Vol. 790
No. 119

Wednesday
28 March 2018

PARLIAMENTARY DEBATES
(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Lords wishing to be supplied with these Daily Reports should give notice to this effect to the Printed Paper Office.

No proofs of Daily Reports are provided. Corrections for the bound volume which Lords wish to suggest to the report of their speeches should be clearly indicated in a copy of the Daily Report, which, with the column numbers concerned shown on the front cover, should be sent to the Editor of Debates, House of Lords, within 14 days of the date of the Daily Report.

This issue of the Official Report is also available on the Internet at
https://hansard.parliament.uk/lords/2018-03-28

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

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

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

House of Lords

Wednesday 28 March 2018

11 am

Prayers—read by the Lord Bishop of Rochester.

Royal Assent

11.05 am

The following Acts were given Royal Assent:
Northern Ireland (Regional Rates and Energy) Act,
Northern Ireland Assembly Members (Pay) Act,
Northern Ireland Budget (Anticipation and Adjustments) Act.

European Union (Withdrawal) Bill

Committee (11th Day)

11.05 am

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

Amendment 353 not moved.

Schedule 5: Publication and rules of evidence

Amendment 354

Moved by ***Baroness Bowles of Berkhamsted***

354: Schedule 5, page 38, line 35, at end insert—
"( ) an EU directive;"

Baroness Bowles of Berkhamsted (LD): My Lords, my amendment would add EU directives to the list of relevant instruments that the Queen's printer must make arrangements to publish. I briefly flagged the point of the amendment when we debated recitals with regard to interpretation and Clause 6(3) on 7 March. Anyhow, in those previous exchanges, and since, in the letter of 13 March from the Solicitor-General to Robert Neill MP, it has been confirmed that recitals have an ongoing role in interpretation of retained EU law. There are several interesting points in the letter and footnotes, but for the benefit of the House I will read out just a small part, which says:

"For example, the Treaty base of EU legislation, its recitals, and the working papers prepared in advance of its adoption, may all be referred to at the moment. Our courts are well-versed in this, and in dealing with the differences that exist between the interpretation of domestic law and EU law. As such clause 6(3) of the Bill should not disturb the existing approach taken by our courts".

I still have an ongoing concern that I raised regarding post-Brexit loss rights of challenge in court, and on which I have written to the noble and learned Lord, Lord Keen, but from the interpretation point of view it is clear that recitals and other parts of directives are available for interpretation. On that basis it seems to me that directives are not just any old other EU instrument; they should have a rank prescribed in the Bill and not left to the possible halfway house of it being done at the discretion of the Queen's printer or for there to be special rules about their admissibility.

Recitals and indeed whole directive texts and their empowerments will not only be a last resort to reference by the court; it is quite likely that, post Brexit, a lot more notice will be taken of them than previously, especially in those areas where any kind of regulatory alignment is sought. I understand from a ministerial meeting that the Treasury is certainly thinking that way.

What happens if there is no automatic publication by the Queen's printer? As I said, it could be that the Queen's printer does it under paragraph 1(3) of Schedule 5, but that is not certain, or under part 2 on rules of evidence in Schedule 5, and in particular paragraph 4, where it would be necessary for there to be regulations to enable documents that were not published by the Queen's printer to be admissible, and they would have conditions around them. It may just be for certification, of course, but that does not reflect the status of this important category of EU instruments from which a great deal of retained EU law derives.

Directives need to be added to the list of relevant instruments, as I suggest in my amendment, or some other provision should be made in Schedule 5 for this important category of documents. If there is a need to make exceptions to publishing some directives or parts of them, those powers exist in paragraph 2, and I agree with the amendment in the next group that it should require regulation to make that exception, but directives should be of a category that is in unless taken out, rather than out but can be opted in. I beg to move.

Viscount Hailsham (Con): My Lords, there seems to be a great deal of sense in the amendment, partly because of the provisions of Clause 6, and partly because it is important that the businesses that will be trading into the European Union have ready access to all relevant documents. They will be regulated by directives which set out the principles with which they must comply. The noble Baroness is quite right to move the amendment. Unless there is some compelling reason—which cannot be cost, because that must be very small—I hope it will get a favourable reception from my noble friend.

Lord Pannick (CB): My Lords, it is indeed striking that directives are not included in Schedule 5, part 1, paragraph 1(2). The reason may be that directives are given a very odd status under Clause 4(2)(b), which we debated on a previous day. Under Clause 4(2)(b), retained EU law does not include rights which arise under an EU directive when they are,

"not of a kind recognised by the European Court or any court or tribunal",

in this country,

"in a case decided before exit day".

We debated the complexities, the uncertainties and, as I see it, the unsatisfactory nature, of the clause. Is that the reason why directives are not included in Schedule 5, part 1? If not, what is the reason?

Baroness Ludford (LD): My Lords, I support my noble friend's valuable amendment. I wonder whether the Government are being as transparent as they

[Baroness Ludford]
ought to be. After all, there have sometimes been well-founded suspicions of gold-plating of directives and, in contrast, of not entirely full or accurate transposition of directives. I am sorry to repeat myself, but I gave the recent example of the European investigation order, which was not transposed in regulations last December with exactly the wording in the directive. The European Convention on Human Rights has been substituted for the charter, which is in my opinion a breach of the accurate transposition of the directive.

Not only during the transition but well into the future, businesses and all citizens will be obeying a lot of the acquis of EU law, if the Prime Minister's emerging strategy of staying plugged into many EU policies and agencies one way or another comes to fruition. Therefore it is right for businesses and individuals to be able to see how EU law in directives, which unlike regulations, does not have direct effect, has been translated, transposed into UK law, so that they can track its accuracy. This is a long-running theme in the European Parliament, as my noble friend will know. Indeed, the Minister will know that there was an attempt to campaign in the European Parliament to have what was known in the jargon as "correlation tables". It was possible to see exactly how EU law had been translated into national law in all EU states.

Funnily enough, the member states never wanted that to happen. They got away with a bit of smoke and mirrors of people not understanding where law had come from at the European level, or where it had not. Where something had been added at national level that was sitting in some dusty drawer in Whitehall and this convenient vehicle of an EU directive came along, they said, "Right, we'll just slap into that things we've long thought about and no one will realise that it didn't come from Brussels". Well, people need to know whether it came from Brussels or not. The kind of transparency that my noble friend is seeking would be extremely useful.

11.15 am

Baroness Hayter of Kentish Town (Lab): My Lords, it may not be possible to answer my question today, but it is an important one. I would have put down an amendment at the end of Amendment 354 to use two additional words: "in English". Once we leave the European Union, there will not be an English-speaking country that chooses English as its language. The Maltese have accepted Maltese as the language, the Irish chose Gaelic. It is only the United Kingdom for which English is the language.

In future, for all sorts of reasons, it will be interesting to know whether the Government will ask or, I hope, negotiate that English remains for the production of EU documents. For myriad reasons, not least business, we will need to know that. If the Minister cannot answer my question about negotiations now, it would be useful if she could report at some point in the future.

Baroness Goldie (Con): My Lords, may I first of all, in English, thank all who have contributed to the debate? I know that to some it may seem anorak territory, but knowing where to find law and being able to access law are matters of fundamental importance. Before coming to the specifics of Amendment 354 in the name of the noble Baroness, Lady Bowles, it may be useful to provide some context for the debate.

Part 1 of Schedule 5 serves an important purpose, which was picked up by, among others, the House of Lords Constitution Committee and the Bingham centre. Specifically, it is a recognition of that vitally important factor of the law being publicly available and accessible after exit day. Part 1 therefore provides for a combination of duties on and powers for the Queen's printer to help to ensure that this happens.

I will be clear about what the provisions involve. There are differences between how part 1 of Schedule 5 is sometimes described and what it actually does. It is designed to ensure that retained EU law is sufficiently accessible but it does not, for the avoidance of doubt, impose a duty on the Queen's printer to identify or publish retained EU law itself, or any subset of it. Instead, it imposes a duty on the Queen's printer to make arrangements for the publication of the types of EU instrument that may become retained direct EU legislation, being regulations, decisions and tertiary legislation. It also requires the publication of several key EU treaties and confers a power on the Queen's printer to publish other related documents.

I recognise the important issue the noble Baroness seeks to highlight by her amendment. Directives are an important part of EU law at the moment, and may be relevant to retained EU law in some cases, but they are not covered by the duty to publish which I have just outlined. That duty is focused, as I explained, on instruments that may become retained direct EU legislation, which of course in terms of the Bill directives cannot.

Viscount Hailsham: People trading in the European Union need to know the status of the requirements that they have to adhere to when they are trading into the European Union. Directives can be relevant to that.

Baroness Goldie: I was about to come on to that point, as it was raised also by the noble Lord, Lord Pannick. Directives have been implemented in domestic law—they are already there—so they do not need retaining in and of themselves, which is a distinction that I am trying to make in terms of how the Bill is drafted, but they remain available for the purposes of interpreting retained EU law. They are available for that purpose no matter what the Queen's printer may do.

That said, sub-paragraph (3) of paragraph 1 also allows, but does not require, the Queen's printer to publish certain other documents and instruments. Since the noble Baroness tabled her amendment, work has progressed further, and I am happy to confirm that the National Archives, which exercises the functions of the Queen's printer, intends to make pre-exit day directives available online. I hope that I have reassured the noble Baroness and ask that she withdraw her amendment.

Baroness Bowles of Berkhamsted: I thank noble Lords who have supported the amendment. If something is present in the National Archives, I wonder whether that means that it can then automatically be relied on

in court without there being any necessity for certification or other requirements. If that was the case, it would fulfil the point that I was trying to make—there are other points that noble Lords have referenced. I did not want it to be that, in order in a court proceeding to reference a directive or draw the judge's attention to it, one had to remember to go through the certification process, especially if there were a lot of them.

Baroness Ludford: My noble friend is much more an expert than I am on these technicalities, but other noble Lords as well as I have talked about more general accessibility for citizens and businesses. Someone like me knows that I can just put the number of the directive in Google and, hey presto, I get the *Official Journal*. However, it being in the National Archives is not as good as it being in whatever series is published under Schedule 5. If this is to be done in some voluntary capacity, why is that good enough? Why cannot it be in the Bill? It seems a very British solution: "Oh, well, it'll be in the National Archives". No one will be able to find it because they do not know that it is there. It might or might not be okay for the technical purposes that my noble friend is talking about, but it will not be squarely there in a series that can be made known. I cannot understand the Government's logic.

Baroness Bowles of Berkhamsted: I thank my noble friend for that intervention. She also made some important points earlier about what has come into our law allegedly from directives. I must say that, since I have been looking at this withdrawal Bill, I have become astonished by what has been done under the European Communities Act, which I do not think I would have wanted if I had gone back and made the European Communities Act again—but that is a digression.

There are two outstanding points: whether you need to do anything to get it into court for technical purposes; and what the visibility is for citizens. I must say that anybody who thinks that our legislation is at all visible should go on to the government website and wander around it. If they are hoping to find out what the current law is, the first thing they will see is that the site is not up to date. I find it a far sight easier to find up-to-date European law, but again, I digress.

With the proviso that it may be necessary to return to this—possibly the Government will bring forward an amendment or provide further explanation—I beg leave to withdraw my amendment.

Amendment 354 withdrawn.

Amendment 355

Moved by ***Lord Lisvane***

355: Schedule 5, page 39, line 18, leave out sub-paragraph (3) and insert—

"(3) Any direction given under this paragraph must be contained in regulations."

Lord Lisvane (CB): My Lords, this amendment is in my name and those of my noble friend Lord Pannick, my noble and learned friend Lord Judge and the noble Lord, Lord Tyler. It is grouped with Amendment 355ZZA in the name of the noble Baroness, Lady Bowles of Berkhamsted, which I venture to suggest has a great deal of merit.

Amendment 355 may appear to address a minor matter but it is an important matter of principle. The exception from the duty to publish provided by paragraph 2(1) of Schedule 5 depends on a Minister being satisfied that a relevant instrument, as defined in paragraph 1(2) of the schedule, has not become or will not become on exit day retained direct EU legislation. I entirely appreciate the argument that, in that case, there may be little point in publishing some or all of it. However, where the argument goes off course is that, while paragraph 2(2) allows a Minister to give a direction to the Queen's printer not to publish a specified instrument or a category of instruments, paragraph 2(3) allows this to be done by mere ministerial direction.

The Delegated Powers Committee, of which the noble Lord, Lord Tyler, and I are both members, was critical of this. At paragraph 49 of its 12th report, the committee said:

"Amending the law by direction … is highly unusual. The delegated powers memorandum"—

that is, the Government's delegated powers memorandum to the committee—

"justifies this on the ground that it is a 'limited administrative power'. Even so, to allow Ministers to amend the law by a mere direction, with no associated parliamentary procedure, sets an ominous precedent. Such a direction is what Henry VIII might have called a proclamation".

It does not matter that this power is proposed to be used in relatively uncontroversial circumstances and that the identification of any instrument or category of instruments may be relatively straightforward. The important point is what the Delegated Powers Committee calls an "ominous precedent". This may seem a little Cassandra-like, although I think that the Delegated Powers Committee is believed rather more often than was Cassandra with her repeated nul points, but, right on schedule, along comes the Taxation (Cross-border Trade) Bill, which makes much use of the unwelcome concept of making law by public notice—in effect, by proclamation, with no role at all for Parliament.

In the referendum campaign, much was made of parliamentary sovereignty, and it has been a recurrent theme of our debates in Committee. I suggest that we should be sharply aware of procedures or processes that tend to diminish or extinguish the role of Parliament in favour of that of the Executive. I beg to move.

Lord Pannick: My Lords, I have added my name to this amendment and I agree entirely with what my noble friend Lord Lisvane has said. I simply add that sub-paragraph (3) is also objectionable. It states:

"A Minister of the Crown must publish any direction under this paragraph".

However, it does not even say how or where the Minister is to publish. It gives complete discretion to the Minister.

I also have a wider concern about paragraph 2: that is, the power for the Minister to create an exception to the duty of the Queen's printer to publish retained direct EU legislation. The Minister recognised in the previous debate, and appropriately so, the importance

[Lord Pannick]
of the law being publicly identifiable so that everyone knows what the corpus of retained EU law is. However, paragraph 2 contradicts that. To give a discretion to the Minister to exclude something from the material that is to be published by the Queen's printer if the Minister takes the view that a relevant instrument will not become direct EU legislation leaves matters completely uncertain. I suggest that a much more sensible approach is that, if the Minister takes the view that a particular instrument is not becoming retained direct EU legislation, the Minister should have a duty to ensure that it is not included in the material that is to be published by the Queen's printer.

What we want, and what the public are entitled to have, is a body of material that in the view of the Government constitutes the retained direct EU legislation that is to become part of our law. These matters should not be left to the discretion of Ministers.

11.30 am

Lord Tyler (LD): My Lords, as a co-signatory to the amendment, I want to make a short contribution in support of the reference by the noble Lord, Lord Lisvane, to the work of the Delegated Powers and Regulatory Reform Committee and to pay tribute to our legal advisers, who are not only expert and experienced but amazingly diligent. The noble Lord referred to the committee's work on the Bill, but he did not make direct reference to paragraph 93 of our third report to the House, the last sentence of which reads:

"The Statute of Proclamations 1539, which gave proclamations the force of statute law and later gave rise to the term 'Henry VIII power', was repealed in 1547 (after the King's death earlier that year)".

I have not been able to do the necessary follow-up research but, as I understand it, our 16th-century predecessors put around the statute of limitations some additional restrictions that are not in this Bill. As a former Member of the other House, I think that it would be extraordinary if the two Houses of Parliament allowed this to go through. It may seem a minor matter, but in terms of precedent it is extremely important. If we let it through, it seems that we will not have done our job as well as our 16th-century predecessors.

The work that is done by the Delegated Powers Committee is well respected in your Lordships' House and I am delighted that that is the case. In saying that, I want to make sure that Members of the House know that we have the advice of some extremely assiduous lawyers. I think that the advice that we give the House usually benefits from that. I am not always a huge fan of lawyers, but in this respect I think that we are very well served.

Lord Judge (CB): My Lords, we come to the next stage of the slow journey of this Bill through the House. I shall look at Clause 9 again and address the issue of what the Act of proclamations provided, but just as a footnote I remind the House that the statute provided in categoric terms that a proclamation could not overrule a statute. One tends to overlook that. Everyone is absolutely riveted, are they not? Schedule 5—what an exciting topic to come to first thing in the morning. The problem, though, is that tucked away in this schedule, as frequently happens, is an issue of principle. That issue is, simply, and I support what the noble Lord, Lord Lisvane, says, that we are giving an unnecessary, or inappropriate—I do not mind which word we use for these purposes—surrender of power to the Executive. We really must break that habit.

Baroness Ludford: My Lords, to go slightly beyond the terms of the amendment, as foreshadowed in the words of the noble Lord, Lord Pannick, the issue of principle appears to extend to giving the Government the power not only to decide whether something is to be published but to decide whether they are satisfied that it is retained direct EU legislation. Following the debate on the amendment in the name of the noble Lord, Lord Patel, about clinical trials regulation, there have been exchanges and meetings.

Apparently, I am wrong about that. I am told that at some point I will get a blow-by-blow explanation. The Minister sighs, but no one has actually explained. There is a contradiction between the drafting in the Bill and the Explanatory Notes. The Minister is looking at me as if I am stupid. I am sorry about that, but we need to know the criteria by which the Government will precisely decide whether an EU measure is retained EU law and, preferably, have a list of those measures. That would be transparent. We need both the criteria and the list. We cannot just leave it to the Government to decide not only whether they publish but whether an instrument is retained EU law. This has massive consequences in the real world, as does the clinical trials regulation. Researchers are leaving the country because they do not know whether we are going to continue to apply EU law. This is not nothing; it is an important matter.

Lord Cormack (Con): My Lords, this is very important and the noble Baroness is entirely justified in getting a little worked up about it. I spent 40 years, almost to the day, in the other place. I never had a ministerial office and I was always deeply suspicious of Ministers exercising arbitrary power and of any measure that extended the opportunity for Ministers to exercise such powers. My noble friend Lord Hailsham intervened in the debate earlier this week to remind me—not that I needed reminding—of the importance of the Back-Bencher. The Government must always be answerable to Parliament. Giving a Minister an extra arbitrary power, be it in ever such a small degree, enables them to evade answerability to the elected House.

We are fortunate to have committees—the Constitution Committee and the committee of which the noble Lords, Lord Lisvane and Lord Tyler, are members—that act as watchdogs on behalf of this House and Parliament. As this Bill leaves our House, which it will do in a month or two, and goes back to the Commons, it must have been tightened up in as many particulars as possible so as to guarantee as much power as possible to the elected House.

Baroness Bowles of Berkhamsted: My Lords, I will speak to the amendment in my name, in case other noble Lords want to come in on it. It relates to Part 2 of Schedule 5, on the rules of evidence. It is about regulations again, but in a different part of the schedule.

I am sensitive to powers that potentially change what may or may not be available as evidence. This is a constitutional point, especially if it means disappearing cases or defences. I therefore find the provision in paragraph 4(3) of Schedule 5 too wide. It permits regulations under paragraph 4 to modify any provision made by or under any enactment made up to the end of the Session in which this withdrawal Bill is passed. That is basically all legislation until then.

I have tried to work out why this provision is needed and what it could do if abused, for that is the standard that we must measure against. In many discussions on wide powers, Ministers have protested good faith. Many of your Lordships have not doubted them but have still wanted safeguards, while others of your Lordships, including distinguished privy counsellors on the government side, have warned—or maybe confessed—that Ministers will abuse powers and have likewise suggested safeguards. This is all part of the "appropriate" versus "necessary" argument.

I was struck last Wednesday that, when the boot was on the other foot, the Government were less keen on having to rely on trust. About devolution, the noble and learned Lord, Lord Keen, said:

"If we look to the issue of consent, rather than consultation, let us be clear that it is not a question of trust but of constitutional propriety".—[*Official Report*, 21/3/18; col. 403.]

I accept that the context is different, but the point that many of us have been trying to make about many powers in the Bill is just that: it is a matter of constitutional propriety between the Executive and Parliament and, indeed, the freedoms of the people.

Here we have another such power, even if it is small. It does not seem right that rules of evidence for admissibility could be changed, maybe quite widely, by amending any Act of Parliament, not necessarily limited to the consequences of Brexit. I have suggested adding a limitation, which would not allow use of the power for reducing the scope of what is admissible except for the purpose of replacing EU references with domestic ones. I thought that limitation was additionally relevant because the power to amend all pre-Brexit legislation seems to be perpetual. I was first inclined just to delete it, but I hope that my amendment will give the Minister an opportunity to clarify the kind of circumstances that are envisaged for the power, why it should be perpetual and whether some limitation could be envisaged to address my concerns.

Viscount Hailsham: My Lords, I have a brief observation on Amendment 355. I agree entirely with the points of principle that have been articulated by my noble friend Lord Cormack, by the noble and learned Lord, Lord Judge, and by the noble Lord, Lord Tyler. Let me make a practical point. If the Minister makes an exception and gets it wrong, people dealing with the European Union may find themselves non-compliant with regulations that are in force and thereby exposed to some form of penalty or disadvantage. The advantage of the amendment is that it would reduce that possibility by a small degree. It is worth guarding against the risk if we can.

Lord Wallace of Saltaire (LD): My Lords, the Minister remarked that the previous amendment was slightly nerdish and that we were dealing with technical issues. That is absolutely the role of this House. We are intended to deal with the details of Bills. We have already spent more time on the Bill, before we have reached the end of the Committee stage, than the House of Commons spent on all stages. That is appropriate—and necessary.

We should not underestimate how far these technical, constitutional, nerdish issues have resonance outside. I have seen the term "Henry VIII powers" in the columns of the *Yorkshire Post*. I should tell the noble Lord, Lord Callanan, that I found myself last Saturday addressing several thousand people in Leeds on a Stop Brexit march. In a short speech, I mentioned in passing that the House of Lords had just defeated the Government on a question relating to Euratom. A great cheer went up from the crowd. Until that point, I would have thought that there were at most 200 people in Yorkshire who understood what Euratom was—most of them medical doctors of one sort or another. If several thousand people think that the question of Euratom is important, we should not underestimate the public and those who care about detailed issues in the Bill, in particular executive control versus parliamentary sovereignty and the extent to which the Government may be taking powers in the Bill that a future Government of a different complexion might use and abuse. These are not entirely nerdish and technical matters; they are actually rather important politically.

11.45 am

Baroness Goldie: My Lords, I thank all who have contributed to this debate; very important points have been raised. This subject may be academic and technical but the issues are important—and to me, they are actually very interesting. I say to the noble Lord, Lord Wallace of Saltaire, that I think there are a lot worse ways of spending a wet Wednesday morning than looking at these issues.

In responding to Amendment 355, I would like to take the opportunity to explain the Government's approach, and explain why we do not consider it necessary or practical to require the making of secondary legislation. Taken together, paragraphs 1 and 2 mean that the Queen's printer has a duty to publish all relevant instruments in respect of which it has not received a direction. The direction-making power, therefore, is already clearly limited in its scope. I acknowledge the concern, as articulated by the Delegated Powers and Regulatory Reform Committee, that the direction-making power in paragraph 2 is akin to allowing Ministers to change the law by proclamation. The noble Lord, Lord Lisvane, colourfully referred to that. However, the Government respectfully disagree with that characterisation. The power in paragraph 2 to exempt the Queen's printer from the duty to publish in relation to certain instruments or parts of instruments is, I would submit, a targeted, common-sense provision to enable the Minister to narrow what is—as I hope I have explained in my previous remarks—the necessarily wide task of the Queen's printer.

This power does not enable a Minister, by decree, to determine what is or is not retained EU law, nor is it designed to prevent some aspects of retained direct EU legislation being published. I would remind the House that any directions under paragraph 2 must be published. So there is no secrecy here; the process

[Baroness Goldie]
is transparent. I did note the concern of the noble Lord, Lord Pannick, that there was an absence of detail on the mode of publication. I have no specific information about that. I would imagine that it would follow existing practice. However, I shall certainly undertake to write to him about that aspect.

The National Archives is already looking at how the various directions to the Queen's printer will be made available on legislation.gov.uk, to make access to them easier still.

Accordingly, the Government do not consider that this direction-making power can fairly be characterised as an alarming extension of executive power, or as setting an ominous precedent for the future. The law needs to be made publicly available—that is a given—and we need a proportionate way to achieve this. A targeted, carefully circumscribed power for a Minister to give directions in relation to a body is not unprecedented or harmful. I noted that the noble Lord, Lord Tyler, was deeply concerned about the operation of this provision, and the noble and learned Lord, Lord Judge, was, I think, predictably suspicious. So let me try to provide an illustration.

For example, under Section 92 of the Energy Act 2013, the Secretary of State may direct the Office for Nuclear Regulation as to the exercise of its functions, generally or specifically. In 2017, the Secretary of State did make such a direction as to the supply of information in relation to the nuclear safety of civilian nuclear installations. I say to the noble Lord, Lord Pannick, that that direction was published online, so it was readily visible and accessible. The alternative option put forward in the amendment of the noble Lord, Lord Lisvane, would be to require any such directions to be made in secondary legislation. Such an approach would in our view be unnecessary and potentially counterproductive. It would also impose an added burden to the volume of regulations which we can anticipate following from this legislation.

Viscount Hailsham: If it has to be done by regulation, it gives this House and the other place at least a theoretical possibility of saying that the Minister should not make the exception, because the regulation or directive is, in fact, retained EU law. The citizen must be in a position to have access to what is relevant retained EU law. If it is not done by regulation, there is no way of challenging the Minister's decision on that point. Surely, is that not objectionable in principle?

Baroness Goldie: This is all about trying to ensure that the statute book does not become cluttered with material which is irrelevant, not competent under the Bill and not within the scope of retained EU law as we have defined it.

Lord Beith (LD): We would all agree with the principle that the noble Baroness has just advanced—we shall adduce it when trying to remove some other bits from the Bill later today. However, she seems to be advancing the proposition that it is for a Minister to say that something is not part of the law, because of something that the Minister judges makes it invalid. The constitution has never given that role to Ministers. Courts decide what the law is if the matter is in doubt, not Ministers. To say to the people at the National Archives, whom I visited on one occasion—a small and diligent group huddled over computer screens which have replaced scissors and paste—"Do not print it", is not an answer to a question of doubt about the law.

Baroness Goldie: If we can set to one side any concept of malevolence or malign intent on the part of the Government or a Minister, perhaps we can accept that this is a genuine attempt to provide simplicity. If a Minister in a department perceives that an instrument or one of the elements of EU retained law is no longer applicable and is not going to fit in with the new body of law, it is desirable that clarification can be provided in the swiftest possible way and that it should not make its way to the Queen's printer. I appreciate that there are deeply felt views about this, and I am certain that we will come to this again on Report. I am merely trying to indicate to the Committee what the Government think is not just a sustainable position—

Lord Tyler: I am full of admiration for the way in which the noble Baroness appears to be trying to avoid the suggestion that it is executive expediency that is going to determine how this issue is going to be addressed. I think she knows that if she had used that phrase, people all over the House would have said: "We are not into that business". Perhaps she could be a bit clearer about what considerations she thinks would be in the Minister's mind to take this particular action.

Baroness Goldie: It is a little difficult to predict specific examples. Many of your Lordships have had experience of ministerial positions. I imagine that if an anomaly were brought to the attention of the Minister that something was not going to apply; it was no longer relevant; it did not fit in the new framework of what will be a body of UK law, the Minister would be reasonable in trying to ensure that that element, whatever it was, did not appear to make its way via the Queen's printer on to what is perceived to be the body of law for the UK.

Some may argue that that is inherently flawed and a deeply suspect way for any Government to behave. In the extraordinary situation in which we find ourselves—I suggest that outside of wartime this situation is unprecedented—common sense has to be applied. There has to be a proportionate way of balancing legitimate interests in the constitution with the practical need to make sure that we do not create nonsense in the statute book.

Baroness Bowles of Berkhamsted: Surely this comes about when the Government are dealing with the so-called deficiencies and then coming out with the statutory instruments to make those right. Why can you not identify it at that stage and make it part of the regulation? That is the point at which the comparison with what does not work in EU law is made. Why cannot it be part of that regulation? Whether it is under Schedule 5 or something else as the empowerment does not really matter, if it is properly done.

Baroness Goldie: The noble Baroness is quite right: there may be an overlap of issues where there is the desire to legislate positively about something as well as taking into account something that is no longer relevant. What I am saying is that where there is a patent misfit because something no longer applies to UK law, I think it is sensible in those circumstances to let the Minister try to ensure that there is no confusion, in that it does not make its way into what is in public view as representative of the body of law.

Baroness Kramer: Surely there is nothing wrong with a Minister proposing that something is not relevant and appropriate, but to make the final decision on that with no capacity for challenge is completely out of order. That is not a responsibility that should be placed on any member of the Executive.

Viscount Hailsham: Before my noble friend responds to that, I wish to make a similar point. If a direction is published, that is after the event; whereas if it has to be done by regulation, that in effect gives everyone the right to say that the Minister has got it wrong. That would be prospective rather than retrospective. Does the regulation procedure not have that advantage? It gives people the right to say the Minister has got it wrong.

Baroness Goldie: Well, I have listened with interest to these contributions. We will certainly reflect on what has been said. I understand the desire of the Chamber to get some whiff or wind of what the Minister might be contemplating and I can certainly undertake to look at what the noble Baroness, Lady Kramer, and my noble friend Lord Hailsham have said. I was going to go on, if I may be permitted to do so, to try to cover the point about secondary legislation, if I can pause for breath to do that.

Lord Pannick: The Minister is being very patient. I would like to add to what the noble Viscount has said. A real disadvantage of what the Government are proposing—that is, there is publication with no opportunity for the matter to be debated before it is decided—is that there is a means of challenge, and that is in court. It would be most unsatisfactory if the procedure that the Government adopt is that Ministers make a decision and publish a direction, there is no opportunity for debate in either House and then anyone who is aggrieved takes the matter to court. Surely it would be far better for this to be done by statutory instrument, and then any concerns could be properly debated.

Baroness Goldie: I hear the noble Lord, and I shall certainly reflect on that observation, but if I may be permitted to advance what the Government consider to be the case in relation to the proposition that this be dealt with by secondary legislation it might enable the Committee to understand why the Government have adopted the view that we have. The alternative option to require that any such direction is to be made of secondary legislation would arguably be counter-productive. The task of identifying instruments that will not become retained EU law will be a continuous one, and our awareness of such instruments will grow over time. I understand and respect the motives behind the amendment. I have to suggest that it would seem rather paradoxical to require the Government to legislate repeatedly in order to avoid the publication of irrelevant EU legislation, but maybe I am being perverse in looking at it that way. The legislation required to ensure that our law operates effectively after exit day will be significant, and I respectfully suggest that we should try not to add to that task in this case. As I have said, though, many useful points have been raised on this complex question, and I shall reflect on all the contributions made. However, on the basis of what I have been able to say, I hope the noble Lord will feel able to withdraw his amendment.

Lord Newby: The Minister started her speech by saying one of the principal reasons why the Government were opposing this amendment was that what it proposed was "impractical". I have been listening very carefully, but I do not think she has explained why it is impractical. She has explained a number of other objections that the Government have, but surely it is not impractical. It is perfectly possible to do it. It is just that the Government do not want to do it, for other reasons.

Noon

Baroness Goldie: I disagree with the noble Lord. I was using "impractical"—if I did use it, and it is so long ago that I started my speech that I cannot remember what I said—in the context of what is reasonable and proportionate in all the circumstances.

I turn to Amendment 355ZZA—sounds a bit like a pop group—in the name of the noble Baroness, Lady Bowles. If I have understood the amendment correctly, the noble Baroness is concerned about regulations being used to diminish the evidential value of certain matters or documents. I agree that this is an important area which we want to get right. Part 2 of Schedule 5 ensures that the rules of evidence, currently in Section 3 of the 1972 Act, can be replaced and properly reflect the legal landscape post exit. The power in Part 2 of Schedule 5 enables a Minister to make provision about judicial notice and the admissibility of specified evidence of certain matters. For clarity, judicial notice covers matters which are to be treated as already within the knowledge of the court and so are not required to be "proved" in the usual way.

The power in part 2 of the Schedule covers a limited and technical, though important, area, and subparagraphs (2) to (5) of paragraph 4 set out the scope and limits of that power. While I understand the noble Baroness's concern, and share her desire to ensure that the effective administration of court proceedings continues after exit, I hope I have reassured her that the regulation-making power is designed to do exactly that. In addition, regulations made under this power are subject to the affirmative procedure, as provided for in paragraph 9 of Schedule 7, so there will be a debate and a vote in this House before any new rules are provided for. On that basis, I would ask the noble Baroness not to press her amendment.

Lord Wallace of Saltaire: My Lords, I query the comparison with war time. This is a very sensitive issue in the debate on leaving the European Union.

[Lord Wallace of Saltaire]
After all, the leave campaign depicted the European Union as a continental—or German—tyranny, from which we would be escaping. Yesterday, Jacob Rees-Mogg talked about remainers as being like Japanese soldiers who had not yet realised that they had been defeated and liberated by the Americans. The Prime Minister's Mansion House speech takes us in a very different direction. She talked about leaving, but recognising that our values and interests remain the same as those of the European Union; that we will remain closely associated with the Union. That is not something which one can compare with war time. It is a complicated disengagement process in which we are not entirely disengaging. It is not helpful to the public, or to the continuing debate, to make these comparisons.

Baroness Goldie: I hear the noble Lord. I did not in any way wish to draw a specific comparison between the two. I was simply describing the magnitude of constitutional challenge which is confronting the country. I had no wish to conflate the two situations in any way. The noble Lord is quite right that there are profound differences. If it caused concern, I apologise.

Lord Lisvane: My Lords, I am grateful to the Minister for her lengthy and very detailed reply. I am also grateful to noble Lords who have taken part in the debate and expressed supportive views. Particularly telling were the twin points made by the noble Lord, Lord Pannick. The first was about the availability of the corpus of legislation and clarity and certainty on that point. His subsequent point, made in an intervention, was about the risks of challenge in the courts. The Government would clearly wish to avoid that. The noble Viscount, Lord Hailsham, made the helpful point that an enhanced process would allow it to be judged whether Ministers had got it wrong and for that judgment to be made in time.

The Minister answered the issue very much in terms of administrative practicality—pragmatism, if you will. She quoted some precedents—we have traded precedents on successive days in Committee, and some have been good and some have been less so. But an army of embryo precedents—if such a concept can be allowed—is about to march towards your Lordships' House from the other end of the building in the form of the Taxation (Cross-border Trade) Bill, which I referenced in moving the amendment. I think we need to be very cautious about rather distant precedents contained, for example, in the Energy Act.

As I say, the noble Baroness answered very much in terms of administrative convenience, practicality and so on. She talked about the volume of the regulations. I do not think that a sensible solution is beyond the wit of man and woman to devise in this case. Could there not be a cumulative list of ministerial decisions on items of legislation that have been identified as falling within this provision on the DExEU website, so that everybody knows what is coming, which could be wrapped up in one SI every month or every six weeks? That would seem to me to reduce the burden.

The Minister was very kind to be concerned about the burden on the Queen's printer and the National Archives. However, I am sure that, given their experience and resources, that is a burden which they are well capable of carrying.

Powerful as the Minister's reply was on these administrative matters, I do not think that the volume of legislation—or transactions, if you will—is enough to outweigh the issue of principle that lies behind this. I know the noble Baroness will forgive me for this image, but when she touched, fairly briefly, on the issue of principle, I seemed to hear the desperate scrabbling of fingers on a rather treacherous cliff edge. She was much more certain on the issues of administrative feasibility.

The Minister did make one prediction with which I completely agree: this is an issue which is bound to arise once again at Report. On that basis, I beg leave to withdraw the amendment.

Amendment 355 withdrawn.

Amendment 355ZZA not moved.

Debate on whether Schedule 5 should be agreed.

Baroness McIntosh of Pickering (Con): My Lords, I am most grateful for this opportunity to probe the contents of Schedule 5 and debate whether it should be agreed. We have been told throughout the Committee proceedings that this is a technical Bill making arrangements to transpose existing EU law instruments such as regulations, decisions and Court of Justice case law which already exist on exit day into UK law. The two debates we have had today demonstrate the point that I would like to make: we have never embarked on an exercise of this scale and I do not think the Government are aware as yet what the scale of the exercise is.

I begin with one quick question. Paragraph 1(1) of Schedule 5 says that the Queen's printer "must" make arrangements for the publication of each relevant instrument and so on. Yet under sub-paragraphs (3) and (4) of paragraph 1 we are told that the Queen's printer "may" make arrangements. I wonder why there is a difference there. Under sub-paragraphs (3) and (4), who will exercise that discretion? For the purposes of this Bill, what are the instruments, how many are they and where are they?

With a number of other noble Lords, I was fortunate to have a meeting with my noble and learned friend Lord Keen, where I asked where these instruments could be found. I hope the Minister will be able to confirm that. It is rather surprising to learn that there is no central depository for such instruments in this country at this time. We are referred to websites to see what the range of instruments is. The first website is that of the Queen's printer—the National Archives—and we see a blank screen. We have first to search through all the legislation; we have to have the title of the legislation, the year in which it was agreed and its number. We also have to know the type of the legislation and go through various categories. The only specific reference to EU legislation that I could see in the short research that I did was in respect of UK statutory instruments.

The second website to which we are referred is EUR-Lex, which is a widely used European legal search engine and the EU's legal database. There again, you are faced with a screen in which you need to type in the document number, the year it was adopted, the type of instrument—regulation, directive, decision, European court case—and the body which issued it. That is what you have to enter before you can do any further search.

On the scale of the exercise, it is very clear from the Explanatory Notes that we do not know how many instruments there are—our preceding debates today have magnified that. We are told in the Explanatory Notes that, while there is no single figure for how much EU law already forms part of domestic law and how much will therefore be converted by this Bill, according to EUR-Lex, the EU's legal database, there are currently more than 12,000 regulations which it defines as directly effective EU laws and more than 6,000 EU directives which will have been transposed and enforced across the EU. Additional research from the House of Commons Library indicates that in addition to that—I assume that it is in addition—around 7,900 statutory instruments have been made in the UK which have been implemented as EU legislation. There are a further 1,302 primary UK Acts of Parliament between 1980 and 2009, excluding those which have later been repealed, with 186 Acts in addition exhibiting a degree of EU influence, which means that they are UK law emanating from EU law.

If I was back in practice, as the noble Lord, Lord Pannick, and a number of other noble and noble and learned Lords are, and I wished to advise a client for the purposes of this Bill which instrument or decision is to be transposed, my understanding is that we simply would not know. Tomorrow, it will be only one year until we formally leave the European Union. I am sure that my noble friend the Minister will agree that this is a massive exercise. I want to put two simple questions to her. First, are we right to conclude that there is no centrally depository or archive for such instruments at this stage in this country, but that the information is held in the archives in Brussels? Secondly, can the Government put a figure on the number of decisions and other such instruments to be transposed for the purposes of this Bill into UK law as part of this exercise?

12.15 pm

Baroness Goldie: My Lords, I thank my noble friend Lady McIntosh for her comments. In response, I will need to be fairly brief. Clause 13 gives effect to Schedule 5, which is a technical but important part of the Bill. Quite simply, Schedule 5 seeks both to ensure that our law is sufficiently accessible after exit day and to provide for rules of evidence replacing those currently in the European Communities Act. I acknowledge my noble friend's intention to oppose that Schedule 5 stand part of the Bill and will try to persuade her otherwise.

Paragraph 1 of Schedule 5 requires the publication of relevant instruments defined in the schedule as those that may form part of retained direct EU legislation and the key treaties likely to be of most relevance to, or to give rise to directly effective rights et cetera forming part of, retained EU law under Clause 4. My noble friend will understand that, after a period of more than 45 years of membership of the EU, a huge body of law has developed. Without wanting to seem patronising, that is exactly why this Bill before us is so vitally important. We want to make sure that all the protections, rights and benefits that our citizens in the UK have enjoyed under that huge body of law will flow seamlessly on exit day into our UK domestic law.

On the specific question that my noble friend asked about whether there was any central archive, I am not aware of any specific central archive, but I shall certainly have officials look at that and I shall undertake to write to my noble friend.

Lord Foulkes of Cumnock (Lab): Could the Minister also deal with the question of Scotland? As I understand it, the Queen's printer applies only for England, Wales and Northern Ireland. There is a separate Queen's printer for Scotland, under Section 92 of the Scotland Act 1998, who is responsible for Acts of Parliament for Scotland. Does not that create some problems in relation to the drafting of Schedule 5?

Baroness Goldie: I do not have a response to that specific point, but I shall certainly undertake to write to the noble Lord and provide more detail.

I revert to my noble friend Lady McIntosh, who I think sought a figure for the number of instruments or individual components of law. I am unable to provide that; I do not think that such a figure exists. Obviously, a lot of work has been done across departments to ascertain what is likely to affect the activities within departments and what is likely to become part of retained EU law post exit day. Again, I shall double-check that and, if there is any more information that I can give in that connection, I shall do so.

The remaining provisions of paragraph 1 provide for the power to publish other documents, such as decisions of the Court of Justice of the European Union or anything else that the Queen's printer considers useful in relation to those things. It also ensures that, in accordance with the snapshot, anything repealed before exit day, or modified on or after exit day, does not have to be published. This is supported by the targeted and what I have already described as common-sense power in paragraph 2 to enable Ministers to narrow the task of the Queen's printer by ensuring that instruments that are not retained EU law do not have to be published. We have had an interesting debate on that and I have given certain undertakings to look at the contributions from Members.

Lord Foulkes of Cumnock: I have another query. We are all talking about the Queen's printer. As I have said, that is the Queen's printer applying for England, Wales and Northern Ireland. Can the Minister tell us who the Queen's printer is? As I understand it, the Queen's printer has responsibility—and it is a good job that we have two Bishops here—for printing the Bible, I think in the King James version. I have just had a nod from a Bishop, which is very exciting. I think that the Queen's printer may currently be Cambridge University Press, but I may be wrong on

[Lord Foulkes of Cumnock]
that. Everyone including the Minister is talking about the Queen's printer, but hands up who knows who it is? There are not even hands up in the Box. I know that the Minister is the fount of all knowledge, so who is the Queen's printer?

Baroness Goldie: I can always rely on the noble Lord to lighten the proceedings and introduce an element of light relief. I do not imagine that the Queen's printer is some inky-fingered individual stabbing away in a dark basement. If the Queen's printer is as busy as the noble Lord implies, the less we give them to do, the better. That is why I think that the direction to exclude things from the Queen's printer would be very timely. I shall of course find out more information for the noble Lord.

Lord Lisvane: I wonder if I could, as they say, be helpful. I think that the Queen's printer is the Keeper of the National Archives, who also holds the title "Queen's Printer".

Baroness Goldie: I am grateful to the noble Lord, Lord Lisvane. As the late FE Smith, said, I am no wiser but I am certainly better informed.

Lord Adonis (Lab): I suggest that the noble Lord, Lord Lisvane, becomes the Queen's printer, because he is far more knowledgeable about these matters than anyone else in the country.

Baroness Goldie: I do not wish in any way to diminish the talents of the Queen's printer, whoever that person or group of persons is or wherever they dwell, but I think that the noble Lord belongs in this Chamber making the powerful and important contributions that he does.

Lord Foulkes of Cumnock: The noble Lord, Lord Lisvane, has been helpful to an extent by saying that the Queen's printer is the Keeper of the National Archives. However, that raises the question: who is the Keeper of the National Archives?

Lord Cormack: His name is Mr Jeff James.

Baroness Goldie: Then I offer a heartfelt tribute to Mr Jeff James.

Lord Lisvane: If it assists the noble Lord, Lord Foulkes of Cumnock, he is also the Queen's printer for Scotland.

Lord Beith: I recommend that the Minister and other Ministers pay a visit to Kew, which is a very nice place, and have a look at the small but diligent unit that tries to maintain an accurate record and account of what the law of this country is.

Baroness Goldie: My Lords, if we do not get through this debate, I will not be visiting anywhere. I must thank a group of your Lordships for their fascinating contributions, some of which have eliminated my need to write to anyone about anything. Still, I shall look at *Hansard*.

In the view of the Government, the mixture of defined duties and specific powers provided for in part 1 of Schedule 5 strikes the right balance. I say to my noble friend Lady McIntosh that it is comprehensive, flexible and accountable.

Part 2 of Schedule 5 ensures that after exit day questions about the meaning or effect of EU law can continue to be treated as questions of law and so can be determined by our courts when determining that such a question is necessary in order to interpret retained EU law. As I said earlier, it also contains a power, subject to the affirmative procedure, to make provision about judicial notice and the admissibility of evidence of certain matters.

I hope that my remarks have provided sufficient explanation of the rationale behind, and indeed the importance of, Clause 13 and Schedule 5 and why it is imperative that that clause and schedule stand part of the Bill.

Baroness McIntosh of Pickering: My Lords, this has been an entertaining and illuminating debate. I am grateful to those who have pressed the Minister for answers.

I do not quite understand why there is a discretion in sub-paragraphs (3) and (4) of paragraph 1 of Schedule 5 for the Queen's printer not to publish the instruments in question, because it would be difficult to find out what they are if they are not published. I look forward to hearing from the Minister how many there were in the last year—if we ever get a final answer. Could she also respond on the issue of why there is no discretion under sub-paragraph (1) when there is a discretion under sub-paragraphs (3) and (4)?

The Minister has confirmed the scale of the exercise that we will all be involved in. It was not my intention that Schedule 5 should not be part of the Bill; it was purely my intention to explore the fact that there is no archive and we do not know how many instruments of this type there will be.

Schedule 5 agreed.

Clause 18 agreed.

Clause 19: Commencement and short title

Amendments 355ZA and 355ZB not moved.

Amendment 355A

Moved by ***Lord Wigley***

355A: Clause 19, page 15, line 18, at end insert ", subject to subsection (2A)"

Lord Wigley (PC): My Lords, in moving Amendment 355A, standing in my name, I shall speak to Amendment 357A. Both of these are paving amendments for the substantive Amendment 358A, also in my name, to which I shall address most of my remarks.

The amendment goes to the core of the Brexit referendum in 2016 and relates to a campaigning issue which undoubtedly swung many voters to support the leave campaign. This is to do with the amount of extra funding which would, supposedly, be available as a result of the UK decision to leave the EU. The amendment also addresses the guarantees that were given to Wales—and to Scotland and other parts of the United Kingdom—that all the funding coming from the EU would be replaced by UK Treasury funding so that, in this context, Wales would not miss out.

Amendment 358A proposes that this Act does not come into force until the UK Government have laid a report before Parliament, and the National Assembly for Wales, outlining how the money currently provided to Wales through the EU will be provided after Brexit. Such a statement in the Bill is needed in order to demonstrate to the electors of Wales that they were not led up the garden path in the referendum and that the Government do indeed intend to keep the promise, made by the leave campaign, that this level of funding will be maintained. I would be obliged if noble Lords will bear with me as I address those promises in greater detail.

I start with the outrageous £350 million a week that was promised to be channelled into the NHS as money returning from Brussels. That was a central part of the Brexit deal, equivalent to a manifesto commitment in a general election. It is a pledge which the Government, in signing up to deliver the other parts of the Brexit manifesto, are duty-bound to honour. If they feel obliged to deliver Brexit on the basis of the referendum vote, they must do so on the basis on which that vote was secured. That commitment was as applicable to Wales as it was elsewhere and it no doubt had an impact in Wales where the public services devolved to the Assembly are funded by the notorious Barnett formula. The NHS in Wales, as elsewhere, desperately needs additional funding. Indeed, Conservative Ministers—including the present Prime Minister—have derided the Welsh Government for not providing as much money to the NHS as was being provided in England. For a time that was true, but this was partly because the overall cake was inadequate. If an increase in health funding in Wales was the same as that in England, other services such as education would have been even harder hit. It was partly because of a decision by the Welsh Government to redirect some of the funding increase to social services, for the justifiable purpose of enabling hospital patients to return home earlier, thereby reducing the pressure on hospital beds. Whichever way, there was and there is a pressing need for additional funding for healthcare in Wales.

The vote to quit the EU was undoubtedly augmented, in part, by people swallowing the outrageous propaganda that £350 million a week would be coming to the health service. Even on the basis of the restrictive Barnett distribution, the NHS in Wales could therefore have expected something like £18 million a week more funding—£1 billion a year. That is a promise which was made and which the people of Wales expect to be fulfilled. My helpful amendment enables the Government to explain to the people of Wales how they intend to fulfil their pledge.

12.30 pm

That was not the only promise that was made concerning post-Brexit funding. It has not gone unnoticed in this Chamber that those areas that voted most heavily in favour of Brexit in Wales were the old industrial valleys—the very areas which benefited most from European strategic funds. Since west Wales and the valleys were accorded what was defined as objective 1 status by the EU back in 2000, those areas most in need of economic support—defined as having under 75% of the average GDP of the European Union—received direct funding from Europe, which will have amounted over two decades to almost £4 billion. Obviously, at the time of the campaign, voters in those areas demanded to know what would happen to such funding. The Brexit lying squad, as it is known, true to form said: "Yes, of course, that money would be funded by the UK Treasury" so that such impoverished areas would not lose out as a consequence of leaving the EU. That was part of the deal and, as far as those areas are concerned, a central part of it. They voted out, and now they expect that promise to be honoured, not in some general way but specifically in terms of total aggregate funding and its being distributed not at the whim of Treasury Ministers but on a needs-based formula, just as the European funds have been distributed. If the Minister will give a copper-bottomed guarantee to the House today that this will be done, perhaps it will not be necessary to press the amendment. I wait to hear what assurances, if any, the Minister can give.

There is also the financial challenge facing rural Wales by the ending of the common agricultural policy, which will follow the implementation of the Bill. I well remember addressing several meetings organised by farming unions during the referendum. While the union leadership was committed to remain, individual farmers were being tempted to vote out, basing their case on the guarantees being given by the Brexit campaign that their funding was secure. It is now time to deliver. If farmers do not get a fair deal, they will be very angry indeed, as farmers certainly can be. The CAP currently pays some £270 million per annum to Wales, which amounts to about 9% of the figure coming to the UK from the CAP. That is about twice the per capita level because of the importance of agriculture to Wales. Will that sum be replaced in full by the Treasury in London? Can the Minister give a commitment that is not just a short-term fix for two or three years after Brexit but an ongoing pledge for the future, with no sunset clause to undermine the confidence of our farmers, since agricultural investment is a long-term commitment? If the money is distributed on a UK level, can he give an assurance that it will not be on a Barnett basis but on a needs basis or an inflation-proofed CAP existing provision basis?

In 2016, we were told by the Brexit campaigners that there were other European funds which would be equally safeguarded. Prime among these was the western seaboard counties of Wales having access to the Interreg funding, secured for Wales by the Conservative Government at the time of the Maastricht Treaty. It has helped to finance projects of benefit to the western seaboard of Wales and the corresponding eastern seaboard of Ireland. It has funded numerous small-scale projects in transport, environment and culture, and

[Lord Wigley]
has made a valuable contribution to those areas. Several million pounds have been paid out by Brussels to Wales for Interreg support. Once again, at the time of the referendum, promises were made liberally around Wales that the areas benefitting from Interreg funding would be secure and that equivalent funds would be paid out by the Treasury to Wales and, no doubt, to other Interreg-qualifying areas.

That is the background to my amendments. They give the Committee the opportunity to write into the Bill statutory assurances that these EU sources of funding will be maintained. They should be guaranteed for the next 12 years, equivalent to two further rounds of European funding and as a pro rata equivalent to the funding which emanated from Brussels over the past decade. The element of this funding which replaces EU structural funds should be reviewed 10 years after Brexit and reassessed on the basis of whether the equivalent GDP per head in the designated beneficiary areas has reached 90% of the UK average figure. If not, the funding should be extended.

I make one final point, which I am bound to make in this context as I have before. We are frequently told that funds repatriated from Brussels should be administered on a UK-wide basis to ensure that equity is secured for every part of Britain. I understand that argument, but I am afraid that bitter experience has taught me that Wales just cannot trust the Treasury in London when it comes to safeguarding our economic and financial well-being. It pains me to say this, as I realise how much apoplexy it may cause some noble Lords opposite, but the truth is that we have been able to trust EU Commission officials in Brussels better than we can trust the Treasury in Whitehall. I mentioned this at Second Reading, but let me briefly explain again.

In 2000—the first year of our National Assembly's existence, when I was leader of the opposition there, and the first year of the European objective 1 funding for Wales—the Assembly expected to receive from Brussels several hundred million pounds to finance EU projects. The money that Brussels sent for the benefit of Wales was dispatched via the UK Treasury and, surprise, surprise, it did not come through to Wales. After painstaking inquiries were made, it became clear that the Treasury had no intention of passing this money to Wales—

Lord Cavendish of Furness (Con): I am grateful to the noble Lord for giving way. Does he accept that those of us who live in Cumbria have watched with huge envy the largesse that has been directed at Wales?

Lord Wigley: I have no doubt that Cumbria has its problems, and I have no doubt that people from Cumbria will speak up on its behalf. I support entirely that Cumbrian needs should be answered on a needs basis; we are arguing for exactly that for Wales. The current Barnett formula, as this House has recognised, does not provide that needs-based system for funding. So I accept entirely what the noble Lord says.

The point that I was making was that, back in 2000, the Treasury claimed that it already funded ambitious regional economic projects and that the European cash would be gratefully received as a contribution towards such spending. I sought clarification from officials at 10 Downing Street, but no clarification or assurance was forthcoming. In March 2000, I went to Brussels and met the EU regional commissioner, no less than a certain Monsieur Michel Barnier. He just could not believe what I was saying, since the EU funding was provided on the basis of additionality. He asked his officials—yes, those much-derided Brussels Eurocrats—whether what I said could possibly be true. They confirmed my account, and Mr Barnier asked me to give him a couple of months without making political capital on the issue, in which time he would do his best to sort it out.

The eventual outcome to this incredible episode was, as I may have previously mentioned, that as part of his spending review in July 2000 the then Chancellor Gordon Brown announced that the UK Government would be making a payment of £442 million to the Assembly to settle the account. Thereafter, Wales received the money from Brussels, which it had a right to expect.

So please do not tell me the nonsense about Wales being able to trust the Treasury in London more than it can trust Brussels. Such a claim flies in the face of our bitter experience. Unless we have safeguards built into law, there is no reason for us to believe that we can trust the UK Treasury or its Ministers with our future financial well-being. That is why I have proposed amendments to the Bill. If Wales, in the wake of Brexit, is to be thrown back at the mercy of Whitehall, God help us. I beg to move.

Baroness Humphreys (LD): My Lords, I am grateful for the opportunity to speak in support of Amendment 358A in the name of the noble Lord, Lord Wigley, and I thank him for tabling it.

Since 2000, the area of west Wales and the valleys has been in receipt of funding from the European Union. Everywhere one looks in west Wales and the valleys, one finds examples of the benefits arising from this—from the newly transformed Ponty lido to the upgraded railway stations in Aberystwyth, Carmarthen, Llandudno and Port Talbot, where we see the effects of a £21 million cash injection of EU funds. From the National Waterfront Museum on Swansea marina to the regeneration of south Wales valley towns, we see the benefit of millions of pounds from Europe.

We see schemes creating employment, breathing life into communities and improving the quality of people's lives. In my own area, I have seen EU funding being used to build a new rural development centre, to convert an old mill to a teaching centre and an old school into a community centre and, perhaps, the project that is closest to my heart, for the upgrading of Nant Gwrtheyrn, the Welsh language and heritage centre on the Llyn peninsula. We have also seen major road improvements. The stretch of the A465 from Brynmawr to Tredegar, for example, saw £82 million of EU funding being poured in to help with its construction, helping to improve both safety and connectivity.

These are just a very few examples of the impact of EU funding on west Wales and the valleys. All this has been achieved with the aid of the main funding streams.

It may be useful to remind ourselves of the aim of three of the streams and inquire of the Government how they intend to replicate them. The European structural funds have been used to support people into work and training; have supported youth employment, research and innovation projects and business competitiveness in the SME sector; and have overseen renewable energy and energy efficiency schemes. These funds are worth £2 billion from 2014 to 2020. What will replace them in two years' time?

The common agricultural policy, as the noble Lord has already referred to, is, as those of us who live in Wales know, an essential £200 million-a-year scheme, providing payments to more than 16,000 farms in Wales to help to protect and enhance the countryside. What assurances can the Minister give about how these funds will be allocated in future, and on what basis?

The third scheme that I want to talk about is the Welsh Government Rural Communities—Rural Development Programme 2014-2020. It is a £957 million programme supporting businesses, farmers, the countryside and communities in rural areas and has been essential to areas such as the Conwy Valley, where I live. Could the Minister outline how the Government intend to support rural communities in Wales after 2020?

All this is in stark contrast to the dire lack of funding that came to Wales from the UK Government prior to 2000, which led to west Wales and the valleys being designated as one of the poorest areas in the EU and therefore eligible for objective 1 funding. I am sure that noble Lords will understand my scepticism about future funding commitments if, or when, we leave the EU.

The UK Government's record on funding to Wales hardly fills one with confidence. It has been proved beyond doubt that the Barnett formula, by which Wales has received its funding for the NHS, education and so on, has been disadvantageous to Wales, yet no Government of any colour have been prepared to address the issues and reform the formula itself to ensure fair funding on a permanent basis. My noble friend Lord Thomas of Gresford and the noble Lord, Lord Wigley, have already spoken about this. In earlier debates on the Bill my noble friend Lord Thomas drew the House's attention to the disparity in funding under the Barnett formula and voiced his fears that future funding to Wales will perpetuate the situation. As he has so clearly pointed out, the weakness of the Barnett formula in relation to Wales is that it is based on a crude population count, whereas EU funding has always been based on need.

It is certainly time for Ministers to be crystal clear about the amount of funding that will come to Wales—remembering, of course, that we were promised "not a penny less" during the referendum campaign. We need to know the basis on which the funding will be determined and the methods which will be used to distribute it.

12.45 pm

Lord Roberts of Llandudno (LD): My Lords, I usually sleep quite well, but last night I had a sleepless night. It was because I received a Written Answer yesterday from Defra about exactly how much farming support came from Europe. It stated:

> "Across the UK £3.95 billion is provided a year under the Common Agricultural Policy. Of this, around 93% is funded from the EU, with around 7% being national funding under rural development programmes".

So 93% is from Europe. If Brexit goes through, it could well devastate the Welsh agricultural industry. It is a catastrophic move for Welsh agriculture. We know that it already struggles. We have had years of blight in Welsh agriculture, but now we have a scheme going through that we do not have to approve: this House can stop it and, by so doing, stop that death blow to Welsh agriculture.

Lord Liddle (Lab): My Lords, I add an English voice in support of the amendment—a northern English voice and a Cumbrian voice. In deference to the noble Lord, Lord Cavendish, for whom I have great regard because of the work he does in Cumbria, I think that European funds have made an enormous difference to our prospects in the north. In our debates on the Bill, we have heard a lot of the voices of Wales and Scotland about how they should be treated in the light of Brexit, but we have heard very little about how the north of England should be treated. This reflects the fact that federalism in this country has not advanced far enough. We do not have a proper devolved system of government. It is an object lesson in how the interests of large parts of England are completely forgotten in a lot of our deliberations.

The noble Lord, Lord Wigley, is absolutely right that the £350 million a week claim on the bus played an enormous part in the leave victory. I remember giving out leaflets on the streets of the ward I represent on the county council in Wigton in Cumbria. People came up to me and said "Roger, you know, we're not going to vote for you on this because we're just wasting all that money". I tried to explain to people that the £350 million that they were talking about was a gross figure of UK contributions to the EU, from which we got back substantial amounts of money which went to Cumbria in a big way.

Let me cite some examples. There is not just the agricultural support, which I know is a great concern of the noble Lord, Lord Cavendish. We would not have broadband in Cumbria if we had not had special EU support for it. We would not have had the regeneration schemes for the ports of Maryport, Whitehaven and Barrow if we had not had EU structural funds. We have had huge support for regeneration.

One other interest that I should declare is that I chair Lancaster University, just outside my native county, which is presently building a health innovation campus that would not happen without EU structural funds—and this for an excellent university, which is top of the league in the *Sunday Times* this year, if I can plug it in the Lords Chamber. It is a vital investment for the university's future.

The truth is that, if the £350 million claim that the leavers made was to be met, all that spending would have to be scrapped—all the spending on agriculture and the regions and all the spending on culture, science and innovation would go, because that was the gross contribution. Clearly, therefore, there is great embarrassment on the Benches opposite as to their present intentions, because they cannot tell the Foreign

[Lord Liddle]
Secretary that he was lying throughout the campaign. But the truth is that that was what he was doing. He was lying about the £350 million. The fact is that, if these programmes, the agriculture support and structural fund money is to continue, there is no £350 million. There might be a lesser sum from the net contribution, but when you are thinking about the net contribution, you have to think about the impact of Brexit on our economic growth and therefore on tax revenues. It is already the case that, whereas we were growing before the referendum at the top of the G7 league, we are now growing at the bottom of it, and the Chancellor's own forecasts for the next five years suggest that we will continue to be in that position and will suffer a considerable loss of potential growth and tax revenue.

This is a very serious issue. I would like clear answers from the Government as to what promises beyond 2020 they are prepared to make on agriculture and structural funds. That matters greatly to the future of the regions of this nation.

Lord Adonis: I endorse everything that my noble friend Lord Liddle has said. Always when the House debates a Bill at length, certain themes appear, and the themes and patterns can often be of some significance. One of the most significant themes that has appeared in your Lordships' consideration of this Bill is how weak the voice of England has been in our debates compared with the voice of Scotland, Wales and Northern Ireland.

There has been only one substantive debate about the interests of England after EU withdrawal and how it is handled, which was the debate initiated by the noble Lord, Lord Shipley—significantly, a former leader of Newcastle City Council—on 19 March. It was a very significant debate in the form that it took. What came through very clearly in the debate was that the noble Lord, Lord Shipley, and other leaders of local authorities in England, including the noble Lord, Lord Porter, who sits on the Conservative Benches and is the leader of the Local Government Association, had far more confidence in the EU's processes of consultation through the Committee of the Regions than they did in any institutional arrangements for consultation between Her Majesty's Government and local authorities in England.

I am delighted to see the noble Lord, Lord Bourne, in his place—I think that he may be responding to this debate. In his characteristic way, he made a very constructive response to the debate, saying that the Government were considering consultation arrangements post-EU withdrawal with local authorities in England. I took it to be a very significant statement when he said that that might involve new consultative machinery, including possibly a new consultative body between the Government and local authorities in England. I have to say that the fact that it takes EU withdrawal for Her Majesty's Government to produce proposals for formal institutional consultation between the leaders of local authorities in England and the Government is a pretty damning commentary on the state of our constitutional arrangements in this country. One of the themes that comes through very strongly from Brexit is that English local government and the regions and cities of England are essentially government from London in a colonial fashion, in much the same way as Scotland and Wales were before devolution. One of the very big issues raised by Brexit is that whatever happens over the next year, whether or not we leave—and I hope we do not—Parliament is going to have to address with great seriousness in the coming years the government of England as a nation but also the relationship between this colonial-style government that we have in Westminster and Whitehall and local government across England as a whole.

The one telling exception to this pattern is London, because London has a directly elected mayor and the Greater London Authority. As a former Minister, I know that the whole way that London is treated is radically different from the way that the rest of England is treated because it has a mayor and the GLA. When the Mayor of London phones Ministers, sitting there with 1 million votes—somewhat more than my noble friend has as the county councillor for Wigton; I know he has done very well but he does not sit there with quite so many votes—I assure noble Lords that Ministers take the Mayor of London's call.

I remember vividly that when I was Secretary of State for Transport I met the then Mayor of London, who is now the Foreign Secretary, and he did not know who the leader of Birmingham City Council was. It only happens to be the second largest city in England. That is a very telling commentary on the state of the government of England. How England is going to be treated is massive unfinished business in our constitutional arrangements, and Brexit has exposed a whole set of issues relating to the government of England that will now have to be addressed.

Lord Cavendish of Furness: The noble Lord is making an important point about devolution, with most of which I agree. Does he accept that this Government have really gone out of their way to try to devolve power and that in many cases, as I think he would accept, it is the people on the ground who have refused and rejected it?

Lord Adonis: My Lords, I am not seeking to make party-political points in this debate; this issue is going to embrace us on all sides of the House. I note, though, that at the moment we still do not have proper arrangements in place for what is going to happen over the mayoralties in the great county of Yorkshire, which is a hugely important set of issues. There is massive disagreement taking place between different cities in Yorkshire and the Government about how this should be handled. At the moment we still do not have strong powers for any of the mayors outside London. The treatment of the counties of England that are not going to be embraced by the new city mayors is very problematic in the current arrangements, partly because it is genuinely problematic. We have never been able to resolve the issue about how you devolve to local government in England outside the major cities.

This is going to be a big ongoing source of debate, and rightly so. As these debates have demonstrated, we have done much better by Scotland and Wales in recent years, not least because they now have their

own devolved Parliament and Assembly. We have done our very best to ensure consensual power-sharing government in Northern Ireland although, to our great regret, the Assembly is not sitting at the moment. Before long we are going to have to start giving equal attention to the government of England.

Lord Foulkes of Cumnock: I hope my noble friend Lord Adonis will forgive another Scottish voice, but I completely agree with every word that he has just said. Is not one of the ironies that our asymmetric devolution, which is the problem, is something that we could be tackling now with legislation in this Parliament if we were not preoccupied with this futile Bill and the other eight Bills that are going to follow it, which are totally unnecessary? We would have the time to deal with it.

1 pm

Lord Adonis: I entirely agree with my noble friend; he is completely right. However, it is rather a sad commentary on our politics at the moment that we in this House need to be frank and accept that, but for Brexit, a lot of these issues would not have been flushed out. I do not think that, but for Brexit and the Brexit referendum, we would be addressing them.

At the moment, I am spending a lot of time travelling around the country, particularly to places which voted to leave. Most of these places are remote from London. There is an almost direct relationship between the distance from London, particularly the time it takes by train to get to places, and their likelihood of having voted to leave the European Union. What comes through so powerfully from the people I am meeting there is a massive sense of isolation and alienation not just from Brussels, although that is an issue, but from London and our Government and Parliament here. That is not a stable state of affairs for the future of government and democracy in this country, and it will have to be addressed.

Lord Foulkes of Cumnock: I completely agree. I feel so frustrated because for the past three years, I have been trying to persuade the leader of our party to consider a constitutional convention or to discuss the issue even within our party. I agree that we need to come back to that, but I turn to the amendment in the name of my noble friend Lord Wigley. I call him my noble friend because, especially on this Bill, we agree on so much. I am grateful to him for tabling it. Although it applies to Wales, as others have said, it could apply equally to England and Scotland.

As others have also said, I am pleased that it is the noble Lord, Lord Bourne, who will reply to the debate, because I have had dealings with him, as he will testify, on a number of occasions both before he was a Minister and since, and he looks at these things carefully, seriously and sympathetically. I expect that he will do the same again today.

I will not go through the whole list, but in Scotland we will lose structural funds, scientific grants and the Social Fund, and the Erasmus funding is in doubt. There is the European Investment Bank, which has funded roads, railways, hospitals and many other things. None of this can be continued when we leave—if we leave: the noble Baroness, Lady Humphreys, is absolutely right. I should always use the phrase "if we leave", because it has not yet been finally decided, we are going through a process. It was the noble Lord, Lord Roberts, who said it, not the noble Baroness, Lady Humphreys. I am getting completely mixed up. As we go through the process, we are seeing more and more problems that will be created by Brexit.

I do not know whether any of your Lordships have visited the Falkirk Wheel, now one of the great tourist attractions in Scotland but also one of the great engineering attractions. Again, it was partly funded by the European Union. The Scottish Parliament estimates that more than 40,000 jobs have been created with European funding. As I said, I do not want to list them all—I could go on at length if that were appropriate, but I will not.

We have had vague promises that funding will be continued if we leave the European Union. We need, if not today then in the near future, more detail, more specifics. We need to know exactly what kind of funding there will be. Will each of the funds lost be replaced? What will replace the common agricultural policy? What will replace the regional development fund? What will replace the scientific grants? What will replace the Social Fund? It needs to be more specific. It is exactly like the immigration arrangements, which get put off, put off and put off. We have been promised them again and again but they have not been published. We do not even have a White Paper, let alone a Bill.

People need to know. If, as I hope, we will have a final say, if the British people will be given a final say, they will need to know whether these funds are to be replaced, how they are to be replaced and whether they will be replaced pound for pound, pound for euro, or whatever is appropriate. I hope the Minister will give such an assurance.

It is also ironic, as I said earlier when I was having an exchange with my noble friend, Lord Adonis, that we are wasting a lot of time in this debate.

Noble Lords: Hear, hear.

Lord Foulkes of Cumnock: Thank you very much. There was a huge measure of support there, principally from the Cross Benches. I do not think I have done anything to offend the Cross Benchers; quite the reverse, I was keeping them amused earlier on.

However, this is a serious point. Not only are we taking a lot of time dealing with the Bill, including Wednesday mornings, but we are spending a lot of money. My honourable friend in another place, Stephen Doughty, got an Answer recently that stated that £395 million has been transferred to the Home Office just for dealing with Brexit. Just the process is taking up a lot of money. In fact, we ought to have more Questions and Answers about exactly how much is being taken up by the actual physical process of dealing with this, including civil servants and travel. I understand that Mr David Davis does not like to travel by Eurostar so takes charter flights to Brussels, so the costs are mounting day by day and week by week.

My last point is more general. We now know that the leave campaign has been guilty of fraud and continues to be under investigation by the Electoral Commission. We now know that money was transferred

[Lord Foulkes of Cumnock]
illegally from the leave campaign to the BeLeave organisation, and that unfortunately some of my colleagues and former colleagues in the Labour Party were involved in that because one of them, a former MP, was a director of the Leave campaign. I think it is particularly reprehensible that she was involved in that.

That brings me back to the point made not by the noble Baroness, Lady Humphreys, but by the noble Lord, Lord Roberts, about if Brexit goes through. People are becoming increasingly disillusioned by the way in which we were duped during the referendum campaign, and that strengthens the case for having a new look—

Lord Cavendish of Furness: The noble Lord will remember from an earlier debate that it seems that Euratom was understood in detail in Yorkshire by not tens or hundreds but thousands of people. I think people were probably not duped.

Lord Foulkes of Cumnock: That is a matter of opinion. More and more research is being done, including recently by an organisation whose exact name I am trying to remember which carried out some work, about which I had an email this morning, showing that people who voted leave did so for a whole variety of reasons, unconnected in some cases to the whole question of the EU. That is one of the problems of referenda generally, as we have discussed before. Still, as we discussed earlier, if the decision was made by the British people, there is a very strong argument that it needs to be undone by the British people. We need to look at that again as the arguments become even stronger.

To return to the amendment, I hope we will get some specific promises and details from the Minister. As I said when I started, he has been known for his credibility, sincerity and honesty. I hope we will see that again today.

Lord Thomas of Gresford: My Lords, I have a specific question for the Minister: do the Government accept the proposition, put forward so clearly by the noble Lord, Lord Wigley, in introducing the amendment, that they are bound by the promises made by the leave campaign? They say, "It is the voice of the people that we are following". The Government had a number of choices that they could have made, but in fact they have chosen to follow a model that must bring great delight to the most extreme Brexiteers. If they do that, they are bound by those promises, I submit—I accept what the noble Lord, Lord Wigley, said.

It is suggested—this is the weak and feeble argument put forward by the leave people these days—that it did not make any difference, and that what they said really had no impact whatever. Before the people spoke and before we heard the voice of the people, the people listened. And what did they listen to? They listened to a universal lie about the National Health Service, that it would receive £350 million a week. The noble Lord, Lord Liddle, has referred to this as "lying", but I prefer the word "cheating", which has been used elsewhere in this building this week. The campaign, we now learn, was prepared to send out contradictory messages to targeted people. We do not know what those messages were and we do not know who the people targeted were, but that was cheating. So when the people spoke, they had listened to the lying and cheating propaganda that had been put forward.

Let me be more specific about Wales, where specific promises were made. Wales has been the net recipient of £650 million a year from European funds. That is not something to be proud of; it is because Europe recognised the needs of Wales, and gave money in structural funds and agricultural support that addressed those needs. I will not enumerate precisely what they are, because my noble friend Lady Humphreys has already covered that ground quite fully.

There is a moral imperative about this Government: if they are going to campaign for the sort of Brexit that the most extreme Brexiteers want, they should fulfil those promises, and make it clear in the report that the amendment calls for. In Wales it was said by leave campaigners, in terms, "You will not lose a penny"; that was said widely, across Wales, in all the campaigning that took place.

Lord Cavendish of Furness: By whom were these promises made? One problem about a referendum, the principle of which so many of us disagree with, is that it is not a case of a Government making promises that they then have to honour. I do not remember being told about not receiving a penny less. Also, I think that the noble Lord might desist from the extraordinary use of the word "extreme" Brexiteer. You cannot be 52% in the European Union; you are either in or out under this absurd and very unpleasant system of a referendum.

Lord Thomas of Gresford: I have the greatest respect for the work that the noble Lord does in Cumbria. Indeed, I feel very much for Cumbria and the north of England for the problems that they have, but they did not have made to them the specific promises that campaigners in Wales made. The Government have picked up the mantle, however you look at it, of the leave campaign. As I have said, they had choices. They could have stayed within the single market and campaigned for the customs union, but have chosen not to. That is why I wholly support the amendment proposed by the noble Lord, Lord Wigley.

1.15 pm

Lord Griffiths of Burry Port (Lab): My Lords, my noble friend Lord Foulkes described this as a futile Bill. He may be right, but it is the Bill that we are discussing. Similarly, many quite prolix arguments have been made about a number of matters that are of great importance but are not directly a consequence of the amendment before us. If we look at that, we might need to do so in a particularly poignant way.

First, I commend the terrier-like activity and concerns of the noble Lord, Lord Wigley, who has worried away at this subject like a dog with a bone over 11 days —it astonishes me that there is still some marrow in the bones, but it has been necessary. Others have talked with regret about the fact that other parts of the United Kingdom have not received the same attention that Wales, Scotland and Northern Ireland have. We can

all regret that, but we can see exactly why they have received more attention, because the Bill as drafted dealt with the devolved Governments' established institutions in a way that many people in authority felt was not fair, or just, or constitutional or whatever. Consequently, we needed to deal with the irregularities that the Bill generated in respect of these institutions, and that is what we have spent quite a lot of time doing.

I look at what has happened in Wales since 1997 and recognise the building of confidence in the institutions that now govern the Principality. I see the three different ways in which powers were gradually passed over to the Assembly: first, in a hand-me-down sort of way from this Parliament; secondly, by statutory instrument; and, finally, only very recently, through primary legislation-making powers.

I am delighted to see the noble Lord, Lord Bourne, across the Chamber, given the constructive part he played, as the leader of the Conservatives in Wales at that time, in bringing about the referendum and the agreed settlement that gave us the Assembly as it is. Let there be no doubt about it, the Assembly in Wales began in a situation of chaos—with a plain piece of paper on which many potential plans and outlines were scribbled as the various parties for power struggled between themselves to find the right shape.

At the minute, I am dealing with the family of the late Lord Richard of Ammanford, because I will be officiating at his funeral. As I look at his life, the interesting thing to note is the part played by the Richard commission, which put before the people of Wales a number of steps, just about all of which have now been incorporated into legislation which I believe will soon come into being and will govern affairs henceforward—a posthumous tribute to him. The important thing was that it commanded the confidence of all parties in Wales. Those who have typified the contribution of the Welsh voice to this debate as being merely a mouthpiece for Labour in Wales are wide of the mark. The widespread support for the institutions is acknowledged—and the part played in that by the noble Lord, Lord Bourne, has to be recognised.

Here we are on the 11th day of Committee, but this is not the end of it—for goodness sake, there is a lot of entertainment yet to come. Where else would I get the kind of discussion that we have enjoyed about the Queen's printer? Was it dot matrix or what? Because Her Majesty likes Tupperware, perhaps she likes old-fashioned ways of printing—I do not know, but it was a very illuminating and enlightening debate. We have had esoteric and philosophical principles adduced, constitutional and political positions established and fought for, and all the rest of it. At the end of the day, is it not wonderful that, with all these things in the ether—all this magnificence of idea and thought—it is money that constitutes the core of the amendment before us? We heard reference earlier in the debate to the practical arrangements that we need to face—well nothing is more practical than money.

Wales can legitimately point to the difference between the kind of economic activity that it was able to enjoy and take forward while administered, as it were, from Westminster and the kind of support that it has received subsequently because of membership of the European Union. We should hear from our debate the plea to distinguish between the infelicities of a Barnett formula which applied crudely to Wales and what will happen if it is applied crudely to Wales after we come out of Europe—if we come out of Europe. It will lead once again to a cap-in-hand approach from Wales to its financial masters here in London.

"Needs based" has been a tectonic plate, it has been a quantum leap to go from the Barnett formula to that. The needs of some of the run-down and rural areas in Wales are very desperate indeed. So I hope that we have heard, through all that has been said, the need for us to look again at the principle of how to financially support this institution.

The word "consent" was used earlier and was disputed greatly. Consenting adults is a concept that I am very familiar with. I would have hoped that instead of consent being interpreted, as it has been, as requiring a level of support that cannot be given for legal and other reasons, we would remember that consent between consenting adults is reciprocal. I do not want to think that the devolved Governments are holding a gun—a veto power—to the head of the United Kingdom Government. But Wales feels that, in the way the Bill is drafted, that is exactly what the United Kingdom Government are doing to Wales: holding a potential veto to its plans, which in certain circumstances they might use.

It all drives us back to that one word which the noble Baroness, Lady Bowles of Berkhamsted, mentioned this morning: trust. There has to be trust. How we rejoiced at the possibility that framework arrangements—the list of 24 has been referred to in previous debates—might be written into a schedule to the Bill, as amended, so as to give confidence to the people in Wales that there is a shape going forward. Some sort of consent to that list could indicate all that is necessary for us moving together as partners. The Government in Wales do not need to be treated in an infantile manner in these matters. Trust is possible, and in my opinion it is necessary.

We can read for ourselves all the details in *Hansard*, but this amendment has put out the case. Once we are through this process and into the legal situation that we will arrive at, on the shores of Canaan, having have crossed the river Jordan—

A noble Lord: Oh!

Lord Griffiths of Burry Port: I was hoping that that was an intervention—I am better prepared for interventions than I was last time.

I simply hope that, when all is said and done, the fact that this is about money—even if the guarantees and figures cannot be given in a debate such as this—will indicate the desperate need felt in Wales for some support and encouragement. There must be a promissory note for adequate support that will be met once we are no longer in Europe for the activities that up to now Europe has helped us with so generously.

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 the noble Lord, Lord Wigley, for tabling these amendments and all who have participated

[Lord Bourne of Aberystwyth]
in what has been a free-wheeling, free-ranging debate covering an awful lot of important areas, some which I perhaps in all fairness could not have anticipated when I read the amendments.

The noble Lord, Lord Griffiths of Burry Port, is absolutely right that in debating something geared specifically to Wales we should recognise the enormous contributions made by Lord Richard and Lord Crickhowell, both of whom sadly died recently. Sometimes in similar ways but in differing ways in other respects, both made enormous contributions in Wales and to devolution. Lord Richard is certainly massively missed. He made an outstanding contribution on the Richard commission in relation to devolution but in so many other ways in public life as well.

I will first turn to the amendments and then try to do justice to the many wide-ranging points made during the debate. The noble Lord, Lord Wigley, was described as "terrier-like" and as getting the last bit of marrow out of the bone. As someone who has often broken bread with him, I thought that conjured up an extraordinary vision of him. For many years, he has certainly fought hard for many issues in public life, not least for Welsh principles and rights, both here, in the Commons and in the National Assembly for Wales. I think that is acknowledged across the political divide and by people with no politics at all. He continues to make an extraordinary contribution.

The amendments would require the United Kingdom Government to produce a report outlining how EU funding provided to Wales will be replaced once we leave the EU. They would mean that the entire Bill could not be brought into force pending the publication of such a report.

While I understand the desire for as much clarity as possible—I shall say something about cohesion funding shortly—I do not consider such a step necessary in view of the considerable funding assurances the Government have already made to all parts of the United Kingdom. I recognise that there is an issue here that goes broader than Wales. There are certainly issues relating to Cumbria, as has been mentioned during the debate, Cornwall, Merseyside, Scotland and so on—this affects many parts of the United Kingdom, although the amendments are for understandable reasons addressed to the needs of Wales, which I can strongly identify with.

The agreed implementation period to the end of 2020 will see the UK participate in 2014 to 2020 EU funding programmes until their closure. In the case of some of those projects, that will mean the end of 2023. It will not be beyond 2023, but it could mean funding for those programmes that remain open during that funding programme until the end of 2023. The projects would receive their full allocation of EU funding during that period—that is an agreed position as things stand.

This approach ensures that projects are not disrupted and no community misses out. The noble Baroness, Lady Humphreys, was there at the start of the Assembly as were the noble Lord, Lord Wigley and I, and saw the benefit of such funding—I fully recognise many of the examples that she gave. In the area that I represented in west Wales, there were massive benefits. No community would miss out. British businesses and potential investors have certainty and stability up to the end of projects running to 2023.

In the longer term, the Government have further committed to maintain cash farm funding until the end of this Parliament, taking us beyond 2020, which provides the sector with more certainty than in any other part of the EU as things stand. The Government will also create a UK shared prosperity fund to reduce inequalities between communities across the United Kingdom and deliver sustainable, inclusive growth. The Government intend to consult on the design of this United Kingdom-wide fund during 2018. That will of course, quite rightly, mean engagement with the Welsh Assembly through the Welsh Government and, similarly, the Scottish Parliament through the Scottish Government and with others who would expect to be consulted in that process.

1.30 pm

Lord Liddle: Can the Minister tell us anything about the timing of consultation papers on the shared prosperity fund? When are they likely to appear? Particularly in relation to the debate on Brexit, are we likely to see what is proposed before the final decisions that we have to make at the end of this year?

Lord Bourne of Aberystwyth: The noble Lord makes a fair point. I do not know the specific answer, but I will cover it in a letter to all Peers who have participated in the debate on these amendments, and place a copy in the Library.

Lord Thomas of Gresford: Perhaps the Minister can answer this question. Is the UK prosperity fund—which I think was in the last Conservative manifesto—intended to be administered or distributed on the basis of need or a population count?

Lord Bourne of Aberystwyth: My Lords, it certainly was in our last manifesto. As I have just indicated, it talks about reducing inequalities, so the noble Lord has that comfort. Again, I will ensure that any points not dealt with in my answers will be covered in a letter to all Peers who have participated on these amendments, a copy of which will be placed in the Library.

The noble Lord, Lord Wigley, made some points about cohesion funding, which dates back to 2000. I remember when the noble Lord was leader of the opposition in the Assembly and I was leader of the Welsh Conservatives—I later became leader of the opposition. I too went out to Europe and fought for this with Michel Barnier. I also remember the struggles that we had with the Treasury; that was accurately reflected. I agree with the noble Lord, Lord Thomas, on this point, which the noble Lord, Lord Wigley, made in the Assembly on many occasions. Such funding was not a badge of pride: it was coming to Wales because of the poverty that was experienced in west Wales and the valleys. It was not limited to Wales: Cornwall, Merseyside and so on were also involved. This was something that we did not really want to qualify for. There will be another round of funding from 2021 to 2027 and I will

look at how that pans out. It is not guaranteed, even in European terms, that Wales will qualify. We were somewhat surprised in the last round of funding—it was very marginal—that Wales just managed to qualify. In one sense we were pleased, because to just qualify rather than just miss was welcome. We have to remember that there is no automatic right to it. It is based on 75% of average prosperity throughout the European Union.

There were some free-ranging points made about the referendum campaign—I remember the campaign in Wales as a campaigner for remain—but I will focus on the parts of the debate that were more central to the amendment and the legislation. First, however, I will touch on some of the funding that is coming to Wales. As a Welsh Office Minister, I know that we are participating very much in mid-Wales growth deals, north Wales growth deals and city deals. Stuff is going on which is helping projects in Wales now and engaging with the NFU, the FUW, the CLA and so on. Many things are happening in Wales that I am sure noble Lords across the Chamber would be pleased about.

Points were made about the Barnett formula. Lord Richard would have had much to say on this and we come back to it on many occasions. However, the issue exists independently of Europe and it is not made better or worse by our position in Europe. It does need addressing. In fairness, as part of the coalition in the previous Parliament, we ensured that the formula was ameliorated by the application of the Barnett floor, which benefited Wales. That said, I recognise the points about the historic position of Wales, unlike Scotland which benefits from the Barnett formula. I will leave that for another day, if I may.

The noble Baroness, Lady Humphreys, was there at the start and very much engaged with ensuring that we got the benefits of Objective 1 into Wales. In parenthesis, the giving of taxation powers to Wales, which was part of the coalition Government and the Silk commission and is now in process, should help to incentivise growth in Wales and is part of the added powers that have been given to the National Assembly for Wales. We should not fail to recognise that a lot of these issues are things that the National Assembly now can, and I have no doubt will, ameliorate.

The noble Lord, Lord Roberts, made a valid point about Welsh agriculture being much dependent on agricultural funding. I hope he takes comfort from what I have said about the agricultural budget up to the end of the Parliament. He is right that we have to focus on it. In fairness, it is not just a Welsh issue but, as he rightly recognises, it is central to a lot of Welsh life and many areas and close to the hearts of people in Wales.

The noble Lord, Lord Liddle, mentioned the Cumbrian situation and touched on federal issues. I can promise that just as I would take a call from Sadiq Khan, I would take a call from the noble Lord. If he wants to ring on any issues, I would be very keen to do that. I think Wigton is extremely important.

The noble Lord, Lord Adonis, referred appositely and correctly to the weak voice of England in our structures. I think that the noble Lord, Lord Foulkes, by inference touched on the incomplete part of the jigsaw in that we do not have regional voices for England, or not in the same way that exist in Scotland, Northern Ireland and Wales.

I perhaps take issue with the noble Lord, Lord Adonis, about the unknown mayor of Birmingham. I think that would be a surprise to many people. Many people know that it is Andy Street, just as we all know Andy Burnham. I do not think it would be quite right to refer to them as colonial governors, either.

Lord Adonis: My Lords, I was referring to the then Leader of Birmingham City Council who is now also a Member of your Lordships' House.

Lord Bourne of Aberystwyth: And a very able one. I take that qualification and thank the noble Lord for it.

It is also worth saying that there were attempts to extend regional government to England. I am sure we all remember the referendum in the north-east, which was pretty decisive. I accept that there are issues to address there. This Government have done more for city mayors than has been done for a long time in terms of devolved power and not just in the big cities of the UK. We have looked at other areas—Cambridgeshire, for example. However, there is incomplete work—including in Yorkshire, it is fair to say.

I agree with the noble Lord, Lord Foulkes, that the Falkirk Wheel is well worth visiting. I also agreed with him on other issues that he mentioned in relation to the unaddressed issues about government in our country—some points well made.

I thank the noble Lord, Lord Thomas of Gresford, for his contribution and agree that we fought for money for Wales. It was not a matter of pride, it was a matter of getting money that was needed. I agree that in many ways the money is still needed because of the relative poverty in Wales—sometimes a poverty that is not obvious. The grinding poverty that exists in the Valleys is obvious, but the poverty in the rural communities of north-west and south-west Wales is not necessarily as obvious.

I thank the noble Lord, Lord Griffiths of Burry Port, for his contribution and for re-focusing us on some of the issues that matter. He referred to the history of some of the devolution process in Wales—the 1997 referendum, the 2011 referendum and much work that was done in-between. He is right that there is a money issue. I do not think it is just a money issue; it is also an attitude issue that has existed prior to this Government and probably the previous Government. In short, I think it is ameliorated. There is an attitude of: "Let's not forget Wales, let's not forget Scotland". It has become lot better; it is plugged in. That is not to say that we are there yet. It is not just a money issue, though money is important too.

The noble Lord mentioned the Barnett formula. A lot of good work has been done in the past by Gerry Holtham and the Holtham commission, but there are issues which remain to be addressed—that is no doubt true. He went on to talk about the consenting process, and I take it that he means the process referred to in Clause 11. I agree that this is a partnership and, in fairness, the Prime Minister is very much aware of that.

[Lord Bourne of Aberystwyth]
She met the First Ministers of Wales and Scotland very recently, and I think progress was made. More work needs to be done and is being done. We are not there yet. I think that anyone who is fair minded would acknowledge that we have made considerable progress on this but, as I say, we are not there yet.

I appreciate that the noble Lord, Lord Wigley, may regard this as half a loaf—it is not everything he wants—but I am happy to talk to him between now and Report and to find answers to some of the questions put by the noble Lord, Lord Liddle, about the timing of this process. I hope that helps the noble Lord: I thank him for bringing this important issue to the House. I thank other noble Lords for their part in this. While the present team and I remain at the Wales Office, we are determined to ensure that Wales gets a fair deal. I am sure that applies to the Scottish and Northern Ireland teams in relation to Scotland and Northern Ireland. We have to ensure that all parts of the United Kingdom are taken care of in this. We do not want this to be x versus y: everybody has to be fairly dealt with. On the basis that I am happy to try to find more information for the noble Lord, Lord Wigley, and others, I hope that the noble Lord will withdraw his amendment.

Lord Wigley: I am very grateful to all noble Lords who have taken part in this debate, which was rather longer than I expected. Perhaps I set the wrong precedent in my own speech. I thank the noble Lords, Lord Liddle, Lord Roberts of Llandudno, Lord Adonis, the noble Baroness, Lady Humphreys, of course, as well as the noble Lords, Lord Foulkes, Lord Thomas of Gresford and Lord Griffiths of Burry Port, and the Minister, for their comments. I am grateful for the acknowledgment of the importance of the issue. In response to the noble Lord, Lord Cavendish, whose interventions I followed with interest, I recognise, as we all do, that other parts of the UK have specific needs which should be addressed as well. We need a mechanism to do that. In the context of the current round of European funding, on top of the CAP, there is a particular impact on Wales, which was what I wanted to highlight.

I suggest to the noble Lord, Lord Bourne, that, in the fullness of time and having thought a bit more about this and discussed it with his colleagues, the Government might be minded to bring forward a White Paper, or a publication of some sort, laying out how funding coming from Europe will be replaced. This would not be just for Wales but for other areas as well, and not just for the period from now until 2019 or 2021—whichever is the end of the transition period—but their ongoing intention after that. As the noble Lord, Lord Foulkes, said, the timing is important. I identify with the comments made about the late Lord Richard and the late Lord Crickhowell who, in their different ways, both made considerable contributions to Wales. I am sure that, if they were here today, they would be taking an active interest in these issues.

The noble Lord, Lord Bourne, knows enough about the feelings in the National Assembly about European funding to realise that this is a real issue that can make a difference, not just a political football. We can certainly argue about how the money is used and how it is used in Merseyside, south Yorkshire or Cornwall, where it is used in different ways, sometimes with better results. We need the resources because we are not going to get them elsewhere. They have to be replicated somehow. The question of trust has arisen in a number of contributions. Before the noble Lord, Lord Bourne, entered the Chamber there was another issue regarding money from the Treasury—the aggregated capital funding that Wales was accumulating in the National Assembly to avoid the wastage of year-end expenditure and put it into capital projects. That money was taken back by the Treasury on the basis that we had no right to aggregate money from other headings to fund capital projects. That is the sort of breakdown of trust that we are talking about, and we have to make sure that those attitudes are not exemplified in the ongoing period.

I hope that over the coming two or three weeks it will be possible to see whether a different formulation of this amendment can be tabled on Report, bringing in other parts of the United Kingdom and perhaps other parties. I invite the Front Benches of the various parties and individuals on the Cross Benches to consider whether that may be possible, and to do so with the positive intention of achieving a meaningful step forward as a result of the debates here that will help Wales and all other parts of the United Kingdom to find a way through the consequences of leaving the European Union. On that basis, I beg leave to withdraw the amendment.

Amendment 355A withdrawn.

House resumed.

1.45 pm

Sitting suspended.

Immigration: Asylum Claims

Question

3 pm

Asked by ***Lord Scriven***

To ask Her Majesty's Government what progress they have made in implementing the recommendations of the Independent Chief Inspector of Borders and Immigration in the report, *An investigation into the Home Office's Handling of Asylum Claims Made on the Grounds of Sexual Orientation, March to June 2014.*

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, the UK is a world leader in handling asylum claims based on sexual orientation. In their response, the Government accepted all eight recommendations from the independent chief inspector's report, either entirely—seven—or partially—one. They have since implemented them all accordingly as part of their drive to continually improve.

Lord Scriven (LD): I thank the Minister for that Answer. I want to move on to the issue of detention of those seeking asylum on the grounds of sexual orientation.

The UK is the only country in the EU that detains indefinitely those seeking asylum on sexual orientation grounds. Therefore, will the Government commit to implementing the Yogyakarta principle plus 10, on the application of international human rights law in relation to sexual orientation and gender identity, with particular reference to ending the detention of LGBTI asylum seekers?

Baroness Williams of Trafford: My Lords, I can make it absolutely clear here today that we do not detain asylum seekers indefinitely. The noble Lord will know, because I have said it here before, that detention is a last resort, and the vast majority of LGB asylum claims are processed in the non-detained system, with claimants living in the community. Only a small minority of claimants are detained while their claim is considered, and almost all of them have claimed asylum after being detained for removal. Detention under immigration powers is used only very sparingly, as I have said, and alternatives are considered before any decision to detain is made.

Lord Lexden (Con): Are the Government taking steps to improve the quality of decision-making in LGBT asylum claims, in view of the large number of refusals that are overturned on appeal?

Baroness Williams of Trafford: My Lords, the quality of the system was vastly improved after the 2014 report, which I talked about in my first Answer. In addition, the training of people dealing with LGBT asylum claims in detention or seeking their removal has been done in conjunction with both Stonewall and UKLGIG to absolutely ensure humane treatment of LGBT people in asylum.

Lord Kennedy of Southwark (Lab Co-op): Can I ask the noble Baroness about the Home Office guidance issued in 2017? I have seen reports suggesting that gay asylum seekers could be returned to Afghanistan if they pretended they were straight. Surely this cannot be the case. We must work to a much higher standard, and the question of personal safety should be paramount in decisions given by the authorities.

Baroness Williams of Trafford: What the noble Lord says seems to be a contradiction in terms, because an LGBT person would presumably be seeking asylum because they feared persecution on return to a country that persecuted LGBT people. I would largely dispute the point, but I will double check because the noble Lord asked the question.

Baroness Berridge (Con): My Lords, I thank Her Majesty's Government for the initial constructive response to the serious concerns—outlined in the report by the All-Party Parliamentary Group for International Freedom of Religion or Belief, which I co-chair—about people claiming asylum on grounds of persecution for their faith or belief. In particular, there were concerns about religious-based "Trivial Pursuit"-type questions and poor interpretation of religious concepts. Will my noble friend confirm that, as in LGBTQI claims, all Home Office caseworkers, as part of their training, will now have compulsory training in asylum claims on the grounds of persecution for faith or belief?

Baroness Williams of Trafford: All people in the detention estate have training in dealing with LGBT claims and claims on the grounds of faith. As with LGBT claims, faith claims are dealt with sensitively. Nobody who fears persecution because of their faith or because they are LGBT would be expected to return to a country in which that characteristic was persecuted.

Baroness Barker (LD): My Lords, does the Minister understand that some of us are greatly concerned when her department has to ask charities and voluntary organisations to tell it how many LGBT people it has in detention? Could her department commit to producing better statistics on these people, who, after all, are often detained with the very people from whom they are fleeing persecution?

Baroness Williams of Trafford: I thank the noble Baroness for bringing that up. She will know that we produced statistics at the end of last year. Figures from charities and any information that could be brought to bear in this early stage of making those statistics robust are always helpful, but clearly, we would like to get to a stage where the statistics we produce are robust. I thank the noble Baroness for her part in this.

Lord Christopher (Lab): My Lords, some of the cases we have read about in the press are almost unbelievable. The noble Baroness may not have the answer to this question in her briefing papers, but how many of the staff dealing with these matters have more than 12 months' experience of them? How many have more than two years' experience? At its peak, what was the size of the cut in the Home Office staff overall?

Baroness Williams of Trafford: The noble Lord is right: I do not have the precise figures on me. However, I can tell him that all people in the detention estate are trained in dealing with some of these very sensitive issues.

Baroness Afshar (CB): My Lords, how aware are these officials of the very differing interpretations of and varieties within religions, as defining someone as Muslim does not particularly help in understanding what kind of Muslim they are and what kind of understanding they have? The variety within Islam is so large that it takes me a whole term to teach my students about it. Would the Government be willing to have me teach for a term to tell them about the differences just within Islam?

Baroness Williams of Trafford: The noble Baroness is right to point out that religion, particularly Islam, can be interpreted in different ways in different countries. Therefore, it is very important for those in the detention estate to have religious literacy training so that they are sensitive to those differences. I will take back the noble Baroness's point.

Children and Young People: Mental Health
Question

3.08 pm

Asked by ***Lord Cotter***

To ask Her Majesty's Government what progress they have made in implementing the proposals for support for mental health provision for children and young people in schools, set out in the December 2017 Green Paper, *Transforming children and young people's mental health provision*.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, following publication of the Green Paper in December, we are working across health and education to explore options for implementing the proposals, which will be informed by responses from the consultation. This includes consideration of training programmes for the designated leads and mental health support teams, delivery of the four-week waiting time pilot and criteria and processes for selecting the trailblazers. We will publish a response to the consultation in due course.

Lord Cotter (LD): My Lords, I thank the Minister for his reply. As we all know, mental illness is an increasing concern. It is good that the Green Paper to which he referred has been produced. Appendix B refers specifically to schools and says that,

"68% have a designated member of staff",

for mental health. However, does the Minister not agree that it is equally important that teachers are fully trained and involved in the process of dealing with mental health, since, unwittingly, they can exacerbate young people's lack of confidence? For example, I heard recently of a young person who needs encouragement being told by a teacher, "Your mother did this work for you". Teachers need training to deal with this issue.

Lord O'Shaughnessy: The noble Lord hits on an important point. Not only is mental illness unfortunately rising in prevalence, but it is everybody's responsibility to try to help young people who suffer from it. That is what lies behind the proposals in the Green Paper, which contains a number of elements. He is quite right: there is additional training that will be applicable for all teachers, in mental health first aid, for example. It will also make sure that pupils understand it, changing the PHSE curriculum for more focus on mental health and well-being. That is why the designated leads are so important, because they bring that together at school level. So I agree with the noble Lord that schools have a critical role to play in dealing with this problem of mental health.

Baroness Meacher (CB): My Lords, the Minister will be aware that young people with severe mental health problems can wait up to four and half months for treatment when a young person with severe physical health problems can expect to be seen within the day. Of course we all want equal treatment of these two groups. I very much welcome the Government's plan to spend £1.25 billion extra in this area. However, does the Minister have an estimated average waiting time for young people with severe mental health problems once the £1.25 billion is in place?

Lord O'Shaughnessy: I do not have a specific time, but I point to two things. First, there are now waiting time standards for early intervention in psychosis and eating disorders. Those waiting time standards will become more exacting over time, but they are being met at the moment. The Green Paper also proposes a pilot of four-week waiting times for access to specialist services in the NHS. We have a long way to go—average waits are 12 weeks—so we are inevitably starting incrementally, but the ambition is that over time, we will roll that out as a nationwide ambition. However, I am afraid that I cannot give the noble Baroness a deadline.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, a lot of mental health issues among young people, including bullying and suicides, are caused by the use of social media. Is this an area that the Government should be addressing urgently?

Lord O'Shaughnessy: It absolutely is, and the Green Paper covers some of these issues, both in terms of providing resilience for young people themselves and getting social media to act more responsibly.

The Lord Bishop of Ely: My Lords, in my area, the diocese of Ely, which covers Cambridgeshire, some young people wait for up to 12 months for effective treatment, and the referral rejection rates are at the highest they have ever been—over 50% in Cambridgeshire. In many cases, voluntary sector organisations are working with us to mitigate the amount of time that children and young people have to wait. Does the Minister agree that 2025 is too long to wait until the changes proposed in the Green Paper are fully rolled out?

Lord O'Shaughnessy: I recognise the right reverend Prelate's point about the rising demand for services. We are trying to increase the proportion of children and young people who are helped from a quarter to a third, but obviously that leaves two-thirds who will not be helped. So there is a long way to go. We are unfortunately starting from a low base; we have to bring together many new staff and teams. I agree with the right reverend Prelate that speed is of the essence, but we must also be realistic about what we can achieve.

Baroness D'Souza (CB): My Lords, are the Government carrying out research on the causes of the increase in mental health issues in both young children and teenagers?

Lord O'Shaughnessy: The answer is yes, they are: the Green Paper has commissioned further research, and the amount of funding the National Institute for Health Research puts into this area has increased by 50% over the last seven years. However, we still do not understand the causes behind all mental illness, so this is an essential part of the strategy.

Baroness Tyler of Enfield (LD): My Lords, given that the number of child and adolescent psychiatrists has declined by over 6% since 2013, and the number of mental health nurses by more than that, will the Government agree to consider the recommendation from the Royal College of Psychiatrists to add child and adolescent psychiatrists to the national shortage occupation list?

Lord O'Shaughnessy: There has undoubtedly been an impact on mental health nursing. In fact, the widest definition of the mental health and learning disability workforce according to the latest workforce stats is up by around 3,000 full-time equivalent posts. But we agree that more needs to be done. That is why there is an ambition to bring in 4,400 more mental health staff to support children and young people over the next few years. It is also reassuring to know that there are 8,000 mental health nurses in training at the moment.

Baroness McIntosh of Hudnall (Lab): My Lords, the Minister will be aware that the incidence of mental health issues in children of primary school age is growing. Whatever the causes, they are almost always amplified and exacerbated by the onset of puberty and the transition to secondary schooling. What emphasis is being put on identifying and helping to meet the unmet need in primary schools, and who is undertaking that work?

Lord O'Shaughnessy: That is an excellent question. A terrifying statistic is that 8,000 of those under 10 years old are suffering from severe depression. The designated leaders will be in every school; that is the ambition. We are also rolling out mental health support teams to support all schools, both primary and secondary, so I can reassure the noble Baroness that primary schools are within the scope of the plans.

Lord Patel (CB): My Lords, following on from the right reverend Prelate's question, I would like to make a plea. Will the Minister agree that the proposed mental health support team should work with the voluntary sector—particularly the children's voluntary sector—especially in the area of palliative care, and in children's hospices, where children are bereaved by the death of their siblings and the incidence of mental health problems is also extremely high?

Lord O'Shaughnessy: The noble Lord makes an excellent point, and I will make sure it is fed back into our deliberations.

Community Football Clubs

Question

3.16 pm

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

To ask Her Majesty's Government what assessment they have made of the risks to community football clubs from land development proposals.

Lord Kennedy of Southwark (Lab Co-op): My Lords, I beg leave to ask the Question standing in my name on the Order Paper and in doing so refer the House to my relevant interests and also make clear that I am a member of the Dulwich Hamlet Supporters' Trust.

The Parliamentary Under-Secretary of State, Ministry of Housing, Communities and Local Government and Wales Office (Lord Bourne of Aberystwyth) (Con): Congratulations. My Lords, local authorities should assess the risks posed to sports facilities by development in their areas. We are clear in the National Planning Policy Framework that access to high-quality sports and recreation facilities is important for the health and well-being of communities. Planning policies should be based on robust assessment of what an area needs and should make it clear that facilities should be protected.

Lord Kennedy of Southwark: My Lords, Dulwich Hamlet is a much-loved non-league football club based in Southwark, where I grew up. It was founded in 1893, which is 125 years ago. Does the Minister agree that the present situation is tragic, with the club locked out of the ground, and that the best way forward is for all interested parties to get around the negotiating table and reach an agreement that gets Dulwich Hamlet playing football again at Champion Hill?

Lord Bourne of Aberystwyth: Yes. The noble Lord will be aware that my honourable friend Tracey Crouch, the Minister for Sport, in answering a debate in the other place, indicated that she was minded—indeed, determined—to find and appoint an independent mediator. I would be happy to meet with the noble Lord to discuss how we can carry this forward; I very much support what he is up to.

Lord Foulkes of Cumnock (Lab): My noble friend deserves the title he got of "Campaigner of the Week" for this campaign. Will the Minister send a message to Andrew McDaniel, head of the New York hedge fund Meadow Partners, which owns Meadow Residential, to get round the table to resolve this problem? Will he also tell him that treating a much-loved local club like this—putting up a six-foot security fence with a notice saying "Trespassers will be prosecuted"—does not help?

Lord Bourne of Aberystwyth: My Lords, I note what the noble Lord says. Clearly we are hoping for mediation, so perhaps his mediation skills might be brought to bear when we get there—although possibly the approach might be a little more nuanced. I will just add that the situation in Dulwich is by no means unique. There are many other such situations, and the Minister for Sport is determined to look at this in a holistic way to see what we can do.

Lord Addington (LD): My Lords, many sports clubs, especially those with established grounds beside urban areas, are under threat from development. Will the Government give us not just an idea that this should be taken into account but a structure where, if somebody

[LORD ADDINGTON]
provides a community asset—that is, exercise and community involvement—there is a structure that guarantees the ground and that its activity will not be lost unless there can be some form of replacement on a like-for-like basis, within striking distance of that community?

Lord Bourne of Aberystwyth: My Lords, the noble Lord will be aware of the community assets policy, which I think answers some of the points that he has raised. I will make sure that he has a copy of it, showing how it operates. However, I will say once again that the Minister for Sport is looking at the matter. It is partly a question of contractual arrangements—it is not just a planning situation—because clubs sometimes need advice when entering into contractual arrangements with others. I think that that was part of the problem in the Dulwich case. So there are many aspects to this, but we are determined to look at them.

Lord Faulkner of Worcester (Lab): My Lords, does the Minister agree that one of the undesirable effects of the rise in property values, particularly in inner cities, and the introduction of substantial sums of extra money into football at all levels, has been the growth of what one might call less desirable individuals coming in to own and run clubs—and in some cases to close them down, as we have heard this afternoon? Does he feel that the football authorities have sufficient power to implement their fit and proper person test and keep some of these characters out of the game?

Lord Bourne of Aberystwyth: The noble Lord raises a very important point in relation to fit and proper persons—and, again, I will make sure that the Minister for Sport is aware of the concerns expressed in this House when looking at this issue. In order to ensure that the House is aware of this, I will simply say that many successful football players of great wealth are helping—I think that Rio Ferdinand is an example in relation to Dulwich. However, the noble Lord makes a valuable point.

Lord Ouseley (CB): My Lords, I am delighted to hear that the Minister for Sport is trying to rescue the situation. My concern in relation to this Question is the effect, over a number of years, of the loss of playing fields that have been sold off by local authorities, having been encouraged to do so by previous Governments, notwithstanding the commitment to replace them with new provision. What evidence is there of the new provision, and what impact is the loss of playing fields having on young people and their health?

Lord Bourne of Aberystwyth: The noble Lord is right to raise that issue. He will be aware that Sport England is a statutory consultee where a playing field or sports facility is threatened with closure. The latest statistics show that 1,138 out of 1,200 planning applications in 2015-16 resulted in improved or safeguarded sports provision. I think that that is about 95%. So it is not 100%, but I hope it will give the noble Lord some comfort, because it is a very high percentage.

Lord Swinfen (Con): My Lords, is it acceptable to develop sites with flat surfaces and playing fields on flat roofs? Will my noble friend look into this?

Lord Bourne of Aberystwyth: My Lords, I will certainly ensure that that matter is taken to the relevant Minister so that it is looked at.

Lord Bassam of Brighton (Lab): The Minister rightly said that this situation is by no means unique. He will recall that Brighton and Hove Albion Football Club—

Lord Foulkes of Cumnock: Declare your interest.

Lord Bassam of Brighton: I declare an interest as a member of the Brighton and Hove Albion Supporters' Club, Lords branch. Focus DIY, which acquired the club in the 1990s, went bankrupt, and Brighton and Hove Albion is now in the Premiership. The noble Lord is right to point out that this situation is not unique, but I would like to understand what action the Government intend to take to ensure that vulnerable community-based football clubs such as Dulwich Hamlet do not fall prey to developers such as Meadow Residential in the future. There is a serious issue here that needs to be addressed nationally.

Lord Bourne of Aberystwyth: I thank the noble Lord and recognise his role in Brighton and Hove Albion. There are a couple of specific points that I can mention following the debate in the Commons. My honourable friend the Minister for Sport said, first, that she would look at helping clubs with support to produce proper contractual arrangements when they sell their grounds, which has often been an issue. The other relevant matter which I think the noble Lord may be pleased to hear is that she is asking the Football Association to speak directly to supporters about a review of clubs that do not own their own stadiums. That is very relevant in the context of the point that the noble Lord has raised.

Vote Leave Campaign

Question

3.23 pm

Asked by ***Lord Hunt of Kings Heath***

To ask Her Majesty's Government what assessment they have made of whether the Electoral Commission has sufficient powers to investigate claims that the Vote Leave campaign broke electoral law during the 2016 referendum on the United Kingdom's membership of the European Union.

Lord Young of Cookham (Con): My Lords, the Electoral Commission has ongoing investigations into spending and campaigning on the EU referendum, and the Government will consider any specific recommendations that arise from those. The commission has not so far called for greater investigative powers.

Lord Hunt of Kings Heath: My Lords, these very serious allegations come in the context of the former CEO of Cambridge Analytica claiming that he could fix election outcomes for a fee, using entrapment. Does the noble Lord think that the maximum £20,000 fine per offence that can be imposed by the commission is anywhere near meeting the gravity of the allegations, if proven? Does he consider the Government have shown respect for the independence of the commission, when the Foreign Secretary arrogantly dismissed the whistleblower's claims as utterly useless? Will the Prime Minister apologise for the shameful outing of Mr Sanni by her political secretary?

Lord Young of Cookham: My Lords, on the first part of the noble Lord's question, it is the Information Commissioner's Office that is investigating the specific allegations about the misuse of data by Cambridge Analytica and its associates. That is a different regime to the one that comes under the Electoral Commission. On the specific question of the £20,000 fine, the noble Lord is correct that the Electoral Commission has expressed concern in the past that this might be regarded as simply the cost of doing business, and it is making representations that it should be enhanced to a higher level. The Government are considering those representations and, alongside any other recommendations that come out of the investigation currently under way, we will then consider what further action to take. Whatever the Foreign Secretary may have said about these allegations, it is the independent Electoral Commission that has the final word as to whether or not an offence has been committed. I have nothing to add to what the Prime Minister has said on the final part of the noble Lord's question.

Lord Cunningham of Felling (Lab): My Lords, is it the case that the Government are taking seriously attempts, either by foreign powers or by UK citizens or individuals, which strike at the very heart of the integrity of our whole democratic process? That is the question; that is the issue. The powers of the Electoral Commission, confronted by the power, influence and wealth of other countries and international organisations, are frankly derisory. That is the reality of the situation. I understand and accept what the Minister is saying about ongoing investigations. But if we are intent on protecting the strength, virility and fairness of our democracy, these situations have got to be addressed at a much higher level, and powers need to be enhanced to deal with them.

Lord Young of Cookham: The Prime Minister made it clear recently that these are very serious allegations which do raise questions for the integrity of our democratic system. So far as the Information Commissioner is concerned, it is she who is investigating the misuse of data. The Data Protection Bill currently going through Parliament, now in the other place, gives enhanced powers to the Information Commissioner's Office to get the information that is needed. If more powers are needed, the Government have said they will seriously look at that issue before the Bill emerges from Parliament. But I agree with the noble Lord that, on the whole, we have a robust electoral system and its integrity is amongst the highest in the world, but we need to take every safeguard we possibly can to make sure that it is not undermined by alien forces from overseas.

Lord Tyler (LD): My Lords, does the Minister recall that, as long ago as 10 March last year, I drew to his attention and to that of the House that the leave campaign then was accused not only of lying in the substance of its campaign but of cheating in the process of delivering it, and I gave examples? Can the Minister explain why the investigation of these increasingly serious allegations has taken so long? He says the law is robust, but this is a very long period indeed in which there has been no satisfactory outcome. It would appear that both the Electoral Commission and the police say they have appropriate resources, but is there a lack of effective electoral law here or are there discrepancies? After what we have seen and heard in the last few days, and given the very narrow result of the EU referendum—for every 17 people who voted to leave, there were 16 who voted to remain—do the Government not recognise that there are continuing public doubts about the integrity of the system, which he has just described as being robust, and which then challenge the legitimacy of the whole Brexit process?

Lord Young of Cookham: I think it is worth quoting what the Electoral Commission said in its report on the referendum:

> "The evidence outlined in this report confirms that, through careful management of the potential risks associated with the timing and profile of the poll, we saw a referendum that was delivered without any major issues and the announcement of a clear, timely final result".

We will never know if the law was broken and whether it made any difference. My personal view is that it was unlikely, and there are better explanations as to why people voted as they did, rather than that they were targeted by an algorithm.

Lord Pearson of Rannoch (UKIP): My Lords, can the Electoral Commission take into account the £9 million spent by the Government on the pamphlet which went to every household in the land urging our people to vote to remain in the European Union? Surely that was in effect part of the referendum campaign, was it not?

Lord Young of Cookham: The Government followed the precedent of previous national referendum campaigns in 1975 and also the campaign on Scottish independence. The Government published a leaflet in accordance with precedents setting out the Government's view. There was nothing irregular or improper about that at all.

Viscount Ridley (Con): My Lords, given that the remain campaign spent considerably more than the leave campaign—not even counting the £9 million spent by the Government—and that the vote leave campaign has been investigated twice over these issues already by the Electoral Commission, does the Minister agree that it is important that the Electoral Commission is not put under significant political pressure on this matter?

Lord Young of Cookham: The Electoral Commission is independent of the Government and accountable to Parliament. Under the leadership of Sir John Holmes, with Claire Bassett as the chief executive, it is well able to defend its independence against any aggressor.

Worboys Case and the Parole Board

Statement

3.30 pm

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, with the leave of the House, I will repeat a Statement made by my right honourable friend the Lord Chancellor and Secretary of State for Justice. The Statement is as follows:

"With permission, Mr Speaker, I should like to make a Statement on the High Court judgment handed down this morning in the case relating to the Parole Board decision to release John Radford, formerly known as John Worboys.

This is an important and unprecedented case. The President of the Queen's Bench Division, Sir Brian Leveson, the most senior judge who heard this case, said it is wholly exceptional. It is the first time that a Parole Board decision to release a prisoner has been challenged and the first time that the rules on the non-disclosure of Parole Board decisions have been called into question.

The judgment quashes the Parole Board's decision to release Worboys and finds that Rule 25 of the Parole Board rules is unlawful. This means that Worboys' case will now be resubmitted to the Parole Board. A new panel will be constituted and updated evidence on his risk from prison and probation professionals will be provided. The panel will then assess anew whether Worboys is suitable for release. Those victims covered by the victim contact scheme will be fully informed and involved in this process. My department also has to reformulate the Parole Board's rules to allow more transparency around decision-making and reasoning.

It is clear that there was widespread concern about the decision by the Parole Board to release Worboys. As I have previously told the House, I share these concerns and consequently I welcome this judgment. I want to congratulate the victims who brought the judicial review and to reiterate my heartfelt sympathy for all victims who have suffered as a result of Worboys' hideous crimes.

I want to set out, in greater detail than I have previously been able, the reasons why I did not bring a judicial review. As I told the House on 19 January, I looked carefully at whether I could challenge this decision. It would have been unprecedented for the Secretary of State to bring a judicial review against the Parole Board—a body which is independent but for which my department is responsible. I took expert legal advice from leading counsel on whether I should bring a challenge. The bar for judicial review is set high. I considered whether the decision was legally irrational—in other words, a decision which no reasonable Parole Board could have made. The advice I received was that such an argument was highly unlikely to succeed, and indeed this argument did not succeed. However, the victims succeeded in a different argument. They challenged that, while Ministry of Justice officials opposed release, they should have done more to put forward all the relevant material on other offending. They also highlighted very significant failures on the part of the Parole Board to make all the necessary inquiries and so fully take into account wider evidence about Worboys' offending.

I also received advice on the failure of process argument and was advised that this was not one that I, as Secretary of State, would have been able successfully to advance. The victims were better placed to make this argument and this was the argument on which they have won their case. It is right that the actions of ministry officials, as well as the Parole Board, in this important and unusual case have been laid open to judicial scrutiny.

I have always said I fully support the right of victims to bring this action. I have been very concerned at every point not to do anything to hinder the victims' right to challenge and to bring their arguments and their personal evidence before the court. Indeed, the judgment suggests that, had I brought a case, the standing of the victims might have been compromised.

The court's findings around how this decision was reached give rise to serious concerns. The court has found that the 'credibility and reliability' of Worboys' account in relation to his previous offending behaviour,

'was not probed to any extent, if at all',

by the Parole Board, and that, although the Parole Board was entitled to make inquiries of the police in relation to his offending, it did not do so. These are serious failings which need serious action to address. In these circumstances, I have accepted Professor Nick Hardwick's resignation as chair of the organisation.

I am also taking the following actions: instructing my officials to issue new guidance that all relevant evidence of past offending should be included in the dossiers submitted to the Parole Board, including possibly police evidence, so that it can be robustly tested in each Parole Board hearing; putting in place robust procedures to check that every dossier sent by HMPPS to the Parole Board contains every necessary piece of evidence, including sentencing remarks or other relevant material from previous trials or other civil legal action; boosting the role of the Secretary of State's representative at Parole Board hearings, with a greater presumption that they should be present for more complex cases where HM Prison and Probation Service is arguing strongly against release; working with the Parole Board to review the composition of panels so that the Parole Board includes greater judicial expertise for complex, high-profile cases, particularly where multiple victims are involved or where there is a significant dispute between expert witnesses as to their suitability for release; and developing more specialist training for Parole Board panel members.

The judgment also found that the blanket ban on the transparency of Parole Board proceedings was unlawful. I accept the finding of the court and will not be challenging this. It was my view from the beginning that very good reasons would be needed to persuade me that we should continue with a law that does not allow any transparency. I am now considering how the rule should be reformulated.

When I addressed the House on this matter in January, I said that I had commissioned a review into how victims were involved in Parole Board decisions, into the transparency of the Parole Board and into whether there should be a way of challenging Parole Board decisions. That work has been continuing for the past two and a half months. Given the very serious issues identified in this case, I can announce today that I intend to conduct further work to examine the Parole Board rules in their entirety.

As a result of the work that has been completed to date, I have already decided to abolish Rule 25 in its current form and will do so as soon as possible after the Easter Recess. This will enable us to provide for the Parole Board to make available summaries of the decisions they make to victims. In addition, I will bring forward proposals for Parole Board decisions to be challenged through an internal review mechanism, where a separate judge-led panel will look again at cases that meet a designated criterion. I intend to consult on the detail of these proposals by the end of April, alongside other proposals to improve the way that victims are kept informed about the parole process.

I am grateful to Baroness Newlove for her help with this part of the review and to Dame Glenys Stacey for her helpful suggestions and review of the way that victim liaison operated in this case. I will come back to the House with further proposals as they are developed.

In conclusion, let no one doubt the seriousness with which I take the issues raised by this morning's judgment, nor the bravery of the victims who brought this case to court. I commend this Statement to the House".

3.38 pm

Baroness Chakrabarti (Lab): My Lords, I am most grateful to the Minister for that Statement about today's High Court decision. I hope that he will agree that the ruling was possible only because of the Human Rights Act and the victims' rights contained in it. But today's decision clearly highlights the deep flaws in the initial Parole Board decision, which caused enormous anguish for victims—those whose cases had been dealt with but also those who have not yet had justice. There is also deep concern among women and the public more widely.

Of course, the head of the Parole Board has decided to stand down—although I am sure that all noble Lords will be concerned to preserve the independence of the board going forward. So what is needed is surely a change in the way that the Parole Board and perhaps the wider justice system function. As the Minister said, the current legal restrictions on the Parole Board mean that we still do not know exactly why the initial decision was taken. That led to rumours about where Worboys would be released and even whispers that he might be released without a tag. It is not good for victims or public confidence.

It cannot be right that victims had to resort to a crowdfunded judicial review—not a legally aided one—before any whiff of the reasons for the release of John Worboys became available. Judges in the judicial review said that there was too much secrecy about Parole Board decisions under Rule 25, which presents any reasons for decisions made by the board. The case underlines, once and for all, that we need urgent measures to achieve greater transparency in Parole Board decisions. I am sure noble Lords will agree that if the public are entitled to be informed about court judgments, it makes sense that they should also be informed about at least the rationale of Parole Board decisions. This is not about undermining the board's independence. I am sure that all Members of your Lordships' House can unite in defence of the independence of both the board and the judiciary. It is right that action is being taken. The Government have committed to taking action to improve transparency, but it seems that we need not just transparency but a clear mechanism to allow victims to challenge decisions when they feel aggrieved. Can the Minister commit to the review he discussed being concluded by this summer? It is inevitable in government, with so many pressures, that such reviews sometimes slip. Can we have some assurance that that will not happen in this case?

A lawyer for Worboys's victims has said that the Ministry of Justice was responsible for preparing the dossier of evidence on which the Parole Board made its decision to release. Can the Minister explain why information about the "rape kit" used by John Worboys was not included in this dossier? Can he also explain why the sentencing remarks of the judge in the Worboys criminal trial were not included in that dossier? Why did the dossier contain nothing about the new information that had come to light during the proceedings brought by victims against the Metropolitan Police? It must be possible that the failures in the Worboys case go much wider than the rules governing the Parole Board or the board's function.

It is clear from today's ruling that judicial review is a key tool for every citizen to be able to challenge unjust or unlawful decisions by the state or other public bodies. Deep cuts to legal aid have undermined the ability of too many people in our country to pursue judicial review. I repeat: I do not think it is right that victims should have to resort to crowdfunding to access justice. Justice cannot be dependent on the depth of your pockets. Will the Government commit to using their review of legal aid to look in particular at how we might better support the basic right to judicial review of administrative action?

It seems that there have been widespread failings in this case from the very outset. In 2009, John Worboys was convicted of 19 offences against 12 women, but the police have also linked Worboys to about 100 other cases. Many of the victims have raised concerns about the police handling of the case. Others have raised concerns about the CPS decision not to prosecute in other cases. We have discussed at length the complaints about the Parole Board, particularly its failure to properly notify victims of proceedings. It is clear that we need a thorough examination of the end-to-end handling of this case, from the first attack reported to a police officer right through to the Parole Board hearings that were under review in today's decision. Those of us on this side of the House have asked the Government to consider such an end-to-end review before. I hope, in the light of today's decision, that the Minister might commit at least to considering that request.

Finally, for most people most of the time the justice system is out of sight and out of mind until a case such as this comes to public view. Yet, the justice department has in recent times faced 40% cuts—the

[Baroness Chakrabarti]
deepest of any department. Is it not time to reconsider the effect of those cuts and whether they are sustainable? If I might be so bold or cheeky, I ask the Minister to consider lobbying the Lord Chancellor to get extra investment into a justice system that is at least strained, if not quite broken.

Lord Marks of Henley-on-Thames (LD): My Lords, I join the noble Baroness in welcoming the Statement from the Secretary of State and the noble and learned Lord's repetition of it in this Chamber. The High Court's decision is a signal victory for the victims. I join the noble and learned Lord in congratulating them on bringing this case.

The High Court's decision and the Statement mark a real endorsement of three important principles. First, the interests of victims should be given significant weight in the Parole Board's decision-making at every stage. Secondly, the Parole Board should operate with far greater transparency and its secrecy hitherto has acted against the interests of justice. Thirdly, a much wider range of evidence, including evidence of past offending, which was so very relevant to the Worboys case, should be fully considered by the board.

I welcome the many steps announced by the Secretary of State in the Statement. I also endorse the points made by the noble Baroness about how important judicial review is and the importance of resisting any attacks on it, direct or indirect, through its funding by Governments in future. However, I have a number of questions for the noble and learned Lord. I appreciate that the answers will necessarily to some extent be preliminary at this stage, but I make two points about that. First, the answers will be relevant to the reconsideration to be given by the Parole Board pursuant to the decision of the High Court in the Worboys case. Secondly, as the noble and learned Lord stated, this work has been going on for two and half months already.

My first question is: what thought has yet been given as to how evidence of past offending will be heard, tested and then weighed up by the Parole Board? In that context, how is it proposed that the voices of victims will be heard?

Secondly, one of the problems has been that the victims were notified of the decision after it had been taken and made public. That cannot be right. I appreciate the commitment in the Statement to giving a summary of reasons, but can we be assured that victims of past crimes by offenders who are about to be released will be notified in advance of a decision to release?

Thirdly, how is it intended that the role of the Secretary of State's representative at Parole Board hearings, which was mentioned in the Statement, will be enhanced?

Fourthly, on training, the Statement commits to further specialist training of Parole Board members. How is it that the training of Parole Board members has been allowed in the past to be of a standard that the Government now accept was deficient?

Finally, how, in general terms as well as, as far as possible, in the particularity, is it proposed, given the abolition of Rule 25, that greater transparency for Parole Board proceedings will be implemented?

Lord Keen of Elie: I am obliged to the noble Baroness and the noble Lord for their observations on this matter. We are all agreed that we have to maintain the independence of the Parole Board: that is certainly our intention. Transparency came up early in this process as a matter that had to be the subject of review. Indeed, my right honourable friend's predecessor announced on 9 January this year that he intended to institute inquiries into the question of Rule 25. Those inquiries have effectively concluded and, as I indicated, we intend to bring forward proposals with regard to Rule 25 by the end of April. The detail of that is not something that I can address because we have yet to formulate an alternative rule that allows for the appropriate level of transparency. As to the further, more detailed review that is to touch on victims, for example, and their position, we fully intend that such a review should be completed by the summer. I cannot give a cast-iron guarantee, but that is certainly our intention. We recognise the importance and the urgency of this work.

I turn to the questions raised by the noble Lord, Lord Marks. The question about the evidence of past offending raises the issue of reports of other offences for which an individual has not been tried or convicted. The court commented on that in its judgment and indicated that such evidence should be before the Parole Board, not in order that it should make its own determination of guilt or innocence but so that it could utilise that material in engaging with the party seeking parole and test their honesty and candour with regard to their previous offending. It is in that context that I anticipate this material being used. Particular note is taken of the interests of victims and the question of notification: that will be addressed in the course of the forthcoming review, as well as the question of how the Secretary of State's representatives will take a more enhanced role in these matters. That will be a matter for consideration.

As for training, we were not saying that the training was deficient in the past, but we believe it can be improved. That will again be the subject of the forthcoming review. The noble Baroness also asked what material was and was not before the Parole Board. I should say that the judge's sentencing comments should, as a matter of procedure, have been before the Parole Board. That is a failing on the part of HM Prison and Probation Service, which should have been providing the material to the Parole Board. There is other material that the Parole Board could have called for, and which the court clearly felt it should have called for, that it did not call for. Clearly, we have taken that into account when deciding on the need for further review in this area. Beyond that, I would not like to make any further comment, except that in light of Nick Hardwick's resignation it may be that new leadership will bring about change in itself, so far as the conduct of the Parole Board is concerned.

3.53 pm

Lord Woolf (CB): My Lords, I shall take up the last point that the noble and learned Lord made in answering the questions raised a few moments ago. Nick Hardwick has been an outstanding contributor to criminal justice in this country. I say that knowing that other Members

of this House who have occupied the highest judicial posts in this country share that view, even though they have been closely involved in criminal justice as Lord Chief Justice. I have not spoken to the noble and learned Lord, Lord Phillips, but I have spoken to the others and they confirm that that is the case. It was not mentioned in the Statement that has just been read out that Nick Hardwick indicated that his role in this matter was extraordinarily limited. Although the Parole Board may have been at fault, as indicated in the judgment, it is right to say there was no personal criticism of its chairman. I am sure the House accepts that being a member of a parole board is an extraordinarily difficult task. A parole board can act only on the information given to it. In those circumstances, I ask the Minister to make clear that the view I have just indicated about Nick Hardwick is accepted by the Lord Chancellor and Minister of Justice. It is right that it was made clear to him that he should resign, albeit that he thought he would have been able to carry on perfectly well in the role. Bearing in mind the importance of the Parole Board, this is a most important matter.

Lord Keen of Elie: I am obliged to the noble and learned Lord, Lord Woolf, for his observations and readily concur with his comments on the contribution that Professor Nick Hardwick has made to criminal justice in this country. I say that without qualification. Clearly a situation had arisen in which there had to be consideration, both by the Secretary of State and by Professor Nick Hardwick, of whether it would be tenable for him to continue in the present circumstances. In light of that, he tendered his resignation. Again, I repeat, I accept without qualification the comments made about his considerable contribution to criminal justice in this country.

Baroness Newlove (Con): My Lords, this has been a successful day for victims and they have received justice, but we must not forget how hard this journey has been for them. They have had huge pressure on their shoulders. It has not been an easy fight and is still not an easy fight. I ask my noble and learned friend to think that it cannot be right that offenders have legal teams to take them through the parole system, yet the victims have had to crowdfund through the internet to get a legal team to represent them. Surely the Government will look at this so that it never happens again.

My other point is that, if Worboys appeals this judgment, I want it understood that all the victims in this case should be given the right information, including those who did not go to trial but had their evidence put on file. It is more important that we do not see the same situation again, where victims are scared and do not feel safe for their lives.

Lord Keen of Elie: I am obliged for the observations of my noble friend Lady Newlove. I should like to repeat the appreciation of the department and the Lord Chancellor for the work she has done in leading engagement with victims in the inquiry to date. That has been extremely important. Under the present victims' scheme, those who are the victims of an offence for which there has been a conviction are automatically engaged in the victim engagement scheme. Where the victim of a reported offence did not proceed to trial or conviction, however, the position is different. We shall look at that matter in the forthcoming review.

Lord Blunkett (Lab): My Lords, in endorsing the words of the noble Baroness, Lady Newlove, the ruling of the High Court, and the transparency, training and other measures that will flow from it, I wish also to endorse what the noble and learned Lord, Lord Woolf, said. I was responsible for appointing Nick Hardwick to his first major public appointment 15 years ago, to head the Independent Police Complaints Commission. He has been a great public servant. He has done a superb job in modernising and reforming the Parole Board, with great difficulty, and we owe him a debt of gratitude.

Lord Keen of Elie: I entirely accept the observations of the noble Lord.

Lord Grabiner (CB): We have focused attention—quite properly, in my view—on the performance of the Parole Board, but there is a separate and rather important aspect of this very shocking case. As I understand it, the CPS had available to it a good deal of material which was not then the subject of prosecution. That may have had a real impact on the sentence that was ultimately imposed upon Worboys; in fact, I am sure that it did. Can the Minister assure us that the performance of the CPS in this story and in future possible prosecutions and investigations will be carefully looked at? If you do not charge what you should charge, you often end up with the wrong result.

Lord Keen of Elie: I note the observations of the noble Lord. Clearly, the role of the CPS in the conduct of the prosecution of Worboys is a matter of some concern. The CPS takes these decisions independently and clearly, that independence has to be respected. Worboys was the subject of an IPP sentence, albeit one that was liable to open the door to review before the Parole Board. I cannot give an undertaking at this time of any formal inquiry into the role of the CPS with regard to the original prosecution decisions that were taken, but I note what the noble Lord has said.

Viscount Hailsham (Con): My Lords, I welcome what my noble and learned friend has said about the action that has been taken. With regard to enhancing the role of the Secretary of State at the meetings of the Parole Board, I suggest that in complex cases he gives consideration to using a special counsel, who might, after all, also be able to articulate the views of the victims. I remind him of the practice that was adopted when I was a very junior Minister in the Home Office reviewing the tariffs in life sentence cases, which was to obtain the up-to-date observations of the trial judge, if available—and, if I may say so, the Lord Chief Justice.

Lord Keen of Elie: I note the observations of my noble friend Lord Hailsham. Clearly, these considerations will be taken into account in the review process that is being carried out.

Lord Beith (LD): My Lords, I welcome the High Court decision and the fact that it showed up the really serious errors made by both the Parole Board and the Ministry of Justice. But I take it that the Minister agrees that these errors should not blind us to the proper role and importance of the parole system within our criminal justice system and, indeed, as the noble and learned Lord, Lord Woolf, rightly pointed out, to the contribution, which the Minister has already acknowledged, that Nick Hardwick has made in several positions—bearing in mind also that Nick Hardwick argued that the transparency we are all now calling for was not allowed by law and should have been.

Lord Keen of Elie: Well, indeed. I am obliged to the noble Lord for his observations in that regard. As I indicated earlier, it had occurred to my right honourable friend's predecessor, almost as soon as this matter came to his attention, that Rule 25 really did need to be looked at and given further consideration because of the impact it had on the perception of proceedings. Regarding the proceedings of the Parole Board itself, clearly, there are hundreds of individuals involved and engaged in that process. It is critically important as part of our criminal justice system and it is equally important that it should remain independent of the Executive.

Lord Mackenzie of Framwellgate (Non-Afl): My Lords, in my experience, when criminals convicted of serious offences and serving long sentences are released, it is generally to an open prison so that they can be further assessed. Why did this not happen in Worboys' case?

Lord Keen of Elie: I am not able to answer that question but the point the noble Lord makes is entirely accurate because, generally speaking, the issues for the Parole Board to consider are, first, whether it should release into an open prison environment and, thereafter, whether there should be release on licence.

Lord Judge (CB): My Lords, what is the proposal to improve the arrangements by which the victims in this case are provided legal aid?

Lord Keen of Elie: There are no immediate proposals in that regard. As the noble and learned Lord is aware, the LASPO provisions are currently under review.

Lord Davies of Stamford (Lab): My Lords, the head of the Parole Board has resigned and, as usual, the Secretary of State and the Government sail on with apparent impunity. However, the failings revealed by this case—the excessive secrecy, the failure to consult victims, the apparent inadequacy of training and the failure to look at previous offences—were part of the system's structure for years and years. They should have been known about—if, indeed, they were not—and the Government should have addressed them a long time ago. Has the noble and learned Lord persuaded himself that the Government have no responsibility at all for these shortcomings?

Lord Keen of Elie: With respect, I have not suggested that the Government consider themselves as having no responsibility in respect of the matters disclosed in the Worboys judicial review.

Lord Goldsmith (Lab): My Lords, I want to raise one question about the funding for this appeal. Quite rightly, noble Lords have commented that it is inappropriate that the victims should have had to crowdfund in order to challenge this decision. From the Statement that the noble and learned Lord made, I understand that the Secretary of State for Justice himself had some impediment to bringing a claim—I am not talking about the substance of his claim here. Why did the Attorney-General not consider it to be part of his job to challenge the decision? After all, it is the Attorney-General who challenges inappropriate sentences and, to some extent, has responsibility for looking after victims. Would that not have reduced the problems, such that the Government, through what is in many ways the independent office of the Attorney-General, could have stepped in to bring this matter before the courts?

Lord Keen of Elie: The noble and learned Lord makes an interesting suggestion. It is not a point which I recollect being addressed at the time, and the matter was looked at from the perspective of the Secretary of State for Justice. As the noble and learned Lord implicitly acknowledges, the Secretary of State was in something of a difficult position, given that the Parole Board—albeit an independent entity—has a link to the Ministry of Justice. But I take on board the noble and learned Lord's observation.

Lord Selkirk of Douglas (Con): Does my noble and learned friend accept that his assertion that there will be a review of procedures with a view to keeping them properly up to date is extremely welcome? Does he agree that in very anxious cases of this nature, the protection of the public must be considered paramount?

Lord Keen of Elie: Of course, the protection of the public is an all-embracing requirement, but there are certain things which require particular consideration. These include the interests of the victims.

Lord Christopher (Lab): Will the noble and learned Lord reflect for a moment on the fact that this case, awful though it was, may well lead to changes being made which have unexpected consequences? I suggest that he go back to the original papers from when the Parole Board was set up to see precisely what its purpose was and was not intended to be. There is another side to this matter which has not been aired today—and I understand why not: the interests of offenders who are, one hopes, working towards release by parole. If that confidence in the Parole Board stops, considerable damage may well be done to the position and the penal system—of prisons with numbers of prisoners we have never seen before. If we go back and look at the papers, we may be able to provide something better which does not give rise to a whole rash of cases

for all sorts of offences. In particular, confidentiality is very valuable in many cases of offenders coming before the Parole Board.

Lord Keen of Elie: My Lords, we are concerned that we maintain a balance between the aims of the parole process and the interests of the victims of serious crime. In the context of any review, that balance will be at the forefront of our minds. The Parole Board has always been conscious of the need to take account of the future of offenders who are in prison. We do not operate a system of permanent internment—there comes a time when offenders are deemed safe for release on licence—but clearly the process by which we arrive at these conclusions has to be the subject of continued assessment and, in this instance, further review.

Baroness Hussein-Ece (LD): My Lords, only a fraction of crimes of sexual violence such as rapes ever come to court and end with successful convictions. How can the Government ensure that women will still be encouraged to come forward to seek and get justice if they are the victims of such crimes, given the way that Worboys' victims have been treated in this total failure? Victims of these appalling crimes have had to crowdfund. I am sure that Members in this House have seen these brave women come forward and exactly what they have gone through in giving evidence and being interviewed. There are women who have not had justice at all yet and were told not to push it, since the sentencing of Worboys would somehow reflect the true nature of the crime and the numbers of women affected. How can the Ministry of Justice ensure that women will come forward, and that these women will receive justice in the end?

Lord Keen of Elie: Clearly, it is a matter of concern for the entire justice system that victims, particularly of these sorts of serious crimes, should not feel inhibited in coming forward and reporting them. We have seen issues arise regarding the way these complaints were handled on some occasions by the police; those resulted in civil litigation, which has now concluded. We have also seen the issue raised of the CPS in the context of the number of prosecutions actually undertaken in the Worboys case. Clearly, we must keep these matters under review in the context of ensuring that victims of such crimes are willing to come forward and report offences, and appreciate that they will receive justice at the end of the day.

Lord Cormack (Con): Can my noble and learned friend assure the House that this deeply unfortunate case will not result in undue delay in looking at other prisoners who are on indeterminate sentences? That issue has been raised many times in this House, not least by the noble and learned Lord, Lord Brown of Eaton-under-Heywood.

Lord Keen of Elie: Clearly, the Worboys case will not be allowed to displace further consideration of the position of IPP prisoners. That issue is raised regularly in this House. We have had it under active consideration and continue to have it under consideration.

Lord Harris of Haringey (Lab): The noble and learned Lord has told us repeatedly of the importance of the Parole Board's independence, and he responded positively to all the statements made around the House about the integrity of and contribution made by its outgoing chairman. Can he therefore explain the thinking of the Secretary of State that Nick Hardwick's position was untenable, essentially requiring him to resign? Is that not incompatible with his statements about the independence of the Parole Board?

Lord Keen of Elie: I do not regard the position taken by my right honourable friend as inconsistent with the independence of the Parole Board. He took a view on the matter following the decision of the High Court, and he expressed that view to Professor Nick Hardwick, who tendered his resignation.

Lord Campbell of Pittenweem (LD): My Lords, may I take the Advocate-General back to the question of legal aid? Had the legal aid scheme provided for assistance in cases of this kind, it would none the less have had to apply the test of reasonable prospects of success, or probable cause. Given that the Secretary of State received advice to the effect that there was no probable cause, that could well have resulted in the victims making an application for legal aid but still being turned down.

Lord Keen of Elie: That is of course potentially the case, although I would observe that the High Court's decision eventually turned on a different point from the issue of rationality: the failure to take account of material information that should have been before the Parole Board. Beyond that, I would not seek to speculate as to the outcome of a legal aid application, but the point the noble Lord makes is entirely sound.

Manchester Arena Attack Review

Statement

4.15 pm

The Minister of State, Home Office (Baroness Williams of Trafford) (Con): My Lords, with the leave of the House, I will repeat a Statement that was made by my right honourable friend in the other place. The Statement is as follows:

"The horrific events that took place at the Manchester Arena on 22 May last year were an attack on the people of Manchester. All terrorist attacks are cowardly but this was an appalling attack which deliberately targeted innocent people, many of them young. Twenty-two people were killed and many more injured. As a north-west MP, I feel the pain personally.

The Mayor of Greater Manchester commissioned this independent review following the attack, focusing on the response to the attack and the nine days that followed it. The report rightly highlights the acts of bravery and compassion on the night of 22 May and the following days. As Lord Kerslake noted yesterday, the response was overwhelmingly positive. He said the investments in planning and exercise were demonstrated to the full. We are indebted to the emergency services.

[Baroness Williams of Trafford]
He said we should reflect. We keep our preparedness for terrorist attacks under constant review to ensure that our plans reflect best practice and the current threat. Lessons learned from exercising and attacks are also crucial. It is right that all those involved acknowledge where the report has identified the need for improvement. The review is extensive and makes many recommendations. We, and all other agencies concerned, will consider them carefully.

At the centre of the review Lord Kerslake put the experiences of bereaved families, the injured and others directly affected, as indeed they should be. We will ensure that across government the recommendations concerning victims are fully considered. We continue to stand with the people of Manchester as they recover and rebuild following the horrendous attack last year, and our thoughts remain with those who were injured and with the families and friends of those who lost their lives".

Lord Kennedy of Southwark (Lab Co-op): First, we remember all those people who lost their lives in the attack and also those who were injured. I thank the Minister for repeating the Answer to the Urgent Question in the other place earlier today. I thank the noble Lord, Lord Kerslake, for his comprehensive report. I too pay tribute to the emergency service workers who acted with courage and skill on that terrible night.

Can the Minister confirm that the Government will be orchestrating a review into national counterterror protocols following the publication of this report? What are the Government going to do about the fact that the national aid mutual telephony system operated by Vodafone failed to cope with the high number of calls on the night in question?

Baroness Williams of Trafford: On the national counterterrorist reaction and response, I think the noble Lord will agree that generally the overall response was excellent. There was an issue with the telephony system. Part of that issue was that there was no backup system. That has been thoroughly reviewed and a backup has been put in place. It was not something we would have wished to have happened on such a terrible night. I hope that that sort of issue will never arise again because of the measures we have put in place.

Lord Paddick (LD): My Lords, I associate myself with the comments of the noble Lord, Lord Kennedy of Southwark. As a senior policer officer, I have been directly involved in the immediate response to terrorist incidents, including the attacks on London on 7 July 2005, and the aftermath is typically chaotic for several hours. Secondary explosive devices and/or marauding gunmen are real possibilities, as we saw in the November 2015 Paris attacks. If either of those alternative scenarios had transpired in this case, the criticism could well have been of the police and the ambulance service for putting their unarmed crews in danger. Does the Minister agree that these are extremely difficult calls to make but that once the decision has been made by the police, who are the lead agency in such situations, that decision needs to be communicated to all the emergency services so as to provide a united response? Can the Minister tell the House who in government is taking responsibility for ensuring that communication between emergency services is effective in these situations?

Baroness Williams of Trafford: I pay tribute to the noble Lord and the part that he played in the Metropolitan Police. He must have some incredible experience of such things. He is absolutely right about the immediate aftermath, which is why there are various phased processes for the police and emergency services to go through afterwards. On the terrible possibility of a secondary attack, he is completely right to point out that communication is key, and the joint emergency services interoperability principles come into play. Events such as the 7/7 bombings, through which I am sure the noble Lord was operational, identified the need to improve that joint working between the emergency services. The JESIP, as it is called, was set up to improve how the police, fire and ambulance services work together when responding to those multiagency incidents when they are not specifically CT focused. That was not the case in this instance; it is most relevant in major incidents involving mass fatalities and significant numbers, such as those seen in Manchester and London last year—therefore, providing a key component to the UK's ability to adequately prepare for a terrorist incident.

Lord Kerslake (CB): My Lords, I am grateful to the Minister for her response to the Urgent Question. I add my praise to the emergency services and indeed, to the people of Manchester, who responded magnificently to this terrible event. As we say in the report, there is a lot for Manchester to be proud of, but clearly there are some important lessons to learn. They are lessons for Greater Manchester, but they go well beyond that to the country as a whole, and we would all hope that a similar attack does not happen.

At what point will the Minister come back on the eight recommendations we made to the Government? It would be extremely helpful if a letter went directly to the Mayor of Greater Manchester. In particular, will she give her thoughts to the question of mental health service support for those who are injured as a consequence or indeed, for bereaved families? The people who were injured and the families who were bereaved came from across the north of England, not just from Greater Manchester. Does she agree that it is unacceptable that they had a different level of service according to where they lived and that we must have a co-ordinated response?

Baroness Williams of Trafford: I thank the noble Lord for his report. I did not quite expect him to be in his place today; I was looking round for him. In terms of aid for victims, which was the first point, it is very important that victims are able to access a range of financial assistance, not least from the incredible efforts of the charitable sector, but also through the criminal injuries compensation scheme. The Ministry of Justice is working closely with the Criminal Injuries Compensation Authority, its executive agency, which administers the scheme to ensure that this process is as smooth as possible. On another note, I thank the local communities who were involved in giving so generously to the charitable efforts in the aftermath of the attack.

Lord Harris of Haringey (Lab): My Lords, I am sure that we all want to pay tribute to the emergency service workers on the night—in particular those who carried on caring for victims even though they were being instructed to withdraw from the area because of the risk of supplementary explosions. The issue of communications and the failure on this occasion of Vodafone have been raised already. Will the noble Baroness tell us whether the failure in this instance has meant that the Government will think again about transferring all emergency services communication to the mobile phone network over the next few years?

Baroness Williams of Trafford: The noble Lord is absolutely right to again bring up the issue of communication. Certainly moves are afoot to upgrade the mobile phone network but, of course, the police might use underground, which is another possibility. I will keep the House abreast of some of the updates in innovation that are taking place as they come forward.

Lord Howarth of Newport (Lab): My Lords, may I invite the Minister to respond to the second question posed by the noble Lord, Lord Kerslake, on mental health care and a consistent quality of response?

Baroness Williams of Trafford: I knew that I had left something out in my response to the noble Lord, Lord Kerslake. That was, of course, the mental health and other problems that victims may face in the aftermath of an attack and the short-term, medium-term and long-term effects. In the immediate aftermath of the attack, we rapidly put together a cross-government Victims of Terrorism Unit to work closely with Manchester. It identified and resolved issues affecting the provision of an effective and co-ordinated response to victims of terrorism. That runs alongside the work we have done across systems, including in the third sector and the private sector, to improve and strengthen the support that is so vital to victims in the aftermath of a terrorist attack.

Lord Stunell (LD): My Lords, I associate myself with the Minister's remarks on the emergency services and the response of the community across the whole of Greater Manchester, including in my own borough of Stockport. A good friend of mine spent two very anxious hours outside the arena that night, hoping that he would be able to collect his daughter, and was quite unable to get any of the information that he needed to find that out. In the event, she was safe and well, at least physically, but the failure of that emergency helpline system caused real anxiety to a large number of people at a very difficult time of their lives. I hope that the Minister will understand that and apply as much pressure as she can—or as the Government are able to do—to make sure that this kind of slip-up does not occur in future.

Baroness Williams of Trafford: I join the noble Lord in complimenting the response from the community on the night of the attack. I was at the vigil in Albert Square the day after the attack. I also went over to the Islamic centre in Whalley Range, where there were representatives of all faiths from all parts of Greater Manchester and beyond. The feeling of solidarity among all sectors of the community across Greater Manchester was quite incredible. However, the noble Lord is absolutely right that the lack of communication caused incredible distress to people on the night. I take on board his point and the points of other noble Lords that we must make sure that such an almost elementary failing does not happen again.

European Union (Withdrawal) Bill

Committee (11th Day) (Continued)

4.28 pm

Amendment 355B

Moved by ***Lord Wigley***

355B: Clause 19, page 15, line 18, at end insert ", subject to subsection (2AA)"

Lord Wigley (PC): My Lords, I shall move Amendment 355B standing in my name and speak to Amendment 357ZA, also in my name, both of which are paving amendments to the substantive Amendment 358B, in my name and that of the noble Lord, Lord Clancarty—I mean the noble Earl—to which I will also speak. I hope that he will also speak to that amendment in a moment.

Amendment 358B states:

"None of the sections of this Act may come into force unless it is an objective of Her Majesty's Government, in negotiating a withdrawal agreement, to secure continued EU citizenship for UK citizens".

This amendment comes after our earlier debate on this subject area, but it is none the less worth revisiting the matter in the light of the publication of the withdrawal agreement and subsequent announcements by both the UK Government and the European Union.

4.30 pm

The question of the future status of the rights bestowed on UK citizens by EU membership will not disappear; rather, it will grow in both prominence and importance as negotiations progress, and, I suggest, it will assume an increasing urgency. Despite the resolution passed by the European Parliament highlighting the "strong opposition" felt by many UK citizens to the loss of their EU citizenship rights, I was disappointed to see no reference to it in the withdrawal agreement, which, if I interpret it correctly, includes reference only to UK and EU citizens who have exercised their rights or intend to exercise their rights by moving to the UK during the transition phase—no doubt the Minister can correct me if I have misinterpreted that. In successive Answers to Written Questions on the issue put down in the other place by my Plaid Cymru colleagues, the Government claim that EU treaty provisions make clear that only citizens of EU member states are able to hold EU citizenship. The line they take is that,

"when the UK ceases to be a member of the European Union, British nationals will no longer hold EU citizenship, unless they hold dual nationality with another EU Member State".

[LORD WIGLEY]

A lot has been made of the clarity, or lack of clarity, of EU law on the status of the rights of UK citizens after we leave. However, I will focus on international law. I draw attention to the work of Professor Volker Roeben and others, based in the law department of Swansea University, which has been published. European law and its founding treaties may offer a clear interpretation one way, but the reverse is equally clear in international law, and that should not be ignored. If anything, the 1969 Vienna Convention on the Law of Treaties means that it is incumbent on both the UK and the EU to address this matter of future status urgently. I state this because, even if Article 70(1)(b) of the convention is interpreted in such a way that the withdrawal of a member state from the EU extinguishes the rights of individuals created by the founding treaties, international law would still require that a treaty is agreed on the future status of such rights. Does the Minister agree with that statement?

Associate European citizenship is a model that the UK could adopt and pursue, and I strongly encourage the Government to think along those lines. As well as affording UK citizens the ability to continue to enjoy the rights and freedoms they currently do, it would safeguard the dormant rights of younger generations and, perhaps most importantly, grant generations yet to be born the same opportunities from which those of us present here today have been able to benefit. It is entirely possible to pursue associate EU citizenship for UK citizens, and there are precedents from which such a scheme could draw. Interestingly, Greenland, as part of a European Union member state, left the EU, while the other part of the member state remains. I note that when Greenland left, the withdrawal agreement ensured the rights of EU citizens. EU citizenship is built on such links and is crucial not only to our economy but to the future of our young people.

Noble Lords may also like to consider the interesting situation of citizens of some of the Crown dependencies in the Channel Islands, where there is a bespoke and unique relationship. I make the point that this is all a matter of political will. I seek to know from the Minister whether that political will exists in the Government's ranks. I raise the question in the hope that, when it comes to negotiations, a way is found to ensure that benefits are afforded equally to people whose citizens' rights now appear to be threatened. I beg to move.

The Earl of Clancarty (CB): My Lords, I added my name to an amendment in this group. I spoke at length to a similar amendment, my own Amendment 210, earlier in the Bill, so I will be fairly brief.

I fully support everything the noble Lord, Lord Wigley, has said. It is important that we should understand that the loss of EU citizenship would affect British citizens resident in the UK as well as those living abroad. That is a huge number of individual citizens whom the noble and learned Lord, Lord Keen, avoided referring to in reply to my own amendment but who are aggrieved at that potential loss of individual citizenship. In that same reply, the noble and learned Lord said:

"Let us be clear that EU citizenship is linked directly to citizenship of a member state". —[*Official Report*, 7/3/18; col. 1081]

I do not argue with that. The court case begun in Amsterdam is to determine the nature of such linkage and whether a citizenship, once held by a citizen, cannot be taken from them against their will whatever actions are taken at the national level.

It is young people who will feel the loss of EU citizenship most keenly, not just the principle of European citizenship; it is young people who feel most European. Also they will feel the real practical effects of that loss, particularly if we also leave the single market. As others have pointed out, young people have found a strong voice in the group Our Future, Our Choice—one of whose founder members, incidentally, was a leaver who changed his mind. We have all learned a lot since the referendum; that is something that, as a country, we should freely admit.

In the EU citizenship debate in the House of Commons on 7 March, the Immigration Minister, Caroline Nokes, said:

"We are content to listen to proposals from the EU on associate citizenship for UK nationals".—[*Official Report*, Commons, 7/3/18; col. 351]

So I ask the Minister: has there been any development on that front, bearing in mind that such a citizenship, according to Voelker Roeben, would not depend on revision of the founding treaties? I warmly support the amendment.

Lord Adonis (Lab): My Lords, I completely understand the motivation of the noble Lord, Lord Wigley, and I am of course entirely with him in wanting to stay in the European Union, but I am at a complete loss to understand how it is possible for British citizens to continue having European citizenship after we have left the European Union. I simply do not understand how it is possible to have citizenship of an organisation of which we are not a member. The specific issue of what happens to European Union residents in Britain, given that the Government have already committed that their rights will be guaranteed for a further seven years, is a completely different point. Assuming that the noble and learned Lord will be replying to the debate, will he tell us what the precise relationship will be between the European Court of Justice, European law and the seven-year guarantee of the rights of EU citizens currently resident in the UK?

Lord Wigley: The noble Lord understandably challenges the point, and he is right to do so, and I too would much prefer we were not leaving the European Union. But there are precedents—I quoted the example of Greenland—and there is also the parallel question of associate citizenship, which has been raised as a possibility by people with a background in international law as a perfectly viable option.

Lord Adonis: My Lords, my understanding is that Greenland became independent of Denmark, so the situation was very different from the one we are talking about here.

It is very important that we do not offer people false hope. It is important over the next year that people understand the full gravity and consequences of the decision the Government are proposing to impose on

the country. There are no halfway houses. What does this thing called associate citizenship amount to? It amounts to a row of beans. There is no point offering people the prospect that we can somehow have the benefits —it is a classic case of having our cake and eating it. It is important that those who are in favour of staying in the European Union do not somehow think there are all kinds of halfway houses, which might give us all the benefits without staying in the European Union. It seems to me a very simple proposition: if people want to enjoy the benefits and rights of citizenship of the European Union, there is only one way to do it and that is to remain a member of the European Union.

Baroness Smith of Newnham (LD): My Lords, I support the noble Lord, Lord Wigley. Like the noble Lord, Lord Adonis, I thought that the founding idea of European Union citizenship in the Maastricht treaty, which goes back to 1993—so I was not sure how it was applicable to the case of Greenland, which left in 1986—was that you had to be a citizen of an EU member state in order to have EU citizenship. However, my new understanding is that, as Article 20 of the Treaty on the Functioning of the European Union reads that,

"citizenship of the Union shall be additional to and not replace national citizenship",

this might give a little more wriggle room. I agree with the noble Lord, Lord Adonis, that policies of having cake and eating it are not necessarily desirable. However, we are in a debate about the withdrawal Bill. This morning I thought that perhaps we were so keen on having another Second Reading debate and thinking about the referendum all over again that we had lost sight of the Bill.

Lord Adonis: My noble friend Lord Murphy has just made an ingenious suggestion. Under the Good Friday agreement all residents of Northern Ireland are able to apply for Irish citizenship, which of course also gives them citizenship of the European Union. Perhaps if we allowed all citizens of Britain to apply for Irish citizenship by extending the Good Friday agreement, we could get the benefits that the noble Baroness is seeking to achieve.

Baroness Smith of Newnham: My Lords, I was intervened on and had not finished—in fact, I had barely started. The point is that many people feel that we have talked a lot, absolutely rightly, about the rights of EU citizens who are resident in the United Kingdom, and we have talked a bit about the rights of UK nationals who are resident in other European countries, but there has been very little discussion about those people who are not overtly exercising their rights, as the noble Lord, Lord Wigley, said. When we have considered UK nationals resident elsewhere, we have tended to think about people living—retired, working or studying—in other countries. Here I declare an interest: my day job is as a lecturer in European politics. On an almost daily basis I consider that I am exercising my rights as an EU citizen by being able to get on the Eurostar and go to Brussels without having to think about visas or visa waivers. There are all sorts of ways in which we are able to exercise our rights as citizens on a daily basis.

I suspect that the Minister will say, "This is absolutely not possible", but will he at least say that the Government are thinking about the rights that British citizens might retain? So far, much of the debate on withdrawal has been about regulations and whether we retain laws, but do we also retain rights, and do the Government wish us to retain rights?

Lord Davies of Stamford (Lab): My Lords, for the first time in these debates, I am, sadly, going to have to disagree with my greatly respected noble friend Lord Adonis. It is quite a serious matter to deprive people of one of their citizenships. I feel that quite strongly because I feel very European. I feel European, British and English, and even partially Welsh because my ancestors, I am proud to say, came from the Principality. I have never seen any contradiction at all in those different identities and loyalties, and I find it very insulting that someone should suggest that there is such a contradiction or that I have to give up one of those affiliations. That is the suggestion, although of course it will not affect my loyalty or my sense of identity or my sense of who I am.

These things are subjective, and the actions of third parties—even of Governments or parliaments—do not affect them. That is also the verdict of history. One thinks of Poland, which ceased to exist as a country between 1795 and 1918. That did not stop the Poles feeling very Polish. In the case of Ireland, the British tried for about 800 years to stamp out any sense of separate Irish identity and nationality but completely failed. At the end of 800 years I think that the Irish were more patriotic and conscious of their nationality than they were at the beginning. Therefore, I do not think that this will change the psychological or subjective notion of who I am and where I stand; nevertheless, it is offensive.

There is a quite separate matter in my mind, which is the loss of important benefits: the right to work, the right to vote and the right to take part in various programmes, such as educational exchange programmes. We have already debated these things in full. These are very important rights and liberties, which we will give up if we leave the Union. However, I do not see why, in addition, we should be told that we have to give up our sense of citizenship.

I recognise that the Brexiters in this Chamber and in the country as a whole see no virtue in the European Union or in having the rights that come with being in the EU, and they certainly see no virtue in European citizenship; indeed, they may wish positively to give it up for reasons of their own—perhaps the exact mirror image of my own position. However, I hope they will agree, as I hope all rational, liberal people will do, about the Pareto principle—that if you can do something in life that improves the happiness of a number of people without damaging the interests or happiness of anybody else, you should do it. On that basis, I hope that the Government will not want to stand in the way of those of us who want to keep our European citizenship. Of course, it is a matter for the European Union to decide whether to continue to give us European citizenship; it is not a matter for the British Government. However, I am asking the British Government not to impose obstacles but to positively help those of us who wish

[Lord Davies of Stamford]
to achieve that purpose, which I think we can do without causing any damage to our fellow citizens who wish to go in a different direction.

Of course I agree totally with what my noble friend Lord Adonis said about leaving the European Union. That is a disaster. I have made it clear in these debates that that has been my view all along. Much the best solution in all these circumstances and to all the problems we have been airing in the last few weeks would be to stay in the European Union. I agree about that. But I do think that in life if there is going to be a complete disaster, if the ship is going to go down, it is better to get a place in a lifeboat than just going to the bottom. It is on that basis that I appeal to colleagues taking both points of view about the European Union to be generous and to try to help those of us who wish to preserve some physical manifestation and demonstration of our European citizenship, to which most of us—on our side, anyway—attach strong, personal importance.

4.45 pm

Lord Kerr of Kinlochard (CB): I have the greatest respect for the noble Lord, Lord Wigley, but my head says that this will not work and that the noble Lord, Lord Adonis, is absolutely right. Citizenship is defined in the treaty as being a citizen of a member state. When we cease to be a member state, we all lose our citizenship, unless we are lucky enough to live in Northern Ireland or to be born in Northern Ireland. I do not think the Greenland precedent works, on the grounds of chronology. It was not actually Greenland seeking independence, and it preceded the concept of citizenship emerging in the European Union in the Maastricht treaty.

Lord Wigley: Does the noble Lord not accept that although it happened chronologically before the treaty of 1992, the rights continue afterwards and therefore are respected?

Lord Kerr of Kinlochard: I am afraid it does not apply to 60 million of us. It did apply to 40,000 Greenlanders a long time ago. My concern is that we should be careful in what we ask the Government to do. The noble Lord, Lord Wigley, said that this is purely a matter of political will, and that the Government could fix this if they chose to. I am afraid that this is not the case.

I would like to ask the Government if they could construe for us the missing paragraph 32 from the draft withdrawal agreement of 28 February. The Minister will remember the Leader of the Opposition's question on the Statement on Monday. Paragraph 32 was in the draft of the withdrawal agreement of 28 February. It read:

"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".

It seems to me that the Government should exercise political will here and carry on negotiating. I was encouraged to see that the paragraph had dropped out, because it limited the rights of UK citizens living in continental Europe after we leave, if we leave, to the particular country in which they live. It seemed to me that these rights ideally should be portable, so that somebody living in France could live in Italy or Spain and retain these rights. I have always thought it a little harsh of the European Union side in this negotiation to take the opposite view. I was encouraged to see that prohibition on the rights extending to residence in another member state had dropped out of the text that was looked at in the European Council.

I hope this means that the Government have either succeeded in killing that prohibition or, perhaps more likely, are themselves continuing the fight to try to get rid of that prohibition. It would be very useful to know. I think that leaving the European Union will be a disaster for all of us. I resent the fact that I will no longer have any rights as a citizen. But it seems to me that it is particularly awkward for those people whose legitimate expectations when they chose to live in France, Italy, Spain or wherever will be reduced. They will still be able to exercise their rights when they live in the country to which they chose to move, but they will not be able to choose to move to another country and retain these rights. I would be glad if the Minister could elucidate the answer to the Leader of the Opposition's question on the Statement on Monday.

Baroness McIntosh of Pickering (Con): My Lords, it might be helpful if I, as a half-Dane, set out the position of Greenland. The noble Lord, Lord Wigley, raised the interesting point of what the status of UK citizens will be when we leave the European Union but continue to benefit in some places from it. Greenland is an autonomous Danish dependent territory, with only limited self-government and its own Parliament. It withdrew from the European Union but nevertheless is now associated with it under the Overseas Associated Decision and is eligible to benefit from funding from the EU's general budget through the EU-Greenland partnership. That begs the question of whether the Government are minded to apply for such associated status so that citizens from parts of the UK can benefit in the future.

Viscount Waverley (CB): My Lords, I apologise for not being here at the start. I will say very briefly that one aspect has not come under consideration: namely, UK citizens who have their prime residence on the continent. If a UK citizen has restricted access to the country in which they have their residence and the situation arises where the spouse is not allowed to enter the UK—of which I have first-hand knowledge, as my colleague the Minister is aware—that could mean separation for many people and it will further complicate this whole arena.

Lord Roberts of Llandudno (LD): My Lords, I will intervene very briefly. Since the Maastricht treaty, 18 million people have been born into European citizenship. They have not acquired it—it is their right from birth. What right have we to strip them of this citizenship? I am proud of being Welsh, proud of being British and proud of being a European. A person is usually stripped of citizenship as a penalty for having done wrong and for being an undesirable. How on earth am I going to tell the children—and

they are not only children now—who have been born since the Maastricht treaty into European citizenship that they no longer have that right?

Baroness Hayter of Kentish Town (Lab): My Lords, in the words of those who tabled the amendments and their supporters, we hear the cry of millions who feel the loss of what they believe has been, or has become, their birthright—European Union citizenship.

We see this in many different ways. Half a million holders of UK passports have already applied for Irish passports, often by virtue of their parents' or grandparents' status; 30,000 EU citizens—double the number we saw before the referendum—who live here are now applying for British nationality; and many Britons are taking up membership of an EU member state so that they can preserve their EU citizenship. There is an even greater number of people who, like me, would love to continue to hold a purple passport. I have no nostalgia for my old passport—I think it is black rather than blue—and do not want it back; I would like to keep my purple one.

Apart from the emotional attachment, there are pragmatic reasons why people would like to continue with that. As the noble Lord, Lord Kerr, said, even with the withdrawal agreement we are not certain that it will allow Brits who are living abroad to do more than just remain in the country where they find themselves at the moment. It may not guarantee them the right to move or work elsewhere.

I heard recently from a British national, Nick Gammon, who at the moment is living in Holland—he has lived in France and Ireland—whose children absolutely identify as citizens of Europe. He is a translator and even at the moment his work is done not only in Holland but in Belgium, Germany and Britain, and indeed all over the place. But of course, after exit, while he will be able to carry on living in Holland, he will not be able to continue to live and work in one of those other places if it is not included in the final withdrawal agreement—although it would be nice if we could hear that it is going to be.

Of course, Nick is not alone. A few days ago we talked about the designers, architects, performers, sports men and women, nurses and all sorts of people who move around for their career, very often as freelancers, as well as for their personal lives. We heard from our EU committee earlier about how tourists moving abroad now risk losing their European health insurance card, the EHIC. Obviously this does not apply to many noble Lords in the Chamber, but if you happen to be more than 90 years of age or you have a pre-existing ailment, it will become very hard to get health insurance if we lose the EHIC. So there are enormous problems with continuing the movement across Europe that we know.

So there is undoubtedly an ache for the EU passport, with its ongoing residence and other rights. Perhaps I may briefly tell one more story. In my husband's family, his cousin's husband will I think be known to many: Nick Ross, whose Jewish grandmother and father arrived here from Germany in the 1930s. Nick has just taken German nationality. He has done so for a number of reasons, including how Germany has changed—although he does not necessarily want to go and work there. Following his lead, his sons, nieces and nephews have also applied for German passports, which says quite a lot. I gather that it is taking the youngsters rather longer because there is now a long queue of people doing just that.

That is a reflection of the world in which the current generation lives. Young people have more in common with friends, colleagues and partners across the continent than our parents would ever have imagined. It is the world that EU citizens residing here have also come to assume. Some are still in shock after the June 2016 decision, which will bar their automatic right to stay here, work and bring their family over. Even with all the promises we have been given, we know that there are great worries about how the system for settled status will continue.

I return to the amendment. Of course we cannot acquire stand-alone EU citizenship. It does not exist but is an add-on, even in the words which we have just heard quoted. It is an add-on for the nationals of EU member states. The EU 27 nations are no more going to give passports to all 65 million of us than we would give British passports to the 500 million citizens across the European Union—so I am afraid that we are not likely to get passports from another EU member state, and therefore, sadly, we will lose our EU citizenship.

But what we can do is ask the Government to ensure that at every stage of the negotiation they prioritise the movement of people around the continent in the way that a generation has learned to enjoy and value. Whether it is over the negotiations on staying and working with Euratom, Erasmus or the medical or other agencies, everything we do should help to preserve the free movement across the continent which youngsters in particular have come to expect. I think that we would like to see, if I may use the phrase, a continental Brexit, and I hope that Ministers will press for it so that people will be kept at the centre of all the negotiations, which will help them to continue to feel European—even if we revert to the old black passports.

The Earl of Clancarty: I detect an elegiac and rather defeatist note in what the noble Baroness is saying. Has she read the report by Professor Volker Roeben? If so, what is her response to it?

5 pm

Baroness Hayter of Kentish Town: Not only have I looked at that report and a number of other documents, but the noble Earl will have observed that I have one of the major legal advisers sitting on my right, from whom I take great strength.

I would love to believe the noble Lord but, alas, I also believe what it says in the treaty: EU citizenship is an add-on for citizens of a member state. That is why noble Lords have heard me say before that I was born in Germany but, sadly, in a British hospital, so I was born British. For a long time, I thanked my parents for getting me into a British hospital so that there were no complications. They are long dead, but I am now really cross with them for not having me in a German hospital so that I could have a German passport and keep it. My wish is there, but my brain tells me that it is just not possible.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, at one stage I thought that, for the first time in many days, I was going to agree with the noble Lord, Lord Adonis, but then he went and spoiled it.

Many people—today, yesterday, a year ago—wanted to remain EU citizens, but more people decided that they did not. That is where we find ourselves today. I do not seek to elaborate on that. I understand the strength of feeling from many people who did not want to see us leave the EU, but the reality is that we will. The consequence of that is clear and has been made clear by the noble Baroness, Lady Hayter, and the noble Lords, Lord Adonis and Lord Kerr: pursuant to Article 20, EU citizenship is an addition to the citizenship of a member state.

Lord Dykes (CB): I apologise for interrupting at this juncture because the Minister has only just begun his interesting speech. He asserted that people voted decisively in favour of Brexit and therefore also against being European citizens. As far as I recall, that did not really come up in the campaign, so how many of those people would have known about EU citizenship arising from the Maastricht treaty a long time ago?

Lord Keen of Elie: It is so utterly basic to the issue that it is difficult to conceive of many, if any, people who did not understand the nature and consequences of Brexit, so I will not elaborate on that.

I want to come back to remarks made by the noble Lord, Lord Adonis, as well as the noble Lord, Lord Wigley, in an earlier debate. We have debated this already in Committee in the context of another amendment. The noble Lord, Lord Adonis, mentioned Northern Ireland. Clearly, where one meets certain residency tests in Northern Ireland, one is eligible to apply for a passport from the Republic of Ireland Government. By that means, membership of an EU state can be retained and one can remain an EU citizen. As I indicated in an earlier debate, there are two areas of opinion in Northern Ireland: there are people who are perfectly happy—indeed, anxious—to secure a passport from Dublin and people who have no desire to do so.

Lord Adonis: I am afraid I must disappoint the noble and learned Lord because I think we are continuing to agree. However, I asked him why he will not extend the right to apply for an Irish passport to those of us on the mainland.

Lord Keen of Elie: It is not in my gift. It would be a matter for international treaty negotiation between the United Kingdom and the Republic of Ireland. It is for Ireland to decide who it will admit as citizens of the Republic; it is not for us to demand. That is the answer to the noble Lord's point.

Baroness Altmann (Con): As a point of interest, perhaps one should recommend to all pregnant mothers in Great Britain that they might consider going over to Northern Ireland to have their babies.

Lord Keen of Elie: I am not going to indulge in an issue regarding maternity at this stage. Let us try to keep focus on the amendment, shall we?

We are all aware of the issue and we are also aware of the agreement that has been entered into to protect the rights of EU citizens and their family members living in the UK and of UK nationals living in the EU until the end of the implementation period, set at 31 December 2020. During the implementation period, individuals will still be fully covered by the EU acquis. UK nationals will be able to continue to move around the EU 27 member states and will have the freedom to move to another member state to live and work, as long as they do so before the end of the implementation period.

That reminds me of the point made by the noble Lord, Lord Kerr, about Article 32 of the withdrawal agreement. The position is this: what was proposed in Article 32 was removed as there was no actual agreement on that point. Therefore, there was no reason to have a legal text covering a point that was not the subject of agreement. The United Kingdom pushed strongly for the inclusion of ongoing movement rights during the first phase of the negotiations, but the European Union was not yet ready to include them. Of course, it remains an issue that we wish to pursue. We have already made that clear.

To come back to the amendment itself, it is simply not feasible for us to set upon a course of negotiation that is doomed to failure. We cannot secure EU citizenship for citizens of the United Kingdom after we leave the EU. That is the short point to be made. Therefore, the amendment would set the Government on a course of negotiation that would effectively prevent the present Bill—

Lord Davies of Stamford: My Lords—

Lord Keen of Elie: I shall just finish the sentence, so will the noble Lord please sit down? It would effectively prevent the present Bill getting on to the statute book and achieving its intended purpose: to ensure legal certainty at the point at which we leave the European Union.

Lord Wigley: I am very sorry to hear that this would prevent the Bill reaching the statute book. Notwithstanding those feelings, I ask the noble and learned Lord to address the point I raised in my earlier comment about the 1969 Vienna Convention on the Law of Treaties that that convention,

"will be binding on all remaining Member States, the UK, and the EU itself post Brexit".

Does he accept that the convention,

"ensures that the status and rights of those EU citizens resident in the territory of the Union and those resident in the UK will continue",

after Brexit?

Lord Keen of Elie: I hope the noble Lord did not pay good money for that opinion. He will perhaps elaborate on the position in due course, but I do not accept that proposition.

Lord Wigley: I will not come back after this intervention, but has he read the document to which I referred, or have experts in his department done so?

Lord Keen of Elie: I have not read the opinion in question, but I am not unfamiliar with the terms of the Vienna convention on treaties.

Lord Wigley: If between now and Report he or his advisers have an opportunity to read that opinion and, having done so, feel that what has been said in a Chamber does not fully reflect the situation, will he be prepared to come back at a later stage?

Lord Keen of Elie: I am perfectly content to look at the opinion.

Lord Davies of Stamford: I will take up a point that the noble and learned Lord was making before he took the very sensible and helpful intervention from the noble Lord, Lord Wigley. We all accept—I explicitly accepted it in my remarks—that EU citizenship is not within the Government's gift. I accept, too, that there is no practical possibility of the Government negotiating it in foreseeable circumstances with the EU. What I am asking for and what I hope the noble and learned Lord can offer on behalf of the Government is that they will place no obstacle in the way and will do anything that appears possible to facilitate and support any move by any of us to try to achieve from the European Union some recognition of the fact that we are European citizens and we will continue to feel that way even after Brexit, if Brexit, unfortunately, takes place.

Lord Keen of Elie: The reality is that if Brexit takes place we will not continue to be EU citizens.

Lord Wigley: My Lords, I am very grateful to everyone who has participated in this short debate, particularly to the noble Earl, Lord Clancarty, who I am sorry I relegated in my earlier reference. I also thank the noble Lord, Lord Adonis, with whom I usually fully agree on these matters, although it was encouraging to hear that there may be alternatives by not pursuing this Bill. I thank the noble Baronesses, Lady Smith, Lady McIntosh and Lady Hayter, and the noble Lords, Lord Davies, Lord Kerr and Lord Roberts of Llandudno, for their comments. I think I have got as far as I am likely to get on this. I was grateful to the Minister for saying that he is prepared to look at the opinion to which I have been referring. I can ask no more than that, and on that basis, I beg leave to withdraw the amendment.

Amendment 355B withdrawn.

Amendments 355C to 357A not moved.

Amendment 358

Moved by ***Lord Goldsmith***

358: Clause 19, page 15, line 21, at end insert—

"( ) If the United Kingdom agrees transitional arrangements with the European Union, a Minister of the Crown may not appoint a day on which section 6 is to come in force unless this day follows the expiration of those transitional arrangements."

Lord Goldsmith (Lab): My Lords, the purpose of this amendment is to prevent Section 6 coming into force until after the expiration of any transitional arrangements agreed with the Union. Clause 6, somewhat innocently and perhaps misleadingly named "Interpretation of retained EU law", does more than simply offer canons of interpretation for retained EU law. Its apparent purpose is to bring to an end in a number of respects the role of the European court, the CJEU. Once Section 6 is in force no court or tribunal would be bound by any principles laid down or any decision made on or after exit day by the CJEU. Moreover, it would bring to an end the ability to refer matters to the European Court. As the Committee will be well aware, one of the ways in which the uniformity of Union law is preserved is through the ability of national courts to refer questions of interpretation and so forth to the European Court for decision. That means that our courts can get authoritative rulings on European law from the top European court to help our courts make their decisions. Moreover, of course, while we are members of the Union we are bound by Union law as interpreted and laid down by the European Court.

Of course, because certain law will be retained as EU law after exit, if the Bill goes through, the shutters cannot and should not come down completely even after exit. Subsections (3) to (7) of Clause 6 provide how the courts and tribunals are to interpret retained EU law after exit. As one would expect, even after exit day retained EU law will need to be interpreted in the light of decisions of the CJEU on those very provisions, although at that time our most senior courts—the Supreme Court in England and Wales and the High Court of Justiciary in Scotland, in its appellate role—would have the power to depart from those decisions. It is not, however, that aspect of continuing arrangements that this amendment primarily concerns. This amendment is concerned to ensure that, so long as we remain bound to follow EU law under transitional arrangements, the judicial arrangements, including the role of the CJEU, will continue to apply. That makes sense because, until the transitional arrangements have come to an end, EU law will continue to apply.

I have looked, as many noble Lords will have done, at the colourful draft agreement for withdrawal published recently. I say "colourful" because we can see the green parts that show what has been agreed at negotiator level and the yellow parts showing what has been agreed as policy objectives. As for the proposals for judicial procedures, none of that is green or indeed yellow; it is white at the moment so, as I understand it—the noble and learned Lord or the noble Baroness, whoever is replying, will explain—the current position is that we simply have, in this text, the negotiating position that the European Union wants to put forward. That is dealt with in Title X and Articles 82 to 92, particularly Articles 82 and 83. As I understand them—again, this could be confirmed or otherwise—the current proposal of the European Union is as follows.

First, the European Court will continue to have jurisdiction in any proceedings brought before it by or against the United Kingdom before the end of the transition period. So in one case its jurisdiction would remain, if that proposal were ultimately accepted.

Secondly, the European court would continue to have jurisdiction to give references or preliminary rulings from our courts referred to it before the end of the transition period. In any case, if the current draft of Article 85 from the European Union is accepted,

[Lord Goldsmith]
the judgments and orders of the Court of Justice handed down before the end of the transition period, as well as those handed down in proceedings by or against the United Kingdom, will have,
"binding force in their entirety on and in the United Kingdom".
I believe, although it would be helpful to have confirmation, that the European Union intends that, if this negotiating position is ultimately accepted, rulings and preliminary references brought before the end of the transition period will also be binding.

5.15 pm

I apologise for the length of that introduction. What it amounts to is this: as long as transition arrangements are in place, the European court will have a role to play and its rulings will need to be respected and observed. That is obviously right, so it seems to me, because the transition period will be one in which we will to all intents be following the rules of the European Union though we will not be members of it. If the ultimate withdrawal agreement is in the terms currently proposed by the Union, as they appear from the negotiating document, Clause 6 as it stands would be in direct contradiction to the withdrawal agreement. The possibility for references, for example, would no longer exist.

I suggest that, in any event, it is sensible that the provisions of Clause 6, which would change the effect of European court judgments, should not come into effect until the end of the transition. That is the purpose behind this amendment. I anticipate that the Government will recognise that, if they eventually agree with the current negotiating position of the European Union, they will have to agree that Clause 6 cannot come into force until after the end of the transition period. If that is not the position, I have misunderstood the current position that is being put forward by the European Union. I question what would happen even if we do not agree that negotiating position. Whatever it is, I suggest that it cannot simply be that the shutters come down in this way, before the transition period has run its course. I do not see what the alternative is, because the rules and principles of the European Union will have to continue to apply during the transition period. That must include being subject to the jurisdiction of the European court.

I hope this amendment is helpful to the Government, because it draws attention to something that will need to be fixed in the light of the withdrawal agreement taking place. In those circumstances, I look forward to hearing what the Minister has to say and beg to move.

Lord Kerr of Kinlochard: My name is to this amendment, but I have little to say because the case for the amendment has been brilliantly put forward by a lawyer, and I am no lawyer. It seems to be a common-sense amendment. If, as I think will be the case, the European Union side in the negotiation continues to insist that, if we want a standstill period in which we act as if we were members of the customs unions and the single market until January 2020, the jurisdiction of the Court of Justice as the umpire of the single market must continue. It seems to me we have to accept that if, as I expect, the European Union insists on taking the position it is now taking. In that case, as explained by the noble and learned, Lord Goldsmith, Clause 6 would have to be struck out. Clause 6 is in flat contradiction to what is going to be agreed on the standstill agreement. Therefore, it seems sensible to avoid having to repeal part of the law that we would have passed for us instead to introduce this small amendment that simply says that Clause 6 does not come into effect until the end of the transition period.

The concept of a standstill transition is extremely unsatisfactory. It is necessary but it is insufficient to deal with the huge problems that British industry and business will face. It is inconceivable that by January 2020 we will have negotiated a full agreement with the European Union covering the full gamut of our future relationship, including trade. That is just not feasible. Even if we had done that—if we had achieved the impossible—we would have a mixed agreement which would require national ratification in all capitals. All the standstill agreement does is give us the position for 21 months that we will accept and operate under laws that we have not written, on which we have had no votes; with no judge in the court but the court having jurisdiction; with no Members in the European Parliament but the European Parliament writing our laws, with the Council; and with no one in the Commission. I find that ignominious and insufficient because all it has done is move the cliff edge out to 1 January 2021. We will not have the long-term, permanent successor relationship defined in treaty form in a ratified treaty at the end of this period.

Moreover, it is my judgment that for legal reasons it will not be possible to extend the period. It seems to me that one cannot use Article 50, which is about withdrawal, to produce an extended period of future relationship. There are other articles in the treaty which define association agreements and relationships with third countries. I do not think the lawyers will allow us to use the withdrawal agreement as a treaty base for an extended period of new relationship. Therefore, although it is absolutely necessary to have a standstill because otherwise the cliff edge is very close, it does not solve the problem of the cliff edge but merely postpones it for a bit. But the amendment moved by the noble and learned Lord, Lord Goldsmith, must surely be right. It does not make sense to have a lengthy Clause 6 explaining a relationship which will not actually be the relationship we follow during the standstill period.

Lord Davies of Stamford: My Lords, I am mystified as to why there is any controversy at all on this matter and why the Government have come forward with a Bill that includes Clause 6 in its present form. After all, it is us who have asked for some withdrawal or transitional arrangement, and very necessarily so—I quite agree with the noble Lord, Lord Kerr; the whole matter is extremely unsatisfactory from many points of view.

Although our position will change constitutionally in March next year if we go ahead with Brexit, and we will not have been involved in the legislative process and so forth, the whole purpose of the transitional arrangement as I and I think everybody has understood it—that is the way the European Union has understood it,

because after all, it is our request—is that the regime affecting all economic agents, traders and so forth, will be completely unchanged. They will carry on after March next year until January 2021 in exactly the same way. The rules they operate under will be the same. Their contracts will be interpreted in the same way as before. Their obligations to the state and so forth will be interpreted in the same way and therefore they will know exactly where they stand. They will not need to have any new regime introduced during that period. If that is the case, surely the legal regime must not be subject to any change—quite obviously so—because if it is going to continue as it presently is, the judgments of the courts which oversee that must be the same as they otherwise would have been.

Therefore, I am completely mystified as to why the Government have proposed that Clause 6 should come into effect on Brexit rather than at the end of the transitional period. I just hope that we will have a satisfactory and credible explanation from the Government. They might even admit that they have made a slight slip on this occasion and accept the amendment which is now before them.

Baroness Smith of Newnham: My Lords, I rise in the absence of my noble and learned friend Lord Wallace of Tankerness, who has also put his name to this amendment. I want to raise a point that he has already raised with the noble and learned Lord, Lord Keen, and a couple of my own.

First, my noble and learned friend asked how EU law will take effect, given that under Clause 1, the European Communities Act 1972 will be repealed. It may be that ensuring Clause 6 has effect only after the transition period gets around that, but there is a real question about the United Kingdom implementing EU law from the day we leave—30 March next year—through to the end of December 2020. During that period, we will be subject to the European Court of Justice but, in principle, will have no representation—that is the point the noble Lord, Lord Kerr, made in passing: we will not have a judge. The noble Baroness the Leader of the House was asked whether the United Kingdom will still have a judge on the Monday. We assume it will not, but is that the case? Have the Government discussed it? In addition, will we have an Advocate-General? My understanding is that the current Advocate-General believes she is in an ad-hominem position.

Lord Hope of Craighead (CB): I think it was the noble Lord, Lord Thomas of Gresford, who pressed this point. The answer we received was that this would be a matter for negotiation, the suggestion being that we would somehow negotiate the presence of a UK judge on the court. Rather like the point about nationality, having looked at the treaties, I think it is almost impossible to see how this could be arranged. I think we have to accept that we will not have any representation on the court because we will have no Members of the European Parliament.

Baroness Smith of Newnham: I am most grateful to the noble and learned Lord. In a sense, that puts us in an even more difficult position. Surely, one idea was that by taking back control we would be able to legislate and use our own courts. We will have 21 months in which we do what the European Union requests without having a say. What are the Government doing to ensure we have at least some sort of seat at the table?

The Duke of Montrose (Con): I had a son who worked in the European court. As far as I understand it, if an issue comes up which is relevant to the United Kingdom, it is unlikely that a United Kingdom judge would be part of the panel asked to rule on it.

Lord Kerr of Kinlochard: There will be no United Kingdom judge: when we are not members of the European Union, we will not be entitled to have a judge at the European Court of Justice. The noble and learned Lord, Lord Hope, is absolutely right, I am afraid.

Lord Vinson (Con): My Lords, the ECJ works at a snail's pace. There will be a massive amount of undigested legislation one way or the other at the end of the transition period—how does this affect the issue?

Lord Pannick (CB): My Lords, I support this amendment. One of the primary purposes of the Bill is to promote legal certainty: I cannot understand how it can be anything other than destructive to legal certainty for Parliament to enact a Bill that includes Clause 6, which removes the jurisdiction of the Court of Justice of the European Union from exit day—defined as 29 March 2019—when the Government's own intention, and that of the European Union, is that there should be a transitional period during which the Court of Justice will retain jurisdiction, and during which we will agree to that jurisdiction.

Lord Hannay of Chiswick (CB): My Lords, I too support this amendment. I will be very brief. It seems that if the Government try to maintain the text as it is they are basically marching Parliament up to the top of the hill in order to march it down again—they are also marching Parliament to the top of the hill to defend a position on which they themselves ran up the white flag some weeks ago. Frankly, this is not a sensible way of proceeding. It will make a mockery of Parliament if it is asked to legislate something which it knows not even the British Government want to happen. Surely, the right answer is to remove Clause 6, as the amendment proposes.

If by any chance everything collapses or changes, or the Government somehow persuade the European Commission to draft the text in a different way, it will be perfectly possible for the Government to put it in the withdrawal and implementation Bill that will come forward after the conclusion of negotiations. Meanwhile, we should start with the standstill as it has been agreed and without this provision.

5.30 pm

Lord Keen of Elie: My Lords, I am obliged to the noble and learned Lord, Lord Goldsmith, for raising the issue of Clause 6 in the context of the implementation

[Lord Keen of Elie]
period that is referred to in his amendment. Reference is made repeatedly to the transition period; yes, we recognise that there is to be an implementation period, as it is termed, if that and everything else is agreed. But nothing is agreed until everything is agreed, so we do not yet have that implementation period. We desire it and recognise that the EU also sees its significance. That is why we were able to express matters as we have in the March text—the multi-coloured text to which the noble and learned Lord referred. I agree with his reference to Articles 82 to 85 in that context and the point that they are on white, because they express a proposal and not a concluded agreement on those points. That is what I want to underline at this stage.

As I have said during Committee on a number of occasions, this Bill is to ensure that there is a functioning UK statute book on day one, regardless of the outcome of negotiations. In his speech on the implementation period, the Secretary of State was clear that it will allow—if it is finally agreed—a strictly time-limited role for the European Court of Justice, in keeping with the EU's existing structures.

I am sensitive to the fact that unlike some other amendments, the provisions of this amendment are conditional upon the implementation period being part of the withdrawal agreement. Accordingly, they do not fully prejudge the outcome of negotiations and I acknowledge the delicacy of the drafting of the noble and learned Lord, Lord Goldsmith, in that respect. However, that does not change what we have asserted consistently: that the details of the implementation period will be legislated for in the withdrawal agreement and the implementation Bill. We have always been clear that the major elements of the withdrawal agreement will be implemented in that Bill and not in this Bill.

Lord Dykes: Presumably that means, too, that because there are so many gigantic individual subjects to be agreed in the implementation period, it would be perfectly feasible for the Union and the United Kingdom in further negotiations to agree on a longer period in order to get through all the complicated material, which the Government still say will be easy to do but will be extremely difficult.

Lord Keen of Elie: The Government's objective is to conclude a withdrawal agreement by October of this year. That has been stated on a number of occasions and it is in that context that we intend that the present Bill should deal with the situation, whether or not there is a withdrawal agreement or an implementation period. As and when a withdrawal agreement is concluded, it will be dealt with in the withdrawal agreement and implementation Bill. Clearly, if we enter into an international treaty with the EU 27 in respect of these matters, we will respect that international treaty and our obligations inherent in it and, in accordance with the duality principle, draw down those obligations into our domestic law, using the withdrawal agreement and implementation Bill. I suggest that it is inconceivable that we would not seek to do that.

Lord Beith: The noble and learned Lord has been quite clear that it will be the withdrawal Bill that is the mechanism. Is he saying that it will be that Bill and not the use of the statutory instrument powers to be found elsewhere in this Bill which will enable him to modify or repeal its sections when it is an Act?

Lord Keen of Elie: We have been clear that the withdrawal agreement and implementation Bill will legislate for the withdrawal agreement. That may involve us amending the terms of the present Bill, but we should remember that the present Bill is intended to accommodate the situations where there is a withdrawal agreement and where there is no withdrawal agreement and therefore no implementation period. It is to bring certainty to the statute book in that context. Clearly, there may be a situation in which we have to bring forward amendments to the present Bill in the second withdrawal agreement Bill. I recognise that.

Lord Kerr of Kinlochard: The Minister has just been paying tribute to the delicacy of the drafting of the noble and learned Lord, Lord Goldsmith, whose language in this amendment copes with both eventualities. It sets out the contingency that there is a transitional agreement. I do not see the difficulty.

Lord Keen of Elie: It is not a question of difficulty; it is a question of how we have decided to approach dealing with this in a legislative manner. The intention is that the present Bill will legislate for legal certainty whether there is or is not a withdrawal agreement. In the event of a withdrawal agreement, we will legislate to ensure that in the withdrawal agreement and implementation Bill the terms of the present Bill will be brought into line with the terms of the withdrawal agreement in order that we can discharge our international legal obligations. We have consistently pointed out that that is the approach being taken to legislation in this context. It is really quite inconceivable to suppose that the Government are going to enter into a withdrawal agreement and then not implement that international legal obligation in our domestic law. That is the intention. It is simply a question of the order in which these things are being done, and it has always been maintained, and will be maintained, that it is not for this Bill to deal with the eventuality or the prospect of the implementation period.

Baroness Ludford (LD): Does the Minister not appreciate the absurdity some of us feel? As the noble Lord, Lord Hannay, pointed out, we are being marched to the top of a hill that the Government have already abandoned. We are being asked to legislate in terms that are contrary to government policy and strategy in the Brexit negotiations, which leaves one feeling in a somewhat surreal position.

Lord Keen of Elie: I sympathise with the idea of being left in a somewhat surreal position. As I said at the outset of my remarks, nothing is agreed until everything is agreed, so while we have the anticipation and desire to secure an implementation period, nothing is agreed until everything is agreed.

Lord Cormack (Con): Does my noble friend not think of Sir Thomas More:

"I trust I make myself obscure"?

Lord Keen of Elie: I often think of Sir Thomas More, but not on this occasion.

Lord Hannay of Chiswick: I find it rather hard from the Cross Benches and as a non-politician to make this point, but I wonder whether the Minister has considered what the Government are proposing to do. They are proposing to offer in an Act of Parliament signed into law by the Queen something which they know is not going to happen. They have offered that up; their supporters will, no doubt, rise cheering to their feet; and then, three or six months later, they will repeal that part of the Act, at which point there will be cries of betrayal and perfidy—and those are probably rather mild words compared with the ones that will be used by the *Daily Mail* and others. Have the Minister and his colleagues not given any thought to that? Is not the simple thing to do to accept the amendment, and then there will be no betrayal and no perfidy, or if there is it will have been done already?

Lord Keen of Elie: There is no betrayal and no perfidy, but I feel misrepresented by the noble Lord because he said "knowing that there will be an agreement". We do not know for certain that there will be an agreement. Nothing is agreed until everything is agreed. Of course, we have an aspiration; we seek to secure the implementation period, and when we do we will then legislate for that in the withdrawal agreement and implementation Bill. Meanwhile, this Bill is designed and intended to accommodate the situation in which there may not be such an agreement.

Lord Wallace of Saltaire (LD): I hate to add to the surreal nature of this, but the formula "Nothing is agreed until everything is agreed" seems incompatible with negotiating a transitional agreement during which we recognise we will agree only a small number of things and carry on negotiating. It seems to me that the Government should now drop the mantra that nothing is agreed until everything is agreed, because we are actively pursuing, if I understand the Government's case, a transitional partial agreement, during which a number of commitments will be made but a number of the fundamental issues of our future relationship with the European Union will remain entirely unclear and will be negotiated in the two or perhaps three or more years afterwards.

Lord Keen of Elie: My Lords, we are engaged in a bilateral negotiation; it has not yet concluded. This Bill is designed to accommodate the situation in which there may not be a conclusion to that negotiation, as well as a situation in which there may be. In the event of the latter case, the withdrawal agreement and implementation Bill will bring the legislation into line with the statute book.

Baroness Altmann: Will my noble and learned friend clarify for the Committee, if nothing is agreed until everything is agreed and we may not go into a transition period, how it can possibly make sense to have 29 March written into the Bill?

Lord Keen of Elie: Because that addresses a distinct issue, which is the exit date from the EU. It is quite distinct from the question whether we are able to finally conclude an implementation period, which it is our intention to do. Let us be clear about that. The EU has also indicated its intention to do it as well. But we are engaged in a bilateral negotiation.

Lord Pannick: It is plain and obvious that nothing is agreed, but can the noble and learned Lord be clear with the Committee about the Government's position in relation to negotiating this transitional implementation period? Do they now accept that they are no longer seeking to impose any red line relating to the jurisdiction of the Court of Justice during that implementation period?

Lord Keen of Elie: I am not sure I agree with the term "red lines"; it is not one that I am inclined to use. I am never quite sure what they are. Our position is that during an implementation period, if and when finally agreed, we will accept that there is a role for the European Court of Justice. Indeed, it is outlined in the EU's own proposals for the agreement at Articles 82 through to 85. As the noble and learned Lord indicated, that is not yet the subject of final confirmation between the two parties but it is what is anticipated.

On a related point, during that period, I agree with the noble and learned Lord, Lord Hope, that as we cease to be a member state we will cease to have the right to have a judge in the Court of Justice of the European Union. That must follow. However, we will have the right to make interventions in cases that pertain to the United Kingdom.

Lord Goldsmith: My Lords, there have been moments during the 11 Committee days that we have had so far on this Bill when I felt a little sorry for the noble and learned Lord opposite for the positions that he was being expected to argue by those behind him and in other places, but never more sorry than I am today. This is the most absurd situation. We have offered him an amendment and I am grateful for the description given by the noble Lord, Lord Kerr of Kinlochard, as delicate. It does not presume even that there are transitional arrangements. It simply says that, if there are transitional arrangements, this is what will happen. I cannot understand why it is not accepted. I had hoped on this 11th final day of Committee that we would have a breakthrough.

Baroness Hayter of Kentish Town: The 11th hour of the 11th day.

Lord Goldsmith: The 11th hour of the 11th day, as my noble friend Lady Hayter says. If we had had a breakthrough, we would have been able to say we had finished Committee with a concession—not much of a concession, it would have to be said, because it is so obvious that this ought to happen, but at least it would have been something that we could build on as we move towards Report where we hope we will have a degree of constructive engagement.

This really does not make sense at all. We all know, and the noble and learned Lord knows—indeed, he accepted it—that there will be a role for the European Court of Justice after the magic exit day, whatever day we end up with. If there is not, this amendment does

[Lord Goldsmith]
not operate. It is very straightforward and simple: to suggest otherwise is cloud-cuckoo-land or Red Queen land.

The noble and learned Lord's final recourse is to legal certainty. We all accept the importance of legal certainty, and that that is what is behind the Bill. However, there is complete legal certainty if this Bill, when it becomes an Act, says, "If something happens, this provision does not come into effect until the end of that period". I will not quote Latin again, but we know there are principles which say that those things are certain which can be made certain, and it will be certain because we will know whether or not there is such an arrangement.

5.45 pm

I thank the noble Lords and the noble Baronesses who have spoken, all of whom have supported my position in their speeches and interventions. The noble Lord, Lord Kerr of Kinlochard, is absolutely right, of course, that what the Government are doing with the transitional arrangement does not solve the problem but postpones it. But, obviously, they hope that by postponing it, things will be more resolved at the end of that period. However, we cannot have a situation in which we have a vacuum, because the provisions for judicial interpretation and enforcement disappear.

The noble Lord, Lord Hannay of Chiswick, put himself momentarily into the role of a politician to consider what the Government would do, and I was envisaging exactly the same thing. If the Government have their way, this Bill will be passed in this way and they will trump to the world that the role of the European Court of Justice has gone—ended, so far as the United Kingdom is concerned, on exit day. Then, a few months later, the Prime Minister will have to stand up and say, "We have decided to reinstate a role for the European Court of Justice. We think it makes sense to do that". I cannot see that happening. I cannot imagine why the Government would want to put themselves in that position.

Therefore, I very much hope that, despite the noble and learned Lord following his brief today, as he has very loyally done, when this comes back, which it undoubtedly will—unless the Government have the sense to put forward their own amendment, which I hope they will—they will accept that this amendment has to be followed through. In the meanwhile, I can do nothing else than beg leave to withdraw the amendment.

Amendment 358 withdrawn.

Amendments 358A and 358B not moved.

Clause 19 agreed.

Schedule 8: Consequential, transitional, transitory and saving provision

Amendment 358C

Moved by ***Lord Pannick***

358C: Schedule 8, page 55, line 33, leave out sub-paragraphs (1) and (2)

Lord Pannick: My Lords, this amendment is in my name and those of three other members of your Lordships' Constitution Committee: the noble Lords, Lord Norton of Louth and Lord Beith, and the noble Baroness, Lady Taylor of Bolton.

Amendment 358C and Amendment 360A, with which it is grouped, address the powers tucked away in Schedule 8 to modify retained direct EU legislation by the use of delegated powers that relate to subordinate legislation. A power to modify is an important matter because "modify" includes a power to repeal—see Clause 14 (1).

This Committee has debated on previous days the surprising omission from the Bill of any provision that identifies the legal status of retained EU law. Is it primary legislation, secondary legislation or something else? The powers in Schedule 8, in paragraphs 3(1) and 5(1), which we are now addressing, have attracted the attention of your Lordships' Constitution Committee because those provisions treat retained EU law as analogous to secondary legislation for the purposes of powers to modify. That is a surprising position for the Bill to adopt, certainly in relation to that part of retained EU law which confers important rights: for example, in the fields of employment, the environment and consumer protection. It means that, in addition to the other powers to modify retained EU law, which the Bill will confer and which we have debated in detail—Clauses 7, 8, 9 and 17—there is yet another set of powers recognised by Schedule 8 that will give Ministers the power to modify the retained EU law, on important subjects, which is brought into domestic law.

My concern is not reduced by paragraph 3(1) of Schedule 8 saying that these powers can be used only,

"so far as the context permits or requires",

and paragraph 5(1) says that the powers may be used,

"unless the contrary intention appears".

These statements are opaque in the extreme and certainly do not provide any degree of legal certainty.

I therefore look forward to hearing from the Minister why these powers are needed at all in addition to the other extensive powers which the Bill confers, and I look forward to hearing from him what these powers say, if anything, about the legal status of retained EU law. I beg to move.

Lord Beith (LD): My Lords, I am glad to be associated with the noble Lord, Lord Pannick, in supporting this amendment to seek some clarity. I will simply add two further points, having said that this distinctly lacks clarity at the moment.

First, I draw attention to paragraph 3, which says:

"Any power to make, confirm or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on or after exit day without that restriction".

A little gloss on that from the Minister would be helpful. The second thing that needs clarifying is the impact on the devolution aspects of the Bill. The Government's Explanatory Notes say that,

"in relation to the devolved administrations these pre-existing powers"—

that is, the powers that can be used under the clause we are discussing—

"are subject to the devolution provisions described in paragraphs 36 to 41 of these notes, meaning powers in pre-exit legislation cannot be used to modify retained EU law in a way that would be incompatible with EU law as it existed on exit day until the relevant subject matters are released from the interim limit on their competence".

I imagine that the noble and learned Lord, Lord Hope, pricked up his ears at that phrase, because it goes to the heart of the argument we have been having about the impact of the Bill on devolution and the idea that powers will be released to the devolved Administrations only once the UK Government are satisfied with the way they will deal with the framework provisions. The appearance of the phrase,

"until the relevant subject matters are released from the interim limit on their competence",

in the Explanatory Notes is quite worrying. The provisions are of course there because some of the provisions here relate to existing devolved powers. The devolved Administrations must have the capacity to take this kind of action if the UK Government have the capacity to do so. However, it is subject to this rather extraordinary restriction: the Government hold on to the powers until they are satisfied that they can be released. For the benefit of clarity, I hope that the Minister can help us.

Lord Goldsmith: My Lords, I support the amendment. There is not much to add to what the noble Lord, Lord Pannick, said about what the amendment does and why it is necessary, nor to add to the questions he asked or to those then added by the noble Lord, Lord Beith, which in particular picked up issues with regard to the devolved Administrations.

We know that a major theme in your Lordships' House, rightly, has been how powers are to be exercised, recognising that there may be circumstances in which they have to be exercised. Notwithstanding that, on the whole this Committee has rightly taken the view—or we hope that we will see it take the view, certainly from the interventions and contributions that have been made throughout the Committee—that this is a matter where proper parliamentary scrutiny is required. There may well be a role for certain delegated legislation, but please let us not add to it with still yet another way in which things can be done which avoid that full parliamentary scrutiny.

I hope that the Minister, when he responds, will be able to say something reassuring, both answering the questions posed by the noble Lords, Lord Pannick and Lord Beith, and saying why we need not be concerned and that the Government will content themselves with relying on those delegated powers that will be specific to the Bill, once this Committee and the other place have determined just what those delegated powers should be.

Lord Keen of Elie: I am obliged to noble Lords. I begin by making two observations. These amendments are linked closely to the issue we have already debated in Committee of the status of retained EU law and how we deal with it in the context of its status. As has been indicated previously in Committee, the Government have been listening and considering that, and we intend to come back to the House on the matter before Report. I mention that because it is a relevant backdrop to what we are considering at this stage.

On the points raised by the noble Lord, Lord Beith, essentially, the powers in paragraph 3 of Schedule 8 are, first of all, designed to remove what I might term the shadow of European law from what will be domestic legislation. However, more particularly, the noble Lord raised a point about the devolution issues and quoted from the Explanatory Notes. I understand that the section of the Explanatory Notes that he refers to addresses Clause 11 prior to its recent amendment. I appreciate that we then withdrew that amendment, but the Explanatory Notes should be read in that context. Essentially, therefore, we have moved on because of the decision to flip Clause 11—I think that was the term used—so I ask the noble Lord to look at the proposed amendment to Clause 11 to understand the context in which we now want to deal with this point.

Lord Beith: The noble and learned Lord is being reasonable, but he is inviting us to presume that we have moved on when we have not yet done so. The Government have indicated a willingness to look further at the Clause 11 issues and come back with something new. However, when we compare that discussion to the one we just had, it is a bit odd now to be invited to behave as if something has happened which has not happened yet.

Lord Keen of Elie: I understand the noble Lord's point. He appreciates the statements of intent that we have made with regard to Clause 11. Although we withdrew the amendment to Clause 11, it was tendered and withdrawn for a particular purpose, in order to ensure that it could be finalised before Report. I hope that that addresses the noble Lord's concern about the terms of the Explanatory Note that he quoted.

We have discussed on previous occasions in Committee the risk of ossifying the statute book and how that has to be balanced against checking the ability of the Government to propose changes to retained EU law. Clearly, as I indicated, the Government have heard the debates on the question of how we should treat the status of retained EU law, and we intend to come back on that. However, we must make provision for how delegated powers outside the Bill will interact with retained direct EU legislation. To do nothing would create uncertainty and potentially—by putting it beyond the reach even of Henry VIII powers that can modify Acts of Parliament—risk placing retained EU law on a pedestal of protection beyond even the elevated position of primary legislation. That is why I say that the two issues are linked: how we deal with the status of retained EU law but also carry on with our domestic powers to deal with the entire scope of our domestic legislation, including that which is going to be defined as retained EU law.

6 pm

At present, the Bill provides that all retained direct EU legislation is—within the context provided by the scope of the powers—to be amendable by delegated powers on the statute book on exit day, unless Parliament provides for the contrary intention, also by future delegated powers.

I am sympathetic to noble Lords' concerns that this makes retained direct EU legislation too easily amendable and that it does not recognise what are sometimes

[Lord Keen of Elie]
referred to as internal hierarchies of EU law, with "primary-esque" regulations sitting above "secondary-esque" tertiary legislation—that is an approximate comparison between our own system of legislation and what we find from the EU, with tertiary legislation largely in the form of delegated and implementing Acts.

The Government of course are concerned to ensure that we have a workable statute book going forward. That is why the power in Clause 7 is key to ensuring that the statute book works on day one after our withdrawal from the EU—and, after it is corrected, it must also work on day two, day 20 and day 200.

In this context, it is perhaps relevant to remind ourselves that Parliament passes around 1,000 statutory instruments each year. Similarly, in 2017, the EU adopted more than 500 basic pieces of tertiary legislation and slightly fewer than 500 amending pieces of tertiary legislation—all of which instruments will be part of our legislation after Brexit. Without the ability to adjust retained direct EU legislation with subordinate legislation, we face a serious risk of these regimes simply ceasing to function. Before exit day, the regimes could be adjusted in EU law; after exit day they need to be adjustable by relevant domestic delegated powers—both pre-existing powers and those that we are transferring from the European Union.

In relation to pre-existing domestic powers, it is crucial that the effect of our leaving the EU is properly reflected in the statute book, including by ensuring that powers which have been granted by Parliament continue to function effectively. We are withdrawing from the EU, and among the key reasons for this is to return decision-making to the United Kingdom. Paragraph 3 of Schedule 8 ensures this by lifting what I term the "shadow" of the treaties from our statute book.

Paragraph 3 of Schedule 8 ensures that the amendment of retained direct EU legislation is subject to parliamentary scrutiny—and, rightly, allows Ministers to bring to Parliament instruments, within the existing scope of the powers, which propose policy that would either have been in areas of the exclusive competence of the EU or which diverges from EU policy. It cannot be rational, once we have left the legal architecture of the EU and the treaties, for the restrictions they place on what this Parliament can consider and approve to continue in some shadowy form after we have left the European Union. That is why we are taking these powers.

I know that there is concern about the use of Henry VIII powers—but, again, those have to be available for allowing the modification of regulations and directives that come into retained EU law. Perhaps in this context they are more aptly termed Charles V powers, as he was the equivalent Renaissance continental monarch at the time.

Lord Wallace of Saltaire: My Lords, since we have returned to the subject of Henry VIII powers, I would like to inform the Minister that, after this morning's discussion on the Statute of Proclamations, I looked up the Wikipedia entry—my historical memory of this being relatively limited—and discovered that Thomas Cromwell's original proposals for the Statute of Proclamations passed through the House of Commons unamended, but they were amended in the House of Lords. Does the Minister think that is a relevant precedent?

Lord Keen of Elie: Of course, our constitutional position has altered over the last few years—say, the last 500—and, at the end of the day, we see ourselves as, essentially, an amending House. I understand the noble Lord's point but, in that context, we also understand the precedence of the other place with regard to the final passage of legislation. Therefore, our primary tasks in this context are scrutiny and comment.

The Government have always said that this Bill is not the place for radical policy change. Essentially, what we want to do at this stage is preserve the existing domestic powers to amend legislation pursuant to paragraph 3 of Schedule 8, in order that we can address issues with regard to retained EU law. But the manner in which those powers will ultimately be deployed will depend on the outcome of our consideration of the question of what status we confer on retained EU law. Given that that is an ongoing issue, I invite the noble Lord at this stage to withdraw his amendment. He may, of course, choose to return to it once he has seen our proposals with regard to retained EU law, but it appears to me that the two issues are inextricably linked.

Lord Goldsmith: Before the noble Lord announces the fate of his amendment, I have a question for the Minister. He said several times that there is a connection here with what will happen to EU retained law and what status it will have. We have had full debates on that, as he rightly says. We have heard from the noble Baroness, Lady Bowles; we have heard from the Constitution Committee; we have heard a rather different proposal from the noble and learned Lord, Lord Brown of Eaton-under-Heywood, who is not in his place at the moment. My question is simply: when will we know what the Government's decision is? I hope that they will not stick—because they cannot stick—to the idea that it will be simply for Ministers to decide as we go along the status of a particular piece of retained law. When will we know the Government's position? That might enable us to advance not only on that point but on points such as the one being debated at the moment. Can the Minister give us an answer as to dates?

Lord Keen of Elie: I cannot give the noble and learned Lord an answer as to dates, but clearly we are concerned to ensure that any proposals we have to make are in place in time for consideration by the whole House before Report.

Lord Pannick: I am grateful to the noble and learned Lord, who I have always regarded as a true Renaissance Minister in all respects. I am very pleased to hear him confirm that the Government are seriously considering the issue of the legal status of retained EU law. The Committee of the House will look forward to seeing amendments from the Government in that respect. I am far less persuaded of the need to include in this Bill paragraphs 3(1) and 5(1) of Schedule 8, in addition to

all the other extensive powers which the Government—and Ministers—will be giving themselves to amend retained EU law, under Clauses 7, 8, 9 and 17. The question is: why is it necessary also to include these powers in Schedule 8?

The concern, as the Minister will understand, is that future Ministers may decide that it is much more convenient to use the extensive, unrestricted powers in Schedule 8 than to comply with whatever restrictions are imposed by this House, by the other place—by Parliament—on the powers to modify under Clauses 7, 8, 9 and 17. So we might need to come back to this matter on Report.

I was also interested to hear the Minister say in his reply that the Bill is not the place for "radical policy change". I will remind him of that when we debate the amendments—which no doubt will be put forward on Report—to take out the provisions in the Bill that remove from retained EU law the European Union charter of rights. I beg leave to withdraw the amendment.

Amendment 358C withdrawn.

Amendment 359 not moved.

Amendment 360 had been withdrawn from the Marshalled List.

Amendments 360A and 361 not moved.

Amendment 362 had been withdrawn from the Marshalled List.

Amendments 363 to 364 not moved.

Amendment 365

Moved by ***Lord Lisvane***

365: Schedule 8, page 64, line 33, leave out from first "time" to end of line 34

Lord Lisvane (CB): My Lords, I can hear the strains of the "Farewell" Symphony as we prepare to tackle the penultimate amendment to be debated in Committee, and how appropriate it is that the very final amendment should be in the name of the noble Lord, Lord Adonis.

Amendment 365 is in my name and the names of my noble and learned friend Lord Judge, my noble friend Lord Pannick and the noble Baroness, Lady Hayter of Kentish Town, and it is very sharply focused. The Committee has already considered the issue of tertiary legislation, with Amendments 110 and 135 as vehicles. Those amendments combined the issue of the principle of tertiary legislation with that of sunsetting. Amendment 365 is about only sunsetting, so I need not trouble the Minister to revisit the general defence of tertiary legislation, which he made at cols. 1473 and 1474 at an unearthly hour on Monday 12 March, although it was then what the rest of the world knew as Tuesday 13 March.

On that occasion, the Minister also made a defence of the exemption of tertiary legislation from sunsetting. He said:

"Where sub-delegated or transferred legislative powers are crucial to the functioning of a regime, it would not be appropriate"—

how often that word "appropriate" recurs—

"for those powers to be subject to a sunset".—[*Official Report*, 12/3/18; col. 1475.]

If one accepts the principle of bodies such as the Prudential Regulation Authority and the Financial Conduct Authority exercising tertiary powers in their role as continuing guardians of a regime—and the Minister made a very good case for that in his speech on that occasion—it also makes sense for them to continue to do so after two years have elapsed from exit day. Indeed, I feel that I am now starting to make the Minister's speech for him. However, there remains a serious point, because if bodies responsible for the functioning of a regime are to continue to exercise their powers without a sunset, it is crucial that those powers are tightly drawn in the first instance, as there will be no opportunity for parliamentary scrutiny of the subsequent exercise of the powers that have been delegated to those bodies.

Therefore, perhaps the most helpful thing the Minister could do in replying to this debate would be to give your Lordships a clear assurance that the tertiary powers will be carefully circumscribed, and that when affirmative instruments delegating those powers come before Parliament—because the actual delegation will be subject to the affirmative process—they do not simply prescribe some general subject area in which the body is to operate and which is to be its responsibility, but are rather more specific and indeed constraining. I beg to move.

Lord Goldsmith: My Lords, I support this amendment and am grateful to the noble Lord, Lord Lisvane, for bringing it forward. I am also grateful to him for reminding the Committee that, when we sit past midnight, it remains the same day. I wonder what the noble Lord's nervous maiden aunts would have made of this never-ending night. The amendment raises an important point and is yet another example of how we have to be careful and circumspect in the use of delegated powers. It is now really for the Minister to answer that question and to see whether he is prepared to give us the reassurance that the noble Lord, Lord Lisvane, asked for.

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): I thank the noble Lord, Lord Lisvane, for introducing this amendment, which stands also in the names of the noble Lord, Lord Pannick, the noble and learned Lord, Lord Judge, and the noble Baroness, Lady Hayter. I am glad to have the opportunity to address it.

First, I reassure noble Lords that the strength of feeling around the exercise of delegated powers by those not immediately accountable to Parliament has been heard, as I said the other evening. The Government are looking very closely at the issue of transparency before Parliament, and we will of course hold that at the forefront of our minds as we consider our position ahead of Report.

At the heart of this Bill is the repeal of the European Communities Act, including Section 2(2) of that Act. As noble Lords on all sides of the Committee know, that provision has been the vires used for many statutory instruments made by many Governments in recent years. This Bill does not replace that power. Although there are several broad powers in the Bill, with some

[Lord Callanan]
approaching the breadth of Section 2(2) of the ECA, they are, unlike that power, time limited. The Bill is not an assault on Parliament but, rather, the means by which this Parliament will take back control to itself.

6.15 pm

Nevertheless, there is, and will always be, an important place for subordinate legislation in our legislative system. As my noble and learned friend Lord Keen said in responding to the previous group, there are indeed many delegated powers of a similar type in parts of European law. I and the other former MEPs in the Committee will have known the system of comitology well. These powers currently allow the Commission, with the scrutiny of the European Parliament and the member states in the Council, to make subordinate legislation setting out technical details, adjusting to developments in the market or prescribing procedures and forms. The powers to make this legislation—generally, as the noble Lord, Lord Lisvane, acknowledged, known as tertiary legislation and taking the form of delegated or implementing acts—will still be important as an integral part of the European law regimes that we are bringing into domestic law via this Bill.

Without the ability to exercise those powers in the future, the law that we are rightly incorporating into the UK's domestic legal order would quickly become stale. Perhaps I may give some examples of areas where regular updates are required. One is the amendment of the regulation of chemicals, where the ability to react quickly is of real importance for public safety and health. Therefore, we need narrow and specific delegated powers to be exercisable after the sunsets of the broad delegated powers in this Bill.

Although I have no doubt that over time, new domestic regimes will replace all these European-derived powers, there is not the time to seek to redesign and replace all these powers in the next two or three years. Sunsetting all these powers would commit us to doing little else in the next few years other than providing for their replacements—something I cannot consider a proportionate or sensible use of our time. The proper way for these powers to be replaced is when it is appropriate to do so as part of future primary legislation in that policy area.

I am of course aware of noble Lords' concerns about the transparency and scrutiny of new powers being vested in UK Ministers and other public authorities under the Bill. I repeat that the Government are listening to those concerns and we will reflect closely on them before Report. However, I can illustrate the diversity of issues that these powers cover and which my ministerial colleagues are tackling. For example, I hope that noble Lords will agree that one can reasonably argue that the power to set the font size on tobacco packaging does not require the same parliamentary time as, for instance, the management of invasive alien species.

We are keen to hear the views of noble Lords but, given the variety within these powers, the Government are very wary of prescribing a one-size-fits-nobody solution to scrutiny. That, I fear, would only store up even more discontent among noble Lords. I remain convinced that the delegated powers granted under this Bill will be needed for the foreseeable future and that the right way to address the exercise of delegated powers transferred or granted by the SIs under the Bill is not to sunset them all. Rather, it is for noble Lords to scrutinise closely and carefully the SIs transferring those powers and the conditions they set out, and to reject them if they do not meet their exacting standards. We in the Government are committed to making sure that Parliament has all the material it needs to do this. I therefore ask the noble Lord whether, in the light of that, he will consider withdrawing his amendment.

Lord Lisvane: My Lords, I am very grateful to the Minister and to his Opposition shadow for what they have said in this very short debate. It may be a good moment to pay tribute to the stamina of the Minister and his ministerial colleagues. We are on day 11—it must seem to them like day 43. They are no doubt musing on some parliamentary version of what used to be said of King Philip II of Spain: that if death came from Madrid, we would be immortal.

The Minister's reply rather put the onus on to your Lordships to look at the affirmative instruments that would delegate these powers and decide whether they were sufficiently constrained. I think that might be the second-order question. The first-order question—and I know the Minister accepted this point, even though he did not reflect it in what he said—is for the Government to think very carefully about how these powers should be constrained in order to avoid any controversy in your Lordships' House. If that message has been taken on board, I beg leave to withdraw the amendment.

Amendment 365 withdrawn.

Amendments 366 and 367 not moved.

Amendment 368 had been withdrawn from the Marshalled List.

Amendments 369 and 370 not moved.

Amendment 371 had been withdrawn from the Marshalled List.

Amendment 371A not moved.

Schedule 8 agreed.

Schedule 9: Additional repeals

Amendment 372

Moved by ***Lord Adonis***

372: Schedule 9, page 67, leave out line 38

Lord Adonis: My Lords, it appears to fall to me to move the 372nd and last amendment to the Bill. By my calculations, some 236 noble Lords have so far taken part in the deliberations on this Bill, which is more than the entire membership of your Lordships' House for the first six centuries of its existence. I believe, from a quick scan of *Hansard*, that we are now in our 115th hour of deliberations on the Bill, which is

time enough for two and a half circumnavigations of the globe—which I am told is roughly what Dr Liam Fox has so far undertaken in search of trade treaties to succeed the European Union. It has also enabled the Minister and me to forge a deep and special partnership, but the maiden aunt of the noble Lord, Lord Lisvane, need not be too alarmed because we have had witnesses present for the entire duration.

This amendment would prevent the repeal in this Bill of the European Union Act 2011, which provides for referendums in the case of significant changes to the treaties regulating the European Union. I do not want to go into the substance of the legal issues involved—I refer noble Lords who wish to understand those issues to the entry on 4 July 2016 of the blog by Pavlos Eleftheriadis, who is professor of public law at Oxford University, where there is a substantial subsequent debate. However, these matters are before the courts at the moment. There is a case which is pending, and the courts will decide these issues. I do not think I can add much to those deliberations.

My reason for bringing this amendment to the attention of the Committee is that there is an important constitutional principle at stake. The European Union Act 2011 was of course passed by both Houses of Parliament. It was passed by an emphatic majority of the House of Commons, where on Second Reading it was passed by a vote of 330 to 195. Yet there was no express vote or debate in the House of Commons on the issue of repealing this 2011 Act when the Bill went through the House of Commons. Indeed, it is not even clear from the debates that most Members of the House of Commons were aware of the fact that this Bill does repeal the European Union Act 2011, since there was no reference whatever to the Act in the deliberations of the House Commons. The issues which have become controversial in recent weeks since the legal actions started were not matters of public debate when the Bill was going through the House of Commons.

The European Union Act 2011 was regarded as a flagship piece of legislation in the 2010 Parliament. The noble Lord, Lord Hague of Richmond, who was then Foreign Secretary and who proposed the Act told the House of Commons:

> "The Bill makes a very important and radical change to how decisions on the EU are made in this country … It marks a fundamental shift in power from Ministers of the Crown to Parliament and the voters themselves on the most important decisions of all: who gets to decide what". —[*Official Report*, Commons, 7/12/10; col. 193.]

It was a significant piece of legislation, not a minor piece of legislation. My contention is simple and straightforward: that on a matter of this gravity, where Parliament is repealing a significant piece of legislation, it is not too much to expect the House of Commons to debate, deliberate and vote on that repeal. There has been no debate, no deliberation and no vote on the part of the House of Commons. It seems to me to be an absolutely appropriate exercise of your Lordships' power to ask the House of Commons to consider matters properly, and that this House should ask the Commons to have an express debate and vote on the repeal of the European Union Act 2011. I beg to move.

Lord Pannick: My Lords, I have listened with admiration to the contributions of the noble Lord, Lord Adonis, throughout this Committee. They have been exemplary examples of scrutiny. But on this occasion, I am afraid, I am not persuaded. The reason I am not persuaded is that the 2011 Act imposed a referendum condition which applied in a series of circumstances, and they were all circumstances in which the powers of the EU and its institutions were extended. The Explanatory Notes to the Bill which became the 2011 Act made very clear that its purpose was to implement the commitment of the coalition Government —I quote from paragraph 11 of the Explanatory Notes —that,

> "there is no further transfer of sovereignty or powers [from the UK to the EU] over the course of the next Parliament... Any proposed future treaty that transferred areas of power, or competences, would be subject to a referendum on that treaty"

The plain fact of the matter is that there is no transfer of further powers or sovereignty to the EU from the UK. On the contrary, this Bill is very simple. The agreements being negotiated are designed to achieve exactly the opposite, whether we like it or not—the return of powers to the United Kingdom from the EU. The 2011 Act simply has no application and it is entirely right and proper that if this Bill repeals, as it will, the 1972 Act, it should also repeal the 2011 Act.

Lord Liddle (Lab): My Lords, I would like to intervene briefly to support my noble friend Lord Adonis, and I do this in defence of your Lordships' House. When the 2011 Act was debated here, I was speaking on the Opposition Front Bench with my noble friend Lord Triesman. I think we gave it six days, possibly seven, in Committee, and three days on Report. We did our best to scrutinise this piece of legislation. It seems to me that the idea that it should be repealed in a schedule without any debate in the House of Commons is, as my noble friend Lord Adonis says, a bit of a constitutional offence.

The noble Lord, Lord Pannick, makes very good points, as he always does. Can I be allowed to make a political point in return? He says that there is no transfer of powers involved in what is going on now. Let me assure you that there is a big transfer of powers to Brussels. Brussels is going to be able to legislate, during the implementation period that we have now signed up for, without any British Minister taking part. We are asking for opt-ins to various pieces of Brussels legislation as part of the negotiations and British Ministers will have no say over those policies—no say on policies on goods trade or on financial services. We will be trying to maintain equivalence with a regime over which we have no say. As to the idea that this Bill is taking back control to Britain, it is in fact handing control in large parts to the EU, where British Ministers and the British Government will have no say at all. We on this side of the House should point out this position and explain that the way to deal with it is to stay in the EU, and that is what we should fight to do.

6.30 pm

Lord Mackay of Clashfern (Con): My Lords, I understand that that political point can be shortly made and it would dispense with all our consideration of this Bill altogether.

[Lord Mackay of Clashfern]

I played quite a part in the 2011 Act—along with the noble Lord—in stating what the position in law was for EU law in this country. I was keen to point out that the treaty did not of itself have that effect. It became an argument later when the noble Lord, Lord Pannick, argued about these and other matters in the Supreme Court. However, the point was that the authority for EU law in our country is the 1972 Act. This House affirmed that and the House of Commons accepted it.

The important thing about the 2011 Act is that its repeal is consequential on the repeal of the 1972 Act and our departing from the European Union. Matters that are consequential are usually covered in schedules. If noble Lords wish to discuss purely consequential legislation, so be it, but it is not necessary. As the noble Lord, Lord Adonis, said, we have used it quite a few times and, given the amount of time we have spent on this Bill, it is appropriate that this provision repealing the 2011 Act should be in a schedule.

Lord Adonis: My understanding is that it is not consequential that the repeal of the 2011 Act under this schedule will take place when this Bill becomes law at a point determined by a Minister, whereas we only repeal the European Communities Act 1972 on Brexit day, 29 March next year, or later under Clause 14(4) if a Minister chooses to extend the date.

My understanding—it is important to tease out these issues because we are a revising Chamber—is that this is being done deliberately by the Government. They want to forestall any cases coming under the 2011 Act as soon as possible. I assume they have read the legal opinion which raised doubt about the interpretation of the 2011 Act and do not want them rumbling through the courts before the repeal of the European Communities Act 1972 takes effect.

Lord Mackay of Clashfern: That does not prevent the repeal of the 2011 Act being consequential on the main provision in this Bill.

Lord Dykes: My Lords, one has distinct memories of the European Union Bill and it then becoming an Act. The noble Lord, Lord Adonis, has done a great service by referring to it, although his objectives in so doing might be somewhat different from noble Lords in other parts of the House. That Bill was introduced at the beginning of the coalition period. I have always thought that the coalition was agreed too quickly. Both leaders, understandably, were keen to get going with it and some aspects of the agreement were left vague and unresolved. There was a great deal of excitement about the initial period of this unusual and first-time type of coalition. For those of us who pompously describe ourselves as good Europeans—rather than just fairly keen on the EU—this was a painful moment. Given the celerity of the agreement of the coalition at the beginning, the contents of the Bill were never properly gone into or discussed, despite the substantial vote in the House of Commons to which the noble Lord, Lord Adonis, referred. Again, that was because it was the beginning of the period of this new exercise of the interesting and fascinating coalition.

I believe David Cameron was not much interested in the legislation. He regarded it as a routine inclusion in the incipient contents of the coalition's programme—not the things that appeared later on—but for the Liberal Democrats it was important. I remember it being described by a senior colleague who was then a member of the coalition representing the Liberal Democrat portion of it—I will not say who—as, "Just routine smoke and mirrors, old boy, don't worry about it". However, it was not easy for people to accept it in that sense and I remember vividly a substantial rebellion within the Liberal ranks in the Lords on this matter. There may have been a small one in the Commons as well—I cannot exactly remember those details—but in the Lords there was a substantial rebellion led by Baroness Shirley Williams and others in the team who were not members of the coalition Government because they objected strongly to the contents of the Bill.

The contents were elusive, vague and cynical, That is what put off people who regarded themselves as enthusiastic members of the European Union—members of the club—unlike some other people in Britain who were only half-hearted members of the club, including politicians. For example, a transfer of powers to Brussels had to be accompanied by a referendum and could take place only if the Government got the authority of Parliament to do so. However, the Government could suggest that something was too minor a matter to bother about and just leave it aside.

An extraordinary, ironical conclusion of one of the important items was that the enlargement of the Union would not be included in the Bill. In those days there was a rumour that Turkey was going to join at some stage—there were endless discussions about that possibility—and yet that would not have been part of the matter discussed in the democratic Parliament of the United Kingdom, particularly in the House of Commons. There were other anomalies which looked like opportunism. The rebellion was substantial among the Liberal Democrat ranks here, and the legislation was then forgotten and buried.

I always thought that rather than object to the repeal—I can understand why the noble Lord, Lord Adonis, is suggesting it—the infamous 2011 Act should be repealed as quickly as possible. That needs to be on the agendas of both the Lords and the Commons for the future. At the moment, therefore, I am torn between agreeing with the noble Lord, Lord Adonis, for the reasons he has enunciated, and saying that it would be a mistake and that this should be included in the total repeal list. After all, getting rid of that obnoxious legislation would not be a precursor to any other anticipated legislation following the same theme later on.

Baroness Altman (Con): My Lords, the 2011 Act was introduced by the elected Chamber for the express purpose of safeguarding major constitutional changes in respect of our relationship with the EU and I support the amendment, to which I have added my name.

The Act, among other matters, provides for a referendum throughout the United Kingdom on any proposed EU treaty or treaty change which would transfer powers from the UK to the EU. Parliament voted for this power in order to protect the sovereignty

of the United Kingdom and it is this aspect of our constitutional framework that it is important for the Committee to be mindful of as we negotiate our future relationship with the EU. Surely the proper time for the 2011 Act to be repealed is when we conclude our relationship with the EU. However, the Bill as it stands allows a Minister to repeal it at any time after Royal Assent.

The Conservative Party manifesto in 2010 led to this Act. It is worded not in terms of transfers of power but in terms of the extension of the competence or objectives of the European Union and decrease in the voting power of the United Kingdom. If we go into a transition period, there will be a new form of treaty relationship with the EU, one in which the UK has surrendered powers to the EU. The transition or implementation phase is a subordination of power to the EU 27 and binds us to them with fetters in a new international treaty. I contend that even if one believes wholeheartedly in leaving the EU there are strong grounds not to repeal this Act before we have actually and finally departed. Parliament does not yet have the terms of any deal for Brexit, nor will it have before Royal Assent. I therefore believe that it is vital that the 2011 Act is not repealed in this Bill as that would remove a safeguard which currently exists to protect the United Kingdom and our constitutional position. Parliament enacted that legislation for a specific purpose and Ministers should not be allowed to repeal it at will without proper debate and discussion unless we have already concluded our exit terms.

The other place did not have an opportunity to debate this amendment and it seems to have been missed, or perhaps honourable Members might have assumed that the repeal of the Act would apply only on the date of exit, but it turns out that it could be before that date by ministerial diktat. Given the uncertainty that still surrounds this Bill and the entire Brexit process, as well as the lack of clarity on our future relationship, I urge my noble friend the Minister to agree to this amendment. It safeguards the constitutional position enacted by Parliament in 2011 and maintains the sovereignty of Parliament over the Executive to protect the UK from deleterious treaty change that has not received prior approval from Parliament or the people.

Baroness Ludford: My Lords, I am delighted to take part in this the last debate of the Committee stage, and I am grateful to the noble Lord, Lord Adonis, for providing the opportunity for it. The noble Lord, Lord Dykes, took us down memory lane. I am sorry to say that I was deprived of the delights of participation in the debates on the 2011 Bill, as I was exiled to the European Parliament at the time. Obviously, I was denied a most enjoyable opportunity.

There is an arguable case that the 2011 EU Act referendum requirement could apply on the grounds that the standstill transition and/or the future relationship removes powers from the UK relative to the EU. There is much legal argument, as the noble Lord, Lord Adonis, noted, about whether it could apply, and indeed litigation is taking place on that very question. It would therefore be premature to abolish the Act either while the litigation is progressing or before it is clear whether the relationship between the UK and the EU during the standstill transition and beyond that into the future entails a loss of sovereignty such as to trigger the need for a referendum under the Act. The standstill transition most certainly does entail a loss of sovereignty, as we discussed earlier today. We will be mere rule takers who are obliged to obey with no say; that is already clear. It is a clear transfer of power to the EU.

The Government's emerging Brexit policy, as articulated in the Prime Minister's Mansion House speech, suggests that their plan is for us to take our instructions on the facts from Brussels for many years to come and indeed into the long-term future, so the Act ought to be retained in the tool-box and abolished by Parliament only as and when it is genuinely no longer needed. Certainly it should not be repealed before exit day or subject only to ministerial regulations.

Members on these Benches make no bones about the fact that a further vote for British citizens on the Brexit deal is justified in its own right. That is our major argument for a further opportunity for the citizens of this country to have their say on Brexit. It would be a wholly different exercise from the 2016 referendum because citizens would be able actually to evaluate what kind of Brexit we are going to get. Is it the kind of Brexit that some have advocated, or is it Brexit in name only? There have been no lesser advocates than Jacob Rees-Mogg for having a two-stage process. In 2011, he said in the context of one or other of the plans to renegotiate our membership:

> "Indeed, we could have two referendums. As it happens, it might make more sense to have the second referendum after the renegotiation is completed".—[*Official Report*, Commons, 24/10/11; col. 108.]

For that, one can substitute the Brexit negotiations.

I recall my noble friend Lord Newby quoting recently that a majority of Conservative voters want to have a referendum on the final Brexit deal. In London, that figure reaches 61% to 25% opposed, and the support for people to have the chance of a vote on the deal is growing all the time. So the major case for that to happen rests, as I say, on substantive rather than procedural grounds.

Until things are clear, it seems to Members on these Benches that there is validity in retaining the possible use of the EU Act, which is about the loss of sovereignty and the transfer of powers to the EU. That is precisely what we are going to be faced with.

6.45 pm

Lord Faulks (Con): My Lords, this is a piece of political opportunism. The context of the 2011 Act, as those who were in the House well remember, was that there was very strong opposition in your Lordships' House to there being referendums as the result of relatively minor transfers of powers and competences. That was rejected as being unnecessary and being a sop to the Eurosceptic wing. However, there were, incidentally, quite a few occasions on which it was conceded that all was far from perfect in the European Union, which is not something we have heard much about in the debates during the course of this Committee stage. To say that we should rely on a Bill that was

[Lord Faulks]
most unpopular with many Liberal Democrats and a good number in the Labour Party in order to hold another referendum is really not what this is about.

Lord Goldsmith: My Lords, it must be unprecedented to have such a long and well-attended debate on what is almost the final repeal in the last schedule to a Bill. Given that this is the last debate that we will have in the Committee stage, perhaps I may, as the person who happens to be responding from these Benches, pay tribute to the quality of the contributions that have been made by all sides of the Chamber, including from my noble friend Lord Adonis. I have to say that anyone outside who says that we have been spoiling or somehow wrecking the Bill would not be able to maintain that charge in the light of the clarity and detail of the scrutiny that we have given the Bill.

As to the amendment, I admire the ingenuity which brings it forward. It is clear that the purpose behind it ultimately would be to trigger the referendum-requiring provisions set out in the 2011 Act. There are two ways of looking at that. One is to consider the political nature of the 2011 Act and compare that with what is happening at this stage, where one might well say, if I dare, that it was simply a staging post to the position we find ourselves in now. Many of us find the position of exit an unhappy one, but it would be a staging post to that and it has now passed. There is a legal question which is quite different: whether in fact the conditions in the 2011 Act are triggered. From what the noble Baroness, Lady Ludford, has said, there are legal proceedings which may challenge that, and I do not think it is right for me to venture an opinion from this Dispatch Box as to whether those are right or not.

However, I will venture a political opinion from my position, which is this. We are well aware that there are some in this House, in particular on the Liberal Democrat Benches—we fully respect their views, even if we may not share them—who would like to see a further referendum, and many in the country would like to see that. If that is going to happen, one might say that the way for it to come about is through a direct vote on whether a referendum should be taking place rather than what might seem to be a side wind. And that is my problem with the proposed amendment, even though it is ingenious. I have reason to believe—indeed, I suspect, from what the noble Baroness, Lady Ludford, said—that this House will have an opportunity on Report to express its view directly, full-throatedly and openly about a further referendum. The House will give its view, but I am not convinced about doing it through this route.

Lord Adonis: Can my noble and learned friend give his view on whether it is appropriate that the 2011 Act should be repealed in advance of the repeal of the European Communities Act 1972?

Lord Goldsmith: It is perfectly appropriate, although I do not like the word "appropriate", as we all know. Perhaps the answer is that it is not necessary, but it may be appropriate.

I fully respect what the noble Lord is doing. It is not easy to say this but, politically, the 2011 Act was a staging post on the route—as it turns out—to full Brexit, even though some people still hope that we will not go that far, and it has therefore served its purpose. I am not making a legal analysis of whether the conditions in the Act apply because I can see arguments why they may and why they may not; I am explaining why, if there is a suggestion that this House will vote for a referendum, it would be better to do it on an amendment or a Motion that directly raises that question. It can then be fully debated and we can all have our say. For those reasons, I very much regret to tell my noble friend that I cannot support his amendment.

Lord Callanan: My Lords, after 115 hours of Committee debate, as observed by the noble Lord, Lord Lisvane, it is somehow appropriate—that word again—that the last and 372nd amendment should be tabled by the noble Lord, Lord Adonis. He referred to our deep and special partnership; I think that is probably going a bit far, but to mark the occasion, I thought I would get him a gift to celebrate his perseverance. The Adonis nut bar is available in all good health shops. He is welcome to collect it later.

In responding to Amendment 372, I want to be very clear about what the European Union Act 2011 does. The Act contains a recent mechanism for two principal goals—first, to provide that where Ministers participate in certain types of decisions, those decisions are specifically approved in the UK. This normally happens via an Act of Parliament. The Act passed last year to approve the decisions—which allowed the participation of Albania and Serbia in the work of the EU Agency for Fundamental Rights and the conclusion of an agreement on competition law between the EU and Canada—is an example of this. Secondly, the Act also provides that where there is a revision to the fundamental treaties of the EU, akin to the treaties of Lisbon or Maastricht, there should be an Act of Parliament—and, in certain circumstances, a referendum in the UK—before the UK Government could approve those changes.

I invite noble Lords to cast their minds back, as some Members have done, to 2011 and the context in which this Act was passed. Sadly, I was not a Member of your Lordships' House then; I was with the noble Baroness, Lady Ludford—not directly; we were Members—in the European Parliament. The Act was drafted in the context of its time in response to new EU methods of approving treaty changes and calls for more public and parliamentary involvement in such decisions. Its purpose was to regulate decision-making on the UK's relationship to the EU treaties in the context of the UK as a member state. At that point, the idea of holding a referendum on the UK's membership of the EU was far from the Government's mind, let alone undertaking the most complex negotiation in history to recast that relationship with the UK outside the EU treaties.

Of course, everything has changed since then. We are leaving the EU. The 2011 Act is redundant. It is appropriate to repeal redundant legislation. It may even be necessary to repeal the 2011 Act. Amendment 372 would prevent the Bill from repealing the 2011 Act. From previous statements made by the noble Lord, Lord Adonis, I understand that he intends to use the Act in an attempt to secure a second referendum—no

surprise there. I will not revisit the positions that we have already covered extensively in debate about the merits or otherwise of holding a further referendum as part of the process of our exit from the EU; no doubt the Liberal Democrats will enable us to return to this matter on Report. We have covered that at length in this Committee; suffice it to say that the Government think, first, that a second referendum is not appropriate and, secondly, that it is most certainly not for this Bill to provide for one.

Lord Adonis: If I could have a last celebratory intervention on the Minister in Committee, can he indicate to the House when the Government intend to use the powers they would get under this Act to repeal the 2011 Act?

Lord Callanan: I do not want to give the noble Lord a precise date at this time. We will wait until the legislation is on the statute book before deciding such things.

Crucially, a second referendum is not provided for by the 2011 Act. As I hope I have set out, that Act could never have been intended to achieve that goal.

Lord Adonis: Is the Minister indicating that the Government may repeal the 2011 Act in advance of the repeal of the European Communities Act 1972?

Lord Callanan: I will not comment any further on the repeal date, I am afraid, no matter how many times the noble Lord asks me.

I refer noble Lords to the first sentence of the first part of the Explanatory Notes to that Act. Acts of Parliament or referenda are required by the 2011 Act,

"if these would transfer power or competence from the UK to the EU".

We are leaving the EU. That process is neither governed by the types of decision referred to in the 2011 Act, nor involves a change to the treaties on European Union or the functioning of the European Union. Those treaties will go on without us, governing the EU and its institutions, for which we wish only the greatest of success. Moreover, I hope it is unquestionable for the Government to pursue a withdrawal agreement that will transfer power to the EU; it is the nature of leaving the EU that it must involve a transfer of power back to the UK. Therefore, I say with all due respect to the noble Lord, Lord Adonis, that it is disingenuous of him to mislead others outside this House that the 2011 Act is an instrument to deliver a second referendum on our membership of the EU.

We are progressing towards establishing a future relationship with the EU as an independent third country. As part of this, we will require new processes for approving our new relationship with the EU. The Government are committed to giving Parliament a vote on the final deal of our withdrawal agreement negotiations.

Lord Liddle: The Minister is saying things that directly contradict what the Prime Minister has said: that we will have an implementation period in which we will follow the laws set by the EU without having any say over them. In her Mansion House speech, she said that we wish to maintain regulatory alignment with the EU in a large number of areas. That means following EU laws without having any say in them. Will the Minister accept that point?

Lord Callanan: I will not accept that point. We have not agreed anything yet. We are still to have those negotiations.

Lord Liddle: Is the Minister saying that he rejects what the Prime Minister said in her Mansion House speech?

Lord Callanan: Of course I am not saying that. I am saying that we are in the process of conducting a negotiation. We have said that when have concluded that withdrawal agreement, we will return to this House with the withdrawal agreement and implementation Bill. The noble Lord will be able to make all his points—at great length, no doubt—over and again during that process. He has made those points many times in the course of this Committee, so if he will forgive me I will make a bit more progress and then we can all go out and have an enjoyable evening at the end of this stage.

7 pm

I am of course conscious of the reservations held by several noble Lords—in particular the noble Lord, Lord Liddle—regarding the Government's proposal in this area and their desire to press for a different proposition. However, I hope we can all agree that, however that vote takes place, we will need a new and different process to approve that deal. Our Bill as drafted will therefore repeal the 2011 Act. The relevant provision is in Schedule 9. The repeal of the Act is an integral part of the Government's commitment to returning full parliamentary sovereignty and properly reflecting in our statute book the dramatic changes that our withdrawal from the EU will deliver to our constitution.

Therefore, I hope noble Lords will understand that the 2011 Act is not perhaps what some present it to be and that it is right that it is repealed to make way for our future processes of securing parliamentary approval for the Government's relationship with the EU. Therefore, for the last time, I ask the noble Lord if he would please withdraw his amendment.

Lord Adonis: My Lords, I am immensely grateful to the noble Lord for the gift of the Adonis nut bar. I tried to buy one online and was told that the site is pornographic—the parliamentary internet is very well policed—but I could refer the matter to my supervisor if I wished to take it further. I toyed with referring it to my noble friend the Leader of the Opposition but I thought she would be very keen that I did not eat the nut bar, because she thinks I have far too much energy at the moment in any event in pursuing these matters in the House.

Lord Dobbs (Con): I found one of these nut bars the other day. It has lots of impenetrable small talk and carried a health warning. I think it was suitably named.

Lord Adonis: My Lords, I have always disregarded health warnings on the grounds that one would never eat anything at all if one proceeded down those lines.

The debate has been disappointing in that I do not think the two key points I made have been responded to. I have huge admiration for the noble Lord, Lord Pannick, and the noble and learned Lord, Lord Mackay of Clashfern, but they have not addressed the point that, in the way the Bill is framed, the repeal of the 2011 Act is emphatically not consequential on the repeal of the European Communities Act 1972. Rather, it is consequential on the enactment of the Bill and it will take place well in advance of Brexit day and the repeal of the European Communities Act 1972. If it was indeed consequential on the repeal of that Act, which I fully accept it should be because we would not be a member of the European Union at that point, I would have no difficulty at all with the repeal in Schedule 9. It is because it is being deliberately accelerated in advance that there is an issue.

Lord Mackay of Clashfern: It cannot happen until immediately after Parliament has passed a Bill fixing a date for leaving the European Union. The 2011 Act has no substance or content at all apart from the European Union treaty, so this idea that it has to be consequential in time is an extra. It is consequential in its subject matter. That is what is really important.

Lord Adonis: My Lords, we might not leave the European Union next year. We have not enacted the legislation to do so. At the moment there is no treaty. The 2011 Act would be repealed under the terms of the Bill. The two are clearly not consequential.

Baroness Ludford: Does the noble Lord agree that there is no relationship between exit day and the repeal of the European Communities Act? Clause 19 says that the repeal, inter alia, of the 2011 Act, is a provision of the Bill that will,

"come into force on such day as a Minister of the Crown may by regulations appoint".

It has absolutely nothing to do with exit day or the ECA.

Lord Adonis: That is the precise point. The big question that the Minister would not answer—I do not think he wanted to give me the answer—is why the repeal of the 2011 Act is being accelerated ahead of Brexit day and the repeal of the European Communities Act 1972. The Minister has not given an answer, nor has he given the Committee any indication of when that repeal would take place. My understanding is that the Government would seek to repeal the 2011 Act as soon as they can after the enactment of the Bill, which will mean that its terms would not apply for the period between that repeal and Brexit day, but it is of course perfectly possible. Who knows what will happen in the next 52 weeks? As Harold Wilson famously said, a week is a long time in politics, so goodness knows what will happen in the next 52. The Act would not apply. It may well be that my noble and learned friend is right that there is not a substantial legal argument here, but that is precisely the issue the courts are there to determine. They will not have the opportunity to do so because the Act will have been repealed.

Lord Goldsmith: To clarify, I did not say that. I deliberately did not express a view as to whether that argument would legally succeed precisely because I understand it is the subject of legal proceedings. I would not want for a moment to pre-empt them.

Lord Adonis: My Lords, those legal proceedings will by definition cease if the 2011 Act is repealed soon after the enactment of the Bill.

The second point that was not addressed, which is a matter of some substance, is that, on an issue of this gravity, surely it is not too much for the people to expect of Parliament that the House of Commons itself should expressly vote on the repeal of the 2011 Act. Because of the guillotine Motion in the House of Commons and the limited opportunities there were for debate in the Commons the matter was never debated, let alone voted on. That is one of our responsibilities.

My final point on the final day and the final amendment on the Bill, with such a magnificent attendance by noble Lords on the Conservative Benches, is to address the final point made by my noble and learned friend about taking a decision expressly on the issue of a referendum. I agree that it is a matter we should expressly take a decision on. The point of the 2011 Act is that it is existing statute law and should be repealed expressly only by the House of Commons.

It is clear that the dominating issue that will preoccupy us over the next six to nine months is whether the people themselves should have a say on the terms of the withdrawal treaty. What is already lurking behind the debate—it is, I am afraid, an issue of intense debate in my own party, but I suspect it will spread to other parties—is whether the people should be allowed that final say. It is clear that many people, I suspect including my noble and learned friend and maybe my right honourable friend the leader of the Opposition, at the moment do not think that a referendum is the right course. What is happening is we are having a charade of big debates about what are essentially second-order issues in the House while the consensus is rolling on that, maybe to avoid too big a division of public opinion, we should allow Brexit simply to roll on next year.

That will be the dominating issue of British politics in the next nine months: whether Brexit is a done deal, whether Parliament will debate, with the option of rejection, the Prime Minister's withdrawal treaty and whether—in considering what is the biggest and most significant issue that has faced Parliament in this generation—before we take the final plunge into the unknown and engage in Brexit, we will give the people a say on the terms of withdrawal. That is a very big and weighty issue to raise at the very last moment of the debate in Committee, but in two weeks' time we will regroup and start Report. We can rehearse all these arguments again. On that note, I beg leave to withdraw the amendment.

Amendment 372 withdrawn.

Schedule 9 agreed.

House resumed.

Bill reported without amendment.

House adjourned at 7.09 pm.