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PARLIAMENTARY DEBATES

(HANSARD)

HOUSE OF LORDS

OFFICIAL REPORT

ORDER OF BUSINESS

Questions
NHS: Winter 2017-18 1163
Elections: Personal Data.....1166
Foreign and Commonwealth Office: Religion 1168
Elections: Personal Data.....1171
European Union (Withdrawal) Bill
Report (1st Day).....1173

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

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.

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House of Lords

Wednesday 18 April 2018

3 pm

Prayers—read by the Lord Bishop of Coventry.

Oaths and Affirmations

3.06 pm

The Duke of Norfolk took the oath, and subscribed an undertaking to abide by the Code of Conduct.

NHS: Winter 2017-18
Question

3.07 pm

Asked by ***Lord Clark of Windermere***

To ask Her Majesty's Government what assessment they have made of the effectiveness of their plans for the NHS in dealing with the pressures during the winter of 2017-18.

The Parliamentary Under-Secretary of State, Department of Health and Social Care (Lord O'Shaughnessy) (Con): My Lords, last year the NHS started planning earlier than ever before to support delivery during the challenging winter months. Despite the NHS being extremely busy, with challenging weather conditions and flu rates at their highest level for several years, hard-working A&E staff treated more than 55,300 people within four hours per day between December and March—that is 700 more a day on average than the year before. A review of winter performance by NHS Improvement and NHS England will be published this summer.

Lord Clark of Windermere (Lab): I thank the Minister for his Answer. Of course, we are all very thankful indeed that we have got through the worst days of the winter, and we are grateful that new plans were put in place. However, I think we all know that we got through only due to the dedication and commitment of the staff in the health service at every level, and that we face dire shortages in every sector of the health service. Is the Minister aware, for example, that 800 student nurses in 20 universities have had their grants or loans cut off or reduced due to administrative errors by the Student Loans Company, and that many of them now face financial distress, with the prospect of no or reduced support for the foreseeable future? Does the Minister accept that that is preposterous when there is such a shortage? Will he therefore step in and try to sort that out, so that no student nurses suffer?

Lord O'Shaughnessy: I join the noble Lord in paying tribute to the dedication of staff who have taken us through what has been the worst winter for eight years. I was not aware of the particular issue he raised; I am glad he has raised it and brought it to me. I shall take it back to the department immediately after Questions to make sure that we get to the bottom of what is going on and try to fix it urgently.

Baroness Jolly (LD): My Lords, community pharmacies are a hugely undervalued resource and could help alleviate pressure. They could do that by helping people who have already been discharged from hospital avoid readmission and by being first port of call for patients, offering advice and treatment to those with minor health conditions. Will the Minister tell the House whether the Government are having a conversation with NHS England about future commissioning of community pharmacy services?

Lord O'Shaughnessy: I agree with the noble Baroness that we need to beef up the role of pharmacies. Primary care is an area of investment within the five-year forward view. There are, I believe, nearly as many pharmacists as there ever have been, if not more, so their role is increasing all the time and that is part of our conversations for the future.

Baroness Browning (Con): While my noble friend is looking at the expansion of advice from pharmacies, will he look at the same time at insurance cover for pharmacists? My understanding is that, while GPs have been very keen for pharmacists to give advice, for example, to asthma sufferers and to provide the equipment that asthma sufferers need to carry with them, they have run into difficulties in getting insurance cover to provide that level of advice.

Lord O'Shaughnessy: I shall certainly look into that issue. We are reviewing insurance across primary care, as my noble friend might know, and I shall look into this specific issue.

Baroness Masham of Ilton (CB): My Lords, does the Minister agree that one of the problems is the shortage of intensive care beds, which holds up operations in hospitals so that there is a queue?

Lord O'Shaughnessy: The noble Baroness is quite right. That is one of the reasons we have taken some big decisions over the winter, one of which is to reduce the amount of delayed discharges. I think it has been reduced by about 1,500 beds. It was also the reason behind what was undoubtedly an unpopular decision and one that we did not want to take: to suspend and postpone some elective surgeries during January. That freed up a number of beds, which helped us to cope with the emergency admissions. Happily, it has not had to be reinstated since the end of January.

Lord Hunt of Kings Heath (Lab): My Lords, a huge debt is owed to the NHS for the way that it has responded to the pressures this winter. However, can I ask the Minister about elective treatments and the cancellations in January? He will know that the maximum 18-week wait target has not been met for, I think, at least two years. Given that the BMA has said that winter pressures will really never come to an end—they simply continue throughout the year—does he think that we will ever meet the 18-week target again under the current Government?

Lord O'Shaughnessy: I agree that those winter pressures are increasing. One reason that they are doing so, and throughout the year, is that we have a growing and ageing population, as we discuss a lot in this House. It is worth pointing out that the planning guidance for the NHS for 2018-19 talks about not only providing more surgeries but starting to stop the growth in waiting lists and reduce waiting times, as well as halving them for the longest waits. We are focused on this, supported by the extra money that was announced for the NHS in the Budget at the end of last year.

Lord Laming (CB): My Lords, does the Minister agree that the structure of the GP service, settled decades ago at the beginning of the National Health Service, is no longer fit for the current demands on primary care services? Could that be looked at in a serious way?

Lord O'Shaughnessy: I think the structure of our GP service and primary care is envied around the world. It has many strengths, such as the partnership model being based in the community, but it is changing. For example, more GPs are employed in hospitals. There is a major programme of investment going into primary care, including new models of care around how GPs are structured, but the presence of primary care doctors in the community is one of the great strengths of the NHS.

Lord Brooke of Alverthorpe (Lab): My Lords, I welcome the review which the Minister has announced. Does he agree that it would be beneficial if we had a debate in this House on the review when it is out, and will he commit to trying to ensure that his Chief Whip gives us the time to have such a debate?

Lord O'Shaughnessy: I am not sure how much pressure I can bring on the Chief Whip for anything, but I look forward to debating the review in whatever form we can when it comes out.

Baroness Gardner of Parkes (Con): My Lords, in view of the discussions about whether people from overseas should be able to use the health service, can the Minister tell us whether any statistics are kept on any impact they would have had during this crisis, or how much of our budget would have been spent on them?

Lord O'Shaughnessy: I do not believe that we have specific statistics on the demand from overseas visitors during winter. I say to my noble friend that overseas visitors are most welcome to use the NHS but it is important that they pay. We are reclaiming more money than ever from overseas visitors to go into funding the NHS.

Baroness Pitkeathley (Lab): Is the Minister aware that the pressures on the health service are compounded by the difficulties in the social care system? We are promised a Green Paper. We were promised a carers action plan in January; it is now mid-April. Will he update the House on where we are with the carers action plan?

Lord O'Shaughnessy: I know that it is still the intention of the department to publish a carers action plan, and I will write to the noble Baroness with the specific time as to when that may happen.

Elections: Personal Data

Question

3.15 pm

Asked by ***Lord Tyler***

To ask Her Majesty's Government whether they are satisfied that current electoral law adequately prevents the misuse of personal data in United Kingdom elections and referendum campaigns.

Lord Young of Cookham (Con): My Lords, the misuse of personal data in UK elections is governed primarily by data protection law. The Information Commissioner has said that she has an ongoing investigation into the use of data analytics for political purposes, in which she is continuing to invoke all her powers and is pursuing a number of live lines of inquiry. The Government are currently considering recommendations from the commissioner, including some for enhanced legal powers.

Lord Tyler (LD): My Lords, I welcome the slightly more positive tone from the Minister since our previous exchanges on 28 March, but I particularly draw his attention to the fact that my Question relates also to referendums. Given that the Foreign Secretary panicked and sought to rubbish the evidence of whistleblowers even before they presented it, given that leave campaigners were seeking, obviously, to avert an adverse judgment when they attacked the impartiality of the Electoral Commission, and given that when the Conservative chair of the investigating Select Committee in the other place was asked whether the Brexit poll was compromised he said that we may need a public debate about that, do the Government not recognise that any complacency gives added voice to the demand for the public to have a free and fair vote at the end of the Brexit process?

Lord Young of Cookham: The last question the noble Lord put to me is a matter in which we will be engaged in the forthcoming debate on the European Union (Withdrawal) Bill, where there may well be an amendment of the type that he envisages, and it would be wrong for me to anticipate that debate. So far as his first points are concerned, the Information Commissioner and the Electoral Commission are independent offices, with robust chairmen and chief executives, and I am sure they are capable of withstanding pressure from whatever direction it may come.

Lord Hunt of Kings Heath (Lab): My Lords, I do not know whether the noble Lord has seen the comments made yesterday by the chair of the Commons DCMS Select Committee, which referred to extracts from

interviews given by Nigel Oakes, founder and CEO of SCL Group, in which he made reference to the Nazis leveraging,

"'an artificial enemy' to make people scared, and through this to incite hatred of Jewish people",

and, chillingly, by the former communications director of Leave.EU, Andy Wigmore, who was reported praising the Nazi propaganda machine and boasting of Leave.EU borrowing outrageous and provocative tactics from Donald Trump to keep immigration at the heart of the 2016 referendum campaign. As the chair's statement said,

"these statements will raise concerns that data analytics was used"—

in the referendum campaign—

"to target voters who were concerned about this issue, and to frighten them with messaging designed to create 'an artificial enemy' for them to act against".

Very encouragingly, today the Minister has said that the Government will consider action in the light of the various investigations that are taking place, but the point I put to him is this: I believe our very democracy is under threat and the Government must take action in this area.

Lord Young of Cookham: I begin by endorsing what the noble Lord has just said and deploring any language that incites racial hatred or, indeed, any other form of hatred in this country. He will know that the Information Commissioner is investigating exactly this issue of whether information has been improperly used to seek to influence the outcome of an election or a referendum. I made it clear in response to the noble Lord that we are in active dialogue with the Information Commissioner. We have already accepted some amendments to the Data Protection Bill which is currently in another place. We are prepared to do so again if it is necessary to deal with any inadequacies in the legislation.

Lord Howarth of Newport (Lab): My Lords, does the Minister agree that this is a global problem that cannot be resolved on a one-country basis? If the Electoral Commission is to have additional powers, which I am sure it is going to need, how are the Government going to approach the broader issue and try to reach international agreement to tackle this extremely grave issue? There really is a threat to our democracy, I believe.

Lord Young of Cookham: Of course, we can have our own rules governing how elections are conducted in this country, and any outside organisation would have to comply with the law here. However, to respond to the good point that the noble Lord makes, we are actively engaged with the commission on its public consultation on the back of its recommendation for measures to effectively tackle illegal content online that it published in March this year. We are going to play a full and active part in shaping the ongoing commission work that follows publication of the voluntary guidance. I return to what I said right at the beginning: regardless of what is happening in the rest of the world, we can have a robust electoral system in this country, not least because we have manual counting and, on the whole, manual voting, which are less vulnerable to corruption.

Lord Hayward (Con): My Lords, following the previous question about the problems of international interference in all forms of elections throughout the world, is it not the case that technology is moving so fast that any change in electoral law will have to be drafted in a very flexible manner so that it keeps up with the changes in technology, whether the threat comes from Russia, America, Cambridge Analytica or anywhere else?

Lord Young of Cookham: I agree with my noble friend. I know Henry VIII is not always man of the match in this country, but the Data Protection Bill provides order-making powers so that the Government can act quickly to keep rights and responsibilities up to date and respond to the emerging threats that my noble friend has just mentioned.

Lord Rennard (LD): My Lords, does the Minister accept that there may be widespread evasion of the basic principles of our electoral laws aimed at ensuring that there is a level playing field, and that the costs of gathering data, analysing it and then using it for communications purposes in general elections are not properly apportioned between constituencies? In referendums, its use by third parties ensures that we no longer have a principle whereby either side of a referendum campaign can spend the same amount of money. Before we have another general election or another referendum, we must put our electoral laws right because they are clearly not fit for purpose.

Lord Young of Cookham: The noble Lord will know that there is a case currently before the courts on precisely the issue that he has raised: the allocation of expenditure between local constituencies and the central party. It would be sensible to await the outcome of that case before deciding whether any legislative changes are necessary.

Foreign and Commonwealth Office: Religion

Question

3.22 pm

Asked by ***Lord Suri***

To ask Her Majesty's Government what director level staffing changes, if any, they intend to make in the Foreign and Commonwealth Office to provide greater capacity for that department to co-ordinate, oversee and deliver policy to advance freedom of religion and belief.

Baroness Stedman-Scott (Con): My Lords, the deputy director of the multilateral policy directorate at the Foreign and Commonwealth Office leads all FCO work at official level to promote freedom of religion or belief. Ambassadors and high commissioners lead work abroad in promoting and defending human rights including freedom of religion or belief, taking account of the situation in their host countries. In their day-to-day work, many desk officers in London and staff in the overseas network contribute to the promotion of freedom of religion or belief. I can confirm that we have no current plans to appoint new staff to work on freedom of religion or belief at director level.

Lord Suri (Con): I thank the Minister for her response. I am also pleased to see that several FCO and DfID country posts have responded positively to the letters sent by the Minister, Mark Field, and my noble friends Lord Ahmad and Lord Bates asking that they outline the strategic steps that they are taking to support and advance freedom of religion or belief at country level. Will she explain what resources and efforts are being applied to ensure that the steps outlined are carried out effectively and that country-specific strategies to advance freedom of religion or belief are being co-ordinated, developed, shared between posts and implemented effectively?

Baroness Stedman-Scott: We have received updates from a variety of UK missions on how they are promoting freedom of religion or belief. Resources and efforts will vary across these posts as each country faces its own set of unique challenges, and our freedom of religion or belief work needs to be tailored to suit the local context. Our interventions range from diplomatic interventions, our work at the Human Rights Council, dialogue and project support. Officials from the human rights policy unit remain in contact with the relevant leads, follow the progress of activities and share best practice.

Lord Alton of Liverpool (CB): My Lords, has the Minister seen, in advance of this week's Commonwealth Heads of Government conference meeting in London, that 95% of citizens of the Commonwealth have religious beliefs but that in 70% of Commonwealth countries there is some degree of persecution on the basis of freedom of religion or belief? How is it commensurate with that challenge to have only two desk officers in the Foreign and Commonwealth Office dealing with this issue? How is it commensurate with our obligations under Article 18 of the Universal Declaration of Human Rights, which upholds the right of every citizen to believe, not to believe or to change their belief?

Baroness Stedman-Scott: I am delighted to hear that more than 90% of people in the Commonwealth have a religious belief; that is excellent. It is disturbing that 70% are unable to express it in the way that we would all want. On the noble Lord's point about resources, I in no way wish to make light of this, but I cannot think that there is a government department that does not want more resources to do things. I cannot answer his question in as much detail as he would like, but I will go away, find out more information and let him have it. I just put in a plea that resources are tight in the current fiscal climate, but by 2019-20, the overall resource budget will be £1.24 billion.

The Lord Bishop of Coventry: My Lords, following on from that question, the Minister will be aware of the gathering at Lambeth Palace at the moment convened by my most reverend friend the Archbishop of Canterbury, which is bringing together parliamentarians and religious leaders from across the Commonwealth to help them work on good local practice. Would not the sort of director-level appointment mentioned in the Question to increase capacity help Her Majesty's Government to partner with such initiatives to take them on to the next stage and provide co-ordination across the Commonwealth?

Baroness Stedman-Scott: I congratulate the Church on hosting today's meeting with people from across the Commonwealth and I am sure that they will gain much from it. When I was the chief executive of a charity and people asked for resources, I used to say, "I get the message", so I get the message on a director-level appointment. The only thing I can confirm to give any comfort at this point is that we are actively reviewing the need for such a post.

Lord Collins of Highbury (Lab): My Lords, the noble Lord, Lord Ahmad, has made this a political priority. He is the Minister for Human Rights. I return to the point made by the noble Lord, Lord Alton: to have two desk members covering this issue is simply not good enough. If it is a priority, the Government should ensure that they can deliver on it. The fact is that 80% of the world's population live in countries where oppression of religious belief takes place. That oppression ends in other human rights abuses. We should be prioritising this because we need to create a tolerant world.

Baroness Stedman-Scott: I completely agree with the noble Lord that we want a tolerant world. I completely agree that we must do everything we can to ensure that people have freedom of religion. On the face of it—I do not doubt what the noble Lord says—two desk people appears remarkably light. I could get in big trouble afterwards for agreeing with him on that, but noble Lords are all very kind to me. The Leader is laughing; I am all right.

My noble friend Lord Ahmad is absolutely committed to this agenda. He believes in it and there can be nobody better to be fighting this corner. I absolutely confirm that it is important and I hope the noble Lord will leave it with me.

Baroness Brinton (LD): My Lords, to spare the Minister's blushes, there are not even two full-time FCO officers; there are two part-time members of staff. To keep my question very brief, you cannot have a priority unless it is properly funded. Things may be tight, but how will the Government demonstrate that this is a real priority and fund the necessary posts?

Baroness Stedman-Scott: It gets better. Let me say to the noble Baroness, it is a priority—I would not say that if it was not true. I do not want to repeat myself, but I will talk to people about the resources. It occurs to me, if I have got my facts correct, that we may have desk positions in London—part-time, as the noble Baroness points out—but we also have staff in other posts around the world, part of whose job is to promote and support freedom of religion. The resource-light situation that we are talking about may not be as bad as that, but I have got the message.

Elections: Personal Data

Question

3.30 pm

Asked by ***Lord Haskel***

To ask Her Majesty's Government what steps they are taking to prevent possible abuse of the United Kingdom's electoral system following the evidence given by Mark Zuckerberg to the United States Senate on 10 April.

Lord Young of Cookham (Con): My Lords, the Government take the security and integrity of our democratic processes very seriously. We have measures in place to protect elections from undue interference, both on and offline. We talk regularly with the major tech companies about a range of safety and security issues; we work closely to support those responsible for overseeing and delivering our elections; and we keep the need for legislation under review.

Lord Haskel (Lab): My Lords, I hear what the Minister says, but are the Government listening to the obvious concern from all over that our political integrity is under threat? If the Government were listening, surely our institutions would already have caught up with the much stronger powers of enforcement and regulation such as those of the Financial Conduct Authority, the regulations in place regarding the press, TV and radio or the powers to break up market dominance that we have in other sectors? Will the Government start catching up now?

Lord Young of Cookham: The noble Lord will know that the Data Protection Bill is at the moment in another place, having passed through your Lordships' House. That Bill gives extra powers to the Information Commissioner to safeguard the integrity of our democratic process, as he indicated. For example, once the legislation is on the statute book, the maximum fine for an organisation such as Facebook would rise to £1 billion. New criminal offences are being created and the Information Commissioner is being given extra powers. As I said a moment ago, there is a dialogue with the Information Commissioner and if at any point she feels that she needs additional powers, over and above those in the current legislation, we are more than ready to consider them.

Lord Cormack (Con): My Lords, how many desk officers are dealing with this problem?

The Parliamentary Under-Secretary of State, Department for Digital, Culture, Media and Sport (Lord Ashton of Hyde) (Con): Quite a few!

Lord Young of Cookham: I have had some in-flight refuelling from my noble friend to my left who has responsibilities for DCMS and, in a nutshell, his answer was "Lots!".

Lord Wallace of Tankerness (LD): My Lords, have any of these desk officers drawn to the noble Lord's attention the opinion submitted to the Select Committee in the House of Commons relating to alleged non-declaration of payments during the referendum to AIQ data services? Specifically, in paragraph 13 of that opinion, the view is expressed that,

> "the extensive grounds for suspicion of the commission of offences under PPERA are sufficiently strong, and the potential offences sufficiently serious, that there is a good case for the exercise by the Commission of its Schedule 19B investigative powers".

Can the Minister indicate whether he is aware that the Electoral Commission is pursuing this particular line of investigation and, if and when it does, will he give the House an assurance that, if requested, the Government will ensure that it has sufficient resources to do so?

Lord Young of Cookham: On the question of resources for the Electoral Commission, it is answerable to the other place. There is the Speaker's Committee on the Electoral Commission, as the noble Lord will know. I am not aware of any dispute about resources, and I am not aware of the Electoral Commissioner having asked for any more resources. If, at the end of the inquiry, which the noble Lord will know is going on into allegations of underdeclaration during the referendum campaign, the Electoral Commission feels that it needs more powers, the Government are indeed in listening mode.

Baroness McIntosh of Hudnall (Lab): My Lords, the noble Lord made reference, during an earlier Question, to the international nature of most issues to do with data protection. Can he say—particularly given that after next March, we shall no longer have a seat at the table, for instance when European Governments are discussing the potential for collaboration on matters of this kind—what the Government are doing to ensure that we are properly plugged into all of the various international ways in which these issues are being discussed and promoted?

Lord Young of Cookham: Next month, on 25 May, the General Data Protection Regulation comes into effect and we will be abiding by that. On top of that, the Data Protection Act goes beyond in providing extra safeguards. I am sure that the Government want to ensure that, post our departure from the European Union, we remain in the forefront of protecting this country against the sort of external influences referred to by the noble Baroness.

Lord Foulkes of Cumnock (Lab): My Lords, will the Minister have another word with his colleagues—or preferably with the officials who brief him—to ask them why they have not drawn his attention to the excellent report of the ad hoc Select Committee of this House, which was published yesterday, dealing with the effect of digital media on referenda and elections, which is what this Question is about?

Lord Young of Cookham: I was indeed aware of the report referred to by the noble Lord. It raises a really interesting question. Information technology is challenging the business model for election campaigns as we have traditionally known them: knocking on doors, leaflets and public meetings. That model is being challenged

[LORD YOUNG OF COOKHAM]

by the social media and to some extent being displaced by it. To the extent that social media can reach people who are alienated or bypassed by the traditional method of campaigning, that is a good thing. We have to ensure, however, that the legal framework within which we now operate is fit for purpose and that personal data is not misused. We should try to turn to our best advantage the fact that we are engaging people in the democratic process who previously were not so engaged.

Lord Bilimoria (CB): My Lords, the questions being asked are about digital interference with elections and the Electoral Commission. Does the Minister think that the Electoral Commission is basically toothless, in that it cannot even police a message on the side of a bus about £350 million going to the NHS? Should it not have more powers to stop blatantly lying statements during elections and referenda?

Lord Young of Cookham: The Electoral Commission has been absolutely clear that it does not want to get involved in deciding whether a particular advertisement is truthful or not. It regards that as something fit for the political dialogue between the parties. If somebody believes that a claim is untrue, they are at liberty to denounce it, but I do not think that the Electoral Commission wants to get drawn into the truth or otherwise of political campaigns.

European Union (Withdrawal) Bill

Report (1st Day)

3.37 pm

Relevant documents: 12th and 20th Reports from the Delegated Powers Committee

Clause 1: Repeal of the European Communities Act 1972

Amendment 1

Moved by ***Lord Kerr of Kinlochard***

1: Clause 1, page 1, line 2, at end insert—

"(1) Subsection (2) applies if, and only if, the condition in subsection (3) is met."

Lord Kerr of Kinlochard (CB): My Lords, the Eugene O'Neill play "Long Day's Journey Into Night" is very good, but it does go on a bit. We have already had 13 long days and 372 amendments, which at least enables us to be quite brisk and brusque at this stage. The arguments have all been advanced already, and it falls to me to speak to Amendment 1, in my name and those of the noble Lord, Lord Patten of Barnes, and the noble Baronesses, Lady Hayter and Lady Ludford. The amendment is a call to the Government to explore a customs union.

I intend to distil simply five points out of our previous debate—five arguments for a customs union. The first argument is that made by manufacturing industry, and it does not need repeating: it has been made very clearly in our debates and in public debate, and has been supported strongly by the CBI and the TUC. We know what Airbus Industrie thinks and we know of its worries. We know about the motor industry's worries. We know that 60% of a UK-built motor car consists of components that come into our country. The motor industry believes that, if those components came across a customs frontier, its costs would rise by between 5% and 10%, which is serious. We know from the Government's economic analysis that the hit on manufacturing would represent, over time, 1% of GDP. That case does not need to be explained any more.

Secondly, the case for export to the European Union explains itself too. Fifty per cent of our exports go to the European Union—indeed, 70% of our agricultural exports. The Government are rightly concerned not to introduce new frictions in this trade, but a customs frontier is an inevitable friction; the delay, not just at the Irish frontier but at Dover and elsewhere, would be considerable and would have considerable costs. The Government are right to minimise frictions, not just for that reason but because to replace trade with the European Union with trade further afield will not be an easy task. A further 20% of our exports go to countries which have preferential arrangements with the EU or are negotiating them, including 60 free trade agreements, 32 of which are with Commonwealth countries. To simply replicate such preferential arrangements when we are out on our own, representing a smaller market—offering the concession of access to a smaller market—will not be child's play, as the Australians and New Zealanders have already demonstrated to us through their demands on agricultural quotas. If we look at America—which accounts for 15% of our exports today—and the TPP, TTIP and NAFTA sagas, or listen to the inaugural speech with its paean for protectionism, we can see that that will not be easy.

The further afield you go, the more difficult it gets. The population of Canada is three times the population of Switzerland but we sell twice as much to the Swiss because they are closer. The ineluctable rule is that as distance doubles, trade halves. I am talking about trade in goods, but it is a fairly standard rule. So it is well worth looking further afield, but it will be hard not to see a fall in overall exports if our trade with the European Union is made more complicated, and it will be much more complicated if we do not have a customs union. We must try to limit the damage of leaving our largest, because closest, market.

My third point is about the nature of customs union, and here I will admit the downside of customs union. It is about goods, not services, and it would prevent us abolishing our tariffs on imports into this country. It would prevent us doing what Professor Minford wants to do, and that is, for some, a serious downside. I do not believe that the Government intend to follow Professor Minford's prescription. I do not think the Government intend to take us to a tariff-free, low-welfare, low-tax, low-regulation, low-standard sweatshop economy. The Prime Minister has been pretty clear that she is not planning to do that.

More importantly, as I said, the customs union is only about goods—it is not about services. It would leave us entirely free to go on doing our trade promotion, as we do now, but also to negotiate new arrangements for trade in services, investment protection, remittance of profits, intellectual property, data protection, access

to government procurement—all the new ideas and new issues which are now much more important in trade negotiation than tariffs. Therefore, there is very little economic downside to customs union. It would stop us doing what no sane Government would want to do and would in no way inhibit us from doing what every Government would want to do.

The fourth issue is the Irish border. Even if cross-border trade is tariff free, as I hope and believe it will be, rules of origin, phytosanitary and other checks will require a hard border. They will make that inevitable unless we have a customs union. A customs union is not in itself a sufficient condition for an open or soft border—there will still have to be a degree of regulatory alignment, particularly in the agricultural sector—but it is a necessary condition for an open border.

3.45 pm

The EU's alternative of a customs frontier in the Irish Sea is unacceptable to us. We have offered two alternatives. One is blue-sky thinking—the idea that when the great container ship arrives at Hamburg or Rotterdam from an Asian port, the port authorities should be required to unload it and separate out from inside the containers the goods that are coming to the UK, which will be charged UK duties, and those going to the rest of the European Union, which will be charged EU duties. Maybe that will happen one day, but even if blue-sky thinking were a good term, I do not see the European Union buying that.

As for our other alternative, which is a digital frontier with verification at a distance, committees of this House and the other place have examined it. I quote only from the report published exactly a month ago by the relevant committee of the other place, which said that,

"we cannot see how it will be possible to maintain an open border with no checks and no infrastructure if the UK leaves the Customs Union".

I believe that that is right. So the workable solution to the Irish border conundrum is a customs union.

My last point concerns the current negotiations in Brussels and what might happen if the Government accept this amendment. We know, because they have said so, that the 27 regret that we plan to break from the customs union. We know, because their guidelines of 23 March say so, that they are envisaging a bare-bones free trade agreement with something on services to be determined. However, that is because of our decisions on the single market and the customs union. They say at paragraph 4 of their guidelines—

Lord Robathan (Con): My Lords—

Noble Lords: No! Keep going.

Lord Kerr of Kinlochard: At paragraph 4 of their guidelines, they say that it is the UK's positions,

"which limit the depth of such a future partnership",

and that:

"Being outside the Customs Union and the Single Market will inevitably lead to frictions".

But they also say at paragraph 6 of their guidelines that if the UK's positions on the customs union and the single market,

"were to evolve, the Union will be prepared to reconsider its offer":

in other words, to improve its offer. We do not know how far-reaching such improvements would be but, if we go on refusing to allow our negotiators to explore the idea of a customs union, we will never find out, and that in my view will be irresponsible—hence the wording of the amendment. I do not recall at the time of the referendum any debate about a customs union.

Lord Grocott (Lab): My Lords—

Noble Lords: No!

Lord Grocott: I say yes. I think that the noble Lord has agreed to give way and I am very grateful. My point is specifically about the amendment. Are we not allowed to intervene with a question on the amendment?

A noble Lord: It has not been moved yet.

Lord Grocott: What I have to say may affect the decision as to whether or not to move it. My question is specifically about the wording of the amendment, which says—

The Countess of Mar (CB): My Lords, the noble Lord should be allowed to develop his arguments. The amendment is not on the table yet—it has not been put by the Speaker. So I ask the noble Lord, out of courtesy, to let the noble Lord, Lord Kerr, finish speaking.

Lord Kerr of Kinlochard: Perhaps I may continue. I recall no debate at all at the time of the referendum on a customs union. The country voted narrowly to leave the European Union, but no one can argue that it voted knowingly to leave the customs union with the European Union.

The red line was laid down in October 2016 in the "citizens of nowhere" speech. One hears that there had not been much discussion in the Government; there certainly had been no discussion with Parliament. One wonders to what extent the economic consequences of the decision on customs union had been fully assessed and analysed within the Government; I have no idea. Other red lines have since been sensibly blurred; in my view, it is time to blur this one.

The House knows that I was and remain a keen remainer. I believe that, when a deal is struck, the country should be given a chance to say whether it is what it wants. That would be fair, but it is nevertheless our duty to help improve the deal and see how it could be made better. If in the end we do leave, it should be in a way that limits the damage to the country's well-being and to the future of our children. That is why I believe that it makes sense for the Government to be asked to explore customs union. I beg to move.

Lord Grocott: I simply wanted to ask for information on the wording of the amendment, which requires the Government to put a statement to both Houses about the contents of an agreement on a customs union. I

[LORD GROCOTT]
simply want to ask this: if such a statement is presented to both Houses, as his amendment requires, and if the House of Commons says yes and the House of Lords says no, what happens next?

Lord Kerr of Kinlochard: Am I allowed to respond? I thank the noble Lord for his question. The Government would be required to negotiate for a customs union and make a statement about the outcome of the negotiations, which would be before the withdrawal implementation Bill came to the House. It seems to me that the requirement on the Government is simply to negotiate. I may be wrong about the willingness of the other side to envision a customs union—we cannot require the Government to come back with a customs union—but we can require the Government to explain how hard they have tried and what kind of customs union they think might be available.

Lord Patten of Barnes (Con): I am delighted to second the amendment moved by the noble Lord, Lord Kerr, and I will seek to do so as briefly as he did, partly because he was so comprehensive in the arguments for a customs union and partly because we chewed over many of these issues in Committee and we plainly should not deal with them again. So I will not go into the issue of Northern Ireland's border with the Republic of Ireland, because I spoke twice on that in Committee.

I assume straightaway, because I have a regard for his intelligence, that the Minister responding to this debate is not going to suggest that the referendum result or the Conservative manifesto disqualifies us from proceeding in the direction suggested by the noble Lord. If I am wrong about that, I would be delighted to come back to it later. But there is one point made in the manifesto that I will dwell on for a moment—and, as clergymen occasionally say at the end of sermons, share with you all—because it allows me to bridge to the main argument we have today, which is about trade and trade opportunities for this country.

I confess to the House straightaway that I used to make my living helping to write manifestos, and so I have a certain regard for these things. The manifesto said at the beginning:

"People are rightly sceptical of politicians who claim to have easy answers to deeply complex problems".

So I ask the House to turn its attention to what we have been promised on trade.

We are told by the Secretary of State for International Trade that a free trade agreement with the EU will be one of the "easiest in human history". He also told us that, by the end of March 2019, the Government will have put in place or drafted or agreed up to 40 trade agreements with other countries. That is the backdrop. It seems to me that those propositions invite a little scepticism, and in a moment or two I will suggest to the House why that is the case.

I have a degree of expertise in this area for which I do not seek to make extravagant claims—I do not know as much about trade as the noble Lord, Lord Mandelson, does, and I know that expertise is a dangerous thing in the present climate. But I did, either on my own or with others, negotiate free trade agreements between the European Union and Mexico, Chile and most of the countries of the Mashreq and Maghreb region. We were part of the negotiation team for China's accession to the WTO. We failed with Russia—for all sorts of reasons which the House will not be surprised about—and we made only limited progress with Mercosur, the San José dialogue and the Andean pact countries. So I know how difficult these things are, and some of the problems that will be faced in addressing the agenda mentioned by the noble Lord, Lord Kerr.

The first thing we have to do is secure our market in the European Union—50% of our trade. We then have to think about the 12% of trade with countries with which the European Union has concluded agreements already and the 8% with which it is negotiating trade agreements already. That adds up to about 70%. Of the remaining 30%, about half is with the United States, a quarter with China and Hong Kong, and the rest with everyone else.

How are we going to manage with the countries with which the European Union has negotiated deals already? I spent a particularly dreary afternoon on Maundy Thursday looking through the European Union-South Korea trade deal. It was dreary not because it is not a good deal—indeed, it is such a good deal that the Foreign Secretary not long ago boasted about the great increase in British trade with South Korea—but because it is even longer than a long day's journey into night. It runs to 1,400 pages, 900 of which just list tariffs. The idea that you can simply Snopake the words "European Union" and insert "United Kingdom" and grandfather that trade agreement in nanoseconds—even nanoyears—is absurd.

First of all, the South Koreans know that we are the demandeur. They will know that we have a trade surplus with South Korea at the moment, which might make them a little resistant to being as helpful as they were with the European Union, which is, anyway, a much bigger market than the United Kingdom—500 million to about 65 million. There are technical issues as well that will be particularly demanding. I will not try to explain to the House—because I have only a vague notion of what it means—the problem with trigger volumes preventing surges of agricultural imports to a country. But that issue is one that will involve not just negotiations with South Korea but tripartite negotiations between us and the European Union as well as the South Koreans.

Even more important are rules of origin—something that used to be well understood by the Secretary of State for Exiting the European Union. Not long before the Foreign Secretary made a speech saying that there was no reason why we should not, after leaving the European Union, stay in the single market, the Secretary of State for Exiting the European Union pointed out that, on balance, he was in favour of staying in the customs union because, even though you would not then be able to do independent trade deals on your own, the issue of rules of origin was so important that we had to stay within the union so that that did not present problems for us.

4 pm

Rules of origin is a problem that comes up straightaway when you look at the South Korea deal. Under rules of origin, each party is able to do without tariffs provided that up to 55% of what it is exporting is made in its own back yard. That is fine within the European Union, but the car industry in this country makes only 41% of the cars that we export in Britain. So straightaway, cars—and you can go down the list of tariffs—would not be able to go tariff free into the South Korean market.

The South Korean trade deal provides 99% tariff-free access after five years. It is a terrific piece of trade diplomacy. Incidentally, it provides that access after five years, but the trade deal that the South Koreans did with Australia does not come into full working order, even on a more limited range of goods, for 20 years—so it was a very good piece of negotiation by the European Union. The idea that we can just do that and all the other trade deals overnight, over a month or over a year, without any problems is for the birds. It belongs to the category denounced in the manifesto.

After we have dealt with the issue of the 12%, or maybe 20% by then, of the market that is covered by existing or future trade deals—"future" before we leave the European Union—between the European Union and other countries, we then deal with the three other categories of country. The first is China. China, admittedly, has done a trade deal with Switzerland and also with Iceland. Switzerland has done 38 trade deals with other countries, as opposed to more than 50 between the European Union and other countries. The deal between Switzerland and China is a very good example of how difficult it is to get into bed with an elephant. The Swiss have agreed hardly anything with the Chinese about services and nothing about cars, but they have accepted that China will have, for a number of goods, tariff-free access to Switzerland straightaway. In return, Switzerland gets tariff-free access to China after 15 years. So sleeping with elephants is a bit of a problem. I imagine that we would be looking to open up prospects for services—which, as the noble Lord said, is not an issue particularly involved here—but, apart from that, I am not quite sure what we would be hoping to get out of any future deal with China.

What about Australia and the Commonwealth? As the noble Lord said, one of the basic axioms in trade policy is that you double the distance and halve the trade. The notion that the Australians will open up their market further for us without making demands in return is, again, nonsense. They will ask for us to make concessions in the field of agriculture, which may take some explaining to small and medium-sized farmers in this country.

What about India? I noticed the other day that the European Union suggested that it might be easier to do a deal with India when we were no longer members of the European Union. In fact, we were always the back-markers when it came to negotiations with India. Why? Because we were concerned about opening up access to our services in India. Why? Because the Indians wanted in return for anything we were prepared to ask for greater scope for visas for Indians coming to this country, and we were not prepared to allow that.

Finally, the United States represents 15% of our market, but we expect Richard Cobden's legatee, President Trump, to open up the American market to the United Kingdom's exports. Are we serious? We would be pressing for opening up procurement with the United States, and the United States would be pressing for opening up procurement with us in the National Health Service. I am not going through chickens again because we had chickens up to our eyebrows in Committee, but I remember a wonderful speech given by my noble friend Lord Deben about chickens. I wish I could remember every word of it, but it was a pretty compelling argument on the difficulties of doing a food deal with the United States. President Trump will not be there for ever—but, in my experience, the Americans were not pushovers when it came to doing trade deals.

I have two last points. Is our ability to do trade deals or to export overseas held up by the fact that we are members of the European Union? When I last looked, Germany was a member of the European Union. Germany exports two and a half times as much to China as we do and exports more to India than we do. So the reason we do not do better in export markets must lie somewhere else. I do not agree with the point made by the Secretary of State for International Trade. I do not think that it is because British businessmen and exporters are—what was his expression?—fat and lazy. That is not why we do not do better. The truth is that between only 10% and 15% of companies in the country actually do serious exporting. They are mostly medium-sized or large companies—and guess what they want? They want the best access possible to the closest market. And where is that?

So I do not think that blethering on about global Britain, or pretending that we have not been global Britain for years, or repeating "The Road to Mandalay" whenever one is travelling, is going to make a spectacular difference to our trading opportunities. I think very strongly that we will not do any better than we are doing within the customs union, given that we start from a position in which we export to the European Union three and a half times as much as we do to the United States, five times as much as we do to the Commonwealth and six times as much as we do to all the BRICs combined.

So I support the amendment with some enthusiasm and I repeat what my noble friend Lord Hailsham said in Committee: namely, that there are times in one's political career when what is alleged to be party loyalty comes way behind trying to stand up for the national interest. I intend to do that on this amendment and elsewhere on Report, and in doing that I think I will be repeating what I would have been able to say with the full support of my party for most of the time I have been a member of it.

The Countess of Mar: My Lords, I hope that noble Lords will forgive my confusion about a technical matter. The amendment states:

> "Page 1, line 2, at end insert".

However, line 2 on page 1 comes immediately after,

> "The European Communities Act 1972 is repealed on exit day".

[THE COUNTESS OF MAR]
Can noble Lords make clear what exactly we are debating? The amendment states:

"Subsection (2) applies if, and only if".

The amendment does not seem to fit the Bill.

Lord Wigley (PC): My Lords, I support Amendment 1, moved so persuasively by the noble Lord, Lord Kerr, and Amendment 4. I want to speak briefly to Amendments 2 and 5 in my name, which are coupled with them and essentially seek the same goal.

Noble Lords may remember that in Committee I moved the very first amendment on the issue of maintaining a customs union with the EU after our membership ceases. We had an excellent debate at that stage so I will not repeat the detailed arguments, save to remind the House of one central point: having tariff-free trade in goods with the European Union and the 56 countries with which the European Union has an agreement is fundamentally important—not only to Wales but throughout the UK—to our manufacturers and farmers. It also opens the door to resolving the Irish border question, as has been said.

I accept—reluctantly—that we are leaving the European Union. That is not the issue in this debate. The question is how we leave without weakening or severing our vital trade links. By passing either of these amendments, we give MPs an opportunity to return to this central issue. Without such an amendment, they will be unable to do so. They need such a facility because so much has changed in the time that has elapsed since they passed this Bill last year. We must enable them to fine-tune the Bill to meet the requirements of exporters, manufacturers and farmers. MPs will have the last word, and rightly so, but by passing either amendment we give them the opportunity to endorse a better Bill that is fit for purpose and more acceptable to those whom it affects. I urge colleagues on all sides to unite in passing such an amendment and I urge the Government to accept the outcome.

Lord Lamont of Lerwick (Con): My Lords, both the noble Lord, Lord Kerr, and my noble friend Lord Patten made extremely powerful speeches. Both of them referred to trade with the EU representing 50% of our exports. I think that the figure is actually a little lower than that, nearer 45%; I make that point not to argue over the absolute figure but the direction of travel.

One of the points that was not made in either speech is how the pattern of our trade has been changing and a much higher proportion of our trade was with the EU 10 or 15 years ago. This is because Asian markets and other countries—I agree that they are all small markets at the moment—have cumulatively been growing as a share of our trade. The question in considering the amendment is, which is better for the future trend of our trade: remaining in the customs union or the Government's alternative—which the noble Lord, Lord Kerr, did not really put forward—of a free trade agreement with the EU? We are talking not just about the customs union, but the customs union while being outside the EU—that is, being in the customs union but not an EU member—which is a very different matter, for reasons that I will come on to.

We have to be clear in our minds about the difference between a customs union and a free trade area. A customs union has free trade between its members but an external tariff and rules against non-members. A free trade area has reduced or zero tariffs between its members but allows individual members to have differing external tariffs and non-tariff controls on imports from non-members. The noble Lord, Lord Patten, referred to the question of rules of origin—that is, goods that come from outside the free trade area but which have to qualify to go into other countries by having a certain percentage of the content being made locally. The EU is a customs union but has free trade relations with European states outside the EU, such as Norway, Iceland and Lichtenstein. This means that, despite being inside the single market, they have control over external tariffs and the administrative costs are greatly reduced by modern customs procedures, such as electronic pre-clearance and trusted trader arrangements.

In his speech on the customs union, the noble Lord, Lord Kerr, concentrated just on what happens at the border. I would argue that a customs union is not just about tariffs; it has implications for the single market. It is related to the whole issue of the rules and definitions that make up the single market. This is made very clear on the European Commission's website, which defines the customs union like this:

"The Customs Union is a foundation of the European Union and an essential element in the functioning of the single market. The single market can only function properly when there is a common application of common rules at its external borders … These common rules … go beyond the Customs Union as such—with its common tariff—and extend to all aspects of trade policy, such as preferential trade, health and environmental controls",

agriculture and fisheries,

"the protection of our economic interests by non-tariff instruments and external relations policy measures".

4.15 pm

A customs union has to operate a vast range of non-tariff controls on goods, such as health standards on food. Within its own market, the UK would have to operate a vast panoply of non-tariff controls on goods entering its external borders from the rest of the world. In addition, the UK would not be able to depart from these rules for goods that are domestically produced because they would circulate freely into the EU 27. Alignment or being in a customs union means that a vast swathe of regulations would have to be kept exactly the same as the EU rules. We would have to change them to match the EU rules, however damaging that might be or inappropriate we thought it was.

The noble Lord, Lord Kerr, refers to the CBI study. It would prefer to see alignment of rules in the domestic market here with the EU. No one is arguing—I am not—that there cannot be alignment, but I would argue over who makes the decision on aligning. That decision ought to remain in the control of the UK. The same would apply to tariffs, where EU tariffs can be extremely damaging to British consumers, who have to pay well above world prices for food, clothing

and footwear—things that are particularly damaging to lower-income groups. We would also have to match its trade protection and anti-dumping measures without having a say.

Another feature of the EU customs union that was not mentioned by either of the proposers is the payment of tariff revenues into a common central pot, less 20% retained by the member states. This is particularly disadvantageous to the UK because we have the highest percentage of trade outside the EU of any member state. Are we going to go on paying that?

There are some disadvantages with a free trade agreement in terms of rules of origin, but they do not seem to have bothered Switzerland, Iceland or Norway very much. The disadvantages of being inside the customs union are threefold: operating inappropriate tariffs, not having autonomy over domestic rules and goods, and not being able to conclude trade agreements. Both noble Lords who spoke said that it will take a long time to negotiate free trade agreements. That might well be right, but I still believe that it is extremely important that our trade policy should be structured with how it is likely to develop in the future.

The important point is that there is only one country that is in the position advocated by the noble Lord, Lord Kerr—Turkey, which is a member of the customs union outside the EU. Turkey is required to align itself fully under article 56(1) of the agreement between Turkey and the EU, which says:

"Where it adopts legislation in an area of direct relevance to the functioning of the Customs Union … the Community shall immediately inform Turkey thereof within the Customs Union Joint Committee to allow Turkey to adopt corresponding legislation which will ensure the proper functioning of the Customs Union".

Turkey has absolutely no say on tariffs, the definition of products and the internal rules that apply in the internal market. That is the difference that the noble Lord, Lord Kerr, did not address—that instead of being in the customs union within the EU, being in the European Parliament, the Commission, the Council of Ministers and represented in the European Court of Justice, we would be subject simply to the rules made while having no representation at all. I know that the noble Lords, Lord Kerr and Lord Patten, would far rather we were in the EU—but that is not where we are starting from. The amendment has to address where we are, and what is possible from where we are now.

As regards trade with non-members, Turkey is obliged to harmonise its commercial policy with that of the EU, and to grant tariff-free access to goods from any country with which the EU has negotiated a free trade agreement, without having had any say or representation in the negotiations. Nor does that mean that Turkey gets tariff-free access into the result of the negotiations with the new agreements that the EU has signed; that does not follow either. Given where we are, I do not think that the model put forward by the noble Lord, Lord Kerr, is at all satisfactory. I do not think the Turks regard it as satisfactory either. As I understand it, Turks have compared Turkey's agreement with the EU to what is called the capitulation of the Ottoman Empire. That means the provisions under which western traders entering Turkey were given exemption from prosecution, taxation, conscription and the searching of their homes. The Turks do not regard this as an entirely satisfactory arrangement, and nor should we. It is not right for us either.

Lord Howarth of Newport (Lab): My Lords, I listened to the noble Lords, Lord Kerr and Lord Patten, with much interest and even pleasure. They are virtuosi—but as I sometimes find when I listen to virtuosi, they are not entirely convincing. Amendment 4 is simply too vague for us to send it to the other place. If those who tabled it insist that the Government should seek to negotiate membership of a customs union, it behoves them to be specific about the features of the customs union that they believe would be appropriate in the interests of our country.

Let us be clear that we all want continuing free movement of goods between this country and the European Union. That is not in contention; it is a major objective of the Government in their negotiations. Those who support the amendment, which refers to "a customs union", not to the existing customs union, should explain how the alternative customs union that they envisage would differ from the existing customs union.

For example, how would it differ with regard to the common external tariff, which the noble Lord, Lord Lamont, has just mentioned? At what level do those who tabled the amendment think the CET should be pitched? A common external tariff is protectionist, and as such is bad for the efficiency and productivity of our industries. It puts up the prices of goods imported from outside the European Union into the United Kingdom, to the disadvantage of our consumers and our producers: 21% of household incomes in this country are, on average, spent on food, clothing and footwear. Indeed, a higher percentage is spent by less well-off households. The existing customs union puts high tariffs on these essentials: 26% on food, 11.8% on clothing and 11.4% on footwear, on average. Also objectionable about the common external tariff is the fact that, as a barrier to imports from developing countries, it impairs their economic development. The European Union's average external tariff is 5.1%. That is high compared with the USA's external tariff of 3.5%. Noble Lords insist that the Government should state their precise objectives in negotiation. Will they state theirs? What should the common external tariff be? Do they envisage a customs union without a common external tariff? That would be very good, but is it in the realm of possibility? Is it not, in fact, better to seek to negotiate a free trade agreement?

If the new customs union to be negotiated differs from the existing customs union, how would it solve the problem of the border between Northern Ireland and the Republic? Noble Lords should explain that. How would the two sets of rules of the new customs union and the existing customs union of the EU interact? What dispute resolution mechanism do they intend?

Do they think that the European Union would accept a radically liberalised form of customs union with the United Kingdom and allow us such enhanced freedoms? It would be lovely, but it seems unlikely. However, unless they do and can say how

[LORD HOWARTH OF NEWPORT]
their alternative customs union would work, we have to conclude that the amendment is tabled simply for tactical reasons, a device, as the noble Lord, Lord Wigley, candidly acknowledged, to enable the House of Commons to have a debate and vote on a customs union. Actually, what they clearly want is for us to stay in the existing customs union.

If we send an amendment to the other place, it will be amendable. Amendments to a vague amendment could go anywhere. Some noble Lords—I certainly exonerate my noble friends on the Opposition Front Bench—entertain the hope that a cross-party combination of remainers could force the Government to commit to staying permanently in the existing customs union, with all the disadvantages that the noble Lord, Lord Lamont, and others have described, including our inability to strike free trade agreements with other countries. As the noble Lord, Lord Lamont, reminded us, a customs union is in practice inextricable from a single market and from compliance with a whole mass of European Union rules on which we would have no say. I fail to see how that is reconcilable with our democratic values.

Only today in the *Times* it is reported that there is just such a manoeuvre of Members of Parliament to form a cross-party alliance and to force this issue. Noble Lords who support this amendment should come clean and say what the game is. It is not appropriate that we should write into statute vague amendments and tactical devices.

Lord Bilimoria (CB): My Lords, the noble Lords, Lord Howarth and Lord Lamont, have given the other side of the argument to what the noble Lords, Lord Patten and Lord Kerr, have proposed. Of course, the European Union is not perfect; of course, with the customs union, there will be disadvantages and advantages, but the bottom line is this: whether free trade between the UK and the EU is 50% or whether it is declining and is now approaching 40%, it is still by far the biggest element of our trade. To have duty-free free movement within that customs union is a huge advantage—that is point number one, before you look at anything outside the European Union.

Then there is this whole talk about going global. What a lot of nonsense. We have always been a global trading nation; we have always been an open economy, an open market, and respected for it, which is why we are a recipient of among the highest levels of inward investment in the world. On the point made by the noble Lord, Lord Patten, about this taking time, the Canadian free trade deal, CETA, took eight years; it is also, to my knowledge, thousands of pages' long. It is nowhere near as good as the free trade agreement that we have at the moment with the European Union. Our other 53 agreements representing almost 20% of our trade beyond the European Union are good but nowhere near as good as that with the European Union. We cannot just substitute them. The noble Lord, Lord Patten, gave as just one example the South Korean deal, where they say, "Don't expect us just to roll over—65 million versus 500 million. No, it is a different deal altogether".

CHOGM—the Commonwealth Heads of Government Meeting—is taking place here. I would love to do more business with the Commonwealth—2.4 billion people; India has 1.25 billion people. What is our total trade with the Commonwealth at the moment? It is 9% of our trade—9% versus the 50% that we have with the European Union. Let us get real. We would love to do more with India—I am the founding chairman of the UK India Business Council. How many free trade deals does India have with any country in the world on a bilateral basis? It has nine, and not one with a western country. Here is the crux of it; I know this from the horse's mouth—Prime Minister Narendra Modi is over here in the UK today. If you ask India what its priority is, an EU-India free trade agreement or a UK-India free trade agreement, you will be told that an EU-India agreement is much more important to India and it has been working on it for several years.

On the referendum and the point about the manifesto, when people voted to leave, they did not vote to leave on any basis. They did not vote, saying, "Please leave the customs union". The red lines of leaving the single market and leaving the customs union were put down by the Prime Minister, not by the people who voted to leave: they did not say on what basis to leave. Our job as Parliament, what we are trying to do here, is damage limitation. This amendment is about damage limitation, because the best thing by far is to remain within the customs union—for our economy, for our businesses, for our citizens and for our country.

4.30 pm

Viscount Ridley (Con): My Lords, many of the arguments we have heard on these amendments almost boil down to saying that nothing can ever be changed for the better. This is, indeed, a peculiar psychological quirk of human beings, but it is not borne out by history. As my noble friend Lord Lamont said, if this amendment is passed and we are in a customs union but not in the European Union then the UK will be obliged to operate a system of external tariffs with no say in setting them. The UK would not be able to enter into new trade agreements with other countries around the world and would be bound by the rules and standards of the European Court of Justice—and that would apply even in the domestic economy. The UK would be significantly worse off than it is today.

A customs union is, by definition, a form of discrimination. Ricardo, Cobden, Gladstone: those great liberals would be spinning in their grave at the thought that their descendant party today is in favour of this form of trade discrimination. The answer to growing protectionism in the world is not to retreat inside a protectionist bloc of slow-growing countries that constitute just 10% of the world's future economic growth, but to seek free trade opportunities wherever we can find them. The answer is not to discriminate against African and Asian economies, but to be open to all. It is not to turn our back on our friends in the Commonwealth, eager to do trade deals with us in this week of all weeks. It is not to yearn to,

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

It is to embrace a model not of harmonisation and identical regulation designed to prevent and extinguish innovation, but one of mutual recognition, to learn how to achieve better ends by better means. It is not to rely on a wall of protective tariffs to keep the world at bay, but to play to our strengths as a common-law, English-speaking, scientifically advanced nation of shopkeepers and entrepreneurs. It is not to be parochial and regional, but to be ambitiously global. And it is not to listen to millionaire loveys and Trekkies gathering in Camden.

I am genuinely surprised that some in the parties opposite want to discriminate against Africa, with an average agricultural product tariff of 14.8%, 25% on sugar refining, 20% on animal products and 31.7% on dairy products.

Lord Hannay of Chiswick (CB): My Lords—

Viscount Ridley: I thought there were to be no interventions.

Lord Hannay of Chiswick: I just want to ask the noble Lord where he gets his idea that being in a customs union with the European Union will mean imposing tariffs on Africa when the European Union has zero tariffs on all African countries.

A noble Lord: Middle stump!

Viscount Ridley: The European Union has an external tariff. It applies to not all products from Africa, admittedly, but to a considerable number. It also applies to Caribbean and Asian countries: there is a 20% tariff, for example, on tomatoes.

I beg those who have not yet made up their minds how to vote to recognise this amendment for what it is. It is an attempt to wreck the Bill and to prevent Brexit.

Lord Adonis (Lab): I defer to the noble Viscount in his knowledge of millionaires. Maybe he is right, maybe he is wrong, but I do not think that they particularly enter into it. It is ordinary, hard-working people who will, of course, suffer the consequences if our trade collapses, and they are the people we should have at the front of our minds. However, on the point about trade with the wider world, almost two years ago a very thorough analysis of our trade and trade policy was made by a prominent politician in a speech. This is what she said:

> "It is tempting to look at developing countries' economies, with their high growth rates, and see them as an alternative to trade with Europe. But just look at the reality of our trading partnership with China—with its dumping policies, protective tariffs and industrial-scale industrial espionage. And look at the figures. We export more to Ireland than we do to China, almost twice as much to Belgium as we do to India, and nearly three times as much to Sweden as we do to Brazil. It is not realistic to think that we could just replace European trade with these new markets".

That was the current Prime Minister speaking on 25 April 2016, and I do not think anything has changed since.

Viscount Trenchard (Con): My Lords, I am not quite sure exactly what this amendment means, in spite of the eloquent speeches by the noble Lord, Lord Kerr, and my noble friend Lord Patten. It would require the Government to lay before Parliament a statement outlining the steps taken to negotiate an arrangement which enables the UK,

> "to continue participating in a customs union".

I do not think this is at all helpful to our negotiators. Even if remaining in a customs union were one of the Government's possible objectives, which it is not, the amendment does not even set a condition that such negotiations must be successful. I expect that those of your Lordships who believe that we should remain in a customs union, which I believe is now the policy of the Labour Party, will not wish to support this amendment in its present form.

I believe that noble Lords who think that we should stay in a customs union are misguided because it would prevent us establishing our own tariff schedules at the WTO. As my noble friend Lord Lawson mentioned, we would be in an unenviable position similar to that of Turkey, which is bound to accept imports from third countries, agreed to by the EU at similar tariffs to those decided on by the EU. Turkey, however, does not even benefit from any preferential tariff rates for its own exports to such third countries which become available to EU countries through agreements made by the EU with third countries.

It is essential that the UK, after the end of the implementation period, should be free to implement bilateral and multilateral free trade agreements with third countries. Failure to be able to do this would negate the whole upside potential of recovering our sovereignty in international trade matters and it would be pointless for the UK to leave the EU on such a basis. A major benefit of leaving the EU will be acquiring the freedom to reduce and ultimately eliminate tariffs on essential products, which represent a high proportion of the budget of poorer people, as mentioned by the noble Lord, Lord Howarth, my noble friend Lord Ridley and others.

One of the two possible customs arrangements the Government have said they are considering is a customs partnership with the EU, under which the UK would mirror the EU's requirements for imports from third countries where their final destination is the EU. It seems to me that if such a customs partnership required the UK to retain a high degree of regulatory alignment with the EU, it would make the UK unattractive as a potential trade partner for third countries and prevent us becoming a powerful advocate for free trade around the world and exercising our considerable influence on ensuring that developing global—rather than European—standards represent best practice in consumer protection in a way that does not inhibit innovation, as excessively bureaucratic regulatory regimes tend to do. I look forward with interest to hearing what my noble friend the Minister has to say about the Government's current thinking on the option of customs partnership. In any case, the inclusion of any of these amendments in this Bill, which is largely technical in nature, would unnecessarily tie the hands of our negotiators in a manner detrimental to the UK's interests.

Lord Lawson of Blaby (Con): My Lords, perhaps I may correct briefly my noble friend who has just sat down. When he referred to what I had said, I do not think he was showing great prophetic qualities; I think he intended to refer to my noble friend Lord Lamont.

I will be brief because I know the Minister wishes to reply to this debate very soon. Let me make just one or two comments. First, this whole thing has had something of an Alice in Wonderland nature. The noble Lord, Lord Kerr, whom I have known for many years and whose company I enjoy, said that nobody said during the campaign that leaving the European Union meant leaving the customs union. That is complete nonsense, with great respect to the noble Lord. I was, for a time, chairman of Vote Leave, which was recognised by the Electoral Commission as the official leave campaign, and we made it absolutely clear that leaving the European Union meant leaving the customs union and the single market. It was not just us. On the other side of the debate, the then Prime Minister and the then Chancellor of the Exchequer made it explicit that leaving the European Union would mean leaving the customs union and the single market, so it is nonsense to say that this was not put clearly to the British people.

This is really a political debate. I can see that there are political reasons for wanting to remain in the EU. I accept that. I think the political reasons for leaving the European Union are very much stronger, but it is absolute nonsense to suggest that there is an economic case for what is being put forward in this amendment. Quite apart from the political problem my noble friend Lord Lamont and others on our side of the debate have pointed out, what is being proposed is that we should not be in the European Union but should be within the customs union. In other words, we should have a quasi-colonial status. That is not something that I or, I think, the British people as a whole will give houseroom to.

What is even more nonsensical is the idea that one cannot trade without a trade agreement. I hope we can conclude trade agreements, but one can trade without them. The rest of the world is not in the European Union. Most of the world does an enormous amount of trade with the European Union. Most of the world is growing a great deal faster, which is rather more important, than the European Union is. If the customs union and the single market were so wonderful, the European Union would be the most dynamic part of the world economy, which it certainly is not. As it is, our trade with the rest of the world is growing far faster than our trade with the European Union. It is not merely greater than our trade with the European Union, but it is growing faster. Indeed, to some extent, my noble friend Lord Patten gave the game away when he pointed to German success in exports to China. There is no trade agreement involved in that. It is a fallacy to believe that bilateral trade agreements are as important as trade. It is trade that matters, and within trade it is the Word Trade Organization system that is overwhelmingly important.

This is basically a political argument. I accept that there are arguments on both sides. I happen to feel that the political arguments for leaving the European Union are greater than the political arguments for remaining in. This is a political argument dressed up as a trade argument, and the trade argument has no substance whatever. I therefore urge the House to reject what is in essence a wrecking amendment.

4.45 pm

Baroness Ludford (LD): My Lords, I am a signatory to the amendment and would like to speak to it. The Government's paper of last August on future customs arrangements proposed two customs schemes as the alternative to being in the customs union, one based on technology, described as "innovative", the other with the UK acting as an agent for the EU for EU-bound goods, described as "unprecedented" and "challenging". Those are words that, if in Jim Hacker's vocabulary, would have attracted congratulations from Sir Humphrey for the Minister's bravery.

The issues for manufacturing industries such as cars and aerospace have been covered by the noble Lords, Lord Kerr and Lord Patten. They are to do with supply chains, border checks and rules of origin. That all sounds like very dry stuff but it boils down to costs, delays and red tape affecting investment decisions and jobs. Staying in the customs union is an economic and industrial issue. The Freight Transport Association estimates that an even an extra two minutes checking every truck during peak hours could result in queues of almost 30 miles at border points.

The chief executive officer of Airbus, Tom Enders, has summed up the problems for his company. I say to the noble Lord, Lord Lamont, that Tom Enders sees leaving the customs union, not staying in it, as very damaging. He points out that during production parts of his company's wings move between the UK and the EU multiple times before final assembly. This is typical for all our UK-assembled products and why the lack of clarity around the customs union and trade is hugely worrying. We think that across our operations and supply chains Brexit will affect 672 sites. Hard borders and regulatory divergence risk blocking trade, creating supply-chain logjams and causing our business to grind to a halt. This is not some esoteric question. Of course, being in the customs union does not solve all the problems; for example, it would be great to have participation in regulatory convergence as well. However, staying in the customs union is a necessary part of preserving the simplicity and streamlined nature of the manufacturing industry. The noble Lord, Lord Lamont, is right that remain is the gold standard, but let us at least go for silver.

As for the argument that being in a customs union would constrain our freedom to conclude third-party trade deals, the ones that we have by virtue of EU membership are far more valuable. Our food, animal welfare and environmental standards could be compromised by third-party agreements. Many potential partners will want immigration concessions, which has proved difficult. As has been noted by the noble Lord, Lord Lawson, you do not need a trade agreement to export, hence Germany exports four times as much to China as we do. That country has not been inhibited so why have we? That is something that we can do inside the customs union. As reported yesterday, China's

top diplomat in Brussels, its head of mission to the EU, has said that a UK deal with the EU is a precondition for trade talks with China. The Chinese need us to have a decent arrangement with the EU before they want to talk about it. If there is not a Brexit deal, they say, there will not be things to talk about. They need to know exactly how we are going to operate with the EU. I add that no member of the Commonwealth has wanted us to leave the EU, so praying that in aid is totally inappropriate.

Not only did people not vote in 2016 to leave the customs union—that was not on the ballot paper—they did not vote to lose their jobs, either. We should protect those jobs by pressing for Britain to stay in a customs union.

Baroness Hayter of Kentish Town (Lab): My Lords—

Lord Forsyth of Drumlean (Con): My Lords—

Noble Lords: Front Bench!

Lord Forsyth of Drumlean: I am most grateful to the noble Baroness. I will keep my remarks very brief. Whoever sent me the briefing for Labour Lords, I thank them and I am happy to pass it on to any other Member of the House who would like to see it. I found it extremely useful because I was rather puzzled by this amendment and others in the name of the noble Lord, Lord Kerr, and was also puzzled when looking at the Amendment Paper to see a number of other amendments supported by noble Lords from all parties. On reading the briefing for Labour Lords, the explanation became clear. What we are witnessing here is an attempt to create division and confusion in the House of Commons with a view to preventing Brexit going ahead. That is what is going on, and it is carefully orchestrated, as set out in the briefing to Labour Lords.

I was puzzled by this amendment because, like the noble Countess, Lady Mar, I wondered what it had to do with the Bill. The Bill is a simple, technical Bill which sets out to ensure that European law is translated into UK law when we leave the European Union. The amendment makes the commitment that Clause 1, which is the repeal of the European Communities Act, which was central to what the British people voted for, should be subject to some conditions about a customs union, or whatever. The Bill has nothing whatever to do with a customs union. What is going on here is an attempt to get the House of Commons to look at this issue again and create division among those people who wish to support the views of the British people.

I say to colleagues in this House: have a care with what we are doing. We are an unelected House, and this amendment and the other amendments are part of a campaign which is putting Peers against the people—

Noble Lords: Oh!

Lord Forsyth of Drumlean: Yes, it is. The people set out very clearly that they wished to leave the European Union, which meant leaving the customs union as well. As my noble friend Lord Lawson pointed out, it was central to the whole campaign. What is going on here is an exercise by remainers in this House—who are the majority—who refuse to accept the verdict of the British people, and I believe they are playing with fire. I hope that, on reflection, the amendment will not be carried.

Perhaps I may just pick up one point which was made—

Noble Lords: Oh!

Lord Forsyth of Drumlean: This is a debate. If I may, I will pick up one point as a point of information to my noble friend Lord Ridley, which was the suggestion that the customs union does not discriminate against African countries. Why is it that Germany exports more coffee than the whole of Africa? Answer: because there is a tariff barrier on any finished products. If African countries wish to export coffee beans, that is fine, but if they wish to turn them into an added-value product and create jobs and industries, they are subject to, I think, a 7% tariff. I would have thought that the noble Lord, with all his experience, would have known that, but it is typical of the way in which this campaign has been organised by the remainers: misleading the British public and trying to overturn the decision which the people made with the full knowledge of everything involved.

The noble Lord says, "Calm down", but I believe in this House. I believe it has an important duty to carry out and it is quite outrageous that people are trying to use this House to overturn the wishes of the British people.

Baroness Hayter of Kentish Town: I am so delighted that I gave way to the noble Lord, Lord Forsyth, because he has exposed that it is not the Labour Party, nor is it this House, spreading disarray over Brexit: the Government are doing that quite well by themselves in the other House. We are saying that the Bill is a part of what started with Article 50: looking at how we leave the European Union. As we know, a part of what will come at the end will be our future relationship with the European Union. That is why it is absolutely correct that this House discusses it in this Bill.

On the particular amendment—of course the meat of it is Amendment 4 rather than Amendment 1—it is right for us to cover it, and it is right for us to support it today. It is right for the country. It is demanded, as we have heard, by industry and by trade unions. It is vital for the future of Ireland—although not repeated again today, we have heard that before. It will also get the Government off a hook of their own making: their adoption of the red line of leaving the customs union, which was taken without any impact assessment, without any consultation with business, investors, farmers, exporters or importers, and when the Prime Minister had a Commons majority. Come election night in 2017, soon after 2 am, David Davis admitted on air that the Government might have lost their mandate to exit the customs union. As he said,

"that's what we put in front of the people, we'll see tomorrow whether they've accepted that or not".

They did not. There was no majority for that red line. There was no mandate for a hard Brexit.

This amendment is good for the governance of this country. It reflects the rejection of that part of the Government's manifesto. It would save the economy

[BARONESS HAYTER OF KENTISH TOWN]

£24 billion over the next 15 years, which ejection from the customs union would otherwise cost. The amendment would allow full access to European markets, no new impediments to trade, no reductions in standards, no tariffs on goods traded with the EU and common tariffs on goods imported from other countries. This presents no problems for increasing trade outwith the EU; as the noble Lord, Lord Patten, has already said, Germany exports more than we do to China. Even Liam Fox admitted that a customs union self-evidently does not prevent us from increasing bilateral trade with countries such as China. The CBI, as we have heard, stresses that the EU is businesses' preferred market by far. Three-quarters of exporting companies are selling into the EU and the vast majority of them are SMEs. We have already heard the Japanese ambassador warning that Japan's firms will leave Britain if Brexit makes it unprofitable to stay—that is a real risk with new tariffs, if we are outside the customs union. As we have heard, there is a high level of integration between the UK and EU supply chains, so checks, delays, and VAT charges all challenge the bottom line. Rules of origin, which we have heard about, could cost up to 15% of trade.

There are also physical challenges. The British Ports Association says that, with 95% of imports and exports handled by its ports, if we have anything like the customs checks that we now have on non-EU imports, it could take 45 minutes per lorry. A quarter of trade between the UK and continental Europe goes through the Channel Tunnel, as indeed does most of the Republic of Ireland's road freight into mainland Europe. Folkestone—there is a bad joke coming—would look more like stone than folks. We had to have one—I warned your Lordships it was bad.

Last year, the CBI, the Institute of Directors, the British Chambers of Commerce, the EEF and the Federation of Small Businesses all called for tariff-free goods trade between the UK and the EU, in preference to the Government's slightly weasel words of "as tariff-free as possible". The CBI stresses that frictionless trade with the EU is businesses' number one priority and that some form of a customs union is necessary to ensure frictionless trade and no hardening of the Irish border. We have heard already about Airbus, Boeing and Rolls-Royce all saying that a customs union would best support the free flow of goods. Ford, the biggest car manufacturer, argues that any sort of border restrictions or customs friction will be an inhibitor for us continuing to trade the way we have done. The Food and Drink Federation wants a tariff-free customs union. And so it goes on.

We have heard it from industry, we hear it from trade unions, we have heard it from Northern Ireland, and indeed southern Ireland, and it is the same for our regions. Those particularly identified by the Government's impact assessments will be of interest to the Minister: the north-east and the West Midlands. Those are the areas that will be most affected by Brexit if we have more customs and less trade. They are major exporters of cars, food and other goods.

This amendment is not about us playing politics; it is not about us unscrambling Brexit: it is about how we leave the EU. It is about our future relationship once we are outside. All it asks is for the Government to seek to negotiate our participation in a customs union with the EU. We will support this for the sake of the economy and for the sake of the country.

5 pm

The Minister of State, Department for Exiting the European Union (Lord Callanan) (Con): My Lords, it is a great pleasure for me to resume our debate after the Easter Recess. I hope that all noble Lords enjoyed a good break. I spent most of it studying amendments to this Bill. I hope that some doubts about how seriously the Government take these debates have now been dispelled, as noble Lords will have seen that the Government have already tabled many amendments on key aspects of the Bill. Further amendments will follow, relating to the provisions on delegated powers and on devolution. It is our firm and consistent desire to find consensus in this House on the contents of the Bill wherever possible, and I hope that our debates can proceed on a reasonably collaborative basis.

Unfortunately, as in Committee, we start our proceedings with some amendments to the Bill that the Government cannot envisage accepting—or indeed any variant on them. That is not, of course, to impugn the motivation of those supporting the amendments or to deny the importance of the subject matter. Put simply—this will probably surprise nobody in the House—the Government simply do not agree with the proposed approach.

I am, of course, grateful to all those who have taken part in this debate on the vital issue of our future economic relationship with the EU. As the Prime Minister stated in her Mansion House speech, we are seeking the broadest and deepest possible partnership, covering more sectors and co-operating more fully than under any free trade agreement anywhere in the world today. The Government have been clear that the UK, in its entirety, is leaving the customs union. For the sake of clarity, a customs union—as has been pointed out by many noble Lords—has a single external border and sets identical tariffs for trade with the rest of the world. International trade policy is consequently an exclusive competence of the EU, to avoid the creation of different customs rates in different parts of the EU customs union.

The nub of the issue is this. If the UK were to remain in the customs union and be bound by the EU's common external tariff, it would mean providing preferential access to the UK market for countries that the EU agrees trade deals with, without necessarily gaining preferential access for UK exports to such countries. Alternatively, we would need the EU to negotiate with third countries on the UK's behalf. This would leave us with less influence over our international trade policy than we have now, and would not, in our humble assertion, be in the best interests of UK businesses.

By leaving the customs union and establishing a new and ambitious customs arrangement with the EU, we will be able to forge new trade relationships with our partners around the world and maintain as frictionless trade as possible in goods between the UK and EU, providing a powerful and positive voice for free trade

across the globe. There are real opportunities for the UK from increasing our trade with fast-growing economies around the world. The EU itself predicts that 90% of future world GDP growth is expected to be generated outside Europe—a trend expected to continue over the next five to 10 years.

In assessing the options for the UK's future customs relationship with the EU, the Government will be guided by what delivers the greatest economic advantage to the UK, and by three key strategic objectives. First, we want to ensure that UK-EU trade is as frictionless as possible. Secondly, we want to avoid a hard border between Ireland and Northern Ireland—a commitment that was solidified by December's joint report. Thirdly, we want to establish an independent international trade policy.

Last year, in its future partnership paper, the Government set out two potential options for our customs arrangements with the EU. These were reiterated by the Prime Minister in her speech at the Mansion House earlier this year. I will give a few more details of those options.

Option 1 is a new customs partnership between the UK and the EU. At the border, the UK would mirror the EU's requirements for imports from the rest of the world whose final destination is the EU—including by applying the same tariffs and the same rules of origin as the EU for those goods. By following this approach, we would know that all goods entering the EU via the UK would pay the correct EU duties, removing the need for customs processes at the UK-EU border. But, importantly, we would also put in place a mechanism so that the UK would be able to apply its own tariff and trade policy for goods intended only for the UK market.

The second option would be a highly streamlined customs arrangement under which, while introducing customs processes between the UK and the EU, we would jointly agree to implement a range of measures to minimise frictions to trade, together of course with specific provisions for Northern Ireland. This option would include measures to simplify the requirements for moving goods across borders; it would reduce the risk of delays at ports and airports; and it would see the continuation of existing levels of UK-EU customs co-operation, with mutual assistance and data sharing.

Of course, the precise form of any new customs arrangements will be the subject of negotiation, and this will form a key part of our future economic partnership with the European Union. The Government have formed this policy not arbitrarily but because we do not believe that a customs union is in the best interests of the UK and of UK businesses.

I understand that many noble Lords disagree with our analysis, or believe that our goals are unreachable. However, we cannot support Amendments 1 and 4, tabled by the noble Lord, Lord Kerr, and Amendments 2 and 5, tabled by the noble Lord, Lord Wigley, which would have the effect of requiring the Government to make a Statement to Parliament on the steps taken towards the delivery of an objective the Government have clearly ruled out.

We in the Government are trying to seek the best possible future arrangements for the UK. I am confident we will succeed, and the progress we have made already in areas that many thought impossible demonstrates how all sides have been willing to break new ground in order to move forwards. We have set out our two potential options for a future customs relationship with the EU, but these amendments would send a signal that the Government will not seek to negotiate them, and instead pursue an outcome that the Government have ruled out.

I hope that noble Lords will accept our sincerity in our negotiating goals. I will also add, before noble Lords make a final decision, that I do not seek to give false hope that the Government will reflect further between now and Third Reading. I therefore hope that the noble Lords, Lord Kerr and Lord Wigley, will not press their amendments.

Lord Kerr of Kinlochard: I thank all noble Lords who have taken part in this fascinating debate. Some made speeches that were more predictable than others, and the Minister's was a classic restatement of the position that the Government have explained all along; I am grateful to him for repeating so clearly what he has said so many times before.

I ought to pay tribute to my past—my various masters from the past—who are marking my homework so harshly. I owe the noble Lord, Lord Lawson, an apology. I am sure that he explained to the country at large the truth about the customs union and that he did it every day, morning, noon and night, but I am not sure that the country was listening. What I remember is the man who is now the Foreign Secretary telling the country, "Nobody is even talking about leaving the single market". He published that the day after the referendum, having said it throughout the referendum campaign. So I exonerate the noble Lord—I have to; he was my boss.

As for the noble Lord, Lord Lamont, and a number of others, including the noble Lord, Lord Howarth, I ask them to please read what the amendment says. We are not asking for Britain to stay in the EU customs union—we cannot. As a non-member of the EU, we cannot be a member of the customs union. We are asking for an arrangement that enables us to participate in "a" customs union, and I say to the noble Lord, Lord Lamont, that it does not follow that we can only get the deal that the Turks got. At the time, Turkey's main concern was the export to the EU of its walnuts. I do not believe that that would be the principal concern if the Government were to act on this and start negotiating for a customs union. I cannot answer the noble Lord, Lord Forsyth, but he is much better informed about Labour Party policy than I am.

In the course of my speech I was very worried to see the noble Viscount, Lord Ridley, nod enthusiastically. I hesitated, but I realised that it was only because I had cited Professor Patrick Minford. I will know not to do it again.

Although the Minister's response was a beautiful restatement of government policy, it did not deal with any of the arguments advanced by those of us who tabled the amendment. The best argument made in the debate was that of the noble Lord, Lord Wigley. The customs union was not fully debated in the House of Commons as it dealt with this Bill. It is the job of the House of Lords to give the House of Commons the

[Lord Kerr of Kinlochard]

opportunity to debate whether we should seek a customs union. There are plenty of customs unions of various kinds between various countries around the world, and they are all sui generis. I do not know what terms we could get but we will never know unless we find out. I should like to test the opinion of the House.

5.11 pm

Division on Amendment 1

Contents 348; Not-Contents 225. [The Tellers for the Contents reported 348 votes, the Clerks recorded 347 names.]

Amendment 1 agreed.

Division No. 1

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Adebowale, L.
Adonis, L.
Ahmed, L.
Alderdice, L.
Allan of Hallam, L.
Allen of Kensington, L.
Alli, L.
Altmann, B.
Alton of Liverpool, L.
Anderson of Swansea, L.
Andrews, B.
Arbuthnot of Edrom, L.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Balfe, L.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Benjamin, B.
Berkeley, L.
Best, L.
Bhatia, L.
Bichard, L.
Bilimoria, L.
Billingham, B.
Birt, L.
Blackstone, B.
Blair of Boughton, L.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Boothroyd, B.
Bowles of Berkhamsted, B.
Bowness, L.
Boyce, L.
Bradley, L.
Bradshaw, L.
Bragg, L.
Brinton, B.
Broers, L.
Brooke of Alverthorpe, L.
Brookman, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burnett, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Cameron of Dillington, L.
Campbell of Pittenweem, L.
Campbell-Savours, L.
Carlile of Berriew, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chidgey, L.
Christopher, L.
Clancarty, E.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clement-Jones, L.
Collins of Highbury, L.
Colville of Culross, V.
Cooper of Windrush, L.
Cormack, L.
Corston, B.
Cotter, L.
Coussins, B.
Crawley, B.
Crisp, L.
Cunningham of Felling, L.
Darling of Roulanish, L.
Dear, L.
Deben, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Drayson, L.
D'Souza, B.
Dubs, L.
Durham, Bp.
Eatwell, L.
Elder, L.
Elystan-Morgan, L.
Evans of Watford, L.
Falconer of Thoroton, L.
Falkland, V.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Goldsmith, L.
Gordon of Strathblane, L.
Goudie, B.
Grabiner, L.
Grantchester, L.
Green of Hurstpierpoint, L.
Greengross, B.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Hailsham, V.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskel, L.
Haskins, L.
Haughey, L.
Haworth, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hennessy of Nympsfield, L.
Heseltine, L.
Hilton of Eggardon, B.
Hoffmann, L.
Hollick, L.
Hollis of Heigham, B.
Horam, L.
Howe of Idlicote, B.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Hutton of Furness, L.
Hylton, L.
Inglewood, L.
Irvine of Lairg, L.
Janke, B.
Janvrin, L.
Jay of Ewelme, L.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Jones, L.
Jowell, B.
Judd, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kerslake, L.
Kingsmill, B.
Kinnock of Holyhead, B.
Kinnock, L.
Kirkhill, L.
Kirkhope of Harrogate, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Laming, L.
Lansley, L.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Leeds, Bp.
Leitch, L.
Lennie, L.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lipsey, L.
Lister of Burtersett, B.
Listowel, E.
Lisvane, L.
Livermore, L.
Low of Dalston, L.
Luce, L.
Ludford, B.
Macdonald of River Glaven, L.
MacKenzie of Culkein, L.
Mackenzie of Framwellgate, L.
Macpherson of Earl's Court, L.
Maddock, B.
Mandelson, L.
Manningham-Buller, B.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Massey of Darwen, B.
McAvoy, L. [Teller]
McDonagh, B.
McGregor-Smith, B.
McIntosh of Hudnall, B.
McIntosh of Pickering, B.
McKenzie of Luton, L.
McNally, L.
Meacher, B.
Miller of Chilthorne Domer, B.
Mitchell, L.
Mogg, L.
Monks, L.
Moonie, L.
Morgan of Drefelin, B.
Morgan of Huyton, B.
Morgan, L.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Murphy, B.
Myners, L.
Newby, L.
Northbrook, L.
Northover, B.
Oakeshott of Seagrove Bay, L.
O'Donnell, L.
O'Neill of Bengarve, B.
O'Neill of Clackmannan, L.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parekh, L.
Parminter, B.
Patel of Bradford, L.
Patel, L.
Patten of Barnes, L.
Pinnock, B.
Pitkeathley, B.
Plant of Highfield, L.
Ponsonby of Shulbrede, L.
Prescott, L.
Primarolo, B.
Prior of Brampton, L.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Radice, L.
Ramsay of Cartvale, B.
Ramsbotham, L.

Randerson, B.
Razzall, L.
Rea, L.
Rebuck, B.
Redesdale, L.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Richardson of Calow, B.
Ricketts, L.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Singh of Wimbledon, L.
Smith of Basildon, B.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
St Albans, Bp.
St John of Bletso, L.
Steel of Aikwood, L.
Stephen, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Symons of Vernham Dean, B.
Taylor of Bolton, B.
Teverson, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Thurso, V.
Tomlinson, L.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tugendhat, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Turnbull, L.
Tyler of Enfield, B.
Tyler, L.
Uddin, B.
Vaux of Harrowden, L.
Verjee, L.
Verma, B.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warner, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watson of Richmond, L.
Watts, L.
Waverley, V.
Wellington, D.
Wheatcroft, B.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Willetts, L.
Willis of Knaresborough, L.
Wilson of Dinton, L.
Wood of Anfield, L.
Woolf, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Norwood Green, L.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Astor, V.
Attlee, E.
Baker of Dorking, L.
Bamford, L.
Bates, L.
Berridge, B.
Bertin, B.
Bew, L.
Black of Brentwood, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Brown of Eaton-under-Heywood, L.
Browne of Belmont, L.
Browning, B.
Burns, L.
Buscombe, B.
Byford, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Carswell, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chartres, L.
Chester, Bp.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cope of Berkeley, L.
Courtown, E. [Teller]
Couttie, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Cromwell, L.
Cumberlege, B.
Dannatt, L.
De Mauley, L.
Deech, B.
Dixon-Smith, L.
Dobbs, L.
Duncan of Springbank, L.
Dunlop, L.
Eaton, B.
Eccles of Moulton, B.
Eccles, V.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Falkner of Margravine, B.
Farmer, L.
Faulks, L.
Feldman of Elstree, L.
Fellowes of West Stafford, L.
Fellowes, L.
Fink, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goschen, V.
Grade of Yarmouth, L.
Green of Deddington, L.
Greenway, L.
Griffiths of Fforestfach, L.
Hamilton of Epsom, L.
Hanham, B.
Harding of Winscombe, B.
Harris of Peckham, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Kakkar, L.
Kalms, L.
Keen of Elie, L.
Kilclooney, L.
King of Bridgwater, L.
King of Lothbury, L.
Kinnoull, E.
Kirkham, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Lothian, M.
Lucas, L.
Lytton, E.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mallalieu, B.
Mancroft, L.
Manzoor, B.
Marlesford, L.
Maude of Horsham, L.
Mawson, L.
McColl of Dulwich, L.
McInnes of Kilwinning, L.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Morrow, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Palumbo, L.
Pearson of Rannoch, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Powell of Bayswater, L.
Price, L.
Rana, L.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ridley, V.
Risby, L.
Robathan, L.
Rogan, L.
Rotherwick, L.
Saatchi, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Slim, V.
Smith of Clifton, L.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stevens of Ludgate, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Swinfen, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Trevethin and Oaksey, L.

Trimble, L.
True, L.
Ullswater, V.
Vere of Norbiton, B.
Vinson, L.
Wakeham, L.
Walker of Aldringham, L.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Willoughby de Broke, L.
Wilson of Tillyorn, L.
Wolfson of Aspley Guise, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

5.30 pm

Amendments 2 and 3 not moved.

Amendment 4 agreed.

Amendment 4A (to Amendment 4) not moved.

Amendment 5 not moved.

Amendment 6

Moved by ***The Earl of Sandwich***

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

"(2) Regulations bringing into force subsection (1) may not be made until the Secretary of State has laid before both Houses of Parliament such procedures as have been agreed with the EU for continued coordination of international aid and development policy, including association with the EU's European Development Fund, ECHO, humanitarian aid missions and similar institutions, and these procedures have been approved by a resolution of each House of Parliament."

The Earl of Sandwich (CB): My Lords, in proposing Amendment 6, I would like to remind noble Lords that in Committee the noble Lord, Lord Wallace of Saltaire, moved an important amendment, Amendment 12, on foreign policy and security. International development was mentioned only in passing, so I wish to make up for that today and I am grateful for the support of colleagues who have experience of development. I intervened only briefly in Committee and I promise not to take up more than a few moments of valuable time on Report.

International aid used to be an also-ran subject in Parliament, but the Blair Government and the Cameron-Clegg coalition changed all of that, although some are still restless about the 0.7% target. Foreign policy, security, trade and aid are all closely joined up these days and the aid programme now involves several government departments.

I believe that this country has enjoyed a long and beneficial period of EU membership, during which we have developed close ties with several European aid agencies, the most prominent of which are the European Development Fund, ECHO, the humanitarian fund, and the Commission's own aid instrument. We have been paying considerable amounts into these funds and we have worked alongside them in our own aid programmes around the world. DfID has a significant EU department which manages these relationships over here, in Europe and in the many countries that benefit. As you would expect, these aid programmes are monitored by committees of both Houses such as our own EU Committee, which I hope we shall retain, as well as by watchdogs like the National Audit Office and the Independent Commission on Aid Impact. How are we going to continue to be associated with these EU programmes after Brexit?

I know that during the passage of the Bill there have been continuous hopes of association with all kinds of things European, but the Government are full of empty reassurances. That is why we have to keep reminding Ministers that they are important, even in a withdrawal Bill. In the words of the amendment, we need,

"continued coordination of international aid and development policy".

I am sorry for those Peers with distinguished foreign policy backgrounds who spoke on Amendment 12 because they got next to nothing back from the Front Bench except honeyed words. For instance, my old friend the noble Viscount, Lord Hailsham, wanted to ensure that the UK is a full participant in the formulation of foreign and security policies, while others like my noble friend Lord Hannay warned that it might already be too late for the Government to set up any alternative framework for our future foreign and security policy. Why should we wait so long? The main excuse offered is that we would be showing our cards too early. Do we have to wait for the very final deal or beyond that to transition, or even no deal? How can Monsieur Barnier be expected to negotiate when there is nothing but air to negotiate with, and why should our sovereign Parliament have to wait in the meantime?

If you read the Lancaster House speech made in January 2017 or the partnership paper from last September *Foreign Policy, Defence and Development*, you might believe that the Prime Minister was already satisfied with our relationship with the EU and our present association with many EU institutions—and perhaps she is. From the vote we have just had, I believe that so are the majority of us here in Parliament. Yet she still delays, and despite all the talk of partnership, what you do not get is any sense that this fine association is going to continue. Instead, you get woolly phrases such as:

"The UK would like to offer a future relationship that is deeper than any current third country partnership".

I would like to think that the Commission is already making contingency plans for some kind of association agreement between the UK and the EU development agencies. However, the Minister may well say that it has enough trouble already in rethinking its own aid programmes, which is true. However, sitting at the edge of a table is not as good as sitting at the table, especially after you have somewhat ostentatiously kicked back the chair and given up your place.

Moreover, what about the people engaged on the ground—the aid workers and managers of aid programmes; what can they look forward to? Many aid agencies in this country which are receiving grants from various EU budgets are unable to plan ahead. What is being done to help them through this transition, because they cannot expect DfID to pick up the tab at short notice?

Another area is development education, a subject about which we have already heard a lot during the course of the Bill. A wide variety of NGOs are drawing

on EU central funding to interpret development issues abroad through events and exhibitions about Africa and subjects in Asia. The Bond organisation has done a lot of work on future collaboration of civil society organisations in the EU which may help Her Majesty's Government with their plans.

In conclusion, as I said at Second Reading, EU member states form the world's largest source of development funding and, taken together, they make a huge contribution to poverty reduction and help to defeat epidemics. They are currently interlocked through the various aid organisations and, despite the UK's prominent position in the EU during these two years of pre-Brexit meandering, we still have no idea how the structures can be dismantled and replaced. I beg to move.

Lord Bruce of Bennachie (LD): My Lords, I rise briefly to support the noble Earl, Lord Sandwich, and I was happy to add my name to the amendment. I want just to reinforce the point that currently the UK delivers £1.5 billion a year of its aid through EU institutions, and indeed 15% of the European Development Fund comes from the UK, so it is in the interests both of the UK and the EU that we should continue to co-operate.

Much more practically, in the two multilateral aid reviews that have been carried out by the Department for International Development, the delivery of aid by EU agencies has been described as "Very Good" in terms of the "Match with UK development objectives" and operational performance, so it does deliver for us. It is also the case that it is entirely consistent with the EU for non-member states to contribute to European development funding because both Norway and Switzerland contribute to the European Development Fund.

The other issue that is causing concern if there is no continuing engagement is the Caribbean and Pacific regions, whose relationship with the EU they value very much, but which has been strongly championed by the UK as a member. If we continue to participate, they will be reassured by knowing that our voice will have some influence on ensuring that their interests are safeguarded.

A final point made by the noble Earl, Lord Sandwich, was that many of our NGOs—our development contractors and specialists—are involved in helping to deliver EU programmes. It would be very much in their interests, as well as those of the EU, if they were able to continue to be part of a European objective which—it is important that the House understands this—delivers aid and development in parts of the world that the UK does not reach because it does not have an operational presence where the EU does. I support the amendment; it is entirely consistent with our record in the past and would be a very positive development for the future.

Lord Crisp (CB): My Lords, I added my name to the amendment because it is very much in the interests of both donor countries and the countries that receive that aid. I agree with the points made by the noble Lord, Lord Bruce, as well as those made earlier by my noble friend Lord Sandwich in moving the amendment —in particular, his last and hugely important point about co-ordination and continued partnership, building on what we have already got.

I will not labour those points at all. I want to make just one additional and very practical point. For years, recipient countries have received aid from different countries with different monitoring arrangements and different conditions—or, if you like, with different strings attached. This is costly; indeed, it is wasteful because it puts an unnecessary burden on those countries. The international community has tried over many years, with some success, to align or harmonise these arrangements so as to reduce this wasteful burden and, by doing so, make sure that it gets the best value possible from its donations.

Of course, there are also advantages in countries aligning their priorities to have as big an impact as possible, which is helped enormously by the global priorities set out in the sustainable development goals. However, having made those points about alignment, this amendment does not constrain the UK in its future decision-making in any way. It merely seeks to ensure that, wherever possible—I stress that—there is alignment between its donations and those of our neighbours and that they can be made as efficiently as possible. The UK can, of course, choose to diverge from its neighbours, but this amendment would merely require it to do so in full knowledge of what it is doing.

Lord Collins of Highbury (Lab): My Lords, I support the amendment on behalf of the Opposition. As we have heard in the debate so far, in the words of the Government's own review of their actions, the European Development Fund is one of the most efficient and effective global agencies. The point being made is that, through action in concert and working co-operatively, we amplify our actions. We get more for our buck as a consequence of working with others. Certainly, the European Union has been key in delivering effective development support.

When we had a discussion about both the multilateral and bilateral review documents, and when we had Oral Questions on the subject, the Minister—the noble Lord, Lord Bates—acknowledged all these points. He said, "Well, these are matters for negotiations". He was even questioned on how we can deal with transition. If we simply stop and say, "Well, these things will come back into our control", we do not deal with the question of the long-term funding arrangements that are currently in place. We need to know the answer to these questions. It is simply not good enough to say that they will be dealt with eventually. These matters are too important to be left to some eventuality in the distant future.

5.45 pm

Baroness Goldie (Con): My Lords, I am grateful for the opportunity to respond to Amendment 6—tabled by the noble Earl, Lord Sandwich, and supported by the noble Lord, Lord Crisp—concerning the co-ordination of international aid and development policy once we have left the EU. This matter is important and I hope to respond with some adequacy to the points that have been made.

[Baroness Goldie]

As noble Lords know, the Government have committed to meet all the financial obligations that we have to the European Development Fund and other EU development instruments up to December 2020, when both the implementation period and the current EU Multiannual Financial Framework will end. As a world-leading development donor, we will continue to honour our commitments to the world's poorest and seek to shape how the EU spends those funds through all the means available to us after exit. Once we have left the EU, the EU will remain one of the largest development spenders and influencers in the world, as will the UK. Let me assure your Lordships that we want to retain a close partnership with the EU in the future. It is in the interests of both the UK and the EU that we work coherently together—a point rightly emphasised by the noble Lord, Lord Collins—in response to specific crises overseas and in helping the world's most vulnerable people. Importantly, we share the concerns and values of the EU, and the commitment to the sustainable development goals, Paris climate change agenda and Addis Ababa agreement on financing for development. We share a commitment to the 0.7% contribution and to testing new and innovative approaches to financing the "billions to trillions" agenda.

The EU's development priorities are closely aligned with the UK's; indeed, they have been shaped to a considerable extent by the UK during our EU membership. For example, our approach to addressing the root causes of migration and meeting humanitarian needs from the outset in a way that prepares for longer-term crisis response are based on our common experiences and joint shaping of best practice in development programming. Where we hold these shared commitments and objectives, it is in our mutual interest to find ways to continue working together, on a case-by-case basis, to ensure that we can collectively draw on expertise and resources, achieve our global development objectives and deliver the best value for money. As the Prime Minister said in her Munich speech,

"if a UK contribution to EU development programmes and instruments can best deliver our mutual interests, we should both be open to that".

In September last year, we published a future partnership paper setting out our desire for future co-operation with the EU on development that goes beyond existing third country arrangements and builds on our shared interests and values. As we enter a more forward-looking phase of negotiations with the EU, we look forward to discussing what this partnership will look like.

However, while we have clearly signalled to the EU our openness to a future partnership on development, that partnership will be contingent on the current discussions between the European Commission and member states on how the EU will finance international development after 2020. Put simply, the EDF will not exist in its current form after 2020, and nor will the other instruments that currently fund development programmes through the EU budget. The European Commission and member states are engaged in ongoing discussions about how the EU will fund its development priorities in the future, as referred to by the noble Lord, Lord Bruce. It is not at all clear currently whether the EU's future development finance instruments will allow participation by non-member states. The current set of instruments—including ECHO and the EDF—are open to contributions from members of the EU only. We are encouraging the EU to design a more open and flexible enabling framework within which it can work with its partners to tackle global development challenges and build a secure, stable and prosperous world. We envisage that holding these development financing instruments open to third countries would enable the UK to work through the EU on a case-by-case basis where we judge our development impact would be amplified.

Finally, assuming that the EU designs a set of future development instruments that is open to non-member states to participate in, we would of course need to be satisfied with the terms of such participation. In particular, we would need to be assured of adequate governance arrangements to allow us to track and account for our spending and the results we deliver. We are also clear that the UK's world-class development sector should be eligible to implement EU programmes to which the UK contributes. I say to the noble Earl, Lord Sandwich, that in this context, I think I can say that while the Government are in agreement with the spirit in which the amendment is offered—the spirit of a future partnership with the EU on development—we do not agree that it would be appropriate to legislate at the moment for a future partnership that as yet, we know so little about, or indeed that relies on EU instruments that will be obsolete by the end of the implementation period.

I said at the beginning that I wanted to try to provide a response of some adequacy because this is a very important issue. Very good ongoing work is taking place. I hope that this provides your Lordships' House with the reassurance that the UK is closely engaging with the EU to shape that vital future relationship and, in those circumstances, that the noble Earl feels able to withdraw his amendment.

The Earl of Sandwich: I thank the Minister very much for her response. I am obviously not going to put the amendment to a vote—it is a sort of respite period between the other votes—but I maintain that it is an important subject linked to many other existing big issues. Aid is a mightier weapon than most people realise. I would like to see it get a higher status. I was a bit disappointed that no Bishops joined in the debate, but there we are.

Global priorities were rightly mentioned by the noble Lord, Lord Crisp, and some by the Minister. I am glad that she went forward to talk about what might happen in the European Union, because changes are afoot. We have to work alongside those when we reach the point of association. I know that the Government recognise that there are shared values. We are all still Europeans and we share similar commitments and objectives. With that, I beg leave to withdraw the amendment.

Amendment 6 withdrawn.

Amendment 7 not moved.

Amendment 8

Moved by ***Baroness McIntosh of Pickering***

8: After Clause 2, insert the following new Clause—

"Status of EU directives adopted, but not implemented, before exit day

(1) Unless already part of retained EU law under any other provision of this Act, all EU directives adopted but not implemented before exit day, including those listed in subsection (4), remain binding in domestic law, as if the United Kingdom had not left the EU.

(2) In implementing any EU directive under subsection (1) after exit day, a Minister of the Crown may use any power set out in the European Communities Act 1972 as if that Act had not been repealed.

(3) If, through implementing a directive under subsection (2), a situation arises which would be considered a deficiency had it arisen in retained EU law, a Minister of the Crown may use any of the powers set out in section 7 of this Act to remedy that situation as if that directive had been implemented before exit day.

(4) EU directives adopted, but not implemented, before exit day, include—

(a) Recognition of Professional Qualifications Directive (2017/2397);

(b) Fraud (criminal law) Directive (2017/1371);

(c) Accessibility of websites and mobile applications Directive (2017/2102);

(d) Legal aid (suspects, accused persons and those under European Arrest Warrant proceedings) Directive (2016/1919);

(e) Rail safety Directive (2016/798);

(f) Rail interoperability Directive (2016/797);

(g) Safeguards for child suspects in criminal proceedings Directive (2016/800);

(h) Trade marks Directive (2015/2436);

(i) Financial instruments Directive (2014/65);

(j) Cost-effective emission reductions and low-carbon investments Directive (2018/410);

(k) Environmental assessments (genetically modified organisms) Directive (2018/350);

(l) Maritime workers Directive (2018/131);

(m) VAT Directive (2017/2455);

(n) Health and safety (exposure to carcinogens or mutagens at work) Directive (2017/2398);

(o) Passenger ships (safety and standards) Directive (2017/2108);

(p) Passenger ships (passenger registration) Directive (2017/2109);

(q) Passenger ships (inspections) Directive (2017/2110);

(r) Hazardous substances (electronic equipment) Directive (2017/2102);

(s) Tax dispute (resolution mechanisms) Directive (2017/1852);

(t) Hybrid mismatches (third countries) Directive (2017/952);

(u) Weapons (control and acquisition) Directive (2017/853);

(v) Shareholder engagement Directive (2017/828);

(w) Maritime workers (International Labour Organisation) Directive (2017/159);

(x) Tax Avoidance Directive (2016/1164);

(y) Mayotte (status) Directive (2013/64)."

Baroness McIntosh of Pickering (Con): My Lords, in moving Amendment 8, which stands in my name and those of the noble Baroness, Lady Smith of Newnham, and the noble Lord, Lord Wigley, and Amendment 32, which is consequential to this amendment, I wish to press the Minister, my noble and learned friend Lord Keen, who replied to the debate last time. My starting point is that, despite urging my noble and learned friend and following his response to the debate that we had in Committee and subsequently in the cross-party meeting held between Committee and Report, we have seen no movement on this. Since Committee I have revised the amendment to include a list of those 23 directives that we know from a House of Commons briefing paper will fall into one particular category: directives adopted but not implemented before exit day. For clarity, I have attached that list.

However, it is important to point out that this list is not comprehensive. There are a number of other directives of which I am aware, such as the environmental directives relating to water. As has been brought to my attention by the City of London Corporation just today, there are further examples such as the second payment services directive 2015/2366, which will be implemented before exit day, but the regulatory technical standards underpinning its operation will not.

A second category of directives falls within the remit of this amendment, which are broadly packages of directives such as, for example, those referred to in Committee by the noble Baroness, Lady Young of Old Scone, to whom I am very grateful. This has been brought to our attention in a briefing from the Law Society of England. It is particularly concerned that there is no legal basis or mechanism as yet for Ministers to bring any measures into UK domestic law that are part of a package of EU legislation into which the UK will have had input as an EU member state and to which we agree. It is its recommendation that Ministers should be given powers to bring certain types of EU legislation into domestic law if it forms part of a package as this will reduce the impact on businesses and help them to prepare better.

There is then a third category that I believe falls into Amendment 9, which we will consider after this little group. Within that category there are regulations that fall to come into effect after exit day, but the main regulation will have been adopted before that. Again, the City of London gives the example of the prospectus EU regulation 2017/1129. The regulation itself, which is directly applicable, will have been in force since 20 July 2017, but the majority of the regulation will not apply until 21 July 2019, which will mean we will no longer be in regulatory alignment with the European Union after that date.

To sum up the little debate we had on this in Committee, my noble and learned friend Lord Keen, who I am delighted to see in his place, was rather brutal and frank. He said that there might be directives that have been adopted that have not been subject to implementation by the exit date because the transition period extended beyond the exit date. He went on to say:

> "There is no legal basis for doing so. With great respect to my noble friend, her amendment would not actually provide one; that is perhaps an aside".

[Baroness McIntosh of Pickering]

The central point is that,

"directives that have been adopted but not implemented by the exit date, and which have a transition period that goes beyond the exit date, are not part of domestic law, and for the purposes of the Bill they will not become part of domestic law or EU retained law. Therefore, we will not be taking them into our domestic law by way of an implementation that takes place after",—[*Official Report*, 28/2/18; col. 689.]

that date.

My purpose in bringing forward the amendment is simply to request that my noble and learned friend brings forward a legal basis today. When we had our meeting, for which we are extremely grateful, he said that it would be open to the Government at a future date to decide that a directive that fell into this category—adopted but not implemented—could be transposed by primary legislation and become part of retained EU law in that way. The question I put to my noble and learned friend is simple. This is very odd. Either it would lead to at least 23 pieces of primary legislation—23 separate Bills—or one Bill giving individual effect to all the separate pieces of legislation, not just the 23, but the others to which I have referred, in which case it would extend Henry VIII powers beyond those we have already identified. My further question to the Minister would therefore be: what precedent is there for this, and where would the parliamentary scrutiny fall?

In speaking to these amendments, I hope for further clarification, and a commitment and an undertaking from my noble and learned friend to give legal certainty about these two categories of legislation where directives have been adopted but not implemented before exit day.

6 pm

Baroness Smith of Newnham (LD): My Lords, I too have added my name to the amendment. It has been suggested that some amendments may be attempts to subvert the will of the people. For example, the noble Lord, Lord Forsyth, suggested that to discuss a customs union was somehow to go outside the purpose of the Bill. Amendment 8, however, speaks to the heart of the Bill, which, as I understand it, is intended to do two things. It will repeal the European Communities Act 1972, and it will ensure that on the day we leave, the United Kingdom has a full statute book and there is full regulatory alignment with the European Union.

There are clauses that deal with regulations, retained law and directives, and a clause to deal with regulations that currently have direct effect. But there is an anomaly in relation to directives that have been adopted but not yet implemented. There are two particularly important points in the title of the new clause in the amendment. The first is the fact that the directives have been adopted. In Committee, the noble Lord, Lord Pannick, suggested that things could change. But if the directives have been adopted they are already EU legislation—legislation in which the United Kingdom has participated. It seems somewhat strange that directives that we have been part of, and which we have implemented and enshrined in UK law, should continue to be part of our law, but that we are not transposing, nor looking for any way of transposing, other directives that we have agreed to, and which will be important as part of regulatory alignment when we leave.

The second important point in the title of the new clause is the idea that the directives will have been adopted before exit day. Exit day will, we believe, be 29 March 2019, unless subsequent amendments change it. We assume that there then will be a transition period to the end of 2020. During that time the United Kingdom will not be in the EU institutions and will not be party to any further directives. It therefore makes sense that we would not be party to directives adopted after exit date, during the transition period. For those that have already been adopted, however, there appears to be a period of limbo.

I would be grateful if the noble and learned Lord, Lord Keen, could explain how the Government intend to deal with these 23 directives. Are we simply saying that they do not matter—that somehow, directives agreed before the referendum are fine but we are not quite sure about those agreed later? What sort of certainty does that give to business? If the aim of the Bill is to give legal certainty, we have at least 23 directives, plus others that the noble Baroness, Lady McIntosh, mentioned, on which there is no certainty. This is an important amendment, and I shall be grateful if the Minister can explain what the Government plan to do with the directives to ensure that, on the day when we leave the European Union, there is certainty. Surely taking back control should include all areas from the point when we leave, following full regulatory alignment on exit day—and surely that needs to include these directives.

Lord Wigley: My Lords, I intervene briefly to support Amendment 8, moved by the noble Baroness, Lady McIntosh of Pickering, and supported by the noble Baroness, Lady Smith of Newnham, which also stands in my name. I spoke on this matter in Committee so I shall not repeat the points I made then. We were seeking greater clarity at that stage—and as far as I can see we still need that from the Minister—on the status of EU directives adopted but not implemented before exit day. I seek an assurance from the Minister that if an amendment of this kind is not accepted for inclusion in the Bill, the loose ends that will undoubtedly exist will be tied up by some other process later, whether in the implementation and withdrawal Bill or by some other device. Clearly some very valid issues have been raised by the noble Baroness, Lady McIntosh, and we need to be sure that they have been looked after in the legislative process.

Baroness Hayter of Kentish Town: My Lords, as has been said, this is an issue for which the Government simply have to produce a solution. For once I am quite glad that I am at the Dispatch Box on this side of the Chamber so it is not my problem—but I do know that it is a problem that the Government absolutely must solve. Let us consider some of the subjects covered by the list in the amendment: safeguards for child suspects in criminal proceedings; the recognition of professional qualifications, which will be extraordinarily important for business; health and safety; and the trademarks directive. We cannot afford to have gaps, particularly with something such as trademarks. This list covers issues that are already our policy and have been adopted with our consent,

so we need to find a way of getting them into our legislation. How that can be done, I hope the Minister will now tell us.

The Advocate-General for Scotland (Lord Keen of Elie) (Con): My Lords, I begin by apologising to the House, and to the noble Baroness, Lady McIntosh, for not having been in my seat when she moved the amendment. I can attribute that only to my oversight, and to a disappearing group of amendments.

We addressed this matter in Committee. As has often been said during the passage of the Bill, it is intended to create a snapshot of EU law as it applies in the United Kingdom immediately before exit day, and then to retain it in our domestic law following our departure. That has always been the necessary mechanism. It is crucial that this snapshot is taken accurately and with certainty, to ensure that, as far as possible, the law we have before exit will be the same as the law after exit. This is not merely a dry technical or legal point. It is fundamentally important to people, businesses and other organisations throughout the country that we should have that degree of certainty.

Keeping that in mind, I turn first to Amendment 8 and the questions that have been raised in that context. Unlike other EU law such as regulations, decisions, and tertiary legislation, EU directives are not intended to form a part of a member state's domestic law. Instead they require member states to bring forward their own national measures within a certain period of time, in order to implement their intended effect domestically. It is these domestic measures which are part of our law, and will be saved under Clause 2.

Questions have been raised about a series of directives that have been adopted, which have been helpfully listed by the noble Baroness, Lady McIntosh. The noble Baroness, Lady Smith, suggested that there was an anomaly in the situation when directives had been adopted at EU level but not implemented. However, with respect, where they have been adopted, so be it. Where they have been implemented we have a different scenario: they form part of our domestic law.

There are two developments that I wish to mention, because they impact on the amendment and the questions that have been raised in this context. First, the Government have reached agreement with the EU—subject to everything having to be agreed before anything is agreed—regarding an implementation period that will begin on 30 March 2019 and last until 31 December 2020. It is proposed and agreed that for the implementation period the United Kingdom will continue to follow and implement EU law, and that the existing EU mechanisms for supervision and enforcement will continue to apply. The proposed final agreement with the European Union will include the implementation period and its domestic effect. As the noble Baroness, Lady Smith, anticipated, that will be provided for by the withdrawal agreement and implementation Bill. That has an impact on the series of directives to which the noble Baroness, Lady McIntosh, refers in her Amendment 8. Before I turn to those directives, I should observe that at least two of them are directives in respect of which we have opted out; in other words, as member states can do, they can secure an opt-out from a directive and it is never implemented in their national law, nor is it intended that it should be so implemented. Those directives in the noble Baroness's amendment are: at paragraph (d), the legal aid (suspects, accused persons and those under European arrest warrant proceedings) directive; and, at paragraph (g), the safeguards for child suspects in criminal proceedings directive. In respect of those, there is already an opt-out in place; it was never intended that we would opt in and implement those directives—that is simply the position at the present time.

On the remaining directives listed in the amendment, there is a confusing reference to the websites and mobile applications directive, which I believe should be a reference to a 2016 directive. However, putting that to one side, I can say that all but two, or possibly three, of these directives will be implemented during the implementation period running up to 31 December 2020. That will be provided for by the withdrawal and implementation Bill, which is the instrument that will be employed for that purpose. Those directives will be addressed. There are exceptions. There are instances, for example, in which a directive can have a divided implementation period, where it may be only partially implemented before the final implementation period date of 31 December 2020. Essentially, we must come back to the fundamental requirement for an identifiable point at which we have ring-fenced and identified retained EU law. That is subject to what will go into a withdrawal and implementation Bill in the event of the implementation period agreement being implemented. That will cover all such legislation.

Amendment 32, also tabled by the noble Baroness, Lady McIntosh, would amend Clause 7 so that it would extend the correcting power of Ministers to include legislation arising after the snapshot had been taken. As set out before, Clause 3 seeks to convert direct EU legislation—regulations, decisions and tertiary legislation—as it applies in the UK immediately before our exit from the EU into our domestic statute book. This provision is a reflection of the snapshot approach taken by the Bill and is to ensure that our law stays as similar as possible following our departure to what it was immediately before our exit.

While most direct EU legislation will apply shortly after it is adopted, certain provisions within the legislation may be stated to apply in a staggered way on different dates. If the date falls after our exit from the EU, these provisions will not be retained by the Bill in our domestic law. That cut-off provides the necessary clarity for individuals and businesses to understand what the law is both pre and post the exit date.

Instead of seeking to change this clear cut-off point, the noble Baroness's amendment would amend how such staggered implementation within direct EU legislation may be treated for the purposes of the correcting power within Clause 7. As will be discussed in much greater detail on later days, the power contained in Clause 7 is designed to correct the "deficiencies" arising within retained EU law as a result of our withdrawal from the EU, thereby helping us to provide a functioning statute book from day one. As I understand it, the noble Baroness's intention in tabling Amendment 32 was to widen the definition of "deficiency" to include the provisions within direct EU legislation which are stated to apply after our exit from the EU, thereby

[Lord Keen of Elie]
giving Ministers the ability to use Clause 7 to bring them into our domestic law. That is currently prohibited by Clause 7(4).

6.15 pm

I understand what the noble Baroness is seeking to achieve within the amendment. I note that the clear cut-off point laid down in Clause 3 may give rise to some conclusions which are slightly unusual, where part of a regulation comes into retained EU law and part of it does not because its application date post-dates the exit date. However, Clause 7(4) is designed to reflect the same approach as that taken in Clause 3. There has to be a point at which we take back control of our law. The present power in Clause 7 is intended to be used to correct only deficiencies and not to extend the power of Ministers to bring into our law that which would not otherwise have been possible. The noble Baroness's amendment would appear to extend such Henry VIII powers beyond the realms in which even the Government anticipated they might be applied, which would not be appropriate. Of course, there will be the opportunity through the normal legislative process for Parliament to consider whether it wants to bring into our domestic law after the exit date matters that have been covered by regulations in EU law but not applied to us before the exit date, but that is a matter for the sovereign Parliament; it is not a matter for Ministers to try to correct a deficiency by means of this Bill.

To that extent, I hope that I have addressed the points raised by the noble Baronesses, Lady McIntosh and Lady Smith, and given some reassurance to the noble Lord, Lord Wigley, as to how we intend to deal with these outstanding directives as they will apply during the implementation period up to 31 December 2020. The provisions in respect of that latter point will be addressed in the withdrawal and implementation Bill; it is not intended that they should be addressed in this Bill, when we have not yet, as it were, signed on the dotted line with regard to that form of agreement.

I cannot hold out false hope that we will reflect further on this issue between now and Third Reading, so if the noble Baroness wishes to test the opinion of the House, she should do so now.

Baroness McIntosh of Pickering: That is a very tempting offer. I thank the noble Baroness, Lady Smith of Newnham, and the noble Lord, Lord Wigley, for their contributions. I am sure that my noble and learned friend meant no disrespect to the House and those of us who have spoken to and supported this amendment by being late and, perhaps because of his lateness, being unable to address many of the arguments that were put. I am disappointed in particular that he did not respond to my question whether he intends to have 23 or more Bills if the directives are to be transposed into EU law, as he undertook to do at a private meeting—obviously it was a private meeting; it was not a matter of record—that we had in the Chamber.

To my noble and learned friend's point that the UK has opted out of two of the directives, as he has said on two occasions, it is quite within the wit of the Government to opt in at a later date, so that is not a compelling argument. I welcome his placing on the record that the category of regulations that we are considering may fall in the transition period. It is my clear understanding—and, I think, the understanding of the House—that the European Union has agreed to a transition period. The Government perpetuate the myth that we are going to embark on an implementation period. It would be helpful to the House to be given clarification at some point as to what the different understandings of a transition period and an implementation period may be. It is my firm intention not to let this matter go, because it does fall within the scope of later groups of amendments, including those to be considered, as my noble and learned friend said, under Clause 7. I also understand that he has given a very clear commitment to the proposer of Amendment 9. Against that background, I thank those who supported this amendment and spoke to it and at this stage I beg leave to withdraw the amendment.

Amendment 8 withdrawn.

Clause 3: Incorporation of direct EU legislation

Amendment 9

Moved by ***Lord Patel***

9: Clause 3, page 2, line 30, at end insert—

"( ) For the purposes of this section, the Clinical Trials Regulation (2014/536) is deemed to be operative immediately before exit day, and therefore it forms part of retained EU law."

Lord Patel (CB): My Lords, I thank those who have put their names to my amendment: the noble and learned Lords, Lord Mackay of Clashfern and Lord Judge, and the noble Baroness, Lady Thornton. Many others wanted to add their names but were unable to do so: I see several nodding on either side and I thank them all. I also thank all noble Lords who spoke in Committee. There was strong support across the Committee, including, surprisingly to some perhaps, from the noble Lords, Lord Forsyth and Lord Lawson, and the noble Viscount, Lord Ridley, who cannot be accused of being strong remainers. Since then, we have had some very fruitful meetings with the ministerial team—the noble Lords, Lord Callanan and Lord O'Shaughnessy, the noble Baroness, Lady Goldie, and the noble and learned Lord, Lord Keen. I am grateful to them and their officials for meeting us all on two occasions. One was just yesterday and I apologise for my discourtesy in getting cross yesterday—I am sorry about that, it was for other reasons.

The amendment seeks to secure a commitment from the Government that they will align the UK with the clinical trials regulation. It is important to the research community, pharma and, indeed, the EU institutions that the UK strongly wishes to collaborate in clinical trials across the EU, and it is important to do so, particularly as we begin to develop medicines that are more precise—precision medicines for individuals. I hope that we will get some commitment from the Government to do so. That is as much as I am going to say. I beg to move.

Baroness Goldie: My Lords, it may help if I speak now and then allow other noble Lords to comment: that might help elucidate the situation. This is a very important issue and I am grateful to the noble Lord, Lord Patel, for providing me with the opportunity to make clear the Government's position on the UK's future clinical trials framework and to provide clarity on the introduction of the new EU clinical trials regulation.

As the noble Lord knows, the MHRA is working towards the implementation of the new clinical trials regulation. The new regulation, agreed in 2014, is a major step forward. It will enable a streamlined application process, a harmonised assessment procedure, a single portal for all EU clinical trials and simplified reporting procedures, including for multi-member state trials. The UK has been involved in developing the new regulation and this has been widely welcomed by the research sector, including medical research charities and industry.

I pay tribute to the perseverance and interest in this issue of the noble Lords, Lord Patel and Lord Kakkar, the noble and learned Lord, Lord Judge, my noble and learned friend Lord Mackay of Clashfern and the noble Baroness, Lady Thornton. Points raised in Committee were helpful; they were very instructive and assisted the Government. Indeed, a most useful meeting was held yesterday, as the noble Lord, Lord Patel, mentioned, at which the noble Lords, Lord Patel and Lord Kakkar, the noble and learned Lord, Lord Judge, and my noble and learned friend Lord Mackay were most constructive in their approach. I thank them for that, because it greatly assisted in reaching what I think is a resolution of this matter. This means that today I can provide noble Lords with the strongest possible reassurance on the UK's commitment to implement the CTR. If the CTR comes into force during the implementation period, as it is currently expected to do in March 2020, it will apply to the UK. If this opportunity does not come to pass, the Government will seek to bring into UK law all relevant parts of the EU regulation that are within the UK's control. I shall expand on that shortly.

The Government have been consistent that a key priority through the negotiations is to ensure that the UK remains one of the best places in the world for science and innovation. Noble Lords will be aware that the life sciences sector in the UK is world-leading. It generates turnover of more than £63.5 billion per annum and the UK ranks top in the major European economies for life sciences foreign direct investment. Importantly, there are more than 5,000 life sciences companies in the UK, with nearly 235,000 employees. The Government are determined to build on this success as we leave the EU. Of course, it is not just UK industry that benefits from a thriving life sciences sector. More importantly, UK patients benefit from having access to the most innovative and cost-effective treatment available. It is in the interest of patients and the life sciences industry across Europe for the UK and the EU to find a way to continue co-operation in the field of clinical trials, and for continued sharing of data and information, even if our precise relationship with the EU will, of necessity, change.

As the Prime Minister outlined in her Mansion House speech, the UK is keen to explore with the EU the terms on which the UK could remain part of EU agencies that are critical for medicines. For example, membership of the European Medicines Agency would mean investment in new innovative medicines continuing in the UK, and it would mean these medicines getting to patients faster, as firms tend to prioritise larger markets when they start the lengthy process of seeking authorisations. It would also be good for the EU, because the UK regulator assesses more new medicines than any other member state.

It is only fair that I deal with the amendment of the noble Lord, Lord Patel. The amendment asks for the EU clinical trials regulation to be deemed operative immediately before exit day, in order that it forms part of retained EU law and is therefore part of the UK statute book after the UK's withdrawal from the EU. While it is true that the new clinical trials regulation was adopted at EU level in 2014, article 99 of the regulation states that it will only apply six months after the Commission publishes a notice confirming that the relevant EU database is fully functional. This is not expected to happen until after exit day. It is this stated date of application that is relevant to whether the EU law is incorporated by Clause 3 of the withdrawal Bill, and that is why it is not captured by Clause 3. As I have said, today I can offer noble Lords the strongest possible assurance of this Government's support on the following.

If the clinical trials regulation comes into force during the implementation period, as it is currently expected to do in March 2020, it will apply to the UK. The withdrawal agreement and implementation Bill will give effect to the implementation period in domestic law and will allow regulations to continue to apply in the UK for this time-limited period. If this opportunity does not come to pass, we will give priority to taking the steps necessary to bring into UK law, without delay, all relevant parts of the EU regulation that are within the UK's control, so that those planning clinical research can do so with certainty. The two key elements of the regulation that are outside the UK's control, and therefore not covered by this guarantee or pledge, are, first, the use of a shared central IT portal and, secondly, participation in the single assessment model, both of which require a negotiated UK-EU agreement regarding UK involvement post-Brexit. We cannot pre-empt these negotiations and we do not wish to do anything that might disadvantage the negotiating position of the UK by giving any further guarantees at this time.

In short, the Government are committing to being as aligned with the new EU clinical trials regulation as we possibly can be, subject to the negotiatory aspects that I have mentioned. I was anxious to elucidate the position to assist the Chamber and contributors as to the Government's position and I hope that the noble Lord can accept my reassurances.

6.30 pm

Lord Mackay of Clashfern (Con): My Lords, I have had the privilege of being involved in this sort of question for some time. Clinical trials need to be in a system which makes it relatively easy to set them up. The new regulation to which this amendment relates has very much simplified the system. Unfortunately, for fairly technical reasons to do with the portal, it has

[LORD MACKAY OF CLASHFERN]
not come into force yet but the assurance that the Government have given in relation to this seems the best that they could give. It is entirely in accordance with the agreement that we came to yesterday; namely, that the Government will do all they can to bring the regulation into effect. Of course, if it happens during the implementation period then nothing more is required but if, unfortunately, it does not come into force during that period the Government will do everything possible to avoid delay and give certainty to those who plan clinical trials. As your Lordships know, planning clinical trials is not something that happens the day before they start; there has to be a good deal of planning so that such trials may be effective. I think the Government have done all that can be done in this situation to give effect to the intention of the noble Lord, Lord Patel.

Lord Kakkar (CB): My Lords, I thank the Minister for her very full response to the amendment moved by my noble friend Lord Patel. She has given a powerful reassurance that the important elements of the European clinical trials regulation that can be applied independently of the European Union to improve the situation for the conduct of clinical research in our country will be brought into force. That is vital, as the Minister said, for ensuring that those who plan clinical research can do so with absolute certainty over a period of time prior to implementation. I, for one, am most grateful to her for this reassurance.

Baroness Thornton (Lab): My Lords, I join everyone in thanking the Minister—the noble Baroness, Lady Goldie—and indeed the other Ministers who have been involved in the discussions. I thank them for the meetings we have had. I am sorry that I was not at the meeting the other day, but I thank her for sharing with me what she was going to say today. I am very happy that the Government have recognised the importance of this matter. Who would not be honoured to be on an amendment with the noble Lord, Lord Patel, and the noble and learned Lords, Lord Judge and Lord Mackay of Clashfern, and if they say that they are content, who am I to say that I am not? What will be necessary from now on is for the Government and all of us to reassure the medical professions and the researchers that this is exactly what will happen, so that they can plan with confidence clinical trials for the future.

Lord Patel: My Lords, briefly, I thank everybody who has spoken but particularly the Minister for the way in which she presented the solution. I say by the way to the noble Baroness, Lady Thornton, that we used the brains of the two noble and learned Lords for medical knowledge, not their legal knowledge. I thank them, as this will reassure the research communities, pharma and even the EU institutions of our commitment to collaborate with EU nations on clinical trials. I thank the whole ministerial team and I beg leave to withdraw my amendment.

Amendment 9 withdrawn.

Amendment 10 not moved.

Amendment 11

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

11: After Clause 3, insert the following new Clause—

"Enhanced protection for certain areas of EU law

(1) Following the day on which this Act is passed, a Minister of the Crown may not amend, repeal or revoke retained EU law relating to—

(a) employment entitlements, rights and protection,

(b) equality entitlements, rights and protection,

(c) health and safety entitlements, rights and protection,

(d) consumer standards, or

(e) environmental standards and protection,

except by primary legislation, or by subordinate legislation made under any Act of Parliament insofar as this subordinate legislation meets the requirements in subsections (2) to (5).

(2) Subordinate legislation which amends, repeals or revokes retained EU law in the areas set out in subsection (1) must be subject to an enhanced scrutiny procedure, to be established by regulations made by the Secretary of State.

(3) Regulations under subsection (2) may not be made unless a draft has been laid before, and approved by a resolution of, each House of Parliament.

(4) The enhanced scrutiny procedure provided for by subsection (2) must include a period of consultation with relevant stakeholders.

(5) When making regulations relating to the areas of retained EU law set out in subsection (1), whether under this Act or any other Act of Parliament, a Minister of the Crown must—

(a) produce an explanatory statement under paragraph 22 of Schedule 7, and

(b) include a certification that the regulation does no more than make technical changes to retained EU law in order for it to work following exit."

Baroness Hayter of Kentish Town: My Lords, I hope that perhaps we might get some more concessions like that one. No? I thought it might be one of those nice little things.

As noble Lords will see, Amendment 11 has support from across the House. It would basically ensure that there can be no reduction in the laws we are bringing over into domestic law under the Bill without primary legislation. This amendment should, of course, have included the words "human rights" which appear in the Marshalled List in Amendment 11A, so elegantly suggested in that amendment by the noble Lord, Lord Low. I may need some help here; I was going to say mea culpa for not having put the words in, but I do not know what the plural of mea culpa is. No Latin comes to mind. However, I express our apologies, because clearly the same arguments apply here to human rights as they do to the other rights: the things that we are bringing over and transposing on Brexit date should not then be vulnerable to subsequent change by secondary legislation. That is clearly as true in the field of human rights as for the other rights we have mentioned.

In getting on for half a century in the EU, we have seen great improvements in the quality of our environment—those clean beaches, rivers and air—and in consumers' and workers' protection. Some of these improvements, particularly on the environment and

consumer protection, require international action—but some are there to ensure a level playing field for industry. They are driven by fair competition objectives, although they happen also to benefit workers and consumers.

Hitherto, all the areas covered by Amendment 11—employment, equality, health and safety, consumer protection and the environment—have been safeguarded, or ring-fenced if you like, thanks to EU membership requirements. We now need to bubble-wrap those protections for what we bring into our law to safeguard them from meddling hands—because, without any protection, those standards could be weakened by secondary legislation. That could happen without consultation with stakeholders and even without a Bill going through Parliament, where MPs and Peers could interrogate the rationale, cost and benefit of any change.

I hope that no Government would ever want to sweep away such protections. We heard earlier about the importance of manifestos and the 2017 Conservative manifesto promised not to change the protections. It said:

"Workers' rights conferred on British citizens from our membership of the EU will remain".

However, there are other parts of the Government who appear a bit more deregulation-obsessed. Liam Fox has said that protections make it "too difficult" to fire staff, and that:

"Political objections must be overridden",

to deregulate the labour market. Michael Gove boasted at one point that the Government,

"now have the potential to … if necessary rescind",

employment protections. Boris Johnson has described EU workers' rights as "back-breaking". Others have contemplated scrapping the working time directive, the agency workers' directive and the pregnant workers' directive or even tearing up the precautionary principle under which traders have to prove that something is safe before it is sold—which is of course a key consumer protection.

The demands to deregulate do not emanate from industrialists or employers. We have had representations from architects, scientists, designers, insurers and testers, the CBI and the British Chamber of Commerce. The very businesses which operate EU rules at the moment, which want us to stay in the customs union, are all also content to keep those regulations.

Furthermore, there is widespread support for EU-derived consumer, employment and environmental protection, with only minimal appetite for deregulation among the public. Three-quarters of the public want us to retain the working time directive and two-thirds want us to keep vehicle emissions rules. An Opinium survey found,

"little to no appetite ... for reducing or removing EU standards".

The figure was the same for remain as for leave voters. Trade unions warn against giving Ministers,

"wide-ranging powers to repeal, dilute or limit hard-won employment rights",

regulations and standards, without such changes being made through an Act of Parliament.

The British Medical Association, along with 12 royal colleges and unions, wrote to the Prime Minister calling on her to stand firm against Brexiteers who want to scrap European laws and warning of the risk to patient safety since, in their words,

"fatigue, caused by excessive overwork, remains an occupational hazard for many",

NHS staff. The Royal College of Nursing warns that,

"removing or weakening working time regulations would put patients at serious risk".

Such protections are not just good in themselves; they matter for trade. Indeed, non-tariff barriers are a bigger hurdle for trade than customs duties, so even if the Government were not worried about patient safety, workers' rights or consumers—although I am sure they are—they might listen to industry, on whose success our economy depends.

The British Chambers of Commerce stresses the importance of businesses getting their goods across borders as quickly as possible and calls for a pragmatic agreement between the UK and the EU that ensures that businesses face only one set of regulatory approvals to sell their goods across borders. Dairy UK, the NFU and 35 others signed a joint letter stressing that a successful Brexit for the food sector must involve free and frictionless trade, and that means keeping the same rules with no diminution of standards. The Urology Trade Association is just one of many trade bodies that came to see us. It wants the Government to ensure regulatory continuity, since any divergence could lead to changes in licensing arrangements and an increase in bureaucracy, which would reduce competitiveness and market penetration.

Our EU partners are already talking of a no-regression undertaking to promote fair competition and a level playing field, but also to reduce the checks and assurances that have to take place when rules diverge. Maintaining the standards that we are incorporating into UK law is supported by business, requested by the EU, demanded by environmentalists, strongly demanded by trade unionists, whose working days are affected day in, day out by these protections, and promised by the Prime Minister—so what is not to agree to? The Prime Minister said:

"This Government has committed not to roll back workers' rights",

and that,

"it would be for Parliament or the devolved Assemblies to decide on future employment law".

We are merely seeking to put her words into legislation. I beg to move.

Amendment 11A (to Amendment 11) not moved.

Baroness Oppenheim-Barnes (Con): My Lords, it is not often in your Lordships' House that I have been at odds with the noble Baroness—we usually make quite a good gang together—but I have to say that the very last thing that I want to remain after we leave the EU is a lot of these badly drafted regulations, which do not achieve their objectives in many cases and can be improved. I shall not detain the House by going into the detail now, but I have had many meetings with enforcers who are used to having to deal with the problems arising. The situation is that, the day that this Bill becomes law, it will be possible for us to draft

[Baroness Oppenheim-Barnes]
or improve regulations which we do not think are helpful enough—not less helpful—or possibly a bit deceptive. This can be done quite easily after the Bill has passed by tabling new, different and improved regulations. It is not that I do not think they are necessary; I just do not think they are good enough or that they achieve what they are supposed to achieve under the present situation.

6.45 pm

Lord Warner (CB): My Lords, I rise as a co-signatory to this amendment briefly to support what the noble Baroness, Lady Hayter, said. In Committee, she gave an extensive explanation and justification for this amendment. She has done so again today, and I shall not repeat those arguments.

The two words I want to emphasise are "vulnerable" and "future-proofing". The areas covered in this amendment are particularly vulnerable to backsliding from the existing situation, which has often been hard won over many years. That is why they have been singled out for enhanced protection in this amendment.

The second word is "future-proofing"—there is a hyphen in there, so it is a second word. The worry is not about the position just after Brexit. This amendment is about ensuring that these rights and protections cannot be tampered with in future by the casual use of statutory instruments. For me, it is the way that the Government have gone about the Brexit process and the mood of reluctance to be transparent that have led so many people to distrust their intentions. That is why we have so many amendments like this down on Report.

When I was a boy, my dad used to take me to see the Lord Mayor's show. I was always fascinated by the man at the back of the parade with his broom and pan sweeping up the horses' droppings. On this Bill, I sometimes feel that your Lordships' House is having to emulate that gentleman a little too often.

Lord Kirkhope of Harrogate (Con): My Lords, as one of the signatories to this amendment and, indeed, a signatory to the previous amendment in Committee, I want to make a very short intervention in support.

I realise that we must look at this in the context of the overall position of retained law, and I know that the Minister has written to us and that at a later stage on Report—on Amendment 26—he will deal with the general question of the status of retained law and will deal with subordinate legislation on Schedule 8. Like the Minister, for many years I was engaged in the process of drafting some of these things in Europe. These matters have been picked because they are particularly important within the context of the protection that has been afforded to them under European law until the point at which this country leaves the European Union. They are sensitive areas. The one that I feel most interested in is environmental standards and protection. It is important that they are given some separate consideration. I entirely agree with what the noble Baroness said because they are also politically sensitive to the extent that, without some form of protection, they are very much at risk. Indeed, I would go further and say that, without some of these protections, maintaining the same characteristics and having that protection in our negotiations on our future relationship with the European Union would be at a severe disadvantage were these matters to be threatened or to look as if they were about to be threatened. It is therefore all the more important that we have a special approach to them.

The last time we raised this matter, in Committee, I received a very interesting response, as we all did. It was essentially very legalistic and referred to issues of hybrid approaches and so on. I know hybrid is the in word at the moment in relation to other things, but so far as I can see, the Government have not come forward with any particular approach which would satisfy those of us who are concerned about these matters. I am therefore looking forward with great interest to hearing my noble friend's response to see whether the Government will perhaps understand the concerns and react to them in a positive way.

Baroness Smith of Newnham (LD): My Lords, I am one of the signatories to this amendment. As other noble Lords have said, it is about protection and future-proofing. I was initially going to say that the noble Baroness, Lady Hayter, had said it all and perhaps I did not need to rise, but I want to support the point that Amendment 11A from the noble Lord, Lord Low of Dalston, makes: that human rights protection is clearly also important.

I reassure the noble Baroness, Lady Oppenheim-Barnes, that this is not about saying EU legislation has to be enshrined in UK law in perpetuity entirely unchanged. The amendment says there are certain aspects of EU law that we believe are hugely important and it should not be possible simply to amend them by statutory instrument, nor for Ministers to engage in any sort of casuistry to change them. If Parliament wished to amend the legislation then it would be possible, but it would be subject to very strict guidance about the approach that it took. Surely the amendment would allow Parliament to take back control but also ensure that the protections we currently enjoy as part of the EU would be retained.

Lord Cormack (Con): My Lords, all I would say is that the key words in this important amendment are simply "except by primary legislation". That is why I am glad to support it, because it bolsters what the Prime Minister has already said and promised and it ensures that we cannot have, by sleight of hand, fundamental changes to things that concern so very many people.

Lord Low of Dalston (CB): My Lords, I did not move my Amendment 11A because the noble Baroness, Lady Hayter, had already referred to it in such approving terms. I did not want to take up the time of the House unnecessarily but perhaps your Lordships might permit me a small indulgence to say something about the substance of the amendment. I am also grateful for the endorsement of my amendment by the noble Baroness, Lady Smith of Newnham.

If delegated powers are used to make changes, I underline the importance of construing the list of areas requiring the enhanced scrutiny procedure as

including changes to human rights. As the Bill currently stands, such changes can be made without that added assurance. Many areas of human rights are currently protected by EU law, such as rights to privacy under the Data Protection Act 1998 and regulations made under it which give effect to EU law; children's rights; and protection from trafficking. It is therefore essential that the list of areas requiring the protection of the enhanced scrutiny procedure is understood as including human rights protection in EU retained law.

Lord Callanan: My Lords, we now reach a point that has been of considerable interest throughout the Bill's passage in Parliament: how retained EU law, once it forms part of our domestic law, will be amended and how those amendments can be scrutinised to ensure that rights remain protected. There is no doubt that retained EU law, including EU-derived domestic legislation, retained direct EU legislation and anything saved by virtue of Clause 4 will contain within it important rights and protections that are currently relied upon daily by individuals and businesses. As such, for the Bill to achieve its aim of continuity within UK law following exit day, it is crucial that these rights and protections are not diluted or weakened as we withdraw from the EU.

I believe that that is what the noble Lady, Baroness Hayter, aims to achieve with her Amendment 11, which seeks to put in place an enhanced scrutiny procedure for regulations made under powers that amend retained EU law in certain defined policy areas—both powers in the Bill and those that exist or will exist elsewhere. As we have heard, the policy areas covered are employment, equality, consumer standards, health and safety standards and environmental standards.

As I have said, I understand and support the noble Baroness's intention to protect this law, and I and my ministerial colleagues have all repeated the Government's commitment to effective parliamentary scrutiny and to maintaining the UK's long-standing tradition of upholding the rights and protections in these vital areas. However, I believe the Government have already taken steps to address those concerns, potentially in ways that are even stronger than the noble Baroness's amendment. Through the package of amendments that we tabled for Report, which will be discussed in more detail on a later day, the Government have actively and constructively responded to the concerns that have been raised in this House and have proposed putting in place suitable protections against the erosion of rights within retained EU law.

For example, by the powers contained in Clauses 7, 8 and 9, modifications to all retained EU law, not just in the specific policy areas listed in Amendment 11, will be subject to numerous scrutiny procedures, including where relevant the new sifting committees within both Houses. Ministers will also have to comply with a number of important statement requirements for each piece of secondary legislation, which will be published in the Explanatory Memorandum when the SI is laid, to explain fully why the instrument has been made for the consideration of Parliament and the public.

The Government, recognising and responding to the concerns on how retained direct EU legislation will be amended beyond the life of the Bill powers, have also tabled further amendments that address the use of existing and future delegated powers to modify this law. These amendments alter the circumstances and procedures concerning how it is or is not possible to amend retained direct EU legislation by other domestic powers, reflecting the hierarchy of EU law. EU regulations and rights that are saved by Clause 4, which are higher up this hierarchy and are likely to contain more fundamental rights, rules and provisions, will therefore be amendable in a way akin to primary legislation. EU tertiary legislation and decisions, on the other hand, which contain more technical and detailed provisions, will be amendable in a way akin to subordinate legislation.

I believe that in many ways those amendments can be seen to go a step beyond the noble Baroness's amendment, in that they seek to protect all the rights and protections contained in EU regulations and those that are retained by virtue of Clause 4, not just rights within a particular policy area. I also believe the Government's amendments represent a more effective approach. Referring to broad but undefined policy areas could produce unclear or differing views about which provisions of retained EU law would actually be covered. This would not only lead to uncertainty within our domestic statute book but risk creating significant litigation as individuals and businesses sought clarity about how retained EU law should be treated.

I look forward to discussing in detail the Government's amendments on this subject during later days. I believe they strike the right balance between protecting retained EU law from erosion and allowing us sufficient flexibility to ensure that we can deliver an operative and stable domestic statute book. Having said that, beyond the Government's amendment I cannot give false hope that I will reflect further on this issue between now and Third Reading, so if the noble Baroness wishes to test the opinion of the House, as I suspect she does, she should do so now.

Lord Elton (Con): If this amendment is accepted, will it prevent the passage of the Minister's amendment that covers the same ground?

Lord Callanan: No, I do not think they are mutually exclusive. I think the amendments can both stand.

Baroness Hayter of Kentish Town: I thank the Minister for his clear answer today. I wish the amendments he drafted were equally clear—I have had three very good lawyers sit and explain them to me. I have to say that they do not do what he says. There is not a hierarchy in status between EU regulations and EU directives, and the extra protection he has put in will not affect the directives. There are particular directives, such as the ambient air quality directive, the habitats directive and the working time directive, that are not covered by the government amendments. There is enhanced scrutiny for stuff coming over now, but for the future it does not cover those really important directives. I have had three different lawyers look carefully at his wording and, believe me, all three tell me that it does not meet the promise of the Prime Minister.

[Baroness Hayter of Kentish Town]

The Prime Minister said that we will bring over everything, but after that it will be for Parliament—not a statutory instrument but Parliament or the devolved Assemblies—to decide whether there is any change to working time law. The same is true for the environment. It is, I am afraid, not good enough to leave this to secondary legislation. We need to make sure that these really important provisions are safeguarded and that only primary legislation can amend them. I wish to test the opinion of the House.

7 pm

Division on Amendment 11

Contents 314; Not-Contents 217.

Amendment 11 agreed.

Division No. 2

CONTENTS

Aberdare, L.
Adams of Craigielea, B.
Addington, L.
Adebowale, L.
Adonis, L.
Alderdice, L.
Allan of Hallam, L.
Allen of Kensington, L.
Alli, L.
Altmann, B.
Anderson of Swansea, L.
Andrews, B.
Arbuthnot of Edrom, L.
Armstrong of Hill Top, B.
Armstrong of Ilminster, L.
Bach, L.
Bakewell of Hardington Mandeville, B.
Bakewell, B.
Barker, B.
Bassam of Brighton, L.
Beecham, L.
Beith, L.
Benjamin, B.
Berkeley of Knighton, L.
Berkeley, L.
Best, L.
Bichard, L.
Bilimoria, L.
Billingham, B.
Birt, L.
Blackstone, B.
Blunkett, L.
Boateng, L.
Bonham-Carter of Yarnbury, B.
Boothroyd, B.
Bowles of Berkhamsted, B.
Bowness, L.
Bradley, L.
Bradshaw, L.
Bragg, L.
Brinton, B.
Brooke of Alverthorpe, L.
Brookman, L.
Browne of Ladyton, L.
Bruce of Bennachie, L.
Burnett, L.
Burt of Solihull, B.
Butler of Brockwell, L.
Butler-Sloss, B.
Campbell of Pittenweem, L.
Carlile of Berriew, L.
Carter of Coles, L.
Cashman, L.
Chakrabarti, B.
Chandos, V.
Chidgey, L.
Clancarty, E.
Clark of Windermere, L.
Clarke of Hampstead, L.
Clement-Jones, L.
Collins of Highbury, L.
Cooper of Windrush, L.
Cormack, L.
Corston, B.
Cotter, L.
Coussins, B.
Coventry, Bp.
Crawley, B.
Cunningham of Felling, L.
Darling of Roulanish, L.
Dear, L.
Deben, L.
Dholakia, L.
Donaghy, B.
Doocey, B.
Drake, B.
Drayson, L.
D'Souza, B.
Dubs, L.
Elder, L.
Elystan-Morgan, L.
Falconer of Thoroton, L.
Falkland, V.
Faulkner of Worcester, L.
Featherstone, B.
Foster of Bath, L.
Foulkes of Cumnock, L.
Fox, L.
Gale, B.
Garden of Frognal, B.
German, L.
Giddens, L.
Glasgow, E.
Goddard of Stockport, L.
Golding, B.
Goldsmith, L.
Gordon of Strathblane, L.
Goudie, B.
Grantchester, L.
Greengross, B.
Grender, B.
Grey-Thompson, B.
Griffiths of Burry Port, L.
Grocott, L.
Hailsham, V.
Hain, L.
Hamwee, B.
Hannay of Chiswick, L.
Hanworth, V.
Harries of Pentregarth, L.
Harris of Haringey, L.
Harris of Richmond, B.
Haskins, L.
Haworth, L.
Hayman, B.
Hayter of Kentish Town, B.
Healy of Primrose Hill, B.
Henig, B.
Hennessy of Nympsfield, L.
Heseltine, L.
Hilton of Eggardon, B.
Hollick, L.
Hollis of Heigham, B.
Hope of Craighead, L.
Howarth of Newport, L.
Howe of Idlicote, B.
Hoyle, L.
Hughes of Woodside, L.
Humphreys, B.
Hunt of Chesterton, L.
Hunt of Kings Heath, L.
Hussein-Ece, B.
Hutton of Furness, L.
Irvine of Lairg, L.
Janke, B.
Jay of Ewelme, L.
Jay of Paddington, B.
Jolly, B.
Jones of Cheltenham, L.
Jones of Whitchurch, B.
Jones, L.
Judd, L.
Kakkar, L.
Kennedy of Cradley, B.
Kennedy of Southwark, L.
Kennedy of The Shaws, B.
Kerr of Kinlochard, L.
Kingsmill, B.
Kinnock of Holyhead, B.
Kinnock, L.
Kinnoull, E.
Kirkhill, L.
Kirkhope of Harrogate, L.
Kirkwood of Kirkhope, L.
Knight of Weymouth, L.
Kramer, B.
Lawrence of Clarendon, B.
Layard, L.
Lea of Crondall, L.
Lee of Trafford, L.
Leeds, Bp.
Lennie, L.
Levy, L.
Liddell of Coatdyke, B.
Liddle, L.
Lister of Burtersett, B.
Lisvane, L.
Livermore, L.
Low of Dalston, L.
Luce, L.
Ludford, B.
Lytton, E.
Macdonald of River Glaven, L.
MacKenzie of Culkein, L.
Maddock, B.
Mandelson, L.
Manningham-Buller, B.
Marks of Henley-on-Thames, L.
Masham of Ilton, B.
Massey of Darwen, B.
McAvoy, L. [Teller]
McDonagh, B.
McIntosh of Hudnall, B.
McIntosh of Pickering, B.
McKenzie of Luton, L.
McNally, L.
Meacher, B.
Mendelsohn, L.
Miller of Chilthorne Domer, B.
Mitchell, L.
Mogg, L.
Monks, L.
Morgan of Drefelin, B.
Morgan of Huyton, B.
Morris of Aberavon, L.
Morris of Handsworth, L.
Morris of Yardley, B.
Murphy of Torfaen, L.
Newby, L.
Northover, B.
Oakeshott of Seagrove Bay, L.
O'Neill of Bengarve, B.
O'Neill of Clackmannan, L.
Paddick, L.
Palmer of Childs Hill, L.
Pannick, L.
Parekh, L.
Parminter, B.
Patten of Barnes, L.
Pendry, L.
Pinnock, B.
Pitkeathley, B.
Plant of Highfield, L.
Ponsonby of Shulbrede, L.
Prescott, L.
Primarolo, B.
Prosser, B.
Purvis of Tweed, L.
Puttnam, L.
Radice, L.
Ramsay of Cartvale, B.
Randerson, B.
Razzall, L.
Rea, L.
Rebuck, B.
Redesdale, L.
Rees of Ludlow, L.
Reid of Cardowan, L.
Rennard, L.
Ricketts, L.
Roberts of Llandudno, L.
Robertson of Port Ellen, L.
Rodgers of Quarry Bank, L.
Rogers of Riverside, L.
Rooker, L.
Rosser, L.
Rowe-Beddoe, L.
Rowlands, L.
Royall of Blaisdon, B.
Russell of Liverpool, L.
Sandwich, E.
Sawyer, L.
Scott of Needham Market, B.
Scriven, L.
Sharkey, L.
Sheehan, B.
Sherlock, B.
Shipley, L.
Shutt of Greetland, L.
Simon, V.
Smith of Basildon, B.
Smith of Clifton, L.
Smith of Finsbury, L.
Smith of Gilmorehill, B.
Smith of Newnham, B.
Snape, L.
Soley, L.
Somerset, D.
Steel of Aikwood, L.

Stephen, L.
Stern, B.
Stevenson of Balmacara, L.
Stone of Blackheath, L.
Stoneham of Droxford, L.
Storey, L.
Strasburger, L.
Stunell, L.
Suttie, B.
Taverne, L.
Taylor of Bolton, B.
Taylor of Goss Moor, L.
Teverson, L.
Thomas of Cwmgiedd, L.
Thomas of Gresford, L.
Thomas of Winchester, B.
Thornton, B.
Thurso, V.
Tomlinson, L.
Tonge, B.
Tope, L.
Touhig, L.
Triesman, L.
Truscott, L.
Tugendhat, L.
Tunnicliffe, L. [Teller]
Turnberg, L.
Tyler of Enfield, B.
Tyler, L.
Uddin, B.
Vaux of Harrowden, L.
Verjee, L.
Wallace of Saltaire, L.
Wallace of Tankerness, L.
Walmsley, B.
Warner, L.
Warwick of Undercliffe, B.
Watkins of Tavistock, B.
Watson of Invergowrie, L.
Watson of Richmond, L.
Watts, L.
Waverley, V.
Wellington, D.
Wheeler, B.
Whitaker, B.
Whitty, L.
Wigley, L.
Willetts, L.
Willis of Knaresborough, L.
Wood of Anfield, L.
Woolf, L.
Woolmer of Leeds, L.
Wrigglesworth, L.
Young of Hornsey, B.
Young of Norwood Green, L.

NOT CONTENTS

Agnew of Oulton, L.
Ahmad of Wimbledon, L.
Anelay of St Johns, B.
Arran, E.
Ashton of Hyde, L.
Astor of Hever, L.
Astor, V.
Attlee, E.
Baker of Dorking, L.
Balfe, L.
Bates, L.
Berridge, B.
Bertin, B.
Bew, L.
Black of Brentwood, L.
Bloomfield of Hinton Waldrist, B.
Borwick, L.
Bottomley of Nettlestone, B.
Bourne of Aberystwyth, L.
Brabazon of Tara, L.
Brady, B.
Bridgeman, V.
Bridges of Headley, L.
Brougham and Vaux, L.
Browne of Belmont, L.
Browning, B.
Buscombe, B.
Byford, B.
Caine, L.
Caithness, E.
Callanan, L.
Carrington of Fulham, L.
Cathcart, E.
Cavendish of Furness, L.
Chadlington, L.
Chalker of Wallasey, B.
Chartres, L.
Chisholm of Owlpen, B.
Colgrain, L.
Colwyn, L.
Cope of Berkeley, L.
Courtown, E. [Teller]
Couttie, B.
Craig of Radley, L.
Craigavon, V.
Crathorne, L.
Cumberlege, B.
De Mauley, L.
Deech, B.
Dixon-Smith, L.
Dobbs, L.
Duncan of Springbank, L.
Dundee, E.
Dunlop, L.
Eaton, B.
Eccles, V.
Elton, L.
Empey, L.
Evans of Bowes Park, B.
Fairfax of Cameron, L.
Fairhead, B.
Falkner of Margravine, B.
Fall, B.
Farmer, L.
Faulks, L.
Feldman of Elstree, L.
Fellowes of West Stafford, L.
Fink, L.
Finkelstein, L.
Finn, B.
Flight, L.
Fookes, B.
Forsyth of Drumlean, L.
Framlingham, L.
Fraser of Corriegarth, L.
Freeman, L.
Freud, L.
Gardiner of Kimble, L.
Gardner of Parkes, B.
Geddes, L.
Gilbert of Panteg, L.
Glendonbrook, L.
Gold, L.
Goldie, B.
Goodlad, L.
Goschen, V.
Grade of Yarmouth, L.
Green of Deddington, L.
Greenway, L.
Hamilton of Epsom, L.
Hanham, B.
Harding of Winscombe, B.
Harris of Peckham, L.
Hay of Ballyore, L.
Hayward, L.
Helic, B.
Henley, L.
Hodgson of Abinger, B.
Hodgson of Astley Abbotts, L.
Hogan-Howe, L.
Holmes of Richmond, L.
Home, E.
Hooper, B.
Horam, L.
Howard of Lympne, L.
Howard of Rising, L.
Howe, E.
Howell of Guildford, L.
Hunt of Wirral, L.
James of Blackheath, L.
Jenkin of Kennington, B.
Jopling, L.
Kalms, L.
Keen of Elie, L.
King of Bridgwater, L.
Kirkham, L.
Lamont of Lerwick, L.
Lang of Monkton, L.
Lawson of Blaby, L.
Leigh of Hurley, L.
Lexden, L.
Lindsay, E.
Lingfield, L.
Liverpool, E.
Livingston of Parkhead, L.
Lothian, M.
Lucas, L.
Lupton, L.
MacGregor of Pulham Market, L.
Mackay of Clashfern, L.
Magan of Castletown, L.
Mancroft, L.
Manzoor, B.
Marland, L.
Marlesford, L.
Mawson, L.
McColl of Dulwich, L.
McGregor-Smith, B.
McInnes of Kilwinning, L.
Mone, B.
Montrose, D.
Morris of Bolton, B.
Morrow, L.
Naseby, L.
Nash, L.
Neville-Rolfe, B.
Newlove, B.
Nicholson of Winterbourne, B.
Noakes, B.
Norton of Louth, L.
O'Cathain, B.
Oppenheim-Barnes, B.
O'Shaughnessy, L.
Pidding, B.
Popat, L.
Porter of Spalding, L.
Price, L.
Rana, L.
Rawlings, B.
Redfern, B.
Renfrew of Kaimsthorn, L.
Ribeiro, L.
Ridley, V.
Risby, L.
Robathan, L.
Rock, B.
Rogan, L.
Rotherwick, L.
Saatchi, L.
Sassoon, L.
Scott of Bybrook, B.
Seccombe, B.
Selborne, E.
Selkirk of Douglas, L.
Selsdon, L.
Sheikh, L.
Shephard of Northwold, B.
Sherbourne of Didsbury, L.
Shinkwin, L.
Shrewsbury, E.
Skelmersdale, L.
Smith of Hindhead, L.
Spicer, L.
Stedman-Scott, B.
Sterling of Plaistow, L.
Stoddart of Swindon, L.
Stowell of Beeston, B.
Strathclyde, L.
Stroud, B.
Sugg, B.
Suri, L.
Taylor of Holbeach, L. [Teller]
Taylor of Warwick, L.
Tebbit, L.
Thurlow, L.
Trefgarne, L.
Trenchard, V.
Trevethin and Oaksey, L.
Trimble, L.
True, L.
Ullswater, V.
Vere of Norbiton, B.
Verma, B.
Vinson, L.
Wakeham, L.
Waldegrave of North Hill, L.
Wasserman, L.
Wei, L.
Whitby, L.
Wilcox, B.
Williams of Trafford, B.
Willoughby de Broke, L.
Wilson of Tillyorn, L.
Wolfson of Aspley Guise, L.
Wyld, B.
Young of Cookham, L.
Younger of Leckie, V.

7.18 pm

Clause 4: Saving for rights etc. under section 2(1) of the ECA

Amendment 12

Moved by ***Lord Deben***

12: Clause 4, leave out Clause 4 and insert the following new Clause—

"Saving for rights etc. under section 2(1) of the ECA

(1) Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day, form part of domestic law by virtue of section 2(1) of the European Communities Act 1972 continue on and after exit day to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

(2) Subsection (1) does not apply to any rights, powers, liabilities, obligations, restrictions, remedies or procedures so far as they form part of domestic law by virtue of section 3.

(3) Where, following the United Kingdom's exit from the EU, retained EU law incorrectly or incompletely gives effect to any rights, powers, liabilities, obligations, restrictions, remedies or procedures created or required by EU law in force immediately before exit day, a Minister of the Crown must as soon as possible make regulations for the purpose of giving correct and complete effect to such rights, powers, liabilities, obligations, restrictions, remedies and procedures.

(4) This section is subject to section 5 and Schedule 1 (exceptions to savings and incorporation)."

Lord Deben (Con): My Lords, the proposal here is to overcome the problem that arises under this present law, as presented to your Lordships' House, which is that it does not include those elements of European Union law that are not specifically written down but are in the protocols and the like. I will not press this amendment to a vote, and I am sure my noble friends will be pleased about this. I make it clear now, however, because an amendment will be debated on Monday that I will want to press to a vote. In this circumstance, some of my colleagues may wish to press it, but I merely put the point to the House that the Government promised us something very simple. They said, "We are going to put into British law all that we now have in European law. Then, after that, if we want to make changes, we will be able to make those changes".

Even those of us who are deeply disturbed by the Government's decision to continue with the extremely damaging activity of leaving the European Union at least felt that we were then going to start with a situation where we were not automatically losing some of the protections provided by the European Union. What was more, we felt that, were we then to decide to change things, perhaps we would find that there were some advantages to our leaving the European Union. So far, I have not found any, but let us imagine that we were to do so. Then we would, in proper parliamentary order, decide on the changes. I say to my noble friends that the real issue for me here is that—and I say this, too, to those who are leavers—the Government have not carried through what they said they would. They have not put into the withdrawal Bill all those things that protect us and provide for our sensible behaviour in the European Union. They have also made it clear, by a number of parts of it, that they will not offer Parliament the chance in the future to make decisions in a proper parliamentary way. Indeed, they intend to do by subsidiary legislation a whole range of things that, in my view, should not be done.

We have just had a vote that has made it clear that this House believes in parliamentary democracy and this is another attempt to raise these issues. I say to my noble friends—particularly to my noble friend Lord Callanan, who is, of course, a leaver, so he has the disadvantage of believing in this Bill—that the Government have promised something, and I do not believe that they are carrying out that promise. Therefore, we sought in this amendment to encourage the Government to think to themselves that they should really take seriously the proposition that, in future, we would have in our law,

"the rights, powers, liabilities, obligations, restrictions, remedies and procedures which, immediately before exit day, form part of domestic law by virtue of section 2(1) of the European Communities Act 1972".

These should continue and, after exit day,

"be recognised and available in domestic law (and to be enforced, allowed and followed accordingly)".

Even if my noble friends do not like this fact, we need this because the public, our businesses, our organisations and our voluntary organisations need it too. They need certainty and I do not see why they should not have it. We have managed to have all this for a very long time. I cannot say we have had all of them for 40 years, because some of these things were brought in in the meantime, but we have had them for a very long time and it has not destroyed our nation. Why can we not continue in this way until we decide, in a parliamentary manner, that we want to change it? That seems a perfectly sensible attitude. Therefore, we have tabled this amendment, which is designed to ensure those protections.

Many people will feel that this is the right amendment to support. I hope that they will also support the amendment on the environment that we have tabled for Monday, with the enormous support of people from across the House, particularly the Liberal Democrats, who have been very helpful in understanding what this is about. We have an amendment that covers much of what we are trying to say here, but I still think this is the Government's opportunity to explain a simple thing to us: why do the Government not want to ensure that what they said they would do is in fact done? If the Minister says that there is something wrong with the amendment, I understand: we are all amateurs at writing amendments. Of course, it is quite possible that there is some fundamental reason why this is not the way to do it. If that is the case, I would like the Minister to say, "We will take this away and, in the excellent manner that we have in the House of Lords, come back at Third Reading with an amendment that simply does what we promised".

I have been in politics for a very long time and was a Minister for 16 years. I have always thought that Governments should do what they promise. I have always been as critical of my own party when they did not do it as I was of coalition parties and the Opposition. I do not like promising things and not delivering, so I hope that as a result of this amendment my noble friend will say, "Yes, you have a point here; there are some things we have left out. Can we sit down and talk about what those things are and can we produce an amendment that will meet that requirement?" Can we also guarantee that, if in the future we wish to change those things, we will do so with proper parliamentary procedure and not with something that we all know is a means by which the Executive imposes things on the people?

This Parliament—elected or not elected—is here to protect the people against the overuse of executive powers. That is what we are here for. I am afraid that

some of my noble friends are not here, but I am appalled by some people who get up and say that the reason why we are proposing these things is because we do not want to leave the European Union. We know perfectly well that we do not want to leave the European Union, but the reason we are proposing these things is that, if we do leave the European Union, we do not want to lose some of the things that are beneficial to us. I object to people insulting me, saying that I am trying to stop the Bill. I am trying to make the Bill acceptable to the British people. People did not vote to muck up their whole future, to get rid of things merely to enable some rather extreme people to run the country in a way that is unacceptable. They voted to maintain the good things and they did not want to remain a member of the European Union. I am sorry that they decided that, but I do not see why I should not try to make this the best Bill that I can. I object to being insulted by saying that I am trying to do something else. I am trying to make this a good Bill. Therefore, I say to my noble friends: "Will you help me make this a good Bill? If this is the wrong amendment, then will you please promise to produce the right amendment?" I am very happy—and I am sure my noble friends will join me—to help the Government to produce the amendment that would do what we want to do here, if this is not the right way to do it. I beg to move.

Baroness Jones of Whitchurch (Lab): My Lords, I support Amendment 12, to which my name has been added, and the comments of the noble Lord, Lord Deben. The amendment follows the concerns expressed by the Constitution Committee over the current wording of Clause 4. These were extensively debated in Committee and the case was powerfully made by the noble Lords, Lord Krebs—who unfortunately cannot be with us this evening—Lord Pannick and Lord Carlile, among others, that existing Clause 4 creates legal uncertainty, not least by its determination that provisions in directives must have been tested in a court prior to exit day.

What is more, existing Clause 4 fails to deliver the promises made time and again—promises that we have heard again this evening—that the withdrawal Bill will apply the same rules and laws after we leave the EU as existed before exit day. This is because there is no mechanism built into the Bill to address any omissions or powers incorrectly or incompletely transferred. Instead, the noble Baroness, Lady Goldie, suggested that we would have to rely on correcting mistakes or omissions through domestic legislation, without an obligation on the Government to do just that. Therefore, our amendment addresses this challenge head on. In order to ensure that environmental protections—and other protections, because this is not just about the environment—are not weakened by omission or design, it will place a duty on Ministers to correct that error.

To achieve this comprehensively we have drafted a new clause to replace Clause 4 which makes clear those obligations on Ministers. The new clause removes the problematic prescriptions in Clause 4(2)(b) concerning the need to have the rights predetermined in a court of law. This never made sense, as many environmental rights are accepted either as common-sense policies or have such huge public support that they could not realistically be challenged through litigation. It then makes it clear that the Minister has a duty to act and make a remedy where rights, powers, liabilities, obligations and so on are incorrectly or incompletely transferred.

7.30 pm

In Committee, the noble Lord, Lord Krebs, spelled out environmental policies which might be missed out if the current wording of Clause 4 is applied. For example, the current environmental reporting obligations—such as the requirement to review and report on the implementation of the marine strategy framework directive, the air quality directive and the habitats directive—will no longer be required by law when we leave the EU. Similarly, the obligation to review and adjust air quality targets in line with scientific information from the World Health Organization, and to reduce potentials in member states, is not yet present in UK domestic law, leaving a serious gap in air quality standard oversight. In addition, Article 5 of the energy efficiency directive has not been fully transposed into domestic legislation, with the result that public bodies do not have to ensure that their buildings adhere to energy performance requirements. There are other obligations not yet transposed into UK law, such as the water framework directive's requirement that water pricing policies provide adequate incentives to use water efficiently.

We therefore believe that this amendment is important to fill the governance gap which will occur when we no longer have to abide by EU policies or report on progress to EU institutions. It also protects our environment against inadvertent errors or incomplete transpositions, which, sadly but inevitably, will occur. I therefore hope that the Minister will take these comments seriously and will feel able to give a positive response, and if not, as the noble Lord, Lord Deben, said, that she will come back at Third Reading with an alternative proposition to the very well thought out amendment we have put forward this evening.

Lord Puttnam (Lab): My Lords, I support the amendment spoken to by the noble Lord, Lord Deben, but I will comment briefly from a slightly different angle. During the 1980s, I spent seven very happy years as president of the Council for the Protection of Rural England—a title which I suggest would thrill even the most ardent Brexiter. It was a marvellous organisation. Founded in 1926, it was the pioneer of environmental protection—both urban and rural—here in the UK, and many of its policies were copied by other European nations. Since our accession to the European Union, they have in fact been enhanced within the EU. It would be quite extraordinary if there were any possibility that we would reverse out of those environmental benefits that have accrued over the years—pioneered, I repeat, by a British organisation, the CPRE. Any legislation that would go some way towards securing, developing and building on what we have would be entirely welcome, but anything that would endanger that I would oppose vehemently.

Baroness Bakewell of Hardington Mandeville (LD): My Lords, I will speak briefly to this amendment, to which I have added my name. There is little I can add to what the noble Lord, Lord Deben, and the noble

[BARONESS BAKEWELL OF HARDINGTON MANDEVILLE]
Baroness, Lady Jones, said so eloquently. The current Clause 4 is unsuitable, so we have submitted a proposed new Clause 4, which covers a much broader area than the environmental concerns. However, because so much environmental legislation stems from the EU, it is particularly important for the Government's environmental commitments that we carry these forward.

The amendment aims to preserve more comprehensively than the existing Clause 4 rights, powers, liabilities, obligations, restrictions, remedies and procedures, all derived from EU law and incorporated into domestic law via the ECA. Where such rights are incorrectly or incompletely transferred it imposes a duty to remedy this, and we feel that it is important that the Government take this duty on board. There will be transition gaps and incomplete transfers. Examples of transition gaps which put environmental protection at risk include, as the noble Baroness, Lady Jones, said, the requirement to review and report on adequacy and implementation of laws such as the air quality directive and the habitats directive. As the noble Lord, Lord Deben, said, if we are not doing this in the right way, will the Minister please tell us which way we should be doing it? I fully support this amendment and I will support the amendment that comes forward on Monday.

Lord Goldsmith (Lab): My Lords, in supporting this amendment also, I start by just noting one thing we have learned during the passage of the Bill so far: how very complicated the process of exit will be. That is important, because, as the noble Lord, Lord Deben, rightly reminded us, the purpose of the Bill is to enable us to leave, but with the same rights and obligations, and the same protections, the day after exit as the day before. The Prime Minister made that promise very clear. This amendment would help to make sure that this promise can be kept. If one looks at the way the Bill currently deals with rights that are being passed over, one can see the complication in the provisions as drafted.

I will not repeat the arguments that were raised in Committee, nor indeed repeat those that have been so well made by my noble friends Lady Jones and Lord Puttnam and by the noble Baroness, Lady Bakewell. However, one thing is clear: if there is a defect in what the Government are doing and if the provision will not pass across into our law the day after exit those things it should, the amendment simply says that this is a mechanism by which they can be brought in. I think the Government would want to welcome that, because it means they could achieve what they want to achieve in what is, as I said, a complicated area in which it may be difficult to be sure that everything has been done as it should. Of course, if it is unnecessary because all the rights have been passed across, in those circumstances there will be no need for the clause to operate. However, it will be there to achieve what is required.

I will make one other point, because it may look to some slightly paradoxical to use a ministerial power of regulation to achieve this when so much concern has already been expressed in this House, and will be on amendments to come, about the overuse of delegated powers. This differs from the other powers that concern has been expressed about. It is not a discretion of the Minister to use the power but an obligation to do so if certain conditions are met: if in fact—and it is an objective fact which can be verified or not—retained EU law does not give effect to,

"rights, powers, liabilities, obligations, restrictions, remedies or procedures created or required by EU law in force immediately before exit day".

Therefore, it makes sense to do that.

The noble Lord, Lord Deben, made the sensible suggestion that if this amendment does not quite do it the right way, the Government can and should come back with an alternative method at Third Reading. However, that they should do something to make sure this gap is plugged seems a strong and correct argument, and for that reason I support the amendment.

Baroness Goldie: My Lords, I am grateful to the noble Baroness, Lady Brown of Cambridge, in absentia for her Amendment 12 and to my noble friend Lord Deben for speaking to it on her behalf. I note that this amendment is very similar to an amendment tabled in Committee by the noble Lord, Lord Krebs, to which the noble Baroness was a signatory. As was the case with that amendment, Amendment 12 seeks to amend what EU law is retained through Clause 4.

As this House is aware, and has been said earlier within the debate, one part of EU law that the Bill does not convert into our domestic law is EU directives. The reason for this is clear. As EU directives as such are not a part of our domestic law now, it is the Government's view that they should not be part of our domestic law after we leave the EU. Instead, the Bill, under Clause 2, is saving the domestic measures that implement the directives, so it is not necessary to convert the directives themselves. This is not only a pragmatic approach but one that reflects the reality of our departure from the EU. As an EU member state, we were obligated to implement those directives. When we leave the EU, those obligations will cease.

However, the Bill recognises one exception to this approach. Where, in a case decided or commenced before exit day, a domestic court or the European Court of Justice has recognised a particular right, power, liability, obligation, restriction, remedy or procedure provided for in a directive as having direct effect in domestic law, Clause 4 will retain the effect of that right, power, et cetera within UK law.

That seems to the Government to provide a clarity which it is important for this Bill to achieve, and it is why we believe that Clause 4 as currently worded strikes the right balance—ensuring in respect of directives that individuals and businesses will still be able to rely on directly effective rights that are available to them in UK law before exit day, while also providing clarity and certainty within our statute book about what will be retained in UK law at the point of exit.

I shall explain to my noble friend Lord Deben what we see as a difficulty. This certainty would be undermined by the amendment, placing both businesses and individuals in the difficult position where they are uncertain about whether the rights they rely on will change. It could also create practical difficulties for our courts following our exit. There could be new litigation about whether implementing legislation correctly or completely gave

effect to a pre-exit directive, and whether Ministers had fulfilled the duty in the amendment's proposed new subsection (3) to make implementing regulations. This could continue for years after our exit from the EU, effectively sustaining an ongoing, latent duty to implement aspects of EU legislation long after the UK had left the European Union.

I think it would be acknowledged that it would be strange for Ministers to be obligated to make regulations to comply with former international obligations which the UK is no longer bound by. Although Ministers might find that they were obliged to make regulations under the amendment, it would presumably still be open to Parliament to reject the instrument and either require it to be revoked or decline to approve it, depending on the procedure involved, yet the Minister would, under the terms of the amendment, remain under a legal obligation to make regulations. I think that this gets to the heart of the problem: how is that tension to be resolved?

Therefore, I say to my noble friend Lord Deben that, although I understand that the genuine intention behind the amendment is to give confidence and certainty, in practice I do not think that it would necessarily achieve this, and I respectfully suggest that the real consequence would be confusion.

Furthermore, the amendment specifically implies that the Government would have to undertake a thorough investigation, as soon as possible, of all the EU directives that have been domestically implemented over the course of this country's 40-plus years of EU membership to ensure that they have correctly and completely implemented them all.

Baroness Ludford: I apologise for interrupting the Minister and thank her for allowing me to do so. Would it be so terrible if there were to be an audit of whether the UK had correctly implemented EU directives? The Government are marking their own homework if they say, "We're not implementing the directives; we're only going to freeze the domestic implementation". However, if there is something wrong in the way that we have implemented a directive, then the Government are judge and jury of what will be retained.

At the risk of boring everybody—I will probably mention it again on Monday—I have cited before the directive on the European investigation order, which is about summoning evidence or maybe a witness to give a statement. It is the parallel to the European arrest warrant. The directive says that someone could challenge this in, say, a British court on the grounds of a breach of the Charter of Fundamental Rights. The Government have substituted for the charter the European Convention on Human Rights, which, as we know—we will be discussing it on Monday—is a bit narrower than the charter. Therefore, they have wrongly transposed the directive. Whether the European Commission is going to do anything about it, I do not know, but I remind myself that I want to find out. What happens if the Government have wrongly implemented the directive? What happens to people's rights?

7.45 pm

Baroness Goldie: Perhaps I can, with my next contribution, enlighten the noble Baroness about her concern. However, I point out that the Government's observation about the practical obligation of reviewing 40-plus years of EU membership to ensure that they have correctly and completely implemented directives is merely part of the reason why we cannot accept the amendment.

Perhaps I may continue and shall try to address the noble Baroness's point. Although the Government believe that successive Governments have always sought conscientiously to implement EU legislation in accordance with our obligations as a member state—that is where we are—such a review as required by the amendment could throw doubt on certain domestic implementation, again potentially creating confusion within well-accepted and relied-upon parts of our domestic law. That is the anticipated and foreseeable consequence of that part of the amendment. Given the wide scope of EU law that will be retained by Clause 4—not just directly effective provisions arising from EU directives—this would also present a huge practical and resource-intensive challenge to the Government. I suggest that the effect of such a duty as we leave the EU cannot be ignored.

The effect of the amendment would be to profoundly undermine the Government's clear and coherent position on retained EU law. We have previously talked about how the Bill must take a snapshot at some point, otherwise there will be complete ambiguity, confusion and uncertainty as to what is being transferred, and I believe that that desire for clarity would be very seriously affected by the amendment. As such, I ask my noble friend Lord Deben to withdraw the amendment. I should add that I cannot give any false hope that I will reflect further on this issue between now and Third Reading, so if my noble friend wishes to test the opinion of the House, he should do so now.

Lord Deben: I am sorry to have heard what my noble friend—especially this particular noble friend—has said in reply. She may say that, mayn't she? But nobody else thinks that. Everybody else who has looked at the circumstances says that we should retain the rights that we have now and that if we want to change them, we should do so in a proper parliamentary way afterwards. That is all we are saying. We can talk about a lack of confidence and people not quite knowing where they are, but I have to say to my noble friend that people do not know where they are at the moment because the amendment is not something that the Government are taking up.

My noble friend then mentioned the word "snapshot". I am a little tired of that word. If you want a snapshot, that is what this amendment is. It is a snapshot of where we are now, and we are saying that we stay where we are until we—the sovereign Parliament of the United Kingdom—decide to change that. Instead of that, we have not a snapshot but a fuzzy picture that has bits in it. They are the bits that the Government have decided are suitable for us and not the bits, some of them in the background, that are important for us.

I say to my noble friend that there was a time when I would have taken her arguments rather more seriously. Then I got the message that some of the promises that the Government made about taking care of what they do on the environment once independent and outside the EU do not seem to be forthcoming. All those things we were told about something parallel to the

[LORD DEBEN]
Committee on Climate Change do not seem to be coming forward as we were told they would be. This is at least a way of making sure that the Government continue to do what they have had to do under European Union law, until such time as they ask Parliament to change it.

I want to address two other things that my noble friend said. Do not talk to me about resources. This whole Bill is going to cost the British taxpayer more than anything one can possibly imagine. That is why, every time I ask how much this costs, the Government do not answer. This is the only Bill I have ever seen in front of Parliament that is uncosted in every detail. I declare an interest as chairman of an organisation that represents people who give financial advice. We have just looked at the cost to the financial industry of changing everything because we are leaving the European Union. I am merely saying that the resource costs of this Bill are enormous. So please do not tell me that we cannot have an audit of what we are implementing, making sure that they are the right things, because of resources.

The last thing I want to say is this. My noble friend said that there were a number of things here that, for one reason or another, are not quite what she would like even if she were prepared to help us. She has said that she is not going to help us, so I might have to be more unhelpful myself in the future. I want to say one thing about this that is not about Parliament but about the world outside. Increasingly, people are becoming very cynical about what the Government have in mind for the protections of our human rights, our environment and the other things that we hold dearest. They are beginning to think that preparation is being made for arrangements with other countries that will make it difficult for us to protect all those things, from animal welfare to human rights, which we hold dear. My noble friend may think that that is an unfair approach, and I am not suggesting that it is a true one; I am merely saying it is a perception. When a perception like that becomes as universal as it now is, it is up to the Government to remove it.

One of the ways they could do that is to make sure that nothing that now protects us is removed, except by parliamentary activity. That is what we ask for here. Although I will not press this amendment, I say to the Government that there is a political issue here. As a Conservative, I want to say that this Government will undermine their position unless they make sure that all those who care about these issues do not think that the withdrawal Bill will undermine their rights and protections. This Government have to recognise the seriousness of the position on those issues.

Amendment 12 withdrawn.

Amendment 13 not moved.

Amendment 14

Moved by ***Baroness Kennedy of The Shaws***

14: After Clause 4, insert the following new Clause—

"Maintenance of rights in the area of family law

(1) Within six months of the passing of this Act, a Minister of the Crown must publish a report outlining the ways in which the rights afforded by EU family law continue to exist in domestic law.

(2) The report provided for under subsection (1) must include—

(a) the steps, if any, taken by Ministers of the Crown to negotiate the continuation of reciprocal arrangements between the United Kingdom and member States in the field of family law;

(b) the nature and duration of these reciprocal arrangements, if such arrangements have been successfully negotiated; and

(c) a declaration from the Minister of the Crown outlining whether, in their view, the rights of individuals in the area of family law have been weakened.

(3) The Minister of the Crown must lay the report before both Houses of Parliament."

Baroness Kennedy of The Shaws (Lab): My Lords, many Members of this House will remember that I have raised the issue of matters concerning family law arrangements that cut across the whole of Europe. I chair the EU Justice Sub-Committee of the European Union Select Committee and we published a report for this House, which dealt with issues of maintaining the mutuality that exists across Europe for matters concerning family law, business and commercial disputes, and individual rights.

The concern that we have is that we want it to be clear that, in the negotiation, the Government should be mindful of the ways in which current arrangements have been carefully crafted over many years. A number of directives exist, which I know the Minister is only too aware of: directives on which court will take control of a particular issue if there is a dispute between parties based in different nations; the ways in which family law matters can be dealt with where there is divorce and a breakdown of families, or where there are issues concerning access or maintenance arrangements for children. Those are dealt with by Brussels regulations I, II, IIa and the maintenance regulation, and they are found to be of incredible value in these areas of law. I wanted to raise this again because I would like some assurances from the Minister that these are going to be included in any negotiated settlement with Europe in the future, because the loss of these legal arrangements would be detrimental to the rights of individuals, businesses, people running businesses and others.

Those are the matters raised by me; we want to have monitoring of the ways in which the Government might proceed. It is similar to the position that was raised by the noble Lord, Lord Deben, just now. I am raising this because I want assurances and I hope to receive them from the Minister before deciding what to do. I beg to move.

Lord Marks of Henley-on-Thames (LD): My Lords, I start by apologising for arriving a moment after the noble Baroness had started speaking. I did not know what had happened to Amendment 13. I want to speak briefly in full support of the amendment from the noble Baroness, Lady Kennedy of The Shaws. I do not propose to rehearse all the arguments that we made at Committee at some length, but want to make four very brief points.

First, no one suggested in Committee, on behalf of the Government or anyone else, that the family law provisions contained in the European regulations Brussels I, IIa, the maintenance regulation and the arrangements for the enforcement of obligations and co-operation were not a considerable benefit to the citizens of the UK as well of other member states. Secondly, no one suggested that any benefit would flow from our not continuing to have those regulations applied in the United Kingdom. Thirdly, no one suggested that we could achieve reciprocal protections for UK citizens and citizens from other member states of the EU without negotiating for their continued protection. Fourthly and finally, all that could be said and was said by the Minister for the Government was that it was all a matter for the negotiations, but it would be possible to negotiate arrangements whereby we could continue to benefit from the regulations without accepting the role of the Court of Justice of the European Union in overseeing their implementation.

It is on that point that I take issue with the Government, because I ask why the EU 27 should agree to a set of arrangements affecting private law rights—these are disputes between citizens of different member states, by and large—whereby citizens of those other member states have obligations that are enforceable in their courts at the instance of citizens of the United Kingdom, while the United Kingdom could refuse to honour such obligations unless the courts of the United Kingdom approve their enforcement. In other words, a different set of rules could be said to apply to the UK from the rest of the Union.

The Government's obsession—and I use the word without embarrassment—with the direct effect of CJEU decisions in cases involving treaty rights threatens to scupper the whole system of family law protections that is so important to our citizens, as well as to the citizens of other member states. The noble Lord said that it would be easy to negotiate other agreements for non-binding decisions. That, I suggest, is simply impossible to achieve. I do not see any difficulty with our accepting, in the case of private law rights between citizens, the binding nature of decisions of the Court of Justice of the European Union. That way, we could commit, and commit early, to continuing to have all the rights and benefits for all citizens bound by the regulations for the foreseeable future.

8 pm

Lord Mackay of Clashfern: My Lords, I am certainly interested in family law, and have been for some time, but this amendment strikes me as rather otiose and ineffective. It says:

> "Within six months of the passing of this Act, a Minister of the Crown must publish a report outlining the ways in which the rights afforded by EU family law continue to exist in domestic law".

It has nothing to do with reciprocity in the sense of other people's laws; it is that they will continue to exist in domestic law. As I understand it, this Bill transforms into our law all existing EU law to this effect—that is what the Bill is supposed to do. And if it is deficient in that respect, it is for the noble Baroness, with all her expertise, to point that out. So far as I have understood it, all law that applies here on Brexit day will become part of our law, and therefore there is nothing to report in respect of that because that is what EU law was before—which would now be the law here.

Baroness Kennedy of The Shaws: I do not know whether I am entitled to interrupt someone who speaks subsequent to me, but I want to explain. We are introducing this into domestic law, but take, for example, the current position for a wife divorced from an Italian spouse. She can go to her local court here in Britain and obtain an order which is then—because of reciprocity and the special arrangements—enforceable in Italy against her ex-husband, who lives there and has not been paying maintenance for his children. It is the business of reciprocity that is problematic. I am sure the noble and learned Lord knows that very careful arrangements have been made as to which court in which country takes cognisance of a case and where the matter is dealt with if there is conflict. All those rules, which have now been set down in regulations, need to be settled with our partners in Europe. It is not enough to introduce it into UK law; we have to have the component of the other party and the other court in agreement. That has to be part of the negotiations. Bringing this into UK law will not do it on its own.

Lord Mackay of Clashfern: I think the noble Baroness has demonstrated the truth of what I am saying: namely, that she is concerned with the rights afforded by EU law in this country. The fact that those rights will continue to be enforced in this country is what the Bill is about. Therefore, I do not see any possibility of this amendment having any effect. The noble Baroness has just mentioned its operation in Italy, if the husband is there. That depends not on the domestic law of this country but on the law of Italy, and that is not part of what we can do in this Bill.

Lord Marks of Henley-on-Thames: I am terribly sorry to interrupt the noble and learned Lord when he has already been interrupted, but the point is that these provisions are all about reciprocity. They are about the mutuality of enforcement in other member states and in the United Kingdom. Subsection (2) of the proposed new clause seeks to address the problem with reciprocity. It says:

> "The report provided for under subsection (1) must include … the steps, if any, taken by Ministers of the Crown to negotiate the continuation of reciprocal arrangements between the United Kingdom and member States in the field of family law".

The point of that reciprocity is to ensure that United Kingdom citizens can enforce rights in other members states under the regulation in the same way as member state citizens—or former member state citizens as they would be—can in the United Kingdom.

Lord Mackay of Clashfern: I take what the noble Lord is saying, but such a report would not be dealing with subsection (1). That is my point. Subsection (1) is the operative subsection and it deals with domestic law, and reciprocity is not a matter that can be dealt with by domestic law. The only thing we can do, as I said on the last occasion on which we discussed this, is make sure that our arrangements are suitable for reciprocity and, if the reciprocity comes, that we have

[LORD MACKAY OF CLASHFERN]
the right arrangements to deal with it. That is our domestic side of reciprocity. The rest of the reciprocity belongs to the rest of Europe, and I hope it will see the benefit of this as much as us. However, as far as we are concerned, we are bringing the whole of EU law that refers to family matters into our law by virtue of this Bill, and a report about that would be otiose.

Lord Inglewood (Con): My Lords, if I may, I want to make a brief comment that I should like to have made in Committee but the time was not appropriate. Like a number of your Lordships in the Chamber, I was a Member of the European Parliament for 10 years. Looking back on my experience, the most distressing aspect of the job was dealing with problems relating to family law. I make a plea to everybody concerned with this: the personal unhappiness and anguish that surrounds these circumstances is severe, and when dealing with this the Government should please remember that we are talking not about money but about people. They must find a way—I am sure they can—to resolve these horrible circumstances in the most humane way possible.

Baroness Crawley (Lab): My Lords, my noble friend Lady Kennedy is simply asking that the Minister publish within six months of Royal Assent a report outlining how the rights currently enshrined in EU family law will continue to exist after exit day. That is a very modest ask.

Baroness Sherlock (Lab): My Lords, I am grateful to my noble friend Lady Kennedy of The Shaws for a characteristically impressive summary of the challenges facing us in relation to family law post Brexit. I should also like to place on record my appreciation of the work done by the EU Justice Sub-Committee, which she chaired so ably, and the very helpful report it produced last year entitled *Brexit: Justice for Families, Individuals and Businesses?*. These issues are of huge importance to a significant minority of our citizens, and I am grateful to the noble Lord, Lord Inglewood, for underscoring just how much personal pain can be at stake in individual cases and how important it is that we get this sorted as soon as possible.

In Committee, we had a wide-ranging discussion on a number of amendments related to the post-Brexit family law landscape, so I will not go over that ground again. I am grateful to the Minister for subsequently meeting a number of us who spoke in Committee, along with some family lawyers. I hope very much that that dialogue can continue as we discuss these matters further.

In replying to me in Committee on 5 March, the Minister confirmed that the Government wanted to,

"agree a clear set of coherent common rules about: which country's courts will hear a case in the event of a dispute—that is choice of jurisdiction; which country's law will apply—that is choice of law; and a mutual recognition and enforcement of judgments across borders".

That is what is at stake. The Minister continued:

"We believe that the optimum outcome for both sides will be a new agreement negotiated between the UK and EU as part of a future partnership which reflects our close existing relationship".—[*Official Report*, 5/3/18; col. 854.]

That is what we all want. The point made by the noble Lord, Lord Marks, is that almost nobody disputes that what we have at the moment is the Rolls-Royce of family law provision. But time is very tight indeed. I understand that Ministers would like to negotiate a deal for the implementation period but that does not leave much time, even if it is forthcoming, to get a deal in place by the time we leave the European Union. If we crash out without a deal, things get very serious indeed. My noble friend Lady Kennedy of The Shaws is asking for reassurance that the Government are determined to do this: to get a full, properly reciprocal deal in place; to make a priority of it; and to find a way for Parliament to be kept informed about how those negotiations are going.

I understand that the noble and learned Lord, Lord Mackay of Clashfern has two different objections. I think he suspects that we are trying to press the Government to do something that they cannot do, which is to deliver reciprocity on their own. We would contend that we know that and that is the problem. One of the difficulties about this very situation is that the way the Bill has been framed means that, in the case of family law, because it is English and Welsh family law or Scottish family law that we retain, simply bringing that in does not mean that things stay the same. It means that things change in precisely the way my noble friend Lady Kennedy explained. With that family of a British man and an Italian woman, if the Italian woman were to take the couple's son away to Rome and he pursued a British court for an order to have the child returned, whereas at the moment the court in Rome would have to recognise that, in future it would not. Under this arrangement, however, this country would have to recognise an Italian order for a child to be returned if the situation were reversed. That is the reciprocity that we cannot get around.

I fully accept that the Minister and the noble and learned Lord, Lord Mackay of Clashfern, may not like the wording of this amendment about the report. I honestly do not mind very much. All I would like to see is some means by which the House can be reassured that the Government are making progress, that they will keep us informed and that we will find out in good time how the problems for families described very movingly by the noble Lord, Lord Inglewood, will be solved. Will the Minister please give my noble friend and the House the reassurance that we seek this evening?

Lord Keen of Elie: My Lords, I thank the noble Baroness, Lady Kennedy of The Shaws, for raising this important issue. We discussed it at some length in Committee and I will not repeat the points I made at that stage. But, as the Government outlined in their position paper published in August last year, we are committed to continuing civil judicial co-operation with the EU once we leave. That of course includes the area of family law as covered by Brussels II and Brussels IIa, as it is clearly in the interests of all individuals and families both in the UK and throughout the rest of the EU that there should be an effective area of civil judicial co-operation for these purposes. Of course, that will be the subject of negotiation.

Amendment 14, while clearly well intentioned, is potentially burdensome and I venture to suggest is not necessary. My noble and learned friend Lord Mackay of Clashfern pointed to what is potentially a deficiency in the drafting of subsection (1) of the proposed new clause, but I do not take issue with that. I understand the point that is being made about the underlying principles of reciprocity and its importance in this context.

To suggest a six-month period for a report is of course an arbitrary deadline, which makes no reference to the position of the negotiations between the EU and the UK at that stage, or to any other steps that have been taken by the Government in regard to these issues. The Government are concerned not only with the final agreement reached in negotiations but in addressing what will be done with regard to retained EU law, including retained family law. Ultimately, any agreement that takes place between the United Kingdom and the EU to reflect not only our domestic position but the need for reciprocal enforcement will be the subject of the upcoming withdrawal agreement and will be legislated for in what is proposed to be the Withdrawal Agreement and Implementation Period Bill—so it is not something that will be the subject of the present Bill.

But I stress that the Government share the view expressed by the noble Baroness and others in the House on the importance of maintaining an effective system for resolution of cross-border family law disputes once we leave the EU. It will be an important part of the partnership that we seek to maintain with the other EU 27 countries. The Government certainly believe that intergovernmental co-operation and mutual recognition is of benefit to all parties. This is not an instance in which the EU has one particular interest and we have another. We all understand that the individuals and families concerned are affected right across the EU. We have made it clear that civil judicial co-operation in respect of family matters will be part of our future relationship with the EU.

8.15 pm

Indeed, the EU, in its Article 50 negotiating guidelines, has stated that options for judicial co-operation in matrimonial, parental responsibility and other related matters should be explored. We are committed, apart from anything else, to continuing with our membership of the Hague conference on private international law and participating in all the conventions that relate to family law, going back to 1970 with the recognition of divorces and legal separations, the civil aspects of child abduction covered in the 1980 convention, the issues on protection of children in the 1996 convention and also the convention on the recovery of maintenance, which was a point raised by the noble Baroness—albeit that the EU is a signatory of that part of the convention and we will have to address our individual and independent signature to that part of the convention.

We are entirely conscious of the need to do that, which is one reason why we looked at the implementation period up to 31 December 2020 in order to address these matters. During the implementation period, the current reciprocal rules, including the key EU family law instruments and Hague conventions, will continue to apply as they do now. So we do not consider that a report of the type specified by the amendment is realistically a way forward. What is required and what we are committed to is ongoing negotiations with the EU in order to secure an agreement on reciprocal rights with regard to family law.

On Amendment 20, with reference to the Court of Justice of the European Union and the point raised by the noble Lord, Lord Marks, I do not believe that it is necessary for the UK to subject itself unilaterally to the jurisdiction of the CJEU in order to secure a reciprocal agreement in this field. I certainly do not accept the fourth point made by the noble Lord, Lord Marks, that somehow we have to embrace the jurisdiction of the CJEU in order to secure a suitable international agreement with regard to mutual recognition in this regard. That is simply not the case. Of course, the CJEU will remain the final arbiter of EU law in this context, just as the UK's Supreme Court will be the final arbiter of our law. It is not exceptional or unusual to find circumstances in which there is reciprocity and mutual recognition without the embracing of one single court.

An example of that is the Lugano convention, which covers countries such as Norway, Iceland and Denmark in circumstances where the CJEU has no jurisdiction over the Lugano convention countries but there is an agreement whereby the national courts of the Lugano countries will respect the decisions of the CJEU and the CJEU will respect the decisions of the national courts of the Lugano convention countries for the purposes of applying these mutual arrangements. There is nothing exceptional about that aspect of it.

We therefore have to be clear about what the present Bill is designed to do. It is legislating not for the future agreement between the United Kingdom and the EU, but to provide a stable and certain domestic statute book on exit day. For that reason alone, we could not accept the sort of proposal set out in Amendment 20 that would pre-emptively tie our domestic courts to the CJEU in one particular area.

What I seek to stress is our determination to secure by negotiation—it will have to be by way of negotiation—suitable agreements with regard to family law, mutual enforcement and mutual recognition in these areas. I underline the term "mutual". We are not talking about trying to secure a benefit for the United Kingdom at the expense of the EU, or trying to secure a benefit for the United Kingdom when there is no benefit for the EU. We are talking about something that is to the mutual benefit of all parties to such an agreement. That is why we continue to entertain a degree of confidence in being able to secure this during the course of the implementation period when we come to negotiate the whole area of judicial co-operation—which, of course, goes beyond the realms of family law and embraces other areas such as contract law, commercial law and indeed insolvency.

In these circumstances, I invite the noble Baroness, Lady Kennedy, to withdraw her amendment. I feel I have to add that we will not reflect further on this issue between now and Third Reading—so if she does wish to test the opinion of the House, this would be the time to do so.

Baroness Kennedy of The Shaws: My Lords, I thank the Minister for his response. I want to make clear the purpose of both these amendments—Amendment 14 and Amendment 20. The idea was that they would create a safety net because we are concerned, as are many practitioners who deal with family law matters that cross borders in Europe, that somehow—as can happen—when the negotiation is complete, we will find that there are glitches and things have fallen between the slats. It will not be a perfect solution in the way that is imagined. That is because, in creating law, we often do not imagine the very particular circumstances of a family. That is what we have been anxious to look at: how to create some kind of safety net if the negotiations do not satisfy the needs that people have when it comes to family matters.

That is why having a requirement to produce a report within six months is not, I suggest, an onerous demand on the Government. It would say, "This is what will happen in those circumstances". The report would be able to deal with how the Government envisage the arrangements working in practical terms. It would be neither otiose nor unnecessary because there are concerns about the whole business of reciprocity and how it is going to work.

I have heard the Minister mention Lugano before as his example, but as I am sure he knows, Lugano is only about commercial matters. If a person in Norway is in a family dispute with someone in another part of Europe, they will not have the reciprocity that we are talking about. We have to make sure that, in the design of some eventual court that will deal with conflict on trade or commercial matters, it would also be able to deal with family matters because Lugano does not do that. Lugano is specifically a commercial court dealing with commercial matters. It does not deal with family issues, and families complain about it. If someone here has a problem with someone in Switzerland over maintenance or access to children, I am afraid that they have to get lawyers in Switzerland at great expense in order to deal with the Swiss courts, which do not operate on quite the same set of rules as we have here in Britain or, for example, with the same commitment to the rights of women. I suggest that there are legitimate concerns here.

The idea behind Amendment 20 is to retain some way of getting to a court which would have, if you like, an overarching role for a limited period of time. The suggestion may seem clunky, but it is really about creating a safety net. As the noble Lord, Lord Inglewood, said, we are talking about families involved in some of the most miserable of circumstances when they break down. People want to maintain relationships with their children into the future and so on.

I have heard what the Minister has said and I am grateful for his reassurances that this issue is going to be taken seriously in the negotiations, but I can assure the noble and learned Lord that I will be snapping at his ankles, as will others in this House, if we do not see a proper kind of reciprocity in the final arrangements. I beg leave to withdraw the amendment.

Amendment 14 withdrawn.

House adjourned at 8.25 pm.