Amendment 348 would prevent fees or charges to be levied by tertiary legislation. At an earlier stage, I expressed concern that this Bill, already proposing to confer sweeping powers upon Ministers, should go even further and permit the making of the law of the land by persons and bodies authorised by a Minister. The authorisation would, as the Minister said in an earlier debate, be subject to the affirmative procedure, but once that authorisation had been made, the law made under it would be under no sort of parliamentary control and, unless in the form of a statutory instrument—which it would not be—would not even be required to be published.

The arguments against tertiary legislation become even stronger when the powers being given to persons and bodies would allow them to levy fees and charges which might well be used to gold-plate their functions. Clause 14(1) defines "public authority" by reference to Section 6 of the Human Rights Act 1998, and Section 6(3) of that Act, in turn, defines "a public authority" as including a court or tribunal—which is fine—but also,

"any person certain of whose functions are functions of a public nature".

That spreads the net very wide indeed.

Amendment 349 returns to the issue of ancient principle that taxation should be by primary legislation, not by statutory instrument. When this was considered by the Committee earlier in its proceedings, your Lordships were supportive of the proposition that it should be for the House of Commons to impose taxation by primary legislation, not for Ministers to do it by regulations. In a sense, we are possibly getting a little punch drunk as we see power after power after power being arrogated to Ministers. This is one which should not be.

Lord Judge (CB): My Lords, I was not able, for unavoidable reasons, to be here when the issue of tertiary legislation was addressed in the course of the debate on this Bill, so I want to add something. I do not think that even those who do not see eye to eye with me would accuse me of being an ardent advocate of secondary legislation: I am not. I spoke about this at Second Reading and have been extremely reticent on the issue in Committee, but I shall return to it in much greater detail on Report.

I support my noble friend Lord Lisvane. The provision we are considering—I will take it quite slowly, because this is how I see it—would vest powers in a Minister to use secondary legislation, with negligible proper scrutiny, if any, to bestow lawmaking powers on a public authority, with even less scrutiny. It amounts, in effect, to scrutiny being diminished to extinction. In that process, we as lawmakers are not doing right. We are simply handing power over to people who should not have it. This tertiary form of legislation is, therefore, even more questionable than secondary legislation, for the same reasons and—I add, at this time of night—with knobs on.

Lord Tyler (LD): My Lords, I endorse the contributions of the noble Lord, Lord Lisvane, and the noble and learned Lord, Lord Judge, and draw attention to the work of the Delegated Powers and Regulatory Reform Committee, on which the noble Lord, Lord Lisvane, and I sit. One of the things the committee found most uncomfortable was the extent to which Ministers have played games with words in their explanatory memoranda. We were particularly critical of the reference in Schedule 4 to tax-like charges. The committee stated:

"A 'tax-like charge' means a tax. Taxes and tax-like charges should not be allowed in subordinate legislation. They are matters for Parliament, a principle central to the Bill of Rights 1688".

It is not so late and therefore I shall indulge in some further remarks. My only really respectable connection with your Lordships' House is that of my ancestor, the great Bishop Jonathan Trelawny, the Cornish folk hero who was one of the seven bishops to defy James II's attempts to impose rules upon this country without Parliament's acceptance. His portrait is in the Peers' Guest Room—he is the one at the end with the Beatles haircut.

I make that point because I am amazed and ashamed that Members of the House of Commons have not seen the dangers in this part of the Bill. I speak as a former Member of the House of Commons. This issue goes back to not just the Bill of Rights and the Glorious Revolution of 1688, but far earlier. Reference was made to the Bill of Rights in previous exchanges in Committee. The short-circuiting of the most basic responsibility and role of the House of Commons of approving taxes seems to me an extremely important issue. We should not allow this precedent to be pursued in this Bill. It is the historic role of the House of Commons. I recall that when we had exchanges about tax credits, the former Chancellor of the Exchequer, Mr George Osborne, sought to short-circuit and get

round the normal process by which the House of Commons decides financial matters. I remember at the time that the noble Lord, Lord Forsyth, referred, I think, to ship money and Charles I, saying that the last time a member of the Executive sought to short-circuit Parliament, he lost his head.

Baroness Kramer (LD): My Lords, I shall add a very quick word because so much has already been said. There is an irony in Schedule 4 which may interest the Committee: namely that the power to provide for fees and charges has been handed to Ministers by means of either secondary or tertiary regulation, depending on which part of this measure you are looking at. Paragraph 3 of Schedule 4 states:

"A Minister of the Crown may only make regulations under paragraph 1with the consent of the Treasury".

The irony of that is, frankly, extraordinary because it shows where the Government intend the power of the land to lie. We have always suspected that the Treasury is handed some of the greatest powers that are denied to Parliament. If it is considered fit for the Treasury to be able to intervene in fees and charges, then surely it is Parliament's right to be able to intervene, scrutinise and monitor those fees and charges.

Baroness Hayter of Kentish Town: My Lords, I do not think that the noble Lord, Lord Tyler, was threatening to cut the right reverend Prelate's head off because of this. However, what may have been a threat to the Minister was to me a great delight: the promise of the noble and learned Lord, Lord Judge, that he will do this with knobs on when we come back on Report. I look forward to that.

9 pm

I will not add to what has been so well said but I will put a question to the Minister. In a sense, we have covered three things in different groups about the powers given by secondary legislation. One is about the creation of new criminal offences, another is about the setting up of new public bodies, and another, which we return to here, is the ability to raise fees and charges. We do not want to hear, as we come to these amendments on Report, what the Government will do about them. I assume that they will meet us—I hope the whole way, but if not, half way. The Minister may not be able to say that tonight, but he has had notice of it, as we have brought it up before. The time for stonewalling and hearing is now gone. We need to know, before Report, where the Government are planning to move. I hope, therefore, that this evening he will be able to give us an assurance on that.

Lord Callanan: My Lords, I thank noble Lords for this commendably brief debate at this not so late hour, and I thank the noble Lord, Lord Adonis, for his commendably brief opening statements. I was delighted to see that he made his way up to Newcastle yesterday but, unsurprisingly, he forgot to ask me to meet him for a drink while he was there to speak to his 200 or so Brexit-disliking supporters.

Lord Adonis: Anti-Brexit supporters.

Lord Callanan: The noble Lord is right—I am sorry.

I will try to give a relatively detailed explanation. For any policy to be complete, it must have a practical answer to the question of how it will be funded. Clause 12 and Schedule 4 are that answer here. I hasten to add that they are not the answer to all money matters in relation to Brexit. The withdrawal agreement and implementation Bill will provide the statutory underpinning for paying our negotiated financial settlement with the EU and any other financial matters related to the withdrawal agreement. Before I proceed, I make it completely clear that I have heard the principled and eloquently expressed concerns about the powers in Schedule 4 and their scrutiny, and we will look closely at this ahead of Report. I regret to say that I am unable to provide too much detail on that at the moment, but we will carefully consider this issue.

Clause 12 and Schedule 4 provide that all the money which might flow into and out of the Exchequer as a consequence of the Bill is made "proper", in line with the rules governing public expenditure and as laid down between the Commons and the Treasury in the PAC concordat of 1932—which I assume even the noble Lord, Lord Lisvane, was not around to take part in. Maybe his maiden aunts were around at the time to take part—who knows? These are obviously provisions relating to spending and charges on the public and were closely examined by the other place, which has privilege in financial matters, before the Bill reached us.

It is evident that the process of taking on new functions from the EU, and in the future running them, will cost money. Some of this will be public measures funded from general taxation—and, I hope, more efficiently than they were funded at the EU level. Some will be paid for by users of services to ensure that taxpayers, both corporate and individual, do not end up unfairly subsidising specialist provision. Where the line will fall is clearly a matter for debate in some cases, and I expect that as SIs come before Parliament for scrutiny, that question will, in a handful of cases, be relevant to the discussion. These provisions of the Bill, however, are key to ensuring that the rest of the Bill can be given real-world effect. I hope noble Lords will agree that without funding, the essential EU exit preparations enabled by the Bill could not be put into practice.

I thank the noble and learned Lord, Lord Judge, and the noble Lords, Lord Lisvane and Lord Tyler, for Amendment 348. The Government, as has been said at other times and in other places, are aware of the risks and concerns posed by any legislative sub-delegation to public authorities, but we remain convinced that conferring powers on public authorities other than Ministers to allow them to make provisions of a legislative character can be an appropriate course of action. I stress that, like any other form of sub-delegation under this Bill, any transfer of legislative power must be approved by both this House and the other place following a debate. It will not be possible for an SI to pass through this place, under the eyes of noble Lords, without a thorough and reasonable explanation of how any sub-delegation will be exercised in practice.

[Lord Callanan]

In this exceptional Bill, it is right that, although we must address all the issues that we discussed at Second Reading and which will arise under the Bill, Parliament also keeps a close and strict eye on all matters where any financial burden can be imposed on individuals and businesses. However, I remind noble Lords that this power is only available if the public authority is taking on a new function under the Bill and that the fees and charges must be in connection to that function. This is not a general power for the Government or any other public authority to raise moneys as they please.

The Government envisage sub-delegating this power in limited circumstances—for example, where Parliament has already granted to a public authority the power to set up its own rules for fees and charges of the type envisaged by this power, and, for good reasons, made it independent of the Government.

Lord Tyler: Will the Minister clarify one point? As I understand it, the affirmative procedure would apply to secondary legislation under Schedule 4 where there is a new fee or charge, but only the negative procedure would apply in subsequent regulations modifying those fees. That is an important qualification of the assurances he was giving to the Committee just now.

Lord Callanan: The noble Lord makes a good point. I will answer his question later. In line with the Bill's aim to provide continuity, Parliament should have the option of approving the ability of authorities such as the Financial Conduct Authority and the Bank of England to independently make fees and charges for firms that will, after exit and under this Bill, fall under their regulatory remit.

Amendment 349 comes to the heart of the purpose of these powers and I thank the same noble and learned Lords for tabling it. This power is designed to ensure that those using specialist services transferred from the EU to the UK pay for them. This involves providing for fees and charges which, though not taxes in the common sense of the term, are at least tax-like. For the benefit of the noble Lord, Lord Tyler, let me clarify what we mean by tax and tax-like charges in this context. Under the guidance laid down by the Treasury, although fees and charges for services that are set on a strict cost-recovery basis are not taxes, any fee or charge that goes further than direct cost recovery is likely to count as taxation or to be tax-like. This would be the case if it cross-subsidises to construct a progressive regime between large multinationals and small enterprises, if it is a compulsory levy in a regulated and surveilled sector, such as banking, or if it funds the broader functions of an organisation not directly part of the cost of providing a service, such as enforcement.

I hope we can all agree that, as part of providing continuity, this Bill should enable the Government to continue to fund public services in an appropriate manner. Because the Government have directly prohibited the increase or imposition of taxation, including tax-like charges of the type I have just described under other relevant powers in the Bill—particularly Clause 7(1)—we require the ability to do so under this power. To give an example, without this the Bank of England would not be able to bring trade repositories—a vital piece of financial market infrastructure currently supervised at the European level—within the scope of its levy-based funding regimes. This House approved the creation of those delegated regimes through the relevant legislation and I hope that, with the proper information before it, it will approve the relevant power in this Bill, subject to the use of the affirmative scrutiny procedure.

Having said all that, let me repeat what I said at the start. We are looking closely at this matter ahead of Report. We will try to see how we might provide appropriate reassurance to a number of the fairly reasonable concerns that have been raised by noble Lords. Even with that caveat, I recognise that noble Lords may still have concerns but I hope that I have given some insight into the Government's position and satisfied the House of the honourability of the Government's intentions. I hope that noble Lords will agree, therefore, to not press their amendments or object to Clause 12 standing part.

Lord Adonis: I congratulate the Minister on what was, I thought, an excellent response to the debate. After 10 days in Committee, he has learned from the noble Baroness, Lady Goldie, how to charm the House and we have seen a new side to him that we were not aware of before: his conciliatory and emollient side. He may even, in due course, convert to the anti-Brexit cause at this rate of progress—maybe with another 10 days in Committee we would get there.

However, the Minister did the noble Lord, Lord Lisvane, a great disservice. It is a well-known fact that the noble Lord drafted Magna Carta.

Noble Lords: Oh!

Lord Adonis: So the idea that he was not aware of the various provisions that the Minister mentioned is, of course, a great calumny.

In conclusion, I apologise to the Minister that I did not give him advance notice of my appearance in Newcastle yesterday to campaign against Brexit. I did think of extending an invitation to him to appear alongside me, but decided that he would probably be so busy preparing his compromises on the amendments he was presenting to the House today that he would not be able to fulfil the engagement.

I have spoken for so long only because the Chief Whip, who has now come in to check, said that we would conclude our business this evening by 9.15 pm—and indeed we will; I did not want him to be disappointed. On that basis, I shall not oppose Clause 12 standing part.

Clause 12 agreed.

Schedule 4: Powers in connection with fees and charges

Amendments 348 to 352 not moved.

Schedule 4 agreed.

Clause 13 agreed.

House resumed.

House adjourned at 9.11 pm.